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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 90-055]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for locations in California and North Carolina. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime for these locations.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for locations in California and North Carolina. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltimes between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is amended as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
North Carolina:			
Cherry Point	Morehead City		1
Add:			
California:			
San Diego	Los Angeles		6
North Carolina:			
Cherry Point	Morehead City		2

Done in Washington, DC, this 15th day of June 1990.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14376 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-235-AD; Amdt. 39-6636]

Airworthiness Directives; General Dynamics Models 340, 440 and C-131 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which requires inspection for unacceptable drilled holes in certain fuselage frames, and repair, if necessary. This amendment is prompted by reports from operators who have found numerous holes drilled in the fuselage beltframes, the result of repeated removal and reinstallation of the cargo or passenger compartment interiors. Excessive holes in the fuselage frames could compromise the structural integrity of the airplane. This condition, if not corrected could result in failure of the beltframes.

EFFECTIVE DATE: July 30, 1990.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5234.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which requires inspection for unacceptable drilled holes in certain fuselage frames, and repair, if necessary, was published in the **Federal Register** on January 30, 1990 (55 FR 3067).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters responded that the cost estimate presented in the preamble to the Notice was too low and did not take into account the cost of repair parts. The commenters stated that the required inspection would necessitate between 300 and 2,000 manhours, and the cost of repair parts may be as much as $15,000 per airplane, depending upon the configuration of the airplane (cargo or passenger) and the extent of damage. After considering the data presented by the commenters, the FAA concurs that the number of manhours required is higher than previously approximated; the economic impact analysis paragraph, below, has been revised to indicate this higher amount. The economic analysis, however, is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, i.e., "repair, if necessary," since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Four commenters stated that not all aircraft have numerous excess holes, as the total airframe hours are low and the interiors are either original or have been changed only once. Therefore, these commenters requested that such airplanes not be required to undergo the proposed inspection, since to do so would create yet another set of holes. The FAA agrees that not all aircraft have excess holes and does not intend to have operators strip out aircraft unnecessarily. If those aircraft can be identified, a request for an alternate method of inspection or adjustment of compliance time can be submitted in accordance with paragraph C. of the final rule. In addition, a provision has been made in the final rule to disregard any holes which are not degraded or cracked and are used to attach a FAA-approved interior, or are original Convair manufacturing holes and meet the criteria in the Service Bulletin.

Four commenters requested that the compliance time be extended in order that they may accomplish the inspection during some other regularly scheduled maintenance interval or in conjunction with other required inspections in the same area of the airplane. Based on the revised, and more accurate, number of manhours required to accomplish the inspections, the FAA concurs that the compliance time may be adjusted somewhat. The final rule has been changed to divide the required inspections into two parts, as specified in the relevant Convair service bulletin, and each inspection may be performed at a different interval: The Part I inspection is to be accomplished within 1,650 hours time-in-service or 18 months after the effective date of the rule, whichever occurs first; the Part II inspection is to be accomplished within 2,300 hours time-in-service or 24 months after the effective date of the rule, whichever occurs first. Additionally, operators may apply for an adjustment of the compliance time as provided by paragraph C. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 350 General Dynamics Models 340, 440, and C-131 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,150 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,200,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Dynamics (Convair): Applies to Models 340, 440, and C-131, B, C, D, E, F, and G (Military) series airplanes, including all airplanes converted to turbopropeller power, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent progressive damage to the airframe, accomplish the following:

A. Perform a visual inspection of the fuselage frames in accordance with General Dynamics, Convair Division, Service Bulletin 640 (340D) 53-15, Revision 1, dated December 1, 1989, in accordance with the schedule below. Any drilled holes found which do not conform to the limitations specified in the service bulletin, or any holes found which are cracked, must be repaired prior to further flight, in accordance with the service bulletin. Any holes specifically used for attaching an FAA-approved interior, or original Convair manufacturing holes, may be disregarded if they are not degraded or cracked, and if they meet the criteria specified in the service bulletin.

1. Within 1,650 hours time-in-service or 18 months after the effective date of this AD, whichever occurs first, accomplish the inspections specified in Part I of the service bulletin.

2. Within 2,300 hours time-in-service or 24 months after the effective date of this AD, whichever occurs first, accomplish the inspections specified in Part II of the service bulletin.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective on July 30, 1990.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-14331 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC73

Entitlement as a Surviving Divorced Spouse After Remarriage

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In this final regulation, we are removing from our current regulations the requirement that for a surviving divorced spouse who has remarried to be entitled to benefits on his or her former spouse's Social Security account, the remarriage must have occurred after the former insured spouse died. This action is based on the district court decision in *Pirus v. Bowen*, No. CV87-1141-IH (C.D. Cal., Nov. 18, 1987), which held that this requirement in our regulations is invalid and unenforceable.

EFFECTIVE DATE: This regulation is effective beginning June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Schenberger, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: Sections 202 (e) and (f) of the Social Security Act (the Act) provide in paragraph (1) that a surviving divorced spouse is entitled to widow's or widower's insurance benefits if, among other things, he or she is not married and has attained a specified age. Paragraph (3) of section 202(e) and paragraph (4) of section 202(f) provide that if a surviving divorced spouse marries after attaining age 60, or age 50 in certain situations, the marriage is deemed not to have occurred.

Our current regulations provide in 20 CFR 404.336 that a person may be entitled to benefits as a surviving divorced wife or a surviving divorced husband if the person is unmarried. In addition, as explained in paragraphs (e)(1) through (e)(3) of § 404.336, a marriage may be deemed not to have occurred for these purposes where the person remarried after a specified age. Paragraph (4) of that section adds a further requirement that the remarriage must have occurred after the death of the insured former spouse.

On February 5, 1988, we published a final rule (53 FR 4082) which, among other things, added paragraph (4) to § 404.336. We explained in the

Supplementary Information of that publication that the addition of paragraph (4) reflected the intent of Congress as expressed in the language of section 131 of the Social Security Amendments of 1983 (Pubic Law 98–21) and in the related legislative history that the remarriage of a surviving divorced spouse after he or she had become entitled to benefits as such would not cause a termination of those benefits. Senate Rep. No. 98–23 at 6, House of Representatives Rep. No. 98–25, part I, at 56–57, House Conf. Rep. No. 98–47 at 129, 98th Cong. 1st Sess. (1983). Prior to the 1983 amendments, a divorced spouse who remarried before his or her former spouse died could not become entitled to benefits under the Act as a surviving divorced spouse. Because of this, we did not believe Congress' intent, expressed in the legislative history cited above, to avoid a termination of surviving divorced spouse's benefits on remarriage could have applied to such a divorced spouse who remarried before the death of the former spouse and thus had never become entitled to surviving divorced spouse's benefits on the earnings record of that former spouse.

In a judgment dated November 19, 1987, the U.S. District Court for the Central District of California held in *Pirus* v. *Bowen* that 20 CFR 404.336(e)(4) violates the Social Security Act and is invalid and unenforceable. The court in *Pirus* further enjoined the Secretary from denying claims for surviving divorced spouse's benefits solely because the remarriage had occurred prior to the death of the former spouse. Since this case had been certified as a nationwide class action, we took the necessary steps to pay benefits to surviving divorced spouses who were initially denied benefits on or after March 31, 1985, the date specified in the Order Certifying Class, because the remarriages occurred prior to the deaths of former spouses. We are now removing paragraph (e)(4) from 20 CFR 404.436 so that our regulations will conform to the *Pirus* decision and reflect our current policy.

We are publishing this removal action as a final rule instead of a proposed rule. Even when not required by statute, as a matter of policy we generally follow the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that in this instance these procedures are unnecessary and that good cause exists under 5 U.S.C. 553(b)(B) for waiver of notice of proposed rulemaking and public comment procedures. We reached this conclusion because we are merely deleting an existing rule that has been declared invalid in a nationwide class action lawsuit. Since the decision of the court was not appealed and was adopted by the Agency as a permissible interpretation of the applicable statute, we need to make this change so that our regulation will be consistent with the decision of the court.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under E.O. 12291 because it will result in negligible administrative costs or savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pubic Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: March 12, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: April 19, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart D of part 404 of 20 CFR chapter III is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

§ 404.336 [Amended]

2. In § 404.336, paragraph (e)(4) is removed.

[FR Doc. 90–14298 Filed 6–20–90; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Milbemycin Oxime

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The NADA provides for use of milbemycin oxime tablets for prevention of heartworm disease and control of hookworm infections in dogs.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 140–915 which provides for use of 2.3-, 5.75-, 11.5-, and 23.0-milligram milbemycin oxime (Interceptor®) tablets for use as an anthelmintic in dogs. The product is for prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum*. The NADA is approved as of June 14, 1990, and the regulations are amended by adding new 21 CFR 520.1445 to reflect the approval. The basis of approval is discussed in the freedom of information summary. Additionally, the regulations are amended to revise the sponsor entries in 21 CFR 510.600(c)(1) and 510.600(c)(2).

As provided under the Generic Animal Drug and Patent Term Restoration Act of 1988 and section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning June 14, 1990, because milbemycin oxime is a new animal drug that has not been previously approved under section 512(b)(1) of the act. Under section 512(c)(2)(F)(iv) of the act, the sponsor may elect, within 10 days of receiving such approval, to waive clause (i), in which event this approval reverts to 3 years of marketing exclusivity as set forth in clause (ii) beginning June 14, 1990.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Ciba Pharmaceutical Co.," and alphabetically adding a new entry "Ciba-Geigy Animal Health" and in paragraph (c)(2) by removing the entry "000028" and numerically adding a new entry "058198" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300	058198

(2) * * *

Drug labeler code	Firm name and address
058198	Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 520.1445 is added to read as follows:

§ 520.1445 Milbemycin oxime tablets.

(a) *Specifications.* Each tablet contains 2.3, 5.75, 11.5, or 23.0 milligrams of milbemycin oxime.

(b) *Sponsor.* See 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 0.23 milligram per pound of body weight (0.5 milligram per kilogram).

(2) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum* in dogs.

(3) *Limitations.* Administer once a month. First dose given within 1 month after first exposure to mosquitoes and continue regular use until at least 1 month after end of mosquito season. Prior to initiation of treatment, dogs over 6 months of age should be tested for existing heartworm infection. If positive, dogs should be converted to a negative status prior to use of drug. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 14, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–14351 Filed 6–20–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–90–1961; FR–2634–N–03]

Section 8 Housing Assistance Payments Program, Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas Fiscal Year 1988 Amendment to Notes Regarding Special Category Computations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioners, HUD.

ACTION: Final Section 8 Housing Amendment to all market areas.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. On December 1, 1989, at 54 FR 49886, the Department announced final Fiscal Year 1988 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program. This notice announces an amendment to the notes regarding special category computations that were appended to the December 1, 1989 final notice.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8

Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments to owners on behalf of eligible families. Total housing expense represents the total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the difference between the total housing expense and the total family contribution. Initial contract rents plus any allowances for utilities generally may not exceed area-wide Fair market Rents (FMRs) established by the Department.

The Department published proposed Fiscal Year 1988 FMRs in the Federal Register on May 22, 1989, at 54 FR 21196, with a comment due date of June 21, 1989. On December 1, 1989, at 54 FR 49866, the Department published the final Fiscal Year 1988 FMRs in the Federal Register.

Appended to the December 1, 1989 final notice is a list of Notes pertaining to Special Category Computations. Note number 4 states that "One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet, provided that the project conforms to the following criteria:

a. The project meets HUD's cost containment guidelines, and

b. Use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project."

This Notice

The minimum square footage requirement set forth above has been inadvertently included in recent FMR notices even though the policy was changed in 1985. The Department discovered then that it was unnecessary and contradictory to the purposes of the programs to which these FMRs are applied to continue the requirement of applying one-bedroom FMRs *only if the bedroom space plus the proportionate part of the common space totals at least 450 square feet* when the project meets the other necessary criteria (i.e., meets HUD's cost containment guidelines and use of the one bedroom FMR is necessary in order to assure the economic feasibility and financial soundness of the project).

The Department changed its policy from applying one-bedroom FMRs only if the bedroom space plus the proportionate part of the common space totals at least 450 square feet in the Funding Notice H 85-6 for Fiscal Year 1985 to allow the application of the one-bedroom FMRs only if the unit would be occupied by two persons. However, sponsors of Section 202 group homes and disability advocacy groups voiced concern that the result of the new requirement would be to limit single occupancy to zero-bedroom FMRs and that this would prevent economic feasibility for some projects. Therefore, this policy was further modified by a memorandum dated February 14, 1986, from the Acting General Deputy Assistant Secretary for Housing to HUD field offices to allow the application of the one-bedroom FMRs with single person occupancy when a project meets HUD's cost containment guidelines and the use of the one-bedroom FMR is necessary to assure economic feasibility. This later policy did not have a minimum square footage requirement because the Department discovered that it was contradictory to the purposes of cost containment.

Because the minimum square footage requirement was inadvertently included after the policy was changed, the Department finds itself having to grant a continuous number of requests for waivers. Therefore, in light of the benefits to be gained by the public in relieving it of the delays due to requesting waivers of this outdated requirement, the Department has determined that notice and public procedure are unnecessary and contrary to the public interest and that it is in the best interest of the public to issue this amendment as a final notice.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs set forth in December 1, 1989 notice are within the exclusion set forth in § 50.20(1), no environmental assessment was required, and accordingly no environmental assessment is required for this technical correction to that notice.

The Catalog of Federal Domestic Assistance program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department amends number 4 of *Notes* to the Final Notice published on December 1, 1989, at 54 FR 49866, to read as set forth below.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Notes

Special Category Computations

* * * * *

4. FMRs for living units in a group home developed with a direct loan under Section 202 of the Housing Act of 1959 are those for zero-bedroom or a one-bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2- to 4-story structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be authorized by the HUD Assistant Secretary for Housing, provided that the project conforms to the following criteria:

a. the project meets HUD's cost containment guidelines, and

b. use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project.

* * * * *

Authority: Sec. 6(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 6, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-14393 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administrative Instruction No. 81]

Privacy Program

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is publishing as a final rule a new general exemption ((j)(2)) that will allow the Office of the Secretary of Defense to exempt a new record system from certain provisions of the Privacy Act of 1974, as amended, (5 U.S.C. 552a). A general exemption is required to protect the information contained therein from certain disclosures.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cregg, Chief, Records Management and Privacy Act Branch, Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, DC 20301-1155. Telephone (202) 695-0970.

SUPPLEMENTARY INFORMATION: On May 15, 1990, at 55 FR 20168 of the Federal Register, the Office of the Secretary of Defense published a proposed exemption rule for a new record system identified as DWHS P42.0, entitled "DPS Incident Reporting and Investigations Case File" under the provisions of 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974, as amended. No comments were received, therefore the Office of the Secretary of Defense is adopting the proposed exemption rule as a final rule.

List of Subjects in 32 CFR Part 286b

Privacy.

PART 286b—PRIVACY PROGRAM

For the reasons set forth in the preamble, 32 CFR part 286b is amended as follows:

1. The authority citation for 32 CFR part 286b continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 286b.7 is amended to add paragraph (b) as follows:

§ 286b.7 Procedures for exemptions.

* * * * *

(b) *General exemptions.* The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by law enforcement activities. Certain functional records of such activities are not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any stage of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System Identification and Name*—DWHS P42.0, "DPS Incident Reporting and Investigations Case Files".

Exemption—Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c) (3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

Authority—5 U.S.C. 552a(j)(2).

Reason—The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provisions of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

* * * * *

Dated: June 18, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14393 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-33]

Special Local Regulations for Marine Events; July 4th Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the July 4th Fireworks Display. The event will be held in the Inner Harbor, Baltimore, Maryland on July 4, 1990. The special local regulations will govern vessel activities during the display. The regulations are necessary due to potential danger to waterway users, the confined nature of the waterway, and possible spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective from 8:30 p.m. to 11 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11 p.m., July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of Federal Register publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until June 8, 1990; leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Baltimore Office of Promotion has submitted an application dated May 24, 1990 to hold the July 4th Fireworks Display in the Inner Harbor, Baltimore, Maryland. The display will be launched from a barge anchored in the Inner Harbor. A portion of the Inner Harbor will be closed to waterborne traffic for a brief period during the actual firing of the fireworks. Traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-0533 is added to read as follows:

§ 100.35-0533 Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'52.0" North, longitude 76°36'14.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective date.* These regulations are effective from 8:30 p.m. to 11:00 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11 p.m., July 5, 1990.

Dated: June 13, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14340 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-90-32]

Special Local Regulations for Marine Events; South County Fireworks Display; West River, Shady Side, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the South County fireworks display. The fireworks will be launched from a barge anchored approximately 420 yards northwest of Parish Creek Light 1 (LLNR 17675), on the West River, at Shady Side, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 8 p.m. to 10:30 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 31, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Kiwanis Club of Shady Side Inc. submitted an application dated April 4, 1990 to hold a fireworks display on July 4, 1990. The fireworks will be launched from a barge anchored approximately 420 yards northwest of Parish Creek Light 1 (LLNR 17675), West River, Shady Side, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0530 is added to read as follows:

§ 100.35-0530 West River, Shady Side, Maryland

(a) *Definitions*—(1) Regulated area. The waters of the West River bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 38°51'14.0" North, longitude 76°29'58.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates.* These regulations are effective from 8 p.m. to 10:30 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 6, 1990.

Dated: June 13, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14341 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-90-32]

Special Local Regulations for Marine Events; a City Celebrates Fireworks Displays; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the A City Celebrates Fireworks Displays. The events will be held in the Inner Harbor, Baltimore, Maryland on June 29, 1990 and on July 6, 1990. The special local regulations will govern vessel activities during the display. The regulations are necessary due to potential danger to waterway users, the confined nature of the waterway, and possible spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective for the following periods:

8:30 p.m. to 10:30 p.m., June 29, 1990
7:15 p.m. to 9:30 p.m., July 8, 1990.

If inclement weather causes the postponement of the event on June 29, 1990, the regulations are effective from 8:30 p.m. to 10:30 p.m., June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of Federal Register publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the events was not received until June 5, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the events.

Drafting Information

The drafters of this notice are QM1 Keven R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Harborplace in Baltimore has submitted an application dated May 25, 1990 to hold the A City Celebrates Fireworks Displays in the Inner Harbor, Baltimore, Maryland. The displays will be launched from a barge anchored in the Inner Harbor. A portion of the Inner Harbor will be closed to waterborne traffic for a brief period during the actual firing of the fireworks. Traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0532 is added to read as follows:

§ 100.35-0532 Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Definition*—(1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'52.0" North, longitude 76°36'14.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective date.* These regulations are effective for the following periods:

8:30 p.m. to 10:30 p.m., June 29, 1990
7:15 p.m. to 9:30 p.m., July 8, 1990

If inclement weather causes the postponement of the event on June 29, 1990, the regulations are effective from 8:30 p.m. to 10:30 p.m., June 30, 1990.

Dated: June 18, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14342 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-29]

Special Local Regulations for Marine Events; Fireworks Display; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the Annapolis Fourth of July Fireworks Display. The fireworks will be launched from barges anchored approximately 150 yards off Farragut Field, U.S. Naval Academy, from approximately 9 p.m. to 9:25 p.m. on July 4, 1990. The debris from the firework display will cover an area of approximately 350 feet from the launch site. The regulations in 33 CFR 100.511 are needed to control marine traffic within the debris fallout area. The regulations restrict general navigation in this area for the safety of life and property.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 8 p.m. to 10:30 p.m. on July 4, 1990. If inclement weather causes postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 [804] 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Annapolis Recreation and Parks Department, Annapolis, Maryland, submitted an application on March 12, 1990 to hold a fireworks display from 9 p.m. to 9:25 p.m. on July 4, 1990. The fireworks will be launched from barges anchored approximately 150 yards off Farragut Field, U.S. Naval Academy. The debris from the firework display will cover an area of approximately 350 feet from the launch site. The regulations in 33 CFR 100.511 are needed to control marine traffic within the regulated area and particularly within the debris fallout area for the safety of life and property. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.511 are being implemented for this event. A portion of the regulated area will be closed during the fireworks display. Since the marked channels will not be closed for this event, marine traffic should not be severely disrupted.

Dated: June 12, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14343 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 90-035]

Great Kennebec River Whatever Race, Gardiner, ME

AGENCY: Coast Guard; DOT.

ACTION: Notice of implementation of regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.108, for the Great Kennebec River Whatever Race from 6:00 a.m. to 6:00 p.m. on July 1st, 1990.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, (617) 223-8310.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1990 running of the Great Kennebec River Whatever Race in Augusta, Maine. The regulations, 33 CFR 100.108, will be in effect from 6:00 a.m. to 6:00 p.m. on July 1, 1990. The Great Kennebec River Whatever Race is a marine parade sponsored by the Kennebec Valley Chamber of Commerce and is held annually to celebrate the cleanup of the Kennebec River. Approximately 3,000 people and 150 unpowered watercraft of all description are expected to participate along with some 50 spectator craft. The only requirement placed on participants by the sponsor is that all entries be non-motor powered: Traditionally the event attracts a great number of homemade rafts of unique design. The race will start at the U.S. Route 201-202 bridge in Augusta, Maine and finish at the Maine Route 126 bridge connecting Randolph and Gardiner, Maine. The event will be patrolled by the Coast Guard, Coast Guard Auxiliary, state and local law enforcement organizations, and sponsor provided patrol craft. The regulations will serve to restrict the operating speed of vessels in the race area and require race participants (those persons on unregistered and undocumented vessels) to wear Coast Guard approved personal flotation devices.

Drafting Information

The drafters of these regulations are ENS L.J. Penney, project officer, First Coast Guard District Boating Affairs Branch and Lt. R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Dated: June 4, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90-14381 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 90-069]

Safety Zone Regulations; Rowayton Civic Association Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone at the mouth of Five Mile River approximately 100 yards west of Buoy #2. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation becomes effective at 8:45 p.m. July 4, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 11:00 p.m., July 4, 1990, unless terminated sooner by the Captain of the Port. Rain date will be July 8th at the same times.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound, (203) 468-4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are BMC Cassin, project officer, Captain of the Port Long Island Sound, and Lt. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8:45 p.m. on July 4, 1990 approximately 15 minutes prior to the fireworks display 100 yards west of Buoy #2 in Rowayton, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in this entrance channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 33 CFR 165.T1069 is added to read as follows:

§ 165.T1069 Safety zone: Rowayton Civic Association fireworks.

(a) *Location.* The following area is a safety zone: All waters within a 1,000 ft radius of the Barge "C33" (the fireworks launching platform) approximately 100 yards west of Buoy #2 in Rowayton, CT. The launching platform will be moved into and then anchored in position [41-03'18" N, 073-28'61" W.]. The safety zone will be closed to all marine traffic from 8:45 p.m. until the completion of the display at approximately 11:00 p.m.

(b) *Effective date.* This regulation becomes effective on July 4, 1990 at 8:45 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 11:00 p.m. July 4, 1990, unless terminated sooner by the Captain of the Port. The rain date for this event is July 8, 1990 at the same time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: June 14, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 90-14380 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1284

RIN 3095-AA97

Temporary Exhibition of Privately-Owned Material in the National Archives Building

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is publishing rules governing the temporary exhibition of privately-owned documents, paintings, and other objects at the National Archives Building that are not part of a NARA-produced exhibit. The policy embodied in these rules is being established because of limited space and other NARA resources for display of items at the National Archives Building.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110 (FTS 241-5110).

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on April 21, 1989 (55 FR 13553). No comments were received. Accordingly, the proposed rule is being adopted without change.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1284

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended by adding part 1284 to subchapter G to read as follows:

PART 1284—EXHIBITS

Sec.
1284.1 Scope of part.
1284.20 Temporary exhibition of privately-owned material.

Authority: 44 U.S.C. 2104(a).

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials at the National Archives Building.

§ 1284.20 Temporary exhibition of privately-owned material.

(a) Documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that the NARA Office of Public Programs and the Document Conservation Branch judge to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 90 days.

Dated: May 21, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-14388 Filed 6-20-90; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AC54 and 2900-AD14

Procedural Due Process; Appeals Regulations and Rules of Practice; Request for Change in Representation, Request for Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rules; Correction.

SUMMARY: On April 21, 1989, on pages 13569-13580 of the Federal Register, the

Department of Veterans Affairs published a final rule on procedural due process for VA claimants and beneficiaries and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. This final rule included a revision to 38 CFR part 3, § 3.103 (page 13527). A subsequent revision to § 3.103, paragraph (c), appearing in another final rule as described below was published in the **Federal Register** on May 15, 1990. Due to editorial errors it is necessary to publish a correction so as to avoid any confusion.

On May 15, 1990, on pages 20144–20150 of the **Federal Register**, the Department of Veterans Affairs published a final rule to amend its appeals regulations concerning the consideration of additional evidence, hearing requests and requests for changes in representation following the certification and transfer of an appeal to the Board of Veterans Appeals. The revision to 38 CFR part 3, § 3.103, paragraph (c) (page 21048) supersedes the revision published on April 11, 1990, but was incorrectly published.

In the amendatory language and the revision to 38 CFR part 3, § 3.103, paragraph (c) (page 20148), three editorial errors were made. The amendatory paragraph stated that the first sentence of paragraph (c) is revised. In fact, it is newly designated paragraph (c)(1), as published on page 13527 of the **Federal Register** dated April 11, 1990, that is being revised. In addition, the title of paragraph (c)(1) and the words in the first sentence "within the purview of this part" were inadvertently changed. The title is "The right to a hearing" and the words in the first sentence "within the purview of part 3 of this chapter" are correct as published on page 13527 of the **Federal Register** dated April 11, 1990. The title of § 3.103 is correct as it appears in both the **Federal Register** dated May 15, 1990, (page 20148), and in the current edition (revised as of September 1, 1989) of title 38, Code of Federal Regulations.

To avoid any confusion, VA is printing the correct newly designated paragraph (c)(1) to § 3.103.

VA regrets the errors that are corrected by this notice.

FOR FURTHER INFORMATION CONTACT: Don England, (202) 233–3005; Jan Donsbach, (202) 233–2978.

Dated: June 14, 1990.

Charles A. Fountaine, III,

Records Management Service.

PART 3—AMENDED

1. In 38 CFR part 3, § 3.103, newly designated paragraph (c)(1) as published on page 13527 of the **Federal Register** dated April 11, 1990, and as published as paragraph (c) on page 20148 of the **Federal Register** dated May 15, 1990, is correctly designated as paragraph (c)(1) and the first sentence is revised to read as follows:

§ 3.103 Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

* * * * *

(c) *The right to a hearing.* (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 19.174 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. * * *

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[FR Doc. 90-14296 Filed 6-20-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6877]

List of Communities Eligible for Sale of Flood Insurance; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Alabama: Reece, city of, Etowah County	010253	Apr. 27, 1990	Feb. 21, 1975.
Ohio:			
Millersport, village of, Fairfield County	390689	May 8, 1990	Jan. 31, 1975.
Carroll County, unincorporated areas	390783	May 11, 1990	Nov. 4, 1977.
Alabama: Dozier, town of, Crenshaw County	010056	May 4, 1990	Sept. 20, 1974.
Oklahoma:			
Nash, town of, Grant County	400311	May 14, 1990	July 2, 1976.
Noble County, unincorporated areas	400132	....do	Oct. 22, 1976.
Washington: Yelm, town of, Thurston County	530310	May 21, 1990	
Michigan:			
Byron, village of, Shiawassee County	260801	May 23, 1990	Sept. 19, 1975.
Chester, township of, Ottawa County	260829	....do	
Arkansas:			
Garland County, unincorporated areas	050433	May 25, 1990	Aug. 2, 1977.
Chester, town of, Crawford County	050050	May 18, 1990	
New Eligibles—Regular Program			
Texas: Runaway Bay, city of, Wise County	481618	May 10, 1990	Mar. 19, 1990.
Tennessee: Henderson County, unincorporated areas	470088	May 17, 1990	Sept. 2, 1988.
Reinstatements			
Alabama: Rainesville, town of, DeKalb County	010368	July 16, 1975, Emerg.; May 1, 1990, Reg.; Sept. 30, 1988, Susp.; May 4, 1990, Rein.	May 1, 1990.
Maine: Blue Hill, town of, Hancock County	230274	Apr. 1, 1976, Emerg.; May 3, 1990, Reg.; May 3, 1990, Susp.; May 17, 1990, Rein.	May 3, 1990.
Missouri: Hopkins, city of, Nodaway County	290489	Feb. 18, 1975, Emerg.; Apr. 1, 1982, Reg.; Apr. 1, 1982, Susp.; June 11, 1986, Rein.; Mar. 5, 1990, Susp.; May 18, 1990, Rein.	Apr. 1, 1982.
New Hampshire:			
Portsmouth, city of, Rockingham County	330139	July 10, 1975, Emerg.; May 17, 1982, Reg.; May 3, 1990, Susp.; May 21, 1990, Rein.	May 17, 1982.
Keene, city of, Cheshire County	330023	Apr. 24, 1974, Emerg.; Sept. 30, 1983, Reg.; May 3, 1990, Susp.; May 29, 1990, Rein.	Feb. 1, 1985.
Alabama: Louisville, town of, Barbour County	010225	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; May 30, 1990, Rein.	Sept. 1, 1987.
Regular Program Conversions—Region I			
Maine:			
Belfast, city of, Waldo County	230128	May 3, 1990, suspension withdrawn	May 3, 1990.
Carrabassett Valley, town of, Franklin County	230056	....do	Do.
Clinton, town of, Kennebec County	230236	....do	Do.
Greene, town of, Androscoggi County	230475	....do	Do.
Lincolnville, town of, Waldo County	230173	....do	Do.
Livermore, town of, Androscoggi County	230173	....do	Do.
Milbridge, town of, Washington County	230142	....do	Do.
Winterport, town of, Waldo County	230271	....do	Do.
New Hampshire: Durham, town of, Strafford County	330148	....do	
Region III			
Pennsylvania: Heidelberg, township of, Berks County	421069	....do	Do.
Region IV			
Alabama:			
Woodville, town of, Jackson County	010114	....do	Do.
Jackson County, unincorporated areas	010110	....do	Do.
Mississippi:			
DeSoto County, unincorporated areas	280050	....do	Do.
Horn Lake, city of, DeSoto County	290051	....do	Do.
Southhaven, town of, DeSoto County	280331	....do	Do.
Olive Branch, city of, DeSoto County	290266	....do	Do.
Region V			
Minnesota: Thief River Falls, city of, Pennington County	270344	....do	Do.
Wisconsin: Palmyra, village of, Jefferson County	550196	....do	Do.
Region VI			
Louisiana: Beauregard Parish, unincorporated areas	220026	....do	Do.
Region I			
Maine:			
Frankfort, town of, Waldo County	230254	May 17, 1990, suspension withdrawn	May 17, 1990.
Mechanic Falls, town of, Androscoggin County	230007	....do	Do.
Peru, town of, Oxford County	230096	....do	Do.
Vermont: Newbury, city of, Newport County	445403	....do	Do.
Rhode Island: Newport, city of, Newport County	445403	....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
Pennsylvania:			
Benson, borough of, Somerset County	420783	do	Do.
Scott, township of, Lackawanna County	421757	do	Do.
South Heidelberg, township of, Berks County	421107	do	Do.
West Virginia: Ronceverte, city of, Greenbrier County	540043	do	Do.
Virginia: Augusta County, unincorporated areas	510013	do	Do.
Region IV			
Mississippi:			
Picayune, city of, Pearl River County	280130	do	Do.
Pearl River County, unincorporated areas	280129	do	Do.
Region V			
Michigan: Armada, village of, Macomb County	290742	do	Do.
Ohio:			
Aurora, city of, Portage County	390454	do	Do.
Ramsdenville, village of, Summit County	390655	do	Do.
Seneca County, unincorporated areas	390779	do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: June 12, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-14389 Filed 6-18-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 900253-0142]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule prohibits the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) in the Gulf of Mexico. The intended effect of this rule is to reduce fishing mortality of jewfish so that the species may be protected and the stock rebuilt.

EFFECTIVE DATE: August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The harvest and possession of jewfish in or from the EEZ in the Gulf of Mexico is currently banned through August 29, 1990, under an emergency rule (55 FR 8143, March 7, 1990) and an extension of that emergency rule (55 FR 23086, June 6, 1990). Amendment 2 to the FMP continues the ban on a permanent basis. The background and rationale for the ban were contained in the proposed rule (55 FR 12393, April 3, 1990) and are not repeated here.

The public comment period closed on May 14, 1990, and three comments were received on the proposed rule. All comments favored approval of Amendment 2 and its implementing regulations.

The Secretary has approved Amendment 2, and the proposed rule is adopted as final with minor clarifying changes. In this final rule, in § 641.7, the prohibition proposed as paragraph (v) is designated as paragraph (t). The former paragraphs (t) and (u) were removed effective April 24, 1990, by Amendment 1 to the FMP (55 FR 2078, January 22, 1990). No other changes have been made from the proposed rule.

Classification

The Secretary of Commerce determined that Amendment 2 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review that analyzes the economic impacts of this rule and describes its effects on small business entities. A determination was made that the rule would not have a significant economic effect on a substantial number of small business entities under the Regulatory Flexibility Act. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council prepared an environmental assessment (EA) for Amendment 2 that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, and Mississippi agreed with the determination. Alabama did not comment within the statutory time period, and, therefore, consistency is automatically implied.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 15, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.7, a new paragraph (t) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(t) Harvest or possess a jewfish in or from the EEZ.

§ 641.21 [Amended]

3. In § 641.21, paragraph (a)(4) is removed and paragraphs (a)(5) through (a)(7) are redesignated as paragraphs (a)(4) through (a)(6).

4. In § 641.24, paragraph (b)(3) is revised and a new paragraph (b)(5) is added to read as follows:

§ 641.24 Bag and possession limits.

* * * * *

(b) * * *

(3) Groupers, excluding jewfish—5.

* * * * *

(5) Jewfish—0.

* * * * *

5. In § 641.25, a new paragraph (d) is added to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(d) Jewfish—0 pounds.

[FR Doc. 90-14398 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening of a fishery.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, for one day on June 14, 1990. This fishery was closed at midnight, June 11, 1990, based on projections that the 26,100 chinook salmon quota for the May 1 through June 15, 1990, fishing period has been reached. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow one additional day of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective:* Reopening of the EEZ to commercial salmon fishing between the U.S.-Canada border and Cape Falcon, Oregon, is effective 0001 hours through 2400 hours local time June 14, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until July 5, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, would begin on May 1 and continue through the earlier of June 15 or the attainment of a quota of 26,100 chinook salmon. This fishery has been open May 1 through May 14, May 16 through May 27, May 31 through June 2, and June 8 through June 11. Each closure was based on projections that the quota would be reached by that date. However, subsequent evaluation of landing data indicated that the closures were based on overestimates of the catch, and the quota had not been reached.

According to the best available information, commercial catches through June 11 totaled 25,300 chinook salmon, leaving 800 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for one additional day of fishing, on June 14. This action is being taken in as timely a manner as possible to allow commercial salmon fishermen full opportunity to catch the chinook salmon quota prior to the scheduled end of the fishing season on June 15, 1990. The Regional Director has determined that the reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1 through June 15), Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, June 14, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, which is effective 0001 hours through 2400 hours local time, June 14, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public

comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through July 5, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14324 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-001]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Protection and Quarantine regulations to allow the importation of all varieties of mangoes from all of South America, Central America, and the West Indies that have been treated with an approved hot water dip treatment, and by slightly modifying the current hot water dip treatment for mangoes from the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1. This proposal is based on results of research undertaken by the Agricultural Research Service, U.S. Department of Agriculture. It would provide the first approved treatment for mangoes from South America and Panama since 1987, when, as a result of action taken by the Environmental Protection Agency, ethylene dibromide fumigation was disallowed as a treatment for mangoes imported into the United States.

DATES: Consideration will be given only to comments received on or before July 23, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-001. Comments may be inspected at room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foss, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles.

The PPQ Treatment Manual currently lists a hot water dip as the only approved treatment for mangoes. The mango treatment in the PPQ Treatment Manual was revised in a final rule published in the Federal Register on February 15, 1990 [55 FR 5433-5436, Docket No. 89-224], to allow use of a hot water dip treatment for mangoes from certain additional areas and to slightly lower the required temperature of the hot water dip for "Francis"-type mangoes. However, the hot water dip is approved only for mangoes from Central America north of and including Costa Rica, Mexico, and the West Indies. America north of and including Costa Rica, Mexico, and the West Indies. Approval was based on research that showed the hot water dip to be an effective treatment against *Anastrepha* species of fruit flies and the Mediterranean fruit fly [*Ceratitis capitata* (Wied.)] in the varieties of mangoes imported from these places.

Confirming research has shown that a hot water dip treatment is effective against *Anastrepha* species of fruit flies and the Mediterranean fruit fly in additional varieties of mangoes from other places. Specifically, research has shown a hot water dip to be effective for mangoes of the varieties found in all of South America and Panama. The same research has shown that for a hot water dip treatment to be effective for mangoes of the varieties found in the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago, the size, time and temperature requirements currently listed in the treatment schedule for these mangoes should be adjusted slightly.

There are several versions of the proposed hot water dip treatment; however, the only difference among them is the length of time the fruit must be submerged under water, since smaller and flatter fruit requires less time than larger fruit.

Based on this new information, we are proposing to revise the PPQ Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1, and the fruit and vegetable import regulations, which are contained in "Subpart—Fruits and Vegetables" in 7 CFR 319.56. The PPQ Treatment Manual, as revised, would show the following treatment schedules for mangoes:

Hot Water Dip Treatment for Mangoes

All mangoes must be at a temperature of 21.1 °C or higher before treatment begins. The mangoes must be submerged 4 inches below the surface of water that is heated to 48.1 °C. The water temperature must be kept at 48.1 °C, except that it may fall as low as 45.4 °C for no more than 10 minutes in any treatment lasting 65 or 75 minutes, and for no more than 15 minutes in any treatment lasting 90 minutes. The water temperature must not be allowed to fall below 45.4 °C at any time during the treatment.

Type of mango	Submersion time
"Francis" and similarly shaped mangoes (elongate, flattened types, including the "Carrot" variety) from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 570 g each) 75 minutes; (Maximum weight 820 g each) 90 minutes.

Type of mango	Submission time
Other varieties of mangoes from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago; and all mango varieties from Mexico and from Central America north of and including Costa Rica.	(Maximum weight 700 g each) 90 minutes; (Maximum weight 500 g each) 75 minutes.
"Francis," and similarly shaped mangoes (elongated, flattened types) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 570 g each) 75 minutes; (Maximum weight 375 g each) 65 minutes.
Other varieties of mangoes (Tommy Atkins, Kent, Keitt, Haden and similarly shaped) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 650 g each) 90 minutes; (Maximum weight 425 g each) 75 minutes.

We are also proposing to add a provision to § 319.56–2i in "Subpart—Fruits and Vegetables" that treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. We previously determined that a hot dip treatment was an effective treatment for mangoes from Mexico and amended the PPQ Treatment Manual to permit such treatment (55 FR 5433, February 15, 1990). Therefore, we propose to add a provision that treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of all mangoes from Mexico, and that Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

We are proposing to allow hot water dip treatments for specified varieties and sizes of mangoes from certain areas where *Anastrepha* species of fruit flies and the Mediterranean fruit fly exist. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1 It would provide the first approved treatment for mangoes from Panama and South America since 1987, when as a result of action taken by the Environmental Protection Agency, ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States.

In accordance with the Federal Plant Pest Act and the Plant Quarantine Act, the Secretary of Agriculture is authorized to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of injurious plant pests.

This proposed rule would affect domestic mango producers. Mangoes are a minor agricultural crop in the United States, which has few areas with suitable growing conditions for the fruit. In the continental United States, mango production is limited to about 2,300 acres on approximately 270 farms in Florida, all small entities. Most of these small entities do not produce mangoes as their major crop. Production of mangoes in Florida between 1985 and 1988 ranged from 30,250,000 pounds in 1987 to 19,250,000 pounds in 1988.

By comparison, imports of mangoes into the United States during that same time period ranged from 66,073,940 pounds in 1985 to 43,171,269 pounds in 1988, consistently accounting for more than two-thirds of the mangoes marketed in the continental United States. This proposed rule would have a beneficial economic effect on importers of mangoes, by increasing the number of sources from which mangoes may be imported. Based on available information, most mangoes are imported by a small number of importers which are not small entities.

Mangoes imported into the United States come primarily from Mexico (85 to 90 percent during 1985–1988), with Haiti providing most of the others. In 1987, the last year that mangoes treated with ethylene dibromide could be imported into the United States from the countries that would be affected by this proposed rule, countries other than Mexico and Haiti provided only about 2.2 percent of those mangoes. In 1985 and 1986, they provided between 1 and 2 percent. We anticipate that a resumption of mango imports from these countries would not result in a significant increase in the amount of mangoes imported into the United States, and therefore would not result in a significant economic impact on a substantial number of small entities.

This proposed rule would not result in any significant increase in reporting, recordkeeping, or compliance requirements.

As an alternative to this proposed rule, we considered retaining the current treatment schedule in the PPQ Treatment Manual. This alternative was rejected because given the existence of additional effective treatments for mangoes, there is no pest risk basis for not allowing use of these treatments.

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis. Comments should be submitted as indicated under "DATE" and "ADDRESSES." All comments received on this issue will be considered in the preparation of the Final Regulatory Analysis for this rulemaking.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 300—INCORPORATION BY REFERENCE

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1986, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In Subpart—Fruits and Vegetables, a new § 319.56–2i is added to read as follows:

§ 319.56–2i Administrative instructions prescribing treatments for mangoes from Central America, Mexico, South America, and the West Indies.

(a) *Authorized treatments.* (1) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(2) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Mexico. Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(d) *Department not responsible for damage.* The treatments for mangoes prescribed in § 319.56–2f of this subpart and in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 18th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14375 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-106-AD]

Airworthiness Directives: Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require modification of the routing of the cabin-to-wing emergency escape strap. This proposal is prompted by a report that the escape strap is not long enough to reach the attach fitting on the wing. This condition, if not corrected, could result in the escape strap not being attached on the wing during ditching, which would impede evacuation onto the wing.

DATES: Comments must be received no later than August 14, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway, South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jaycyn B. Clear, Airframe Branch, ANM-120S; telephone (206) 431-1962. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-106-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There has been a recent report that the cabin-to-wing emergency escape strap does not reach the attach fitting on the wing of Boeing Model 747-400 series airplanes. The cabin-to-wing emergency escape strap is used as a hand rail from door 3 to the wing in the event of a ditching. One end of the escape strap is attached to the sidewall structure of the airplane and then is routed inboard of the stowage bin structure, causing the strap to be too short to be attached properly to the wing. This condition, if not corrected, could result in escape strap not being attached on the wing

during ditching, which would impede evacuation onto the wing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-25A2847, dated March 29, 1990, which describes rerouting of the cabin-to-wing emergency escape strap behind the stowage bin structure. When the strap is rerouted in this manner, it is long enough to reach the attach fitting on the wing.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require rerouting of the cabin-to-wing emergency escape strap in accordance with the service bulletin previously described.

There are approximately 20 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (1) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes, listed in Boeing Alert Service Bulletin 747-25A2847, dated March 29, 1990, certificated in any category. Compliance required within the next 30 days after the effective date of this AD, unless previously accomplished.

To ensure that the escape strap is long enough so that it can be attached to be fitting on the wing, accomplish the following:

A. Reroute the escape strap behind the stowage bin structure in accordance with Boeing Alert Service Bulletin 747-25A2847, dated March 29, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-14332 Filed 6-20-90; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-50-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-40 Series Airplanes Equipped With Engines Installed in Accordance With Rohr Supplemental Type Certificate (STC) SA3139WE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-40 series airplanes, which would require the inspection and replacement of the Rohr Common Nacelle System (CNS) forward engine mount cross beam with an improved part. This proposal is prompted by a report of a flaw found during routine maintenance, which has been attributed to a forging lap flaw and improper heat treatment. This condition, if not corrected, could result in the loss of structural integrity of the CNS forward engine mount cross beam.

DATES: Comments must be received no later than August 14, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Rohr Industries, Inc., P.O. Box 878, Chula Vista, California 92012. This information may be examined at the FAA, Northeast Mountain Region, Transport Airplane Direcorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch (ANM-120L), FAA, Transport Airplane Directorate, 3229, East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-50-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recently, the FAA has received a report of a flaw found in the Rohr Common Nacelle System (CNS) forward engine mount cross beam on a McDonnell Douglas Model DC-10-40 series airplane equipped with engines installed in accordance with Rohr STC SA3139WE. This flaw, found during routine maintenance, has been attributed to a forging lap flaw and improper heat treatment. Further analysis of the part by Rohr indicated a higher than predicted stress concentration and lower than expected material fatigue strength. Testing of the article indicated a life of 12,000 cycles. This condition, if not corrected, could result in the loss of structural integrity of the CNS forward engine mount cross beam.

The FAA has reviewed and approved Rohr Alert Service Bulletin No. MDC-CNS A71-33, Revision, 1, dated April 27, 1988, which provides instruction for the inspection and modification of the CNS forward engine mount cross beam; and Rohr Service Bulletin No. MDC-CNS 71-33, dated July 25, 1988, which provides instructions for the removal of the CNS forward engine mount cross beam and replacement with an improved part. Fatigue testing of the improved part has established a life of 40,667 cycles.

Since this condition is likely to exist or develop on other airplanes of this type design, an AD is proposed which would require the inspection, removal, and replacement of the CNS forward engine mount cross beam in accordance with the service bulletins previously described.

There are approximately 20 Model DC-10-40 series airplanes of the affected design in the worldwide fleet. Currently, there are no airplanes of this model and design on the U.S. Register; therefore, there would be no cost impact of this AD on U.S. operators. However, should an affected airplane be placed on the U.S. Register in the future, it would require approximately 5.2 manhours to accomplish the required actions, at an average labor charge of $40 per manhour. Required parts would be supplied by Rohr Industries at no charge to operators. Based on these figures the total cost impact of this AD would be $208 per airplane.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substanial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC-10-40 airplanes equipped with engines installed in accordance with Rohr STC SA3139WE, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of structural integrity of the Rohr Common Nacelle System (CNS) forward engine mount cross beam, accomplished the following:

A. Prior to the accumulation of 10,000 cycles or within 1,500 cycles after the effective date of this amendment, whichever occurs later, inspect and rework the CNS forward engine mount cross beam, Rohr part number 198-0325-1 or 198-0328-501, and replace, as specified below, in accordance with Rohr Alert Service Bulletin No. MDC-CNS A71-33, Revision 1, dated April 27, 1988.

1. If no cracks are found and the hardness is equal to or greater than C40 on the Rockwell hardness scale:

a. Within 3,000 cycles after the initial inspection, and thereafter at intervals not to exceed 3,000 cycles, conduct repetitive magnetic particle inspections in accordance with Rohr Alert Service Bulletin MDC-CNS A71-33, Revision 1, dated April 27, 1988; and

b. Prior to the accumulation of 35,000 cycles on the part, remove the CNS forward engine mount cross beam, Rohr part number 198-0328-1 or 198-0328-501, and replace it with Rohr part number 198-1300-501, in accordance with Rohr Service Bulletin No. MDC-CNS 71-33, dated July 25, 1988.

2. If a crack is found or the hardness is below C40 on the Rockwell hardness scale, prior to further flight, remove the CNS forward engine mount cross beam, Rohr part number 198-0325-1 or 198-0328-501, and replace it with Rohr part number 198-1300-501, in accordance with Rohr Service Bulletin No. MDC-CNS 71-33, dated July 25, 1988.

B. The CNS forward engine mount cross beam, Rohr part number 198-1300-501, is life-limited and must be replaced prior to the accumulation of 40,667 cycles on the part.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rohr Industries, Inc., P.O. Box

878, Chula Vista, California 92012. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-14358 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 46104; Notice No. 90-22; Docket No. 46710 is consolidated into Docket No. 46104]

RIN 2137-AB01

Aviation Economic Regulations; Confidentiality of Schedule T-100 Submitted By U.S. Large Certificated Air Carriers

AGENCY: Department of Transportation, Research and Special Programs Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) proposes to terminate the restrictions on disclosure of U.S. air carriers' domestic Schedule T-100 data, making the data immediately available to the public after DOT editing. Detailed international Schedule T-100 data submitted by U.S. and foreign air carriers will continue to be withheld from public disclosure for a 3-year period. At the present time, 14 CFR 241.19-6 requires the Department to maintain a 3-year confidentiality period for all T-100 market data submitted by U.S. and foreign air carriers. Also, DOT proposes to eliminate §§ 241.19-6(a)(4), (b), and (c) which allow release of restricted T-100 data before the end of the three years if the Department determines it to be in the public interest.

DATES: Because of the urgency expressed by carriers, the comment period is limited to 30 days; thus, comments must be received on or before July 23, 1990.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 46104, Room 4107, Office of Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments should identify the regulatory docket number and be submitted in duplicate. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed postcard on which the following statement is made: Comments on Docket 46104. The postcard will be date/timed stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 [202] 366-4387 or 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a final rule on November 16, 1988 (53 FR 46384), implementing a new T-100 reporting system, effective January 1, 1989 for foreign air carriers and January 1, 1990 for U.S. air carriers, and adopting a 3-year confidentiality period for detailed nonstop segment and on-flight market data.

Several foreign carriers filed petitions for reconsideration of the final rule or, in the alternative, delay of its implementation date. Alitalia Linee Aeree Italiane, S.p.A (Alitalia) objected to the rule, however, in part because DOT offered no assurance that it plans to or can protect the highly sensitive proprietary data. Section 241.19-6(a) states that, "the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows: . . . (4) To such other persons and in such other circumstances as the Department determines to be in the public interest, consistent with regulatory functions and responsibilities, upon submission by the requesting party of a written statement of significant need." Alitalia alleged that it would be at a disadvantage because under a broad interpretation of the public interest provision, DOT could share the data with U.S. air carriers, but not make the data available to foreign air carriers.

American Airlines, Inc. (American) commented on Alitalia's motion, but contended that the way to alleviate Alitalia's concerns, that competitors may gain access to its data while it lacks access to its competitors' data, is to make the data publicly available. In this context, American filed a petition for rulemaking on February 6, 1990, to eliminate or shorten the 3-year confidentiality period (see section on petitions for rulemaking).

In response to the petitions for reconsideration, the Department issued an amendment to the final rule (54 FR 31810, August 2, 1989) which changed the effective date from January 1, 1989 to January 1, 1990 for foreign air carrier reporting. This amendment also re-affirmed DOT's commitment to the current disclosure policy as stated in 14 CFR 241.19-6, but expressed its intentions to re-examine the confidentiality policy for U.S. carrier domestic data.

Section 241.19-6 Public Disclosure of Traffic Data currently reads as follows:

(a) Detailed air carrier on-flight market and nonstop service segment data in Schedule T-100 and T-100(f) reports submitted to the Department shall no be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish T-100 international summary statistics without carrier detail. Futher, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the FAAct as required by the Administrative Law judge or other decision-maker of the Department. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence;

(3) To agencies and other components of the U.S. Government for their internal use only;

(4) To such other persons and in such other circumstances as the Department determines to be in the public interest, consistent with regulatory functions and responsibilities, upon submission by the requesting party of a written statement of significant need.

(b) Before it makes a decision on requests for access to detail carrier information under section (a)(4), the Department shall contact the carrier whose data have been requested, and determine whether the carrier will consent to the release of its data. The Department's determination regarding confidential information will be made in writing, and a copy of this written determination will be made publicly available. The Department intends to give considerable weight to the reporting carrier's views in making determinations whether to release its data before the end of the 3-year restricted release period.

(c) Where access to restricted data is approved, the Department may release the requested nonstop segment and on-flight

market data through firms of data service providers who agree to abide by these disclosure restrictions." * * *

Petitions for Rulemaking

In place of the 3-year confidentiality period, American's petition for rulemaking requests that domestic on-flight market and nonstop segment data be publicly available 45 days after the reporting period. For international on-flight market and nonstop segment data, American wants a one-year confidentiality period for the general public with the data releasable to carriers participating in the T-100 System within 45 days, unless there are extraordinary circumstances related to bilateral negotiations or relationships between countries. In no event, however, would U.S. air carriers not have access to other U.S. air carriers' data after the 45-day period.

American made the following points in favor of making domestic on-flight market and nonstop segment data publicly available 45 days after the calendar month to which the data relates:

(1) Release of domestic data is unduly restrictive when compared to past policies which provided for immediate release of all domestic data except downline deplaning and belly cargo data which was withheld from disclosure for 1 year.

(2) These data are valuable resources to airline planners, consumers, academics and others interested in the functioning of air transport markets.

(3) Exchanges of these types of information are viewed as procompetitive (see *Maple Flooring Manufacturer's Association* v. *United States*, 268 U.S. 563, 582–583, (1924); *United States* v. *United States Gypsum Co.*, 438 U.S. 422, 441 (1978)).

(4) The Department has consistently favored the release of information.

(5) A three-year withholding period is excessive rendering the data obsolete and useless.

(6) The Department must give significant and compelling justification for withholding data from public release.

(7) Administering a restricted release program is costly and would strain the Department's limited resources.

(8) Full disclosure assures reciprocal access, and avoids the worst case scenario of some users gaining access to the data while the data is withheld from others.

(9) Parties seeking T-100 data are likely to obtain it under the Freedom of Information Act (FOIA) despite the Department's restricted release period.

British Airways Plc. (British Airways), who originally supported a restricted release period, filed in support of American's petition stating the exchange of T-100 data is procompetitive. It contended that restricted release of T-100 data under the fourth exception (14 CFR 241.19-6(a)(4) would be inconsistent since "public interest" and "significant need" are elastic terms which can be defined very differently by different decisionmakers. Also, the extremely competitive fast-changing climate of the airline industry makes T-100 data worthless after 3 years.

United Air Lines, Inc. (United) supports American's petition, asserting that unrestricted release of market data promotes competition and is consistent with FOIA, which favors the release of all data filed with the Department.

MarkAir, Inc. (MarkAir) supports American's petition as the 3-year confidentiality period would deny carriers the data needed to analyze the size of various markets and to project market shares; to determine optimal flight schedules and aircraft type selection; to measure market growth trends; to develop market seasonality curves; etc. Any additional burden that the Department would encounter separating domestic and international data would be outweighed by the usefulness of timely domestic flight data.

Alaska Airlines, Inc. (Alaska) supports the position of American contending that the value of current on-flight market and nonstop service segment data cannot be overstated, that it uses the data extensively for route studies, passenger traffic forecasts, market share analyses and other planning activities, and that the failure of the Department to permit release of this data will greatly impede the ability of carriers to enter new markets and to continue efficient and responsive operations in existing markets. Alaska also believes that the unavailability of this data may very likely result in the misapplication of carrier resources, may decrease the number of carriers entering new markets and may decrease the level of competition among carriers, as market decisions are made on imperfect and incomplete information. Alaska does not understand why, after 13 years of prompt release of service segment data, the Department has decided to restrict the release of such data.

Thai Airways International Limited (Thai) opposes American's petition. Thai believes that the information submitted by foreign air carriers is commercially sensitive data which should not be publicly available for 3 years.

Alaska also petitioned for a rulemaking (Docket No. 46710) on February 6, 1990 to amend the Department's regulations so that all U.S. carriers providing international service segment data will once again have access to U.S. carrier on-flight and nonstop service segment data which existed until January 1, 1990. Alaska is not seeking access to foreign air carrier data.

American answered Alaska's petition by stating there is no valid justification for discontinuing access to information that serves as a valuable analytical tool, that allows carriers to perceive and meet the needs of air travelers. American believes the availability of international T-100 data is procompetitive stating, "There is little merit in the argument that foreign carriers will suffer competitive harm if this information is made available."

International T-100 Disclosure

We are denying Alaska's petition and that portion of American's petition for rulemaking pertaining to international Schedule T-100 on-flight market and nonstop segment data. U.S. and foreign carriers' T-100 data will remain restricted for 3 years. It was determined in the amendment to parts 217 and 241 issued in August 1989 (54 FR 31812, August 2, 1989) that international data would be withheld from public disclosure under exemptions 3 and 4 of the FOIA, and in some cases under exemption 1 (where foreign air carriers are owned by foreign governments). The amendment explained that the Department believes that premature release of international data would be likely to impair the government's ability to obtain necessary information in the future. The amendment further stated that section 1104 of the Federal Aviation Act (49 U.S.C. 1504) requires that information be withheld from public disclosure if the release of the information would prejudice the formulation and presentation of positions of the United States in international negotiations or adversely affect the competitive position of any air carrier in foreign air transportation. The amendment concluded that these requirements made section 1104 an exemption 3 statute under FOIA.

Since it was necessary to grant a 3-year confidential period to foreign carriers' T-100 data to encourage their reporting compliance, protection of U.S. carrier T-100 data also is required. Access by foreign air carriers or other foreign users to U.S. carriers' T-100 data could subject U.S.-flag carriers to competitive disadvantage so long as

comparable data are not available to the U.S. carriers with respect to the operations of foreign air carriers. The Department believes the premature release of U.S. carrier T-100 data, especially the foreign carriers, would produce the harm specified in section 1104.

The Department considered the option of some type of restricted release procedures as suggested by Alaska and American, such as limited release of U.S. carrier T-100 data to participating U.S. carriers and U.S. airport operators. This option was discredited on the basis that prior disclosure of data by an agency could constitute a waiver of FOIA exemptions 3 and 4 [*Cooper* v. *Department of the Navy*, 594 F.2d 484, 487–88 (5th Cir. 1979); and *State of North Dakota ex rel. Olson* v. *Andrus*, 561 F.2d 177, 182 (8th Cir. 1978). Moreover, "selective disclosure" was found to constitute a waiver of FOIA exemptions (*Educational/Instructions, Inc. v. HUD*, 471 F. Supp. 1074, 1081–82 (D. Mass. 1979). The Department would then be forced to release the compromised data to everyone, thereby placing U.S. carriers at a competitive disadvantage; foreign air carrier competitors would have access to U.S. carrier data, but U.S. air carriers would not have access to comparable foreign air carrier data. International data is too important to the Department's programs to risk noncompliance of the reporting requirement by foreign air carriers. If we granted Alaska's and American's petitions of international data, we do not believe we could withhold the data from a FOIA request, because the exemption 3 and 4 status would have been compromised.

Furthermore, the Department cannot justify withholding the data from the general public while U.S. carriers are exchanging data with their U.S. airline competitors.

Immediate Release of U.S. Carriers' Domestic T–100 Data

The axiom of the Freedom of Information Act (FOIA) is government's information belongs to the people, unless there is a justifiable reason to withhold. While it is recognized that the Government may withhold "commercial or financial information obtained from a person and privileged or confidential" [5 U.S.C. Sec. 552(b)(4)], the Act contains no provisions forbidding disclosure [K. Davis, Administrative Law Treatise Sec. 3A.5 (1970 Supp)]. A private party which submits data to the Government has an enforceable interest under FOIA in confidentiality of such data only to the extent that this interest is endorsed by the agency collecting the information *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979)]. FOIA exemptions are discretionary in that federal agencies may, but need not, deny public release of otherwise qualifying information. Generally, release of information is within an agency's discretion, and only an abuse of discretion can bar disclosure, *Charles River Park "A", Inc. v. Department of Housing and Urban Development*, 519 F.2d 935 (D.C. Cir. 1975). For example, a discretionary disclosure which violates the Trade Secrets Act (18 U.S.C. Section 1905) would be an abuse of discretion. Before a discretionary release of commercial data may be made, an agency must either find that the information is not within the scope of the Trade Secrets Act or that disclosure is authorized by law. Commercial and financial information is confidential under exemption 4 of FOIA if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future; (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The data must be the type which would customarily not be released to the public by the person from whom it was obtained.

In examining U.S. carriers' domestic T–100 data under exemption 4, there is no argument that the data are obtained from a person outside the government, and are commercial and proprietary in nature. However, there may be a question on whether disclosure would cause substantial competitive harm to the air carrier from which the information was obtained. Since 1978, CAB and DOT have taken the position that the free exchange of market/segment data does not cause competitive harm to the submitter as long as the submitter has access to comparable data (41 FR 10827 March 9, 1976). The CAB initially made this determination after more than 40 separate releases of service segment data by administrative law judges without any resultant harm. The comments made by American, United, Alaska and MarkAir acknowledge that the release of market/segment data is beneficial to the air transportation industry, individual carriers, and the traveling public in general by providing carrier management with the information needed for allocating capacity in response to market requirements. The public is better served and benefits from informed air carrier management decisions.

The Trade Secrets Act prohibits the disclosure of confidential information that an agency is not otherwise "authorized by law" to release. Release of U.S. Carriers' domestic T–100 is outside the scope of the Trade Secrets Act, since the release of this data is authorized by the Civil Aeronautics Board Sunset Act of 1984 [Pub. L. 98–443). However, there is no such authority to release international T–100 data, and the discretionary release of this data could run afoul of the Trade Secrets Act.

The Civil Aeronautics Board Sunset Act of 1984, which took effect on January 1, 1985, amended section 329(b)(1) of title 49 U.S.C. by requiring DOT:

(1) To collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 [49 U.S.C. 1441 et seq.) including, at a minimum, information on (A) the origin and destination of passengers in interstate and overseas air transportation (as those terms are used in such Act), and (B) the number of passengers traveling by air between any two points in interstate and overseas air transportation; except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and flight number under which such flight operates are used solely for interstate or overseas air transportation and are not used for providing essential air transportation under section 419 of the Federal Aviation Act of 1958.

A review of the Conference Report of the Civil Aeronautics Sunset Act of 1984 reveals that the prohibition on collecting information by flight number was to reduce carrier reporting burden. However, it went on to say "that data will be collected on a summary basis by carrier, by market."

DOT interprets this statute as providing authority to promulgate regulations for the public release of nonstop segment data concerning interstate and overseas air transportation on a carrier basis. The Department has met this obligation through Form 41, Schedule T–9 and Service Segment Data. These data collections were replaced and refined by the T–100 Reporting System. The statute is silent on the collection and dissemination of international market data.

Section 101(24) of the Federal Aviation Act of 1958 defines interstate and overseas air transportation as follows:

"Interstate air transportation", "overseas air transportation", * * * respectively, mean

the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) A place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) A place in any State of the United States, or the District of Columbia; and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; * * *

We will use the definition for interstate and overseas air transportation in section 101(24) of the Federal Aviation Act of 1958, as amended, to determine if the T–100 data is domestic. T–100 nonstop segment and on-flight market data that relate to U.S.-Canada operations reported by U.S. air carriers are considered international data, even though those operations are reported in the "Domestic" entity by scheduled service carriers. On the other hand, operations to a U.S. Territory or possession, such as Guam, Saipan, Rota, or Tinian, from another U.S. point by U.S. air carriers are considered domestic even though they may be reported in the "Pacific" or "International" entities.

The Department recognizes "as a general principle, the increased availability of market information should promote competition when * * * all competitors can obtain the data." (DOT Order 85–12–35). The easy accessibility of segment and market data should benefit carriers and the traveling public. Restrictions, which were placed on the release of downline service segment data, are no longer necessary, as the reporting disparities between T–6 and service segment carriers are voided in the T–100 system. Also, the Department agrees with American that the restricted release of belly cargo data should be eliminated. Originally, the restriction on this data was placed by CAB (Order 81–12–9) to ease American's fears that it was at a competitive disadvantage against section 418 operators of all-cargo aircraft, which did not report market data. While section 418 all-cargo carriers still do not report detailed domestic market data, we do not anticipate participating carriers will suffer substantial competitive harm from the release of their domestic cargo data flown in combination aircraft. Generally, cargo service is an adjunct to a combination carrier's passenger service. As such, the combination carrier has the advantage of marginal costing. Given this advantage, the Department does not believe that combination carriers' domestic cargo data need to be withheld from all-cargo carriers. Moreover, given the Department's obligations under the Civil Aeronautics Board Sunset Act of 1984, DOT believes that domestic T–100 data does not qualify to be withheld from public disclosure under exemption 4 of the FOIA.

Accordingly, DOT proposes immediate release of U.S. air carriers' domestic T–100 data, following Departmental processing of the data. This means the data should be available approximately 60 days after the applicable month. Carriers are given 30 days to submit the data and it should take the Department about 30 days to process the data. American petitioned for release after 45 days. This only allows 15 days for processing the data which is entirely too short. Further, we do not want to specify an exact date of release, since some months may take longer to process than others because of errors or omission in carrier data. This course of action has been followed in the past on the release of data, and it has worked well. Normally, we should have the data processed within 30 days after receipt. Foreign air carriers' and U.S. air carriers' detailed international T–100 data will continue to be withheld from public inspection for a 3-year period.

Rescission of Section 241.18–6

DOT proposes to eliminate §§ 241.18–6(a)(4), (b), and (c) which allow restricted release of T–100 data before the end of the three years to certain parties when release is found to be in the public interest. DOT believes the discretionary release of international data, that is being held confidential, could also compromise the validity of FOIA exemptions 3 and 4. Requests for access to the restricted data will be handled under FOIA. If it is determined that the data can be released, then the data will be open for public inspection. The public interest provision is unnecessary for domestic data, since we are proposing to make it public after DOT editing.

Except to the extent granted herein, we deny all other motions, petitions and requests in Docket Number 46181.

Department Regulatory Policies and Procedures

Executive Orders 12291, 12612 and 12630; Department's Regulatory Policies and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980.

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The objective of the rule is to release on-flight market and nonstop segment data of U.S. carriers' domestic operations. This proposed regulation has no impact on reporting burden. Accordingly, a regulatory impact analysis is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Orders 12612 and 12630 and it has been determined that the proposed rule: (1) Does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment and (2) does not pose the risk of a taking of constitutionally protected private property.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Department policies concerning access to commerical data. However, its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The proposed amendments would affect only large certificated air carriers.

The proposed action is subject to the Paperwork Reduction Act, Public Law 511, 44 U.S.C. chapter 35; and will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the release of U.S. air carrier T–100 data to OMB. Comments should be directed to Wayne Brough, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The

Department requests that a copy of any comments sent to OMB also be sent to the DOT rules docket. The Department anticipates that this rule would not chnage the Department's fiscal year 1990 Information Collection Budget for OMB No. 2138–0040, Report of Traffic and Capacity Statistics, the T–100 System.

List of Subjects in 14 CFR Part 241

Air carriers Uniform system of accounts and reports.

Proposed Rule

PART 241—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR part 241 Uniform System of Accounts and Reports for Large Certificated Air Carriers, as follows:

1. The authority for part 241 continues to read as follows:

Authority: Secs. 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 758, 766, 788, 774, 783, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95–504, 92 Stat. 1750, 49 U.S.C. 1552.

2. Section 01–6 *Public disclosure to traffic data* is revised to read:

Sec. 19–6 Public disclosure to traffic data:

(a) Detailed domestic on-flight market and nonstop segment data in Schedule T–100 shall be made publicly available after processing.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports shall not be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish international summary statistics without carrier datail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the FAAct as required by the Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

Issued in Washington, DC on June 18, 1990.

Robin A. Caldwell,

Director, Office of Aviation Information Management.

[FR Doc. 90–14447 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–62–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. 33–6868, 34–28124, IC–17534, IA–1234, International Series Release No. 128, File No. S7–11–90]

Request for Comments on Reform of the Regulation of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Commission is soliciting comments on reform of the regulation of investment companies under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934. Developments in the financial markets require reexamination of how pooled investment vehicles are regulated, particularly since the laws governing investment companies have not been amended significantly since 1970. Accordingly, the Commission is requesting comment from investors, investment companies, investment advisers, the financial services industry generally, regulators, and the public generally on a number of specific issues summarized in this release and on any other issues that commenters believe relevant.

DATES: Comments are to be received on or before September 4, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–11–90. All comments received will be available for public inspection and copying in the Commission's Public Reference room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: With respect to the study generally, Matthew A. Chambers, Assistant Director, or Nancy M. Morris, Associate Chief Counsel, at (202) 272–2048. With respect to the following specific topics: Internationalization of the Securities Markets—Regina Hamilton, Attorney; Alternative Pooled Investment Structures—Paul Goldman, Branch Chief, Diane Blizzard, Special Counsel, or Stuart Horwich, Senior Attorney; Asset-Backed Arrangements under the Investment Company Act—Rochelle Kauffman, Senior Attorney; Distribution of Open-End Companies—Karen L. Skidmore, Assistant Director; Closed-End Companies and Repurchases of Shares—Stuart Horwich; Transactions in Options and Futures Contracts—Karen L. Skidmore; Securities Act Issues—Diane Blizzard or Ann Glickman, Special Counsel; Insurance Products under the Federal Securities Laws—Wendell Faria, Attorney; and Bank Involvement with Investment Companies—Ann Glickman (all at (202) 272–2048).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is reexamining the regulation of investment companies under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b–1 *et seq.*), the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a–1 *et seq.*), and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a–1 *et seq.*), in light of the significant changes in the securities markets in recent years. As a part of this reexamination, the Commission requests comments on whether or how investment company regulation should be amended, either by legislation or rulemaking.

This release begins by summarizing the existing regulatory framework for investment companies. Commenters are urged to address the overall regulatory structure for investment companies. The release also discusses briefly a number of specific topics on which the Commission is seeking comment. The topic discussions are summary and are intended to serve as starting points. In addition to addressing the specific topics, commenters are urged to address any other topics or issues relating to investment company regulation that they believe merit examination. Where possible, commenters are asked to provide specific statutory or rulemaking language to implement their recommendations.

II. The Existing Regulatory Structure

In section 30 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–4, Congress directed the Commission to study the unregulated investment company industry and report its findings. The Commission's multi-volume report on investment trusts and investment companies [1] laid the foundation for the Investment Company Act of 1940, which imposes significant substantive requirements on the formation, financial affairs, and operation of investment companies and requires investment companies to disclose information about their activities.

At the time the Investment Company Act was enacted, there were only 68 investment companies with assets of $488 million. By 1970, the industry had grown to 400 investment companies with about $40 billion in assets. In the last two decades, the industry has grown dramatically, in part due to the introduction of money market funds. Today there are over 3,500 investment companies with over $1.2 trillion in assets. Investment companies are fast becoming the primary investment and savings vehicle for a significant portion of the investing public, many of whom invest in investment companies not only directly but also indirectly through their employers' retirement plans. The growth of investment company industry assets has created a major national financial intermediary, giving the investment company industry parity with banks, savings, and loan associations, brokerage houses, and insurance companies.

The investment Company Act generally defines investment companies as issuers primarily engaged in the business of investing in, holding, or trading securities.[2] There are three types of investment companies: face-amount certificate companies,[3] unit investments trusts ("UITs"),[4] and management investment companies.[5] By definition, the terms are mutually exclusive. The Commission requests comment on whether it continues to make sense to divide investment companies into three types, or whether different typologies would make more sense, or whether all investment companies should be treated more or less the same.

Depending on the type of investment company, the Investment Company Act imposes requirements regarding, among other things, composition and election of boards of directors, exchange offers, pyramiding, investment policies and types of investments, investment advisory and underwriting contracts, transactions with affiliates, capital structure, custodial arrangements, portfolio evaluation, fidelity bonds, codes of ethics, disclosure of the source of dividends and distributions, proxies, loans, sales and redemptions, repurchases, use of fund assets for distribution, reorganizations, reports to shareholders and the Commission, books and records, and accountants and auditors.[6] Underlying each of these Investment Company Act requirements are basic policy objectives. For example, section 12(d)(1) (15 U.S.C. 80a–12(d)(1)) was designed to prevent, among other things, a multiplicity of costs and fees from being imposed on shareholders through the practice of pyramiding the ownership and control of investment companies. Section 17 (15 U.S.C. 80a–17) was intended to protect investment company shareholders from loss in the value of their shares as a result of self-dealing by investment companies' insiders. Section 18(f) (15 U.S.C. 80a–18(f)) addressed the dilution of shareholder value through excessive leveraging. The Commission requests comment as to the current validity of these and other policy objectives underlying the Act's provisions. If the policies remain valid, can any of them be implemented in an alternative manner? Would a different overall regulatory structure be appropriate? Are there additional policies or requirements that the Commission should consider?

At the time of enactment, Congress and the Commission believed that most companies not appropriately subject to the Investment Company Act would be excepted from its provisions or otherwise excluded from the definition of investment company. However, to protect against the possibility that some companies would inadvertently be subject to its provisions, the Investment Company Act provides a procedure for a company to demonstrate that it is primarily engaged in a business other than that of being an investment company.[7] Additional flexibility is provided by section 6(c) of the Investment Company Act (15 U.S.C. 80a–6(c)), which authorizes the Commission by rule or order to exempt persons conditionally or unconditionally from any or all provisions of the Act if the exemption is "in the public interest" and "consistent with the protection of investors" and the Act's purposes. The Commission requests comment on whether additional flexibility is needed, whether further or different exemptive procedures are needed,[8] and whether more specific exemptive standards are needed.

Investment companies are required to register with the Commission under the Investment Company Act unless otherwise exempt.[9] The vast majority of investment companies registered with the Commission are management investment companies. The more common type of management investment companies is the open-end

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[1] *The Nature, Classification, and Origins of Investment Trusts and Investment Companies*, H.R. Doc. No. 707, 75th Cong., 3d Sess. (1938); SEC, *Statistical Survey of Investment Trusts and Investment Companies*, H.R. Doc. No. 75, 76th Cong., 1st Sess. (1939); SEC, *Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies*, H.R. Doc. No. 279, 76th Cong., 1st Sess. (1939) [hereinafter cited as "*Investment Trusts and Investment Companies*"].

[2] Investment Company Act section 3(a) (15 U.S.C. 80a–3(a)).

[3] A face-amount certificate company issues debt securities which investors purchase by periodic installments or by a lump sum payment. Investment Company Act section 4(1) (15 U.S.C. 80a–4(1)).

[4] A UIT is a company organized under a trust indenture or similar instrument that invests in a largely fixed portfolio of securities, does not have a board of directors, and issues redeemable securities. Investment Company Act section 4(2) [15 U.S.C. 80a–4(2)]. UITs typically offer units in successive "series," each a representing interests in a separate portfolio of securities.

[5] A management investment company is any investment company that is not a face-amount certificate company or a unit investment trust. Investment Company Act section 4(3) (15 U.S.C. 80a–4(3)]. The distinguishing feature of a management investment company is that its investment portfolio is "managed," usually by an external investment adviser who is paid a fee based on a percentage of the company's assets.

[6] The Commission is empowered to adopt rules under the Investment Company Act, Investment Company Act section 38(a) [15 U.S.C. 80a–37(a)], and to enforce compliance by investment companies and their associated persons. Investment Company Act sections 9(b), 36(a); [41 (15 U.S.C. 80a–9(b), – 35(a), –40]. In order to determine compliance, the Commission conducts periodic inspections of investment companies, examining books and records. Investment Company Act section 31(b) [15 U.S.C. 80a–30(b)].

[7] Investment Company Act section 3(b)(2) (15 U.S.C. 80a–3(b)(2)].

[8] For example, in 1984, the Task Group on Regulation of Financial Services recommended amendments to the exemptive procedures.

The process of granting exemptions under the Investment Company Act should be streamlined to remove the requirement for public notice and comment in every case. Most exemptions are not controversial and are amply supported by precedent. Publication of notice seldom elicits any responses. Removing the notice requirements would eliminate unnecessary delays in the regulatory process and reduce paperwork burdens.

Blueprint for Reform: the Report of the Task Group on Regulation of Financial Services 115–16 (1984).

[9] Section 8(a) [15 U.S.C. 80a–8(a)] exempts certain investment companies from all provisions of the Investment Company Act, including the registration requirement.

company. Open-end companies, known as mutual funds, issue redeemable securities and generally offer their shares to the public on a continuous basis. In recent years, however, the number of closed-end management investment companies registered with the Commisson has increased dramatically. Unlike open-end companies, closed-end companies do not issue redeemable securities and in most cases do not offer their shares to the public on a continuous basis. Rather, a closed-end company issues, in a traditional underwritten offering, a fixed number of shares that are subsequently traded on a securities exchange or in the over-the-counter market.

The sale of investment company shares is subject to the Securities Act. Certain other investment company activities, such as proxy solicitation, are subject to the Exchange Act and the rules thereunder. Investment advisers to investment companies are subject to the Investment Advisers Act, the companion statute to the Investment Company Act. Investment companies also must comply with state securities laws in those states in which they sell their shares. Finally, investment companies that wish to take advantage of favorable tax treatment afforded certain kinds of investment companies are subject to various provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), in particular those of subchapter M (26 U.S.C. 851–855).

III. Specific Topics to be Addressed

A. Internationalization of the Securities Markets

The globalization of securities markets has resulted in increased interest in marketing United States investment company services abroad and in opening United States markets to foreign investment company services. Twenty-four hour worldwide trading and growing investor demand for pooled investment opportunities demonstrate the need to address barriers to cross-border sales of investment company Services.[10]

This section of the release seeks comments on how best to facilitate competition between United States investment companies and advisers and foreign investment companies and advisers, both domestically and abroad. First, it summarizes barriers to sales of investment company services abroad by United States investment companies and advisers. Second, it discusses barriers to sales of investment company services in the United States by foreign entities. Third, it reviews recent developments to promote the growth of international markets in investment company services. Fourth, it sets forth several issues on which the Commission seeks comment.

United States investment companies encounter a number of legal impediments in marketing their products overseas. In order to reach a sufficiently large market abroad, they must comply with the varied requirements of several countries. Moreover, many countries impose greater restrictions on foreign investment companies than on domestic companies. Also, some countries have imposed currency and other restrictions that provide a disincentive to foreign securities investments by citizens of those countries.

Even when foreign host laws seemingly place the marketing of United States securities on a par with domestic securities, practical problems may arise. For instance, a host country may require both domestic and foreign securities to be sold only by the host country's banks or licensed broker-dealers. Yet, in such a case, it may be difficult for foreign investment companies to get "shelf space" for their securities because the host country's banks or broker-dealers have their own competing products to sell.

United States tax law may also impede cross-border sales of the securities of United States investment companies. Certain distribution requirements and differing withholding standards provide an incentive for foreign investors to invest in foreign funds rather than in United States investment companies.[11]

Under subchapter M of the Internal Revenue Code, in order to avoid federal taxation at the investment company level, a United States registered investment company must, among other things, distribute to its shareholders at least 90% of its gross income derived from sources such as dividends and interest. Subchapter M also imposes a tax on an investment company's undistributed taxable income, and Internal Revenue Code section 4982 imposes and additional excise tax on an investment company if the investment company does not distribute to its shareholders 98% of its ordinary income and capital gains.[12] Thus, under subchapter M, if an investment company owning a portfolio of securities distributes all of its income to its shareholders, United States shareholders receive the same tax treatment as if they owned their proportionate share of that same portfolio of securities directly.

Foreign investors, however, may not receive the same tax treatment under the Internal Revenue Code for owning shares directly as for owning shares of a United States investment company holding those same securities. Foreign investors, when paid the distributions from an investment company effectively mandated by subchapter M, have 15% to 30% of the amount of ordinary income and short-term capital gains withheld from the distributions they receive.[13] Under certain circumstances, if foreign investors owned the underlying securities directly, short-term capital gains and certain portfolio debt investment interest would not be subject to this withholding tax.[14] Thus, foreign investors may incur a smaller United States federal tax liability by investing in securities directly rather than by investing in a United States investment company. Moreover, unlike the United States investment company. Moreover, unlike the United States, many foreign jurisdictions do not require current distributions of earnings by investment companies and do not tax these earnings at the investment company level. Consequently, the overall effect of subchapter M and the foreign withholding tax provisions may be to discourage foreign investment in United States investment companies.

United States investment advisers conducting business abroad may be subject to more restrictive regulation than they encounter in the United States. For example, unlike the United States, foreign jurisdictions may require investment advisers to meet certain capital standards.[15]

Foreign regulators may also have greater discretion than United States regulators to determine whether to permit investment advisers to enter their respective markets. For example, under the minimum standards provided in the European Community ("EC") Council Directive of 20th December 1985 on the Co-ordination of Laws, Regulations and administrative Provisions Relating to Undertakings for Collective Investment in Transferable Securities ("UCITS Directive"),[16] the laws of EC member states ("Member States") may give regulators greater latitude than the commission to prevent advisers from entering the investment company business. To qualify as a UCITs manager in a Member State, the Member State must determine that the manager is of "good repute" and has the experience required to perform its duties.

United States law may inhibit cross-border sales of shares of foreign investment companies. An investment company not organzied under United States law is prohibited by section 7(d) of the Investment company Act (15 U.S.C. 80a–7(d)) from publicly offering its securities in the United States unless the Commission by order finds that "it is both legally and practically feasible effectively to enforce the provisions of (the Investment Company Act) against such company." In effect, the Commission is required by section 7(d) to determine that investors in foreign investment companies have the same protections as investors in domestic investment companies. Although the Commission has granted exemptions for funds organized in certain common law countries, and, in the case of Canadian investment companies, has adopted rule 7d–1 (17 CFR 270.7d–1) to facilitate their registration, section 7(d) continues to present difficulties for foreign investment companies, especially those organized in civil law countries.

In 1964, the Commission recommended amending section 7(d) to make it easier for foreign investment companies to register with the Commission.[17] The amendment would have authorized the Commission to exempt certain foreign investment companies from any provision of the Investment Company Act if it found that compliance with the provision would be unduly burdensome and either that the foreign law under which the company operated would provide comparable investor protections or the company would agree to conditions providing those protections.[18] The proposal was never introduced in Congress.[19]

A foreign investment company may also be required to register its proposed public offering under the securities or "blue sky" laws of one or more states.[20] In some states, those laws require a merit review of the offering, giving state regulators discretionary authority to reject offerings as too speculative.[21]

A foreign investment adviser may register with the Commission under the Advisers Act merely by filing an application and paying a $150 fee. While a foreign investment adviser need not maintain an office or staff in the United States, a non-resident adviser must furnish a consent to service of process with the Commission and undertake to furnish books and records to the Commission upon request.[22] The Division of Investment Management takes the view that, once registered, a foreign adviser is subject to all of the provisions of the Advisers Act with respect to both its United States clients and its foreign clients.

To avoid Advisers Act regulation with respect to foreign clients, many foreign advisers create a separate and independent United States registered subsidiary or affiliate to service United States clients. In determining whether a domestically registered advisory subsidiary or affiliate of a foreign adviser operates as a separate independent entity, one of the factors the Division of Investment Management considers is whether the registered subsidiary or affiliate shares advisory personnel with the foreign entity. If they share personnel, the Division may "look through" the registered entity and apply the provisions of the Advisers Act to the foreign entity.[23]

Commenters have suggested that the Division's position may affect adversely the ability of advisory organizations to conduct international advisory activities. For example, it may force investment advisory firms to create separate United States subsidiaries or affiliates with distinct personnel to service only United States clients. This may divide scarce advisory personnel with expertise in specialized markets and reduce capital resources available to each entity, thus diminishing services to both United States and foreign advisory clients.

Moreover, foreign governments may perceive application of the Advisers Act to their investment advisers' activities with respect to non-United States clients as contrary to principles of international comity and might react by reciprocating the treatment. Thus, United States investment advisers might find their overseas operations subject to increased restrictions and their United States operations subject to the laws and regulations of foreign host countries.

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[10] As of December 31, 1988, 68 United States investment companies invested primarily in foreign securities, with total assets of about $11.9 billion. As of December 31, 1988, the number of United States investment companies investing primarily in foreign securities had increased to 183, with total assets of about $27 billion. Of these companies, 140 were open-end companies with total assets of about $17.8 billion and 44 were closed-end companies with total assets of about $9 billion. Also, 30 other open-end companies had at least 25% of their portfolios invested in securities traded outside of the United States, with total assets of about $15.1 billion.

[11] See, *e.g.*, Hearings before the House Comm. on Ways and Means, 101st Cong., 2d Sess. (Jan. 30, 1990) (statement of D. Silver on behalf of the Investment Company Institute, "The Implications of 'Europe 1992' for the U.S. Mutural Fund Industry") (unpublished).

[12] These provisions treat investment companies as conduits of income and tax them only on their undistributed income. See S. Rep. No. 1622, 83d Cong., 2d Sess. 59 (1954).

[13] I.R.C. sections 871(a) 881(a). This tax is often referred to as a "withholding tax."

[14] I.R.C. section 871(a)(2) imposes a withholding tax on capital gains of aliens only if they are present in the United States for 183 days or more during the taxable year. I.R.C. section 871(h) exempts from the withholding tax certain portfolio debt investment interest.

[15] See, *e.g.*, the Financial Resources Requirements set forth in the Investment Management Regulatory Organization's Financial Resource Rules, Rule 4.01 and app. 6 (United Kingdom).

[16] For a discussion of the UCITS Directive, see *infra* notes 25–30 and accompanying text.

[17] See Letter from John S.R. Shad, Chairman, SEC, to the Honorable Thomas P. O'Neill, Jr., Speaker, United States House of Representatives (Jan. 31, 1964) (transmitting proposed Foreign Investment Company Amendments Act of 1964 and Memorandum of the SEC in Support of the Foreign Investment Company Amendments Act of 1964).

[18] In addition, the Commission would have been required to find that the exemption would be consistent with the protection of investors and the purposes intended by the policy of the Investment Company Act, and that the foreign company would not be operated for the purpose of evading the provisions of that Act. The Commission also would have been required to find that it was both legally and practically feasible effectively to enforce against the company those provisions of the Investment Company Act from which exemptions were not granted.

[19] Some foreign investment companies have avoided section 7(d) by forming "mirror funds." A mirror fund invests in virtually the same securities as an existing foreign investment company, but is organized under United States law and registered under the Investment Company Act. See Investment Company Act Release No. 13991 (Dec. 23, 1983).

[20] Some public offerings of closed-end companies are exempt from many blue sky laws because their shares are listed on national securities exchanges registered with the Commission. Offerings of open-end investment companies and unit investment trusts generally must be registered in accordance with state blue sky laws, although seven states currently have "blue chip" investment company exemptions. See, *e.g.*, N.J. Rev. Stat. section 49:3–50(a)(12) (1987).

[21] Many states currently provide for registration by "coordination" to reduce the regulatory burden of this dual structure. An issuer can "coordinate" its blue sky filing with its required filing under the Securities Act by filing with the state the registration statement provided to the Commission and certain documents specified by the state. Coordination simplifies the state review process and can result in concurrent effectiveness on both regulatory levels.

[22] See rules 0–2 and 304–2 under the Advisers Act (17 CFR 275.0–2, 275.304–2).

[23] See Richard Ellis, Inc. (pub. avail. Sept. 17, 1981) (an advisory subsidiary is viewed as having a seperate, independent existence and to be functioning independently if it: (1) Is adequately capitalized; (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent; (3) has employees, officers, and directors, who, if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent; (4) makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to its parent; and (5) keeps its investment advice confidential until communicated to its clients).

In addition to meeting Advisers Act requirements, foreign investment advisers may have to register with state securities regulators. A majority of states require an investment adviser to secure a license by furnishing satisfactory evidence of its trustworthiness and competency to engage in the advisory business. Most states exclude or exempt investment advisers that are broker-dealers registered in the particular state, or have no office located in the state and advise only a *de minimis* number of clients or institutional clients.[24]

Access by United States investment companies and advisers to European markets may improve with the recent implementation of the UCITS Directive. The Directive prescribes a common denominator approach to investor protection designed to coordinate laws and regulations governing collective investment undertakings in EC Member States.[25] A qualifying UCITS from one Member State may sell its shares in any other Member State, subject only to the host country's marketing, advertising, and tax laws.[26] Each Member State must adopt domestic legislation to implement the UCITS Directive, but each is free to choose a form and method of implementation consistent with its legal system. The Directive generally permits a Member State to impose more stringent requirements on its own UCITS than on UCITS from other EC Member States being sold within its borders.[27] While a Member State is free to apply stricter marketing regulations to its own UCITS than those applied to foreign UCITS, the Directive prohibits the use of marketing regulations to discriminate against UCITS originating in other Member States.

Compared with United States regulation of investment companies, the UCITS Directive may be more or less restrictive on any given issue. For example, the Directive requires regulators in a home country to approve not only an investment company's manager, but also the investment company's rules, and its choice of a depositary. On the other hand, the Directive does not directly address other concerns such as affiliated transactions, pricing, and the use of fund assets for distribution.[28]

Japan has taken a step toward permitting foreign entities limited participation in its investment company market. Only investment trust management companies licensed by the Japanese Ministry of Finance ("MOF") may manage Japanese investment trusts. Fewer than twenty of those licenses have ever been issued, all to Japanese entities. Last December, the MOF announced new guidelines for the licensing of investment trust management companies, which apply to both foreign and domestic applicants.[29] One commenter has suggested that, while the new application guidelines purport to improve the ability of foreign money managers to compete in Japan, it is unclear whether foreign firms will be able to comply with the guidelines to compete effectively in the Japanese investment company market.[30]

Efforts by government agencies [31] and industry self-regulatory organizations,[32] among others, are underway to identify and eliminate barriers to cross-border sales of investment company services. While each effort represents a further step toward the internationalization of investment company services, it also underscores the problems that must be addressed.

The Commission requests that commenters address how best to permit cross-border sales of investment company and adviser services, consistent with investor protection. Commenters are requested to identify unnecessary barriers to effective competition among United States investment companies and advisers and foreign investment companies and advisers, both in the United States and abroad, that are created by domestic or foreign securities, tax, or other laws, and any other significant barriers. In this regard, commenters are asked to assess the effect of the Investment Company Act and the Advisers Act, and of existing interpretations, on the ability of investment companies and investment advisory organizations to conduct international activities. Commenters are also asked to recommend, as specifically as possible, the most effective way to eliminate unnecessary barriers to effective competition, including amending or reinterpreting domestic law, entering into multinational or bilateral treaties, harmonizing conflicting regulation, or applying concepts of comity and mutual recognition. Commenters should address how any proposal to eliminate unnecessary barriers to effective competition would affect the Commission's enforcement efforts.

B. Alternative Pooled Vehicles

In 1962, the Commission requested comment on the advisability of a legislative proposal advanced by industry observers to create an alternative type of open-end investment company—a unitary investment fund ("UIF").[33] As summarized in the Commission's release, a UIF would have had neither voting shareholders nor a board of directors; rather, a UIF would have been sponsored and managed by an investment manager.[34] The investment manager, including a bank acting in that capacity, would have been required to register under the Advisers Act.[35] A management contract between the investment manager and the UIF would have set forth, among other things, the UIF's investment objectives, management fees, and shareholder account charges.[36] The investment manager could not have amended these provisions during an initial start-up period (suggested to be five years) unless the Commission had approved an application for an order permitting the amendment. After the initial period, the provisions could be changed at any time upon adequate notice to shareholders. Under the proposal, a UIF investment manager would not have had a fiduciary duty regarding the receipt of compensation by the manager and its affiliates.

The UIF proposal envisioned the Commission taking an active role regulating UIFs. For example, a UIF's registration statement under both the Securities Act and the Investment Company Act would had to have been declared effective by the Commission before shares could have been sold, thereby giving the Commission the opportunity to review the management contract as well as proposed prospectus disclosure.[37]

Commenters generally opposed the UIF concept when it was proposed in 1962. Numerous changes have occurred in the investment company industry since that time, however, that may make alternative pooled vehicles such as the UIF more attractive and practical. Most significantly, securities markets have become increasingly global, and investment companies are seeking opportunities to expand into foreign markets where an alternative structure may enhance competitiveness. In addition, some states now permit investment companies to forego annual shareholder meetings.[38] Also, fee structures and methods of paying for distribution have grown increasingly complex.[39] A UIF-type structure may be more attractive to investors because it would operate under a relatively simple fee structure.

Commenters are asked to consider whether these and other developments in the investment company industry, including anticipated future trends, create the need for alternative pooled vehicles, including, but not limited to, a UIF-type vehicle. Commenters should refer to Release 12388 for a more detailed discussion of issues raised in connection with the UIF proposal. Commenters who previously responded to Release 12388 are invited to update their responses.

Comment is also invited on the feasibility of other alternatives. For example, some commenters have suggested altering the UIF vehicle to provide the sponsor with greater latitude to manage its portfolio or to issue securities that are not redeemable. Others have suggested that closed-end investment companies be allowed to provide a redemption-like mechanism and to use company assets to finance distribution costs.[40]

Would an investment company's ability to avail itself of an alternative structure, such as a UIF, significantly improve the competitiveness of United States investment companies both at home and abroad? Would an alternative pooled vehicle initiative complement international initiatives to regulate similar pooled investment vehicles under a common set of principles?[41]

A significant issue involved in evaluating alternative structures is the extent to which operating expenses would be reduced. For example, investment companies may incur significant costs to solicit proxies and to pay directors' fees and expenses. Commenters are asked to furnish information both with respect to costs presently incurred in complying with the Investment Company Act and costs which would be incurred under an alternative structure. Specifically, how much less would it cost an average investment company to operate in UIF or alternative forms compared to present forms, and how would the cost savings be created?

As noted in the 1962 release, the UIF concept is premised, in part, on an assumption that, in the open-end management investment company context, voting shareholders and directors are "redundant."[42] Some, however, have asserted that directors are sensitive to their responsibilities as board members [43] and that voting rights benefits shareholders in a number of ways.[44] With this in mind, comment is sought on what, if any, investor protection concerns are raised by a management investment company that does not have shareholder voting or a board of directors? Are these concerns reduced for some types of investment companies? For example, it has been suggested that money market funds would be prime candidates for a UIF

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[24] See e.g., N.J. Rev. Stat. section 49:3-49(g), -50(c) (1987).

[25] Not all investment companies are covered by the UCITS Directive. Qualifying UCITS are similar to open-end management investment companies that invest in exchange-listed securities. Closed-end investment companies generally do not qualify as UCITS; companies investing in money market instruments in Member States in which the instruments are not regarded as having the characteristic of transferable securities would also not qualify as UCITS.

[26] Because the UCITS Directive does not offer a unitary system of marketing, advertising, or taxation, it may not eliminate all potential disincentives for investment in UCITS of other Member States.

[27] For example, a Member State may define "transferable securities" to be held by UCITS it authorizes, or it may retain the general definition provided in the UCITS Directive.

[28] *Other differences* between UCITS and investment companies under the United States securities laws include voting and disclosure requirements. Unlike the Investment Company Act, the UCITS Directive does not provide for voting by shareholders and directors on any matter, but authorizes the home Member State to approve the choice and replacement of a UCITS' management company and depositary (which, like a custodian, holds a UCITS's assets) and to adopt and amend a UCITS' rules or organizational documents. Similarly, although UCITS must provide some disclosure, the requirements under the Securities Act and the Investment Company Act are more extensive.

[29] Pozen, *Far Foreign Funds, Japan Barely Opens Door, Pensions & Investments*, Mar. 19, 1990, at 24. *See id.*

[30] For example, under the Financial Reports Act of 1988 (32 U.S.C. 3863), the Commission, the Department of Treasury and State, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency are required to submit to Congress an updated version of the 1988 edition of *The National Treatment Study*. Like earlier editions, the updated study, due December 1, 1990, will examine the extent to which foreign countries deny United States commercial banking and securities organizations equality of competitive opportunity with domestic institutions in similar circumstances. It will also describe specific examples of discrimination by foreign countries against United States financial firms.

[31] In June 1990, the United Kingdom's Investment Management Regulatory Organization Limited ("IMRO"), a self-regulatory organization, completed the first stage of a comparative study of the regulation of investment management in the United Kingdom and the United States. Commission staff prepared a similar study and received detailed comments from IMRO. Last September, IMRO proposed that, because United States registered advisers and IMRO members are required to submit very similar information, the two countries might agree to mutually recognize registration under the Advisers Act and membership in IMRO. However, IMRO noted that, because of differing regulatory standards, registration with the Commission and IMRO membership should not be automatically interchangeable.

[32] Investment Company Act Release No. 12388 (Dec. 20, 1982) ("Release 12388"), 47 FR 56620 (Dec. 17, 1982). The UIF concept had been proposed as a way of streamlining and reducing operating costs of open-end companies. See generally speech by Stephen K. West, General Meeting of the Investment Company Institute (May 1, 1986) (hereinafter cited as "West Speech").

[33] Both shareholder voting and boards of directors are currently required under the Investment Company Act for open-end investment companies. Investment companies in EC Member States and Japan generally do not have boards of directors or shareholder voting.

[34] The Commission has proposed that bank advisers to investment companies be subject to the Advisers Act. See *infra* notes 126–127 and accompanying text.

[35] The management fee would be calculated as a percentage of net assets, excluding expenses incurred for brokerage, interest, taxes, and extraordinary items. Shareholder accounts would be separately charged for sales or redemption fees, if any, and for shareholder servicing and transfer agent fees.

[36] Currently, a domestic investment company is automatically registered under the Investment Company Act upon filing a notification of registration on Form N-8A. Investment Company Act section 8(a) (15 U.S.C. 80a-8(a)). Typically, a Securities Act registration statement for shares of an investment company includes a delaying amendment and is declared effective by the Commission only after review and comment by the staff. If, however, a Securities Act registration statement were filed without a delaying amendment, it would become effective automatically in twenty days. Securities Act section 8(a) (15 U.S.C. 77h(a)) and rule 473 thereunder (17 CFR 230.473).

[37] In 1985, the Division of Investment Management took the position that section 16(a) of the Investment Company Act (15 U.S.C. 80a-16(a)) does not require investment companies to hold shareholders' meetings to elect directors (or those persons holding equivalent positions) on an annual basis. The Division concluded that, aside from two situations set forth in section 16(a) (*i.e.*, electing the initial board of directors and electing directors to fill existing vacancies on the board in the event that less than a majority of directors are elected by shareholders), applicable state law governs the timing of shareholders' meetings to elect investment company directors. John Nuveen & Co. Incorporated (pub. avail. Nov. 14, 1985). Subsequently, Maryland amended its state corporation law to remove the requirement that investment companies hold annual meetings. Md. Code Ann. section 2-501(B) (1987). Many investment companies operating in corporate form are Maryland corporations, and, consistent with state law, they have acted to dispense with annual shareholders' meetings. See also Minn. Stat. section 302A.431 (1988) (regular meetings of shareholders need not be held unless required by the corporation's articles or bylaws or by demand of shareholders). In addition, under Massachusetts law, investment companies organized as Massachusetts business trusts are not required to hold annual meetings.

[38] For a discussion of current distribution arrangements, see *infra* notes 61–72 and accompanying text.

[39] See *infra* notes 73–82 and accompanying text.

[40] For a discussion of some of these initiatives, see *supra* notes 28–32 and accompanying text.

[41] Release 12388 quoting West Speech, *supra* note 32, at 10.

[42] Phillips, *Deregulation Under the Investment Company Act—A Reevaluation of the Corporate Paraphernalia of Shareholder Voting and Boards of Directors*, 37 Bus. Law. 933, 910–11 (1982)

[43] For example, the availability of voting rights may deter management from acting in a manner contrary to shareholder interests. See Wharton School of Finance and Commerce, *A Study of Mutual Funds*, H.R. Rep. No. 2274, 87th Cong., 2d Sess. (1962); see also Release 12388.

structure.[45] If management could take action without shareholder approval, what provision should be made to inform shareholders of management actions? Should shareholders be provided with a procedure to challenge such actions?

A number of provisions of the Investment Company Act and the rules thereunder rely on boards of directors to safeguard investor interests.[46] Some require directors to evaluate the reasonableness of number of different and, in some cases, overlapping fees and charges for investment advice, distribution, administration, and shareholder services. Others permit various types of transactions and activities to take place without prior Commission review of individual applications, which otherwise would be required. These provisions and rules contemplate that the board of directors of an investment company will establish, oversee, and monitor procedures designed to protect investor interests. Often, the disinterested directors are required to determine that an action will be in the best interests of the company and its shareholders. Commenters are asked to consider whether these provisions or rules should be modified to allow UITs or other alternative vehicles to rely on them. If so, what mechanism, if any, would be needed in place of the directors' review? Would new types of sanctions be needed for an investment manager of a UIT or other vehicle who violated these provisions or rules?

The UIT concept relies on the idea that competition and consumer choice are adequate substitutes for director oversight and shareholder voting, particularly in controlling the ability of an investment company sponsor/manager to set fees that could be regarded as excessive. The ability of the market to regulate investment company fees may depend, however, on the extent to which investors make active purchase and redemption decisions, give significant consideration to cost in making those decisions, and are able easily to compare the total cost of investing in alternative funds. With this in mind, should a UIF or other alternative pooled vehicle be permitted to impose front-end sales charges, contingent deferred sales charges, redemption fees, or rule 12b-1 fees? What conditions or limitations should be imposed on charges? Should selling costs be imposed only on a shareholder's account and not on funds assets? Should shareholder account charges be limited to a front-end sales charge?

Comment is also requested on whether the need for a board of directors to stand as an intermediary between shareholders and the investment company in evaluating the reasonableness of multiple fees could be obviated by a single, all-inclusive fee to be charged for all costs incurred in selling and operating an alternative pooled vehicle.[47] If all expenses and charges were included in a single fee, would investors be in a better position to compare total costs to be incurred by investing in different vehicles? Should a single fee also include agency transaction costs? If not, would the investment manager of an alternative pooled vehicle have an incentive to use "soft dollars" to pay for as many fund expenses as possible?

Finally, in the context of an alternative pooled structure like the UIF, should all service contracts between the investment company and affiliated persons be exempt from the requirements of rule 17d-1 under the Investment Company Act?[48] Should section 36(b)[49] be amended to provide that the investment manager of a UIF-type vehicle does not have a fiduciary duty regarding the receipt of compensation by the manager and its affiliates? Are alternative management fee controls, such as a statutory maximum fee, warranted?

C. Asset-Backed Arrangements Under the Investment Company Act

A structured financing or asset-backed arrangement ("ABA") typically consists of a limited purpose entity whose primary business activity is acquiring and holding financial assets and issuing non-redeemable debt obligations or equity interests. The principal and interest payments on the pledged assets are used to make payment on the securities issued by the ABA, which usually are rated not lower than AA by one or two nationally recognized statistical rating organizations.[50] Issuers that have more assets or collateral than needed to make full payment on their debt securities may sell equity or "residual" interests in the residual cash flow or value of the collateral.

The structured finance market is huge, global, and still evolving. In 1988, the volume of new issues was $158 billion; in 1989, volume is projected to be $175.5 billion.[51] The most prevalent ABA to date is the collateralized mortgage obligation ("CMO"). A CMO is a debt obligation collateralized by various types of mortgage loans or by mortgage-backed securities usually issued or guaranteed by the Government National Mortgage Association, Federal National Mortgage Association ["FNMA"], or Federal Home Loan Mortgage Corporation ["FHLMC"].[52] The CMO structure allows the cash flows on the underlying mortgage pool to be carved up into separate, marketable securities. CMOs are issued in a series of classes, each of a specified coupon and stated maturity. Scheduled payments and prepayments from the collateral are prioritized to retire the earliest class of CMOs before retiring later classes in the order of stated maturities.

More recently, other types of ABAs have been issued, including collateralized bond obligations, using corporate bonds as collateral; consumer loan-backed securities, including so-called "plastic bonds" collateralized by credit card receivables; securities collateralized by pools of federal agnecy loans; and securities issued by "bad banks," which are entities chartered as banks that usually hold only non-performing assets and issue debt much like a CMO issure.[53]

ABAs generally are investment companies under section 3(a) of the Investment Company Act because they issue securities to the public (typically in the form of bonds or equity interests), and invest in, own, hold or trade securities within the meaning of the Act (*e.g.*, open accounts receivable, mortgage notes, mortgage-backed securities, government loans). Most ABAs, however, would have great difficulty operating under the Act's requirements. For example, many ABAs have complicated multiclass structures that would be prohibited under section 18, which makes it unlawful for any registered investment company to have more than one class of senior security outstanding and requires certain levels of asset coverage.

Some ABAs have avoided regulation under the Investment Company Act by relying on one of the three statutory exceptions to the definition of an investment company in section 3(c)(5) (15 U.S.C. 80a–3(c)(5)). The exceptions are available only to issuers that are not issuing "redeemable" securities.[54] First, section 3(c)(5)(A) (15 U.S.C. 80a–3(c)(5)(A)) excepts issuers primarily engaged in "acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services." Second, section 3(c)(5)(B) (15 U.S.C. 80a–3(c)(5)(B)) excepts issuers primarily engaged in "making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of specified merchandise, insurance, and services." Finally, section 3(c)(5)(C) (15 U.S.C. 80a–3(c)(5)(C)) excepts issuers primarily engaged in "acquiring mortgages and other liens on and interests in real estate." Most CMO issuers have relied on this exception.

Some ABA issuers unable to rely on section 3(c)(5) have organized outside the United States and offered their securities publicly only outside the United States to foreign investors. Others have offered their securities in private placements to not more than one hundred investors, relying on the exception in section 3(c)(1) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)).[55] Finally, a number of CMO issuers and a few governments loan pools that were unable to rely on a statutory exception have sought and received individual exemptions from some or all provisions of the Investment Company Act.[56]

Given the emergence of ABAs, which developed subsequents to the enactment of the section 3(c)(5) exceptions and arguably were not specifically envisioned by Congress in 1940,[57] it may be appropriate to reevaluate the treatment of ABAs under the Investment Company Act. The Commission requests comments on the subject of ABAs generally and on the following specific issues and questions:

Should all ABAs, regardless of the assets being collateralized, be given the same regulatory treatment or do the different assets collateralizing the securities require or justify different regulatory treatment for each type of structured financing? [58] Similarly, should ABAs that are sold to accredited or institutional investors be given different regulatory treatment from those sold to other investors? Should all ABAs be excepted from the Act? Should an exception be conditional or unconditional? If a conditional exception is appropriate, what types of conditions would be necessary? That is, are structured financings susceptible to abuse and what conditions would address those abuses? Should distinctions be drawn based upon the level of structural complexity or credit risk of the ABA, or upon the types of securities the ABA issues? What is the appropriate role, if any, of the rating agencies in the regulatory framework? [59]

Proponents of regulation of ABAs have argued that the Investment Company Act was designed for complex financial structures, like ABAs, where, in the proponents' view, investor protection concerns cannot adequately be resolved by disclosure alone.[60] If regulation under the Investment Company Act is appropriate, what provisions should apply to ABAs? For example, should ABAs be subject to section 17 (15 U.S.C. 80a–17), which restricts transactions with affiliated persons? What alternatives to the requirements of section 17 would be available to deal with potential conflicts of interest? Are the restrictions of section 18 (15 U.S.C. 80a–18) on leverage appropriate for ABAs, or can the policy concerns underlying this section be addressed in an alternative manner?

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[45] Both the West Speech and Release 12966 made this suggestion, based, in part, on the belief that money market funds may be the fund type most likely to be the subject of comparison shopping by investors. It has been noted that investors perceive the money market fund to be a relatively homogeneous product for which yield is a major purchase criterion and that the level of fund expenses is a major determinant of yield. Phillips, *supra* note 43, at 913.

[46] See, *e.g.*, Investment Company Act section 2(a)(41), 15(c) (15 U.S.C. 80a–2(a)(41), –15(c)), rules 2a–7, 16b–1, 17a–7, 17a–8, 17d–1(d)(7), 17e–1, 17f–1 [17 CFR 270.2a–7, 270.16b–1, 270.17a–8, 270.17d–1(d)(7), 270.17e–1, 270.17f–1].

[47] This approach would require the investment manager to set its fee at a rate high enough to compensate for all costs incurred in selling and operating an alternative pooled vehicle, whether services are performed "in house" or by outside contractors. The fee would include all distribution-related expenses, investment advice, shareholder accounting, and pricing services), and insurance.

[48] In brief, rule 17d-1 prohibits joint transactions among investment companies and their affiliated persons or principal underwriters, or any affiliated person of an affiliated person or principal underwriter, without a Commission order.

[49] Section 36(b) imposes a fiduciary duty regarding compensation paid by an investment company to its investment adviser and affiliated persons of the adviser.

[50] The ratings are based solely upon each rating agency's assessment of the likelihood of timely distribution of principal and interest. Highly rated structures usually have some type of credit enhancement, *e.g.*, reserve funds, subordinated classes, insurance, letters or credit, or overcollateralization.

Certain trends may have increased credit risk; in fact, $4.6 billion of structured finance securities was downgraded during 1989. Most notably, heightened competition among transaction participants may have increased the pressure on credit standards. The average credit quality of structured securities is expected to continue to decline in 1990. *Structured Finance, Annual Report: 1989 Review and 1990 Outlook* 3–8, Moody's Structured Finance Research & Commentary [Jan. 1990] [hereinafter cited as "Moody's *Annual Report*"].

[51] See Moody's *Annual Report*, *supra* note 50, at 2.

[52] In the 1970s, approximately $100 billion in mortgage-backed securities was issued; in 1986 alone, over $94.5 billion in CMOs was issued. In 1988, there was a dramatic shift from private issuer CMOs to FNMA and FHLMC issuance, with agency CMOs accounting for 66% of the market, up from 34% in 1986. Moody's *Annual Report*, *supra* note 50, at 2, 7.

[53] See Mayer, *Slicing the Mellon: Behind the Good Bank/Bad Bank Scheme*, Barron's Aug. 15, 1988, at 100.

[54] Issues important to the availability of any of the three exceptions under section 3(c) are the interpretation of the terms "redeemable securities" and "primarily engaged," which have been analyzed by the Division of Investment Management in a variety of contexts. See, *e.g.*, Prudential Mortgage Bankers & Investment Corp. (pub. avail. Dec. 14, 1977); Solomon Brothers, Inc. (pub. avail. June 17, 1985); California Dentists' Guild Real Estate Mortgage Fund II (pub. avail. Jan 4, 1990). The redeemable securities prohibition was added by amendments to the Investment Company Act in 1970 and was intended to reach certain entities such as real estate investment trusts that attempted to capitalize on the popularity of open-end investment company securities. See S. Rep. No. 184, 91st Cong., 1st Sess. 37 (1970); H.R. Rep. No. 1382, 91st Cong., 2nd Sess. 17 (1970).

[55] Section 3(c)(1) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)) is somewhat analogous to the private offering exemption in section 4(2) of the Securities Act (15 U.S.C. 77d(2)). Section 3(c)(1) provides an exception for any issuers "whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities." See *infra* note 128 and accompanying text for a discussion of possible amendments to this exception.

[56] See, *e.g.*, *Trident Mortgage Securities Company*, Investment Company Act Release Nos. 16228 (Jan. 15, 1988), 53 FR 1674 (Jan. 22, 1988) (notice) and 16288 (Feb. 11, 1988) (order); *Community Program Loan Trust No. 1987 A*, Investment Company Act Release Nos. 15899 (July 29, 1987), 52 FR 28628 (July 31, 1987) (notice) and 15948 (Aug. 24, 1987) (order); *College and University Facility Loan Trust One*, Investment Company Act Release Nos. 15803 (July 31, 1987), 52 FR 28880 (Aug. 4, 1987) (notice) and 15880 (Sept. 16, 1987) (order). With both CMOs and governments loan sales, the legislative history of related legislation indicates a congressional expectation that such issuers be exempted. See The Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Section 7005, 100 Stat. 1874 (1986); 132 Cong. Rec. 33338 (1986); 4 *Hearings on the Concurrent Resolution on the Budget for Fiscal Year 1988 before the Senate Comm. on the Budget*, 100th Cong., 1st Sess. 99 (1987) (statement of John S.R. Shad, Chairman, SEC); The Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (1984); S. Rep. No. 293, 98th Cong. 2d Sess. 9 (1983).

[57] See *Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 181–83 (1940) (statement of David Schenker, Chief Counsel, SEC investment trusts study) (companies engaged in purchasing mortgage or automobile paper and refrigerator paper excepted). See also T. Frankel, 1 *The Regulation of Money Managers*, 443–449 (1978).

[58] See Letter from the Investment Company Institute to Richard C. Breeden, Chairman, SEC (Feb. 2, 1990) (arguing that passive credit card receivables should not be deemed exempt under section 3(c)(5)). But see Letter from Thomas C. Smith, Jr., on behalf of a group of securities firms, to Kathryn B. McGrath, Director, Division of Investment Management, SEC (Feb. 27, 1990).

[59] Generally, the CMO and government loan sales offerings exempted by the Commission have been conditioned, in part, on the publicly-offered securities' being rated in the top two investment grades.

[60] See, e.g., Letter from Tamar Frankel, Professor of Law, Boston University, to Kathryn B. McGrath, Director, Division of Investment Management, SEC (Jan. 29, 1990).

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Should ABAs be regulated under a statute or rule designed for this specific type of pooled investment vehicle, much as business development companies and flexible premium variable life insurance have been accommodated under the Act? Should changes be made in the Investment Company Act, the rules thereunder, or interpretive positions?

D. Distribution of Open-End Companies

The methods by which open-end investment companies have financed the distribution of their shares have changed a great deal in the last ten years, with many companies now using arrangements that did not exist when the Investment Company Act was enacted. Traditionally, most open-end companies financed the expenses associated with the sale of shares by passing these costs on to investors in the form of a sales charge or "sales load" paid at the time of purchase. All investors typically paid the same sales load when buying a company's share because section 22(d) of the Investment Company Act (15 U.S.C. 80a–22(d)) prohibits retail negotiation of sales loads.[61] Other open-end companies sold their shares to the public without a sales load, with the distribution costs being paid by the companies' investment advisers or principal underwriters out of their own resources.

Under section 22(b) of the Investment Company Act (15 U.S.C. 80a–22(b)), the National Association of Securities Dealers, Inc. ("NASD") may prescribe rules governing sales loads that allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The NASD has adopted a rule that generally permits a maximum front-end sales charge of not more than 8.5% of the share's offering price.[62] Although many open-end companies continue to use front-end sales loads, a large number now use them coupled with other distribution arrangements. In addition, investors in an investment company no longer necessarily pay the same sales load. Under rule 22d–1 (17 CFR 270.22d–), investment companies may offer scheduled variations in, or the elimination of, a front-end sales load to specified classes of shareholders or in connection with specified classes of transactions, provided that the variation is applied uniformly to all investors in the class and certain disclosure requirements are met.[63] Negotiation of sales loads, however, continues to be prohibited by statute.

In 1980, after many years of debate, the Commission adopted rule 12b–1 under the Investment Company Act (17 CFR 270.12b–1).[64] The rule permits an open-end investment company to use company assets under a distribution plan ("12b–1 plan") to pay sales and promotional expenses associated with the sale of its shares. The rule places the principal responsibility for making decisions relating to the use of company assets for distribution in the hands of the company directors, particularly those directors who are not interested persons of the company.

Since the adoption of rule 12b–1, more than half of all open-end companies have enacted 12b–1 plans. Many of these companies use 12b–1 fees either alone or with sales loads as the primary means of financing distribution.

In 1988, the Commission proposed amendments to the rule.[65] The proposed amendments would, among other things, require that payments under a 12b–1 plan be made on a current basis and for specific distribution services actually provided to the plan, clarify the duties of directors in adopting and continuing 12b–1 plans, define payments made under a 12b–1 plan as "asset-based sales loads," and prohibit investment companies that adopt or continue distribution plans from being held out to the public as "no-load" or from being otherwise offered in a misleading manner using similar terminology.

In response to the proposal, the Commission has received over 1,900 letters from individual investors, 40 letters from individuals affiliated with the financial services industry (such as financial planners), and 40 letters from entities affiliated with the investment company industry. Virtually all individual investors and a large majority of the individuals from the financial services industry favor the proposed amendments or support changes to rule 12b–1. Many of the letters from individuals urge that 12b–1 fees be abolished. Most industry commenters, however, strongly oppose the proposed amendments, with many arguing that they are unnecessary and would curtail or eliminate 12b–1 plans as an alternative method of financing distribution.

On April 16, 1990, the NASD published for comment an amendment to its sales charge rule that, if adopted, would subject 12b–1 fees to the rule.[66] The proposed amendment is intended to ensure, to the extent possible, that a majority of shareholders that own shares of companies with 12b–1 plans pay no more for distribution expenses than is permitted by the provisions of the current rule.[67]

A number of open-end companies now also assess deferred sales loads. In 1981, the Commission first issued an exemptive order permitting the deduction of contingent deferred sales loads ("CDSLs") upon redemption of company shares.[68] Since then, the Commission has received and granted numerous applications for exemptions permitting CDSLs. To pay for distribution expenses, many open-end companies use CDSLs in conjunction with 12b–1 plans in lieu of charging investors front-end sales loads.

In 1988, the Commission proposed for comment rule 6c–10.[69] The proposed rule would permit open-end companies and certain related persons to impose deferred sales loads, both contingent and non-contingent, subject to specified conditions. The proposed rule generally would codify the standards that the Commission has developed in issuing exemptive orders concerning the use of CDSLs and also would permit for the first time other types of deferred sales loads, such as sales loads deducted in installments.

Commenters on the proposed rule generally support codifying the exemptive orders permitting CDSLs. Commenters' reactions are mixed, however, on whether the Commission should expand these exemptions to permit the use of deferred sales loads not subject to a contingency. Commenters opposing the expansion, many of whom are affiliated with the investment company industry, are particularly concerned about deferred sales loads payable in installments. Some of these commenters argue that investment companies would not be interested in using installment sales loads because of the costs and operational difficulties that would be incurred in implementing such a load structure.

Finally, the Commission has issued a number of exemptive orders permitting the issuance of multiple classes of securities representing interests in a single portfolio of investments where the classes are subject to different distribution arrangements.[70] The orders contain a number of conditions to address concerns regarding the complexity of the arrangement, including a condition that an independent expert render an initial and annual report on the allocation of expenses between the two classes and the accounting for the expenses.

The Commission requests comment on whether the present regulatory approach to financing distribution costs should be revisited.[71] Commenters are encouraged to consider any alternative approaches, including distribution arrangements used by other pooled investment vehicles, both in the United States and abroad, such as commodity pools and real estate partnerships. One area of comparison may be with possible fee structures for UIFs.[72] Another may be with UCITS. The Commission understands that the UCITS Directive would not prohibit price competition among brokers and dealers or the use of assets to finance distribution with appropriate disclosure. Host Member States, however, may impose restrictions on the use of assets to finance distribution. Commenters are requested to address specific changes in the Investment Company Act, the rules thereunder, and any interpretive positions.

The Commission requests comments on how open-end investment companies should be allowed to finance distribution. Should the use of company assets to finance distribution be permitted, and if so, subject to what, if any, conditions? Should there be limits on the amounts that may be expended for such purposes? Should the limits be expressed as percentages of net assets or as percentages of the offering price? Should distribution be financed only on a shareholder account basis by means of front-end sales loads or other fees? What types of sales loads should be permitted? Would direct retail price negotiation between brokers and dealers or the existence of a secondary market in investment company shares increase price competition, reducing the need for regulatory limitations? Would price competition adversely affect investment companies? Should retail price negotiation be permitted for distribution fees taken out of company assets? That is, should customers be able to negotiate for rebates of distribution fees from sales personnel?

In commenting on whether the present regulatory approach should be changed, commenters should address the potential for investor confusion resulting from a variety of distribution arrangements, the operational ability of the investment company industry to implement various types of financing arrangements, the conflicts of interest inherent when company assets are used to finance distribution and the role, if any, that directors should have in monitoring those conflicts, the amount shareholders should be required to pay and whether such amounts should be capped, and the competitive effects any regulatory revisions would have.

E. Closed-end Funds and Repurchases of Shares

As noted earlier, closed-end companies typically do not issue redeemable securities or continuously offer their shares to the public.[73] Investors in closed-end companies must instead trade their shares on a securities exchange or in the over-the-counter market at a price determined by the market, which is typically lower than the shares' net asset value.

A study of the Commission's Office of Economic Analysis demonstrated that a substantial decrease in the value of closed-end fund shares often occurs shortly after the initial public offering.[74] While some of the decrease is attributable to sales loads, there appears to be a further reduction in share value below net asset value that cannot be explained by the sales load. It has been observed that the practical effect of this "discount phenomenon" is that a shareholder who purchases shares of a closed-end fund at the initial public offering and subsequently sells those shares in the open market incurs two separate and substantial costs. At the time of the initial public offering, the investor pays a premium over the fund's initial net asset value to cover underwriting expenses.[75] Upon the sale of these securities, the shareholder also absorbs the discount at which the fund shares may trade in the open market.

On reason for the existence of the discount may be that brokers have a greater financial incentive to sell shares of closed-end investment companies in the initial public offering than in the secondary market, because broker compensation for sales made during the initial public offering is higher than commission rates for secondary market

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[61] Under section 22(d), investment companies, their principal underwriters, and dealers in their shares may sell the company's redeemable securities only "at a current public offering price described in the prospectus." For a discussion of the legislative and administrative history of section 22(d), see Investment Company Act Release No. 13183 (Apr. 22, 1983), 27 SEC Docket 1353 (May 10, 1983) at the appendix (proposing rule 22d–6, which was later adopted as revised rule 22d–1).

[62] See Article III, section 26(d) of the NASD's Rules of Fair Practice.

[63] Investment Company Act Release No. 14390 (Feb. 22, 1985), 50 FR 7908 (Feb. 27, 1985) (adopting revised rule 22d–1). The rule superseded more limited rules previously adopted by the Commission in this area.

[64] Investment Company Act Release No. 11414 (Oct. 28, 1980), 45 FR 73898 (Nov. 7, 1980). Before the adoption of rule 12b–1, the Commission opposed the use of company assets to pay for the distribution of company shares. Since the adviser's compensation is typically based on the size of the company, the Commission believed that the adviser might be inclined to spend excessive amounts on the distribution of shares in an effort to increase company assets and its own compensation. See Investment Company Act Release No. 10431 (June 13, 1988), 53 FR 23258 (June 21, 1988) ("Release 10431") (discussing earlier Commission positions).

[65] Release 10431, *supra* note 64.

[66] NASD Notice to Members No. 90–28 (Apr. 16, 1990).

[67] Under the proposal, however, some long-term shareholders of these companies may still pay more than the economic equivalent of a maximum front-end sales charge. To address this, the proposed amendment also would require that this fact be disclosed adjacent to the fee table in the front section of the prospectus.

[68] *E.F. Hutton Investment Series, Inc.*, Investment Company Act Release Nos. 12079 (Dec. 4, 1981), 46 FR 60703 (Dec. 11, 1981) (notice) and 12135 (Jan. 4, 1982) (order). The NASD has taken the position that its sales load rule applies to deferred sales loads.

[69] Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 (Nov. 9, 1988). The Commission had previously adopted rules 6c–8 (17 CFR 270.6c–8) and 6e–3(T) (17 CFR 270.6e–3(T)) which permit certain investment company separate accounts to impose deferred sales loads. See Investment Company Act Release Nos. 13408 (July 28, 1983), 48 FR 35087 (Aug. 9, 1983) (adopting rule 6c–8); 14234 (Nov. 14, 1984), 49 FR 47209 (Dec. 3, 1984) (adopting rule 6e–3(T)); and 15861 (Mar. 30, 1987), 52 FR 11167 (Apr. 6, 1987) (adopting amendments to rule 6e–3(T)).

[70] See *e.g., Merrill Lynch California Municipal Bond Trust*, Investment Company Act Release Nos. 16503, (July 28, 1988), 53 FR 29294 (Aug. 3, 1988) (notice), and 16535 (Aug. 23, 1988) (order) (investors given the option of purchasing shares either with a front-end sales load, or subject to a CDSL and a rule 12b–1 fee); *Prudential-Bache California Municipal Fund*, Investment Company Act Release Nos. 17227 (Dec. 20, 1989), 54 FR 53414 (Dec. 28, 1989) (notice), and 17308 (Jan. 18, 1990) (order) (investors given the option of purchasing shares either with a front-end sales load and a low 12b–1 fee, or with a CDSL and a higher 12b–1 fee). See also *Alliance Short-Term Multi-Market Trust, Inc.*, Investment Company Act Release Nos. 17285 (Jan. 8, 1990), 55 FR 1305 (Jan. 12, 1990) (notice), and 17330 (Feb. 2, 1990) (order) (arrangement similar to Prudential-Bache's, *supra*, except that, after a specified time, the shares of the class with the higher 12b–1 fee would convert into the other class of shares without payment of any additional load, thereby limiting payments borne by each investor and placing a ceiling on the underwriter's compensation).

[71] The Commission's reconsideration of the present regulatory approach is not an indication of a change in the Commission's views regarding the proposed amendments to rule 12b–1 or proposed rule 6c–10, both of which remain pending. Comments already received regarding these proposals will be considered as part of the general reexamination of the regulation of investment companies under the Investment Company Act.

[72] See supra notes 47–49 and accompanying text.

[73] A redeemable security is "any security * * * under the terms of which the holder, upon its presentation * * * is entitled * * * to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." Investment Company Act section 2(a)(32) (15 U.S.C. 80a–2(a)(32)).

[74] Office of Economic Analysis of the Securities and Exchange Commission, *The Post-Offering Price Performance of Closed-end Funds* (July 21, 1986).

[75] The Commission proposed amendments to Form N–2, the registration form for closed-end investment companies, that would change the caption on the fee table from the present term "underwriting discount" to "sales load." Investment Company Act Release No. 17081 (July 28, 1989), 54 FR 32883 (Aug. 11, 1989) ("Release 17081").

transactions.[76] In addition, few analysts choose to follow closed-end funds after the initial offering has been completed. Some observers have suggested that it might be appropriate for closed-end companies to use fund assets to attempt to address the problem of discounts.[77] For example, a closed-end fund could provide brokers with additional compensation for secondary market transactions in fund shares. Alternatively, closed-end companies could provide analysts with reports and other information in order to increase the number of analysts that follow them and stimulate retail interest.

A number of funds have sought to minimize the discount at which their shares trade by employing a variety of other methods, including guaranteeing minimum distributions and reinvesting shareholder dividends in additional fund shares. Other closed-end investment companies have considered either conversion to open-end status or liquidating fund assets.

Perhaps most significantly, a number of closed-end companies have repurchased their shares in the secondary market in reliance on section 23(c)(1) of the Investment Company Act (15 U.S.C. 80a–23(c)(1)), which allows repurchases on an exchange, or have made tender offers for their shares at prices approximating net asset value. A closed-end company, however, cannot give shareholders an unlimited right to have their shares repurchased by the fund at a price approximating net asset value. Under rule 23c–2 (17 CFR 270.23c–2), a closed-end company may call or redeem any securities of which it is the issuer, in accordance with the terms of the securities, but the Division of Investment Management has interpreted the rule to require that the calls or redemptions be at the option of the issuer and not the shareholder.[78] The Division also has interpreted the Act to limit the ability of closed-end companies to state their intention to make future tender offers at definite times or intervals.[79]

If the shareholders of a closed-end company were given the option to redeem their shares at a price approximating net asset value, the closed-end company would become functionally similar to an open-end company.[80] Closed-end companies, however, are not subject to all of the provisions that govern the operation of open-end companies.[81] For example, section 22 of the Investment Company Act (15 U.S.C. 80a–22), which applies only to open-end companies, imposes certain requirements on the sale and redemption of securities. Also, under section 18, closed-end companies, unlike open-end companies, may issue separate classes of senior securities that leverage the company's other securities. This leverage may confuse shareholders as to the value of the securities that are periodically redeemable. It also may make a company's net asset value more sensitive to market movements and, in a declining market, make redemptions of the company's securities more difficult or impossible. In addition, shareholders may become confused as to the limited availability of redemptions and may believe that they have the right to redeem their shares at any time.

The Commission invites comments regarding possible amendments to the Investment Company Act, the rules thereunder, or any interpretive positions that would give closed-end investment companies additional means to attempt to reduce the discount associated with their shares, or provide shareholders with additional flexibility in selling their shares, consistent with investor protection. Commenters are requested to address whether closed-end companies should be permitted to use their assets to pay for activities designed to lower the share price discount from net asset value, as well as the relative costs and benefits to shareholders from such activities, the conflicts of interest inherent when company assets are used to pay sales-related expenses, and whether only closed-end companies engaged in a continuous public offering should be permitted to use their assets for sales-related expenses.

Commenters are also requested to address whether closed-end companies should be permitted to issue securities that offer holders limited rights of redemption and what safeguards would be necessary to prevent any possible investor confusion between this type of company and open-end companies, such as requiring this type of closed-end company's advertising and name to indicate that the company is offering only limited redemption rights. Commenters also may wish to consider whether closed-end companies should be allowed to make periodic redemptions at a price approximating net asset value, or whether closed-end companies should be allowed to redeem their shares after a certain number of days' notice given to the companies by shareholders.[82] Commenters are also requested to address what safeguards, if any, would be necessary to protect both those shareholders choosing to redeem their shares and those shareholders to retain their shares. Finally, what effect, if any, would periodic redemptions of closed-end funds have on the market generally, and what, if anything, should be done to lessen that effect?

F. Transactions in Options and Futures Contracts

Investment company transactions in futures contracts, options on futures, and options on stock and stock indices continue to increase. Because the Investment Company Act was written long before futures contracts and options gained widespread acceptance, the Act does not address expressly investment company transactions in these instruments. These transactions, however, may raise a number of concerns under the Act. For example, the Division of Investment Management believes that entering into options and futures commitments may result in the leveraging of investment company assets. Section 18 places limitations on the leveraging of investment companies by limiting the amount of "senior securities" an investment company may issue.[83] Section 18 is designed, in part, to protect junior security holders from the speculative effects of leveraging.[84] Under section 18(f), open-end investment companies may not issue senior securities except that they may borrow from banks if they have asset coverage of at least 300%. Section 18(a) allows closed-end investment companies to issue senior securities, including debt, provided that borrowing companies have asset coverage of at least 300%.[85] The Division of Investment Management has taken the position that, unless a fund that engages in options and futures transactions meets certain segregation requirements or "covers" positions to eliminate any potential leveraging, those transactions may constitute the issuances of senior securities.[86]

Commenters are requested to address whether the Investment Company Act should be amended to facilitate the use of options and futures contracts by investment companies for hedging purposes and, if so, what limitations or requirements should be placed on those transactions. Alternatively, should the Commission consider rulemaking or interpretive positions? How should the status of entities that invest in both securities and futures contracts be analyzed under the Act? Do any liquidity or other concerns arise from the use of fund portfolio holdings to cover option positions.

G. Securities Act Issues

An investment company that continuously offers new shares to the public is generally regarded to be engaged in a continuous distribution subject to the registration and prospectus delivery requirements of section 5 of the Securities Act (15 U.S.C. 77e), unless an exemption from registration is available. As a result, these investment companies (as well as the underwriters, brokers, and dealers that distribute their shares) are limited in their ability to advertise.[87] Because an investment company rarely, if ever, advertises except in connection with the sale of its shares (typically its only "product"), an investment company advertisement generally is deemed to be a prospectus that must comply with statutory requirements. In addition, the investment company must maintain an updated or "evergreen" prospectus that must precede or accompany delivery of the securities under section 5(b)(2) of the Securities Act, both for sales by the issuer or by a dealer.[88]

1. Rule 482 Advertisements as "Omitting Prospectuses"

The Commission in 1979 adopted a rule permitting investment companies to publish advertisements containing any information the substance of which is included in the full statutory prospectus.[89] Rule 482 was adopted under the rulemaking authority contained in section 10(b) of the Securities Act, which permits the use of a prospectus for purposes of section 5(b)(1) that omits in part or summarizes information in the prospectus specified in section 10(a). Thus, rule 482 advertisements are styled "omitting prospectuses."[90] Some have suggested that the requirement that the substance of the information in a rule 482 ad be included in the prospectus is awkward and lengthens the prospectus with information that may not be of interest to the individual investor.

Comment is requested on whether the Securities Act or the Investment Company Act should be amended to deal specifically with investment company advertisements and, if so, how it should be amended. For example, section 10(b) of the Securities Act could be amended to permit certain types of investment company advertisements, including advertisements containing performance information, under such requirements as the Commission may prescribe, but not require that the substance of the information be contained in the prospectus of the investment company.[91] Of course, if the amendment were added to section 10(b), the advertisements would continue to carry prospectus liability for false or misleading statements of material fact.[92] However, comment is requested on whether investment company advertisements should continue to carry prospectus liability.

Another approach would be to amend rule 482 to allow investors to purchase fund shares directly from an advertisement, by completing an application form included in the ad, similar to the so-called "off the page" advertisements permitted in the United Kingdom.[93] Rule 482 currently prohibits this practice. Commenters should consider whether rule 482 should be amended, or another rule adopted, to permit investment company advertisements to include an applicaiton or order form to purchase fund shares, and if so, whether the ad should be required to contain certain information (*e.g.*, fund policies, risks, charges).

Finally, commenters are requested to provide information on how other countries regulate investment company advertising and to consider whether some comparable regulatory approach

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[76] See, *e.g.*, *id.* (separate statement of Commissioner Grundfest); B. Malkiel, *The Valuation of Closed-end Investment Company Shares*, 32 J. Fin. 847, 857–58 (June 1977).

[77] At present, closed-end investment companies do not use fund assets to pay for distribution of their shares. Rule 17d–3 (17 CFR 270.17d–3), which exempts certain distribution arrangements between affiliates of open-end investment companies, is not applicable to closed-end funds. Rule 12b–1, which permits open-end management investment companies to use their assets to finance distribution-related activities under certain circumstances, does not apply to closed-end investment companies.

[78] Dimensional Fund Advisors, Inc. (pub. avail. Nov. 21, 1988); J. & W. Seligman & Co. (Pub. avail. Nov. 13, 1989).

[79] In the staff guidelines accompanying Release 17091, *supra* note 75, the Division stated that a closed-end company may agree to consider periodically whether to make a tender offer, but that the board of directors may breach its fiduciary duty by affirmatively stating that the fund will make tender offers at definite times or intervals in the future. *Id.* at app. C. Accordingly, the Division cautioned that a registrant contemplating repurchasing shares on a regular or frequent basis should neither state nor imply in its prospectus that the repurchase will be automatic.

[80] The legislative history of the Investment Company Act and early Commission action indicates that the drafters of the Act regarded the redeemability of shares for open-end companies as the distinction between closed-end and open-end investment companies. *Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong., 3d Sess. 38 (1940) (statement of Robert C. Healy, Commissioner, SEC); *Wisconsin Investment Company*, 10 S.E.C. 333, 337 (1941). Depending on the nature of the redemption rights offered to the shareholders of a closed-end company, the company might be issuing "redeemable securities" and therefore fall within the definition of an open-end company.

[81] See *Wisconsin Investment Company*, *supra* note 80, at 337 (Commission granted exemption allowing closed-end investment company to redeem its securities, but required the company to comply with investment Company Act sections dealing with open-end investment companies).

[82] Commenters should address whether closed-end companies may redeem or repurchase for an amount slightly less than net asset value to reflect the brokerage and other costs associated with the transaction.

[83] Section 18(g) (15 U.S.C. 80a–18(g)) defines "senior security" to mean "any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividend."

[84] See Investment Company Act section 1(b)(7); *Investment Trusts and Investment Companies*, *supra* note 1, at 1708.

[85] With respect to the issuance of preferred stock, section 18(a)(2)(A) requires asset coverage of only 200%.

[86] See, e.g., Dreyfus Strategic Investing (pub. avail. June 22, 1987); Putnam Option Income Trust II (pub. avail. Aug. 23, 1988).

[87] Section 5(b)(1) of the Securities Act makes it unlawful to use jurisdictional means to transmit or carry any "prospectus" relating to any security with respect to which a registration statement has been filed unless the prospectus complies with section 10 of the Securities Act (15 U.S.C. 77j). A written communication or advertisement design to procure orders for a security could, unless a safe harbor is available, be a "prospectus" as that term is broadly defined in section 2(10) of the Securities Act (15 U.S.C. 77b(10)). See In the Matter of Carl M. Loeb, Rhoades & Co., 38 S.E.C. 862, 866 (1960). As such, the advertisement or written communication must comply with section 10 or be preceded or accompanied by a full statutory prospectus that meets the requirements of section 10(a).

[88] Section 24(d) of the Investment Company Act (15 U.S.C. 80a–24(d)) effectively eliminates the so-called "dealer exception" in section 4(3) of the Securities Act (15 U.S.C. 77d(3)) with respect to the sale of investment company securities of the type continuously offered to the public. See infra notes 88–89 and accompanying text.

[89] See Securities Act Release No. 6116 (Aug. 31, 1979), 44 FR 52810 (Sept. 10, 1979) (adopting rule 434(d), later renumbered as rule 482 (17 CFR 230.482)). In contrast, rule 134 under the Securities Act (17 CFR 230.134) limits so-called "tombstone" advertisements to the specific types of information set forth in the rule (*e.g.*, the name of the issuer, the title of the security, the amount being offered). Prior to adoption of rule 482, rule 134 was amended several times to permit investment company tombstones to include a broader range of information than can be included in the tombstones of other issuers. See, *e.g.*, Securities Act Release No. 5530 (Nov. 4, 1974), 39 FR 39868 (Nov. 12, 1974) (adopting amendments to rule 134).

[90] An "omitting" prospectus may be used prior to delivery of the full statutory prospectus that must precede or accompany delivery of the security or confirmation of the sale.

[91] Commenters should consider whether it would be necessary to amend section 10(b) because, as earlier noted, section 10(b) currently only authorizes the Commission to adopt rules permitting the use of a prospectus for purposes of section 5(b)(1) that "omits in part" or "summarizes" information in the full statutory prospectus.

[92] Although section 10(b) specifically states that a prospectus permitted under that subsection is not deemed part of the registration statement for purposes of section 11 of the Securities Act (15 U.S.C. 77k), civil liability would attach under section 12(2) of that Act.

[93] See Securities and Investments Board (United Kingdom), the Financial Services (Conduct of Business) Rules 1987, rule 7.25.

should be adopted, in whole or in part, in the United States.

2. UIT Secondary Market Sales

Sponsors of UITs, although not required to do so, generally maintain a secondary market in trust units as an alternative to the UITs' having to redeem shares. Maintenance of a secondary market benefits unit holders because it increases liquidity and may prevent the premature liquidation of the trust.[96]

The registration statement of each series of a UIT for which the sponsor maintains a secondary market must be kept current because the sponsor, as the trust's depositor, is an "issuer" under section 2(4) of the Securities Act (15 U.S.C. 77b(4)). Although secondary market sales of registered securities are usually not subject to the Securities Act once the offering has "come to rest," all securities offered or sold by an issuer, (*i.e.*, the sponsor) unless otherwise exempt, are subject to the registration requirements of the Securities Act, notwithstanding the fact that the securities may have been sold previously under an effective registration statement.[97] As a result, sponsors maintaining a secondary market are required to file annual post-effective amendments for each UIT series and comply with filing and fee requirements under section 24(f) of the Investment Company Act (15 U.S.C. 80a–24(f)). In addition, a prospectus generally must be delivered to investors in connection with each secondary market sale, including sales by dealers who are not sponsors, because section 24(d) of the Investment Company Act eliminates the "dealer exception" in section 4(3) of the Securities Act.[98]

Commenters are asked to consider whether the requirement that sponsors and third party dealers deliver a prospectus in connection with secondary market sales of UITs should be eliminated, and if so, how best to accomplish that objective. Commenters should specifically address whether UITs should be treated differently in this regard from other issuers.[97] If the prospectus delivery requirement were eliminated, how would secondary market purchasers of UITs be able to obtain adequate information about their investment? Should sponsors and third party dealers be required to deliver the most recent annual report of the UIT's trustee or a similar document in connection with secondary market sales of UITs?

One option would be to revise section 2(4) of the Securities Act so that the depositor (sponsor) of a UIT is not an "issuer," [98] or is only an "issuer" until the initial public offering of the series is completed. Thereafter, the depositor could be deemed to be a dealer with respect to secondary market sales. If section 2(4) were so amended, section 24(d) of the Investment Company Act would no longer apply, and section 4(3) would then operate to exempt most dealer sales in the secondary market from the prospectus delivery requirements. Commenters should address whether means exist to make such changes through the rulemaking process rather than by statutory amendment. Commenters should also address whether dealers should be required to deliver prospectuses for secondary market sales under other circumstances, such as, for example, trades occurring any time before the initial public offering of the series is completed.[99]

3. Delivery of Prospectuses of Open-End Companies Prior to Sale

Open-end management investment companies are subject to the same prospectus delivery requirements as other issuers. A full statutory prospectus must be delivered to purchasers no later than delivery of the security or receipt of confirmation of the sale.[100] The circumstances of the sale of open-end company shares differs from that of other issuers, however, because a full statutory prospectus is typically available beforehand.[101] In addition, mutual fund shares may be sold on the basis of fairly extensive advertising (*i.e.*, rule 482 advertisements), whereas non-investment company issuers are limited to tombstone advertisements.

Rule 482 advertisements must state from whom a prospectus may be obtained and that investors should read the prospectus before investing. However, in the case of dealer sales of securities issued by open-end companies, it may be unrealistic to assume that potential investors will take the time to request and review a prospectus before investing. Rather, investors may be purchasing based not on the prospectus, but solely on the basis of an advertisement or oral representation of the salesperson.

Commenters are requested to address whether section 5(b)(2) of the Securities Act or section 24 of the Investment Company Act should be revised to require the delivery of mutual fund prospectuses prior to sale. In 1941, the Commission proposed amending the Securities Act to require delivery of a form of prospectus to all investors (not just mutual fund investors) a reasonable time before purchase, but the proposal was not adopted.[102] This proposal was followed by numerous efforts to improve dissemination of prospectuses to investors, including the development and formalizing of preliminary prospectus procedures as well as certain types of summary prospectuses.[103] Because open-end companies do not widely distribute a preliminary prospectus prior to sale, and because full statutory prospectuses for open-end companies are almost always available, it may be appropriate to require delivery of prospectuses before sale.

H. Insurance Products Under the Federal Securities Laws

In the 1950s, insurance companies began to offer insurance contracts that blurred the distinction between traditional insurance and securities and raised questions under federal securities laws. In *SEC* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65 (1959), the Supreme Court held that the first of these new contracts, the variable annuity,[104] was a security not entitled to the exemption in section 3(a)(8) of the Securities Act (15 U.S.C. 77c(a)(8)).[105] The Court's decision placed primary emphasis on the notion that all of the investment risk was on the contractholder, rather than on the issuer.[106] The Court also held that an issuer of variable annuity contracts was an investment company not entitled to the exception in the Investment Company Act for insurance companies.[107]

After protracted administrative proceedings, the Commission determined that another new type of contract, variable life insurance,[108] was a security required to be registered under the Securities Act. The Commission pointed to the variable death benefit and cash value features of the variable life contract, and concluded that variable life insurance contractholders would assume a substantial investment risk. The Commission also concluded that a variable life insurance separate account [109] that funds such contracts would be an investment company, but said that "this [was] a close question." [110]

In addition to variable insurance contracts, insurance companies also began to offer through their general account a type of interest-sensitive product called a guaranteed investment contract ("GIC").[111] The Commission took the position that some of these contracts were securities required to be registered under the Securities Act. In order to provide assistance in determining the status of these contracts under the Securities Act, the Commission issued a number of interpretive releases. Most recently, the Commission issued rule 151 (17 CFR 230.151), which provides a safe harbor for GICs meeting the requirements of the rule.[112]

1. Variable Insurance Contracts

As an initial matter, commenters are asked to consider whether variable insurance contracts should continue to be regulated as securities under the Securities Act, or whether the statute should be amended to exempt such contracts, in whole or in part, from the requirements of that Act. In considering this question generally, comenters are asked to consider whether Securities Act regulation of variable insurance contracts is appropriate, and whether the differences between variable life insurance and variable annuities warrant differing treatment for these two types of contracts under that Act.[113]

Assuming variable insurance contracts should continue to be registered under the Securities Act, should the separate accounts that fund them be excluded from the definition of investment company in the Investment Company Act? Is the basis for Investment Company Act regulation of separate accounts still valid? In determining whether an insurance company itself should be required to register under the Investment Company Act, how should the Commission interpret the company's "primary and predominant business activity?" [114] Should the Commission consider the assets held by separate accounts and the assets held by the general account that are attributable to GICs that are required to be registered under Securities Act?

Because variable insurance contracts have both insurance and investment features, neither they nor the separate accounts that fund them fit comfortably under investment company regulation. The interplay between the insurance

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[96] Redeeming shares might require the UIT to sell off a portion of its underlying portfolio and, eventually, liquidate.

[97] See *First MultiFund for Daily Income* v. *United States* 682 F.2d 232 (Ct. Cl. 1979), *cert. denied* 445 U.S. 916 (1980); *SEC* v. *Stanwood Oil Corp.*, 816 F. Supp. 1181 (W.D. Pa. 1981). See also Securities Act Release No. 5817 (Mar. 15, 1977), 42 FR 15982 (Mar. 24, 1977) (proposing Investment Company Act rule 24a–2).

[98] Section 24(d) provides, in pertinent part:

The exemption provided by * * * section 4(3) of the Securities Act of 1933, as amended, shall not apply to any transaction in a security issued by a * * * unit investment trust, if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act, except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

[99] Section 24(d) of the Investment Company Act was amended in 1954 to eliminate the dealer's exception with respect to securities issued by mutual funds and UITs on the theory that, because those issuers continuously offered their securities to the public, all dealers should be compelled to use the statutory prospectus. H.R. Rep. No. 1542, 83d Cong., 2d Sess. 28–30 (1954).

[98] Of course, any depositor who also acts as an underwriter of trust units would be subject to liability for its underwriting activities under the Securities Act.

[99] Under section 4(3), dealers must deliver a prospectus in connection with original sales by the dealer of securities obtained from or through an underwriter, and resales by the dealer occurring prior to 40 days (90 days for first-time issuers) after the effective date of the registration statement (or, under certain circumstances, a different date). See also rule 174 under the Securities Act (17 CFR 230.174), which provides an exception from the requirement in section 4(3) that a prospectus be delivered prior to the expiration of the applicable 40-day or 90-day period.

[100] Thus, investors may see the prospectus for the first time with receipt of the confirmation or the security itself.

[101] Preliminary prospectuses are not often used for sales of mutual fund securities because the fund usually does not commence marketing until its registration statement is effective, and, thereafter, uses its final prospectus.

[102] *SEC Report on Proposals for Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934*, H.R. Comm. Print, Comm. on Interstate and Foreign Commerce, 77th Cong., 1st Sess. 9–12 (1941). See also *Hearings on Proposed Amendments to the Securities Act of 1933 and to the Securities Exchange Act of 1934 Before the House Comm. on Interstate and Foreign Commerce*, 77th Cong., 1st Sess. 339 (1942) (statement of Ganson Purcell, Commissioner, SEC).

[103] See *Report of the Securities and Exchange Commission, Disclosure to Investors* (1969) 105–11. See also Rule 431 under the Securities Act (17 CFR 230.431) governing summary prospectuses.

[104] A variable annuity generally is any accumulation or annuity contract, the value of which varies with the investment experience of an insurance company separate account.

[105] Section 3(a)(8) of the Securities Act exempts from that Act any insurance or endowment policy or annuity contract issued by a corporation subject to the supervision of state insurance regulators.

[106] Justice Brennan, in his concurring opinion, examined the differences between state and federal law that Congress set up in 1933 to see whether variable annuity contracts were the type of investment that Congress was willing to leave exclusively to state insurance commissioners. Justice Brennan concluded that state insurance regulation, which was concerned with such matters as contract terms, reserves, and solvency, was not relevant where people entrusted their money to others to be invested on an equity basis. *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. at 78–79 (Brennan, J. concurring).

[107] Section 3(c)(3) of the Investment Company Act (15 U.S.C. 80a–3(c)(3)) excepts insurance companies from the definition of investment company.

[108] A variable life insurance contract may be described generally as a contract that guarantees a minimum death benefit, but also provides a variable death benefit and variable cash value that reflects the investment experience of an insurance company separate account.

[109] "Separate account" is defined in section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a–2(a)(37)) as "an account established and maintained by an insurance company * * * under which income, gains and losses, whether or not realized, from assets allocated to such account, are * * * credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

The Court of Appeals for the Third Circuit had previously held that a separate account used to fund the reserves under a variable annuity contract was separable from the insurance company and required to register under the Investment Company Act. *Prudential Ins. Co.* v. *SEC*, 326 F.2d 383 (Cir.), *cert. denied*, 377 U.S. 953 (1964).

[110] The Commission then adopted rule 3c–4, which exempted from the Investment Company Act certain separate accounts established to fund variable life insurance contracts. The Commission's decision to adopt rule 3c–4 was based, in part, on the expectation that the states would develop regulations with respect to variable life insurance that would provide protections to purchasers substantially equivalent to those afforded by the Investment Company Act. The Commission indicated that it would monitor the development of state law, and that, if regulatory deficiencies were not remedied, it would consider modifying or rescinding the rule. Investment Company Act Release No. 7044 (Jan. 31, 1973), 38 FR 4315 (Feb. 13, 1973). The Commission subsequently rescinded rule 3c–4 because it "would not assure the necessary investor protections." Investment Company Act Release No. 9239 (June 18, 1975), 40 FR 27044 (July 1, 1975).

[111] A GIC is a type of annuity contract under which the purchaser agrees to pay money to an insurer and the insurer promises to pay interest at some guaranteed rate for the life of the contract, and, in some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate. In addition, all of these contracts generally allow the purchaser to buy an annuity with the monies accumulated under the contract. See Securities Act Release No. 5838 (June 22, 1977), 42 FR 32281 (June 28, 1977) ("Release 5838") for a more detailed discussion of GICs.

[112] Securities Act Release No. 6645 (May 23, 1986), 51 FR 20254 (June 4, 1986) ("Release 6645"). Rule 151 is discussed *infra* notes 129–131 and accompanying text.

[113] Commenters have suggested that the Commission should adopt a "predominence test" for all insurance products with an investment component, including variable life insurance. Under this test, consideration is given to the significant mortality component under the contracts. See, *e.g.*, Kroll & Cohen, *The Insurance-Security Identity Crisis*, 46 Geo. Wash. L. Rev. 780 (1978).

[114] Section 2(a)(17) of the Investment Company Act (15 U.S.C. 80a–2(a)(17)) defines "insurance company" as "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State * * *."

and investment elements of variable insurance products has required several Commission rules providing extensive exemptions from various provisions of the Investment Company Act.[116] Assuming variable products should continue to be regulated under the federal securities laws, commenters are asked to consider whether a separate statute for variable insurance products would result in a more efficient regulatory framework, or whether the existing framework should be retained but amended, through rulemaking or interpretation.

If a new statutory approach is preferable, should it be premised on Securities Act-type disclosure principles, Investment Company Act-type regulatory requirements, or some combination of both? [116] What "security" should be registered? In the case of variable annuities, should it be the contract, or only the accumulation and annuity representing payments allocated to the separate account? Similarly, what should be deemed to be the "security" registered by the issuer of variable life insurance contracts? Who should be considered the "issuer" of variable insurance contracts: the insurance company sponsoring the separate account, or the separate account itself? When should a sale be deemed to occur for a variable insurance contract that requires the remittance of periodic payments over its life? [117] Do the differences between variable life insurance and variable annuities warrant different regulatory approaches? In addition to considering whether variable annuities and variable life insurance warrant different treatment, commenters also should consider whether sections 3(a)(2) of the Securities Act and section 3(c)(11) of the Investment Company Act and rules 22d–1 and 22d–2 thereunder adequately take account of the different regulatory issues that arise in the context of group insurance contracts.[118]

On the other hand, if the existing regulatory framework should be retained, but amended, what are the specific regulatory provisions that should be amended, and how should they be amended? Commenters are asked, in particular, to address the topics discussed below.

First, variable contracts are subject to the limitations imposed by section 27 (15 U.S.C. 80a–27), which was designed for periodic payment plans. Section 27 regulates the sales charges and administrative expenses under variable insurance contracts, requires the contracts to be redeemable, and prescribes certain refund and withdrawal rights depending on the sales load design. Although the Commission has exercised its rulemaking authority to accommodate the insurance element of variable contracts, issues continue to arise in this area.[119] Commenters are asked to comment on whether section 27 imposes unnecessary or burdensome constraints on the design of variable contracts, and if so, to suggest alternative approaches consistent with investor protection.

Second, the Commission regulates the level of administrative charges under variable insurance contracts through the application of section 26 and section 27(c)(2) of the Investment Company Act (15 U.S.C. 80a–26, –27(c)(2)), which were designed to regulate the expenses of UITs and periodic payment plans. For the most part, these sections limit deductions for administrative expenses to the costs incurred in providing such services. Comments are requested on whether this is an appropriate standard.

Third, commenters may also wish to address problems associated with the unique disclosure issues raised by variable insurance products. For example, should variable life insurance prospectuses include a fee table, and if so, how might it present the unique aspects of life insurance charges? Should contract holders be presented with information on the rate of return on the savings component of variable life insurance contracts? How may illustrations be standardized to enhance comparability among competing products? Should illustrations be used by issuers of variable annuities?

2. Guaranteed Investment Contracts

As noted above, a GIC cannot always be readily characterized as "insurance" or as a "security" for purposes of section 3(a)(8) of the Securities Act. To provide greater certainty regarding the availability of section 3(a)(8), the Commission adopted rule 151, which provides a non-exclusive safe habor for GICs that satisfy all of the rule's conditions.[120] Significantly, rule 151 dispenses with the requirement that a GIC contain a mortality component, although this remains a factor in a section 3(a)(8) analysis.[121]

Comments are requested generally on whether investor protection concerns suggest that GICs should be subject to the federal securities laws.[122] In the absence of actuarial considerations (the pooling mechanism), should an insurance company's guarantee under a GIC be treated differently from a guarantee provided by any other person?

I. Bank Involvement with Investment Companies

The Commission has previously recommended that if banks are permitted to sponsor, distribute, and underwrite investment companies, the Investment Company Act and the Advisers Act should be amended.[123] Because the two Acts were drafted in the context of the separation between banking and securities mandated by the Glass-Steagall Act,[124] they do not adequately address the conflicts of interest and other investor protection concerns presented by bank involvement in the investment company business. Although banks generally are not allowed to underwrite investment company securities, they now engage in a wide range of investment company activities, including advising investment companies and selling investment company shares as agent. In addition, the Office of the Comptroller of the Currency has proposed to amend its regulation of common trust funds to eliminate, among other things, the prohibition on common trust fund advertising.[125] These activities raise many of the concerns that would be created by repeal of the Glass-Steagall Act. Accordingly, the Commission requests comment on the regulatory changes necessitated by bank entry into the investment company industry.

In 1988, in response to legislative proposals to allow greater bank securities activities, the Commission proposed several amendments to the Investment Company Act and the Advisers Act.[126] Commenters are asked to comment on those proposals, as well as any other matters that they believe should be addressed. The Commission's 1988 proposals are briefly summarized below.

First, the Commission recommended amending the Investment Company Act to clarify and strengthen the Commission's authority to regulate how banks may serve as custodians of affiliated management investment companies and as trustees of affiliated UITs.[127] Second, to avoid the potential abuse of overreaching by a bank affiliate in a loan transaction with an investment company, the Commission recommended amending the Investment Company Act to prohibit a bank-affiliated investment company from borrowing from its affiliated bank or banks, except in accordance with Commission rules. Third, the Commission recommended amending the Advisers Act to remove the current exclusion from the definition of "investment adviser" for those banks that serve as advisers to registered investment companies. Fourth, the Commission recommended amending the Investment Company Act to regulate potential conflicts of interest arising from the relationships between banks and their borrowers, such as where a bank-affiliated investment company might invest in a corporation to further the bank's interest as a creditor of the corporation. Fifth, the Commission recommended amending the Investment Company Act to provide that no registered investment company may have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank holding company or any company affiliated with it, and amending the definition of "interested person" in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80A-2(a)(19)) to include persons with significant relationships to a bank affiliated with an investment company. Sixth, the Commission recommended amending section 35(d) of the Investment Company Act (15 U.S.C. 80a–34(d)) to prevent investor confusion between bank deposit instruments and investment company securities, by giving the Commission additional authority to require disclosure that the securities of a bank-affiliated investment company are not backed by federal deposit insurance.

J. Miscellaneous

1. Institutional Funds

The Investment Company Act does not distinguish between investment companies that are sold to retail investors and those that are sold to institutional investors, with a limited exception. Section 3(c)(1) of the Investment Company Act provides an exception for "private" investment companies, but, to qualify for that exception, a company can have no more than 100 shareholders. Commenters are asked to discuss whether the exception should be expanded to include entities that sell their securities to an unlimited number of institutional investors.[128] Alternatively, should investment companies with more than 100 institutional shareholders be required to register under the Investment Company Act, but be exempted from some of its provisions, either by statute or by rule? From what provisions should such entities be exempted? Finally, if an expanded exemption is appropriate, should it be available to entities that sell their securities publicly overseas, but sell their securities in the United States only to institutional investors?

2. Regulation of Series Companies

The Investment Company Act allows investment companies to issue series of stock each representing interests in distinct portfolios of securities. Many investment companies have chosen to organize in this fashion because the series structure may result in certain economies. Because the Investment Company Act generally does not specify the provisions for which a series should be deemed a separate investment company, a number of questions exist concerning the application of many of the Act's provisions.[129] Commenters are asked to address the appropriate resolution of these questions. In addition, the use of one prospectus by an investment company with a number of different portfolios may result in a long, confusing prospectus. Should the number of series of any one investment company, or the number of series described in one prospectus, be limited?

3. Fund Complexes

Since the passage of the Investment Company Act, the industry has developed to consist primarily of various money manager organizations each offering a number of different types of open-end companies. Many of these so-called "complexes" are large with some consisting of as many as 100 open-end investment companies sharing a common adviser and underwriter, with liberal exchange privileges among the companies. The Investment Company Act, however, focuses on individual

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[116] See, e.g., rules 0–1(e), 0a–2, 0a–3(T) (17 CFR 270.0–1(e), 270.0a–2, 270.0a–3(T)).

[117] One observer has urged, in the context of variable life insurance, that any attempt at drafting a statute be premised on the principle of disclosure, at least with respect to selling practices and limits on charges currently provided for in the Investment Company Act and the rules thereunder. See Latto, *A Proposed Federal Variable Contracts Act of 1988?*, ALI–ABA Conference on Life Insurance Company Products (Nov. 1988). It may be difficult, however, to implement controls over some charges (e.g., some or all investment-related charges) and not others (e.g., imposing a disclosure standard for insurance-related charges). A system structured on both disclosure and regulatory principles might present opportunities for an insurer to shift excessive amounts of a regulated charge (*i.e.*, amounts in excess of some regulatory ceiling) to a charge that is not so regulated.

[118] Should the rule be deemed to occur at the time of initial purchase only or each time a payment is made (scheduled or unscheduled) under the contract?

[119] See generally Mason & Roth, *SEC Regulation of Life Ins. Products—On the Brink of the Universal*, 13 Conn. L. Rev. 333, 323–25 (1983); see also Frankel, 4 *The Regulation of Money Managers* 309–56 (1988).

[120] For example, the guideline annual premium concept was introduced to permit issuers of flexible premium variable life insurance to comply with sales loads limitations given the flexibility in premium payments, the indeterminate length of the contracts, and the desire of issuers to impose sales loads in excess of nine percent in the early years of the contract. Rule 6e–3 (T)(b)(13)(i).

[121] Under rule 151, an annuity contract will be deemed to fall within section 3(a)(8) if it is issued by an insurer subject to the supervision of a state insurance commissioner, the insurer assumes the investment risk under the contract, and the contract is not marketed primarily as an investment. To assume the investment risk, the insurer must guarantee the principal amount of purchase payments and interest credited thereto, credit a minimum specified rate of interest, and guarantee that any excess interest (above the required minimum) will not be modified more often than annually.

[122] Release 6645, *supra* note 112.

[123] In this regard, what significance should be accorded mortality risks in analyzing the status of GICs under section 3(a)(8)? The Commission determined not to include a mortality risk assumption requirement as a separate element of rule 151. The Commission noted that when Congress created the insurance exclusion under the Securities Act, there were certain "traditional" annuity contracts in effect that involved no assumption of mortality or longevity risks by the insurer. However, the Commission concluded that the presence or absence of a mortality risk assumption may be an appropriate factor to consider in a section 3(a)(8) analysis of annuity contracts outside the "safe harbor." Release 6645, *supra* note 112. For an argument that the *sine qua non* of insurance is the pooling of mortality risks, see Krell and Cohen, *supra* note 113, at 769. For a criticism of the current regulation of GICs, see Nonnenbroeder, The Inadequacy of Current Regulation of Financial Products: The Case of the Single-Premium Deferred Annuity, 39 Am. Bus. L.J. 183, 217 (1988).

[124] See, e.g., *Hearings for the Reform of the Nation's Banking and Financial System Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs* 540–41, 100th Cong., 1st Sess. (1987) (statement of David S. Ruder, Chairman, SEC).

[125] The Banking Act of 1933, commonly referred to as the Glass-Steagall Act, 48 Stat. 162, is codified at various sections of title 12 of the United States Code, as amended. 12 U.S.C. 24, 78, 278, 377.

[126] Notice of Proposed Rulemaking Fiduciary Powers of National Banks and Collective Investment Funds, 85 FR 4184 (Feb. 7, 1990).

[127] Memorandum of the SEC to the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce concerning Financial Services Deregulation and Repeal of the Glass-Steagall Act (Apr. 11, 1988). The Commission also proposed amendments to the Exchange Act, including amending the definitions of "broker" and "dealer" to include banks that engage in certain activities. These amendments are not discussed here because they do not relate solely to investment company regulation.

[128] Such an exception might also have significance for the treatment of asset-backed securities under the Investment Company Act. See *supra* notes 39–49 and accompanying text.

[129] For a detailed discussion of these questions, see Fleming, *Regulation of Series Investment Companies Under the Investment Company Act of 1940*, 44 Bus. Law. 2179 (1989).

investment companies. Commenters should address whether and how the Act and the Commission's rules should be amended to focus on issues raised under the Act by investment company complexes. For example, should prospectuses for funds in a complex also contain summary information for the other funds offered by that complex?

4. Transactions with Affiliated Persons

Section 17(a) of the Investment Company Act prohibits affiliated persons, promoters of, and principal underwriters for registered investment companies, and affiliated persons of such persons from engaging in certain principal transactions with the investment companies without first seeking an order of the Commission. Rule 17d–1, adopted under section 17(d) of the Investment Company Act, prohibits certain joint enterprises among registered investment companies and their affiliated persons and principal underwriters or affiliated persons of such persons or underwriters absent an order of the Commission approving such enterprises. Sections 17(a) and 17(d) were designed to protect investment companies from self-dealing and overreaching by insiders.[130]

Commenters have suggested that section 17(a) and rule 17d–1 provide unduly cumbersome procedures for approval of transactions involving investment companies and their affiliates.[131] Others have criticized rule 17d–1 as being unclear and inconsistent with the purpose of section 17(d).[132]

The Commission seeks comment on whether section 17(a) and rule 17d–1 should be amended to permit increased transactions involving investment companies and their affiliates. Are there classes of transactions now subject to either the section or the rule that do not present the dangers of overreaching? Are there classes of affiliated persons that should not be subject to either the section or the rule? Should the definition of "affiliated person" in section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3)) be revised?

Should transactions with affiliates generally be permitted, subject to the review of the independent directors? If so, should such transactions be subject to section 36(b)?[133]

How may the scope of rule 17d–1 best be clarified? Should rule 17d–1 be amended to prohibit only those joint transactions where an investment company participates on a different or less advantageous basis or otherwise involves overreaching? If so, how should overreaching be defined?

5. Size of Investment Companies

Section 14(a)(1) of the Investment Company Act generally requires an investment company to have a net worth of at least $100,000 before commencing a public offering of its securities. The legislative history of the section indicates that Congress imposed a minimum net worth requirement for registered investment companies to prevent organizers from forming and later abandoning the company to the detriment of investors.[134] While the $100,000 minimum net worth requirement may have been adequate in 1940 to ensure that a minimum risk capital was committed to the investment company's operations, the requirement now appears to be low. Comment is requested on whether the net worth requirement in section 14(a)(1) should be increased and by what amount. Should provision be made to adjust automatically the minimum net capital requirement, and, if so, what criteria should govern any readjustment?

IV. Administrative Policy During the Period of Reexamination

The underlying reason for reexamination of the regulation of investment companies and other pooled investment vehicles at this time is the extent of developments in the financial markets during the fifty years since enactment of the Investment Company Act and the Advisers Act and particularly during the twenty years since the last significant amendments of the laws governing investment companies other than business development companies. Many of the specific topics on which the Commission seeks comments in section III of this release arise as a result of the proliferation of new vehicles, the development of new markets, and the creation of new financial interests which, by virtue of the scope and expansiveness of the operative phrases "primarily in the business of investing, reinvesting, or trading in securities," and in "the business of investing, reinvesting, owning, holding, or trading in securities," are within the reach of the Investment Company Act. Many of the vehicles and interests, and the markets in which they are traded, are adapted only with great difficulty to regulation under the Investment Company Act; some appear as a practical matter to be prohibited under that regulatory pattern. In many instances, the vehicles and interests implicate only to a minor extent certain of the core problems to which various provisions of the Investment Company Act are addressed.

Congress bestowed upon the Commission a broad power to exempt persons, securities, and transactions from any provision or provisions of the Investment Company Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]."[135] That exemptive power has been historically exercised by the Commission "with circumspection and with full regard to the public interest and the purposes of the Act * * *."[136] Over the decades, the Commission has granted exemptions in situations where the Investment Company Act by its terms clearly applied, and has rejected the argument that simply because a provision prohibited certain conduct any exemption from that provision was contrary to the intent of the Act.

The Commission is aware that section 6(c) is analogous to section 3(d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79c(d)) and the Commission is sensitive to the constitutional dimension inherent in any interpretation of exemptive authority that seeks to justify such a delegation in the absence of standards for the exercise of the authority delegated. During the pendency of the review of comments elicited by this release, and while awaiting adoption of such legislative or administrative amendments as may result therefrom, the Commission intends to follow the interpretation of its section 6(c) authority evidenced in its prior exemptive orders. The Commission believes that the tripartite test set forth in section 6(c) provides the Commission with standards that, applied with circumspection, allow it to exempt particular vehicles and particular interests from those provisions of the Investment Company Act that inhibit competitive development of new products and new markets offered and sold in or from the United States.

V. Conclusion

In reexamining the regulation of investment companies, the Commission is seeking comment on a number of specific regulatory issues. Commenters are encouraged, however, to address any other matters that they believe merit reexamination.

By the Commission.

Dated: June 15, 1990.

Margaret H. McFarland,

Deputy Secretary.

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[130] In addition, section 10(f) of the Investment Company Act prohibits an investment company from knowingly purchasing or otherwise acquiring during the existence of any underwriting or selling syndicate any security a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the investment company or any person of which such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person.

[131] See, *e.g.*, Rosenblat and Lybecker, *Some Thoughts on the Federal Securities Laws Regulating External Investment Management Arrangements and the ALI Federal Securities Code Project*, 124 U. Pa. L. Rev. 567, 630, 649 (1976).

[132] See, *e.g.*, Bartlett & Dowd, *Section 17 of the Investment Company Act—An Example of Regulation by Exemption*, 8 Del. J. Corp. L. 449 (1983).

[133] Section 36(b)(4) provides that the provisions of section 36(b) shall not apply to compensation in connection with transactions subject to section 17.

[134] See *Investment Trusts and Investment Companies: Hearings on H.R. No. 10065 Before a Subcomm. of the Comm. on Interstate and Foreign Commerce*, 76th Cong. 3rd Sess. 118 (1940).

[135] Investment Company Act section 6(c).

[136] *Great American Life Underwriters, Inc.*, 41 S.E.C. 1, 5 (1980).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA16

Safety Standards for Explosives and Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule to amend the safety standards for explosives and blasting in underground coal mines.

DATES: Written comments must be received on or before June 29, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On December 8, 1989, (54 FR 50714) MSHA published proposed amendments to update and clarify certain provisions in its safety standards for explosives and blasting. A public hearing was held in Lexington, Kentucky, on May 30, 1990, to hear testimony on the issues. The post hearing comment period was scheduled to close on June 15, 1990. In response to requests from the mining community, the Agency is extending the comment period to June 29, 1990. All interested parties are encouraged to submit comments prior to the closing of the written comment period.

Dated: June 15, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

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BILLING CODE 4510–43–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AE68

Claims Based on Service in Vietnam

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish criteria to be followed in considering claims for service connection for non-Hodgkin's lymphoma (NHL) by veterans who served in Vietnam. VA is also proposing to amend the Schedule for Rating Disabilities to add a specific diagnostic code for NHL as well as evaluation criteria. These changes are necessary to implement a decision by the Secretary based on the results of a study of the association of selected cancers with service in the U.S. military in Vietnam by the Centers for Disease Control (CDC). The intended effect will be to establish a rule for making determinations regarding service connection for NHL for veterans with Vietnam service and specific criteria for rting NHL.

DATES: Comments must be received on or before July 23, 1990. The change to part 3 is proposed to be effective August 5, 1964. The change to part 4 is proposed to be effective on the date that the final regulation is published. Comments will be available for public inspection until July 31, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233–3005.

SUPPLEMENTARY INFORMATION: On March 29, 1990, CDC released a study entitled "The Association of Selected Cancers with Service in the U.S. Military in Vietnam." That study found that Vietnam veterans have a roughly 80 percent increased risk of developing NHL after service in Vietnam. A similar increased risk was not shown among veterans who served in other locations during the Vietnam Era. The Secretary has determined that there is a relationship between Vietnam service and NHL. We propose to add a section to 38 CFR part 3 to set forth the criteria to be used in considering claims for service connection for NHL by Vietnam veterans. We also propose to amend 38 CFR part 4 to add a specific diagnostic code for NHL as well as evaluation criteria.

A VA General Counsel advisory opinion dated May 1, 1990, held that in making a liberalizing amendment to VA regulations the Secretary may establish an effective date earlier than the date of publication in the Federal Register. That opinion further held that having done so, the Secretary may authorize payment to claimants whose claims were previously denied based on the dates that the prior claims were submitted to VA. We propose to make the amendment to 38 CFR part 3 effective retroactively to August 5, 1964, the beginning date of the Vietnam era.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110)

Approved: May 24, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210.

2. 38 CFR part 3, Adjudication, is proposed to be amended by adding § 3.313 to read as follows:

§ 3.313 Claims based on service in Vietnam.

(a) *Service in Vietnam.* "Service in Vietnam" includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) *Service connection based on service in Vietnam.* Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

(Authority: 38 U.S.C. 210(c)(1))

PART 4—[AMENDED]

3. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

4. In 38 CFR part 4, Schedule for Rating Disabilities, § 4.117 is proposed to be amended by adding diagnostic code 7715 after diagnostic code 7714 as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

* * * * *

7715	Non-Hodgkin's lymphoma. Rate as for lymphogranulomatosis (Hodgkin's disease).

* * * * *

(Authority: 38 U.S.C. 355)

[FR Doc. 90-14297 Filed 6-20-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Petitions for Rulemaking, Defect and Noncompliance Orders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition filed by Mr. W.A. Barr under 49 CFR part 552. Mr. Barr sought to have the agency commence a proceeding to determine whether to issue an order concerning the notification and remedy of an alleged defect in the design of the park system in automatic transmissions. The defect in the design of the park system, Mr. Barr claimed, is that the vehicle manufacturers place all of the responsibility of assuring the safe performance of the system on the driver each time the driver moves the selector lever into the park position. Although the petition stated that the alleged defect is present in the automatic transmissions of many manufacturers, including all three major U.S. manufacturers, Mr. Barr used the 1970–79 Ford cars as an example of the alleged problem. He stated that the design of the park system should be changed so that the driver is not made solely responsible for the safety of the system. The petition suggested a mechanical solution to this problem in the form of a mechanism which would ensure engagement of the transmission parking pawl when the vehicle shift lever is in the park position. In January 1987, NHTSA notified the petitioner that it was treating the petition as one for rulemaking.

The petition is denied. The petitioner failed to demonstrate how his proposed remedy would cure the problem resulting from the failure of drivers to properly place the vehicle in "Park." The petitioner and the agency also failed to establish that the extent of the alleged safety problem is great enough to warrant Federal intervention.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (202) 366–5276.

SUPPLEMENTARY INFORMATION: In an undated petition recieved by the agency in December 1986, Mr. W.A. Barr (also referred to below as "petitioner") requested that NHTSA initiate a proceeding to determine whether to issue an order concerning the notification and remedy of an alleged defect in automatic transmissions. Mr. Barr's petition was not directed toward any particular manufacturer or toward any particular model of automatic transmisison. He alleged instead that the park systems on automatic transmissions in general were defective in that they make the driver responsible for assuring that the park mechanism becomes properly engaged each time the driver attempts to place the automatic transmission selector lever in the "Park" position. Mr. Barr stated that the design of the system should be changed so that the driver is not solely responsible for assuring the safe performance of the system.

(For the benefit of persons not familiar with the operation of the park system in a conventional automatic transmission, NHTSA notes that it operates by pushing a pawl between two gear teeth of the park gear in the transmission, which prevents that gear (and hence the transmission output shaft) from turning. This locks the transmission and prevents the vehicle from moving when the system operates as intended.)

The petitioner advocated that NHTSA require manufacturers to design a park system for automatic transmissions that would eliminate the force which he alleges urges the transmisison toward "reverse." The petitioner claimed that his solution would create a force that would urge the transmission toward the "Park" position when the driver attempts to place the selector lever in the "Park" position.

The petitioner claimed that the pawl of a contemporary park mechanism will strike the top of a gear tooth, instead of between two teeth of the park gear, 85 to 90 percent of the time the selector is moved and properly located in the park position, and that in these cases, park lock-up does not occur. He stated that, in order to cure this alleged problem, the park mechanism must be moved further into the park position to close the reverse hydraulic circuit so that the transmission can be locked, thus preventing vehicle movement.

Treatment of the Petition as a Petition for Rulemaking

In January 1987, the agency notified the petitioner that it would treat the petition as one to commence rulemaking instead of one to commence a defect investigation. NHTSA took this step because of: (1) The absence of any allegation by the petitioner of the existence of a defect in a particular vehicle or model of automatic transmission, and (2) the suitability of the petitioner's requested solution as a potential safety improvement for automatic transmission to be installed in future vehicles, but not for automatic transmissions in existing vehicles.

Agency's Response to the Petition

For the reasons stated below, the agency does not find sufficient merit in this petition to grant it.

First, the petitioner did not substantiate his claim about the frequency of the phenomenon, i.e., the landing of the park mechanism on the top tooth of the park gear, which he states is the cause of park lock-up not occurring, with the resulting potential for inadvertent vehicle movement. This information is necessary for the agency to consider a rulemaking proceeding. Without data suggesting current Federal motor safety standards are allowing or not addressing an unreasonable safety risk, the agency will not commence such a proceeding.

Second, the agency notes that a final determination of the existence of a safety-related defect was never made regarding the agency's investigation of 1970–1979 Ford cars which were alleged to have a defect that resulted in inadvertent vehicle movement; instead, the matter was settled as a result of an agreement in December 1980 between the Department of Transportation and Ford.

Third, the petitioner himself appears to have some uncertainty about the real cause of the problem, given that he states in his petition that he agrees with the following conclusions (2) through (4) from Ford's Task Force Report about the 1970–79 Fords that were the subject of NHTSA's defect investigation:

(1) There is no evidence that properly operated Ford automatic transmissions will "jump out of Park" or "slip into Reverse," except when there is a grossly maladjusted transmission or control system. Incidents of broken or grossly maladjusted transmissions or control systems are extremely rare, and there is no evidence that there is a higher rate of this occurrence in Ford-built vehicle than in the vehicles of its competitors.

(2) In all other circumstances, unexpected rearward movement is caused by mispositioning of the gearshift lever between "Park" and "Reverse."

(3) There is no indication that any of the Ford transmission systems have a greater propensity to induce driver error than the transmission systems of any of its competitors.

Fourth, the agency's review of available data on incidents of inadvertent vehicle movement indicated that the potential for this problem is relatively small. The July 3, 1985 NHTSA Office of Defects Investigation (ODI) Staff Report on Ford Transmission incidents states that it is impossible to arrive at a count of fatalities which can be regarded with certainty as being attributed to the alleged defect. After that report, a review of the ODI defect files showed only 87 reported injury cases in calendar years 1982–1988 (or about 12 per year) for all model year 1981–1988 domestic models and only 16 cases of injury involving foreign vehicles occurred during this same period. Moreover, these are not confirmed incidents. Instead, they are based upon telephone calls to the agency in which vehicle owners expressed their belief that inadvertent vehicle movement was a causal factor. Thus, the data may be subject to error. In any event, the relative size of the problem appears small.

In conclusion, although Mr. Barr's petition is being denied, NHTSA will continue to monitor complaints that are submitted to ODI. If a trend toward increased incidents of inadvertent vehicle movement associated with shifting automatic transmission into "Park" is found, additional actions will be considered. These efforts might involve in-depth crash investigations and a more detailed review of reports of such incidents received by the agency. If warranted by the results of these efforts, the agency will examine specific countermeasures for various types of automatic transmissions.

For the preceding reasons, NHTSA denies Mr. Barr's petition.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50)

Issued: June 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–14326 Filed 6–20–90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Louisiana Black Bear, Proposed Designation of Threatened by Similarity of Appearance of all Bears of the Species Ursus americanus Within the Historic Range of U. a. luteolus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Louisiana black bear (*Ursus americanus luteolus*) as a threatened species within its historic range and to designate other bears of the species *U. americanus* within the same range as threatened by similarity of appearance under the authority of the Endangered Species Act of 1973, as amended (Act). Its historic range includes southern Mississippi, Louisiana, and east Texas. The Louisiana black bear is vulnerable to habitat loss and illegal killing. This proposal, if made final, would implement protections of the Act. The Service requests comments and relevant data from the public on this proposal.

DATES: Comments from all interested parties must be received by August 20, 1990. Public hearing requests must be received by August 6, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal (See **ADDRESSES** section), telephone 601/965–4900, FTS 490–4900.

SUPPLEMENTARY INFORMATION:

Background

The American black bear (*Ursus americanus*) was formerly widespread in North America from northern Alaska and northern Canada, including Newfoundland, south to central northern Mexico (Lowery 1961). Hall (1981) lists 16 subspecies of *U. americanus*. The black bear is a huge, bulky mammal with long black hair, with brownish or cinnamon color phases often found in

western parts of its range. The tail on the black bear is short and well haired. The facial profile is rather blunt, the eyes small and the nose pad broad with large nostrils. The muzzle is yellowish brown and a white patch is sometimes present on the lower throat and chest. There are five toes on the front and hind feet with short curved claws. Large males may weigh more than 600 pounds, but weight varies considerably throughout their range.

In 1821, Edward Griffith in his work "Carnivora" called the bear from Louisiana the "yellow bear," according it a full species rank, i.e., *U. luteolus*. The first formal citation of the Louisiana black bear as a subspecies (*U. a. luteolus*) was by Miller and Kellog (1955), cited by Lowery (1961). In 1693, C. H. Merriam described the Louisiana black bear using five skulls from a Mer Rouge locality in Morehouse Parish in northeastern Louisiana. The distinctiveness of these skulls, when contrasted with other black bears, is that they are relatively long, narrow, and flat, and have proportionately large molar teeth (Nowak 1986).

According to Hall (1981), *U. a. luteolus* once occurred throughout southern Mississippi, all of Louisiana and eastern Texas. The historic range according to Hall (1981) included all Texas counties east of and including Cass, Marion, Harrison, Upshur, Rusk, Cherokee, Anderson, Leon, Robertson, Burleson, Washington, Lavaca, Victoria, Refugio, and Aransas; all of Louisiana, and the southern Mississippi counties south of and including Washington, Humphreys, Holmes, Attala, Neshoba, and Lauderdale. While Hall (1981) included the southernmost counties in Arkansas as part of the range, there were no Arkansas specimens to support doing so. Accordingly, Arkansas is not considered as part of the historic range for purposes of this proposed rule.

The Louisiana black bear was included in category 2 in the Service's notices of review on December 30, 1982 (47 FR 58454); September 18, 1985 (50 FR 37958); and January 6, 1989 (54 FR 554). Cateogry 2 includes taxa for which information then in possession of the Service indicates that proposing to list the species was possibly appropriate but for which available data were not judged sufficient to support a proposed rule.

The Fish and Wildlife Service was petitioned on March 6, 1987, under section 4(b)(3)(A) of the Act to list the Louisiana black bear as an endangered species. The Service has made two 12-month findings (August 19, 1988, 53 FR 31723 and August 10, 1989, 54 FR 32833) indicating that the action requested (listing) has been determined to be warranted but precluded by other actions to amend the lists. This proposal constitutes the final finding for the petitioned action.

To clarify taxonomic questions, the Service undertook a study in cooperation with the Louisiana Department of Wildlife and Fisheries to obtain and analyze genetic materials and cranial characters to answer questions on the taxonomic issue. The results of these investigations, which included blood protein electrophoresis, mitochondrial DNA and skull measurements, were received by the Service on July 21, 1989 (Pelton 1989).

A peer review of this report generated a variety of comments, which allow general conclusions on genetics and morphology. Although circumstantial evidence remains that native bears have interbred with introduced Minnesota bears, a morphological distinctiveness remains. There was disagreement on the taxon *U. a. luteolus* as being validated by the multi-character morphological approach. However, it was concluded that, notwithstanding conflicting opinions about accepted mammaltian taxonomic criteria, available evidence, while not overwhelming, did not invalidate the taxon. As a subspecies, *U. a. luteolus* qualifies for consideration as a listed species. This action presupposes bears within the historic range of *U. a. luteolus* possess those cranial features characterizing *U. a. luteolus*. Accordingly, threats to this population of bears threatens the taxon and thereby any unique genetic material possibly possessed by the taxon.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Louisiana black bear (*Ursus americanus luteolus*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The habitat of *U. a. luteolus* has suffered extensive modification with suitable habitat having been reduced by more than 80 percent as of 1980. The remaining habitat has been reduced in quality by fragmentation due to intrusion of man and his structures (e.g., proximity to man's disturbing activities, multilane highways, etc.), thereby stressing the remaining population of bears. According to Rieben (1980) as cited by Nowak (1986), the original 25,000,000 acres of bottomland forests of the lower Mississippi River Valley had been reduced to 5,000,000 acres, and another 165,000 acres are being cleared each year. Some of the Mississippi River Delta counties in the lower Yazoo River Basin may have as little as 5 percent of the original bottomland hardwood.

Presently occupied bear habitat in Louisiana consists of two core areas, the Tensas and Atchafalaya River Basins. Within the basins, only wooded areas (bottomland hardwoods) are considered as bear habitat, although marshes along the lower rim of the Atchafalaya Basin and agricultural lands (sugarcane, soybeans) in other areas are also used. The once extensive bottomland forests of the Tensas Basin no longer exist, with only 15 percent (about 100,000 acres) of the original stands remaining (Gosselink, Louisiana State University, *in litt.* 1988). Of this, only about 15 percent is in public ownership or under plans for public acquisition.

The entire Atchafalaya Basin contained 718,500 acres of bottomland hardwoods as of 1975 (O'Neil et al. 1975). In the lower Atchafalaya River Basin (south of U.S. Highway 190), there are presently approximately 518,000 acres of bottomland hardwoods, with a projected amount of 537,000 by the year 2030 due to accretion (LeBlanc et al. 1981). In the lower Basin, there is a recently established Atchafalaya National Wildlife Refuge of about 15,000 acres and a State owned area (Sheburne Wildlife Management Area) of about 12,000 acres that is to be increased by 23,000 acres. The purchase of 367,000 acres of habitat protection easements are planned. Dow Chemical has donated 30,000 acres to the State and there are 61,000 acres of accreted State lands with land use controls.

Much of the northern portion of the Basin (considered as north of U.S. Highway 190 and which contains the better drained areas) has been cleared for agriculture. As of the 1975 O'Neil report, there were about 200,000 acres of forestland north of U.S. Highway 190. Today there are 100,000 to 128,000 acres of forested lands remaining (Simmering, U.S. Department of Agriculture, *in litt.* 1989). The privately owned lands of the Atchafalaya River Basin may remain exposed to threat from clearing. Privately owned woodlands for both river basins were estimated to be in the range of 115,000 to 143,000 acres of occupied bear habitat out of a total woodland base of 633,000 to 651,000 acres. This means approximately one fifth of the occupied bear habitat is privately owned, and under no plans for protection through conservation easements or acquisition. Clearing forested wetlands for accommodating crop use may forgo USDA farm program benefits for the landowner. This, in the short term, should protect these lands. In the long term, a substantial upturn in commodity prices may make it economically feasible to clear forested wetlands and farm without USDA program benefits. Since the 1985 Food Security Act is re-written every 5 years, there is no guarantee of continued protection of privately owned forested wetlands. In addition, catfish farming, now about a 13,000-acre industry in Louisiana, is rapidly expanding. This, along with crayfish farming and pastureland are other possible uses that would not be limited by the Food Security Act.

Past losses of habitat quantity and quality have been severe (ranging from 95 percent in some lower Mississippi Delta counties to 63 percent in the Atchafalaya River Basin). Protection of privately owned woodlands in the north Atchafalaya and the Tensas River Basins is not assured. Long-term protection of these bear habitats may depend upon factors the Service neither controls nor can adequately predict. The Louisiana bear has exhibited a past vulnerability to habitat loss. Further loss of privately owned occupied habitats as an increment to past losses would represent a threat to this subspecies in a significant portion of its range. Such loss could theoretically breach the minimum population size necessary to ensure continued survival of the Louisiana bear.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Black bear populations range in density from one to two bears per square mile. The Great Smoky Mountain National Park carries 500 to 600 bears on 512,000 acres (Pelton pers. comm. 1989). The White River National Wildlife Refuge in Arkansas carries 130 bears on 113,000 acres (Smith 1983). Through trapping and extrapolation of untrapped bears and known family groups of bears, Weaver (pers. comm. 1989) is able to account for 49 bears in about 70,000 acres of timberland of the Tensas River Basin, which contains about 100,000 acres of woods. What fraction 49 is of the total bears in the Tensas Basin is unknown.

In the Atchafalaya River Basin, there are approximately 718,500 acres of timberland, about 518,000 of which are below U.S. Highway 190. For this vast tract, there is essentially no population data. The population estimates that are available for *U. a. luteolus* range in accuracy from crude to little more than intuition, as the estimates quoted by Nowak (1986). All that is known for certain is that bears exist in the Atchafalaya River Basin, and that due to bear movements it would be difficult to separate bears from the lower, middle, or upper basin.

There are rumors of individuals killing bears for depredating sugar cane and for robbing trap lines. Bears are also killed incidentally to other forms of hunting. It may well be that bear numbers in the Atchafalaya are far greater than most believe, and that illegal kill is not a threat. The White River National Wildlife Refuge in Arkansas has sustained heavy hunting pressure and has maintained a mid-range bear density. A rule of thumb the Virginia Department of Natural Resources uses is that their bear population can withstand a 20 percent annual loss to hunting without affecting the population's ability to sustain itself. As a population of bears approaches the minimum viable number threshold, the more significant is any loss to that population. While illegal killing of bears occurs (Weaver 1988), and that illegal kill can be a threat are both true, the effects of that illegal kill remain speculative.

The appearance of an abnormally low density of *U. a. luteolus* in the Atchafalaya Basin may be an artifact of the poor quality of population data or it may indicate considerable illegal kill is occurring on private and public lands. Should the latter be the case, and at this time it cannot be ruled out, illegal kill of that magnitude would unequivocally be a threat to the continued existence of a viable population of Louisiana black bears.

C. Disease or predation. While *U. a. luteolus*, like all other forms of vertebrate wildlife, suffers from disease, or possible predation (young bears being killed by older males), this is not considered limiting or threatening to the population.

D. The inadequacy of existing regulatory mechanisms. The dramatic losses of bottomland hardwood forests, including the loss of forested wetlands, as discussed in factor A, portray the inadequacy of existing regulatory mechanisms for protection of such habitats. If illegal killing is a threat, the possibility of prosecution under the Act as opposed to State laws or regulations, may serve as a deterrent in some instances.

E. Other natural or manmade factors affecting its continued existence. The introduction of 161–163 bears of the subspecies *U. a. americanus* from Minnesota into the Atchafalaya and Tensas River Basins in the mid-60's is considered by some (Nowak 1986) to represent a manmade threat to the native subspecies, *U. a. luteolus*. This threat was considered as one of "hybridization," in this instance cross breeding between the introduced subspecies and the native subspecies. Other researchers contended that little genetic difference would be found. In gathering data on this question, the Fish and Wildlife Service, in close consultation with the Louisiana Department of Wildlife and Fisheries, instituted a plan in July 1988 to obtain genetic samples from bears in Louisiana for comparison with bears from the original Minnesota trapping locale and other bear populations, including the Florida subspecies, *U. a. floridanus*. Skull measurements from various bear populations, including Louisiana bears taken before and after the introduction of Minnesota bears, were also compared.

The genetic analyses did not show significant differences between the various subspecies (Pelton 1989). Some interbreeding between subspecies is a normal and expected occurrence simply based on opportunity. The mobile nature of bears, plus the fact there was a more or less continuous distribution in relatively recent times (in an evolutionary sense), was the basis for the assertions by some that little genetic difference would be found. It appears that in a biological sense, hybridization as a threat at this taxonomic level may not be a significant cause for concern, unless there are real genetic differences that were undetected. Hybridization as a threat has neither been discounted or proven and remains unsettled. Since the genetic profile of a known *U. a. luteolus* is unavailable, the issue is unlikely to be settled. The greatest likelihood is that the population of bears inhabiting the Atchafalaya and Tensas River Basins is a mixture; that in a definitional sense, the population is probably intraspecifically hybridized. In a biological sense, *U. a. luteolus* is likely pretty much unchanged (genetically) because of the low probability of reproductive isolation that would be necessary for an extended period in order for the evolutionary process of genetic differentiation to operate.

However, to the extent the genetic investigations did not identify real differences, or to the extent a pure genetic heritage is a realistic concept when applied to subspecies not likely to be reproductively isolated, the threat

may (have) exist(ed). Since *U. a. luteolus* and *U. a. americanus* are so similar as to be difficult to distinguish even by experts, the only practical means available for protecting any possibly remaining unique genetic material originally belonging to the native *U. a. luteolus* would be through listing and protecting the taxon now distinguished by cranial features as *U. a. luteolus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Louisiana black bear as threatened, defined under the Act as likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The preferred action is chosen because of the continued exposure of privately owned occupied bear habitats to clearing, the Louisiana black bear's demonstrated past vulnerability to such loss, and the significance of these unprotected habitats to the overall well-being and health of the subject bear populations. Endangered status is not chosen because the threats are not believed to place the Louisiana black bear in imminent danger of extinction. For law enforcement purposes, the Service proposes to list all bears of the species *U. americanus* within the historic range of *U. a. luteolus* as threatened by similarity of appearance. Critical habitat is not being proposed as discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Locality data are available to appropriate agencies through the Service office described in the ADDRESSES section. Protection of this species' habitat will be addressed through the recovery process and through Section 7 of the Act. Therefore, it would not now be prudent to determine critical habitat for the Louisiana black bear.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangerd Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible Federal actions may include Corps of Engineers wetland permits, Soil Conservation Service watershed projects or the Service's activities or National Wildlife Refuges within the species' occupied habitat. Formal consultation and the resulting biological opinion issued by the Service may preclude or modify Federal actions depending on the nature and extent of the impact on listed species.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commerical activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propaganda or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearances an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment will substantially facilitate the enforcement and further the policy of the Act.

Introductions of bears from Minnesota in the mid-60's of the subspecies *U. a. americanus* gives rise to the possibility (however remote) that bears remain somewhere with the historic range of *U. a. luteolus* which are of *U. a. americanus* ancestry. Evidence of *U. a. americanus* in southern Arkansas just north of the Louisiana line has been recently documented. This theoretically could present an enforcement and taxonomic problem because both subspecies may now or later inhabit the same range, and they cannot always be differentiated from each other by enforcement personnel or expert. For these reasons, the Service intends to treat bears of the species *U. americanus* other than *U. a. luteolus* as threatened by similarity of appearance within the historic range of *U. a. luteolus*.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat [or lack thereof] to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation of this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Wendell A. Neal (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
Bear, Louisiana black	*Ursus americanus*	USA (LA, MS, TX)	Entire	T		NA	NA
Bear, American black	*Ursus americanus*	North America	USA (LA, MS, TX).	T(S/A)		NA	NA

Dated: May 31, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Services.

[FR Doc. 90-14413 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

RIN 0648-AD47

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, and request for comments.

SUMMARY: NOAA issues this notice that the Caribbean Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

DATES: Comments will be accepted until August 13, 1990.

ADDRESSES: Send comments to the Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Copies of Amendment 1 may be obtained from the Carribbean Fishery Management Council, suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. Phone (809) 766-5926.

FOR FURTHER INFORMATION CONTACT: Robert A Sadler, NOAA, National Marine Fisheries Service, Southeast Regional Office, (813) 893-3722.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (Act), 16 U.S.C. 1801 *et seq.*

The actions proposed in this amendment consist of the following measures: (1) Increase the minimum mesh size for fish traps to 2 inches in the smallest dimension, (2) prohibit the harvest of Nassau grouper until the species is rebuilt to exploitable levels, (3) expand the current data collection program to include socio-economic information, and (4) establish an area closure during the red hind spawning season. Since implementation of the FMP in 1985, new information indicates that more stringent management measures are needed to accomplish the objectives of the FMP. Recent fishery statistical data show a downward trend in these fisheries indicated by a shift in species composition and decrease in volume of landings, despite the management measures implemented so far.

The amendment also provides an overfishing definition, as required by the revised 50 CFR part 602 guidelines for fishery management plans.

The Act requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining approvability of the document.

The receipt date for Amendment 1 was June 13, 1990. Proposed regulations for this Amendment will be filed with the Office of the Federal Register within 15 days of the receipt date.

Authority: 1801 U.S.C. *et seq.*

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14322 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 55, No. 120

Thursday, June 21, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 15, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act [44 U.S.C. chapter 35] since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An idication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, [202] 447-2118.

New Collection

Food and Nutrition Service.

Survey of State and County Directors of the Food Stamp Program and Related Assistance Programs.

State or local governments; Non-profit institutions; 95 responses; 157 hours; not applicable under 3504(h).

Steven Carlson (703) 756-3133.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 90-14374 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Price Support Levels; Pulled Wool and Mohair

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice affirms the final determinations concerning the price support levels for pulled wool and mohair for the 1990 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, Department of Agriculture (USDA)-ASCS, Room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call [202] 447-6734. A Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these proposed determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.055, as found in the Catalog of Federal Domestic Assistance.

Section 708(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28862, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents [the support price in 1965] by the ratio of: [1] The average parity index [the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates] for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to [2] the average parity index for the three calendar years 1956, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

On November 8, 1989, a notice of proposed determinations was published at 54 FR 46867, requesting comments

concerning the method of calculating the price support levels for pulled wool and for mohair for the 1990 marketing year. The notice also indicated that the 1990 shorn wool support price (grease basis) would be $1.82 per pound.

Discussion of Comments

A total of 31 comments were submitted. Thirty addressed the mohair support price and one commented on the pulled wool (unshorn lamb) formula.

Twenty-seven respondents recommended that mohair be supported at 100 percent of the percentage of parity at which shorn wool is supported and one urged that mohair be supported at around $5.00 per pound. These comments on the proposed determinations were not adopted. Two respondents supported continuation of the program, but no support level was specified. The one comment received concerning the pulled wool support rate urged continuance of support payments based on the current formula which utilizes the liveweight of unshorn lambs marketed.

It has been determined that mohair will be supported at a level of 85 percent of the percentage of parity at which shorn wool is supported. Current estimates indicate that at this minimum level of support, producers would receive about 57 percent of their income from mohair in the form of Government payments. To support mohair at a higher level would be inconsistent with recent Government efforts to increase reliance by all agricultural sectors on the free market.

Accordingly, after taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1986 through 1990 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1990 marketing year. The determinations affirm 1990 support prices of $1.82 per pound for shorn wool and $4.532 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on February 2, 1990. The pulled wool support rate will continue to be calculated as it has been in previous years.

Final Determinations

A. *Support Price—Shorn Wool.* The average parity index for the 3-year period 1986–88 is 1123.3. The average parity index for the 3-year base period of 1956–60 is 297.3. The ratio of these indices is 3.7783. The result of multiplying 3.7783 by the 1965 support price of $0.62 per pound is $2.3425.

Applying the formula indicated in section 703(b) of the Wool Act, 77.5 percent of $2.3425 is $1.82, when rounded to the nearest full cent.

B. *Support Price—Pulled Wool.* The support price for pulled wool for the 1990 marketing year cannot be determined until the 1990 national average market price for shorn wool is calculated, which would occur by April 1991. The method for calculating the support price for pulled wool shall be as follows:

Once the 1990 national average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1990 support price for shorn wool and the 1990 average market price for shorn wool, multiplied by 5 pounds (the amount of wool pooled from the pelt of an average 100-pound unshorn lamb).

C. *Support Price—Mohair.* The support price for mohair for the 1990 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.532 per pound. The calculation is as follows:

The October 1989 parity prices for shorn wool and for mohair are $3.03 and $6.87 per pound, respectively. The support price for shorn wool for the 1990 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.82 per pound or 60.1 percent of the October 1989 parity price for shorn wool. The price support level for mohair for the 1990 marketing year is equal to 85 percent of 60.1 percent (the percentage of parity at which shorn wool is supported), which is equal to 51.09 percent. Accordingly, 51.09 percent of the October 1989 parity price for mohair results in a support price for mohair for the 1990 marketing year of $4.532 per pound.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this act.

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1781–1787.

Signed at Washington, DC, on April 18, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-14378 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Environmental Impact Statement for the Proposed Valbois Destination Resort Village, Special Use Permit, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for the public review of the Supplement to the Draft Environmental Impact Statement.

SUMMARY: Notice of filing a Supplement to the Draft Environmental Impact Statement for the Valbois Destination Resort Village was published in the **Federal Register** on March 30, 1990. Comments were due by June 14, 1990. The period for commenting is now extended to a total of 120 days to July 28, 1990. The additional time is to allow ample opportunity for the general public to review the detailed information supplied in the supplement to the draft environmental impact statement.

DATES: Comments on the DEIS must be received by July 28, 1990.

ADDRESSES: Send written comments to the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Greg Spangenberg 208–364–4104.

Dated: June 13, 1990.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 90-14359 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-11-M

Black Panther Fire Salvage and Resource Recovery Project; Notice of Exemption

AGENCY: Forest Service, USDA.

ACTION: Exemption of Decision from Administration Appeal, Black Panther Fire Salvage and Resource Recovery Project.

SUMMARY: The Forest Service is exempting from administrative appeals its decision to rehabilitate National Forest System Lands (NFSL) and sell salvageable timber on lands burned in the 1987 wildfires. The project area is located on the Klamath National Forest in the Ukonom Creek Watershed.

During the severe fire season of 1987, extensive areas on the Klamath National Forest were burned and now need restoration. The proposed restoration consists of rehabilitation of approximately 1,700 acres of NFSL damaged by wildfire and the recovery of approximately 1.34 million board feet (MMBF) of dead and dying timber which is still merchantable. Any further delay in activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of NFSL and a further deterioration of the fire-damaged timber. Additional delays will also significantly increase the risk of severe forest insect and pest infestation of the already damaged as well as the intermingled and adjacent undamaged trees.

The Forest Supervisor has determined through an environmental analysis, which is documented in the Draft Environmental Impact Statement (DEIS), that there is good cause to expedite this project. The Black Panther Fire Recovery Project is necessary for the rehabilitation of the damaged NFSL and for the recovery of the dead and dying timber that resulted from the wildfire in the summer and fall of 1987. The wildfire affected portions of the drainages on the Klamath National Forest, California. The DEIS, which documents the expected environmental effects of the action, also documents extensive public involvement and addresses issues raised by the public.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate effects of the program, the time remaining for program accomplishment has become critical. Any additional delays will result in damage to presently undamaged resources and could result in a complete loss of the salvageable resources as well.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision for the Black Panther Fire Recovery Project Final Environmental Impact Statement (FEIS). The decision to rehabilitate Klamath NFSL and offer salvage timber for sale in the Black Panther Fire Recovery Project Area will not be subject to administrative appeal and review.

EFFECTIVE DATE: This decision will be effective June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Mo Tebbe, Black Panther Fire Recovery Project Coordinator, Ukonom Ranger District, Klamath National Forest, P.O. Drawer 410, Orleans, CA 95556, (916) 627–3291.

ADDITIONAL INFORMATION: The catastrophic wildfires of 1987 burned an estimated 280,000 acres of NFSL on the Klamath National Forest. The Black Panther Project Area (approximately 5,589 acres) is in Ukonom Creek Watershed. The area contains Lick and Panther Creek drainages, both of which are tributaries to the Ukonom Creek watershed. The assessment area for the Black Panther Recovery Project includes the headwaters of McCash and Cub Creeks, in addition to Lick and Panther Creeks. Approximately 3,215 acres of the assessment area is contained in the Marble Mountain Wilderness. (Portions of the Wilderness were assessed as part of the cumulative effects analysis, but no activities are proposed within any part of the Wilderness.).

The Black Panther Fire Recovery Project Area lies entirely within the assessment area which consists of approximately 10,983 acres. Approximately 60,000 acres of NFSL were burned in varying intensities by the King-Titus Fire. Approximately 1,700 acres of the most severely burned areas in the Black Panther Fire Recovery Project Area are proposed for harvest, primarily by helicopter logging, but approximately 10 percent is proposed for cable logging. These lands need to be promptly salvaged and to remove the timber that was killed or severely damaged by the wildfire.

Analyses of the rate of deterioration of the damaged timber and its related value indicates that about 1.34 MMBF, with an estimated value of $151,500, would be lost to insects and decay as a result of any further delays. Additional delays would also result in an estimated loss of $37,875 to Siskiyou County in National Forest Receipts.

On September 25, 1990, the Klamath National Forest Supervisor published a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register for a proposal to implement fire recovery activities on a portion of the Black Panther Fire on the Ukonom District. Scoping was conducted by the Klamath National Forest, pursuant to 40 CFR 1501.7, to determine the significant issues related to the Black Panther Fire Recovery Project Proposal. A scoping session was held in Somes Bar, California, on June 6, 1990. Considerable written scoping was also conducted. In compliance with the National Environmental Policy Act, the analysis for this proposal was documented in the Black Panther Fire Recovery Project DEIS, which was issued for public review on February 28, 1990. The Notice of Availability for the DEIS appeared in the Federal Register on March 16, 1990. Public comments will be received and addressed. The FEIS and Record of Decision was expected to be issued in June 1990. The associated planning records are located at the Ukonom Ranger District, P.O. Drawer 410, Orleans, CA 95556.

Dated: June 15, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-14367 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-11-M

Wildcat River Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on July 10, 1990, at the U.S. Forest Service, Saco Ranger District Office in Conway, New Hampshire. The meeting will begin at 7:30 p.m. An agenda for the meeting includes a description of the tasks to be accomplished by the Commission during the upcoming year. This meeting is being publicized through local and regional news media. Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603–528–8778).

Dated: June 15, 1990.

Otis L. Durham,

Acting Forest Supervisor.

[FR Doc. 90-14370 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

French Creek Pumping Plant Repair Snohomish County, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR part 1500–1508); and the Soil Conservation Service NEPA Procedures (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the French Creek

Pumping Plant Repair, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 920 Riverside, Room 360, Spokane, Washington, 99208–1060, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the repair of an existing flood control structure to restore the floor control capability. The planned repair includes installing a new pumping plant approximately 400 feet upstream of the present structure and moving existing hardware to the new structure. Steel pipes will connect the new structure to the existing structure to discharge pump flow from French Creek into the Snohomish River. Fish passage facilities will be installed. Riparian vegetation, as mitigation, will be established. Estimated cost of the repair is $6.1 million dollars.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action implementation of the proposal will be taken until thirty (30) days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 13, 1990.

Lincoln E. "Ed" Burton,

Acting State Conservationist.

[FR Doc. 90–14287 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration

Title: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S. (Pub. L. 97–446)

Form Numbers: Agency—ITA–334P; 15 CFR 303 OMB—0625–0040

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 8 respondents; 8 reporting hours

Average Hours Per Response: 1 hour

Needs and Uses: Public Law 97–446 requires the Departments of Commerce and Interior to administer the distribution of duty-exemptions and duty-refunds involving up to $5 million annually to watch producers in the U.S. Territories and the Northern Mariana Islands. The annual allocation and the production incentive certificate for each producer are based on data supplied from Form ITA–334P. The form is completed annually by each producer. It is also used by new firms making application for entitlements for the first time

Affected public: Businesses or other for profit; small businesses or organizations

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Donald Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14319 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: Emergency Application for Rating or Directive Assistance

Form Number: ITA–993; OMB—0648–0055

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1 respondent; 1 reporting hour.

Needs and Uses: The information required for the enforcement and administration of the delegated authority of the Defense Production of 1950, as amended (50 USC App. 2061, *et seq.*) to provide emergency special priorities assistance during a national emergency

Affected Public: Businesses or other for-profit institutions; small business or organization

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14418 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: Exception to Order Requirement

Form Number: Export Administration Regulations § 772.6(c); OMB–0648–0011

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 10 respondents; 3 reporting/recordkeeping hours. Average time per respondent is 15 minutes.

Needs and Uses: The information requested by this report must be submitted to OEL whenever a definite order for export has not been received for a pending shipment. The purpose of the reporting requirement is to prevent shipments of commodities and technology in violation of the Export Administration Regulations

Affected Public: Businesses or other for-profit institutions; small business or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14420 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: Statement by Foreign Importer of Aircraft or Vessel Repair Parts

Form Number: BXA–686P, Export Administration Regulations § 773.8; OMB—0648–0022

Type of Request: Extention of the expiration date of a currently approved collection

Burden: 55 respondents; 14 reporting/recordkeeping hours. Average time per respondent is 15 minutes.

Needs and Uses: The foreign importer may submit Form BXA–686P for approval to operate under the Aircraft and Vessel Repair Station procedure. If approved, the foreign importer will not be required to send the usual documents to the U.S. exporter (such as, import certificates, consignee/purchaser statement, Yugoslav End-Use Certificate, etc.).

Affected Public: Businesses or other for-profit institutions; small business or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14421 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: Reports on General License Exports of U.S.-Origin Commodities Imported for Servicing

Form Number: Export Administration Regulations § 771.17(a)(4); OMB—0648–0018

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 200 respondents; 36 reporting/recordkeeping hours. Average time per respondent is 10 minutes

Needs and Uses: Exporters must submit a report within two weeks of exportation of a serviced commodity. The report eliminates the need for submitting an application for an export license when returning U.S. commodities that were previously exported from the U.S. to a proscribed country

Affected Public: Businesses or other for-profit institutions; small business or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14421 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration

Title: Short Supply Regulations—Petroleum Products

Form Number: Export Administration Regulations, §§ 771.16 and 777.6; OMB—0648–0026

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 4,536 respondents; 93 reporting/recordkeeping hours. Average time per respondent is ½ hour

Needs and Uses: This information collection requires the retention of documents to prove that petroleum products being exported are not prohibited

Affected Public: Businesses or other for-profit institutions; small business or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Marshall Mills, 395–734

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-14422 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 11, 1990 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. TAC Utilization in List Review Process.
5. Discussion of Report on Core List Criteria.

Executive Session:

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4098A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: June 14, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 90-14316 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-582-802, A-580-806, A-583-808]

Postponements of Final Antidumping Duty Determinations: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong and Taiwan; and Announcement of Public Hearings: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, the Republic of Korea, and Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from respondents in the investigations of sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong and Taiwan to postpone the final determinations, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on these requests, we are postponing our final determinations as to whether imports of MMF sweaters are being, or are likely to be, sold in the United States at less than fair value until not later than July 19, 1990 for Hong Kong, and August 2, 1990 for Taiwan. In addition, we are announcing the schedule of public hearings for the investigations of MMF sweaters from Hong Kong, the Republic of Korea (Korea), and Taiwan. *See*, Public Comment section of this notice.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clapp (Taiwan and Korea), Carole Showers (Taiwan and Hong Kong), or James Terpstra (Korea), at (202) 377-3965, 377-3217 or 377-5830, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 27, 1990, we published preliminary determinations of sales at less than fair value on MMF sweaters from Hong Kong (55 FR 17788) and Taiwan (55 FR 17779). These notices stated that if the investigations proceeded normally, we would make our final determinations by July 5, 1990. On May 24, 1990 we published a notice of postponement of the final determination on Taiwan until July 19, 1990.

On May 25, 1990, respondents from Hong Kong requested a postponement of the date of the final determination until not later than two weeks from the scheduled date. On June 5, 1990, respondents from Taiwan requested a further postponement of the date of the final determination until not later than August 2, 1990. These respondents account for a significant proportion of exports of the subject merchandise from the respective countries to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determinations until not later than July 19, 1990 for Hong Kong and August 2, 1990 for Taiwan.

Public Comment

In accordance with 19 CFR 353.38 of our regulations, we will hold public hearings to afford interested parties an opportunity to comment on the preliminary determinations in the antidumping duty investigations of MMF sweaters from Hong Kong, Korea, and Taiwan. A public hearing will be held at 2 p.m. on June 28, 1990 for Hong Kong, 9:30 a.m. on July 10, 1990 for Taiwan, and 1:30 p.m. on July 12, 1990 for Korea, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Interested parties who wish to participate in the hearings must submit ten copies of the business proprietary version and five copies of the public version of case briefs or other written comments to the Assistant Secretary for Import Administration, Room B-099, at the above address, no later than June 18, 1990 for Hong Kong, June 29, 1990 for Taiwan, and July 2, 1990 for Korea. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by June 22, 1990 for Hong Kong, July 6, 1990 for Taiwan, and July 9, 1990 for Korea. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of these postponements, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: June 6, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-14423 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod.

Short-Supply Review Number: 19.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 750 metric tons of various sizes of certain type 430 stainless steel wire rod for the second half of 1990 under the U.S.-Brazil, U.S.-EC, U.S.-Japan, and U.S.-Korea steel arrangements.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Norbert O. Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4987 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On May 29, 1990, the Secretary received an adequate short-supply petition from the American Wire Producers Association ("AWPA"), on behalf of four members of the Stainless Committee, requesting a short-supply allowance for 1,650 metric tons of this product under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA requested short supply for this product due to the general unavailability of this grade of stainless rod domestically and the unwillingness of foreign mills to supply this product with regular export licenses. The Secretary conducted this short-supply review pursuant to Section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

The requested product meets the specifications for type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (millimeters)	Quantity (metric tons)
5.5-6.0	1,440
7.0	120
9.5	40
20.0	50

Action

On May 29, 1990, the Secretary established an official record on this short-supply request (Case Number 19) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to apply a rebuttable presumption that a product is in short supply, and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has granted short-supply allowances for this product during each of the two immediately preceding years. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Regulations. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than June 13, 1990. On June 1, 1990, the Secretary published a notice in the Federal Register announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than June 8, 1990.

On June 8, 1990, the Secretary received comments from Baltimore Specialty Steels Corporation ("BSSC"). BSSC stated that it has produced trial quantities of Type 430 stainless rods with 0.04 percent maximum carbon content, and has provided samples to the petitioning companies. BSSC offered to supply 900 metric tons of two sizes of Type 430 stainless rods to the AWPA to partially meet its short-supply needs.

On June 8, 1990, the Secretary also received comments from the AWPA indicating that sample shipments were made from BSSC to the petitioning companies in December 1989 and January 1990, which were evaluated for acceptability. The AWPA further indicates that only some of these shipments were not acceptable to at least two AWPA petitioning companies.

Conclusion

The Secretary received comments to the **Federal Register** notice from a potential supplier, which has produced material meeting the specifications of at least one of the petitioning AWPA member companies, offering to supply 900 metric tons of the requested product. However, because the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply with respect to 750 metric tons of the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Regulations, a short-supply allowance for 750 metric tons of the requested type 430 stainless steel wire rod for the second half of 1990 under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-14321 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit; Southwest Fisheries Science Center (Permit No. 706)

On April 20, 1990, notice was published in the **Federal Register** (55 FR 14992) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, for a permit to take and import the olive ridley sea turtle, *Lepidochelys olivacea*; hawksbill turtle, *Eretmochelys imbricata*; leatherback turtle, *Dermochelys coriacea*; the green/black turtle, *Chelonia mydas/Chelonia mydas agassizi*; and the loggerhead turtle, *Caretta caretta* for scientific research.

Notice is hereby given that on June 15, 1990, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and polices set forth in Secton 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-14328 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit to harvest groundfish with domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California. The permit authorizes experimental fishing practices, which otherwise would be prohibited by federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: June 1, 1990 through December 31, 1990.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 3000 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140; or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California was received on March 5, 1990. The application represents the last of three years of field work in the West Coast Groundfish Mesh Size Study which began in 1988. The goal of the experimental fishery is to compare the effectiveness of mesh size gear restrictions to the current trip limit regime set forth in the FMP. Current groundfish regulations at 50 CFR 663.26 prohibit the use of a mesh size smaller than four and one-half inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than four and one-half inch mesh. In addition, in order to obtain meaningful results in comparing the relative effectiveness of gear regulations to trip limits, the applicant requested that the EFP waive current trip poundage limits and groundfish quota restrictions for vessels engaged in experimental fishing under the permit. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the **Federal Register** on March 28, 1990 (55 FR 11428). No written comments were received. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its April 1990 public meeting in Eureka, California. The Council recommended that NMFS issue an EFP, as requested by the applicant, and an EFP was issued under the provisions of 50 CFR 663.10.

The EFP was issued to Dr. Ellen Pikitch, University of Washington. The EFP authorities thirty domestic trawl vessels to engage in experimental fishing under the direction of Dr. Pikitch, according to the terms and conditions of the permit, from June 1, 1990, through December 31, 1990, in the EEZ off the coasts of Washington, Oregon, and California. Under the terms and conditions of the permit, an observer from the University of Washington must be aboard each vessel during experimental fishing and present during the unloading of fish taken from each experimental trip. The permitted vessels are authorized to use detachable codends of various mesh sizes when involved in experimental fishing as directed by the permit holder. The groundfish trip limits or optimum yield (quota) closures do not apply to the experimental fishing. The permittee is required to provide weekly notification to NMFS of the activities of the vessels involved in experimental fishing. The permittee will prepare a comprehensive report on the results of the experimental fishery under a project supported by a Saltonstall-Kennedy grant entitled "West Coast Groundfish Mesh Size Study."

Further details or a copy of the permit may be obtained from the NMFS Regional Director at the above address.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14323 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARATMENT OF COMMERCE

National Technical Information Service

Prospective Grant of Exclusive Patent License to Commonwealth Technology, Inc.

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-347,700, "An All Tantalum Stopped Flow Microcalorimeter" to Commonwealth Technology, Inc., having a place of business at Alexandria, VA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a highly sensitive, quick recovery differential microcalorimeter which includes at least one fluid inlet, at least one mixer assembly connected to each fluid inlet, at least one fluid outlet connected to each mixer assembly, at least one heater element surrounding at least a portion of each fluid outlet and a plurality of sensors surrounding at least a portion of each fluid outlet. Each of the mixing assemblies includes a mixing chamber and at least one entry manifold connected to a fluid inlet and has a plurality of ports which connect to the mixing chamber.

The availability of the invention for licensing was published in the **Federal Register**, Vol. *54, #103*, p. *23244* (May 31, 1989).

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1–800–336–4700 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-14388 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 631 is being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 14, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 22, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on June 22, 1990, the directive of June 23, 1989 is amended further to increase to 986,162 dozen pairs [1] the limit for Category 631, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after June 30, 1989.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14320 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 18, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral agreement between the Governments of the United States and Uruguay establishes limits for the period July 1, 1990 through June 30, 1991.

A copy of the agreement is available from the Textile Divisions, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: June 18, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 18, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period which begins on July 1, 1990 and extends through June 30, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	92,697 dozen.
335	79,706 dozen.
410	2,660,139 square meters of which not more than 1,520,080 square meters shall be in Category 410-A [1] and not more than 2,449,017 square meters shall be in Category 410-B [2].
433	15,884 dozen.
434	23,697 dozen.
435	47,858 dozen.
442	33,854 dozen.

[1] Category 410-A: only HTS numbers 5111.11.1000, 5111.11.6030, 5111.11.6060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6000, 5111.30.6000, 5111.90.3000, 5111.90.6000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.0030, 5112.11.0060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.20.0000, 5112.30.0000, 5112.90.3000, 5112.90.6010, 5112.90.6090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Imports charged to these category limits for the periods February 1, 1989 through June 30, 1990 and July 1, 1989 through June 30, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by the previous entries, such goods shall be subject to the limits set forth in this directive.

The limits may be adjusted in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14417 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, (202) 501-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7266.

SUPPLEMENTARY INFORMATION: a. *Purpose.* 1. Rights in Data is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into four categories.

a. A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

b. Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or its software, to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software, and given, that the Government would need to see that data in order to determine the extent of the work.

c. A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract are complete, accurate and comply with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

d. The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities, and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data, for which the Government paid.

e. Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely if ever delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

2. Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions—where the value was $500,000 or less. The $500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was $250,000—$300,000; in order to be commensurate with other clause thresholds, (e.g., small business subcontracting) the $500,000 was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,100*; responses per respondent, *1*; total annual responses, *1,100*; hours per response, *2.7*; and total response burden hours, *2,970*.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0000, Rights in Data and Copyrights.

Dated: June 14, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90-14355 Filed 6-20-90; 8:45 am]

BILLING CODE 6820-34-M

Office of the Secretary

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for June 19, 1990, as published in the **Federal Register** (Vol. 55, No. 112, Page 23582, Monday, June 11, 1990, FR Doc. 90-13383) has been cancelled.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14389 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Chemical Weapons Policy; Meeting

ACTION: Change in Location of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Chemical Weapons Policy scheduled for June 11, 1990, at SAIC, McLean, Virginia, as published in the **Federal Register** (Vol. 55, No. 112, Page 23583, Monday, June 11, 1990, FR Doc. 90-13384) will be held in the Pentagon.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14390 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1990 Summer Study on Tactical Forces/C³; Meeting

ACTION: Change in Location of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board 1990 Summer Study on Tactical Forces/C³ scheduled for 26 and 27 June, 1990, as published in the **Federal Register** (Vol. 55, No. 111, Page 23467, Friday, June 8, 1990, FR Doc. 90-13291) will be held at the System

Planning Corporation, Arlington, Virginia.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14381 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 17 July 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 18, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14382 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Meeting

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of the Committee: Inland Waterways Users Board.

Date of Meeting: July 24, 1990.

Place: Minneapolis-St. Paul Airport, Hilton Hotel, 3800 W. 80th Street, Bloomington, MN 55431.

Time: 9 a.m. to 5 p.m.

Proposed Agenda

AM Session: *Business Session*

—Call to Order

—Disposition of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Trust Fund Analysis

9:45 Trust Fund Disbursements

10:15 Break

10:30 —Update of Investment Needs Assessment

11:00 —Construction Projects Update

11:15 —Upper Mississippi River Transportation Economics Study

12:00 Lunch

PM Session: *North Central Division Presentations*

1:00 —Upper Mississippi River Environmental Management Program

1:30 —Upper Mississippi River Study

2:00 —Illinois River Study

2:30 Break

2:45 —Recreational Use of Upper Mississippi River Locks

3:00 —Public Comment Period

4:45 —Other Business/Instructions to Board Staff

5:00 Adjournment

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 or (202) 272-0146.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-14384 Filed 6-20-90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No./84.116F]

Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions; Analysis of Institution-wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-wide Program competition or a Special Focus Program competition.

Deadline for Transmittal of Applications: July 23, 1990.

Applications Available: June 21, 1990.

Available Funds: $750,000.

Estimated Range of Awards: Up to $150,000.

Estimated Number of Awards: 5 to 10 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: Up to 24 months.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, and 85; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority: Projects designed to analyze successful project designs, policies, and results of projects supported under Institution-wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by recipients of grants under Institution-wide Program competitions proposing to analyze the direct and indirect impacts of the FY 1987 Institution-wide projects for which Departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the specific competition selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.23(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Methods and management plan (34 CFR 612.23(c)(3)(ii)). Five points are added to this criterion for a possible total of 25 points.

Key personnel (34 CFR 612.33(c)(3)(iii)). Ten points are added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FIPSE, FY 1990-F Competition, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3100, ROB-3, Washington, DC 20202-5175. Telephone: (202) 732-5757.

Authority: 20 U.S.C. 3211.

Dated: May 15, 1990.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-14398 Filed 6-20-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.116E]

Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions; Dissemination of Successful Institution-wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-wide Program competition or a Special Focus Program competition.

Deadline for Transmittal of Applications: July 23, 1990.

Applications Available: June 21, 1990.

Available Funds: $800,000.

Estimated Range of Awards: $35,000-$150,000.

Estimated Number of Awards: 8 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, and 85; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority: Projects designed to disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by former recipients of grants under Institution-wide Program competitions proposing to disseminate their own successful projects which were funded in FY 1987 and for which Departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the specific competition selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.23(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(3)(i)). Five points are added to this criterion for a possible total of 35 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Five points are added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity (34 CFR 612.23(c)(3)(v)). Five points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FY 1990-E Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-5175. Telephone: (202) 732-5757.

Authority: 20 U.S.C. 3211.

Dated: May 15, 1990.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-14397 Filed 6-20-90; 8:45 am]

BILLING CODE 4000-01-M

National Commission on Drug Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Commission on Drug-Free Schools. Notice of this meeting is offered pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2.

DATES/TIMES: July 12-13, 1990; meetings will be held between the hours of 8:30 a.m.-5:30 p.m.

LOCATION: The Willard Inter-Continental, located at 1401 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC, 20202-7584; (202) 732-6140.

AGENDA: This meeting is a working session for the Commission members to review and comment on all issues addressed to date, in preparation for submitting a final report to the President and Congress.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools was established pursuant to section 5051 of Public Law 100-690. Co-chaired by the Secretary of Education and the Director of the Office of National Drug Control Policy, the membership consists of selected members of the Senate and House of Representatives, and citizen members representing various areas of drug education, prevention, and law enforcement. The legislative mandate of

the Commission is to develop recommendations for identifying drug-free schools and campuses, identifying model programs to achieve drug-free schools, and to make other findings that are consistent with its mission.

This meeting is open to the public. Records of Commission proceedings are available for public inspection at the Office of the Commission, 330 C Street, SW., Washington, DC, from the hours of 9 a.m.-5 p.m. during Federal government working days.

Dated: June 15, 1990.

Ted Sanders,

Under Secretary.

[FR Doc. 90-14409 Filed 6-20-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Dunne C. Sewell, who was the Department's Assistant Secretary for Defense Programs from August 1978 to January 1981, has a unique combination of outstanding qualifications in the field of applied nuclear physics and extensive experience in management of nuclear weapons and nuclear energy development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Deputy Director of the Lawrence Livermore National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of the Lawrence Livermore National Laboratory. I am satisfied that these activities are in a scientific field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code (in consultation with the Director of the office of Government Ethics), to permit contact by Mr. Sewell with employees of the Department of Energy and other government agencies with respect to the funding, operations, and management of the Lawrence Livermore National Laboratory.

Dated: June 15, 1990.

Admiral James D. Watkins,

U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90-14384 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

Intent To Award a Grant to Oleg Engineering

AGENCY: Department of Energy.

ACTION: Notice of unsolicited assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE-FG01-90CE15471 to Oleg Engineering to assist in the "design, construction and characterization of working a breadboard model of a measurement-while- drilling (MWD) turbine pulser."

Scope: This grant will aid in providing funding in the amount of $70,000 to demonstrate proof of concept and to collect data from a breadboard model which the industry can analyze and review. The system is a new and different approach to transmittal of downhole drilling data. This invention has the significant potential for a higher data transmission rate because it can send positive and negative signals in sequence. Faster and more data transmission improves the ability to interpret reservoir characteristics closer to a real-time basis, enhancing the drilling process and the number of moving components is reduced.

Eligibility: Eligibility of this award is being limited to Oleg Engineering. Mr. Oleg Kotlyer, the inventor and president of the company, is a mechanical engineer with 20 years' experience in the drilling industry. Mr. Kotlyer has been involved with other mud pulse telemetry systems programs and has successfully developed serveral mud pulse transmitters. It has been determined that this project has high technical merit, representing an innovative technology that has a strong possibility of adding to the natural energy resources.

The term of this grant shall be eighteen months from the effective date of award.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-14385 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Kern Oil & Refining Co. and Larry D. Delpit

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE, and Kern Oil & Refining Co. (Kern) and Larry D. Delpit (Delpit), which was published for public comment in 55 FR 19668 (May 10, 1990), shall be made final. The Consent Order resolves matters relating to Kern's and Delpit's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979, through January 27, 1981. To resolve these matters, Kern will pay to the DOE $750,000 and Delpit will pay $2,600,000, for a total of $3,350,000, within thirty (30) days of the effective date of the Consent Order. Following receipt of the settlement monies, ERA will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000; Independence Avenue, SW., RC-32, Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comment Received
III. Analysis of Comment
IV. Decision

I. Introduction

On May 10, 1990, the DOE's Economic Regulatory Administration (ERA) issued a notice announcing a proposed Consent Order between DOE, and Kern and Delpit, which would resolve matters relating to Kern's and Delpit's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979, through January 27, 1981. 55 FR 19648. Specifically, the May 10 Notice provided information regarding Kern's and Delpit's respective potential overcharge liability arising from certain tie-in crude oil purchase and sale transactions at issue in a Proposal Remedial Order issued March 31, 1987, as amended; and detailed the considerations which underlay the ERA's perliminary view that the settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. ERA received one written comment, which was considered in making the decision to issue the proposed Consent Order as a final Order.

II. Comment Received

The one comment received on the proposed Consent Order, filed on behalf of a group of utilities, transporters, and manufacturers (hereinafter "end users"), addressed two issues relating to the proposed settlement terms with Kern: (1) The adequacy of the information provided in the May 10 Notice concerning Kern's financial condition; and (2) the adequacy of the settlement amount to be paid by Kern.

III. Analysis of Comment

A. Kern's Financial Condition

The May 10, 1990, Notice stated that the proposed settlement amount to be paid by Kern is based on ability-to-pay considerations, and that after extensive analysis, "ERA determined that Kern would not be capable of satisfying a judgment in an amount approaching the potential maximum liability alleged in the PRO." 55 FR 19649. The end users maintained that commenters could not comment intelligently on ERA's conclusion because ERA did not explain the major aspects of the financial information Kern provided to ERA or offer to make such information available to commenters.

In the May 10 Notice, ERA stated that it "considered Kern's current and projected financial condition, based on extensive information Kern provided to ERA, including tax returns, reports reflecting Kern's net asset values and the underlying documents and information on which the reports, returns and statements were made." 55 FR 19649. The financial information Kern submitted for ERA's consideration was provided on a confidential basis and for settlement purposes only, and ERA agreed to accept the documents on those terms. By setting forth in the May 10 Notice the types and sources of information which underlay ERA's analysis of Kern's financial condition, ERA disclosed the bases of its determination, but not the contents of the cited documents, consistent with maintenance of the well-recognized confidentiality of the substance of settlement negotiations and the statutory protections accorded financial information of closely held corporations (such as Kern).

B. Adequacy of Kern Settlement Amount

The end users suggestd that ERA might have "set a settlement figure" with Kern without any diminution for collection risk and provided instead for payment over an (unstated) number of years, with the amount of payment in any year related to Kern's cash flow or profit. The fact, relied upon by end users, that ERA has entered into such settlement arrangements in other cases does not make such an approach appropriate in this case.

The Consent Order's payment terms applicable to Kern are the product of ERA's examination of Kern's particular financial situation. In view of ERA's determination of the low potential for any significant additional recovery from Kern, ERA has concluded that the public interest is best served by a prompt resolution of this matter and Kern's payment of the settlement amount in full within 30 days of the effective date of the Consent Order.

IV. Decision

Upon consideration of the one written comment received and addressed herein, and inasmuch as there were no other bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE, Kern, and Delpit is made a final Order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on June 14, 1990.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 90-14387 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Pre-Freshman Enrichment Program (PREP)

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential applicants of the closing date and location for submission of applications for awards under this program.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is concerned about whether there are enough science, engineering and mathematics professionals to perform its R&D mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions * * *", 42 U.S.C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. One the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering and math careers by preparing and guiding students in the sixth through tenth grades in the selection of college-preparatory courses in science, mathematics and engineering.

In the past 17 years, 274 PREP projects have been funded. These projects have reached over 18,000 students, principally women and minorities who have been underrepresented in science, math and engineering. Pending Congressional action, DOE intends to commit about $1.35 million for the Pre-Freshman Enrichment Program for fiscal year 1991. DOE invites all qualified institutions (see following section) to write for a copy of its Pre-Freshman Enrichment Program solicitation, DOE/ER-0454, Notice of Program Announcement Number DE-PS05-91ER75571.

Eligibility and Limitations

The overall intent of the program is to increase the number of scientists, engineers and mathematicians who graduate from college, and who will

continue to play critically important roles in the Nation's overall energy programs. Therefore, institutions which offer science, mathematics and/or engineering degree programs are deemed most qualified. Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(1), applications will be accepted only from U.S. colleges and universities which grant science, mathematics and/or engineering degrees at the baccalaureate level. Non-profit organizations, scientific and professional societies, science museums and science centers, two-year colleges, for-profit industries, and Federal laboratories may participate in cooperative or joint PREP projects, providing the application is submitted by a four-year U.S. college or university.

Application Forms

Program solicitations are expected to be ready for mailing by August 1, 1990. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER–44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 586–1634.

Closing Date for Submission of Applications

To be eligible, applications must be received by the Department of Energy by 4:30 p.m., October 30, 1990.

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: PREP Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576–7564.

(Catlalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Enrichment Program).

Issued in Washington, DC on June 18, 1990.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 90–14386 Filed 6–20–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP88–205–005, TM89–1–1–003]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on June 11, 1990, tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1 in order to conform its tariff with the settlement approved by the Commission in its "Order Approving Settlement as Modified" issued by the Commission on May 2, 1990 in this proceeding. Consistent with the May 2, 1990 Ordrer, Alabama-Tennessee proposes an effective date of June 1, 1990 for these tariff sheets.

Alabama-Tennessee states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies, and all persons on the Commission's official service lists in the captioned dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14308 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–3–20–001, TF90–1–20–002]

Algonquin Gas Transmission Co.; Compliance Filing

June 14, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 11, 1990, tendered for filing electronic versions of the following tariff sheets:

Accepted to be effective April 1, 1990

2 Rev 39 Rev Sheet No. 201
Sub First Revised Sheet No. 201A
2 Rev 40 Rev Sheet No. 203
2 Rev 36 Rev Sheet No. 204

Accepted to be effective June 1, 1990

Alt Forty-first Revised Sheet No. 201
Alternate Third Revised Sheet No. 201A
Alt Forty-second Revised Sheet No. 203
Alt Thirty-eighth Revised Sheet No. 204
Alt Thirty-fifth Revised Sheet No. 205

Algonquin states that such electronic versions of the above listed tariff sheets are made in compliance with the Commmission's Letter Orders of May 22, 1990 and May 25, 1990 in Algonquin's Interim and Quarterly PGA's in the captioned dockets. Such May 22 and May 25 Letter Orders accepted Algonquin's Interim and Quarterly PGA, respectively and, *inter alia*, directed Algonquin to refile electronic versions of the subject tariff sheets to make certain corrections, all as more fully set forth in the Commission's May 22 and May 25 Letter Orders and Algonquin's instant filing. Algonquin states that none of its rates are affected by this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14309 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–10–22–001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on June 11, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88–217, *et al.* and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 43
Third Revised Sheet No. 49A
Fourth Revised Sheet No. 160C
Third Revised Sheet No. 160D
Fourth Revised Sheet No. 160E
Third Revised Sheet No. 160F
Fourth Revised Sheet No. 160G
Third Revised Sheet No. 160H
Second Revised Sheet No. 160I

The purpose of this supplemental filing is to correct an inadvertant error made in the filing of May 31, 1990 in Docket No. TM90–10–22–000. The paper copy of the tariff sheets was printed on a pre-printed form captioned "First Revised Volume No. 1." These sheets should have been filed on "Original Volume No. 1" tariff paper. The supplemental filing also corrects the cover letter and form of notice to the original filing which set forth an incorrect list of the tariff sheets that were actually filed.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14314 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–7–4–000]

Granite State Gas Transmission Inc.; Tariff Filing

June 14, 1990.

Take notice that on June 13, 1990, Granite State Gas Transmission, Inc. (Granite State), 128 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on July 1, 1990:

Fourth Revised Sheet No. 7–C

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988, in Docket No. RP88–242–000 relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges filed on May 31, 1990 in Docket No. RP88–191.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14310 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL90–32–000]

Indiana Municipal Power Agency v. Indiana Michigan Power Co.; Filing

June 14, 1990.

Take notice that on May 31, 1990, Indiana Municipal Power Agency (IMPA) tendered for filing a complaint against Indiana Michigan Power Company (I&M). IMPA states that I&M has charged and is charging IMPA wholesale rates that are unjust, unreasonable and unduly discriminatory and therefore unlawful under the Federal Power Act.

IMPA requests an investigation and the establishment of a refund effective date of July 30, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. IMPA has served a copy of the complaint on I&M. I&M's answer shall be due on or before July 18, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14311 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–144–003]

Northern Border Pipeline Co.; Compliance Tariff Filing

June 14, 1990.

Take notice that on June 13, 1990, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 100
Second Substitute First Revised Sheet Number 120
First Revised Sheet Number 121
Second Revised Sheet Number 402
Original Sheet No. 402a

The purpose of this tariff filing is to revise the proposed Credit Worthiness provision in Rate Schedule T–1 and the term section of the pro forma U.S. Shippers Service Agreement to be in compliance with the Commission's Order Granting Appeal dated June 1, 1990 in Docket No. RP87–144–002.

Northern Border has requested that these revised tariff sheets be effective June 14, 1990. Northern Border states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1990. Protests will be considered but do not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons

that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 90-14312 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-117-084]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 11, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Fourth Revised Sheet No. 805

Texas Eastern states that the purpose of this filing is to update the Index of Purchasers for Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect the execution of Rate Schedules CD-1 and FT-1 Service Agreements for Equitrans, Inc. as reflected in a companion filing dated June 11, 1990 in Docket Nos. RP85-177-076, *et al.*

The proposed effective date of the tariff sheet listed above is June 11, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14313 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-030]

Tennessee Gas Pipeline Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 14, 1990.

Take notice that on June 11, 1990, Tennessee Gas Pipeline Company (Tennessee) filed the following sets of tariff sheets to its FERC Gas Tariff:

I. Rates Effective November 1, 1989
Second Revised Volume No. 1
Second Substitute Sixteenth Revised Sheet No. 20
Second Substitute Thirteenth Revised Sheet No. 20A
Substitute Ninth Revised Sheet No. 22
Substitute Fifth Revised Sheet No. 22A
Second Substitute Eighth Revised Sheet No. 23
Second Substitute Eighth Revised Sheet No. 24
Original Volume No. 2
Third Substitute Sixteenth Revised Sheet No. 5
Third Substitute Fifteenth Revised Sheet No. 6
Substitute Sixth Revised Sheet No. 7
Second Substitute Seventh Revised Sheet No. 8
Second Substitute Sixth Revised Sheet No. 9
Substitute Ninth Revised Sheet No. 10
II. Rates Effective January 1, 1990
Second Revised Volume No. 1
Substitute Seventeenth Revised Sheet No. 20
Substitute Fourteenth Revised Sheet No. 20A
Tenth Revised Sheet No. 22
Ninth Revised Sheet No. 23
Ninth Revised Sheet No. 24
Original Volume No. 2
Substitute Seventeenth Revised Sheet No. 5
Substitute Sixteenth Revised Sheet No. 6
III. Rates Effective April 1, 1990
Second Revised Volume No. 1
Substitute Eighteenth Revised Sheet No. 20
Substitute Fifteenth Revised Sheet No. 20A
Original Volume No. 2
Substitute Eighteenth Revised Sheet No. 5
Substitute Seventeenth Revised Sheet No. 6
IV. Rates To Be Effective May 1, 1990
Second Revised Volume No. 1
Substitute Second Revised Sheet No. 57
Substitute Second Revised Sheet No. 230
V. Rates Filed To Be Effective July 1, 1990 in Docket No. TQ90-4-9
Second Revised Volume No. 1
Nineteenth Revised Sheet No. 20
Sixteenth Revised Sheet No. 20A
Original Volume No. 2
Substitute Nineteenth Revised Sheet No. 5
Substitute Eighteenth Revised Sheet No. 6

Tennessee states that the purpose of these revisions is to implement new base tariff rates effective November 1, 1989 pursuant to the settlement in Docket No. RP88-228 which was approved by Commission orders on March 8, 1990 and May 25, 1990.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14315 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 90-13; Certification Notice—61]

Notice of Filing Certification of Compliance:

Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
West Lynn Cogeneration, Boston, MA	5-30-90	Combined Cycle	128.82	Lynn, MA.
City of Vero Beach, Vero Beach, FL	5-31-90	Combined Cycle	56.5	Vero Beach, FL.

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC, on June 13 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-14388 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3789-6; ECAO-CD-86-0082]

Draft Criteria Document for Oxides of Nitrogen; Vegetation and Ecosystem Effects and Materials Effects Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces peer review workshops to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate the preparation of an external review draft of a revised version of EPA's Air Quality Criteria for Nitrogen Oxides. The workshop site is the Radisson Governor's Inn, NC 54 and I-40 Davis Drive, Research Triangle Park, North Carolina, 27713, (919) 549-8631.

DATES: The workshop will be held July 9 and 10, 1990, from 8:30 a.m. to 5 p.m. for the vegetation and ecosystem effects chapter and on July 10, 1990, from 8:30 a.m. to 5 p.m. for the materials effects chapter. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: J.H.B. Garner, Ph.D., U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4153 or (FTS) 629-4153.

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards (NAAQS) are required under the Clean Air Act. EPA is currently revising the criteria document for oxides of nitrogen as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding these workshops to review certain draft chapters. These chapters discuss the effects of nitrogen oxides on vegetation and ecosystems and the effects of nitrogen oxides on materials. The meetings to discuss the two chapters will be held concurrently the second day. Copies of the chapters will be made available to the public at the meeting. Members of the public will have an opportunity to make brief oral statements. The draft chapters will be subsequently revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the external review draft will be announced in a subsequent **Federal Register** notice.

Dated: June 14, 1990.

Carl R. Gerber,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 90-14288 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3789-7]

Evaluation of the Potential Carcinogenicity of Electromagnetic Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an expert, peer-review workshop to be held by EPA's Office of Health and Environmental Assessment (OHEA) to facilitate preparation of a draft document titled, "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields." The workshop site is the Compri Hotel, 4620 South Miami Blvd., Morrisville, North Carolina 27560 (Tel: 919/941-6066).

DATES: The workshop will be held June 28, 1990, from approximately 8:30 a.m. to 5 p.m. Members of the public may attend as observers.

ADDRESSES: Dynamac Corporation, an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, contact Nicolas Hajjar, Dynamac Corporation, 11140 Rockville Pike, Rockville, Maryland 20852 (Tel: 301/230-6136). Seating capacity is limited.

FOR FURTHER INFORMATION CONTACT: Robert E. McGaughy, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel: 202/382-5898 or FTS/382-5898.

SUPPLEMENTARY INFORMATION: The "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields" will summarize the human evidence for carcinogenicity and laboratory studies related to carcinogenesis of these fields. The document contains no recommendations for regulatory or other health protection measures.

Copies of the workshop draft will be made available to the public at the meeting. A limited number of copies of the draft also will be available to requesters from the ORD Center for Environmental Research Information (CERI) in Cincinnati, Ohio. Those persons interested in obtaining a single copy of the workshop draft should contact CERI at the following address:

CERI (FRN), US EPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268. Tel: 513/569-7562 or FTS/684-7562. Requesters should ask for the document by the EPA number: EPA/600/6-90/005A.

Following the workshop, the document will be revised and an external review draft released for public comment and EPA Science Advisory Board (SAB) review. Ample opportunity will be provided for public review and submission of written comments upon release of the external review draft. The public comment period for the external review draft and the dates of the SAB meeting will be announced in subsequent Federal Register notices.

Dated: June 13, 1990.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90-14399 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00103; FRL-3769-9]

Biotechnology Science Advisory Committee Subcommittee on Ecoregions; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Ecoregions. The Subcommittee will consider scientific issues related to the use of large-scale ecological regions (ecoregions) to assist in the assessment of the release of previously reviewed genetically engineered microorganisms into the environment. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, July 25, 1990, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The Environmental Assistance Division will provide summaries of the meeting at a later date.

Dated: June 14, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc 90-14414 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-44554; FRL 3770-2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67-63-0), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within15 days after it is received.

I. Test Data Submissions

Test data for isopropanol was submitted by Chemical Manufacturers Association Isopropanol Panel, on behalf of the test sponsors pursuant to a final test rule at 40 CFR 799.2325. It was received by EPA on June 5, 1990. The submission describes a Forward Mutation Assay with Independent Repeat in the Chinese Hamster Ovaries. Mutagenicity testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products and procedures.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44554). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 13, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-14415 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-865-DR]

Amendment to Notice of a Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA-865-DR), dated May 15, 1990, and related determinations.

DATED: June 12, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Arkansas, dated May 15, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 15, 1990:

The counties of Calhoun, Monroe, and Ouachita for Individual Assistance and Public Assistance;

Desha County for Individual Assistance; and

Columbia County for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14400 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-866-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-866-DR), dated May 26, 1990, and related determinations.

DATED: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective June 13, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14401 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-869-DR]

Amendment to Notice of a Major Disaster Declaration; Indiana

AGENCY: Federal Emergency Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA-869-DR), dated June 4, 1990, and related determinations.

DATED: June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated June 4, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 1990:

The counties of Dubois and Perry for Individual Assistance; and

The counties of Greene and Scott for Public Assistance (previously designated for Individual Assistance).

Richard W. Krimm

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 90-14402 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 10, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Fairfield, Licking, and Muskingum for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14403 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-868-DR), dated May 18, 1990, and related determinations.

DATE: June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Oklahoma, dated May 18, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 18, 1990:

The counties of Caddo, Cleveland, Delaware, Ellis, and Okmulgee for Individual Assistance only; and

The City of Bethany for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14404 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: June 11, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

Cherokee County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14405 Filed 6-20-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATES: June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Hansford Ochiltree, and Pecos for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14400 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

Office of Training

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: June 27, 1990.

Place: Conference room, Third Floor of H Bldg., National Emergency Training Center, Emmitsburg, MD 21717.

Time: June 27, 1990—8:30 a.m. to 5 p.m.

Proposed Agenda: Program Goal and Objective Statements for Fiscal Years 1992, 1993, and 1994.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before June 25, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: June 8, 1990.

Laura A. Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90–14467 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224–200123–001

Title: South Carolina State Ports Authority/Sea-Land Service, Inc. Terminal Agreement

Parties: South Carolina State Ports Authority (SCSPA) Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement provides for Sea-Land to pay SCSPA $50.00 per loaded container and $10.00 per empty container moving across SCSPA's wharves on quantities of 0 to 70,000 loaded containers per contract year. On quantities in excess of 70,000 loaded containers per contract year, Sea-Land will pay SCSPA $45.00 per loaded container and $10.00 per empty container. In the event that SCSPA provides Sea-Land with facilities costing more than $960,000 but less than $2,000,000, the above-referenced loaded and empty container rates will be increased by $0.012 per loaded container and $0.012 per empty container for each additional $10,000.00 of such cost.

Agreement No. 224–200090–001

Title: Port of Tacoma/PCTC, Inc./Plum Creek Timber Company, L.P.

Parties: Port of Tacoma (Port), PCTC, Inc. (PCTC), Plum Creek Timber Company, L.P. (PCTCLP)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–200090) between the Port and PCTC for preferential berthing of vessels at Berth A, Blair Terminal, Port of Tacoma to provide for the assignment of all PCTC's interest in and under said lease agreement to PCTCLP.

Dated: June 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14290 Filed 6–20–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–056

Title: Asia North America Eastbound Rate Agreement

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment would revise Appendix B by deleting the prohibition of secret ballots.

Dated: June 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14291 Filed 6–20–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing at the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 10, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to merge with D.S.B. Bancshares, Inc., Randolph, Wisconsin, and thereby indirectly acquire Dairyman's State Bank, Randolph, Wisconsin.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *C.B. Bancshares, Inc.*, Des Peres, Missouri; to become a bank holding company by acquiring at least 90 percent of the voting shares of Century Bank, Des Peres, Missouri.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14337 Filed 6–20–90; 8:45 am]

BILLING CODE 6210–01–M

Citizens Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Financial Services, Inc.*, Mansfield, Pennsylvania; to acquire Star Savings and Loan Association, Sayre, Pennsylvania, and thereby engage in savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the States of New York and Pennsylvania.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14338 Filed 6–20–90; 8:45 am]

BILLING CODE 6210–01–M

Eddie Pen-Shing Pen et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Eddie Pen-Shing Pen*, Burns, Tennessee; to acquire an additional 3.0 percent of the voting shares of Cumberland Valley Bancshares, Inc., Madison, Tennessee, for a total of 18.2 percent, and thereby indirectly acquire First Cumberland Bank, Madison, Tennessee.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Eugene Leroy Riser—Trustee*, George West, Texas, to acquire 23.95 percent; Eugene Leroy Riser, George West, Texas, to acquire 22.63 percent; Cruz Garcia, George West, Texas, to acquire 9.05 percent; Gwendolyn Knox, Dallas, Texas, to acquire 9.05 percent; James Marvin Johnson III, George West, Texas, to acquire 9.05 percent; James Henderson Eckhardt, San Antonio, Texas, to acquire 9.05 percent; Robert Edward Matula, Calliham, Texas, to acquire 8.15 percent; Paul Martin Dirks, George West, Texas, to acquire 4.53 percent; and Marcia Lynne Wallace, San Antonio, Texas, to acquire 4.53 percent of the voting shares of Charlotte Bancshares, Inc., Charlotte, Texas, and thereby indirectly acquire Charlotte State Bank, Charlotte, Texas.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–14336 Filed 6–20–90; 8:45 am]

BILLING CODE 6210–01–M

Societe Generale, Paris, France; Proposal to Act as a Futures Commission Merchant in the Execution and Clearance of Futures Contracts, and Options on Future Contracts, on Stock and Bond Indexes

Societe Generale, Paris, France ("Sogen"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("the BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its indirect wholly-owned subsidiary, FIMAT Futures USA, Inc., Chicago, Illinois ("FIMAT"), to engage *de novo* in the execution and clearance of broad-

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based bond and stock indices future contracts on major commodity exchanges and options thereon, as a futures commission merchant ("FCM"). Sogen proposes that these activities be conducted worldwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or management or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975) ("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Sogen contends that the proposed activities are closely related to banking under the *National Courier* test, and that permitting bank holding companies to engage in the proposed activities would result in increased competition and gains in efficiency. Sogen has applied to act as an FCM in the provision of execution and clearance on the following future contracts and options thereon: (a) Bond Buyer Municipal Bond Index futures contract and options thereon, (b) Financial Times Stock Index futures contract and options thereon, (c) Kansas City Mini Value Line Index futures contract, (d) Kansas City Maxi Value Line Index futures contract, (e) New York Stock Exchange Composite Index futures contract, and options thereon, (f) Nikkei Stock Average futures contract and (g) Standard and Poor's 500 Stock Price Index futures contract and options thereon. The Board has previously approved the execution and clearance on the listed futures contracts and options thereon. *See e.g., BankAmerica Corporation*, 75 Federal Reserve Bulletin 78 (1989); *Northern Trust Corporation*, 74 Federal Reserve Bulletin 333 (1988); and *Republic New York Corporation*, 73 Federal Reserve Bulletin 224 (1987). Company would conduct its FCM activities in accordance with the limitations of 12 CFR 225.25(b)(18).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 10, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14335 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

Synovus Financial Corp.; Acquisition of Companies Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to expand the activities of its wholly-owned subsidiary, Synovus Securities, Inc., Columbus, Georgia, and engage *de novo* in providing employee benefits consulting services pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities have been approved by the Board. *Norstar Bancorp, Inc.*, 71 Fed. Res. Bull. 656 (1985).

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14344 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 892 3178]

CPC International Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an advertiser and distributor of Mazola Corn Oil and Mazola Margarine from misrepresenting the effects of such oil or margarine products on cholesterol levels, and from making claims concerning such products' ability to affect heart disease or serum cholesterol levels unless at the time such representations are made, they are substantiated with competent and reliable scientific evidence.

DATES: Comments must be received on or before August 20, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Cheek, FTC/S-4002, Washington, DC 20580. (202) 326-3045.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of CPC International Inc., a corporation, and it now appearing that CPC International Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between CPC International Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent CPC International Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at International Plaza, Englewood Cliffs, New Jersey 07632.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint as attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered, That respondent CPC International Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Mazola Corn Oil, Mazola Margarine or any other edible oil or margarine product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(a) That consumption of chicken fried in any such oil or margarine product will reduce serum cholesterol levels;

(b) That adding any such oil or margarine product to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels; or

(c) The effect of any such oil or margarine product on cholesterol levels.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Mazola Corn Oil, Mazola Margarine or any other edible oil or margarine product, in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product can or may reduce, or help reduce, the risk of developing or otherwise affect heart disease, or that any such product can or may reduce, or help reduce, or otherwise affect serum cholesterol levels, unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation. For any test, analysis, research, study or other evidence to be "competent and reliable" for purposes of this Order, such test, analysis, research, study or other evidence must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

III.

Nothing in this Order shall prevent respondent from representing truthfully, for example, that any product covered by this Order can be part of or compatible with a diet low in saturated fats and cholesterol, and that such diet can be used to reduce serum cholesterol or the risk of heart disease.

IV.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

V.

It is further ordered, That respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this Order.

VI.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

VII.

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from CPC International, Inc. (respondent).

The consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After (60) days, the Commission will decide whether it should withdraw from the agreement and take other appropriate action, or make final the order contained in the agreement.

This matter concerns advertisements about Mazola Corn Oil and Mazola margarine (collectively referred to as "Mazola").

The Commission's complaint in this matter charges that respondent has violated the Federal Trade Commission Act by making false and misleading claims in connection with its ads for Mazola. According to the complaint, respondent's ads represented that consumption of chicken legs fried in Mazola will reduce serum cholesterol levels. The complaint alleges that this claim is false and without a reasonable basis. Also according to the complaint, the ads represented that adding Mazola to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels. The complaint alleges that respondent did not have a reasonable basis for making this representation and, therefore, the claim is false and misleading.

The consent order contains provisions designed to prevent respondent from engaging in similar allegedly unlawful acts in the future.

Part I of the order prohibits respondent from misrepresenting that consumption of chicken fried in any edible oil or margarine will reduce serum cholesterol and that adding such oil or margarine to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels. In addition, the order prohibits misrepresentation of the effects of such oil or margarine products on cholesterol levels.

Part II of the order prohibits claims concerning such products' ability to affect heart disease or serum cholesterol levels unless at the time such representations are made respondent possesses and relies upon competent and reliable scientific evidence that substantiates these representations.

Part III contains a provision which states that this order does not prevent truthful representations that any product covered by the order of a low-fat, low-cholesterol diet and that such a diet can be used to reduce serum cholesterol or the risk of heart disease.

Part IV requires respondent to keep records concerning claims covered by this order. Part V requires respondent to distribute a copy of the order to its operating divisions and to each officer, agent, representative or employee engaged in preparation and placement of advertisements or sales materials encompassed by the order.

Part VI requires respondent to notify the Commission of any change in status that might affect compliance with the order. Part VII requires respondent to file a compliance report within sixty (60) days after service of the order and at such other times as the Commission may require.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-14384 Filed 6-20-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9213]

Illinois Cereal Mills, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: The Commission has dismissed the complaint in this matter as to respondent Elders Grain, Inc., by granting a motion to that effect filed by complaint counsel. In certifying the motion to the Commission, the Administrative Law Judge agreed that continued prosecution of the case, with respect to this respondent, is no longer in the public interest because respondent has exited the dry corn milling industry.

DATES: Complaint issued June 30, 1988. Dismissal Order issued May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Brownman, FTC/S-3302, Washington, DC 20580. (202) 326-2605.

SUPPLEMENTARY INFORMATION: In the Matter of Illinois Cereal Mills, Inc., et al. The prohibited trade practices and/or corrective actions as to the respondent Elders Grain, Inc. are deleted.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Dismissing Complaint

In the matter of Illinois Cereal Mills, Inc., a corporation, et al.

Pursuant to section 3.22 of the Commission's Rules of Practice, Complaint Counsel have moved that the Commission dismiss the complaint in this matter as to the respondent Elders Grain, Inc., and the Administrative Law Judge has certified the motion to the Commission, with his recommendation that the motion be granted. The motion is granted.

It is ordered that the complaint in this matter be, and it hereby is, dismissed as to the respondent Elders Grain, Inc.

By the Commission, Commissioner Calvani recused.

Donald S. Clark,

Secretary.

[FR Doc. 90-14383 Filed 6-20-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Services Research Dissemination and User Liaison Advisory Committee; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meeting during the month of June 1990:

Name: HEALTH SERVICES RESEARCH DISSEMINATION AND USER LIAISON ADVISORY COMMITTEE

Date and Time: June 26-27, 1990, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. Closed June 26, 2:15 p.m. to 4:15 p.m. Open for remainder of meeting.

Purpose: The Committee's charge is to review and make recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and agency liaison with health care policy makers, providers and consumers.

Agenda: This is the initial meeting of the Committee, and most of the agenda will be devoted to orientation, including a presentation by the Acting Administrator, Agency for Health Care Policy and Research and several AHCPR senior staff. During the closed sessions, the Committee will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(C)(6), the Acting Administrator, AHCPR has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. John D. Gallicchio, Chief, Review and Advisory Services Program, Agency for Health Care Policy and Research, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: June 13, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90-14299 Filed 6-20-90; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control

Scientific Issues Involved in Administration of Potassium Iodide for Protection of the Thyroid Gland in the Event of a Nuclear Reactor Mishap: Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Scientific Issues Involved in Administration of Potassium Iodide for Protection of the Thyroid Gland in the Event of a Nuclear Reactor Mishap.

Time and Date: 9 a.m. to 5 p.m., July 24, 1990.

Place: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30329, 404/261-9250.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Matters to be Discussed: In September 1989, representatives of the American Thyroid Association wrote to the Federal Emergency Management Agency meeting requesting that the Federal Government reconsider the issues of stockpiling, distribution, administration of potassium iodide (KI) in case of a large release of radioactive iodine as a result of a nuclear reactor mishap. This matter was referred to the Federal Radiological Preparedness Coordinating Committee (FRPCC) for future consideration. The FRPCC requested that the Department of Health and Human Services (HHS) provide them with recommendations on these issues. In order to fulfill this request, HHS under the leadership of CDC and the Food and Drug Administration, is convening this *ad hoc* meeting of experts in the field of nuclear medicine and potassium iodide issues to solicit relevant scientific and medical information on this subject. Radioiodine exposure dose levels and other safety and efficacy issues regarding the use of potassium iodide as a radioprotective agent will be discussed.

Contact Person for More Information: Additional information concerning the meeting may be obtained from E. Kent Gray, Chief, Emergency Response and Coordination Group, CEHIC, CDC, Mailstop E-32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone 404/639-0615, FTS 236-0615.

Dated: June 15, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-14388 Filed 6-20-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90M-0176]

Depuy; Premarket Approval of AML® Porocoat® Acetabular Cup Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by DePuy, Warsaw, IN, for premarket approval under the Medical Device Amendments of 1976, of the AML® Porocoat® Acetabular Cup Prosthesis. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and

Radiological Health (CDRH) notified the applicant, by letter of March 23, 1990, of the approval of the application.

DATES: Petitions for administrative review by July 23, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1038.

SUPPLEMENTARY INFORMATION: On November 18, 1988, DePuy, Warsaw, IN 46580, submitted to CDRH an application for premarket approval of the AML® Porocoat® Acetabular Cup Prosthesis. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating hips damaged as a result of noninflammatory degenerative joint disease (NIDJD) or any of its composite diagnoses of osteoarthritis, avascular necrosis, traumatic arthritis, slipped capital epiphysis, fused hip, fracture of the pelvis, and diastropic variant. The AML® Porocoat® Cup Prosthesis is indicated for cementless use with the ⅝ porous coated AML® Porocoat® stem that is also indicated for cementless use, or with a cemented femoral component, to comprise a total hip system. Such systems consists of a femoral component, or stem, that is placed in the intramedullary canal of the femur and an acetabular component placed in the pelvis. FDA's regulatory review of safety and effectiveness data for the cemented use of the AML® Porocoat® Acetabular Cup is not required at this time because FDA has determined that the device used with bone cement is substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see 21 CFR 888.3350).

On June 6, 1989, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 23, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 23, 1990, file with Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 14, 1990.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-14352 Filed 6-20-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Meeting—July 10-11, 1990; Cancellation

This is to announce that the meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts *(Peer Review Panel)* scheduled for July 10 and 11, 1990, has been cancelled.

The next meeting of the Peer Review Panel will be held as planned on November 19 and 20, 1990, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park (RTP), North Carolina.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971, FTS 629-3971) may be contacted for information.

Dated: June 18, 1990.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 90-14371 Filed 6-20-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Notice is given that subchapter S5E, Office of Public Affairs, is being amended to reflect the establishment of the Intergovernmental Affairs Staff in the Office of External Affairs. The changes are as follows:

Subchapter S5E, Office of Public Affairs
S5E.00 Mission
S5E.10 Organization
S5E.20 Functions

Subchapter S5E.10 *The Office of Public Affairs*—(Organization):

G. The Office of External Affairs (S5EK).

Add:

5. The Intergovernmental Affairs Staff (S5EK7).

Subchapter S5E.20 *The Office of Public Affairs*—(Function):

G. The Office of External Affairs (S5EK).

2. The External Liaison Staff (S5EK4).

Delete:

a. First sentence: "other Federal agencies and State and local governments."

b. Third line: "Federal, State and."

c. Fifth line: "Intergovernmental."

Add:

5. The Intergovernmental Affairs Staff (S5EK7).

a. Develops, plans and carries out a program of liaison and coordination and information exchange with all levels of government—Federal, State, County and municipal. Presents, explains, advocates and defends the views, goals and objectives of SSA.

b. Works to enhance SSA's image through effective means of open communications and shared information. Works to establish communication networks with all levels of governments.

Dated: June 14, 1990.

John R. Dyer,

Deputy Commissioner for Management.

[FR Doc. 90-14292 Filed 6-20-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3105]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 205503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3533(d).

Dated: June 11, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Public Housing Agency Application, Project Proposal and Legal Authority for Public Housing Development.

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: These forms affect Public Housing Agencies (PHAs) and, on occasion, local officials, turnkey developers, and private owners. The Department needs the information to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet program requirements.

Form Number: HUD-52470, 52471, 52472, 9009, 52483A, 52651A, 52485, 51971-I, and 52482.

Respondents: State Or Local Governments and Non-Profit Institutions.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52470	100		1		1		100
HUD-9009	100		1		1/4		25
HUD-52471	100		1		1/2		50
HUD-52472	50		1		1/2		25
HUD-52483A	228		1		2		456
HUD-52651A	228		2.5		3		1,710
HUD-51971-I	178		2.5		1-1/2		668
HUD-52485	228		1		1		228
HUD-52482	48		1		2		96

Total Estimated Burden Hours: 3,358.

Status: Reinstatement.

Contact: Raymond H. Hamilton, HUD, (202) 708-1938; Scott Jacobs, OMB, (202) 395-6880.

Dated: June 11, 1990.

Submission of Proposed Information Collection to OMB

Proposal: Mandatory Meals Program in Multifamily Rental and Cooperative Projects for the Elderly.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Housing project owners may require tenants of elderly assisted housing to participate in and pay for a mandatory meals program as a condition of occupancy in projects equipped with central kitchen and dining facilities.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Requests	400		1		3		1,200
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,000.
Status: Reinstatement.
Contact: James J. Tahash, HUD, (202) 426–3944, Scott Jacobs, OMB, (202) 395–6880.

Dated: June 11, 1990.

[FR Doc. 90–14305 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–90–3106]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 7, 1990.

John T. Murphy,
Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Indian Housing: Revised Consolidated Program Regulations, FR–2208.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The regulations require Indian Housing Authorities to submit information for administering their Indian Housing programs. The Department will use this information to assure compliance with the Regulations.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: Recordkeeping and On Occasion.
Reporting Burden:

Section of regulation	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden: New							
905.135(e) and (f)	40		1		6		240
905.135(g)	15		1		2		30
905.360	180		1		5		900
905.455	3		1		3		9
905.456	3		1		3		9
905.503(d)	3		1		4		12
905.529(a)(2)	500		1		1		500
Reporting burden: Existing							
905.422(a)(2)	180		1		.30		54
905.446(f)	1,000		1		4		4,000
905.452(a)	40,000		1		1		40,000
905.466	3		1		3		9
905.475	3		1		4		12
905.505(c)	3		1		6		18
905.517(h)	40,000		1		1		40,000
905.903(a)	180		1		1		180
Recordkeeping burden							
905.180(a)(4)	180		3		.5		13
905.446(f)(4)	180		10		2		3,600

Total Estimated Burden Hours: 89,586.
Status: New.
Contact: Dominic Nessi, HUD, (202) 708–5646; Scott Jacobs, OMB, (202) 395–6880.

Dated: June 7, 1990.

[FR Doc. 90–14306 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–90–3104; FR–2845–N–01]

Public Hearing

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of public hearing on regulation.

SUMMARY: This document provides notice of a public hearing on the regulation of the Federal National Mortgage Association (Fannie Mae) and of the Federal Home Loan Mortgage Corporation (Freddie Mac) by the Secretary of the U.S. Dept. of Housing and Urban Development (HUD).

The Secretary is conducting this public hearing to comply with the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which strengthens his role as regulator of Fannie Mae and establishes him as the regulator of Freddie Mac. The new regulations will assure the continuance of these institutions' mission of increasing housing opportunities for low and moderate income families and will protect the safety and soundness of these institutions by instituting proper financial oversight procedures and requiring adequate capital reserves.

DATES: The public hearing will be held on Tuesday, July 31, 1990, beginning at 10 a.m. Outlines of oral comments must be delivered by Friday, July 20, 1990.

ADDRESSES: The public hearing will be held in the Departmental Conference Room, Room 10233, Tenth Floor, HUD Building, 451 Seventh St. SW., Washington, DC. The request to speak and outline of oral comments should be submitted to: U.S. Dept. of Housing and Urban Development, Attn: Walter T. Cassidy, Room 9252, 451 Seventh Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Walter T. Cassidy, Acting Senior Tax Attorney, 202–708–1263. (This is not a toll free number.)

HOURS: 9 a.m. to 5 p.m. e.s.t.

SUPPLEMENTARY INFORMATION: The Secretary's general regulatory power over Fannie Mae is found at 12 U.S.C. 1723a(h) and over Freddie Mac at 12 U.S.C. 1452(b). The current regulations promulgated by the Secretary over Fannie Mae are found at 24 CFR part 81. The regulations promulgated by Freddie Mac, prior to its coming under the regulatory power of the Secretary, are found at 1 CFR parts 490–492.

The following are issues on which HUD particularly seeks public comments and suggestions, but speakers are not limited to these issues:

1. Mortgage programs which would help provide adequate housing for low and moderate income families;
2. Capital adequacy regulations, including stress tests if appropriate;
3. Fair housing requirements;
4. Reports and information to be furnished to HUD;
5. Role of private mortgage insurers (PMIs);
6. Enforcement mechanisms which should be available to HUD.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for HUD and answers to those questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available at the hearing.

Dated: June 14, 1990.

Alfred A. DelliBovi,
Undersecretary.

[FR Doc. 90–14302 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–32–M

[Docket No. D–90–824]

Acting Manager, Region IV (Atlanta); Designation for Memphis Office

AGENCY: Department of Housing and Urban Development.
ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office.

EFFECTIVE DATE: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: H.E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–841–5109.

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Property Disposition Branch
3. Chief, Valuation Branch
4. Chief, Mortgage Credit Branch
5. Chief, Loan Management Branch

This designation supersedes the designation effective July 24, 1989, (54 FR 34255, August 18, 1989). (Delegation of Authority by the Secretary effective October 1, 1970 (35 FR 3368, February 23, 1971)).

This designation shall be effective as of May 24, 1990.

Robert W. Reavis, Jr.,
Acting Manager, Memphis Office.

Raymond A. Harris,
Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 90–14301 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–90–823]

New York Regional Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.
ACTION: Designation of Order of Succession.

SUMMARY: The Regional Administrator is designating officials who may serve as Acting Regional Administrator/Regional Housing Commission during the absence, disability, or vacancy in the position of Regional Administrator/Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Lisa T. Surplus, Acting Director, Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–2761. (This is not a toll-free number.)

DESIGNATION: Each of the officials appointed to or designated as Acting in the following positions is designated to serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional

Administrator/Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator/Regional Housing Commissioner: Provided, that no official is authorized to serve as Acting Regional Administrator/Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator.
2. Director, Office of Operational Support.
3. Director, Office of Fair Housing and Equal Opportunity.
4. Director, Office of Community Planning and Development.
5. Director, Office of Administration.
6. Director, Office of Housing.
7. Director, Office of Public Housing.
8. Regional Counsel.

This designation supersedes the designation effective June 20, 1988.

Authority: Delegation of Authority, 27 FR 4319 (1962); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order II, 31 FR 815 (1966).

Dated: June 8, 1990.

Anthony M. Villano, Jr.,

Regional Administrator/Regional Housing Commissioner, Region II.

[FR Doc. 90-14300 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-01-M

Government National Mortgage Association

[Docket No. N-90-3103; FR-2742-N-01]

Withdrawal From Participation in GNMA Programs

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(d) of the National Housing Act notice is hereby given of withdrawal of the below listed mortgagees, from participation in the GNMA Program.

FOR FURTHER INFORMATION CONTACT: Paul A. Yates, Senior Assistant Vice President, 451 Seventh Street, SW., room 6204, Washington, DC 20410-9000, Tel: (202) 708-4141.

SUPPLEMENTARY INFORMATION: Section 202(d) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989) deals with the coordination of Federal Housing Administration (FHA) and Government National Mortgage Association (GNMA) withdrawal actions. It requires the FHA and GNMA, whenever either initiates proceedings that could lead to withdrawing a mortgagee from participating in its program(s), to (1) Within 24 hours notify the other agency in writing of the action taken (2) provide to the other agency the factual basis for the action taken; and (3) if a mortgagee is withdrawn, publish its decision in the **Federal Register**.

In addition, within 60 days of receipt of a notification of action that could lead to withdrawal the agency so informed shall (1) Conduct and complete its own investigation; (2) provide written notification to the other agency of its decision, including the factual basis for its decision; and (3) if a mortgagee is withdrawn, publish its decision in the **Federal Register**.

In compliance with these requirements of section 204(d) of the National Housing Act notice is hereby given that the Government National Mortgage Association initiated action resulting in the withdrawal of the below listed mortgagees from participation in the GNMA program.

1. The Florida Group, Inc., St. Petersburg, Florida.
2. Trust America Resources, Inc., St. Petersburg, Florida.

Dated: April 20, 1990.

Arthur J. Hill,

President, Government National Mortgage Association.

[FR Doc. 90-14304 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-060-00-4130-09]

Battle Mountain and Elko Districts

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to prepare an environmental impact, statement on an amendment to a mining plan of operations for the Cortez Mine, Lander and Eureka Counties, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, and to 43 CFR, part 3809, the Bureau of Land Management will be directing the preparation of an environmental impact statement (EIS) for the proposed expansion of an existing gold mine in Lander and Eureka Counties, Nevada. This EIS will be prepared by contract, funded by the proponent, Cortez Gold Mines. The Bureau invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held July 10, 1989 at the Bureau of Land Management, Elko District Office, 3900 E. Idaho, Elko, Nevada; and on July 11, 1990 at the Peppermill Hotel Casino, 2707 South Virginia, Reno, Nevada in order to identify issues and concerns to be addressed in the environmental impact statement (EIS) and in order to encourage public participation in the environmental review process. Both meetings are scheduled from 7-9 p.m. Representatives of Cortez Gold Mine will be available to present the Plan of Operations Amendment and answer any questions from the audience regarding the Plan or existing Cortez Gold Mine operations. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations Amendment and the scope of the EIS will be accepted until September 10, 1990. A draft environmental impact statement (DEIS) is expected to be completed by late March, 1991 at which time the DEIS will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: The District Manager, P.O. Box 1420, Battle Mountain, NV 89820. ATTN: Cortez Coordinator.

FOR FURTHER INFORMATION CONTACT: Write to the above address, or call Mr. Dave Davis, at (702) 635-4000.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines of Cortez, Nevada has submitted to the Battle Mountain and Elko District Offices of the U.S. Department of Interior, Bureau of Land Management (BLM) an Amendment to a Plan of Operations (POO). The Plan of Operations Amendment describes existing and proposed mining and processing operations in Lander and Eureka counties, Nevada. Current activities at the Cortez Gold Mine under several approved Plans of Operation include open-pit mining, heap leaching, processing of oxide and sulfide ores, tailings management, and exploration projects. The proposed action includes expanding existing open-pit mines, developing a new open-pit mine, constructing new heap-leach and tailings-disposal facilities, and conducting on-going exploration drilling. The proposed action will allow a sustained rate for the milling of ore of 2,000 tons per day. Total permitted and existing surface disturbance is estimated at 1,770 acres of Public Lands and 690 acres of private land.

Proposed surface disturbance described in the 1990 Plan of Operations is estimated at 1,030 acres of Public Land and 75 acres of private land.

The project site is located approximately 75 miles southwest of Elko, Nevada. The Cortez Gold Mines company is a joint venture based in Lander county, Nevada, where the administrative offices, mill site, and ancillary facilities are situated. The Cortez Joint Venture has operated at Cortez since 1969. It controls approximately 44,000 acres of unpatented mining claims and 3,200 acres of patented mining claims in the project area.

The existing mining activities of the Cortez Gold Mine are located on two BLM administrative districts: the Elko District, Elko Resource Area, and the Battle Mountain District, Shoshone-Eureka Resource Area. Since the larger portion of the surface activities occur in the Battle Mountain District the two Districts have agreed that Battle Mountain will take the lead in directing the preparation of the EIS.

The issues expected to be analyzed in the EIS are impacts to: cultural resources, including the Cortez Historic District which has been determined to be eligible as a National Register Site by the Keeper of the National Register; water quantity and quality: groundwater monitoring by Cortez has led to the discovery of heavy metal and cyanide contamination of the local aquifer; Air quality: A new roasting facility to pre-treat sulfide and carbonaceous ores has been brought on line recently; soils and vegetation; social and economic values; cumulative impacts on the environment from mining activities in the area.

An interdisciplinary team composed of BLM resource specialists will be convened to review the Plan Amendment and EIS. Disciplines represented on the team will be: wildlife, recreation, geology, paleontology, cultural resources, soils, water and air quality, range management, lands and realty, and land use planning.

Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the Plan of Operations Amendment are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the DEIS.

Interested parties are encouraged to provide input and review during the scoping and draft stages of the EIS preparation.

The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: June 14, 1990.

James D. Carliven,

District Manager.

[FR Doc. 90-14382 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-HC-M

[WO-150-00-4830-11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet July 20 and 21, 1990, at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402. The meeting hours will be 8 a.m. to 5 p.m. on Friday, the 20th, and 8 a.m. to 12 p.m. on Saturday, the 21st. On Thursday, July 19, Council members will participate in a field tour of BLM-managed lands along the Snake River. The proposed agenda for the meeting is:

Friday, July 20:

Morning: Opening remarks by Assistant Secretary, Land and Minerals Management, Department of Interior, Dave O'Neal and Director of the Bureau of Land Management, Cy Jamison; followed by a presentation on the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976.

Afternoon: Public Statement period; followed by a presentation on the Endangered Species Act of 1973 and a BLM budget overview.

Saturday, July 21:

Council old and new business, to include Department responses to previous Council resolutions; meetings of Council subcommittees; Report from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1 p.m. on Friday, July 20. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by July 15 to the Bureau of Land Management's Idaho State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: July 20 and 21—Council Meeting. July 20—Public Statements.

ADDRESS: Copies of Public statements should be mailed by July 15 to: Ms. Pat Entwistle, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC Office, BLM, telephone (202) 208-5101; or Pat Entwistle, Idaho State Office, BLM, telephone (208) 334-9030.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Dated: June 15, 1990.

Mike Penfold,

Acting Deputy Director.

[FR Doc. 90-14316 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-84-M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (Susanville District Grazing Advisory Board Susanville, CA

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on August 7, 1990.

The August 7 meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1990, a report on new and revised Allotment Management Plans (AMPs) for FY 1990, a discussion of cattleguard maintenance problems, a discussion of the proposed helicopter gathering of wild horses and burros for FY 1991, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on August 7, 1990 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by August 1, 1990. Depending upon the number of persons wishing to make oral

statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproductoin (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 90-14350 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-00-4212-14; N-50804]

Realty Action; Modification of Recreation and Public Purposes Classification and Designation of Public Land for Competitive Sale; Washoe County, NV

Classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869, et seq.), is hereby modified to allow for disposal of the land through sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, at no less than fair market value:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
sec. 28: Lots 15-24, 26-29 and 31, SW¼NE¼, SE¼.

The area described above aggregates 237.32 acres, more or less. The land will remain closed to all other forms of appropriation including the mining laws. The land has been and will remain open to mineral leasing.

On December 18, 1978, this public land was classified for recreational purposes pursuant to the Recreation and Public Purposes Act. The land was subsequently leased to the City of Sparks, Nevada for recreational facilities and park purposes. The lease expired in 1985. The land was never developed and neither the City, nor Washoe County have any further interest in the land for recreational purposes.

This public land has been examined and determined to be suitable for disposal by competitive sale. Disposal of the land is consistent with Bureau and local plans. The land is no longer required for any Federal purpose and disposal would serve important public objectives for community expansion. The lands are prospectively valuable for geothermal steam and related resources.

This land will be offered for sale beginning at 10 a.m. PDT, September 12, 1990, Carson City District Office, Bureau of Land Management. No bids will be accepted for less than the appraised fair market value of the property. The property has been appraised at $1,623,000. Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District BLM Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, prior to 9 a.m., September 12, 1990. Each bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of the Interior—BLM for not less than twenty (20) percent of the amount of the bid and shall be enclosed in a sealed envelope marked in the lower left hand corner, *BLM Land Sale, N-50904.*

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and related resources shall be reserved to the United States, together with the right to prospect for and remove those resources and will be subject to·

1. Those rights for utility purposes which have been granted to Sierra Pacific Power Company, their successors or assignees by rights-of-way CC-025152, Nev-058684, Nev-061608, Nev-061913, Nev-066906, N-30813, N-46826, N-48540 and N-49752.

2. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, their successors or assignees by right-of-way Nev-047623.

3. Those rights for communication line purposes which have been granted to Nevada Bell, their successors or assignees by rights-of-way Nev-044106 and N-49737.

4. Those rights for gas pipeline purposes which have been granted to Southwest Gas Corporation, their successors or assignees by rights-of-way Nev-058689 and N-24960.

5. Those rights for communication facility purposes which have been granted to TCI of Reno, Inc., their successors or assignees by right-of-way N-12150.

6. Those rights for utility purposes which have been granted to Donald M. Johnson, his successors or assignees by right-of-way N-46126.

7. Those rights for access purposes which have been granted to Feliciano Jimenez, his successors or assignees by right-of-way N-38925.

(These rights-of-way may be altered prior to sale to permit perpetual grant terms.)

Conveyance of the available mineral estate will occur simultaneously with sale of the lands in accordance with section 209(b)(1)(l) of Public Law 94-579.

Acceptance of a bid offer will constitute an application for mineral conveyance and will require payment of a $50 nonrefundable fee by the declared high bidder.

Patent will be issued in the name of the declared high bidder only. Bidders must be either, (1) Citizens of the United States, 18 years of age or older; (2) corporations subject to the laws of any state or of the United States; (3) other entities such as associations and partnerships capable of holding lands or interest therein under the laws of the State of Nevada; or (4) states, state instrumentalities or political subdivisions authorized to hold property. If two or more sealed bids containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All other bids will be returned within 30 days of the sale date.

BLM may reject any and all offers or withdraw the lands from sale if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law. If the tract does not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 a.m. to 4:15 p.m.) and opened on the first and third Wednesday of each month at 10 a.m. Pacific Time until the tract is sold or withdrawn from sale.

The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Dated this 8th day of June, 1990.

James W. Elliott,

District Manager.

[FR Doc. 90-14283 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-5101-08-YQKK/GPO-0112]

Albuquerque District Office; Notice of Application: New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: Application has been filed for a 30 inch diameter natural gas pipeline.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), Northwest Pipeline Corporation has applied for a right-of-way, NM77266, for a 30 inch diameter natural gas pipeline. The pipeline would be approximately 33 miles long and will cross the following lands:

New Mexico Prinicpal Meridian

T. 33 N., R. 8 W.,
Sec. 30: W½NW¼.
T. 32 N., R. 9 W.,
Sec. 1: W½W½;
Sec. 12: W½W½;
Sec. 13: W½W½;
Sec. 14: NE¼/NE¼;
Sec. 24: W½NW¼, N½SW¼.
T. 33 N., R. 9 W.,
Sec. 1: SW¼SW¼;
Sec. 11: NE¼NE¼;
Sec. 24: E½SE¼;
Sec. 25: E½NE¼, SE¼SW¼; SE¼;
Sec. 36: E½NW¼, N½SW¼, W½SW¼.
T. 31 N., R. 9 W.,
Sec. 5: Lots 9, 10, 12;
Sec. 7: Lots 4, 11, 12, 14, 18, 19;
Sec. 8: Lot 4;
Sec. 18: Lots 6, 7, 9, 10, 15, 16.
T. 32 N., R. 9 W.,
Sec. 9: Lots 5, 6, 11, 12, 13, 14;
Sec. 15: Lots 4, 5, 12, 13;
Sec. 22: Lots 4, 5, 12;
Sec. 27: Lot 2;
Sec. 28: Lots 1, 8, 9, 15, 16;
Sec. 33: Lots 2, 6, 7.
T. 30 N., R. 10 W.,
Sec. 4: Lot 8;
Sec. 5: Lots 5, 6, 10, 11, 15, 17, 18;
Sec. 7: Lot 20;
Sec. 18: Lots 5, 8, 9, 15, 16;
Sec. 19: Lots 6, 10, 11, 15, 18;
Sec. 30: Lots 7, 8, 9, 16.
T. 31 N., R. 10 W.,
Sec. 13: Lots 8, 9, 15, 16;
Sec. 23: Lots 6, 7, 8;
Sec. 24: Lots 2, 3, 4, 5;
Sec. 28: Lot 2;
Sec. 27: Lots 1, 7, 8, 10, 11, 12, 13;
Sec. 33: Lots 1, 7, 8, 9, 10, 11, 13, 14;
Sec. 34: Lots 1, 2.
T. 29 N., R. 11 W.,
Sec. 1: Lots 2, 3, NW¼NW¼, E½SW¼, SW¼SW¼;
Sec. 11: E½NE¼, E½SE¼;
Sec. 12: NW¼NW¼.
T. 30 N., R. 11 W.,
Sec. 35: Lot 9, SE¼SE¼.

The purpose of this notice is to inform the public that the agencies involved will be deciding whether the right-of-way grant should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE, Albuquerque, NM 87107.

Dated: June 11, 1990.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 90-14348 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-FB-M

[NM-010-4211-11/GPO-0111]

Amendment of Right-of-way Grant; New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: Approximately ten miles of pipeline authorized by NM42439 will be increased in size from 20 inches to 30 inches.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), El Paso Natural Gas Company has applied to amend right-of-way NM42439 to increase the diameter from 20 inches to 30 inches for 10.173 miles. The 30 inch diameter natural gas pipeline will cross the following lands:

New Mexico Principal Meridian

T. 30 N., R. 10 W.,
Sec. 4: Lot 8;
Sec. 5: Lots 5, 6, 10, 11, 15, 17, 18;
Sec. 7: Lot 20;
Sec. 18: Lots 5, 8, 9, 15, 16;
Sec. 19: Lots 6, 10, 11, 15, 16;
Sec. 30: Lots 7, 8, 9, 16.
Tl 31 N., R. 10 W.,
Sec. 23: Lots 6, 7, 8;
Sec. 24: Lots 2, 3, 4, 5, 6;
Sec. 28: Lot 2;
Sec. 27: Lots 1, 7, 8, 10, 11, 14;
Sec. 33: Lots 1, 7, 8, 10, 11, 13, 14;
Sec. 34: Lots 1, 2.
T. 29 N., R. 11 W.,
Sec. 1: Lot 4;
Sec. 2: NW¼SE¼;
Sec. 11: NW¼NE¼, E2W2.
T. 30 N., R. 11 W.,
Sec. 25: Lots 9, 15.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the amendment should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE, Albuquerque, NM 87107.

Dated: June 11, 1990.

Patricia E. McLean,

Associated District Manager.

[FR Doc. 90-14349 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-FB-M

[ES-030-00-4212-14; WIES 041392; 0-00157 ELM]

Realty Action: Sale of Public Land in Oneida County, Wisconsin; Modified; Competitive Sale WIES 041392A and WIES 041392B; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land, Correction.

SUMMARY: This notice corrects the date of the modified competitive sale, tracts WIES 041392A and WIES 041392B as published in the **Federal Register** on May 17, 1990, Volume 55, No. 96, page 20536. The correct date is August 6, 1990.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 90-14345 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-GJ-M

[CO-010-00-4111-08]

Intent To Prepare a Resource Management Plan and Environmental Impact Statement for White River Resource Area, Craig District, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan and Associated Environmental Impact Statement for the White River Resource Area and Cancellation of the Amendment to the White River Management Framework Plan and Piceance Basin Resource Management Plan.

SUMMARY: The White River Resource Area, Craig District, Colorado State Office, hereby gives notice of its intent to prepare a resource management plan and environmental impact statement for the White River Resource Area. This notice also initiates the scoping process to examine the proposed issues and planning criteria. The White River Resource Area, located in northwest Colorado, contains approximately 1.4 million acres of public land and an additional 700,000 acres of public minerals underlying lands of other ownership.

EFFECTIVE DATE: Comments on the proposed issues, planning criteria, alternatives, and resource disciplines involved will be accepted through July

20, 1990. Public scoping meetings will be held in Rangely, Colorado, at the Chevron Production Office meeting room located at 100 Chevron Road, east of Rangely, on June 18, 1990, beginning at 7 p.m.; at the White River Resource Area Office in Meeker, Colorado, on June 20, 1990, beginning at 7 p.m.; and at the BLM District Office, 3rd Floor Conference Room, 764 Horizon Drive in Grand Junction, Colorado, on June 21, 1990, beginning at 7 p.m. A newsletter will be sent out to all interested individuals and groups requesting comments on the planning proposal. Public meetings will be announced through the local news media. Additional public participation opportunities will be provided for comment on the alternatives and upon publishing the Draft RMP/EIS.

FOR FURTHER INFORMATION CONTACT: Roger Wickstrom, Team Leader, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641–0928, telephone (303) 878–3601.

SUPPLEMENTARY INFORMATION: This Resource Management Plan will replace the existing White River Management Framework Plan and the Piceance Basin Resource Management Plan. Existing decisions in either document, which are still valid, will be carried forward into the new Resource Management Plan. The White River Management Framework Plan (MFP) and the Piceance Basin Resource Management Plan (RMP) are located in the White River Resource Area office in Meeker, Colorado. The plan amendment process, initiated in February 1980 and published in the Federal Register on February 21, 1990, is cancelled and issues and concerns associated with that process will be carried forward to the Resource Management Planning process.

The following issues are anticipated in the White River Resource Management Plan:

1. *Oil and Gas Leasing:* Decisions in the Resource Management Plan will determine which public land and minerals will be available for oil and gas leasing and what stipulations may be necessary to protect other resource values. This issue will bring oil and gas leasing into compliance with the latest Bureau of Land Management program guidance for fluid minerals (Bureau of Land Management Manual Section 1624.2).

2. *Off-Highway Vehicle Management:* Decisions will determine off-road vehicle designations for the public lands within the White River Resource Area. All public lands will be designated open, closed, or limited. Actions to be taken in response to user needs in unrestricted areas will identify opportunities for cooperating in the statewide OHV program partnership.

3. *Wild Horse Management:* Decisions will determine management guidelines for wild horses within the Piceance Basin Herd Management Area and horses outside of the designated area.

4. *Land and Mineral Ownership Adjustment:* Decisions will determine whether land and/or minerals will be available for disposal and what method of disposal will best serve the public interest.

5. *Special Managment Areas:* Decisions will determine what areas will receive special designation to protect or enhance significant scenic, riparian, natural, geologic, cultural, plant, or wildlife values.

6. *Black-Footed Ferret Recovery Program:* This decision will determine the feasibility for the reintroduction of the threatened and endangered black-footed ferret in the River Resource Area.

7. *Public Access:* The decision will be to determine where public access will be sought.

8. *Recreation Management:* Decisions will determine Special and Extensive Recreation Management Areas, management objectives, and recreation management actions.

Additional issues may be identified through public scoping and will be analyzed through the Resource Management Plan process. The proposed planning criteria used to address these issues are summarized below:

1. Oil and Gas—(a) Identify lands eligible for leasing through consultation and application of laws and regulations. (b) Assess the ability of the lands to incur oil and gas development and the availability of the resource for development. (c) Compare the public values of oil and gas development with the public values of other alternative uses which may be precluded or impacted.

2. Off-Highway Vechicle Management—Identify: (a) How the four OHV designation criteria apply (reasons for OHV designations); (b) Management actions to enhance OHV recreation in unrestricted areas (cooperative actions in the statewide OHV program).

3. Wild Horses—Identify: (a) Herd size for the herd managment area; (b) crictical use levels which will not be exceeded and criteria that might guide adjustments among consumptive uses; (c) constraints that will be required on other resources; (d) habitat condition.

4. Land and Mineral Ownership Adjustment—Identify: (a) Location, resource values, and manageability of the land and/or minerals identified for disposal or acquisition; (b) the land and mineral ownership adjustment authorities under which the lands may be conveyed; (c) the conditions, including activity planning requirements, if any, which must be met in order to allow conveyance; (d) the management objectives to be served by adjusting land and/or mineral ownership; (e) the withdrawals to be modified or revoked in support of these actions.

5. Special Management Areas—Identify: (a) General management objectives and strategies for the area; (b) constraints on development and use of the area; (c) the areas warranting national or international recognition that meet the criteria for National Natural Landmark, Man and the Biosphere or World Heritage, National Historic Landmark, or Area of Critical Environmental Concern designations.

6. Black-Footed Ferret Recovery Program—Identify: (a) What areas are suitable for reintroduction; (b) what protection measures would be required for reintroduction; (c) what resources would be impacted by reintroduction.

7. Public Access—Identify: (a) The criteria for areas where access should be acquired; (b) known areas where access should be acquired; (c) benefits to the public.

8. Recreation Management—Identify: (a) Public recreation needs; (b) classification of recreation opportunities; (c) intensity of recreation management required; (d) any areas needing special recreation management designation and the types required.

Alternatives proposed for consideration include: (1) No Action—defined as continuation of current management; (2) Limited Action—defined as those actions necessary to meet the intent of existing laws and regulations; (3) Proposed Action Alternative—defined as those actions necessary to bring management into compliance with current BLM policy and with changes in management direction through consultation with staff and the public.

The White River Resource Management Plan will be prepared using an interdisciplinary team, including persons trained in geology, petroleum engineering, hydrology, soils, air, wildlife, range, recreation, realty, surface protection, cultural resources, and economics.

Dated: May 31, 1990.

Tom Walker,

Associate State Director.

[FR Doc. 90–14358 Filed 6–20–90; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Notice of Receipt of Application Amendment for Endangered Species Permit

The following applicants have amended their application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.):

File No: PRT–739678

Applicant: County of Riverside and 5 cities within Riverside County, California

The County of Riverside and the cities of Moreno Valley, Hemet, Perris, Riverside and Lake Elsinore within Riverside County applied for a permit under section 10(a)(1)(B) of the Endangered Species Act to incidentally take Stephens' kangaroo rat (*Dipodomys stephensi*), an Endangered Species, in the course of otherwise lawful activities. The application includes a Habitat Conservation Plan (HCP) and Implementation Agreement between the Fish and Wildlife Service (FWS), the applicants, and the Riverside County Habitat Conservation Agency (JPA), an agency created to implement the conservation program. A joint State/Federal Environmental Impact Statement/Environmental Impact Report was prepared. Notice of the original application was published in the **Federal Register** on July 31, 1989 (54 FR 31584). That notice invited submission of comments on the application for a period of 30 days.

The applicants request the permit to incidentally take Stephens' kangaroo rat (SKR) in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include much of the historical range of the species within the County and would allow taking incidental to otherwise lawful development of 20 percent or 4,400 acres, whichever is less, of the approximately 22,000 acres of remaining occupied habitat known for the species in western Riverside County.

To mitigate for the incidental take, it is proposed that up to 4,400 acres (as needed to replace loss of habitat at a 1:1 ratio) of occupied habitat in the vicinity of lands currently in public ownership be acquired, during the two year permit period, and placed into public or semipublic ownership for the management of the species. The acquisition of the private lands would be funded from mitigation fees ($1,950 per acre) collected by the applicant jurisdictions. The applicant jurisdictions would approve the issuance of land development permits, subsequent to a mandated review under the California Environmental Quality Act of potential impacts to other environmental resources, for public and private project proponents in specified portions of the county (outside of areas being studied for inclusion in a permanent reserve system for the species) during the two-year permit period.

On June 1, 1990, the applicants submitted a number of technical amendments to their application. The substantive portion of the request pertains to the portions of the conservation plan and implementation agreement that address limitations on the amount of take. As stated above, the maximum amount of habitat on which incidental take would be allowed during the two-year permit period will be limited to 4,400 acres or 20 percent of the total amount of SKR occupied habitat within the HCP area, whichever is less. In addition, the amount of occupied habitat in which incidental take would occur within the HCP area during any three-month period following issuance of the incidental take permit cannot exceed 10 percent, in area, the amount of occupied habitat acquired as replacement habitat.

The applicants propose to incorporate into the appropriate provisions of the HCP and Implementation Agreement the following provision with regard to acquisition of replacement habitat:

"Notwithstanding the foregoing, the obligation to acquire replacement habitat within such six-month period on a one-to-one basis for each acre of incidental take allowed will not apply to incidental take allowed to occur during the first six month period on up to 300 acres of occupied SKR habitat within the HCP area subject to the following terms and conditions: (i) For each such acre of take allowed the County or participating city permitting such incidental take shall pay to the JPA an amount equal to twice the estimated cost of acquiring one acre of replacement habitat and shall receive a credit against impact fees otherwise payable to the JPA in an amount equal to that portion of the estimated cost of acquisition of replacement lands that are attributed to unoccupied land; (ii) all funds received by the JPA are to be held in a separate trust account for the purpose of acquiring replacement habitat on a one-to-one basis within reserve study areas; and (iii) all such replacement habitat is to be acquired as expeditiously as possible, but in all events prior to the expiration of one year from the date of receipts of funds. A more detailed description of the limitations on the amount of take is set forth in the Implementation Agreement (Attachment '1')."

In addition, the applicants wish to incorporate the following provision:

"Except as otherwise expressly provided in this Short-term HCP and in the Implementation Agreement, the USFWS must be satisfied that the amount of occupied habitat on which take has occurred during the previous six months does not exceed by more than 10 percent, in area, the amount of occupied habitat acquired during the same period. If take exceeds acquisiton by more than 10 percent, the permit will be suspended until the required level of acquisition is reached. The USFWS also may disapprove of any specific acquisiton proposal if it does not find the proposed acquisition location appropriate."

The applicants further propose to replace all references to the word "quarterly" in the Short-term HCP and Implementation Agreement to read "semi-annual" or "semi-annually" as the context requires. Finally, the applicants note a modification in the description of the Alessandro Heights reserve study area such that the study area currently includes 768 acres, rather than 798 acres as stated in the HCP, (148 acres of low, 582 acres of medium and 38 acres of high density populations as opposed to 158 acres, 600 acres and 38 acres, respectively).

Copies of the amendments to the application and associated documents (addendum and modification to the HCP, revised Implementation Agreement and draft environmental assessment on the proposed amendments) are on file at the following location and are available for inspection by the public during normal business hours: Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, OR 97232–4181 (503/231–6150).

Interested parties may comment on this modification request by submitting written views, arguments, or data at the above address. Comments must be received by the Assistant Regional Director within 15 days of the date of this publication. Please refer to "PRT–739678/Riverside County" when submitting comments.

Dated: June 18, 1990.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–14346 Filed 6–20–90; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Meeting of Advisory Committee for U.S. Trade and Development Program

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee for the U.S. Trade and Development Program ("TDP"). The meeting will be held on Friday, July 20, 1990 at the Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC.

The Committee will discuss American competitiveness in the world economy and ways to make TDP even more effective in enhancing American competitiveness.

The meeting will begin at 9 a.m. and will adjourn when its business is completed that afternoon. The meeting is open to the public. Any interested persons may attend, file a written statement with the Advisory Committee, and, when recognized by the chairperson, present short oral statements as time permits.

For further information, contact Priscilla Rabb-Ayres, Director, TDP, Room 309, S.A.-16, Washington, DC 20523-1602, Telephone: 703-875-4357.

Dated: June 13, 1990.

Priscilla Rabb-Ayres,

Director.

[FR Doc. 90-14351 Filed 6-20-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31685]

Exemption; Carolina & Northwestern Railroad, Inc.—Lease and Operation Exemption—Southern Railway Co.

Carolina & Northwestern Railroad, Inc. (C&NW), has filed a notice of exemption to lease (with an option to purchase) and operate 22.7 miles of rail line owned by the Southern Railway Company. The line extends between milepost HG-90.0, at Hickory, NC, and milepost HG-112.7, at Valmead, NC.

This transaction is related to a notice of exemption filed concurrently, in Finance Docket No. 31686, *Rail Link, Inc.—Continuance in Control Exemption—Carolina & Northwestern Railroad, Inc.*

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

C&NW shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14251 Filed 6-20-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31686]

Exemption; Rail Link, Inc.—Continuance in Control Exemption—Carolina & Northwestern Railroad, Inc.

Rail Link, Inc. (Rail Link), a non-carrier, has filed a notice of exemption to continue to control Carolina & Northwestern Railroad, Inc. (CNWS). Rail Link already controls non-connecting class III rail carriers Commonwealth Railway Incorporated, which operates in Virginia, and Carolina Coastal Railway, Inc., which operates in North Carolina. CNWS has concurrently filed a notice of exemption in Finance Docket No. 31685, *Carolina & Northwestern Railroad, Inc.—Lease and Operation Exemption—Southern Railway Company.*

Rail Link indicates that: (1) CNWS will not connect with Rail Link's other railroads; (2) the continuance in control is not part of a series of transactions that would connect CNWS with any of the other railroads owned by Rail Link; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any pleadings must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Decided: June 13, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14252 Filed 6-20-90; 8:45 am]

BILLING CODE 7035-01-M

[1] C&NW certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years and older that will be transferred as a result of this transaction.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure to consider proposed amendments submitted by the Advisory Committees under the provisions of chapter 131 of title 28, United States Code. The meeting will be open to public observation but not participation. The meetings will commence each day at 9:00 a.m.

DATES: July 12-13, 1990, Alexandria, Virginia.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, Virginia 11314.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 633-6021.

Dated: June 13, 1990.

James E. Macklin, Jr.,

Secretary, Commerce on Rules of Practice and Procedure.

[FR Doc. 90-14361 Filed 6-20-90; 8:45 am]

BILLING CODE 2211-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on June 7, 1990, a proposed consent degree in *United States* v. *National Bank of the Commonwealth and Seasonall Industries, Inc.*, Civil Action No. 89-2127, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed consent decree requires the National Bank of the Commonwealth to reimburse the Hazardous Substance Superfund $47,500 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Cherry Street Site in Punxsutawney, Pennsylvania. The parties to the consent decree are the United States and National Bank of the Commonwealth.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Bank of the Commonwealth and Seasonall Industries, Inc.*, DOJ Ref. 90-11-3-338A.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office and Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-14286 Filed 6-20-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Enforcement Action

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19309, notice is hereby given that a proposed consent decree in United States v. City of New York and its Department of Sanitation (E.D.N.Y.), Civil Action No. CV-90-1607, was lodged with the United States District Court for the Eastern District of New York on May 29, 1990. This decree settles an enforcement action involving alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the applicable portions of the New York State implementation Plan, 6 NYCRR parts 201 and 222.

The Department of Justice will receive for 30 days from the date of publication of this notice, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. City of New York and its Department of Sanitation, D.J. ref. No. 90-5-2-1-1296.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadam Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. When requesting a copy by mail, please enclose a check in the amount of $3.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-14285 Filed 6-20-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Occupational Exposure to Hand-Arm Vibration; Criteria Document Availability

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of criteria document.

SUMMARY: The Mine Safety and Health Administration (MSHA) has received a criteria document for a recommended standard from the National Institute for Occupational Safety and Health (NIOSH) entitled "Occupational Exposure to Hand-Arm Vibration." (NIOSH Publication No. 89-106). Under section 101(a)(1) of the Federal Mine Safety and Health Act of 1977, this notice serves as the Secretary of Labor's response to the NIOSH recommendations. While MSHA believes that hand-arm vibration syndrome (HAVS) is a concern that may need to be addressed in the mining industry, the NIOSH criteria document does not provide the Agency with sufficient information to proceed with comprehensive and effective rulemaking at this time. The recommendations contained in the criteria document constitute valuable information which can be used by the mining community to address any hazards that may be associated with HAVS. This notice lists MSHA's major concerns that form the basis for its decision not to proceed with rulemaking at this time and solicits comments on the NIOSH criteria document.

DATES: Comments on the NIOSH criteria document must be submitted to MSHA by October 31, 1990.

ADDRESSES: Copies of the NIOSH Document, "Occupational Exposure to Hand-Arm Vibration" may be obtained frm the Office of Standards, Regulations, and Variances, MSHA; room 631; Ballston Tower No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203. Comments on the criteria document shoud be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

NIOSH has concluded that exposure to vibrating tools can cause symptons of

peripheral vascular and peripheral neural disorders of the fingers, hands, and arms. This can result in numbness, pain, blanching of the fingers, loss of finger dexterity, and necrosis of the fingers. The composite of vibration-induced symptons is referred to as HAVS. The prevalence and severity of HAVS usually increases as the acceleration level and duration of use of vibrating tools increases. HAVS is a chronic, progressive disorder with a latency period that may vary from a few months to several years. The early stages of HAVS are usually reversible if further exposure to vibration is reduced or eliminated. However, treatment is usually ineffective for the advanced stages of HAVS.

NIOSH has recommended a standard for exposure to hand-arm vibration that includes a measuring methodology, engineering controls, good work practices, use of protective clothing and equipment, worker training programs, administrative controls such as limited daily use time, and medical monitoring and surveillance. NIOSH has stated that it currently cannot establish a specific quantitative exposure limit to eliminate the risk of developing HAVS in all workers exposed to hand-transmitted vibration from all types of vibrating tools. NIOSH also states, however, that prevention is critical and that adherence to the recommendations should prevent or greatly reduce the potential for vibration-exposed workers to develop HAVS.

II. Issues

The following discussion addresses specific issues raised by the NIOSH criteria document:

A. Dose-Response Relationship

According to NIOSH, a specific dose-response relationship for HAVS cannot be currently determined due to the complex nature of HAVS and the general lack of data. Thus, MSHA has not been given sufficient information to establish a permissible exposure limit (PEL).

B. Mining Tools

The NIOSH criteria document is based on studies conducted on a variety of vibrating machinery. Based on these studies, the criteria were extrapolated to all vibrating tools. MSHA believes that specific data are needed on tools used in the mining industry to define an appropriate scope for the standard and to determine the nature of the vibrating tools to be addressed.

C. Vibration Measurements

1. NIOSH recommends that exposure monitoring be performed initially, and annually thereafter, on all vibrating tools and that records of the acceleration levels be maintained.

MSHA believe that without a PEL this information has practical utility only for future epidemiologic studies. While such studies would be useful if they were based on a consensus methodology, industry-wide exposure monitoring at this time is not warranted.

2. MSHA believes that the instrumentation that is required to perform the recommended vibration measurements may not be sufficiently durable to withstand the adverse conditions of the mining environment. Additionally, the Agency is concerned with the accuracy and precision of the measurement methodology specified in the NIOSH criteria document.

D. Vibration Controls

NIOSH recommends that engineering controls and work practice controls be implemented to reduce hand-transmitted vibration exposure to the "lowest feasible level."

MSHA is concerned that without a recommended exposure limit (REL), specified engineering controls, or specified work practices, mine operators and vibrating-tool manufacturers have little basis for establishing optimization of control design.

E. Labeling

NIOSH recommends mandatory labeling of vibrating hand-held tools with the associated vibration acceleration level.

MSHA believes that such a requirement in the mining industry would be ineffective. The stated vibration level may become invalid because the vibration levels change as a function of time, maintenance, and manner or tool usage. Also, in the absence of a REL, the vibration level can only be used as a guide.

F. Medical Monitoring

MSHA has concerns about properly identifying the population at risk and targeting the appropriate medical surveillance for each stage of HAVS and each vibration exposure level.

Dated: June 12, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-14307 Filed 6-20-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for Relationship Between Arts Education and Performance on Standardized Tests for Grades K-12

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for research and collecting existing data, and analysis of raw test data, which show the relationship between instruction and experience in the arts and performance on standardized tests by students in grades K–12. It is expected this project will result in a report summarizing the studies which will be disseminated to a wide variety of constituencies. Those interested in receiving the Solicitation package should reference Program Solicitation PS 90–08 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 90–08 is scheduled for release approximately July 6, 1990 with proposals due on August 13, 1990.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 90-14284 Filed 6-20-90; 8:45 am]

BILLING CODE 7537-01-M

Independent Commission; Meeting

Notice is hereby given that a meeting of the Independent Commission established by Public Law 101–121 will meet on June 25, 1990, from 10 a.m.—3:30 p.m. in room 311 at the Pension Building, 441 F Street, NW., Washington, DC 20001.

This meeting will be open to the public on a space available basis. Items to be discussed are the review of the National Endowment for the Arts' grants making procedures, including those of its panel system, and consideration of whether the standard for publicly funded art should be different from the standard for privately funded art.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-14383 Filed 6-20-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

Notice of Withdrawal of Application For Amendment to Facility Operation License, Illinois Power Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (the licensee) to withdraw its May 18, 1988 application for proposed amendment to Facility operating License No. NPF–62 for the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois.

The proposed amendment would have revised note "c" on Table 4.11.2–1 of the Clinton Technical Specifications.

The Commisison has previously issued a Notice of consideration of Issuance of Amendment published in the **Federal Register** on December 14, 1988 (53 FR 50330). However, by letter dated January 26, 1990 and telephone conversation on June 8, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 18, 1988, and the licensee's letter dated January 26, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 14th day of June 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14394 Filed 6-20-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 4 to Facility Operating License No. NPF–82, issued to Long Island Lighting Company (LILCO) (the licensee), which revised the Technical Specifications for operation of the Shoreham Nuclear Power Station, Unit 1 (the facility) located in Suffolk County, New York. The amendment was effective as of the date of its issuance.

The amendment revised paragraph 2.E to the Shoreham license allowing reclassification of certain vital areas and other modifications which allows LILCO to reduce the size of the Shoreham facility's security force.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 21, 1990 (55 FR 10540). A request for a hearing was filed on April 20, 1990 by the Shoreham-Wading River Central School District and the Scientists and Engineers for Secure Energy, Inc.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to the action see (1) The application for amendment dated January 5, 1990 and supplemented by letter dated April 5, 1990, the supplemental letter did not change the original intent of the application request and did not affect the staff's original no significant hazards determination, (2) Amendment No. 4 to Facility Operating License No. NPF–82, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 14 day of June 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14395 Filed 6-20-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 12, 1990
Thursday, July 26, 1990
Thursday, August 9, 1990
Thursday, August 23, 1990
Thursday, September 13, 1990
Thursday, September 27, 1990

These meetings will start at 10:30 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: June 14, 1990.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 90-14365 Filed 6-20-90; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Trade Policy Staff Committee; Review and Solicitation of Public Comment: U.S. International Trade Commission Public Report Assessing Economic Impact of Proposed Modifications of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) as a Result of Petitions Filed for Special GSP Review for Certain Andean Countries

As indicated in a previous notice of March 10, 1990 (55 FR 8249), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the U.S. International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the Special GSP Review for Bolivia, Colombia, Ecuador and Peru. The report will be available on June 22 from the USITC by calling Cindy Payne at the Office of Industries at (202) 252-1451. The USITC is located at 500 E Street, SW., Washington, DC. The report will also be available for review by appointment after June 22 at the USTR Public Reading Room (101), in Washington, DC. Appointments may be scheduled by calling (202) 395-6186.

All comments concerning the USITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, Room 414, 600 17th Street, NW., Washington, DC 20506. Comments must be received no later than 5 p.m. Monday, July 2, 1991. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

Daniel F. Leahy,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 90-14368 Filed 6-20-90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems Meeting to be held July 9-10 in the RTCA Conference room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks, (2) approval of minutes of the sixth meeting held on March 15-16, (3) review of initial draft report, (4) discussion of airport classification by user category, (5) define future committee work schedule, (6) other business, and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 29.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-14334 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA General Docket No. H-90-1]

Petition for Exemption or Waiver for a Test Program; National Railroad Passenger Corp.

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a petition for a temporary waiver of compliance with the provisions of title 49, Code of Federal Regulations, § 13.57(b), that part of the Federal Track Safety Standards that prescribes the maximum allowable operating speeds for trains on curves as a function of superelevation and curvature. The petitioner requested this waiver in order to conduct a 90-day test program, the primary purpose of which will be the evaluation of curving performace of rail vehicles described below.

The petitioner recognizes a need to improve trip times for rail passenger service between Boston and New York City. One way to reduce trip time between this city pair would be the negotiaion of curved track at speeds exceeding the values specified in § 213.57(b). The restrictions contained in this section are based on a limiting unbalance of track superelevation, often called cant deficiency, of three inches.

(The theoretical nature of cant deficiency, the origin of the three-inch value and the safety considerations of exceeding this limit with certain rail vehicle types were comprehensively discussed in three prior FRA notices published in the **Federal Register**: 52 FR 38035, October 13, 1987; 53 FR 984, January 14, 1988; 53 FR 7627, March 9, 1988. The October 13, 1987 notice is particularly detailed.)

FRA is considering the conditions under which the test series might be carried out so that the risk of accident to the specimen equipment and its crew as well as hazard to the abutting community would be minimal. In general, the approach to accomplishing this will be: (1) To determine, from static lean tests, certain physical constants characteristic of specific vehicle behavior; (2) to use these data in a modelling exercise to predict vehicle/track interaction at the target test cant-deficient speeds; and (3) to require that sufficient, appropriate instrumentation be installed on each test vehicle to be able to monitor vehicle conformance with the limiting values arrived at through step (2).

The petitioner desires to investigate the following types of rolling stock for ultimate assignment to revenue passenger service: Heritage cars, Material Handling cars, Horizon cars and Viewliners. All of this equipment is currently in revenue operation, but at curving speeds less than the maximum envisioned by the petitioner during test. The test zone defined by the petitioner includes Tracks 1 and 2 between New Haven, Connecticut and Boston. Within this test zone, the petitioner desires to operate the test rolling stock at speeds developing up to eight inches of cant deficiency.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not seem to warrant it. An opportunity to present oral comment will be provided, however, if by August 10, 1990, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H-90-1 and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by August 10, 1990, will be considered in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 8, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-14373 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 15, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: IRS Customer Satisfaction Questionnaire for Tax Practitioners
Description: The data collected will be used to analyze the quality of service that the Eastern Area Distribution Center (IRS) has given to tax practitioners during the filing season. The information will be used by IRS managers to determine if the current service is meeting this group's needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Small businesses or organizations
Estimated Number of Respondents: 550
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 138 hour
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-14382 Filed 6-20-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Automated Data Processing Systems; Meeting

In accordance with Public Law 92-463, the Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Automated Data Processing Systems will be held in room 1010, 810 Vermont Avenue NW., Washington, DC, on July 24, 1990. This morning session will be held from 9 a.m. to 12 Noon, and the afternoon session will be held from 12:45 p.m. to 4:30 p.m.

The Advisory Committee will be presented with an overview of the Department of Veterans Affairs strategic IRM planning process and the Veterans Health Services and Research Administration's strategic information systems plans. The Committee will then discuss emerging information

technologies in the health care marketplace and how they relate to what VA is doing in supporting its medical operations.

The meeting will be open to the public up to the seating capacity of the room. Due to the limited seating capacity of the room, those who plan to attend the session should contact Lorraine Pertino, Office of Information Resources Management (731), Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, 20420, at least 5 days before the meeting. Mrs. Pertino's telephone number is (202) 233-0204.

Dated: June 7, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-14295 Filed 6-20-90; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on July 12-13, 1990. The session on July 12 will be held at the Capital Hilton Hotel, 16th and "K" Streets NW, Washington, DC, and the session on July 13 will be held in the Omar Bradley Conference room (10th floor) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW, Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on July 12 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on July 13 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Pertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233-3985) prior to July 6, 1990.

Dated: June 5, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-14294 Filed 6-20-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Thursday, July 12, 1990, 10:00 a.m.

PLACE: 1111 20th Street NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken June 18, 1990.

MATTERS TO BE CONSIDERED: Formal rule making—adjustment of the syndicated exclusivity surcharge.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, 202-653-5175.

Dated: June 18, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90-14462 Filed 6-18-90; 5:02 am]

BILLING CODE 1410-09-M

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMER: 90-31977.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 21, 1990, 10:00 a.m.

This meeting will be open to the public.

The following items have been added to the agenda:

Draft Debt Settlement Forms with Explanation and Justification
Proposed Rulemaking Proceeding on Foreign National Issue

* * * * *

DATE AND TIME: Tuesday, June 26, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 73g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 28, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Draft Advisory Opinion 1990-11—Friends of Gary Hart '88
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-14558 Filed 6-19-90; 3:34 pm]

BILLING CODE 6715-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3-90

Notice of Meetings—Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gves notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Friday, June 29, 1990 at 10:00 a.m.

Subject Matter

Oral Hearing on objection to Proposed Decision issued on claims against the Government of the Arab Republic of Egypt:
EG-084—Yolanda Sheriff
Hearings on the Record on objections to Proposed Decisions issued on claims against the Government of the Arab Republic of Egypt:
EG-007—Estate of Felix Mansour Benzakian, Deceased
EG-114—Saad Mansour Ibrahim, et al.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC, on June 18, 1990.

Judith H. Lock,

Administrative Officer.

[FR Doc. 90-14559 Filed 6-19-90; 3:34 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rules, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 795

[OPTS-42100B; FRL-3527-4]

Tributyl Phosphate; Final Test Rule

Correction

In rule document 89-18850 beginning on page 33400 in the issue of Monday, August 14, 1989, make the following correction:

§795.228 [Corrected]

On page 33412, in the first column, in § 795.228(c)(2)(iii)(B), the paragraphs designated "(1)" and "(2)", should be designated as "*(1)*" and "*(2)*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 444 and 448

[Docket No. 76N-482B]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

Correction

In proposed rule document 90-13316 beginning on page 23450, in the issue of Friday, June 8, 1990, make the following corrections:

§ 444.542l [Corrected]

1. On page 23453, in the second column, in § 444.542l(a)(1), in the third line, after "sulfate"insert a "hyphen"(-).

§ 444.542l [Corrected]

2. On the same page, in the same column, in the same section (§ 444.542l(a)(1)), in the eighth line, "8" should read "B".

§ 448.513c [Corrected]

3. On the same page, in the third column, at § 448.513c, in the third line of the section heading, after "sulfate" insert a hyphen (-).

§ 448.513c [Corrected]

4. On the same page, in the same column, in § 448.513c(a)(1)(iii), in the last line, "8" should read "B".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 89N-0058]

Human and Veterinary Drugs; Editorial Amendments

Correction

In rule document 90-6284 beginning on page 11575 in the issue of Thursday, March 29, 1990, make the following correction:

On page 11584, in the third column, under § 452.910, in the third line, "(a)(3)(ii)", should read "(a)(4)(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90D-0194]

Compliance Policy Guide for Radioimmunoassay (RIA) Analysis of Hair To Detect the Presence of Drugs of Abuse; Availability

Correction

In notice document 90-13649 beginning on page 23985 in the issue of Wednesday, June 13, 1990, in the second column, in the last line of the **SUMMARY**, "(21 U.S.C. 360)" should read "(21 U.S.C. 360e)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-010804, et al.]

Proposed Continuation of Withdrawals; Idaho

Correction

In notice document 90-11608 appearing on page 20538 in the issue of Thursday, May 17, 1990, make the following corrections:

On page 20538, in the first column, under **Boise Meridian**, in the land description for Rush Creek Administrative Site, the third line should begin "Sec. 28".

On the same page, in the second column, in the land description for Bear Gulch Picnic Area, an additional "NE1/4" was omitted from the end of the description.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4920-10-4410; N-46869]

Realty Action; Private Exchange in Clark and Washoe Counties, NV

Correction

In notice document 90-12765 appearing on page 22851, in the issue of Monday, June 4, 1990, make the following correction:

In the first column, in the land description, under "T. 22 S., R. 61 E.", under "Sec. 17", in the fourth line, after "W½" insert "E½".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

RIN 1212-AA53

Payment of Premiums

Correction

In rule document 89-15866 beginning on page 28944, in the issue of Monday, July 10, 1989, make the following correction:

§ 2610.24 [Corrected]

On page 28959, in the first column, in § 2610.24(c), the first paragraph designated "(2)" should read "(1)".

BILLING CODE 1505-01-D

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federal register

Thursday
June 21, 1990

Part II

Department of Transportation

Coast Guard

33 CFR Part 154 et al.
46 CFR Part 30 et al.
Marine Vapor Control Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, 156

46 CFR Parts 30, 32, 35, 39

[CGD 88-102]

RIN 2115-AC65

Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting new regulations for the safe design, installation, and operation of marine vapor control systems. Some states, in an attempt to meet the national ambient air quality standard for ozone set by the EPA under the Clean Air Act, have issued requirements for the control of volatile organic compound (VOC) emissions from tank vessels which carry oil and chemicals in bulk. Vapor emission control is also being considered as a means of reducing occupational exposure to toxic chemicals such as benzene. Unsafe vapor control system design or operation could result in fires and explosions, tank ruptures, and oil spills. This rulemaking does not require the installation or use of vapor control systems.

DATES: This regulation is effective July 23, 1990. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security, and Environmental Protection (G-MTH-1), (202) 267-1217, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On October 6, 1989, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (54 FR 41366). Interested persons were requested to submit comments. On November 29, 1989, the Coast Guard published a notice in the Federal Register (54 FR 49097) extending the comment period for the NPRM from November 20, 1989 to January 2, 1990. A total of 103 comment letters were received. Because of comments received which requested either a public hearing or a CTAC meeting, a CTAC meeting open to the public was held on November 28, 1989.

Drafting Information

The principal persons involved in drafting this rule are Lieutenant Commander Robert H. Fitch, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

During loading or ballasting of bulk liquid cargo tanks, the liquid introduced into a tank displaces vapors within the tank, which in typical operations today are released to the atmosphere. The displaced vapors of certain cargoes contain VOC's which are a precursor to the formation of ozone, a major air pollutant in some areas. Several states, acting pursuant to their authority under the Clean Air Act of 1970, are considering requirements for the control of VOC emissions from the loading and ballasting of tankships and tank barges. Three states currently have regulations which will require the control of marine VOC emissions in the future.

Marine occupational exposure offers another reason for using vapor control systems. In a separate regulatory project (CGD 88-040), the Coast Guard is developing regulations requiring lower occupational exposure limits for benzene. A Notice of Proposed Rulemaking concerning benzene exposure was published in the Federal Register on January 29, 1990 (55 FR 2978). In anticipation of these requirements, vessel and facility operators are considering the use of marine vapor control systems for the purpose of reducing occupational exposure to benzene and other hazardous chemicals.

In a typical vapor control system, vapors emitted from a tank vessel being loaded or ballasted are collected and piped ashore where they are destroyed through a process such as incineration, recovered through a process such as refrigeration/condensation, or returned to the shore tank being emptied (vapor balancing). When vapors are collected for purposes of reducing occupational exposure, and air pollution is not a factor, facility operators may choose to pipe the vapors to a remote location and disperse them to the atmosphere.

The use of marine vapor control systems introduces potentially significant new hazards to the loading and ballasting operations of tank vessels. The Coast Guard can best address these hazards through the development of safety regulations for tank vessels and facilities using vapor control systems. This rulemaking does not require The installation or use of vapor control systems.

The primary hazards associated with the use of vapor control equipment are: Cargo tank over- or underpressurization; overfill and spillage; and fire, explosion, and detonation. The severity and likelihood of accidents which might result from the use of vapor control systems warrant Coast Guard measures to minimize the risk of such accidents. It is, for example, possible for a vapor control system pipeline interconnecting a tank on a tank vessel with a shoreside vapor processing system to be filled with a flammable vapor. An ignition of this vapor could initiate a detonation wave which would propagate along the pipeline in either direction at the speed of sound and would generate pressures exceeding 600 pounds per square inch. Such an ignition could originate in shoreside vapor processing units such as incinerators or flares. In 1983, such a flare initiated casualty occurred in a marine vapor control system. As a result, two barges were totally destroyed and considerable damage was done to the facility. Review of the casualty indicates that additional safety features, routine inspections, and better training of personnel would have contributed to minimizing the likelihood of this casualty.

Present regulations do not address vapor control in the comprehensive manner considered necessary for safe operation of vapor control systems. There are currently no safety regulations applicable to facility vapor control system installations. In the case of tank vessels, while there are existing regulations for piping and electrical equipment which are applicable to vapor control equipment on vessels, the regulations are at this time inadequate in addressing all of the hazards associated with vapor control. Because of the complexities of vapor control systems, proper training of both ship and facility personnel is also considered essential to the safe operation of vapor control systems. At this time there are no Coast Guard requirements dealing with the training and qualifications of personnel operating vapor control systems.

Recognizing the hazards associated with vapor control systems, the Coast Guard began to review proposed shoreside systems used in handling limited numbers of vessels in dedicated trade. While effective when vapor control system use was limited to a small number of dedicated trades, the case by case reviews fell short of providing a comprehensive safety check and providing the standardization considered necessary for widespread application of vapor control. Case by case review was also an inefficient means of conveying to Coast Guard field units and to industry the level of safety which must be provided.

The use of vapor control systems is expected to increase dramatically as states require their use to help achieve Clean Air Act standards for air quality and as industry increases its use of vapor control systems to meet new or proposed limits for occupational exposure to benzene and other carcinogenic chemicals carried in bulk. Given the anticipated increased use of vapor control systems, the Coast Guard can best ensure safety through regulations.

Because there was little historical experience to provide background data for vapor control systems and serious concerns existed over potential safety hazards introduced in implementing vapor control requirements, in 1986 the Coast Guard funded a National Research Council (NRC), Commission on Engineering and Technical Systems, Marine Board study to assess the technical, safety, and economic aspects of vapor control systems. The NRC study was released in January, 1988 and concluded that control and recovery of hydrocarbon vapors from tankships and tank barges was feasible with available technology provided that national safety standards for vapor emission controls were developed and implemented.

In response to the NRC recommendation, the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control was formed to develop standards for the design and operation of vapor control systems. The Subcommittee held its first meeting in August 1987. Six Subcommittee and ten working group meetings were held to develop the standards. All meetings were open to the public and announced in the Federal Register. CTAC presented the final recommendations to the Coast Guard in February 1989.

The Coast Guard funded a failure modes and effects analysis and a worst case scenario analysis on several hypothetical vapor control systems which included the safety provisions contained in earlier draft recommendations prepared by CTAC. On the basis of the analysis, the Coast Guard proposed changes to the CTAC draft recommendations. CTAC reviewed the Coast Guard recommendations and incorporated some of those recommendations in their final recommendations. The American Petroleum Institute (API) funded a quantitative hazards analysis (referred to as the API hazards analysis) based upon the final CTAC recommendations.

Some changes to the CTAC recommendations resulting from the API hazards analysis were incorporated in the proposed rules. Both the Coast Guard and the API studies are included in this rulemaking docket and are available for examination.

The CTAC recommendations were used as the basis for the proposed regulations in the notice of proposed rulemaking (NPRM) published in the Federal Register on October 6, 1989 (54 FR 41366). The recommendations were reorganized and revised as appropriate to conform with language required for regulations, and some recommendations were not included because they were outside the scope of this rulemaking. Specific technical deviations from the CTAC recommendations were discussed in the Discussion section of the NPRM.

A CTAC meeting was held on November 28, 1989, at which some questions raised in comments submitted to the docket up to that time were discussed. The meeting was announced in the Federal Register on November 2, 1989 (54 FR 46317), and was open to the public.

The close of the comment period was announced as November 20, 1989 in the NPRM. An extension of the comment period to January 2, 1990, was published in the Federal Register on November 29, 1989 (54 FR 49097).

The objective of this rulemaking is to provide standards for the safe design and operation of marine vapor control systems and provide qualification requirements for personnel operating vapor control systems. The requirements would be applicable to vessels and facilities that use vapor control systems to collect vapors of crude oil, gasoline blends, and benzene from a tank vessel's cargo tanks. This rulemaking will not require the installation or use of vapor control systems. The requirement to use a vapor control system will stem from a state requirement to control vessel emissions, or alternatively, as part of a vessel or facility operator's program for complying with personnel exposure requirements for hazardous chemicals.

Discussion of Comments and Changes to the Regulations

General

During the comment period, as extended, a total of 103 comment letters were received. Beginning with this General section, the comments are arranged by issue or topic addressed.

Fifteen comments requested an extension to the comment period. The requested extension ranged from December 20, 1989 to January 20, 1990. As previously discussed, the comment period was extended to January 2, 1990.

Seven comments requested either a public hearing or a CTAC meeting. As previously discussed, a CTAC meeting open to the public was held on November 28, 1989.

Six comments stated that the next step in the rulemaking should be to issue an interim final rule, to permit the industry and the Coast Guard to begin implementation of the requirements while still permitting modifications to be made to the regulations as experience is obtained. Two of the comments recommended a 24-month interim final rule comment period. The Coast Guard's position is that an interim final rule is not appropriate for this rulemaking. Because vapor control systems involve large expenditures on equipment, any revisions in the interim final rule could have significant impact on vessels and facilities as they replace equipment to comply with the changes in the requirements. The Coast Guard will evaluate the adequacy of these regulations as they are applied and necessary changes will be proposed through the normal rulemaking process.

Federalism

Three comments were received regarding the federalism implications of this rulemaking. All supported the concept that states should not be permitted to modify requirements relating to standardization and safety. One of the comments stated that legislation is needed to make the control of marine emissions a national issue, which must provide specific responsibilities for the EPA, the Coast Guard, and the states. While such legislation might be beneficial, it is beyond the scope of this rulemaking.

Timing

One comment stated that the compliance date for state vapor control regulations should coincide with the ability of facilities to acquire the hardware to comply with these regulations. Another comment stated that most of the modifications will have to be done with the ships out of service, and forcing compliance with the regulations prior to a ship's scheduled drydocking will cause financial problems. Another comment stated that the Coast Guard should make it clear to air quality authorities that requiring implementation in less than five years will entail removing vessels out of service before their scheduled drydockings to make modifications, and result in financial hardships and potential disruption of vital products.

The Coast Guard cannot control the implementation dates of state required vapor control systems. However, the Coast Guard has worked with the states to encourage them to allow sufficient time to allow proper design and installation of vapor control systems from the promulgation of these regulations to the implementation date of state vapor control requirements.

One comment stated that a provision should be added addressing the operational timing problems stemming from the state deadlines. The comment asserted that since some companies will modify their vessels anticipating the final regulations, a temporary certification of these new shipboard systems should be provided to allow these vessels to operate until the next regularly scheduled drydocking. The Coast Guard's position is that it is not appropriate to allow temporary certification of vapor control systems which are not in compliance with the final regulations. Systems with minor differences from the final regulations may be reviewed on a case by case basis and allowed to operate with a certain period allowed to come into compliance.

One comment noted that there is no plan for phasing in of systems, and it will take a long time to develop cost efficient technology, design, approve, retrofit, and build these systems. One comment asked if the standards would apply as soon as they come into force where vapors are currently being collected. This comment also stated that some period of grace for the application of the standards relative to when a local authority declares its intention to require vapor control is necessary. The final rules in 33 CFR 154.804 and 46 CFR 39.10–13 contain implementation schedules for existing vapor control systems at facilities and on vessels which were operating prior to the effective date of the regulations. Implementation schedules for new systems depends upon the compliance schedules of those states requiring vapor control systems. The Coast Guard has encouraged the states to provide sufficient time to design and install safe systems.

One comment stated that final rules for bulk liquid hazardous material cargo transfer (CGD 88–034) and benzene exposure (CGD 88–040) should be delayed until these regulations are in place. The Coast Guard's position is that the rule for bulk liquid hazardous material cargo transfer is sufficiently distinguishable from this rulemaking that it does not need to be promulgated after this rule. However, the rule for benzene exposure is scheduled to be promulgated after this rule.

Four comments stated that the Coast Guard should delay implementation of requirements until the International Maritime Organization (IMO) has developed international requirements for vapor control systems. Another comment stated that the IMO standards being developed will only cover ships and the ship/shore interface, not the facility requirements. At the IMO Subcommittee on Bulk Chemicals in September 1989, a joint ad hoc working group was formed to develop uniform international design standards for vapor control systems. It was agreed that standards would be developed for both the ship and the facility arrangements. These standards are scheduled to be completed in 1991. Because of impending state requirements to require control of vapors, the Coast Guard cannot wait for the development of international requirements. The Coast Guard will work with IMO to try to make the international standards compatible with this rulemaking.

One comment stated that the adoption of these national standards will do much to promote national consistency for marine vapor control equipment, and they should be adopted swiftly. Another comment stated that it is crucial that the Coast Guard meet its published schedule for issuing final regulations by February 28, 1990, for industry to be able to meet the deadlines for controlling vapor emissions set by the states. The Coast Guard has made every effort to promulgate these regulations as soon as possible.

Economic Impact

One comment stated that, in general, the NPRM was responsible and cost-effective.

Nine comments opined that the NPRM would have significant economic impact which needs to be considered. One of the comments stated that the regulations will damage U.S. competitiveness. Another of the comments stated that facilities in non-attainment areas and small tug-barge companies may be forced out of business. Another of the comments stated that the limited environmental benefit cannot justify increasing the risk of an accident and the additional costs of vapor control. As discussed in the Background and the Regulatory Evaluation sections, these regulations do not require the installation or use of vapor control systems, and so the costs should not be attributed to this rulemaking. The cost/benefits ratio and the loss of competitiveness should be analyzed by the authorities mandating the use of vapor control systems.

Three of the comments mentioned in the preceding paragraph specified reducing the allowable loading to 97% of tank capacity and expanding the application of the regulations beyond crude oil, gasoline, and benzene as major contributors to the economic impact. The applicability of the regulations has been changed to directly apply only to the loading of crude oil, gasoline blends, and benzene. However, systems loading other cargoes will be reviewed on a case by case basis by the Coast Guard. It would be irresponsible of the Coast Guard to ignore the impact on safety of the control of other cargo vapors, which may be required by some states. Filling limits have been increased to 98.5% of the tank capacity or the level at which the overfill alarm is set.

One comment stated that estimates of constructing vapor control systems at two loading facilities were $10 million for one and $16 million for the other. These figures are not inconceivable. The costs estimated in the NRC study were for typical systems. The size, number of loading berths, number of products loaded, and complexity of the system could easily push the costs beyond that estimated by the NRC study. These costs should be brought to the attention of and analyzed by the authorities mandating the use of vapor control systems.

General Control Technology

Six comments stated that the rulemaking was too specific, and would hinder advancements in technology and flexibility in design. One of those comments suggested establishing performance standards, and another suggested giving the minimum technical content necessary to ensure safety. Title 33 CFR 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and Title 46 CFR 39.10–11, 39.20–1, 39.20–7, 39.20–9, 39.20–11, 39.20–13, and 39.30–1 have been revised in the final rule to be made more performance oriented and to allow greater flexibility in choosing different alternatives. All of these revisions are discussed in greater detail later in this rulemaking document. The Coast Guard's position is that the regulations are now as flexible and as performance oriented as possible consistent with ensuring public safety. Certain specifications are needed for uniformity, such as vapor connection requirements. Future technological development which has not been anticipated by the regulations can be handled under existing provisions contained in 33 CFR 154.107 and 154.108, and 46 CFR 39.15.1 for approval and acceptance of equivalent technology.

Seven comments stated that the rulemaking significantly deviated from the CTAC recommendations and would hinder flexibility and greatly increase costs. The Coast Guard's position is that the NPRM did not differ as significantly from the intent of the CTAC recommendations as the comments indicate. The recommendations were reorganized and revised as appropriate to conform with language required for regulations. Specific deviations from the CTAC recommendations were discussed in the preamble of the NPRM, and will not be repeated here. Some people will consider the revisions to 33 CFR 154.800, 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and Title 46 CFR 39.10–1, 39.10–11, 39.20–1, 39.20–7, 39.20–9, 39.20–11, 39.20–13, and 39.30–1 in the final rule as being more in accordance with the CTAC recommendations in allowing greater flexibility. As discussed previously, the regulations allow as much flexibility as possible consistent with ensuring public safety.

Four comments stated that the rulemaking did not properly consider the API hazards analysis. One of the comments stated that the analysis does not justify requirements which go beyond safety levels established by the CTAC recommendations. Another comment stated that the Coast Guard's references to the API's hazards analysis were responsible and correct. When the NPRM was drafted the final report of the hazards analysis had not yet been released. Since publication of the NPRM, the Coast Guard has been able to further study the analysis. The requirements in 46 CFR 154.820 concerning fire, explosion, and detonation protection have been revised and reorganized in the final rule, and more properly reflect the analysis. However, because of imposed constraints of the analysis and the lack of operational experience to back up the failure data which was used, the results of the analysis cannot be accepted carte blanche.

One comment stated that the regulations may fail to provide safe and economical vapor recovery. The Coast Guard's position is that these regulations, coupled with proper enforcement, will help to ensure that vapor control systems operate safely, and these regulations provide for control of vapors as economically as is possible while ensuring safe operation. As was previously discussed, it is not appropriate for the Coast Guard to weigh the cost/benefits of vapor control.

One comment stated that the EPA and the Coast Guard have not coordinated the analysis of risks in employing such systems with the states implementing air quality control programs for ships. The Coast Guard has discussed the risks involved in using vapor control systems to meet air quality standards with the EPA and interested state officials and will continue to do so. The risks are thoroughly discussed in the various studies. The Coast Guard does not have the authority to control state action to require use of these systems.

One comment stated that the regulations drive vapor control systems towards incineration of the vapors. Five other comments stated that it should not be assumed that incinerators or flares will be the most commonly used vapor processing system, and that such assumption will preclude the use of other equally effective technologies. While the Coast Guard acknowledges that incineration of the vapors will be an attractive alternative in some circumstances, the Coast Guard did not intend to assume that incineration will be the most common means of processing the vapors, nor does the Coast Guard desire to drive all vapor control systems toward destruction techniques. Some changes have been made to 33 CFR 154.820 to provide certain allowances when nondestructive techniques are used. This is discussed in more detail in the discussion for that section.

Two comments stated that if barges are loaded under vacuum, safety provisions for closed loading are unnecessary, since leaks will be in, not out, and minor during ullaging. While this may be acceptable for certain dedicated operations where a facility has oversized blowers or compressors and the size of the ullage openings on the dedicated barge are known, the Coast Guard's position is that this is an unacceptable situation for general operations and should not be permitted as an option in the regulations. A facility needs to know that the vapor control system is not drawing in excess amounts of air to be able to operate safely within its design parameters.

One comment stated that industry needs to know the pressure drop across detonation arresters to properly design facilities to meet the proposed regulations. Because of different sizes of arresters and different flow rates, it is not feasible to specify a maximum pressure drop. However, in accordance with paragraph 6.1.9 of appendix A, the maximum design pressure drop at the maximum flow rate for each detonation arrester is to be part of the ordering information.

One comment asked if the necessary equipment for vapor control systems exists for safe use in a marine environment. The Coast Guard's position is that all of the necessary components are available. Large size detonation arresters have not been tested, but a test program is expected to begin shortly.

One comment stated that equipment needs to be thoroughly tested and approved by the Coast Guard. The Coast Guard's position is that the testing and certification of these devices is more appropriately done by third party independent test organizations.

One comment stated that the Coast Guard should make it clear to air quality authorities that these regulations are based on untested assumptions and not on proven tests on existing equipment. The Coast Guard has corresponded with the states known to be considering vapor control requirements and informed them of the hazards and unproven technology of vapor control systems. However, while vapor control systems have not been tested in non-dedicated operation, the Coast Guard is confident that these regulations will provide for the safe design and operation of vapor control systems.

One comment stated that the Coast Guard should provide a detailed outline of a safe vapor control system based on tested equipment. Because of the many variables which must be considered in designing a vapor control system, it is not feasible to present a standard system. It would also appear that the Coast Guard was trying to prevent flexibility of designs.

One comment stated that while it is appropriate to set definite parameters for loading rates and pressures, the requirements are too rigid on how these ends are to be accomplished. Revisions have been made to 33 CFR 154.814 and 46 CFR 39.20–11 and 39.30–1(d) in order to make limitations on loading rates and pressures more flexible. See the discussions on these sections for details.

One comment stated that past experience has shown that barge operators are unfamiliar with the electrical requirements for hazardous areas, and that a reminder should be added to the regulations that wiring methods for Class I hazardous locations must meet the requirements of 46 CFR 111.105. A reference to 46 CFR 111.105 has been added to 33 CFR 154.812 and 46 CFR 39.20–9.

One comment stated that all vessels should be required to be leak tight during loading at their desired maximum pressure. The Coast Guard's position is that this is not a safety issue, but rather an effectiveness issue which the Coast

Guard does not have the statutory authority to regulate.

One comment stated that the hazards should be addressed with three levels of protection: control systems designed to establish and maintain safe operating conditions; automatic systems designed to prevent operation with an unsafe condition; and automatic/passive systems designed to minimize damage in the event that an accident does occur. Where feasible, this is the approach that the Coast Guard has taken in this rule.

One comment stated that emissions control could be achieved with greater safety and efficiency if it is handled by a vapor collection and combustion system on board the vessel. Another comment stated that a vessel vapor processing unit should be prohibited. Nothing in this rulemaking prohibits installing a vapor control system on a vessel, and it may be economically attractive to do this in certain dedicated operations. A tank vessel which has a vapor processing unit on board is required by 46 CFR 39.10-9 to comply with 33 CFR part 154, subpart E.

One comment stated that the success of recovering vapors from tank trucks cannot be transferred directly to vessel loading because of differences in the operations. These requirements have been developed independently of tank truck operations, and the Coast Guard has made no attempt to apply tank truck regulations to marine vapor control systems.

One comment stated that regulations are becoming overly complicated and very difficult for people to understand and comply with and that these regulations should only cover the additional requirements needed without trying to duplicate and confuse existing regulations. The Coast Guard is sensitive to such concerns, and has made every effort to make the regulations understandable and to eliminate duplication as much as possible without sacrificing safety or clarity.

33 CFR 154.106 and 46 CFR 39.10-5 Incorporation by Reference

One comment supports the Coast Guard's efforts to address the compatibility of vessel and terminal systems, and stated that industry guidelines should be incorporated where available. The Coast Guard has incorporated by reference as many existing industry guidelines as possible.

One comment pointed out APT's correct address in the Incorporation by Reference section. This has been corrected in 33 CFR 154.106 and 46 CFR 39.10-5.

Three comments stated the American Institute of Chemical Engineers (AIChE), Guidelines for Hazard Evaluation Procedures, 1985, should be added to the incorporated material. The Coast Guard disagrees. While the guidelines are mentioned in 33 CFR 154.804 as guidance for conducting a hazards analysis, it is not being incorporated as a standard. The guidelines provide good guidance in conducting a hazards analysis, but a hazards analysis should not be restricted by the guidelines.

One comment recommended that the following industry standards should be added to the references under API in 33 CFR 154.106: API Recommended Practice XXX on Ship, Barge and Terminal Hydrocarbon Vapor Collection Manifolds, dated XXX; API Recommended Practice XXX on Overflow Control Systems for Petroleum Tank Barges, dated XXX; and API Recommended Practice XXX on Effectiveness for Marine Vapor Control Systems, dated XXX. These are recommended practices still under development. The Coast Guard cannot incorporate these by reference because they will not be completed in time for this rulemaking. The Coast Guard may consider incorporating them at a later time.

Two comments stated that appendix C of the NPRM (Draft Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications) should be added to the referenced ASTM standards in 33 CFR 154.106. This specification is not referenced in 33 CFR part 154, therefore it does not need to be added to the list of incorporated references. The number of this specification was left blank in 46 CFR 39.10-5 of the NPRM because it was under development. It has been adopted by ASTM as Standard F1271 and the specification number has been included in the final rule.

The number of the Standard Specification for Tank Vent Flame Arresters was enclosed as Appendix B and the specification number was left blank in 33 CFR 154.106 of the NPRM because it was under development. The specification has not yet been adopted, and the reference to it has been deleted from these sections. It has been included as appendix B of 33 CFR part 154 of the final rule as guidance material.

The number of the Standard Specification for Detonation Flame Arresters was left blank in 33 CFR 154.106 and 46 CFR 39.10-5 of the NPRM because it was under development. The specification has not yet been adopted, and the reference to it has been deleted from these sections. It has been included as appendix A of 33 CFR part 154 of the final rule as guidance material.

In response to comments concerning electrical connections, three standards have been added to 33 CFR 154.106 and 46 CFR 39.10-5: IEC 309-1, IEC 309-2, and NEMA WD6. These standards are referenced in 33 CFR 154.812 and 46 CFR 39.20-9, and are used to specify standard electrical connections for tank barges and facilities.

The International Safety Guide for Oil Tankers and Terminals (ISGOTT) has been added to 46 CFR 39.10-5. It is referenced in 46 CFR 39.30-1 to specify the initial loading for static accumulator cargoes.

33 CFR 154.310 Operations Manual

One comment stated that a copy of the operations manual which includes the facility's vapor control system should be located at the transfer control point (dock) available for review by the person in charge of the vessel to be loaded. While it may be desirable to have the operations manual available for review by the vessel personnel, the Coast Guard does not see a need for vessel personnel to review the manual, and parts of the manual may be considered privileged information. Therefore, it is not appropriate to require facilities to have the operations manual available for review by the vessel personnel.

One comment stated that minor changes are continuously made in operating procedures, and minor changes should not have to be submitted to the Coast Guard; therefore, operating procedures should be kept up to date and readily available at the transfer control point (dock) separate from the operations manual. The Coast Guard agrees that detailed operating procedures are not necessary for the operations manual, so the introduction of § 154.310(b)(2) has been revised to require only a description of the vapor control system's design and operation including specific components.

Four comments stated that the term "line diagram" should be replaced with a "simplified piping and instrumentation diagram (P&ID)" to be consistent with accepted shoreside terminology. The Coast Guard agrees, and has made the change to § 154.310(b)(1).

Three comments stated that the requirement in § 154.310(b)(2)(iv) that the operations manual contain provisions for dealing with pyrophoric sulfide for inerted vapors should only apply to facilities which handle vapors containing hydrogen sulfide in an oxygen deficient atmosphere, that it does not have to contain an inert gas. The Coast Guard partially agrees. The Coast Guard agrees that pyrophoric iron sulfide is not a problem with all vapors, only those vapors containing sulfur. Therefore, the requirement has been changed to only apply to facilities which handle cargoes containing sulfur. The Coast Guard is not aware of pyrophoric iron sulfide deposits being a problem with enriched atmospheres.

33 CFR 154.740 Records

Six comments were received regarding the length of record retention in this section. One comment stated that the records should be retained for five to ten years. One comment stated that two years record retention is adequate. One comment stated that 18 months record retention is sufficient. Two comments stated that it should be one year. One comment stated that records of all repairs and failures should be kept for the life of the system. The Coast Guard has decided that three years is the optimum for record retention. That will provide sufficient time for observing problem trends without creating an undue burden upon the record keepers.

One comment stated that keeping records of minor repairs will be an unnecessary burden on the facilities. The comment recommended that only records of repairs to components which are certified under 33 CFR 154.804 be retained. While the Coast Guard agrees that keeping records of minor repairs is unnecessary, limiting record retention to records of repairs to components required by subpart E is sufficient to eliminate repairs considered to be minor.

One comment stated that paragraph (h) of this section should require a dock operation log, including problems with the vapor control system and corrective measures, since these logs are maintained by the persons in charge. The Coast Guard does not think that this change is needed. The log described by the comment would be adequate to meet the requirement. The Coast Guard will allow the operators discretion to choose the format for the record.

One comment stated that specific penalties should be attached to recordkeeping violations. The Coast Guard disagrees. The penalties for violation of the regulations are in the authorizing statutes. The penalty assessed in a particular case will depend on the nature and severity of the violation.

33 CFR 154.800 and 46 CFR 39.10-1 Applicability

One comment stated that the Coast Guard should require all vessels transporting crude oil and its products to install a vapor control system to protect both directly exposed workers and the general population. Two other comments stated that vapor control should be required as a method to control occupational exposure for benzene and other hazardous chemicals. The Coast Guard does not have statutory authority to require vapor control to reduce emissions for air pollution. This authority is granted to the EPA and the states. However, the Coast Guard does have authority to require reduced exposure to marine personnel of hazardous chemicals. As discussed in the Background section, a separate rulemaking (CGD 88-040) is under development which would lower occupational exposure limits for benzene. If the Coast Guard determines that additional products warrant requirements to lower occupational exposure, they will be developed in separate rulemakings.

One comment stated that because occupational exposure was not considered during CTAC's work, this rulemaking should not be linked to the need to lower benzene exposure. This rulemaking is not linked to lowering benzene exposure. It does not matter why vapor control systems are installed. But if they are installed, then their design, installation, and operation must be reviewed for compliance with applicable safety standards.

One comment stated that vessels complying with the IMO gas and chemical carrier codes should be permitted to perform vapor control in U.S. ports without any modifications. The IMO gas carrier code is applicable to vessels carrying liquefied flammable gases. This rulemaking specifically exempts the collection of these cargoes. Even though a vessel may meet the IMO chemical carrier code, some modifications will probably have to be made or else the vessel could not load safely while collecting the vapors. However, these modifications should be minor.

Six comments were received concerning the general applicability requirements of 33 CFR 154.100. These comments appear to have a misunderstanding that every facility to which part 154 was made applicable would have to meet the vapor control requirements. The applicability in 33 CFR 154.100 is for applicability to the whole part. The specific applicability to the facility vapor control requirements is in 33 CFR 154.800 of this part. In addition, the change to this section is not as a result of this rulemaking, but of another rulemaking. Since it now appears that the change to 33 CFR 154.100 will be final before this rulemaking, it has been deleted from this final rule.

One comment stated that a statement should be included which says that these regulations do not require vapor control, and that the authority to require such systems rests with the individual states. The Coast Guard's position is that this type of statement is not necessary. Nowhere in these regulations is the installation of vapor control systems required, and it should be apparent in reading the applicability sections of 33 CFR 154.800 and 46 CFR 39.10-1 that these regulations do not require their installation.

One comment stated that a statement should be included which says that these regulations are only applicable when vapors are required to be controlled as a result of state requirements. Another comment stated that these regulations should only apply to vessels and facilities in non-attainment areas. The Coast Guard disagrees. Because of safety concerns applicable whenever the vapors are being controlled, these regulations should apply regardless of why the vapors are being controlled.

One comment stated that designation of flammable or combustible should be deleted, since states will determine which VOC cargoes will be listed. The change to applicability discussed in the previous paragraph should satisfy this comment.

Seventeen comments stated that these regulations should only apply to the loading of crude oil, gasoline (or gasoline blends), and benzene. The most common argument was that the CTAC recommendations and the API hazards analysis considered only crude oil, gasoline, and benzene, so inclusion of a broader range of hydrocarbons at this stage is inappropriate and extremely risky. Several of the comments stated that no investigation of compatibility associated with mixing vapors has been made. One of the comments stated that the chemical carrier trade is too different from the crude oil trade to be able to include chemical carriers in this rulemaking. The Coast Guard agrees that the control of all cargo vapors has not been thoroughly analyzed and that initial applicability of the vapor control regulations to a broad range of VOC vapors, as proposed in the NPRM, is inappropriate. Therefore, the direct applicability of the vapor control regulations has been limited to vapors of crude oil, gasoline blends, or benzene in 33 CFR 154.800(a) and 46 CFR 39.10-1(a). However, since control of vapors of other cargoes will sometimes be required, a new paragraph (b) has been

added to 46 CFR 154.800 and 39 CFR 39.10–1 which requires a facility or vessel which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, to meet the requirements prescribed by the Commandant (G–MTH) on a case by case approval.

Two comments stated that cargoes with low vapor pressures should be excluded from the regulations because they will not emit vapors in the flammable range. The change discussed previously to the cargoes of applicability should exclude cargoes with low vapor pressures from these regulations. However, a vapor control system which collects these vapors will require case by case review in accordance with the new paragraph (b). It is unlikely that vapors of these cargoes will be required to be collected because they do not emit a significant amount of vapors.

Three comments stated that the application of individual vapor collection systems to parcel/chemical tanker operations would be very complex. One of the comments stated that the rule should apply only to petroleum tankers and barges, and allow chemical carrier operators to work with the Coast Guard to prepare requirements applicable to chemical tankships and barges. The Coast Guard agrees that collecting vapors from many different, incompatible products creates technical problems. These problems can be worked out, but solutions may be complicated and may require a separate collection system for each incompatible product. At this time the Coast Guard does not anticipate vapor control to be required on a large number of incompatible cargoes. However, if the vapors are being collected, safety concerns need to be addressed. As mentioned previously, case by case review will be necessary for vessels collecting vapors on cargoes other than crude oil, gasoline blends, and benzene. The Coast Guard is willing to work with the chemical carrier operators to develop general requirements for chemical tankships.

One comment stated that multiple berths are not fully addressed, that different product vapors may require different methods of recovery due to compatibility and vapor pressure. Some changes have been made to 33 CFR 154.820 to address fire protection for facilities with multiple berths. The problems associated with the collection of vapors from incompatible cargoes will have to be addressed on a case by case basis.

One comment stated that 46 CFR Table 151.05 and Table 1 in 46 CFR part 153 should be modified to indicate hydrocarbons to help determine applicability of these regulations. One comment stated that it is important for all tank vessels to have rules for vapor control; however, certain changes should be added for specialized tankers. By specialized tankers, the Coast Guard assumes that the comment meant chemical tankships. Because of the changes previously discussed, neither of these changes are needed.

One comment stated that vapor control of pressure tanks on vessels should be exempted. The Coast Guard disagrees. Because of the hazards involved with collecting the vapors, if vapors are collected from a pressure tank the safety considerations cannot be ignored.

One comment stated that existing vapor control systems with a safe operating record should not have to meet the regulations. A safe operating record is only one indication that the system is safe. The Coast Guard's position is that facility systems which have been approved by the Coast Guard and are operating prior to the effective date of these regulations should be exempt except for operational requirements. Therefore, a new paragraph (c) has been added to 33 CFR 154.800 to exempt these systems from the subpart except for 33 CFR 154.850. Existing facility systems which have not been approved by the Coast Guard will be permitted to operate on an interim basis and have a period of time, as given in 33 CFR 154.804(b), in which to fully comply with the regulations.

Existing vapor control systems on vessels which have been approved by the Coast Guard are exempted by a new paragraph (c) in 46 CFR 39.10–1 except for operational requirements in 46 CFR 39.30–1 and 39.40–5. Existing vessel systems which have not been approved by the Coast Guard will be permitted to operate on an interim basis, and have a period of time, as given in 46 CFR 39.10–13(b), in which to comply with the regulations.

One comment asked if these regulations would apply if the amount of vapors vented to atmosphere is well under the EPA regulations. These regulations will apply if the vapors are being collected, regardless of why they are collected.

One comment stated that the Coast Guard should provide the states with a standard for those products from which significant VOC's are emitted and thus for which these systems may be cost effective. It is not appropriate for the Coast Guard to do this. The EPA and state air quality authorities have the statutory authority under the Clean Air Act to designate products for which vapor control may be required.

One comment stated that additional clarification is required to distinguish applicability between tankships and tank barges. The notations given in 46 CFR 30.01–5(c) distinguish whether a section applies to tankships, tank barges, or both, for all of 46 CFR subchapter D.

One comment stated that many barges have vent stacks on an existing vapor collection system, which can be isolated by a valve, and can vent the vapors when loading cargoes for which there are occupational exposure limits. This is perfectly acceptable provided there are no requirements by the local air quality authorities or the EPA to collect the vapors, and these regulations will not apply. As noted in 46 CFR 39.10–1(a), the regulations will apply to vapor dispersion methods only when the vapors are collected through a vapor control system.

One comment stated that the term "vapor processing unit" in 33 CFR 154.802 and 46 CFR 39.10–3 should be changed to "dedicated vapor processing unit" to deal with a facility which collects vapors and routes them to an existing refinery vapor processing system, and that the regulations should not apply to that portion of a vapor control system which is part of an existing refinery vapor processing system. The Coast Guard agrees that this type of system deserves special consideration. A new paragraph (d) has been added to 33 CFR 154.800 to exempt that portion of a facility's existing vapor control system used to process vapor streams from other processes in the facility.

One comment asked how the collection of vapors of liquefied flammable gases (LFG's) will be regulated since they are exempted from these regulations. Because of the differences involved in handling vapors of LFG's, the Coast Guard's position is that they cannot be handled in this rulemaking. The Coast Guard will evaluate the need for developing regulations for collecting vapors of LFG's, and develop such regulations if deemed appropriate.

Because of the change in applicability, the section on Other Hazardous Materials (33 CFR 154.803 and 46 CFR 39.10–7 in the NPRM) has been revised and moved in the final rule to 33 CFR 154.800 and 46 CFR 39.10–1 as paragraph (b). It now requires a facility or vessel which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene to meet the requirements prescribed by the Commandant (G–MTH).

Seven comments were received concerning 33 CFR 154.803 and 46 CFR 39.10–7 which either stated that the section should be deleted or it should be revised to reflect applicability to only crude oil, gasoline blends, and benzene. The Coast Guard acknowledges that the regulations may not adequately address the collection of vapors of all flammable and combustible liquids, but the Coast Guard cannot ignore the safety aspect of collecting vapors of cargoes other than crude oil, gasoline blends, or benzene. Therefore, systems which collect vapors of cargoes other than crude oil, gasoline blends, or benzene, will be reviewed on a case by case basis by the Commandant (G–MTH).

One comment stated that cargoes with a flash point over 125 °F should be exempted because they will not emit vapors in the flammable range. The Coast Guard's position is that if the vapors are being collected, the system must be reviewed for safety.

One comment argued that the Coast Guard should provide a list of cargoes which are not hydrocarbon liquids to ensure that there are no additional safety considerations required for the handling of these products. Because of the changes in applicability, the reference to hydrocarbon liquids in paragraph (b) of 33 CFR 154.800 and 46 CFR 39.10–1 has been deleted.

33 CFR 154.802 and 46 CFR 39.10–3 Definitions

The NPRM proposed to redefine "facility" in 33 CFR 154.105 to include facilities which transfer hazardous materials to or from a vessel. Six comments were received regarding this change. Five of the comments appeared to have the misunderstanding that this definition only related to a facility which collected vapors. Since this proposed change was a part of rulemaking CGD 88-034, "Hazardous Materials Pollution Prevention," the comments have been referred to the project manager for that rulemaking. This definition has been deleted from this rulemaking.

Two comments stated that the definition for "existing vapor control/collection systems" should include those systems which have been submitted to and reviewed by the Coast Guard. The Coast Guard agrees. The definition has been revised to include all systems which are operating prior to the effective date of these regulations.

One comment asked if vessels operating under current Coast Guard issued letters of Compliance would be included under "existing vapor collection systems." These vessels would be included if they have a vapor collection system operating prior to the effective date of these regulations.

Ten comments expressed confusion as to where the "facility vapor connection" was actually located. They stated that it should be at the point where the shoreside vapor control system interconnects with the vapor hose or the base of the vapor collection arm. The Coast Guard agrees, and this change has been made.

Five comments expressed similar uncertainty about the "vessel vapor connection." They stated it should be at the point where the ship's vapor collection system interconnects with the end of the vapor hose or the vapor collection arm. The Coast Guard agrees, and this change has been made.

One comment stated that for the definition of "maximum allowable loading rate," the following should be added to the end of the first sentence: "or non-vapor generating cargo into unwashed tanks previously containing crude oil, gasoline, gasoline blending stocks, or benzene." The Coast Guard's position is that this change is not needed. This definition is appropriate no matter what cargo is loaded when the vapors are collected.

One comment stated that in the definitions of "lightering," "service vessel," and "vessel to be lightered," the words "flammable or combustible liquids" should be changed to "crude oil, gasoline blends, and benzene." The Coast Guard's position is that this change is not needed. The applicability section has been changed to include only those cargoes, so there is no reason to change the definitions.

Because of changes to 46 CFR subpart 39.40, the term "vessel to be lightered" has been deleted from 46 CFR 39.10–1.

One comment recommended changes so that reasonable bounds can be placed on the extent of applicability for systems that are not dedicated to marine systems. These recommendations were to change the definitions of "vapor control system" and "vapor processing unit" to limit applicability, and to replace the term "vapor processing unit" with the terms "dedicated vapor processing unit" and "nondedicated vapor processing unit" to account for facilities which are not dedicated to marine vessels. The Coast Guard agrees that some limit to applicability for this kind of facility is needed, but that the recommended changes are not necessary. A new paragraph (d) has been added to the applicability section (33 CFR 154.800) to exempt the portion of the facility's vapor control system where it connects with the facility's main vapor control system when that system also serves tank storage areas and other refinery processes.

Three comments stated that the term "means of protection" should be deleted, because other recommended changes make it unnecessary. The Coast Guard agrees. Because of changes to the regulations concerning design, review, and initial installation inspection in 33 CFR 154.804, the term is no longer used, so its definition has been deleted from 33 CFR 154.802.

One comment stated that a definition of "emergency lightering" should be added in order to exempt lightering without vapor control in an emergency situation. The Coast Guard's position is that this term is not needed. Vapor control will be required by the states, so an emergency exemption must be provided by the states.

One comment suggested that the following terms be defined: detonation arrester, flame propagation, explosive limits, flame arrester, flame screen, and electrostatic conditions; and that examples of acceptable and unacceptable devices would be helpful. The Coast Guard's position is that definitions for these terms is not necessary. These terms are either familiar with the industry, or criteria for an acceptable device is given in the regulations. Giving examples of acceptable or unacceptable devices would be interpreted as limiting flexibility.

The term "independent" has been revised to delete the last sentence, which referred to electrical wiring. The Coast Guard decided that this sentence was not needed.

The definition of "inerted" has been revised to delete "other inerting arrangements acceptable to the Commandant (G–MTH)" as unnecessary.

Because of revisions to 46 CFR subpart 39.40 of the final rule, the definition of "lightering" has been revised to delete reference to liquids intended only for use as fuel or lubricant as unnecessary, and to specify that the cargo is transferred to a service vessel.

The definition of "maximum allowable loading rate" has been changed to "maximum allowable transfer rate." The reference to 46 CFR 39.30–1(b) has been deleted since it is unnecessary.

Because of revisions to 46 CFR subpart 39.40 of the final rule, the definition of "service vessel" in 46 CFR 39.10–3 has been revised to mean "a vessel which transports flammable or

combustible cargo between a facility and another vessel."

A definition for "topping-off operation" has been added to 46 CFR 39.10–3. This term is used in the revised 46 CFR subpart 39.40.

The definition of "vapor balancing" has been revised for clarification to add that the vapors are transferred via a vapor collection system.

A definition for "certifying entity" has been added to 33 CFR 154.802. The Coast Guard decided that adding this definition would help to clarify its use in 33 CFR 154.804 and 154.806.

Definitions for "vapor destruction unit" and "vapor recovery unit" have been added to 33 CFR 154.802. These terms are used in the revised 33 CFR 154.820 of the final rule.

33 CFR 154.804 Review and Certification of System Designs and Initial Inspection

One comment stated that the proposed regulations' reference to equivalence is vague, qualitative, and unworkable, and that a quantifiable risk related to the current industry practice of open loading should be used as the base level of safety. Another comment stated that if a facility obtained Coast Guard approval, information should be submitted on equipment which was added or modified since the Coast Guard approval and a record of operating experience since the Coast Guard approval. Also, where the existing system, as modified, would not meet a specific requirement of Subpart E, an analysis or a record of actual operating experience to demonstrate an equivalent level of protection should be allowed. One comment stated that each of the criteria for a hazards analysis should be compared to the level of safety of current industry practice of open loading. The NPRM contained no reference to equivalence. The existing 33 CFR 154.108 gives the criteria applicable to facilities for exemptions. The use of a quantitative hazards analysis is just one tool to help show equivalence. Because of the limitations on quantitative hazards analysis, the Coast Guard will not allow total reliance on such an analysis. Reliable failure data on vapor control systems is not available which reduces the confidence in a close comparison by a quantitative hazards analysis. A new paragraph (d)(4) has been added to this section to allow a quantitative hazards analysis to support the qualitative hazards analysis. Because of the limitations on quantitative hazards analysis and uncertainty in failure data, the standard of acceptance is set one order of magnitude (10 times) higher than that for operating without a vapor control system. Military Standard MIL–STD–882B is given as a reference which can be used for guidance in performing a quantitative hazards analysis.

One comment stated that existing systems that have been operating satisfactorily should not have to be reviewed. Another comment stated that systems which have received Coast Guard approval and have been operating satisfactorily should only have to demonstrate an equivalent level of safety. The Coast Guard partially agrees. A new paragraph (c) has been added to this section which exempts existing systems at facilities which have been approved by the Coast Guard as long as they continue to operate with only the vessels for which they were approved. However, vapor control systems currently operating which have not been approved by the Coast Guard must submit design plans to an accepted certifying entity within 6 months after the effective date of these rules and complete certification within 24 months after the effective date of these rules.

One comment stated that there should be a 60 month period from the effective date of these regulations in which to install the vapor control equipment. This rulemaking does not contain any compliance date for requiring control of vapors when vapor control is required. Compliance dates will be established by local air quality authorities. The Coast Guard's position is that the time period in paragraph (b) of this section provides adequate time for existing vapor control systems to come into compliance with these regulations.

One comment recommended that the Coast Guard consider the use of the certifying entity to review barge vapor collection systems. The Coast Guard has an existing mechanism for reviewing and inspecting barge construction and modification by the Marine Safety Center and local Marine Safety Offices which is appropriate for vapor collection systems.

One comment stated that the maximum review period for the certifying entity needs to be specified as six months. The Coast Guard's position is that it is not appropriate to specify the maximum review period of the certifying entity. The Coast Guard anticipates that the time period to review a vapor control system will be much shorter than six months.

Eight comments stated that 12 months is not sufficient time to complete modifications for facilities. One comment stated that 12 months may be too short if an environmental permit is needed, so there should be a provision for lengthening the time period if compliance within 12 months is beyond the facility's control. The comments recommended ranges from 18 months to 24 months from the date of notification of needed modifications from the certifying entity. One comment stated that an exemption to completing the modifications within 24 months should be provided if the facility owner can demonstrate that compliance within this time period is beyond his control. The Coast Guard agrees that the 12 month period in the NPRM was too severe. Therefore, the regulation has been amended in the final rule to require completion of modifications not later than 24 months after the effective date of this rule. The Coast Guard expects that the certifying entities will review plans as quickly as practicable.

One comment asked if the Coast Guard will be able to enforce the regulations. Five other comments stated that inspection and enforcement provisions are needed and should be adopted. One of the comments stated that facilities should be inspected at least annually. Another comment stated that periodic inspections by the certifying entities should be required. The Coast Guard currently conducts an annual exam of every facility. The Coast Guard intends to develop an enforcement program for the vapor control system which will become a part of this exam. It is the Coast Guard's position that this inspection will be adequate and a periodic inspection by the certifying entities is not needed.

One comment stated that calculations for facilities should only be provided on an as needed basis. The Coast Guard agrees. Only calculations needed to help show compliance with these regulations should be submitted. If no calculations are needed to demonstrate compliance, none have to be submitted.

Three comments stated that the requirement for a qualitative failure analysis focusing only on fire protection is inadequate and needs to include analysis of additional hazards. Two comments stated that the criteria for hazards analysis was unnecessarily restrictive and should show that the vapor control system will be safe. Three comments stated that the criteria suggested at the November 28, 1989 CTAC meeting, which broadened the criteria for the hazards analysis, would be more appropriate for the hazards analysis. The Coast Guard agrees, and paragraph (d) of this section (was paragraph (c) in the NPRM) is revised in accordance with the criteria suggested at the CTAC meeting. This criteria will provide a more complete and useful analysis than what was contained in the NPRM.

One comment stated that two levels of safety to protect the terminal from the vessel is not possible to accomplish. Another comment stated that the CTAC Subcommittee did not recommend two levels of protection, that this additional level of protection is not necessary, and that it is not cost effective. The Coast Guard disagrees with the comments, but as discussed previously the references to two means of protection for the criteria of the hazards analysis have been deleted.

Two comments stated that protection against ignition should be expanded to conform with the definition of "means of protection." Another comment stated that sources of ignition with very low probability of occurring should only require one means of protection. Because of the previously discussed changes to the criteria for the hazards analysis, "means of protection" has been deleted.

Three comments suggested that the hazards analysis should be in accordance with guidelines for hazards analysis published by the American Institute of Chemical Engineers (AIChE). The Coast Guard partially agrees. The AIChE guidelines provide good guidance in conducting a hazards analysis, but a hazards analysis should not be restricted by the guidelines. The AIChE guidelines are mentioned in paragraph (d) of this section as a source for guidance in conducting the analysis.

One comment stated that an internal review of the hazards analysis by a company's own certified employees should be acceptable in lieu of review by a separate certifying entity. The Coast Guard disagrees. While the facility's own employees may conduct the hazards analysis, it is important that the review be conducted by an independent third party in order to maintain objectivity.

Two comments stated that letters of adequacy should be issued by Commandant (G–MTH) or the Marine Safety Center. Existing provisions for letters of adequacy are contained in 33 CFR 154.325, which specifies that the letter is issued by the local Captain of the Port (COTP). The letter addresses more than just the safety of the vapor control system. Most of the safety aspects of the letter of adequacy are best addressed on the local level by the COTP, who is most familiar with the local conditions.

Nine comments addressed the type of alterations which need to be reviewed by a certifying entity as required by paragraph (g) of this section in the final rule, all wanting to eliminate review of normal maintenance or repairs. The Coast Guard agrees and has changed the paragraph to read "Any design or configuration alteration * * *."

One comment stated that a copy of the plans, calculations, and specifications should be submitted to the COTP for indefinite retention. The Coast Guard partially agrees. The plans, calculations, and specifications need to be retained, but they do not need to be retained by the Coast Guard. A new paragraph (h) has been added to this section which requires that the plans, calculations, and specifications be retained by the facility.

Two comments stated that designers of vapor control systems should be permitted to certify designs, because they represent a large source of expertise. The Coast Guard agrees. However, as discussed previously, designers of vapor control systems should not be permitted to certify systems which they designed. To remove potential conflicts of interest, paragraph (i) was added to 33 CFR 154.804 to prohibit vapor control system designers from certifying systems with which they were involved in the design or installation.

33 CFR 154.806 Application for Acceptance as a Certifying Entity

One comment expressed concurrence with the requirements in this section concerning the acceptance of certifying entities. Three comments expressed concern about the qualifications of the certifying entities. Two of these comments stated that the certifying entity should be a classification society or equivalent. One of the comments stated that certification should be by a classification society under terms similar to the current arrangement between the American Bureau of Shipping (ABS) and the Coast Guard, and that private companies should not be allowed to certify. Classification societies have most of their experience with vessels, and may not have the expertise to review facilities. The current arrangement between ABS and the Coast Guard for plan review is applicable only to the review of vessels. The Coast Guard's position is that there are other entities with the ability to review facilities other than classification societies. The Coast Guard will carefully review each application in order to ensure a high level of ability.

One comment stated that any qualified, independent professional engineer should be able to review, evaluate and analyze vapor control systems. The Coast Guard disagrees. Not all professional engineers will have the necessary experience to review vapor control systems. A professional engineer who desires to be accepted as a certifying entity must apply in accordance with this section.

One comment stated that provision should be made to obtain a letter from foreign classification societies stating that they are ready to certify facility vapor control systems. Foreign classification societies may apply to be accepted as a certifying entity just like any other organization.

One comment stated that the applicant should have the ability to review and evaluate hazards analyses in accordance with AIChE standards and any other standards that may be accepted by the Commandant (G–MTH). The Coast Guard agrees that a certifying entity should have the ability to review hazards analyses, and this provision has been added to paragraph (b)(1) of this section. However, it is not appropriate to specify the standards because the regulations do not specify the standards which must be used.

Six comments stated that owners/operators should not have to use outside firms to certify their vapor control systems since this would be an extra and unnecessary expense. The Coast Guard disagrees. While owners/operators may have very competent design personnel, an independent entity, free of all possible biases, is needed to certify the system.

Two comments stated that certifying entities should monitor and evaluate tests, but not conduct tests. The Coast Guard agrees. The regulations in 33 CFR 154.804(e) and paragraph (b)(3) of this section have been changed to reflect this.

One comment stated that some oversight program is needed to monitor review by certifying entity. The Coast

Guard intends to develop a program to oversee the certification process.

33 CFR 154.808 Vapor Control System, General

One comment expressed general agreement with this section.

Because of changes to the criteria for hazards analysis, paragraph (a) of this section has been revised to include potential overfill, overpressure, and vacuum hazards which must be eliminated or addressed in the system design and installation.

One comment stated that 150 psig maximum allowable working pressure is over-design. While another comment stated that it should be required. The Coast Guard's position is that 150 psig maximum allowable working pressure is appropriate. While 150 psig is much higher than a vapor control system should ever see in normal operation, the extra strength is needed for mechanical protection and to contain most detonations within the vapor collection system if any should occur. The requirements in paragraph (b) of this section have been revised to require that valves and flanges meet ANSI B16.5 or B16.24, 150 pound class. These standards are more appropriate than ANSI B31.3 as was proposed in the NPRM.

One comment stated that steel should not be allowed for the vapor collecting piping systems because non-steel piping will minimize the formation of iron sulfide. While this is an acceptable way of dealing with pyrophoric iron sulfide, the Coast Guard's position is that there are effective ways of dealing with the problem other than prohibiting steel pipe. Therefore, to maintain greatest flexibility in the rules, steel pipe is permitted for vapor control piping systems.

One comment stated that an outside audible and visual alarm is not appropriate for a facility which has a continuously manned control room with multiple loadings occurring simultaneously. Another comment stated that the alarms should be received in the facility control room as well as on deck. The Coast Guard agrees that the alarm need only sound in a control room, if provided. A new paragraph (e) of this section requires an alarm required by this subpart to be audible and visible at the location where the cargo transfer system and the vapor control system is controlled.

One comment expressed support for the requirement to separate or insulate the vapor control system from external heat sources to limit surface temperature to 177 °C that was given in 33 CFR 154.820(j) in the NPRM. Two comments stated that 177 °C is too high. The Coast Guard's position is that 177 °C is well below the autoignition temperatures of the applicable cargoes, but sufficiently high to allow heat tracing or steam heating of the vapor collection line if the design requires this feature. This requirement has been retained but moved to paragraph (f) of this section in the final rule.

One comment pointed out that there are ways to handle liquid condensate other than collecting it. The Coast Guard agrees. The requirement in paragraph (g) of this section (was paragraph (c) in the NPRM) has been revised to make the requirement to deal with liquid in the vapor line more flexible by making it a performance standard. It requires a means to be provided to eliminate any liquid condensate from the vapor collection system.

One comment recommended excluding liquid seal screw and other compressors not affected by liquid carryover from the requirement to have a liquid knockout vessel. Two comments stated that a liquid knockout vessel may not be needed if the compressor/blower is at the high point of the system. Another comment stated that a liquid knockout vessel is necessary regardless of whether the compressor is at the high point of the system, because entrained liquid will be carried by the gas both horizontally and vertically. Because of the previously discussed change to make paragraph (g) of this section a performance standard, the Coast Guard's position is that it is not necessary to require a liquid knockout vessel. A liquid knockout vessel is just one means of preventing liquid carryover into a compressor, and the compressor may not need to be protected from liquid carryover. The requirements in paragraph (h) of this section in the final rule have been revised to require certain features on a liquid knockout vessel if it is installed.

Two comments stated that the high level in the liquid knockout vessel should trip the compressor instead of, or in addition to, closing the vapor valve. The Coast Guard agrees, and paragraph (h) of this section has been revised to require this.

One comment stated that a requirement for expansion joints in vapor lines on ship or shore to be provided with electrical bonding connections should be included. The Coast Guard agrees. The requirement in 46 CFR 39.20-1(a)(5) requires electrical continuity on vessels and a new paragraph (i) has been added to this section to require electrical continuity at facilities.

Two comments stated that pyrophoric sulfide contaminations come from inert gas generator systems located on board vessels, and do not apply to an inerting process which uses an inert gas such as nitrogen. The Coast Guard disagrees. Pyrophoric sulfide can be a problem in inerted atmospheres regardless of the source or type of inerting gas.

Three comments pointed out that not all cargoes have the ability to generate pyrophoric iron sulfide deposits and that only facilities that handle inerted vapors from pyrophoric iron sulfide generating materials need to have provisions to control the deposits. The Coast Guard agrees. The proposed requirements in 33 CFR 154.820(o) of the NPRM has been revised in 33 CFR 154.808(j) of the final rule to require provisions to control heating from pyrophoric iron sulfide deposits if the facility handles inerted vapors of cargoes containing sulfur.

One comment suggested that a low concentration of sulfur oxides should be required in order to minimize the formation of iron sulfide deposits. Although this may be effective, the Coast Guard's position is that it is not appropriate to limit vessels to only load cargoes with a low concentration of sulfur oxides.

One comment stated that pyrophoric iron sulfide deposits can form in oxygen deficient atmospheres, not just in inerted spaces. The Coast Guard's position is that pyrophoric iron sulfide deposits will only be a problem in inerted atmospheres, enriched atmospheres will normally have sufficient oxygen to prevent iron sulfide deposits from forming.

Two comments requested clarification as to what procedures are available to protect against pyrophoric iron sulfide deposits. One comment stated that the deposits can be handled by operating procedures, such as by having a slow and controlled oxidation in the vapor line before air is allowed into the system. Another comment suggested that the requirements for facilities to control heating from pyrophoric iron sulfide deposits should be the same as for vessels. The Coast Guard's position is that the necessary provisions to control the heating from pyrophoric iron sulfide deposits depends upon the unique circumstances of each facility, such as the frequency of handling inerted vapors, the concentration of sulfur in the cargo, etc. Therefore, it is inappropriate to establish a specific criteria. Section 22.3 of ISGOTT provides guidance for dealing with the problem on vessels that can also be applied to facilities in order to control pyrophoric iron sulfide deposits.

Generally, procedures to control the heating include purging the line with an inert gas containing a slowly increasing amount of oxygen to allow the deposits to slowly oxidize, prior to introducing any flammable vapors.

Four comments stated that the unique configurations and requirements of offshore terminals have not been properly addressed, and that many of the proposed requirements will be impractical offshore and at facilities using subsea lines. One of these comments stated that the rulemaking should either be modified to account for such facilities or they should be exempted from the requirements. Another of the comments stated that recovery of vapors on board the vessel is necessary for safe vapor control. Three other comments stated that the NPRM does not address loading at mooring buoys, with one saying that this should be noted in the preamble, another saying that an entire section should be developed to address this issue, and the other saying that they should be reviewed on a case by case basis. The Coast Guard agrees that these types of facilities present some unique problems, and that having the vapor processing unit on board the vessel is a viable option. However, exempting them from the regulations is not possible since some states may require offshore terminals to collect cargo vapors emitted from vessels within their jurisdictional waters. A new paragraph (k) has been added to 33 CFR 154.814 to better address the concerns for controlling the pressure on tank vessels by these facilities.

33 CFR 154.810 Vapor Line Connections

Four comments stated there is no need for a separate isolation valve, that one automatic valve capable of manual operation would be sufficient. Two other comments stated that this separate manual isolation valve is needed, one clarified that it is needed to isolate an inactive system after completion of loading. The requirements for the automatic and manual valves have been revised. The term "automatic vapor shutoff valve" has been changed to "remotely operated cargo vapor shutoff valve" since this better describes its function. A separate manual isolation valve is required only if the facility is fitted with an enriching system and operates at a positive gauge pressure at the facility vapor connection. This is to prevent enriching gas from leaking back onto a vessel after the transfer operation is completed. Otherwise, only a remotely operated cargo vapor shutoff valve capable of manual operation is required. The revised requirement for the manual isolation valve is in paragraph (h) of this section in the final rule. The revised requirement for the remotely operated cargo vapor shutoff valve is in paragraph (a) of this section (was paragraph (b) in the NPRM).

Seven comments addressed the location of the isolation valve. All thought that there should be some distance between the facility vapor connection and the isolation valve. Two of the comments suggested "as close as practical" should be specified. The Coast Guard agrees that some distance between the facility vapor connection and the isolation valve can be allowed. The requirement in paragraph (h)(1) of this section (was paragraph (a) in the NPRM) has been revised to require the manual isolation valve to be located between the remotely operated cargo vapor shutoff valve (referred to as an automatically operated vapor shutoff valve in the NPRM) and the facility vapor connection. This will allow sufficient distance for required pressure sensors, and still locate the valve close enough to the facility vapor connection.

One comment asked if the remotely operated cargo vapor shutoff valve was to be between the ship and the detonation arrester. The requirement in paragraph (a) of this section in the final rule has been revised to require the valve to be between the facility vapor connection and the point where any inerting enriching, or diluting gas is introduced into the vapor collection line or a detonation arrester is fitted.

Eleven comments disagreed with the requirement for the remotely operated cargo vapor shutoff valve to close in five seconds, and suggested either 30 or 60 seconds for closing time. Generally, the reasoning of the comments was that five seconds closing time would cause hydraulic hammer in the lines and the closing time should be consistent with the closing time of the liquid loading valve. The Coast Guard disagrees that hydraulic hammer would be a problem in vapor lines. However, the Coast Guard does agree that 30 seconds closing time is adequate for this valve, and has revised the requirement in paragraph (a)(1) of this section accordingly.

One comment stated that the automatic vapor shutoff valve should be "fail safe." Another comment stated that the valve should fail in the closed position. The Coast Guard intreprets "fail safe" in this instance to mean fail in the closed position. The Coast Guard's position is that requiring a valve to fail in the closed position would unnecessarily restrict the type of valve which could be used, and some otherwise acceptable valves would be prohibited. However, requiring a valve to close upon loss of control signal is a reasonable requirement with added safety benefits. Therefore, paragraph (a)(2) of this section has been added to require the valve to automatically close on loss of control signal.

One comment said that the automatic vapor shutoff valve should be a "fire safe" valve. Another comment said that the valve should not be "fire safe" because the valve is solely a control valve. Because this valve will often serve as the isolation valve, it is not just a control valve. Although the Coast Guard endorses the idea that the valve should be fire safe, there is not an accepted standard for "fire safe." Therefore, paragraph (a)(6) of this section has been added which gives a criteria to make the valve fire resistant.

Two requirements have been added to the final rule for the remotely operated cargo vapor shutoff valve because the valve may be the only isolation valve. A new paragraph (a)(4) of this section requires the valve to be capable of manual operation or activation, and a new paragraph (a)(5) of this section requires the valve to have a means of determining locally the valve position.

Eight comments were received expressing disagreement with the proposed color coding of the vapor pipe and vapor hose. Four of the comments stated that bright orange is used for cargo loading hoses at offshore moorings to help pilots see them. Six of the comments said that the color coding should agree with the red/yellow/red striping criteria included in a draft API guideline. Another comment stated that the color coding requirements should be deleted because API is developing an industry guideline for manifolds. Because the API guidelines are still under development, they cannot be incorporated by reference. However, the Coast Guard agrees that the red and yellow striping arrangement in the proposed API guidelines is more appropriate, and has revised the color code requirements in paragraphs (b), (d), and (f) of this section, and 46 CFR 39.20-1 (d) and (f) of the final rule to require red and yellow striping consistent with the proposed API guidelines.

One comment said that vapor hoses do not need to be stenciled, that color coding is sufficient. The Coast Guard disagrees. The hoses need to be labeled to ensure they will not be used for anything else.

One comment recommended that vapor hoses be "marked" with black letters, "not more than" 2½ inches high.

The Coast Guard agrees, and these changes have been made in paragraphs (b), (d), and (f) of this section, and 46 CFR 39.20–1 (d) and (f) of the final rule. The Coast Guard has also revised the minimum height of the letters to 50 millimeters (2 inches).

Seven comments expressed concern about the requirements for the stud and hole in the vapor connection flanges. Four of the comments stated that it was not needed because of required color coding and pre-loading checks. Two of the comments said that hose alignment would be difficult, especially for floating hoses. One of the comments suggested that the requirement be operational. Three of the comments also said that the stud system could be defeated by the use of adapters or by sawing off the stud. The Coast Guard's position is that because of the severe consequences of a misconnection, a mechanical means of preventing misconnection is necessary, and that color coding and pre-loading checks are not sufficient. The Coast Guard has revised the requirements in paragraphs (b), (c), (d), and (f) of this section, and 46 CFR 39.20–1 (e) and (f) of the final rule to facilitate alignment. Only the vessel and facility vapor connection flanges are required to have the studs. Vapor hose and vapor collection flanges can have floating flanges or flanges with multiple holes to facilitate alignment. It is true that this method of protection could be defeated, but the operator must be aware of the possible consequences, which could include civil penalties, condemnation of vapor connection flanges with corrective requirements, or operational restrictions.

One comment suggested that the stud arrangement should agree with the proposed API standard, which calls for it to be located at the top of the flange. The Coast Guard agrees and has revised paragraph (c) of this section and 46 CFR 39.20–1(e) accordingly.

Seven comments stated that 100 psig for the burst pressure of vapor hoses is too high and recommended that 25 psig burst pressure would be sufficient. Their arguments were that 100 psig burst pressure will require heavier and more expensive hoses than necessary, and less strong hoses will be sufficient if they are abrasion resistant. The Coast Guard agrees and has revised paragraph (d) of this section and 46 CFR 39.20–1(f) to require hoses with a burst pressure of 25 psig and working pressure of 5 psig which are resistant to abrasion and kinking.

Because of the reduced vapor hose strength allowed, the Coast Guard has decided that provisions are needed to prevent a hose from collapsing when it is handled. A new paragraph (e) has been added to this section and a new paragraph (g) has been added to 46 CFR 39.20–1 which requires vapor hose handling equipment to be provided with hose saddles which provide adequate support to prevent kinking or collapse of a hose.

Two comments expressed disagreement with the requirement for a maximum hose resistance of 1 million ohms (1 Mohm). One of the comments recommended 200 ohms. The other comment recommended 1,000 ohms. The Coast Guard agrees that 1 Mohm is too high, and has revised paragraph (d)(4) of this section and 46 CFR 39.20–1(f)(4) in the final rule to require a maximum resistance of 10,000 ohms.

One comment expressed concurrence with the requirement for the insulating flange in paragraph (g) of this section. Four other comments stated that it should not be required. One of the comments stated that the insulating flange is inconsistent with the requirement for electrical continuity of hoses. Another of the comments stated that the insulating flange should be left to the discretion of the facility to be consistent with the grounding of the vessel. The other stated that it was inconsistent with current practice of grounding the vessel. The Coast Guard's position is that it is not inconsistent with the hose requirement for continuity and it is not dependent upon grounding of the vessel. The hoses need to be conductive to dissipate static charges to either the facility or the vessel. Without the insulating flange, there is potential for arcing when the connections are made up or disconnected, even if the vessel is grounded to the facility by a separate grounding.

Three comments said that a non-conducting length of hose should be allowed in place of the insulating flange, as is often currently used. The Coast Guard agrees. The requirement in paragraph (g) of this section has been revised to require insulation of the vessel vapor connection in accordance with ISGOTT, which allows a single length of non-conductive hose.

One comment recommended adding a definition for insulating flange. The Coast Guard's position is that this is not necessary. The revised requirement refers to ISGOTT, and does not mention insulating flange. The term is used in ISGOTT and is adequately described there.

33 CFR 154.812 Facility Requirements for Vessel Liquid Overfill Protection

Two comments stated that paragraph (b) of this section (paragraph (a) in the NPRM) should be revised to clearly indicate that the automatic cargo loading shutdown system, which is connected to the barge, is only required when the barge has no other means of overfill protection. The Coast Guard agrees. The requirement has been revised to require the system only when it is the barge's only means of overfill protection.

Twelve comments stated that the automatic shutdown system in paragraph (b) of this section should either be made voluntary or deleted. One of the comments stated that if the facility installs a system other than an overfill control panel, the barge must have a backup overfill protection system. One of the other comments stated that the API risk analysis did not find the need for such a system. Two of the comments stated that the system was rejected by the CTAC Subcommittee because it would degrade safety. The Coast Guard disagrees with these comments. This system was developed by the CTAC Subcommittee as a cost-effective method and included in the recommendations to the Coast Guard. This system was also accepted by the API hazards analysis. An emergency shutdown system is already required by 33 CFR 154.550 which allows for a vessel linkage to the facility by electrical, pneumatic, or mechanical means.

Two of the comments stated that independent systems would be safer. The Coast Guard disagrees. An independent shutdown system located on the barge could create surge pressures in the cargo loading hose or the facility's piping which the facility was not designed to handle.

Another of the comments stated that the system was not practical, because the facility panel would be required to monitor as many as 40 tanks on the barge. The Coast Guard disagrees. The facility's control panel would be independent of the number of tanks on the barge. All of the sensors in the tanks are required to be connected in series, so that a high level in any of the tanks would activate the shutdown system, and only one control circuit is needed.

Three of the comments stated that an automatic shutdown was not needed, that the proposed high level alarms would be sufficient. The Coast Guard disagrees. The high level alarms of 46 CFR 39.20–7 are not mandatory for barges. The automatic shutdown system is in lieu of the high level alarms.

Two of the comments stated that the system would be relied upon by the crew as the means to load the barge instead of careful monitoring, resulting in a net reduction in safety. There is a danger of complacency with any automatic alarm or shutdown. Proper training and management oversight will be necessary to help prevent this.

Four comments pointed out that this system could cause confusion between vessel and facility personnel concerning responsibility and liability. The Coast Guard's position is that if the pre-loading checks and tests are properly performed, this should not be a problem.

Because of objections received to the automatic shutdown, paragraph (a) of 46 CFR 39.20–9 has been revised to allow dual high level alarms on tank barges if they are fitted with an electrical shore power connection to power the alarms. To supply a shore power connection, a new paragraph (a) has been added to this section for the facility to provide a suitable electrical shore power connection, and this paragraph gives the requirements to standardize the connection. Vessels and facilities may prefer to go to this type of arrangement in lieu of paragraph (b) of this section (was paragraph (a) in the NPRM).

Four comments stated a need for standardization of the system. The Coast Guard agrees. API is developing a guideline for standardizing the system connection. Some requirements from the draft API standard have been added to paragraph (b) of this section, as well as references to additional standards, to provide the degree of standardization necessary.

Two comments suggested including the requirements for intrinsically safe wiring in 46 CFR 111.105. The Coast Guard disagrees with the need to cite the intrinsically safe wiring requirements of 46 CFR 111.105 in paragraph (b) of this section. However, a reference to 46 CFR 111.105 has been added in paragraph (a)(3) of this section to require that the shore power connection equipment be listed by an independent test organization.

Four comments suggested that the cargo pump does not always need to be shut down when loading is shut down. One comment suggested that the requirement for shut down is inconsistent with the 30 to 60 second shutdown in 33 CFR 154.550(c). The Coast Guard agrees. The requirement in paragraph (b)(1) of this section has been revised to require loading to be shutdown in accordance with 33 CFR 154.550. This section requires shutdown within either 30 or 60 seconds of receiving the shutdown signal, depending on the age of the facility. This change was necessary because a maximum time needs to be established so that barges will know the amount of time they will have to secure loading in order to set the sensors at the proper level.

Paragraph (b)(1) of this section has been revised to require that the remotely operated cargo vapor shutoff valve be closed upon receiving the shutdown signal. The Coast Guard has determined that this is needed as a precaution to prevent liquid from being drawn into the vapor collection line if the tank were to become overfilled.

One comment suggested that the cable for receiving the signal from the barge should be supported to prevent mechanical damage. The Coast Guard's position is that while in most cases it would be prudent to support the cable, it is not appropriate to require it in all situations.

Two comments confirmed the requirement that the alarms should be visible and audible on both the deck and the vessel, and they should be distinctive from other alarms. One of the comments suggested that the high level alarm should have a yellow strobe light or rotating beacon with a distinct low frequency sounder, and the high level shutdown alarm should have a red strobe light or rotating beacon with a distinct high frequency sounder. While the Coast Guard agrees that such distinctiveness is prudent, this is an area which can best be addressed by an industry standard.

33 CFR 154.814 Facility Requirements for Vessel Vapor Overpressure and Vacuum Protection

Two comments stated that 33 CFR 154.814 should clarify that this section applies only for shoreside equipment. The Coast Guard agrees and has changed the title for this section to clarify this.

Seven comments stated that a 25% factor for vapor pressure is excessive for certain cargoes. The comments suggested that the factor should be based upon the cargo loaded, or 5% or 20% for benzene. The Coast Guard partially agrees. The 25% factor is valid for most cargoes. Most available information gives figures which are based on average loading. For this application, the most severe case with turbulent loading is needed. However, the Coast Guard realizes that some facilities may handle only heavy crude oils or other cargoes with low vapor pressures, and has added a provision to paragraph (a) of this section that a lower factor can be used if the facility owner/operator can show that the most volatile cargo under the most severe conditions will have a lower figure.

Two comments stated that a facility's maximum liquid transfer rate, as referred to in paragraph (a) of this section, is difficult to determine at a complicated refinery with a number of loading pumps available and a number of loading berths. The Coast Guard agrees that this figure may be difficult to determine, but the designer will have to use some figure as a basis for designing the size of compressors, vapor collection piping, and the vapor processing unit. This may require limiting the number of pumps which will be used.

Three comments pointed out that as proposed, a facility would be required to size its vapor collection system for the highest loading rate for any liquid product, even if that product did not require vapor control. The Coast Guard agrees, and has revised 33 CFR 154.814(a) to specify that the maximum design loading rate is for cargoes for which the vapors will be collected.

Fourteen comments expressed disagreement with the required pressure ranges given in paragraph (b) of this section. Another comment stated that the pressure range specified in paragraph (b) of this section should be maintained at the vessel vapor connection rather than the facility vapor connection. The purpose of this requirement is to limit the pressures in the cargo tanks to acceptable levels. The following paragraph discusses this more fully.

Another comment suggested that the pressure range given in paragraph (b) of this section should be maintained in the vessel's cargo tanks, based on the pressure measured at the facility vapor connection, corrected for pressure drops across the vessel's vapor collection system and the vapor transfer hose/loading arm. The Coast Guard agrees with the concept of maintaining the pressure in the cargo tanks corrected for pressure drops. Paragraph (b) has been revised to reflect this concept. However, the pressure range has been changed. Since the allowable pressure range will be the pressure in the tank, the range can be based upon the actual tank conditions. Therefore, the upper range has been changed to 80% of the pressure relief valve setting, and the lower range for non-inerted vessels has been changed to 80% of the setting of the vacuum relief valve. A new paragraph (c) has been added to this section to require the pressure drop across the vessel's vapor collection system and the vapor hoses to be taken into consideration in order to maintain the pressure in the tanks.

One comment stated that the pressure sensing device should be specified to be intrinsically safe. The Coast Guard disagrees. The pressure sensing device is not required to be electrical. Where it

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is electrical, 33 CFR 154.808(c) requires all electrical equipment to comply with the National Electric Code.

One comment stated that the vapor overpressure and vacuum protection must activate upon loss of continuity of the tank vessel's overflow control system circuitry. A tank barge fitted with an overflow control system in accordance with 46 CFR 39.20-9(b) will be protected from overpressure and excessive vacuum. The requirements in paragraph (b) of this section requires the shutdown system to be activated by loss of continuity in the sensor system and the remotely operated cargo vapor shutoff valve to close upon activation of the shutdown system.

Two comments stated that the pressure shutdown settings should be fixed for all loading operations to avoid erroneously setting the shutdown levels. One of the comments suggested 0.5 psi vacuum and 1.2 psig pressure. Another comment stated that the shutdown system should be activated when the pressure falls below a low pressure shutdown limit that is equal to or greater than the vacuum relief limits of vessels loaded at the facility. The Coast Guard agrees with the concept of fixed settings for shutdown, but recognizes that the vessel can be better protected if the settings are adjustible. The requirements in paragraphs (f) and (g) of this section have been revised to require an upper and lower limit for the shutdown settings at 2.0 psig for high pressure, and 1.0 psi vacuum for high vacuum, and allows the settings to be adjusted within this range. These paragraphs have also been revised to require the emergency shutdown system required by 33 CFR 154.550 to be activated at these pressure settings.

One comment pointed out that the high pressure shutdown need not cause the automatic vapor shutoff valve to close if there is a means of detecting backflow of gas from the facility to the vessel, and if backflow is detected to the vessel, the cargo transfer and vapor shutoff valves are closed. Two other comments stated that automatic shutdowns are not needed. Another comment stated that the low pressure shutdown should not require shut down of the cargo transfer, since the cargo loading will increase the pressure in the cargo compartments. The Coast Guard agrees that automatic shutdown of cargo transfer is not needed on low pressure, but disagrees with the other comments. Paragraph (g) of this section has been revised to delete the requirement to automatically stop cargo transfer when the low pressure shutdown is activated. Backflow of gas from a facility to a vessel is not the only means to overpressure a vessel. The liquid cargo may be entering the cargo tanks faster than the vapor control system can draw the vapors off the vessel. Without knowing what is causing the abnormal pressure, the safest practice is to secure both cargo and vapor transfer and isolate the vessel from the facility.

Four comments stated that root valves should be allowed in the line for the pressure sensing device to allow for in-line testing or repair of pressure sensing devices. The Coast Guard agrees. The requirement in paragraph (h) of this section was not intended to prevent root valves in the sample line. One comment suggested placing locking devices on the instrument isolation valves. The Coast Guard does not consider this to be necessary. Paragraph (h) has been revised to specify the location of the sensing device between the facility vapor connection and the manual isolation valve.

Twelve comments stated that a designer should be able to choose a mechanical relief valve instead of a liquid vacuum breaker. The Coast Guard agrees and has revised 33 CFR 154.814(j) to allow this flexibility by requiring a "vacuum relief valve."

One comment pointed out that some blowers may be incapable of developing more than 1.0 psi vacuum and should not have to have a vacuum relief valve. The Coast Guard agrees and has revised paragraph (j) of this section to require the vacuum relief valve only if the compressor, blower, or eductor are capable of drawing more than 1.0 psi vacuum.

Two comments stated that pressure and vacuum relief valves should be required to have means to prevent the passage of flame, such as a flame screen. A second comment stated that the capacity test for the vacuum relief valve should include a flame screen connected to the valve. The Coast Guard agrees and paragraph (j) has been revised to require a flame screen fitted at the opening of a vacuum relief valve and that the valve be flow tested with this screen in place.

One comment stated that the location of the safety relief valves should not be specified since the hazard evaluation will indicate the optimum location. While paragraph (j) of this section does not specify an exact location, it requires the valve to be located between the vapor connection and the vapor compressor or blower. The exact location is left to the designer.

Several comments were concerned that the pressure control requirements would adversely impact offshore terminal design. The Coast Guard agrees and a new paragraph (k) has been added to 33 CFR 153.814 to address this issue for facilities with offshore loading moorings with undersea pipelines. This paragraph allows the facility to develop a vacuum greater than 1.0 psi vacuum in order to draw the vapors through the long undersea pipeline. However, the pressure drop in the vapor hoses and undersea pipeline must be considered and, since the actual pressure drop depends on the velocity of the vapors, the actual loading rate must be considered.

Two comments stated that additional relief valves are only needed if gasses are injected into the system, because the vessels are protected by on board valves. The Coast Guard agrees and has revised paragraph (l) in the final rule (paragraph (h) in the NPRM) to only require the pressure relief valve if inerting, diluting, or enriching gas is injected into the vapor stream and is capable of exceeding 2.0 psig.

One comment stated that requiring the capacity of the pressure relief valve to include a vapor generation factor of 25% is too high for some cargoes. Because of the previously discussed revision to paragraph (l) of this section, the reference to maximum loading rate and the vapor generation factor have been removed. The facility vapor relief valve is only required to have a capacity equal to the maximum capacity of the inerting, enriching, or diluting gas source.

One comment stated that 2.0 psig is too low for the relief valve to allow for unassisted vapor balancing. The Coast Guard disagrees. While a vessel may have a high setting for its pressure relief valves which allows for higher pressure than 2.0 psig on the vessel, there will be a pressure drop across the vapor collection lines which will likely reduce the pressure below 2.0 psig. A lower setting would not adequately protect the majority of vessels which are likely to load at a facility. However, a facility which loads dedicated vessels with high pressure relief valve settings may apply to the Coast Guard for an exemption from this requirement.

One comment stated that fixed orifices to limit injection flow will more reliably protect against the hazard of overpressurizing from the injection gas than a pressure relief valve. The Coast Guard disagrees. While using fixed orifices may be safer than using a control valve, there is still the danger of a blockage in the vapor collection line, which would allow the pressure to build up.

One comment stated that the pressure relief valve must also have a capacity

equal to that of the blowers. The Coast Guard disagrees. While the capacity of the blower is a factor in the sizing of the vacuum relief valve, it is not a factor in the sizing of the pressure relief valve required by these regulations.

Two comments expressed uncertainty as to whether the requirements in 33 CFR 154.820(p) of the NPRM would require flame arresters on the outlet of pressure relief valves. To clarify this, paragraph (l) of this section has been revised to require a flame screen at the outlet of a pressure relief valve. Unless the pressure relief valve is a high velocity vent valve, flash back through a pressure relief valve is possible if there is no means provided to prevent it. A comment pointed out that a vacuum relief valve should be tested for venting capacity with the flame screen attached. Paragraph (j) has been revised to require a vacuum relief valve to be tested for relieving capacity with a flame screen fitted. A new paragraph (m) has been added to require a pressure relief valve to be tested for relieving capacity with a flame screen fitted unless the valve is a high velocity relief valve.

One comment stated that the pressure relief valve should be located between the point where inerting, enriching, or diluting gas is introduced and the vapor assist device or the vapor processing unit, with no valves allowed in between. The Coast Guard disagrees. A location between the point of gas injection and the facility vapor connection offers better protection to a vessel connected to the vapor control system.

One comment questioned the location of the pressure relief valve relative to the manual isolation valve. The NPRM proposed to require the pressure relief valve to be located upstream of the detonation arrester and the injection point of the inerting, enriching, or diluting gas. The reference to the detonation arrester has been deleted from paragraph (l)(1) of this section (paragraph (k)(4) in the NPRM). While the pressure relief valve could be located on either side of the manual isolation valve or the remotely operated cargo vapor shutoff valve, the Coast Guard anticipates that it will normally be located in close proximity to the point where inerting, enriching, or diluting gas is injected into the system.

One comment stated that the pressure relief valve should be able to be part of the vacuum relief valve. The Coast Guard agrees. There is nothing in this rule to prohibit this.

Seven comments stated that measurement of the loading rate, proposed in paragraph (l) of this section in the NPRM, should not be required. Five of the comments stated that provisions for overpressure would be adequate. Four of the comments were concerned that a "means" to determine the loading rate would require cargo metering equipment. The means to determine the loading rate does not have to be metering equipment in the cargo loading line. Pump capacity curves or a continuous facility tank gauging system is also acceptable. The Coast Guard realizes that this paragraph created an excessive amount of confusion. The requirements in 33 CFR 154.850(g) require the loading rate to be less than the maximum allowable transfer rate. The Coast Guard does not intend to specify how the facility will ensure that the maximum allowable loading rate is not exceeded. Therefore, the requirement in paragraph (l) of the NPRM is redundant and has been deleted from the final rule.

33 CFR 154.820 Fire, Explosion, and Detonation Protection

Nine comments were received which disagreed with the approach taken in this section. Most stated that the requirements of this section were too specific and inflexible, and that they would not allow for future technology. This section has been extensively revised and reorganized into five separate sections to make it as flexible as possible while ensuring adequate protection. These changes are discussed in more detail in the following paragraphs. The requirements allow for the development of new technology.

One comment said that systems should be designed to prevent ignition from ever occurring, claimed that a detonation cannot be stopped, and proposed that automatic devices be required at all critical points in the overall system. The Coast Guard agrees that the system should be designed to prevent ignition from occurring, and the requirements in this subpart are designed to do that as much as possible. However, all possible sources of ignition cannot be eliminated, so provisions are required to stop the spread or minimize the damage from an ignition. The Coast Guard disagrees that a detonation cannot be stopped. Detonation arresters are designed to do just that. An inerting, enriching, and diluting system is also capable of stopping a detonation flame front, although the pressure wave will continue until it is dissipated. Most automatic shutdown devices cannot react fast enough to shut down and isolate the system once a detonation wave has developed.

Two comments stated that the test for equivalence should specifically state that the rulemaking is designed to not reduce the level of safety below that of the current industry practice of open loading, and any system seeking approval as equivalent would be approved when a hazards analysis shows that it meets or exceeds the base level of safety. Existing provisions for equivalence are contained in 33 CFR 154.108, and the Coast Guard's position is that these provisions are adequate. A hazards analysis is just one tool to help show equivalence.

One comment stated that events with a very low probability of occurrence could either be ignored or require fewer means of protection. Because of revisions to 33 CFR 154.804, the term "means of protection" is not referred to in this rulemaking. Revisions to this section take into account vapor processing units which have lower probabilities of ignition than vapor destruction units.

One comment stated that low pressure disks that enable flame to blow out at designated, controlled points provides a greater degree of safety than high pressure containment designs and devices. The Coast Guard disagrees. While blowout disks are not prohibited, these alone are not adequate since in a detonation the flame front will precede the pressure wave.

Twenty comments were received which objected to the mandatory installation of detonation arresters at all facilities as proposed in paragraph (a) of this section in the NPRM. Nine of the comments expressed concern over the unproven technology, the lack of testing, and the unavailability of detonation arresters. An API test program is expected to begin testing detonation arresters in actual detonations in March 1990. The Coast Guard expects that several of the models will pass the tests and that availability of the arresters will be adequate. Nine of the comments stated that the mandatory use of detonation arresters would limit flexibility unnecessarily, and will not necessarily be more effective than other devices or systems that are or may become available. The Coast Guard agrees and has revised this section to allow more flexibility. Detonation arresters are not mandatory for a vapor control system with a single facility vapor connection which either uses a vapor recovery unit or only receives vapor from inerted vessels.

Two comments stated that the requirement to install detonation arresters should be deleted until the standard is published for comment. The draft ASTM standard was published as appendix A in the NPRM for comment.

One comment recommended allowing a flame arrester with a high temperature

shutdown. The Coast Guard disagrees. Most flame arresters do not have the strength to withstand the pressures generated by a detonation and are not designed to quench a flame front traveling at sonic velocities.

One comment asked if liquid seals could be used in place of a detonation arrester. A liquid seal will be acceptable if it meets the material design standards and the test requirements in appendix A of 33 CFR part 154.

Eight comments disagreed with the proposed requirement in paragraph (a)(3) of this section in the NPRM to require the detonation arrester to be installed within 6.0 meters of the facility vapor connection. They recommended the arrester be allowed to be located "as close as practical" or "as close as feasible" to the facility vapor connection. The Coast Guard disagrees. Such language in regulations would be difficult to enforce. It is important that the detonation arrester be as close to the vessel as possible, and a facility should be able to find room within 6.0 meters of the facility vapor connection. Six of the comments appeared to be uncertain as to where the facility vapor connection is located. The definition of "facility vapor connection" has been revised to clarify this in 33 CFR 154.802 and 46 CFR 39.10-3. As a result of the reorganization of section 33 CFR 154.820 as proposed in the NPRM, the requirements for location of detonation arresters are contained in paragraphs (b)(1), (c)(1), (d)(1), (e), (f)(1), and (g)(1) of this section.

Two comments stated that the number of pipe diameters which would allow a flame to propagate to a detonation should be given, so that flame arresters could be accepted as an alternative. The Coast Guard disagrees. There are too many factors which can affect the run-up distance to reach a detonation. In addition, if an ignition were to occur on the vessel, it would have the length of the vapor collection piping on the vessel plus the length of the vapor hose to build up to a detonation. Therefore, the run-up distance to reach detonation is not relevant.

Seventeen comments disagreed with the mandatory use of inerting, enriching, or diluting for all vapor control systems. Some of the comments stated that it would force facilities to incinerate cargo vapor, economically prohibit refrigeration units, and increase the size of vapor control systems. Several of the comments pointed out that carbon bed adsorption and refrigeration units have proven safety records. Some of the comments pointed out that the API hazards analysis showed that flammable vapors could be handled safely. Three comments expressed support for inerting, enriching, or diluting of all vapors. They pointed out that incinerators have flames, carbon beds can overheat, refrigeration systems have rotating equipment, and compressors and blowers can be ignition sources. One of the comments claimed that enriching cargo vapor would not force facility owners to choose combustion and would not increase the size of the recovery system.

The requirements to inert, enrich, or dilute in this section have been revised. The Coast Guard has concluded that inerting, enriching, or diluting is not necessary for all installations. It will not be mandatory for a vapor control system with a single facility vapor connection which either processes vapor with a vapor recovery unit, only receives vapor from inerted vessels, or vapor balances; and for a vapor control system with multiple facility vapor connections which processes vapor with a vapor recovery unit.

Three comments stated that the fire protection requirements for facilities with multiple berths need additional study and development. One of the comments stated that each facility with multiple berths should be studied and approved on an individual basis consistent with the findings of the API hazards analysis. The Coast Guard agrees that the regulations do not address every aspect of multiple berths. It is difficult to anticipate every type of vapor control system design which will be used and develop the appropriate requirements. These regulations give general requirements which should be applicable to most systems. The hazards analysis and the review by the certifying entity are means to help uncover details in system designs which are not adequately covered and may cause a hazardous situation. The fire protection requirements that were in 33 CFR 154.820(i) of the NPRM have been deleted from the final rule, and all of § 154.820 has been reorganized to give the fire protection requirements for multiple and single berth facilities separately. Paragraph (e) of this section gives the requirements for a multiple berth facility which has a vapor recovery unit, and paragraph (f) of this section gives the requirements for a multiple berth facility which has a vapor destruction unit.

One comment stated that the subject of individual pressure control stations leading to a common collection pipeline with appropriate shutdown valves and non-return valves needs additional treatment in the rules. This comment is similar to the comments discussed in the previous paragraph. While detailed requirements may not be included, 33 CFR 154.814 gives the requirements that must be met at each facility vapor connection for each vessel simultaneously using the vapor control system. It is up to the designer to determine how to meet the requirements. The hazards analysis and the review by the certifying entity will help to uncover additional details in a system which could create a hazardous system.

A vapor control system with a single facility vapor connection which only receives vapor from inerted vessels and processes vapor with a vapor recovery unit must verify that the vapors are inerted. A vapor control system with a single facility vapor connection which only receives vapor from inerted vessels and processes vapors with a vapor destruction unit must either have a detonation arrester or an inerting system. A vapor control system with a single facility vapor connection that receives non-inerted vapor from a vessel and processes vapor with a vapor recovery unit must have either a detonation arrester or an inerting, diluting, or enriching system. A vapor control system with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester at each facility vapor connection. A vapor control system that uses vapor balancing must have detonation arresters at the facility vapor connection and at the storage tank, and must have high level alarm and overfill control systems at the storage tank. All other vapor control systems must have both a detonation arrester and an inerting, enriching, or diluting system. The requirements in 33 CFR 154.826(a) require facilities which do not have an inerting, enriching, or diluting system to have the inlet and outlet of each vapor compressor or blower protected by either a flame arrester, detonation arrester, or an explosion suppression system acceptable to the Coast Guard. This approach allows maximum flexibility while maintaining a minimum level of safety.

One comment stated that the regulations should be independent of climate zones, including cold climate zones, therefore, enrichment or air dilution should not be allowed. The Coast Guard disagrees. Although there will be problems to overcome if enrichment is used in cold weather, the problems can be overcome. In addition, a facility's vapor control system can be tailored for the specific climate at its location, whereas vessels must be designed to operate over a wider range of climatic conditions.

One comment stated that cargo tank inerting is needed to eliminate flammable vapor throughout the system because an ignition on a vessel will have a much more devastating effect on the vessel and surrounding area than an ignition at a facility. While the Coast Guard agrees that inerting the cargo tank vapor space on the vessel will eliminate this additional hazard, it does not agree that this increase in safety is worth the additional expense and complexity that would result from requiring inertion on all tankships and tank barges.

Two comments stated that explosion suppression systems should be tested, that design criteria should then be developed, and that provisions for such systems in lieu of inerting, enriching, or diluting systems should be added in the regue systems.

Two comments stated that vapor balancing should be added as a method of controlling the vapor mixture. The Coast Guard agrees that vapor balancing should be allowed. Although the NPRM did not prohibit it, by requiring inerting, enriching, or diluting, vapor balancing was impractical. With the revision to this section, a vapor balancing system will be more practical. A new paragraph (g) has been added to this section which permits vapor balancing when detonation arresters are installed at the facility vapor connection and at the cargo storage tank. Control of vapor emissions where the facility cargo storage tank is filled becomes a separate but linked problem which can be addressed by 33 CFR 154.800(d).

One comment stated that halons should not be allowed, considering the recent resolution adopted at IMO. The Coast Guard disagrees. The regulations do not require the use of explosion suppression systems that use halon. Manufacturers of fire fighting systems are actively looking for other equally effective media. The prohibition of halons is not appropriate at this time. However, a facility owner must bear in mind that the availability of halon is likely to be limited in the future and that future rulemakings may prohibit its use.

One comment suggested that the term "lower explosive limit" should be used instead of the term "lower flammable limit." The Coast Guard disagrees. While lower flammable limit and lower explosive limit have the same meaning, only one should be used in this rulemaking for consistency. It is the Coast Guard's position that lower flammable limit is more descriptive of the actual conditions. Because of the reorganization of the fire protection requirements, lower flammable limit and upper flammable limit are referred to in 33 CFR 154.824 in the final rule.

One comment expressed support for requiring an alarm to be seen and heard where the cargo transfer and vapor control system are controlled, and anywhere the operator may be reasonably expected to be located. One comment stated that the alarm only needs to be heard in the cargo transfer control area. The Coast Guard's position is that any alarm must at least be audible and visible where the cargo transfer and vapor control systems are controlled. Another comment stated that the point where the cargo transfer is controlled needs to be defined to ensure that it is not considered to be on the vessel. The Coast Guard's position is that this is not necessary. The term is clear enough to indicate that this is the place at the facility where cargo transfer is controlled. This requirement was moved to 33 CFR 154.808 in the final rule because it is applicable to more than just alarms for fire protection. The provision proposed in 33 CFR 154.820(h) of the NPRM to require the alarm to also be audible and visible anywhere the operator may be reasonably expected to be located has been deleted from the revised 33 CFR 154.808(e) of the final rule because it is not needed.

Three comments stated that requiring the analyzers to be not more than 3.0 meters from the facility vapor connection for facilities which only receive vapors from inerted vessels and do not have a source of inert gas is not sufficient. Two of the comments suggested that 6.0 meters be allowed. The Coast Guard agrees. The proposed requirement in 33 CFR 154.820(g)(3) of the NPRM has been revised in paragraph (a)(2) of this section in the final rule to allow a 6.0 meter distance. This paragraph has also been revised to allow only one oxygen analyzer to be used to verify the oxygen content of vapors coming off the vessel.

One comment stated that 33 CFR 154.820(g)(3) in the NPRM would prohibit pre-inerting of a vessel. The Coast Guard does not agree. The requirement has been revised in paragraph (a)(2) of this section in the final rule and neither the proposed nor the revised version of this paragraph would prohibit pre-inerting of the vessel.

Two comments stated that a vessel's inert gas system should be allowed to purge the collection lines prior to cargo transfer, which can be done while ballast from cargo tanks is being transferred ashore. The Coast Guard agrees. This is not prohibited by paragraph (a) of this section.

Six comments objected to the proposed requirement in 33 CFR 154.820(i) of the NPRM for a detonation arrester at the junction point of each branch. Three of the comments stated that short branches do not need the detonation arresters and will only add a significant pressure drop to the system. Two of the comments stated that the hazard evaluation will indicate where and what type of safety devices are needed. One of the comments stated that detonation arresters are not needed at the junction point because of other safeguards. Five comments raised objections to the requirement in 33 CFR 154.820(i) of the NPRM to provide dual means of isolation of branches at the junction point of a multiple berth system. One of the comments stated that the hazard evaluation would determine if the double valves were needed. One of the comments stated that double block and bleed valves have not been accepted in the past for use in an inert gas system. Another of the comments suggested liquid seals be permitted to isolate the branches. One of the comments stated that a single shutoff valve should be sufficient. One of the comments stated that the junction point may be in an inaccessible location, and it should be permissible to isolate the branches upstream of the junction point. Another comment suggested that a branch line may remain open to the downstream system if a purge gas is supplied continuously to the open unused branch. With the extensive revisions to 33 CFR 154.820 to differentiate between vapor destruction systems and vapor recovery systems, and single and multiple vessel vapor collection systems, the Coast Guard has determined that the requirements in 33 CFR 154.820(i) (2) and (3) of the NPRM are no longer necessary and has deleted them. The Coast Guard has also determined that the prohibition against mixing different methods of controlling the vapor mixture contained in 33 CFR 154.820(i)(1) of the NPRM is not needed and has deleted it. However, one aspect of mixing inerted and enriched vapors needs to be addressed. An enriching system which uses oxygen analyzers will not operate properly if inerted vapors are received unless special provisions are made. Paragraph (k) has been added to 33 CFR 154.824 to provide requirements for an enriching system which receives inerted vapors.

Eight comments requested clarification of the requirement to provide flame arresters at all outlets of the vapor control system. One comment pointed out that it would require a vent on double block and bleeds and low

point drains. Two comments stated that flame arresters should not be required on unintended openings such as open hatches, fittings, relief valves, and drains. Four comments stated that flame arresters should be required for normal vapor vents to atmosphere, except for stacks on combustion units. Two comments stated the only outlets will be pressure relief vents, and a plugged flame arrester could cause a relief valve to be ineffective. One comment suggested that a flame arrester or flame screen should be installed on the outlet of the vapor processing unit if a flammable mixture can occur, which would include all processing units except for combustion devices. The Coast Guard agrees that the requirement needs clarification. The regulation proposed in 33 CFR 154.820(p) of the NPRM has been revised in 33 CFR 154.820(h) of the final rule to require a flame arrester at each outlet of a vapor control system that vents to atmosphere which is not isolated with a pressure vacuum relief valve. The Coast Guard's position is that a flame screen would not be sufficient to prevent flashback into the system at these outlets. This would exclude non-normal vent outlets and stacks of combustion devices.

One comment stated that the NPRM ignores unintended openings such as open hatches, fittings, and relief valves, and that intentional or accidental leakage should not be tolerated. The degree of tightness sought by this comment appears to go beyond what is required for safety and addresses effectiveness for air pollution control. The Coast Guard does not have statutory authority to regulate effectiveness for air pollution control. This rulemaking addresses tightness insofar as it affects safety, such as requirements to close load and close gauge. It would be unsafe to not allow pressure relief valves to vent in an overpressure condition. However, the requirements in this rulemaking are designed to prevent a relief valve from opening except in an emergency condition.

One comment stated that the hazard evaluation will indicate where and what type of safety devices are needed for fire protection. The Coast Guard disagrees. A hazard evaluation is not required to know that a flame arrester is needed at certain vent outlets. However, the hazard evaluation may point out a need for additional safety features at other outlets.

33 CFR 154.822 Detonation Arresters, Flame Arresters, and Flame Screens

This new section consolidates general requirements for detonation arresters, flame arresters, and flame screens.

Appendix A of the NPRM contained the draft Standard Specification for Detonation Flame Arresters. Because this standard has not yet been adopted by ASTM, it is included in this rulemaking as appendix A to 33 CFR part 154. Paragraph (a) requires a detonation arrester to be capable of arresting a detonation from either direction and to be acceptable to the Commandant (G–MTH). A detonation arrester built and tested in accordance with appendix A is acceptable.

One comment recommended that a detonation arrester have a rupture disk which would divert the pressure to an area where it can be controlled and dissipated. The Coast Guard disagrees. Tests of detonation arresters conducted by the Jet Propulsion Laboratory for the Coast Guard showed that rupture disks were not effective in dissipating the energy associated with a detonation.

Appendix B of the NPRM contained a draft standard specification for Tank Vent Flame Arresters. Because this standard has not yet been adopted by ASTM, it is included in this rulemaking as Appendix B to 33 CFR part 154. A new paragraph (b) in this section requires all flame arresters to be acceptable to the Commandant (G–MTH). A flame arrester built and tested in accordance with appendix B is acceptable. A new paragraph (c) has been added to this section which gives the criteria for a flame screen. This criteria is identical to that in 46 CFR 30.10–25.

33 CFR 154.824 Inerting, Enriching, and Diluting Systems

The specific requirements for inerting, enriching, and diluting systems have been put into this new section. Paragraphs (h), (i), and (l) of this section have been revised to require that an inerting, enriching, or diluting system be able to supply sufficient gas to maintain the vapor stream outside of the flammable range by an adequate margin. This was implied, but not clearly spelled out in the NPRM.

Six comments stated that 6.0 meters was not sufficient for locating the injection point of the inerting, enriching, or diluting gas, because of other safety devices and pressure control valves that need to be located upstream of the point of injection. One of the comments recommended 40 to 60 feet. Four of the other comments recommended as "close as practical." The Coast Guard agrees that 6.0 meters may be unnecessarily restrictive. Specifying "as close as practical" is not appropriate for regulations without a maximum distance specified. The proposed requirements in 33 CFR 154.820(f)(1) of the NPRM have been revised in 33 CFR 154.824(b) of the final rule to require the injection point to be located as close as practical to but not more than 10 meters from the facility vapor connection.

One comment stated that complete or homogeneous mixing of the vapor stream is difficult to achieve in 20 diameters, and that mixing only needs to be sufficient to ensure that all parts of the vapor stream are outside the flammable range. The Coast Guard agrees that homogeneous mixing connotes a degree of mixing that is impractical and unnecessary. The proposed requirement in 33 CFR 154.820(f)(4) of the NPRM has been revised in paragraph (f)(3) of this section in the final rule to delete the reference to homogeneous mixing. However, the Coast Guard views mixing to ensure that all parts of the vapor stream are outside of the flammable range as complete mixing. The requirement for complete mixing proposed in 33 CFR 154.820(f)(2) of the NPRM is now located in paragraph (b) of this section in the final rule, and it requires complete mixing within 20 pipe diameters of the injection point.

Eight comments expressed objections to prohibiting drawing a vacuum after the point of injection of inerting or enriching gas. One of the comments suggested that a means should be provided which ensures that equivalent safety is maintained. Four of the comments said that means can be provided to prevent excessive air in-leakage. Two of the comments suggested that it should be acceptable to limit the number of flanges and require the vapor stream to be measured upstream of the vapor mover. One of the comments stated that Commandant (C–MTH) approval should not be necessary because these systems will frequently not operate at a positive gauge pressure. The Coast Guard agrees that criteria can be given to control the leakage of air into the vapor control system without requiring Commandant (C–MTH) approval. The proposed requirement in 33 CFR 154.820(f)(12) of the NPRM has been revised in paragraph (c) of this section in the final rule to allow two different design options. The first option is to not have any sleeve-type pipe couplings, vacuum relief valves, or other devices which could allow air leakage into the vapor collection system downstream of the injection point. The second option is to provide an additional analyzer downstream with means to inject additional enriching or inerting gas.

Two comments stated that the words "sets of" should be deleted from the proposed requirement in 33 CFR 154.820(d) of the NPRM for two independent hydrocarbon analyzers for enriching systems. The Coast Guard agrees and the new paragraph (d) of this section in the final rule does not contain the words "sets of." This new paragraph consolidates the analyzer requirements that were in the NPRM. The requirements in paragraph (d) of this section in the final rule requires two analyzers when the analyzers control the amount of inerting, enriching, or diluting gas injected into the vapor collection line. This change was made because new paragraphs (c)(2) and (e) of this section, and 33 CFR 154.820(a)(2) allow a single analyzer when the analyzer does not control the amount of inerting, enriching, or diluting gas injected.

One comment stated that provision should be made for using volumetric measurement instruments to control the addition of inerting, diluting, or enriching gases. The Coast Guard agrees. A new paragraph (e) has been added to this section to allow this in lieu of controlling the mixture by means of dual analyzers. However, one analyzer is still required as a check to ensure that the vapor mixture is maintained in an acceptable range.

Two comments stated that some types of hydrocarbon analyzers always read low when they fail (fail safe), and so redundant hydrocarbon analyzers should not be required for an enriching or diluting system. The Coast Guard disagrees. Sufficient information is not available at this time to be able to determine which analyzer types exhibit this characteristic or if it is only a design feature of some models. Allowing the proposed option could limit an operator's options when replacing equipment.

Two comments questioned how the 30 second response time of the analyzers is measured. The time is measured from when the sample is removed from the vapor stream to when the analyzer registers the reading. If the analyzers are located in the vapor stream, the time is measured from when the gasses contact the analyzer to when the analyzer registers the reading. One comment stated that it is more appropriate to specify a maximum distance from the gas injection point to the sampling point and a maximum sampling time, rather than a maximum time from injection to analysis; because the latter time will vary depending on the vapor flow rate. The Coast Guard agrees. This requirement is now located in paragraph (f)(2) of the final rule. A revision to specify the maximum time from injection to analysis was considered but rejected.

One comment stated that the frequency of an analyzer sampling the vapor concentration should be continuous. The Coast Guard agrees. The proposed requirement in 33 CFR 154.820(f)(4) of the NPRM has been revised in paragraph (f)(3) of this section in the final rule to require continuous sampling.

The requirement to be able to inert, enrich, or dilute the vapor hose in 33 CFR 154.820(f)(10) of the NPRM has been moved to paragraph (a) of this section in the final rule. The requirement to have the more severe analyzer concentration reading activate the required alarms and automatic shutdown system in 33 CFR 154.820(f)(5) of the NPRM has been moved to paragraph (d) of this section and has been broken down to specifically address inerting, enriching, and diluting systems individually. The requirement to sample the vapor concentration no more than 30 pipe diameters downstream from the point of gas injection in 33 CFR 154.820(f)(4) of the NPRM has been moved to paragraph (f)(3) of this section.

One comment stated that certain oxyen analyzers were prohibited without any rationale. The proposed requirements in 33 CFR 154.820(f)(8) of the NPRM prohibited zirconia electrochemical and thermomagnetic type oxygen analyzers because these analyzers operate at an elevated temperature and so could become a source of ignition in the vapor stream. This requirement has been changed in paragraph (g) of this section in the final rule to prohibit oxygen analyzers that operate at elevated temperatures which could become a source of ignition, and gives zirconia electrochemical and thermomagnetic type oxygen analyzers as examples of these types of analyzers.

One comment stated that zero and span gas should be injected into the "sample system." This arrangement is acceptable. The Coast Guard has determined that the requirement proposed in 33 CFR 154.820(f)(9) of the NPRM for a connection for injecting zero and span gas into the system was unnecessary. The requirements in 33 CFR 154.850(b), 156.120(aa)(7), and 156.170(g)(4) require testing and calibration of analyzers, it is up to the designer/operator to provide a means to perform the tests and calibrations.

One comment stated that the lower flammable limit and the upper flammable limit of vapors are variable, and sometimes difficult to determine. The changing of the applicability to crude oil, gasoline blends, and benzene should satisfy this concern since the flammability limits of these products are similar.

Two comments stated that automatic shutdown of cargo loading should be required any time the remotely operated cargo vapor shutoff valve is closed by an inerting, enriching, or diluting system shutdown condition. One comment stated that automatic shutdown of cargo loading should not be required. The requirements in this section (33 CFR 154.820 in the NPRM) do not require the automatic shutdown of cargo loading when the remote cargo vapor shutoff valve is closed. The requirement in 33 CFR 154.850(j) (33 CFR 154.850(b) in the NPRM) requires the operator to shut down the loading whenever a condition results in a shutdown of the vapor control system. The Coast Guard's position is that there is sufficient time for the operator to shut down the cargo loading when the vapor control system shuts down.

Two comments pointed out that the "(e)" was missing from 33 CFR 154.820(e) of the NPRM. This was an inadvertent mistake. The requirements for an inerting system in this paragraph in the NPRM have been moved to paragraph (h) of this section in the final rule.

One comment recommended that the set point for the oxygen alarm for inerted vapor control systems should be given as a range, for example 6%–8%, because the operator may need more time to react. The Coast Guard's position is that this is not necessary. The 8% alarm set point in paragraph (h) of this section in the final rule is the maximum set point which may be used, the operator may choose a lower set point if desired.

Two comments stated that the alarm set point should be set not higher than 7% and the shutdown set point should be set not higher than 8% for inerting systems to be consistent with the CTAC recommendations and requirements of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83). The Coast Guard disagrees. SOLAS 74/83 requires inerted tanks to have an oxygen content no higher than 8%. If a tankship being loaded was inerted to 7.5%, it would set off a high oxygen alarm set at 7% during the entire loading operation while still meeting SOLAS 74/83. An alarm should only reflect an abnormal condition, with the automatic shutdown set at an

appropriately higher level while still outside of the flammable range.

One comment stated that the alarm and shutdown set points for inerting systems are not appropriate for all cargoes because some products have explosive ranges form 1.7% to 36.5%. With the change to the cargo vapors applicable to these regulations in 33 CFR 154.800, the explosive ranges of the applicable cargoes will be much narrower and the set points given are appropriate.

Two comments stated that the values for activating alarms and shutdown valves for enriching systems should be given as minimums to allow them to be set higher. The Coast Guard's position is that the present wording is sufficient to allow the set points to be higher. If the set points are higher, they will fulfill the requirements as written.

One comment stated that there should be provisions to purge the vessel's tanks of oxygen if the vapor control system shuts down at high oxygen level. Another comment suggested that the regulations should allow the vapor control system to be supplied with inert gas from either the ship itself or from shore. The Coast Guard disagrees. The facility vapor control system is not required to be sized to handle the additional inert gas that would be transferred ashore.

One comment stated that oxygen analyzers are not appropriate for monitoring enrichment systems, because a change of 5% in hydrocarbon content is required to change the oxygen concentration by 1%. The Coast Guard partially agrees. Oxygen analyzers can be used, but because of the wide variance of hydrocarbon content reflected by a small change in oxygen content, the appropriate criteria for proper enrichment needs to be carefully considered. The Coast Guard has reviewed the proposed requirement in 33 CFR 154.820(d)(5) of the NPRM and concluded that it failed to properly consider this effect. The requirements in paragraph (j) of the final rule have been revised to require the maximum set point for the alarm at 15.5% oxygen and the maximum set point for automatic shut down at 16.5%. This corresponds to 170% and 150%, respectively, of the UFL for methane.

One comment expressed support for the requirements for air dilution. The requirements for air dilution (33 CFR 154.820(c) in NPRM) have been moved to paragraph (1) of this section.

33 CFR 154.826 Vapor Compressors and Blowers

This new section consolidates the requirements for vapor compressors and blowers into one section. Paragraphs (m) and (n) proposed in 33 CFR 154.820 of the NPRM have been moved to this new section as paragraphs (b) and (d), respectively. A new paragraph (a) has been added to require a detonation arrester, flame arrester, or explosion suppression system acceptable to the Commandant (G–MTH) at the inlet and outlet of each compressor or blower which handles vapor that has not been inerted, enriched, or diluted. This addition is necessary because of the revision to 33 CFR 154.820 which does not require the inerting, enriching, or diluting of all vapors.

One comment stated that the requirements for compressors and blowers in the NPRM were too restrictive, and that other designs can achieve an equivalent level of protection. The requirements given for compressors and blowers are meant to address known hazards characteristics of most types of compressors and blowers. The Coast Guard does not intend to limit compressors and blowers to the types mentioned in this section.

One comment stated that quick closing valves or explosion suppression systems have been extensively tested over a broad scale of applications, and so should be considered for use in lieu of detonation arresters. The Coast Guard disagrees. The Coast Guard does not know of any testing done on these types of systems to demonstrate their ability to stop a fully developed detonation wave travelling at sonic velocities. If successful testing demonstrates the effectivness of these types of systems for this application, the Coast Guard can accept such systems under equivalence provisions. The Coast Guard acknowledges that explosion suppression systems are likely to be effective in certain locations in a vapor control system where a deflagration wave has not accelerated to a detonation. Paragraph (a) of this section and 33 CFR 154.828(a) in the final rule allow an explosion suppression system acceptable to the Coast Guard in lieu of a flame arrester or detonation arrester at the inlet and outlet of a compressor or blower, or the inlet of a vapor recovery unit.

Four comments stated that liquid ring compressors were not addressed and should be allowed. The Coast Guard agrees. The exclusion of liquid ring compressors from the NPRM was not meant to prohibit them. A new paragraph (c) has been added to this section to provide requirements for liquid ring compressors, if used.

Two comments stated that the use of aluminum, aluminum alloys, magnesium, and magnesium alloys should be prohibited for blowers because sparks can be produced on impact with iron oxide. The Coast Guard disagrees. The Coast Guard accepts that this described hazard is possible, but it is not aware of any explosions attributed to rust or scale impacting the impeller. The proposed requirements in 33 CFR 154.820(n) of the NPRM are consistent with the requirements for a nonsparking fan contained in 46 CFR 110.15–1(b)(16). These requirements have been moved to paragraph (d) of this section in the final rule.

Two comments suggested including requirements for lobe blowers. The Coast Guard agrees and lobe blowers have been added to centrifugal compressors and fans in paragraph (d) of this section in the final rule.

Two comments pointed out that it may be impossible to "bond" the shaft of a fan to the fan casing because it passes through a seal. The Coast Guard agrees and has deleted this requirement.

One comment stated that additional fan specifications as to gas tight construction criteria for the housing and seal should be provided. It is the Coast Guard's position that these regulations do not need to go into this much detail.

33 CFR 154.828 Vapor Recovery and Destruction Units

This new section consolidates the requirements for vapor recovery and destruction units. It includes requirements that were in 33 CFR 154.820(k) of the NPRM.

Paragraph (a) of this section requires either a detonation arrester, a flame arrester, or an explosion suppression system acceptable to the Commandant (G–MTH) at the inlet of a vapor recovery unit if the vapors are not inerted, enriched, or diluted. This requirement was not in the NPRM and is needed since the requirements for inerting, enriching, or diluting have been changed.

One comment asked if a hydraulic seal required by paragraph (b)(1) of the final rule is like a typical deck water seal in a vessel's inert gas system. The Coast Guard interprets the terms to have the same meaning.

One comment stated that automatic quick acting stop valves should not be required for an incinerator or flare. Two comments stated that a double block and bleed valving arrangement should be acceptable in lieu of the two automatic quick acting valves for an incinerator or flare, with one of the valves automatic quick acting and the other manual. The Coast Guard disagrees. Quick acting valves are necessary to quickly isolate the incinerator or flare from the rest of the vapor control system when there is a flame failure. The second is needed for redundancy in case the first valve leaks. The requirements for flares and incinerators that were contained in 33 CFR 154.820(k) in the NPRM are now contained in paragraphs (b), (c), and (d) of this section.

Four comments suggested allowing a detonation arrester in lieu of a flame arrester at the inlet of a vapor destruction unit. Three comments stated that a detonation arrester should be required in lieu of a flame arrester. The Coast Guard's position is that either is acceptable. The purpose of the requirement is to protect the rest of the vapor control system from an ignition originating in the vapor destruction unit and a separate detonation arrester will serve that purpose as well as a flame arrester located close to or integrated into the unit. The requirements in paragraph (c) of this section have been revised to allow a detonation arrester in lieu of a flame arrester.

One comment stated that a flame arrester is not needed in addition to the water seal for a vapor destruction unit. The Coast Guard disagrees. A flame arrester fitted with a means to detect a flame on the arrester is needed to ensure that the flame front does not back up into the vapor collection system from the vapor destruction unit during normal system operation.

One comment stated that a minimum velocity at the vapor injection nozzle to the incinerator should be required, along with an interlock system to take appropriate action if the velocity drops below some set point. While this would be prudent, the Coast Guard's position is that it is not appropriate to include this in these regulations. This rulemaking is not intended to include detailed safety requirements for various vapor processing units. To do so could limit technical development and restrict the design of these units. The Coast Guard must rely on other authorities, the system designer, and the certifying entities to develop the details for safety of vapor processing units. In keeping with this approach, the requirement proposed in 33 CFR 154.820(1) of the NPRM that incinerators meet NFPA 85A has been dropped in the final rule. The reference to NFPA 85A has also been deleted from 33 CFR 154.106.

33 CFR 154.840 and 46 CFR 39.10–11 Personnel Training

One comment stated that an extensive personnel training program will be required to ensure safe operation and that this will take time. The Coast Guard agrees with this assessment. An adequate training program is an integral part of a safe vapor control system operation. The development of a training program must begin early in the design phase of a vapor control system.

One comment recommended that the Coast Guard propose a comprehensive training program for review by national authorities, perhaps via the International Maritime Organization (IMO). The Coast Guard intends to submit to IMO a training program similar to Appendix D in the NPRM as part of the effort to develop international standards for vapor control systems.

One person suggested that the scope should be broadened to include all persons involved in the transfer operation, with additional training in supervision for persons in charge. While it would be prudent to provide training for all personnel, the Coast Guard's position is that the minimum necessary for safety is to have one person on the vessel and one person at the facility on watch with the necessary training.

Three comments supported the personnel training requirements and the duration of training. One of the comments stated that personnel training is better than technical requirements for automatic shut downs of cargo loading or the vapor control system. Another comment supported eight hours of hands-on training in normal and emergency operating procedures.

Twenty four comments stated that 40 hours of training, as proposed in paragraph (a) of these sections in the NPRM, is excessive. Eight comments supported eight hours for vessel crews. Three of the comments supported 16 hours. One of the comments supported 12 hours for new tankermen. Two comments stated that 24 hours of training for personnel who had previously undergone the training is excessive. One of the comments supported one hour of drills for a barge of each type. One of the comments supported one day on the job training for system specific equipment. Eleven of the comments stated that either a minimum time should not be required, or the minimum time should be left to the operator. The Coast Guard agrees that it is not practical to require a minimum time because of the wide variation of complexity of both vessel and facility systems. The regulations in paragraph (a) in each of these sections have been revised to delete the minimum required time for training. The subjects to be covered by the training program remain the same as those proposed in the NPRM.

One comment stated that the Coast Guard should not become involved in the training of facility operators. The Coast Guard disagrees. The Coast Guard has the responsibility to issue regulations for the safety of facilities, and human error accounts for the majority of all marine accidents.

One comment stated that a tankerman should not be required to have eight hours of training on each barge worked on. The wording in 46 CFR 39.10–11(a) is not intended to require additional training for a person every time they work on a different vessel, only when "the particular system on the vessel" differs from those with which the person has experience. In addition, as previously discussed, the minimum time period has been deleted, therefore the amount of additional training for a different system is up to the operator. Because the amount of training is up to the operator, the last sentence of 33 CFR 154.840(a) and 46 CFR 39.10–11(a) in the NPRM requiring training for persons who have had previous vapor control system training has been deleted from the final rule.

One comment suggested that in addition to the training course, the employer must verify that the man has had enough supervised on the job training to be qualified to be a person in charge. The Coast Guard's position is that this is included by requiring "drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures."

One comment stated that training for vessel personnel can be integrated into existing internationally accepted tanker training courses. The Coast Guard agrees that this can be done to a certain extent. Most existing tanker training programs are not vessel specific, and therefore will not be able to give the necessary detailed training for the particular system installed on a vessel. In addition, training schools may not want to include training for vapor control systems since not all vessels will have the systems installed.

One comment stated that the training criteria should be included in the tankerman regulations. The Coast Guard disagrees. Not all tank vessels will have vapor collection systems, so the training will not be required for all tankermen.

One comment recommended that on the job training of junior officers by the Master or Chief Officer should be permitted. Details of how the training is achieved is up to the owner/operator. If the owner/operator wants on the job training run by the Master or Chief Officer, that is acceptable. The Coast Guard anticipates that some on the job training supervised by the Master or

Chief Officer will be a part of most tankship training programs.

One comment stated that more detailed and specific information on training requirements, instructors, and criteria should be provided. The Coast Guard disagrees that this is needed in the regulations. More detail on the content of the course was published as appendix D in the NPRM and is available from the Commandant (G-MVP). Other details for training are dependent on the specifics of each type of vapor control system and the experience of the personnel. It is the responsibility of the owner/operator to ensure that each person gets adequate training.

Four comments stated that the training program should include additional criteria for health effects of vapors and proper use of personal protection equipment. The Coast Guard disagrees. These topics are applicable to all tankermen, and are part of the already required training for all tankermen.

Two comments questioned how the training and certification of training will be accomplished. One comment recommended that the vessel or facility should issue a certification to all employees who have completed the training program. How the training is accomplished is up to each owner/operator. They may set up an in-house training program. Alternatively, established schools may develop programs, with part of the course going to the vessel or facility for the on-hands portion. Completion of the training should be documented by the owner/operator or training school by a letter, similar to the way training for crude oil washing is currently documented.

Nine comments were received regarding the review or approval of the training program. One comment recommended having the certifying entity approve the facility training program. Four comments supported Coast Guard approval of training programs. Two comments supported review but not approval of programs by the Coast Guard. Two comments stated that the Coast Guard should neither review nor approve the programs. The Coast Guard's position is that owners/operators can develop and provide adequate training programs with guidance from the Coast Guard, if requested. Coast Guard review and approval of the programs is not necessary. While it may be prudent to have the certifying entity review a facility's training program, it is not appropriate to require this. Requiring a certifying entity to also have expertise in personnel training may eliminate many otherwise qualified applicants.

One comment recommended specifying in 46 CFR 39.10-11(a) that it is the "shipboard" person in charge that must have received training. The Coast Guard's position is that this is not necessary because the paragraph is only applicable to vessels.

One comment suggested adding a requirement to have a short ship/shore training and safety exercise as part of the pre-transfer procedures. The Coast Guard's position is that this is not needed. Requirements for pre-transfer checks of sensors and automatic shutdown systems will keep personnel familiar with the equipment. Additional exercises prior to each loading will not be cost effective.

Two comments recommended a requirement to have periodic refresher or updating courses. The Coast Guard's position is that such a requirement is not appropriate. The necessary refresher training depends upon the complexity of the vapor control system. The Coast Guard recommends that each facility and vessel conduct periodic drills and refresher training for personnel, appropriate to its vapor control system.

Two comments pointed out that the time frame for compliance with the training requirements is not given. One of the comments recommended that existing approved operations should be given 24 months to comply. The Coast Guard disagrees. All vessel and facility persons in charge must complete training prior to operating a vessel control system. Persons in charge of existing vapor control systems should have already had training at least similar to that required by these regulations.

33 CFR 154.850 Operational Requirements

The requirements in this section have been reorganized and revised to follow the sequence of events in a transfer operation.

Seven comments addressed the frequency of testing of the alarms, automatic shutdown systems, and sensing devices. One comment suggested testing just prior to loading. One comment suggested testing just prior to loading if the vapor control system is used infrequently, otherwise every two weeks. Two comments stated that daily testing would be appropriate for analyzers. One comment recommended monthly testing of the alarms and automatic shutdown systems. One comment recommended testing once per week. Another comment stated that testing should be less frequent or use self-checking devices, because often equipment cannot be tested without product flowing through the system. The Coast Guard's position is that daily testing is appropriate. By specifying not more than 24 hours prior to loading, a facility in continuous operation will not have to shut down to test if it has tested not more than 24 hours prior to the loading for another vessel. If the facility loads infrequently, it will not have to test until within 24 hours of loading. The importance placed on these alarms, automatic shutdown systems, and sensing devices makes it necessary to require at least daily testing. A system can be designed to make this testing simple and quick, without having to have vapors flowing through the system.

Two comments suggested changes to the requirement to test alarms and automatic shutdown systems within 24 hours prior to each loading to ensure that it is not confused with the calibration of analyzers in 33 CFR 156.170(g)(4). One of the comments suggested specifying that the tests be electrical and mechanical. The other comment suggested requiring a mechanical test. The Coast Guard disagrees. The wording in paragraph (b) of this section in the final rule (paragraph (d) in the NPRM) is sufficiently clear to indicate that the alarms and automatic shutdown systems are to be operationally tested by whatever means is appropriate for each particular system.

One comment suggested that the preloading checks should specify a check on the calibration of each analyzer to be used, which will entail observing the recorded response of each analyzer to the calibration span gas. The Coast Guard agrees. The requirements in paragraph (b) of this section (paragraph (d) in the NPRM) and 33 CFR 156.120(aa)(7) have been revised to specify that the analyzers must be checked for calibration by use of a span gas. The term "sensors" in paragraph (b) and 33 CFR 156.120(aa)(7) has been replaced with the term "analyzers" to more clearly specify the intent.

One comment suggested including or referencing the requirement for weekly analyzer calibration in 33 CFR 156.170. The Coast Guard disagrees, this would result in confusing required periodic tests or instrument calibration with operational checks. Periodic tests will normally be performed by different personnel than the operational checks.

Because of revisions to 33 CFR 154.812(b), a facility's overfill sensor circuit must be labelled with the maximum allowable length of cable and maximum allowable inductance and capacitance which can be connected to the control panel. A new paragraph (d) has been added to this section which prohibits a barge with an overfill control system in accordance with 33 CFR 154.812(b) from connecting to a facility's overfill control panel if the length of cable, inductance, or capacitance exceeds the allowable values for the facility.

One comment pointed out that the requirement for the facility to control the initial loading rate should instead apply to the tankerman on the vessel. Another comment supported the requirement and stated that the initial loading rate is difficult to determine on the vessel because the vessel will not have a flow meter, and the facility will have to monitor the flow rate. The Coast Guard has revised paragraph (f) of this section (paragraph (h) in the NPRM) to require this cooperation between the facility and vessel so that the loading rate can be properly limited.

Seven comments objected to requiring the slow initial loading to be continued until the height of cargo reaches one meter in depth, noting that one meter could be ⅛ or ⅙ of the cargo capacity on some river barges. The comments estimated that the resulting loading time could increase by 50% over current loading time. The Coast Guard agrees that one meter may be excessive. The requirements in paragraph (f) of this section (paragraph (h) in the NPRM) have been revised to require the initial loading rate to comply with the rate agreed to at the pre-transfer conference required by 33 CFR 156.120(w) and 46 CFR 39.30.1(h). The regulation in 46 CFR 39.30.1(h) now requires the initial loading rate to meet the cargo tank filling recommendations in section 7.4 of ISGOTT.

Two comments pointed out that controlling the loading rate to each cargo tank is only within the control of the vessel, that the facility can only control the overall loading rate. The Coast Guard agrees that this is true, however, there will still be a maximum loading rate for the vessel which cannot be exceeded and that only the facility can limit. For the sake of clarity, paragraph (g) of this section in the final rule has been revised to include both paragraphs (c) and (d) of the NPRM.

Two comments supported the prohibition of line clearing of a cargo loading line. One of the comments stated that it should be prohibited even for open loading. Nine comments objected to the requirement, stating that it will have a major impact on operations. Three of the comments stated that clearing the line can be accomplished without overpressurizing the vessel. One of the comments suggested that line clearing could be done with inert gas. One of the comments stated that clearing of liquid cargo hoses to the vessel would allow only a small quantity of vapor to be involved, and should be permitted. One of the comments stated that pigging of cargo lines can be done safely. One of the comments stated that certain cargoes which can crystallize need to be pigged to clear the lines. One of the comments stated that this requirement would prevent the facility from loading other vessels, and does not recognize the need to wash cargo tanks. The hazard involved in line clearing, overpressurizing the cargo tanks, is caused by the pressurized gas used in the line clearing. While this hazard may exist to some extent for open loading, the risk and consequence is greatly increased during closed loading with vapor control. The Coast Guard agrees that pigging of cargo hoses can be done safely as long as compressed air or gas is not used and that clearing of cargo hoses can be done safely with compressed air or gas. In order to allow this, the requirements in paragraph (h) of this section (paragraph (m) in the NPRM) have been revised to allow gas to be used to clear cargo loading hoses or loading arms when transferring cargo to a vessel connected to a vapor control system. The cargo lines can be modified to allow clearing cargo lines with compressed air or gas while the cargo loading valve is closed.

One comment stated that when one of the analyzers fails, further loadings should be allowed provided the remaining device is tested and calibrated before every load rather than weekly, and the failed analyzer is repaired or replaced within a specified time. The Coast Guard disagrees. Because of the importance of the analyzers, it is the Coast Guard's position that it would not be prudent when dual analyzers are required to begin another loading operation with only one analyzer. The requirement to not conduct further transfer operations if one of the dual analyzers is inoperable is contained in paragraph (i) of this section (paragraph (f) in the NPRM).

Two comments recommended that paragraph (j) of this section (paragraph (b) in the NPRM) allow the continuation of loading without vapor control provided local air quality district regulations allow the facility to do so. If cargo vapor is not being collected, these requirements do not apply. Therefore, if the local air quality district regulations allow a facility to continue loading without collecting vapor, these requirements will not prohibit the operation. However, if a condition results in a shutdown of the vapor control system, it is important to secure cargo loading in accordance with this paragraph, determine the cause, and then, if conditions permit, disconnect the vapor collection hose or arm, and secure the facility and vessel vapor collection systems before restarting cargo transfer.

One comment stated that a shutdown condition should include simultaneous shutdown of both the cargo pumping system and the vapor control system. The Coast Guard does not agree. Simultaneous shutdown of both the cargo loading and the vapor control system is not required when the fault or shutdown condition originates in the facility vapor control system. With these conditions, there will normally be sufficient time to manually shut down cargo loading.

Three comments recommended including periodic inspection and cleaning of flame arresters in addition to the requirement to inspect the flame arrester after a flare-back as required in paragraph (k) of this section (paragraph (n) in the NPRM). Another comment suggested adding "in addition to routine maintenance." The Coast Guard's position is that this is not necessary. Requirements for periodic inspections are contained in 33 CFR 156.170(g) of the final rule.

The Coast Guard has determined that the proposed requirement to verify normal vapor flow, contained in paragraph (i) of the NPRM, is vague and does not significantly contribute to safety. Therefore, it has been deleted from the final rule.

Four comments objected to the proposed requirement to limit vapor hose length to 30 meters. Suggested alternatives were to require limits on hose length to be determined by pressure drop considerations, and to specify a maximum pressure drop of 0.1 psi at the maximum vapor collection rate. The Coast Guard agrees that the desired result can be achieved by better means than limiting the length of vapor hose. The requirement to limit the length of vapor hose proposed in paragraph (k) of the NPRM has been deleted. The requirements in 33 CFR 154.814(c) require the pressure drop across the vapor collection hose or arm to be considered in maintaining the proper pressure.

Thirteen comments objected to the proposed requirement to have the vapor hose not less than the size of the tank vessel's vapor collection system. Suggested alternatives were to match the size of the hose to the facility's maximum loading rate considering

pressure drop, or to require the total cross sectional area of all vapor hoses to exceed the cross section area of the vessel's vapor collection pipe. Two comments stated that the requirement should be deleted because the vessel is protected from overpressurization at the maximum loading rate. The Coast Guard agrees that the desired result can be achieved by better means than limiting the size of the vapor hose. The requirement to limit the size of the vapor hose proposed in 33 CFR 154.850(l) of the NPRM has been deleted. The requirements in 33 CFR 154.814(c) require the pressure drop across the vapor collection hose or arm to be considered in maintaining the proper pressure.

33 CFR 155.750 Contents of Oil Transfer Procedures

One comment stated that all the information required to be put in the vessel's oil transfer procedures by paragraph (d) could be included on the line diagram drawing which is tailored to the equipment for each barge. The requirement does not specify how the information is to be presented. If it can all be put on one drawing, that will be satisfactory.

One comment recommended that the maximum loading rate should be either on the vessel's Certificate of Inspection (COI), or it could be painted on a barge. The Coast Guard considered adding this information to the COI or requiring that it be marked on the vessel and decided the most appropriate place to record this information was in the oil transfer procedures. Placement of this information on the COI would not be sufficient since the person in charge will have to be knowledgeable of all the information included in the oil transfer procedures.

Two comments pointed out that paragraph (d)(1) of this section requires the line drawing to show the location of flame arresters and other devices that are not necessarily installed on every vessel. The Coast Guard agrees, and has added "if fitted" to the paragraph.

Two comments pointed out that the proposed regulation in the NPRM requires the transfer procedures to contain a description of the automatic shutdown system, which is not required for every vessel. The Coast Guard agrees, and "if fitted" has been added to 33 CFR 155.750(d)(7)(v). "If fitted" has also been added to paragraph (4)(iv) for a description of the high level alarm system, since it also is not required for every vessel.

Two comments stated that the vessel's oil transfer procedures should include a table or graph showing the maximum pressure drop across the vessel's vapor collection system versus the cargo loading rate. One of the comments suggested using the density of air (1.0 specific gravity), the other comment suggested using the density of a gasoline/air mixture (2.0 specific gravity). The Coast Guard agrees that the pressure drop across the vessel's vapor collection system as a function of loading rate should be in the oil transfer procedures. Consistent with the change to 33 CFR 154.814(b), the facility needs to be able to determine the pressure drop in a vessel's vapor collection system. A new 33 CFR 155.750(d)(5) has been added which requires this information, calculated in accordance with 46 CFR 39.30–1(b), to be provided in the oil transfer procedures. The regulation in 46 CFR 39.30–1(b) has been revised to require the pressure drop to be calculated based upon the density of a 50% cargo vapor and air mixture.

One of the comments stated that certifying entities should be authorized to review oil transfer procedures, because COTP's and OCMI's may not have the experience needed to approve them. The Coast Guard disagrees. It is not appropriate for a certifying entity to review a vessel's oil transfer procedures. A COTP or OCMI can obtain assistance from the Marine Safety Center in reviewing oil transfer procedures, if needed.

33 CFR 156.120 Requirements for Oil Transfer

Three comments stated that the oxygen content of inerted cargo tanks should be verified prior to transfer. Two of the comments recommended the facility personnel verify the oxygen content. The other comment stated it would be sufficient to have the vessel personnel verify the oxygen content, because the facility monitors the oxygen content as the vapors come ashore. The Coast Guard agrees that the oxygen content should be checked prior to transfer, but because the facility will monitor the vapors as they come off the vessel, the facility personnel do not need to also verify the oxygen content on the vessel. Requiring the facility personnel to also verify the oxygen content would prohibit the vessel from beginning to check the tanks prior to docking. A new paragraph (aa)(9) has been added to this section which makes verification of the oxygen content a part of the pre-transfer checks for inerted tank vessels.

Four comments requested clarification of the requirement for the insulating flange. The requirements in 33 CFR 154.810(g) and 46 CFR 39.40–5(c) have been revised to allow an insulating flange or a section of insulating hose. Additionally, paragraph (aa)(3) of this section has been revised to verify that the electrical insulating device required by 33 CFR 154.810(g) or 46 CFR 39.40–3(c) has been installed.

Two comments suggested that the requirement in 33 CFR 156.120(aa)(6) to check the tank barge overflow control system specify to test the system. The Coast Guard agrees. The paragraph has been revised to require that the system is tested and operating properly.

One comment suggested that the schedule for testing alarms and automatic shutdown systems in paragraph (aa)(7) of this section should specify not more frequently than once a week for those terminals with less than once a week loading situations. The Coast Guard's position is that the present wording of the requirement would allow this. The alarms and automatic shutdown systems are to be tested within 24 hours prior to the start of the transfer operation. If there is only one transfer operation a week, this will only have to be done once a week.

One comment stated that the testing schedule proposed in 33 CFR 156.120(aa)(7) is too stringent, and recommended that the schedule proposed in 33 CFR 154.850(e) in the NPRM be used. The Coast Guard's position is that these two requirements contain the same testing schedule: not more than 24 hours prior to the transfer operation. Section 154.850(e) in the NPRM has been moved to § 154.850(b) in the final rule.

One comment stated that testing alarms and automatic shutdown systems once a week would provide an adequate level of safety. The Coast Guard disagrees. The alarms and automatic shutdown systems are essential safety components, and frequent testing, contingent on cargo loading frequency, is necessary to ensure that they will function properly.

One comment stated that intrinsically safe wiring requirements should be included in paragraph (aa)(7) of this section. The Coast Guard disagrees. It is not appropriate to include intrinsically safe wiring requirements in requirements for pre-transfer checks.

33 CFR 156.170 Equipment Tests and Inspections

One comment pointed out the word "experience" was missing from paragraph (g)(3) of this section. The Coast Guard agrees, the word was inadvertently left out.

One comment stated that styrene vapors could cause clogging of a detonation arrester in the heat of the day, that the device should be inspected after a predetermined number of hours in operation, and a maintenance report should be maintained for the life of the device. The Coast Guard agrees that detonation arresters may need to be inspected and cleaned more than once per year. With the change in applicability to only crude oil, gasoline blends, and benzene, rapidly clogging cargoes such as styrene can be considered on a case by case basis. However, some crude oils may require frequent cleaning of detonation arresters. Because there is no operational experience with detonation arresters, there is no information available as to how often they need to be inspected and cleaned. The regulations in paragraph (g)(3) of this section require a detonation arrester to be inspected and cleaned more frequently if experience shows it is necessary. Cleaning of detonation arresters should be included as part of the record of repairs required by 33 CFR 154.740(g).

Two comments suggested that weekly calibration of analyzers is not needed if the vapor control system is used infrequently. The Coast Guard agrees that the analyzers do not need to be calibrated weekly if the system is not used that frequently. The requirement in paragraph (g)(4) of this section has been clarified to allow testing within 24 hours prior to operation if the system is operated less frequently than once a week.

Four comments recommended less frequent testing of analyzers because they are reliable and not subject to calibration drift. Two of the comments recommended biweekly. The other two recommended monthly calibration. The Coast Guard agrees that they can be calibrated less frequently than weekly. Therefore, paragraph (g)(4) of this section has been revised to allow biweekly calibration.

One comment stated that because analyzers must be tested regularly, they should be tested either 24 hours before loading or once a week. The Coast Guard's position is that regular testing is required by these regulations. The regulation in paragraph (g)(4) of this section requires calibration either biweekly or not more than 24 hours prior to operation when the system is operated less frequently than once a week.

One comment stated that verifying the analyzer prior to its being used rather than at some arbitrary interval would better achieve the desired result, and suggested that this be included as a part of 33 CFR 154.850(b). The Coast Guard's position is that this is provided for in the regulations. The regulation in 33 CFR 156.170(g)(4) requires calibration either biweekly or not more than 24 hours prior to operation when the system is operated less frequently than twice a week, and 33 CFR 154.850(b) requires operationally testing analyzers not more than 24 hours prior to each transfer operation.

One comment stated that calibration of the analyzers should be the same ship-side and shore-side. The Coast Guard's position is that this is required by the regulations. The requirement in paragraph (g) of this section applies to both vessels and facilities.

One comment recommended that each facility should be routinely examined and inspected by the Coast Guard. Facilities currently have an annual inspection by the Coast Guard.

Appendices

Seven comments were received on Appendices A, B, and C of the NPRM. These appendices were draft ASTM standards which were presented for the information of readers. Appendix C has been adopted as ASTM standard F1271. Appendices A and B of the NPRM, Standard Specification for Detonation Flame Arresters and Standard Specification for Tank Vent Flame Arresters, have not been adopted, and have been included for guidance as appendix A and B to 33 CFR part 154.

46 CFR 32.53–85 Instruction manual—T/ALL

One comment noted that additions to the IGS Instruction Manual required by 46 CFR 32.53–85 should not be required unless the vapor control and inert gas systems are interconnected. The Coast Guard agrees and has so modified the final rule.

Another comment stated that the IGS instruction manual should not be changed and that a new manual should be required. This comment is rejected because it would unnecessarily add to the paperwork burden.

One comment stated a concern about who would be responsible for approving amendments to the IGS manual. Since this section does not require changes to the manual but a rather minor addition to the manual, reapproval of the manual will not be necessary.

A new paragraph was added to this section which requires that the oxygen content of the vessel's cargo tanks, if inerted, be at or below 8 percent by volume. This addition was necessary because of changes made to the "Declaration of Inspection" in § 35.35–30.

46 CFR 35.35–20 Inspection prior to transfer of cargo—TB/ALL

One comment voiced general agreement with the requirements of this section, however, two other comments questioned the need for an insulating flange and three comments were concerned that the wording used to state the insulating flange requirement eliminates alternatives currently used by industry. In response to these comments the final rule has been changed to allow alternative procedures that follow the ISGOTT guidelines for the electrical insulating requirements.

One comment questioned whether an insulating flange would be needed for a barge to barge transfer. The answer is yes. Paragraph (m)(3) of this section references § 39.40–3(c) which states that for lightering operations "An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on the service vessel and the vapor connection on the vessel being lightered or topped-off."

Three comments pointed out that not all barges are required to have an overflow control system and, therefore, the connection of this system to the facility is not always required. The Coast Guard agrees with this comment and the final rule has been revised to clarify this point.

46 CFR 35.35–30 "Declaration of Inspection" for tankships—T/ALL

One comment stated that the Declaration of Inspection should also include verification that the oxygen content of the cargo tanks of an inerted vessel is below 8%. The Coast Guard agrees with this statement and has added this verification to the list of requirements in the Declaration of Inspection.

46 CFR 39.10–9 Vessel vapor processing unit—TB/ALL

Two comments were received that suggested that vessel processing units should be prohibited from a safety standpoint. The Coast Guard disagrees since vessels so equipped, other than tank vessels, must meet the requirements contained in subpart E of 33 CFR part 154 and by so doing will be able to operate safely.

One comment recommended that this section should say "meet the requirements of," rather than "meet the intent of," 33 CFR part 154, subpart E. The Coast Guard agrees and has revised the subject paragraph. The entity responsible for determining if these requirements have been met has been changed from the Marine Safety Center

to the Commandant (G-MTH) since policy decisions, such as this, are normally made by Coast Guard headquarters. The Coast Guard recognizes that not all of the requirements in subpart E of 33 CFR part 154 will be applicable to vessels since it deals with facilities. However, since Coast Guard approval of the installation will be required, the Coast Guard will be able to evaluate alternative proposals to ensure that an equivalent level of safety is achieved.

46 CFR 39.10-13 Submission of vapor control system designs—TB/ALL

One comment recommended that plans, calculations, and specifications that must be submitted for approval be sent directly to the Marine Safety Center rather than using the requirements contained in 46 CFR 31.10-5(a). The regulations in 46 CFR 39.10-13 of the final rule has been revised to indicate this change.

Four comments questioned why vapor control system designs on U.S. vessels have to be certified by the Coast Guard while foreign vessels can obtain certification from classification societies. The Coast Guard intends, at least initially, to be involved in the certification of these systems on all U.S. tank vessels. The certification of vapor control systems on foreign vessels by classification societies will be accepted as a substitute for the Coast Guard plan review and inspection. As experience is gained in the use of vapor control systems, the Coast Guard will consider revising the agreements with the American Bureau of Shipping (ABS) to permit them to review and approve vapor control systems.

Five comments recommended that local MSO's and OCMI's be allowed to review vapor control systems for approval and reapproval. This recommendation has not been incorporated. Personnel at MSO's and OCMI's do not have the experience or the expertise to carry out complete plan reviews of tank vessels. Currently, the Marine Safety Center is responsible for carrying out plan reviews for tank vessel systems other than vapor control, so this requirement is consistent with present Coast Guard policies.

Three comments stated that previously approved vapor control systems should not require reapproval. A new paragraph (c) has been added to this section to exempt tank vessels with existing vapor collection systems that have been approved by the Coast Guard and were operating prior to the effective date of the final rule as long as they only transfer vapor to the specific facilities for which they were approved.

Four comments stated that the amount of time allowed for modifying existing vapor control systems was not adequate. The Coast Guard agrees and has modified the regulations in this section of the final rule to allow up to 24 months after the effective date of the final rule for completing any modifications.

Four comments took exception to the requirement that a vessel which has a vapor collection system that was approved for use at one facility must be reapproved if it is to use a different facility. These comments have misinterpreted the requirements of this section. Only vessels, approved by the Coast Guard and operating at a specific facility prior to the effective date of this final rule must be reapproved if they intend to transfer vapor at a facility other than the one for which they were approved.

One comment questioned whether oversight or certification of foreign vessels would be required, and if so, who will be responsible. Plans for oversight are in the development stage, details are still to be determined.

One comment stated that certain gas and chemical carriers are already in possession of Certificates of Compliance approving their existing vapor control installations in accordance with IMO codes and should be accepted by the Coast Guard. The Coast Guard disagrees with this suggestion since section 15.12.2 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk only requires that a vapor connection be provided. It does not contain design, installation, or operational requirements for vapor control systems.

46 CFR 39.20-1 Vapor collection system—TB/ALL

Five comments stated concern about the compatibility of ship to shore vapor connections. The Coast Guard's position is that this will not be a problem since this section prescribes the configuration of the flanges used in making the connections.

Five comments dealing with the location of vapor connections and the compatibility of vessel and facility connections were received. One comment was received which agreed with the Coast Guard's position on the location of the vapor manifold. In light of these comments, this section has been revised to require that vapor collection piping must be permanently installed as close as practical to the vessel's loading manifold. An exception is allowed for those vessels certified to carry cargoes listed in 46 CFR Table 151.05 or Table 1 of 46 CFR part 153. These vessels, in order to preserve segregation of cargo systems, will be allowed to locate their vapor connections in the vicinity of each tank.

One comment questioned whether the requirements in this section would interfere with vapor connections in use outside the U.S. This may be the case, however, the Coast Guard is working through the International Maritime Organization to develop an international standard for vapor control systems.

Another comment questioned if these requirements would preclude the current chemical-tanker practice of hooking up shore vapor return hoses directly to semi-permanent connections on tank hatches, butterworth openings, or cargo or inert gas piping. The answer is yes since this section states that all vapor control piping must be permanently installed. In addition, the variable size openings involved with such hook-ups would make it difficult to determine the pressure drop that would result.

One comment suggested that the permanent piping required by this section could pose a problem for barges that must transit low bridges. The Coast Guard position is that the height of this piping would not be higher than the present venting arrangement required by 46 CFR 32.55, so it should cause no more of a problem than that which presently exists.

Two comments stated that this section prohibits using the inert gas piping system for both inerting and vapor collection purposes. This section does require a means to isolate the vessel's inert gas supply line from the vapor collection system but it does not prohibit the use of the IG main and tank connections for vapor collection purposes.

One comment suggested that the requirement in proposed paragraph (a)(4) of this section to have a stop valve which can isolate the inert gas system from the vapor collection system be modified so that equivalent means of isolation, such as a spool piece, can be used. This requirement has been changed and added to paragraph (a)(6) of the final rule to require a "means to isolate" rather than a specific device.

Two comments questioned the requirement to have a means to drain liquid from all low points in the vapor collection system. They stated that this would be difficult to do because of changing tanker trim and that it would require too many drains thereby creating more sources of leakage. Paragraph (a)(4) of this section has been revised in the final rule to require a means to eliminate liquid condensate from the line. The draining and collection of liquid from the low points in the line would be one method to meet this requirement.

One comment questioned if a rising stem valve would satisfy the requirement for having an isolation valve at the vessel vapor connection. The answer is yes, if the valve is capable of manual operation.

Twenty-one comments were received concerning the labeling and color coding of hoses and the use of lugs on vapor connection flanges. Most of the comments stated that the use of lugs is not necessary and that they would only make the connection of hoses very difficult and possibly lead to hose damage. The Coast Guard's position is that in order to ensure that vapor collection systems are not accidentally connected to cargo loading systems the use of a lug or stud is necessary. However, in order to allow easier connection of vessel vapor control systems to facility vapor control systems this section of the final rule has been modified so that a stud (lug) is only required on the vessel and facility vapor manifold flanges and not on hoses or facility loading arms. Additionally, the flanges on vapor hoses and on facility loading arms must have at least one hole to accept the stud, but may have as many as practical. The regulations in this section addressing color coding and labeling requirements for vapor hoses and piping have also been changed to be in agreement with an API guideline currently under development.

One comment suggested that this section should require use of the industry practice of having a measured in-service resistance of not less than 1,000 ohms recommended by ISGOTT for the vapor hose instead of the maximum value of one million ohms (Mohm) being required. The Coast Guard agrees that one Mohm is too high and paragraph (f)(5) of this section in the proposed rule has been revised in paragraph (f)(4) of this section of the final rule to require a maximum resistance of 10,000 ohms.

46 CFR 39.20-3 Cargo gauging system—TB/ALL

Four comments took exception with the requirement for permanently installed cargo gauging systems since portable gauging systems are available and are adequate. The introductory text to paragraph (a) of this section in the final rule has been modified to eliminate this restriction.

One comment assumed that the use of sight glasses would satisfy the requirements of paragraphs (a) (1) and (2, of this section. The Coast Guard's position is that a viewing port on the tank hatch cover or expansion trunk would be acceptable.

One comment stated that paragraph (a) of this section should only be applicable for closed loaded vessels. The Coast Guard has no problem with this comment since every vessel using vapor control is required to be closed loaded.

One comment stated that even if a barge is fitted with an overfill alarm system it should still have a "topping-off" level indication. The Coast Guard disagrees. A single high level warning and overfill control system should be adequate. However, the regulations do not prohibit such an arrangement.

Two comments stated that local indication by cargo gauging systems should not be required if the vessel has a cargo transfer control room, because this is not required for closed cargo gauging systems in 46 CFR part 153. The Coast Guard agrees. Paragraph (a)(3) of this section has been revised to only require the liquid level to be indicated where cargo transfer is controlled.

Four comments expressed the opinion that it was not necessary for the cargo gauging system to simultaneously indicate the liquid level at the tank as well as at the point from which cargo loading is monitored and controlled. The Coast Guard agrees and has modified the requirement for indication to be at the location where cargo transfer is being controlled.

Nineteen comments were received concerning the visual level indicator required for tank barges that are not equipped with a high level and overflow alarm system. The comments were directed at two areas, the height at which indication begins and locations from which the indicator is visible. All of the comments indicated that a height of 1.5 meters for a "dip stick" type of device was excessive and would expose the device to damage from mooring lines and cargo hoses. The comments recommended heights ranging from 0.75 to 1.05 meters. The Coast Guard understands the problem and has revised the final rule to require that the visual indicator becomes activated when the liquid level in the cargo tank is within one meter of the tank top. Most comments indicated that the requirement to insure that the tank level indicator be visible from all points on the deck would be impossible in some instances and recommended that the indicator should be visible from all cargo control areas. The Coast Guard agrees and has changed the requirement in paragraph (b)(3) of this section as recommended.

46 CFR 39.20-7 Tankship liquid overfill protection—T/ALL

Eleven comments questioned the requirement proposed in paragraph (a) of this section that each cargo tank must be equipped with both a high level alarm and a tank overflow alarm. The Coast Guard has reviewed this requirement and the CTAC recommendations and has concluded that both alarms are warranted in order to prevent tank overfilling and possible tank rupture during closed loading.

One comment questioned the special non-conductive material requirements for in-tank instruments and another stated that these instruments must be intrinsically safe. Upon review of this section, the Coast Guard has decided to delete the specific material requirements proposed in paragraph (b) of the NPRM and replace them in paragraph (a) of the final rule with a requirement that the alarm circuits be intrinsically safe.

Five comments questioned the requirement that high level and overflow alarms must be capable of being checked at the tank. They pointed out that many alarms, such as those using radar or pressure transducer systems, cannot be tested at the tank and that allowance should be made for electronic testing. The Coast Guard agrees and has amended this section of the final rule to allow for electronic testing. In addition to allowing electronic testing of alarms, the Coast Guard has also amended paragraph (b) so that the requirements listed therein are only applicable to alarms that are installed after the effective date of these regulations.

Twenty-two comments opposed having the high level alarm activated prior to reaching 97% of tank capacity. The consensus was that setting the alarm point below 97% would have a great economic impact in that less cargo could be carried thereby increasing shipping costs. In reviewing these comments the Coast Guard has noticed a difference in philosophy among operators as to how the high level alarms are used. Some utilize this alarm as an indicator to the operator that the tank is nearly filled to capacity and to begin a shut down of the loading operation. Others use this alarm as a warning that if some action is not immediately taken the tank overfill alarm will sound. The Coast Guard has reviewed the alarming requirements in light of these differing philosophies and has modified this section of the final rule to allow operators flexibility in how the alarms are used by requiring that the high level alarm activate before the tank

overflow alarm sounds but at a level no lower than 95% of tank capacity.

One comment stated that high level alarms will probably be activated frequently by the operator filling as close as possible to the overfill alarm level, therefore there should be no high level alarm. The Coast Guard's position is that through proper training and management oversight these occurrences will be minimized.

Two comments indicated that the requirement for rupture disks should be applicable only if they are installed, as is the case with spill valves. The Coast Guard agrees and has reworded the requirement in this section of the final rule.

46 CFR 39.20-9 Tank barge liquid overfill protection—B/ALL

Because of objections received to the automatic shutdown system which were discussed under 33 CFR 154.812, paragraph (a) of this section has been revised to allow dual high level alarms on tank barges if they have a self-contained power supply or are fitted with an electrical shore power connection to power the alarms.

Three comments indicated support for this section and for the requirements that it contains.

Four comments stated a need for standardization of the automatic shutdown system. The Coast Guard agrees. API is developing a guideline for standardizing the system connection. Some requirements from the draft API standard have been added to paragraph (b) of this section as well as reference to additional standards to provide the degree of standardization necessary.

One comment stated that a closed gauging system should not be required on a vessel which loads under vacuum. The Coast Guard's position is that all vessels using a vapor control system must be equipped with a closed gauging system since the loading conditions are controlled by the facility. Furthermore, most facilities will not be able to process the amount of vapor that would be collected during open loading if open loading were allowed.

One comment stated that this rule should not mandate the type of overflow protection necessary but should outline the minimum system alternatives which are acceptable. The rule, as written, mandates overflow protection but rather than mandate the type of protection required lists four alternatives, one of which must be used.

One comment suggested that the spill valve mentioned in this section should be called a "liquid overfill protection valve." This is rejected since the term spill valve is universally accepted and recognized throughout the marine industry.

Two comments suggested that each tank should not be required to have its own spill valve, stating that one or two spill valves on a common header should be sufficient. The Coast Guard disagrees with this recommendation. This arrangement will not protect the tanks due to flow restrictions in the vapor collection line unless the flow rate into a tank is significantly below the maximum loading rate. Furthermore, ASTM F1271 is based on a valve installation on the tank top.

Fourteen comments took exception with the pressure settings that were being required for the spill valve. They stated that a specific value should not be given since different tanks have different design pressures. They also suggested that the pressure setting should be set higher than the pressure relief valve setting but lower than maximum internal design pressure of the task. Another comment suggested that the wording describing the requirement that a spill valve relieve at a pressure higher than that of the relief valve when operating at "the maximum anticipated loading rate" be changed to "the maximum allowable transfer rate." The Coast Guard agrees with this approach and has changed this section of the final rule to reflect these suggestions.

One comment stated that the protecting devices used should be fitted with flame screens or flame arresters unless they have been approved to operate without these devices. The Coast Guard's position is that flame screens or flame arresters in these situations would be impractical since they would have too much resistance and would probably be blown out by the cargo when the valve opened.

Four comments were received concerning the use of rupture disks. One comment stated they should not be allowed, the others stated they should be allowed if a standard could be developed or if specific types of rupture disks could be approved, rather than require case by case approval. The use of rupture disks has been left in the final rule as an optional arrangement which, if used, must be approved by the Coast Guard. The Coast Guard intends to propose to the ASTM F25.13 Subcommittee on Piping that an ASTM standard be developed to cover cargo tank rupture disks.

46 CFR 39.20-11 Vapor overpressure and vacuum protection—TB/ALL

Thirty-nine comments discussed the set points for the pressure-vacuum relief valve settings. Most of the comments stated that specific values should not be required but that they should be determined on an individual basis and set to a percentage of the vessel's maximum internal design pressure and vacuum. The Coast Guard agrees with these concerns and has revised this section. Rather than prescribing a fixed set point, each cargo tank pressure relief valve must be set so that it is capable of discharging cargo vapor at 1.25 times the maximum cargo transfer rate so that the pressure in the cargo tank vapor space does not exceed the maximum allowable working pressure of the tank or the settings on spill valves or cargo tank rupture disks. Likewise, each cargo tank vacuum relief valve must be set so that it prevents a vacuum in the tank that exceeds the maximum allowable vacuum for that tank.

One comment asked if the testing of pressure-vacuum relief valves in this section was restricted to new valves. The regulation requires that all valves be tested since the flow rate through the valves is critical when a vapor collection system is used, whereas for previous arrangements without vapor collection the capacity of the valve was not a major concern.

One comment questioned the record keeping requirements for the pressure-vacuum relief valve testing. Each pressure-vacuum relief valve manufacturer will normally test a prototype or production valve of each model it manufactures. The results should be kept on file by the manufacturer and provided to the designer/installer of the vapor collection system.

One comment stated that mandating a requirement that each valve have a mechanical means available for checking the valve before loading would render useless all pressure-vacuum relief valves currently in use on tank barges. The Coast Guard disagrees since only those valves installed one year after the effective date of the final rule will need to meet this requirement.

Another comment questioned if existing pressure-vacuum relief valves are allowed to have a mechanical means to check their operation prior to loading. This rule mandates that valves installed one year after the effective date of the final rule need to have such means, it does not preclude the use of such means on existing valves.

46 CFR 39.20-13 High and low vapor pressure protection for tankships—T/ALL

One comment questioned whether the pressure sensor required by this section included visible and audible alarms or a pressure indicator. The requirement in this section states that each tankship vapor collection system must have a pressure sensing device that has both a pressure indicator and an alarm located where cargo loading is controlled.

Three comments stated that vessels whose tanks are protected by pressure-vacuum relief valves should not be required to have pressure sensing alarms. The Coast Guard's position is that although the pressure-vacuum relief valve provides the primary protection, the addition of an alarm set to alarm at a pressure before the pressure-vacuum relief valve relieves will provide an operational means to prevent unnecessary pressure rise that would lead to the opening of the pressure-vacuum relief valves and increased vapor emissions.

Four comments stated that the requirement to have the pressure sensing alarms sound on the deck area is not necessary and could be a distraction. The Coast Guard agrees and has amended this section to require that the alarms need only be heard at the cargo transfer control point.

Eight comments questioned the requirement that the high pressure sensor alarm be set at 50% of the lowest pressure relief valve setting. Suggestions were made to set the alarm point at the lowest pressure relief valve setting or at some percentage of that value. The Coast Guard agrees that the 50% value is too conservative and has amended the alarm point to coincide with 90% of the lowest pressure relief valve setting.

Six comments questioned the need for more than one pressure sensing device and discussed the best location for the device. The consensus was that one device should be sufficient and that its location was not critical since the pressure drop through the vapor collection header would be negligible. The Coast Guard agrees with this assessment and changed the final rule to require one pressure sensing device located at the aft end of the vapor collection line. This location minimizes the length of instrument cabling and piping associated with the requirement.

One comment stated that ships with closed gauging that have local readouts only at the tank should be allowed to locally install pressure gauges and alarms. The Coast Guard disagrees, with the exception of chemical tankships which are permitted to have vapor collection for individual tanks. Fixed vapor collection piping is required, therefore, only a single pressure sensor location is needed.

46 CFR 39.30-1 Operational requirements—TB/ALL

One comment correctly noted that this section would be applicable to U.S. vessels wherever located, even outside U.S. ports, when transferring cargo vapor to a shore facility. The Coast Guard has modified the final rule so that the prohibition against transferring vapors to a facility which does not have a properly endorsed letter of adequacy is only applicable to U.S. ports.

Twenty-two comments discussed the rate of cargo transfer and the set points used to calculate this value. Most of the comments indicated that the requirement to restrict the vapor collection system pressure to 50% of the lowest pressure relief valve was overly conservative. The Coast Guard has reassessed these requirements and has revised this section to require that the rate of cargo transfer be determined by using an 80% rather than a 50% figure and by dropping the 3.0 and 2.0 pressure set points in favor of the setting of the lowest cargo tank vent system pressure relief valve.

Twenty-three comments discussed the requirement that cargo tanks must not be filled higher than 97% of the cargo tank volume. Several of the comments noted that limiting the amount of cargo to the 97% value would have a substantial economic impact. Suggestions for the filling limit ranged from 96% to 100%. The Coast Guard agrees that the 97% limit is unreasonable and has revised the filling limit to be either 98.5% of the cargo tank volume or the level at which the overfill alarm is set.

One comment stated that the requirements for opening tanks carrying static accumulating cargoes should not be required for crude oil, most alcohols, ketones, and esters or for inerted vessels. The Coast Guard agrees that if the cargo is not a static accumulator the requirement does not apply, however, the Coast Guard is not convinced that the cargoes mentioned fall into this category.

Two comments pointed out that the 30 minute wait required before sampling or gauging devices can be placed into the cargo tank is unnecessary for inerted vessels. The Coast Guard agrees and has modified the section to reflect this fact.

Another comment stated that since it will be necessary to open cargo tanks for sampling purposes it may be necessary to install vapor seal valves for sampling. This is correct and is not prohibited by the regulations.

One comment stated that barge owners should be made aware of these upcoming rules so that they can make provisions for the installation of vapor lock valves designed for restricted or closed gauging and sampling. The Coast Guard agrees, and that is one of the reasons for utilizing the rulemaking process.

Four comments took exception with the requirement to maintain a loading rate of one meter per second or less until the cargo level in the tank reached a meter in depth. The consensus was that this requirement would increase loading times unnecessarily and that limiting the loading rate until the bottom of the tank is covered would provide the required degree of safety. The Coast Guard agrees that the requirements contained in the notice were too stringent and has amended the final rule to require that the initial transfer rate be controlled in accordance with Section 7.4 of ISGOTT.

Two comments pointed out that there was a degree of confusion concerning the location at which the oxygen content of the tank is to be measured. Based on these comments the location for these measurements has been changed to include a point one meter below the tanktop and at one-half the ullage space. As previously discussed, several comments indicated that many high level alarm systems, such as those employing radar or capacitance techniques, do not have the means to be tested at the tank. The testing requirement in this section has been revised to agree with § 39.20-7.

Two comments stated that the term "continuously monitored" in § 39.30-1(j) of the NPRM was unclear. The Coast Guard agrees and on further analysis has deleted the requirement.

Five comments stated that limiting hose length to 30 meters and the inside diameter of all vapor hoses to not less than the inside diameter of the vessel's vapor collection system piping were too restrictive. The Coast Guard has deleted both of these paragraphs (k and l) because the requirement to determine the pressure drop in § 39.20-9(d) of this section is adequate to cover the reason for originally proposing these requirements.

46 CFR 39.40-1 General requirements for vapor balancing—TB/ALL

One comment stated that it was premature to publish regulations applicable to lightering operations since the safety of life and equipment is not assured by these regulations. The Coast Guard disagrees since states may require vapor control during lightering operations that take place under their jurisdiction.

One comment suggested that the applicability of this section to "flammable or combustible liquids" should be changed to "crude oil, gasoline blends, and benzene" in keeping with the suggestions of CTAC. The Coast Guard has made this revision and added paragraph (e) which requires lightering operations involving the collection of vapors from other cargoes to obtain specific approval from the Coast Guard.

One comment stated that it was not necessary to prohibit transferring vapor from a non-inerted vessel to an inerted vessel and that control of oxygen content can be achieved by overcharging the tanks with inert gas. The Coast Guard's position is that it is unsafe to transfer non-inerted vapor to an inerted vessel and that there is insufficient space to add the amount of inert gas that would be required to control the oxygen content without overpressurizing the tanks.

One comment stated that there should be provisions to allow lightering of a barge in an emergency situation without controlling the vapors. It is not appropriate for the Coast Guard to include such a provision. Vapor control will be required by the states, so an emergency exemption must be provided by the states. The Coast Guard position is that if a state mandates the use of vapor control during lightering operations under emergency conditions the requirements in this rule must be met.

Three comments stated that lightering is not adequately addressed since the rules prohibit vapor collection during the majority of lightering operations which involve transfer from an inerted tank ship to a non-inerted barge. They also suggested that the only way to handle a full discharge is to retain the vapors on the vessel receiving cargo or being ballasted by compressing the vapor within the vapor space. The Coast Guard recognizes that transfers from an inerted vessel to a non-inerted vessel is common, however, vapor transfer cannot be done safely with this arrangement. The method recommended for handling ballast vapor is allowed by these regulations provided the pressure does not exceed the value given in § 39.40-5(e) of this section. Alternatively, the receiving vessel could be equipped with a vapor processing unit.

One comment asked what was meant by a device to assist in the transfer of vapor. This requirement has been changed to refer to a compressor or blower.

One comment stated that there are no impending air quality requirements which would govern lightering operations. The Coast Guard disagrees because requirements are presently being prepared by the State of California.

Two paragraphs (c and d) were added to this section. These paragraphs were originally contained in other sections of the NPRM and were moved here as a result of a reorganization of the rule and to provide added clarity to this section.

46 CFR 39.40-3 Design and equipment for vapor balancing—TB/ALL

One comment stated that the detonation arrester should be installed on the receiving vessel. The Coast Guard partially agrees with this comment. The rule has been revised to require placement on the service vessel, which could be either the vessel receiving or discharging cargo. This location places the major burden of complying with the rule on the service vessel rather than on the more transient vessel.

One comment stated that the installation of a detonation arrester when both vessels are inerted is unnecessary, since continuous monitoring of the oxygen content of the vapor stream will provide a level of safety at least as great as that of current operations. The Coast Guard agrees with this concept and has revised the final rule to require a detonation arrester only when the tanks on the vessel discharging the cargo are not inerted.

One comment stated that detonation arresters should not be required since there are no tested, proven detonation arresters available. The Coast Guard disagrees, the technology is proven and manufacturers are currently engaged in a test program to qualify their products. Appendix A of this rule contains an acceptable procedure for testing detonation arresters.

One comment asked why the requirements for pressure sensing devices, although referred to in the preamble as being present in this section, were not included in the proposed rule. The requirements did appear in the NPRM. They were moved to § 39.20-13 but the preamble was not amended to note this move. The preamble discussion has been corrected in the final rule.

Three comments questioned the location of the oxygen analyzer and suggested that it should be located on the service vessel. The Coast Guard agrees and has amended this section of the final rule as suggested.

46 CFR 39.40-5 Operational requirements for vapor balancing—TB/ALL

One comment stated that the requirement for inerting the vapor hose prior to the transfer of cargo vapor should be changed to read "the vapor hose must be bled to atmosphere prior to the start of vapor transfer, inert gas can be used to purge and inert the hose." The Coast Guard agrees and has revised the rule to reflect this suggestion.

One comment suggested that impressed current cathodic protection systems should be shut down during lightering operations. The Coast Guard agrees and has added this requirement.

Three comments questioned the requirement for a continuously monitored pressure indicator proposed in paragraph (b) of this section in the NPRM. This requirement has been removed in the final rule and only the requirements in § 39.20-13 must be met.

Two comments suggested that a non-conductive length of hose should be allowed in lieu of an electrical insulating flange. The Coast Guard agrees and has added this option to the final rule.

One comment stated that the use of insulating flanges is contrary to past U.S. practice. Although this may have been true in the past, the Coast Guard's position is that their use is necessary in operations involving vapor collection.

One comment stated that the oxygen sampling procedure in the proposed rule seemed onerous and that if necessary should be included in 46 CFR 35.35. The Coast Guard disagrees, the requirement in 46 CFR 35.35 is to verify that the testing was done. The required procedure for testing has been retained in this section.

One comment felt that pump speeds could be used to estimate the cargo transfer rate. The Coast Guard has no problem with this method. Another comment stated that the rate of cargo transfer should be monitored by tank gauging. The Coast Guard agrees, this method should be used to confirm transfer rates based on pump characteristics.

Nine comments opposed the restriction for simultaneous lightering and tank cleaning. The Coast Guard has revised § 39.40-5(g) to allow tank washing when both vessels are inerted.

Incorporation by Reference

The material referenced in 33 CFR 154.106 and 46 CFR 39.10-5 has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C 552 and 1 CFR part 51.

The materials are available as indicated in those sections.

Regulatory Evaluation

While the regulations are considered to be non-major under Executive Order 12291, they are considered significant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the public docket. It may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard, room 3314, 2100 Second Street, SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The changes made to the rule since publication of the NPRM either will impose no new burdens or will reduce the burdens proposed in the NPRM. The changes to 33 CFR 154.800 and 46 CFR 39.10-1 limit the applicability to the collection of vapors of crude oil, gasoline blends, and benzene. Changes to 33 CFR 154.804 and 33 CFR 39.10-1 grant exemptions to certain existing facility and vessel vapor control systems. Changes to 33 CFR 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and 46 CFR 39.10-11, 39.20-1, 39.20-7, 39.20-9, 39.20-11, 39.20-13, and 39.30-1 make the regulations more performance oriented and allow greater flexibility in choosing different alternatives.

The rules will benefit industry by providing standards for the safe design and operation of vapor control systems. The rules will result in fewer vessels and facilities being damaged from fires and explosions, fewer vessels being damaged from overfilling and over- or underpressurization, fewer injuries/deaths from fires and explosions, and less oil spilled from overfilling or overpressurizing of tanks while loading with a vapor control system in use.

The rules will also benefit the Federal and state governments. The standards promulgated will facilitate review and inspection of vapor control systems by the Coast Guard. State governments will not need to become involved in developing safety requirements when they impose vapor control requirements, and there will not be differing safety requirements between states.

Estimated costs of installing vapor control systems were provided in the NRC Marine Board study. The study estimated that the cost to modify a typical 35,000 deadweight ton product tanker for vapor control will be approximately $831,250. It estimated that the cost to modify a typical inland river barge for vapor control will be approximately $167,700. It also estimated that the cost to modify a typical product terminal for vapor control which serves ships and barges will be approximately $7,502,160.

Because the rules will not require the installation of vapor control systems, the entire cost of installing vapor control systems should not be attributed to this rulemaking. The only costs which are properly attributable to this rulemaking are those incremental amounts necessary to meet standards in these rules which exceed normal industry practice. Since these rules have been developed in close cooperation with industry, the differences should be minimal. A review of information the Coast Guard has on existing vapor control systems indicates that the costs of those installations are comparable to the costs expected for systems installed in accordance with these regulations.

The Coast Guard cannot predict where and under what circumstances the use of vapor control systems will be required. However, it is unlikely that state and local governments will mandate the use of vapor control systems unless the expected improvement in ambient air quality justifies the cost, or the use of vapor control systems is necessary because the local area is not meeting the national ambient air quality standards set under the provisions of the Clean Air Act. Where the use of vapor control systems is mandated, the safety benefits of standardized equipment and operating procedures are expected to outweigh any increased costs over a marginally acceptable system that might have been installed in the absence of these standards.

Small entities will be affected by this rulemaking only if the state or local governments require the use of vapor control systems. These costs should be attributed to the state or local government rulemaking. Therefore, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Differing state requirements to control hydrocarbon emissions could adversely impact competition between states. Since this rulemaking addresses safety requirements for vapor control systems, it will ease the impact on competition between states by providing for nationwide safety requirements. It is possible that some owners of foreign tank vessels will not install vapor control systems on their vessels and withdraw them from U.S. trade, however, it is not expected that the overall pattern of oil importation will be significantly affected. In addition, the Coast Guard is working with the International Maritime Organization (IMO) to develop international safety requirements for the design and operation of vapor control systems.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2. of Commandant Instruction (COMDTINST) M16475.1B. The environmental impact associated with vapor control systems is the direct result of state or local action requiring the use of such systems. A Categorical Exclusion Determination Statement has been prepared and is included as part of the rulemaking docket.

Paperwork Reduction Act

This rule contains information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval number are:

Section	Topic	OMB control number
33 CFR 154.310	Operations Manual	2115-0078
154.740	Records	2115-0068
154.804	Facility Plan Review	2115-0581
154.808	Application for Certifying Entity	2115-0581
155.750	Oil Transfer Procedures	2115-0120
156.120	Declaration of Inspection	2115-0508
156.170	Equipment Tests and Inspections	2115-0068
46 CFR 32.58-85	Inert Gas System Manual	2115-0506
35.35-30	Declaration of Inspection	2115-0508
39.10-13	Vessel Plan Review	2115-0505

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that while this final rule has important federalism implications, they are not sufficient to warrant the preparation of a Federalism Assessment. Although the Coast Guard has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism

Assessment, it should be noted that the Coast Guard has also determined that regulations for the safe design, installation, and operation of vapor control systems, as described in this rulemaking, can only be effectively implemented at the national level. Once a state requires vapor control, the discretion available to that state to modify requirements concerning design, installation, and operation of vapor control systems, as they pertain to shoreside facilities, will be limited. For example, all flexible hoses used in vapor control systems and the last one meter (3.3 feet) of fixed piping leading to the facility vapor connection must be color coded with three bands painted red/yellow/red of specified width. The vapor connection flange is also of unique design to prevent improper cross-connection. These requirements, and others like them, could not be modified. Some standardization of equipment and operational procedures is necessary since affected vessels move from port to port in the national marketplace and excessive modification of the requirements would be burdensome and potentially unsafe.

List of Subjects

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 35

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 39

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vapor control.

For the reasons set out in the preamble, the Coast Guard amends title 33, chapter I, Subchapter O, parts 154, 155, and 156, and title 46, chapter I, parts 30, 32, and 35, and adds a new part 39 to 46 CFR, Chapter I, as set forth below.

TITLE 33—[AMENDED]

PART 154—[AMENDED]

1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the **Federal Register**, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in part, and the sections affected are:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005	
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)	154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Analyzers, Fourth Edition, February 1985	154.824
American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018	
ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981	154.500; 154.808; 154.810
ANSI B16.24—Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300, 1979	154.500; 154.808
ANSI B31.3—Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda)	154.510; 154.808
International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembé, Geneva, Switzerland	
IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979	154.812
IEC 309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981	154.812
National Electrical Manufacturers Association (NEMA), 2101 L St. NW., Washington, DC 20036	
ANSI/NEMA WD6—Wiring Devices, Dimensional Requirements, 1988	154.812
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269	
NFPA 70—National Electrical Code, 1987	154.735; 154.808; 154.812
Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SWIE 5BH, England	
International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988	154.735; 154.810

3. Section 154.310 is amended by redesignating existing paragraphs (b) and (c) as (c) and (d), respectively, adding new paragraph (b), and adding a parenthetical at the end of the section to read as follows:

§ 154.310 Operations manual: Contents.

* * * * * *

(b) If a facility collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, the operations manual must contain a description of the vapor collection system at the facility which includes:

(1) A line diagram or simplified piping and instrumentation diagram (P&ID) of the facility's vapor control system piping, including the location of each valve, control device, pressure-vacuum relief valve, pressure indicator, flame arrester, and detonation arrester; and

(2) A description of the vapor control system's design and operation including the:

(i) Vapor line connection;

(ii) Startup and shutdown procedures;

(iii) Steady state operating procedures;

(iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors of cargoes containing sulfur);

(v) Alarms and shutdown devices; and

(vi) Pre-transfer equipment inspection requirements.

* * * * * *

(Approved by the Office of Management and Budget under control number 2115–0078)

4. Section 154.740 is amended by deleting the word "and" at the end of paragraph (e), by replacing the period at the end of paragraph (f) with a semicolon, adding new paragraphs (g), (h), and (i), and adding a parenthetical at the end of the section to read as follows:

§ 154.740 Records.

* * * * * *

(g) A record of all repairs made within the last three years involving any component of the facility's vapor control system required by subpart E of this part;

(h) A record of all automatic shut downs of the facility's vapor control system within the last 3 years; and

(i) Plans, calculations, and specifications of the facility's vapor control system certified under § 154.804 of this part.

(Approved by the Office of Management and Budget under control number 2115–0098)

5. A new subpart E is added to part 154 to read as follows:

Subpart E—Vapor Control Systems

154.800 Applicability.
154.802 Definitions.
154.804 Review, certification, and initial inspection.
154.806 Application for acceptance as a certifying entity.
154.808 Vapor control system, general.
154.810 Vapor line connections.
154.812 Facility requirements for vessel liquid overfill protection.
154.814 Facility requirements for vessel vapor overpressure and vacuum protection.
154.820 Fire, explosion, and detonation protection.
154.822 Detonation arresters, flame arresters, and flame screens.
154.824 Inerting, enriching, and diluting systems.
154.828 Vapor compressors and blowers.
154.828 Vapor recovery and vapor destruction units.
154.840 Personnel training.
154.850 Operational requirements.

Subpart E—Vapor Control Systems

§ 154.800 Applicability.

(a) Except as specified by paragraph (c) of this section, this subpart applies to:

(1) Each facility which collects vapors of crude oil, gasoline blends, or benzene emitted from vessel cargo tanks;

(2) A vessel which is not a tank vessel that has a vapor processing unit located on board for recovery, destruction, or dispersion of crude oil, gasoline blends, or benzene vapors from a tank vessel; and

(3) Certifying entities which review, inspect, test, and certify facility vapor control systems.

(b) A facility which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, must meet the requirements prescribed by the Commandant (G–MTH).

(c) A facility with an existing Coast Guard approved vapor control system which was operating prior to July 23, 1990 is subject only to § 154.850 of this subpart as long as it receives cargo vapor only from the specific vessels for which it was approved.

(d) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10–39.

(e) When a facility vapor control system which receives cargo vapor from a vessel is connected to a facility vapor control system that serves tank storage areas and other refinery processes, the specific requirements of this subpart apply between the vessel vapor connection and the point where the vapor control system connects to the facility's main vapor control system.

§ 154.802 Definitions.

As used in this subpart:

Certifying entity means an individual or organization accepted by the Commandant (G–MTH) to review plans and calculations for vapor control system designs, and to conduct initial inspections and witness tests of vapor control system installations.

Existing vapor control system means a vapor control system which was operating prior to July 23, 1990.

Facility vapor connection means the point in a facility's vapor collection system where it connects to a vapor collection hose or the base of a vapor collection arm.

Inerted means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500.

Liquid knockout vessel means a device to separate liquid from vapor.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

New vapor control system means a vapor control system which is not an existing vapor control system.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks and transport the vapor to a vapor processing unit.

Vapor control system means an arrangement of piping and equipment used to control vapor emissions collected from a vessel, and includes the vapor collection system and the vapor processing unit.

Vapor destruction unit means a vapor processing unit that destroys cargo vapor by a means such as incineration.

Vapor dispersion system means a vapor processing unit which releases cargo vapor to the atmosphere through a venting system not located on the vessel being loaded or ballasted.

Vapor processing unit means the components of a vapor control system that recovers, destroys, or disperses vapor collected from a vessel.

Vapor recovery unit means a vapor processing unit that recovers cargo vapor by a non-destructive means such as lean oil absorbtion, carbon bed adsorption, or refrigeration.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects to a vapor collection hose or arm.

§ 154.804 Review, certification, and initial inspection.

(a) A new vapor control system installation must be certified by a certifying entity as meeting the requirements of this subpart prior to operating.

(b) An existing vapor control system installation not exempted by § 154.800(c) of this subpart must be certified by a certifying entity by July 23, 1992. Plans, calculations, and specifications for the installation must be submitted to a certifying entity for review by January 23, 1991.

(c) An existing vapor control system installation that has been Coast Guard approved for operation with specific

vessels must be certified by a certifying entity prior to receiving vapors from other vessels.

(d) Plans and information submitted to the certifying entity must include a qualitative failure analysis. The analysis must demonstrate the following:

(1) The vapor control system is designed to permit the system to continuously operate safely when receiving cargo vapors from tankships and barges over the full range of transfer rates expected at the facility;

(2) The vapor control system is provided with the proper alarms and automatic control systems to prevent unsafe operation;

(3) The vapor control system is equipped with sufficient automatic or passive devices to minimize damage to personnel, property, and the environment if an accident were to occur; and

(4) If a quantitative failure analysis is also conducted, the level of safety attained is at least one order of magnitude greater than that calculated for operating without a vapor control system.

Note: The *American Institute of Chemical Engineers* publication, "Guidelines for Hazard Evaluation Procedures" may be used as guidance when preparing a qualitative failure analysis. Military Standard MIL-STD-882B may be used as guidance when preparing a quantitative failure analysis.

(e) The certifying entity must conduct all initial inspections and witness all tests required to demonstrate that the facility:

(1) Conforms to certified plans and specifications;

(2) Meets the requirements of this subpart; and

(3) Is operating properly.

(f) Upon receipt of written certification from the certifying entity that a facility's vapor control system complies with the requirements of this part the COTP shall endorse the letter of adequacy required by § 154.325 of this part to indicate that the facility is acceptable for collecting vapors of crude oil, gasoline blends, benzene, or any other vapors for which it is certified.

(g) Any design or configuration alteration involving a certified vapor control system must be reviewed by a certifying entity. After conducting any inspections and witnessing tests necessary to verify that the modified vapor control system meets the requirements of this subpart, the certifying entity must recertify the installation.

(h) Certifications issued in accordance with this section and a copy of the plans, calculations, and specifications for the vapor control system must be maintained at the facility.

(i) A certifying entity accepted under § 154.806 of this subpart may not certify a facility vapor control system if it was involved in the design or installation of the system.

(Approved by the Office of Management and Budget under control number 2115-0581)

§ 154.806 Application for acceptance as a certifying entity.

(a) An individual or organization seeking acceptance as a certifying entity must apply in writing to the Commandant (G-MTH). Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization, and must include a letter of intent from a facility owner or operator to use the services of the individual or organization to certify a vapor control system installation. Any false statement or misrepresentation, or the knowing and willful concealment of a material fact may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and denial or termination of acceptance as a certifying entity.

(b) The applicant must possess the following minimum qualifications, and be able to demonstrate these qualifications to the satisfaction of the Commandant (G-MTH):

(1) The ability to review and evaluate design drawings and failure analyses;

(2) A knowledge of the applicable regulations of this subpart, including the standards incorporated by reference in these regulations;

(3) The ability to monitor and evaluate test procedures and results;

(4) The ability to perform inspections and witness tests of bulk liquid cargo handling systems;

(5) That it is not controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions; and

(6) That it is not dependent upon Coast Guard acceptance under this section to remain in business.

(c) Each application for acceptance must contain the following:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A statement that the applicant is not controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions, or a full disclosure of any ownership or controlling interest held by such owners or operators;

(3) A description of the experience and qualifications of the person(s) who would be reviewing or testing the systems;

(4) A statement that the person(s) who would be reviewing or testing the systems is/are familiar with the regulations in this subpart; and

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the person(s) who would be reviewing or testing the systems to determine their qualifications.

(d) The acceptance of a certifying entity may be terminated by the Commandant (G-MTH) if the entity fails to properly review, inspect, or test a system in accordance with this subpart.

Note: A list of entities accepted to certify facility vapor control system installations is available from the Commandant (G-MTH).

(Approved by the Office of Management and Budget under control number 2115-0581)

§ 154.808 Vapor control system, general.

(a) A vapor control system design and installation must eliminate potential overfill hazards, overpressure and vacuum hazards, and sources of ignition to the maximum practical extent. Each remaining hazard source which is not eliminated must be specifically addressed in the protection system design and operational requirements.

(b) Vapor collection system piping and fittings must be in accordance with ANSI B31.3 and designed for a maximum allowable working pressure of at least 150 psig. Valves and flanges must be in accordance with ANSI B16.5 or B16.24, 150 pound class.

(c) All electrical equipment used in a vapor control system must comply with NFPA 70.

(d) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the cargo transfer and vapor control systems are controlled.

(e) Any alarm condition specified in this part must activate an audible and visible alarm where the cargo transfer and vapor control systems are controlled.

(f) The vapor control system must be separated or insulated from external heat sources to limit vapor control system piping surface temperature to not more than 177 °C. (350 °F.) during normal operation.

(g) A means must be provided to eliminate any liquid condensate from the vapor collection system which carries over from the vessel or condenses as a result of an enrichment process.

(h) If a liquid knockout vessel is installed it must have:

(1) A means to indicate the level of liquid in the device;

(2) A high liquid level sensor that activates an alarm; and

(3) A high high level sensor that closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart and shuts down any compressors or blowers prior to liquid carrying over from the vessel to the compressor or blower.

(i) Vapor collection piping must be electrically grounded and electrically continuous.

(j) If the facility handles inerted vapors of cargoes containing sulfur, provisions must be made to control heating from pyrophoric iron sulfide deposits in the vapor collection line.

§ 154.810 Vapor line connections.

(a) A remotely operated cargo vapor shutoff valve must be installed in the vapor collection line between the facility vapor connection and the nearest point where any inerting, enriching, or diluting gas is introduced into the vapor collection line or where a detonation arrester is fitted. The valve must:

(1) Close within thirty (30) seconds after detection of a shutdown condition by a component required by this subpart;

(2) Close automatically if the control signal is lost;

(3) Activate an alarm when a signal to shut down is received;

(4) Be capable of manual operation or manual activation;

(5) Have a local valve position indicator or be designed so that the valve position can be readily determined from the valve handle or valve stem position; and

(6) If the valve seat is fitted with resilient material, not allow appreciable leakage when the resilient material is damaged or destroyed.

(b) Except when a vapor collection arm is used, the last 1.0 meter (3.3 feet) of vapor piping before the facility vapor connection must be:

(1) Painted red/yellow/red with:

(i) The red bands 0.1 meter (0.33 feet) wide, and

(ii) The middle yellow band 0.8 meter (2.64 feet) wide; and

(2) Labeled "VAPOR" in black letters at least 50 millimeters (2 inches) high.

(c) Each facility vapor connection flange must have a permanently attached 0.5 inch diameter stud at least 1.0 inch long projecting outward from the flange face. The stud must be located at the top of the flange, midway between bolt holes, and in line with the bolt hole pattern.

(d) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 25 psig;

(2) Have a maximum allowable working pressure of at least 5 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of ten thousand (10,000) ohms;

(5) Have flanges with:

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges, and

(ii) One or more 0.625 inch diameter holes in the flange located midway between bolt holes and in line with the bolt hole pattern;

(6) Be abrasion resistant and resistant to kinking; and

(7) Have the last 1.0 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (b) of this section.

(e) Vapor hose handling equipment must be provided with hose saddles which provide adequate support to prevent kinking or collapse of hoses.

(f) Fixed vapor collection arms must:

(1) Meet the requirements of paragraphs (d)(1) through (d)(5) of this section;

(2) Have the last 1.0 meter (3.3 feet) of the arm marked in accordance with paragraph (b) of this section.

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with section 6.10 of the OCIMF International Safety Guide for Oil Tankers and Terminals.

(h) A vapor collection system fitted with an enriching system that operates at a positive gauge pressure at the facility vapor connection must be fitted with:

(1) A manual isolation valve between each facility vapor connection and the remotely operated cargo vapor shutoff valve required by paragraph (a) of this section; and

(2) A means to prevent backflow of enriched vapor to the vessel's vapor collection system.

§ 154.812 Facility requirements for vessel liquid overfill protection.

(a) Each facility which receives cargo vapor from a tank barge which is fitted with overfill protection in accordance with 46 CFR 39.20-9(a) as its only means of overfill protection must provide a 120 volt, 20 amp explosion proof receptacle which meets:

(1) ANSI/NEMA WD6;

(2) NFPA 70, Articles 410-57 and 501-12; and

(3) 46 CFR 111.105-9.

(b) Each facility that receives cargo vapor from a tank barge fitted with an intrinsically safe cargo tank level sensor system complying with 46 CFR 39.20-9(b) as its only means of overfill protection must have an overfill control panel on the dock capable of powering and receiving an alarm and shutdown signal from the cargo tank level sensor system that:

(1) Closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart and activates the emergency shutdown system required by § 154.550 of this part when:

(i) A tank overfill signal is received from the barge, or

(ii) Electrical continuity of the cargo tank level sensor system is lost;

(2) Activates an alarm which is audible and visible to barge personnel and facility personnel when a tank overfill signal, or an optional high level signal corresponding to a liquid level lower than the tank overfill sensor setting, is received from the barge;

(3) Has a means to electrically and mechanically test the alarms and automatic shutdown systems prior to transferring cargo to or ballasting the tank barge;

(4) Has suitable means, such as approved intrinsic safety barriers able to accept passive devices, to ensure that the overfill and optional alarm circuits on the barge side of the overfill control panel, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(5) Is labeled with the maximum allowable inductance and capacitance to be connected to the panel, as specified by the equipment manufacturer; and

(6) Has a female connecting plug for the tank barge level sensor system with a 5 wire, 16 amp connector body meeting IEC 309-1/309-2 which is:

(i) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high level alarm connection;

(ii) Labeled "Connector for Barge Overflow Control System"; and

(iii) Connected to the overfill control panel by a shielded flexible cable.

§ 154.814 Facility requirements for vessel vapor overpressure and vacuum protection.

(a) A facility's vapor collection system must have the capacity for collecting cargo vapor at a rate of not less than 1.25 times the facility's maximum liquid transfer rate for cargo for which vapor collection is required plus any inerting,

diluting, or enriching gas which may be added to the system, unless the vapor growth for turbulent loading of the most volatile liquid handled by the facility is less than 25 percent.

(b) A facility vapor collection system must maintain the pressure in a vessel's cargo tanks between 80 percent of the highest setting of any of the vessel's vacuum relief valves and 80 percent of the lowest setting of any of the vessel's pressure relief valves for a non-inerted tank vessel, and between 0.2 psig and 80 percent of the lowest setting of any of the vessel's pressure relief valves for an inerted tank vessel. The system must be capable of maintaining the pressure in the vessel's cargo tanks within this range at any cargo transfer rate less than or equal to the maximum transfer rate determined at the pre-transfer conference required by § 156.120(w) of this chapter.

(c) The pressure measured at the facility vapor connection must be corrected for pressure drops across the vessel's vapor collection system and the vapor collection hose or arm.

(d) A pressure sensing device must be provided which activates an alarm when the pressure at the facility vapor connection exceeds either the pressure corresponding to the upper pressure determined in paragraph (b) of this section or a lower pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter.

(e) A pressure sensing device must be provided which activates an alarm when the pressure at the facility vapor connection falls below either the pressure corresponding to the lower pressure determined in paragraph (b) of this section or a higher pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter.

(f) A pressure sensing device must be provided which activates the emergency shutdown system required by § 154.550 of this part and closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the pressure at the facility vapor connection exceeds 2.0 psi, or a lower pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter. The sensing device must be independent of the device used to activate the alarms required by paragraph (d) of this section.

(g) A pressure sensing device must be provided which closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the vacuum at the facility vapor connection is more than 1.0 psi, or a lesser vacuum set at the pre-transfer conference required by § 156.120(w) of this chapter. The sensing device must be independent of the device used to activate the alarm required by paragraph (e) of this section.

(h) The pressure sensing devices required by paragraphs (e) and (f) of this section must be located in the vapor collection line between the facility vapor connection and the manual isolation valve, if required by § 154.810(h) of this subpart, unless an interlock is provided which prevents operation of the system when the isolation valve is closed.

(i) A pressure indicating device must be provided which indicates the pressure in the vapor collection line.

(j) If a compressor, blower, or eductor capable of drawing more than 1.0 psi vacuum is used to draw vapor from the vessel, a vacuum relief valve must be installed in the vapor collection line between the compressor, blower, or eductor and the facility vapor connection, which:

(1) Relieves at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 1.0 psi vacuum;

(2) Has a relieving capacity equal to or greater than the capacity of the compressor, blower, or eductor;

(3) Has a flame screen fitted at the vacuum relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 with a flame screen fitted.

(k) When a facility collects cargo vapor through an undersea pipeline from a vessel moored offshore, the vacuum relief valve may be set at a vacuum greater than 1.0 psi vacuum provided the pressure controls take into account the pressure drop across the vessel's vapor collection system, any vapor collection hoses, and the undersea pipeline as a function of the actual transfer rate.

(l) If the pressure in the vapor collection system can exceed 2.0 psig due to a malfunction in an inerting, enriching, or diluting system a pressure relief valve must:

(1) Be installed between the point where inerting, enriching, or diluting gas is introduced into the vapor collection system and the facility vapor connection;

(2) Relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 2.0 psig;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility inerting, enriching, or diluting gas source;

(4) If not designed to insure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second, have a flame screen fitted at the discharge opening; and

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000.

(m) The relieving capacity test required by paragraph (l)(5) must be carried out with a flame screen fitted at the discharge opening if the pressure relief valve is not designed to insure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second.

§ 154.820 Fire, explosion, and detonation protection.

(a) A vapor control system with a single facility vapor connection that receives vapor only from a vessel with inerted cargo tanks and processes vapor with a vapor recovery unit must:

(1) Be capable of inerting the vapor collection line in accordance with § 154.824(a) of this subpart prior to receiving vapors from the vessel;

(2) Have at least one oxygen analyzer that samples the vapor concentration continuously at a point not more than 6 meters (19.7 ft.) from the facility vapor connection; and

(3) Meet § 154.824 (f)(1), (f)(2), (g), (h)(2), and (h)(3) of this subpart.

(b) A vapor control system with a single facility vapor connection that receives vapor only from a vessel with inerted cargo tanks and processes vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; or

(2) Have an inerting system that meets the requirements of § 154.824 of this subpart.

(c) A vapor control system with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted and processes vapor with a vapor recovery unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; or

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(d) A vapor control system with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted and processes the vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(e) A vapor control system with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection.

(f) A vapor control system with multiple facility vapor connections that processes vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(g) A vapor control system that uses a vapor balancing system in which cargo vapor from a vessel is transferred through the facility vapor collection system to facility storage tanks must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection;

(2) Have a detonation arrester located within the storage tank containment area as close as practical to the vapor return connection of each facility storage tank; and

(3) Have facility storage tank high level alarm systems and facility storage tank overfill control systems arranged to prevent cargo from entering the vapor return line.

(h) Except for a discharge vent from a vapor destruction unit, each outlet of a vapor control system that vents to atmosphere and is not isolated with a pressure-vacuum relief valve must have a flame arrester located at the outlet.

§ 154.822 Detonation arresters, flame arresters, and flame screens.

(a) Each detonation arrester required by this part must:

(1) Be capable of arresting a detonation from either side of the device; and

(2) Be acceptable to the Commandant (G-MTH). A detonation arrester designed, built, and tested in accordance with appendix A of this part will be acceptable to the Commandant (G-MTH).

(b) Each flame arrester required by this part must be acceptable to the Commandant (G-MTH). A flame arrester designed, built, and tested in accordance with appendix B of this part will be acceptable to the Commandant (G-MTH).

(c) Each flame screen required by this part must be either a single screen of corrosion resistant wire of at least 30 by 30 mesh, or two screens, both of corrosion resistant wire, of at least 20 by 20 mesh, spaced not less than 25 millimeters (1⅛ in.) or more than 75 millimeters (1⅛ in.) apart.

§ 154.824 Inerting, enriching, and diluting systems.

(a) A vapor control system which uses inerting, enriching or diluting gas must be capable of inerting, enriching, or diluting the vapor collection line and the vapor collection hose or arm prior to receiving cargo vapor.

(b) Except as permitted by § 154.820(a) of this subpart, a vapor control system which uses an inerting, enriching, or diluting system must be equipped with a gas injection and mixing arrangement located as close as practical but not more than 10 meters (32.8 ft.) from the facility vapor connection that ensures complete mixing of the gases within 20 pipe diameters of the injection point;

(c) A vapor control system that uses an inerting or enriching system may not be operated at a vacuum after the injection point unless:

(1) There are no sleeve-type pipe couplings, vacuum relief valves, or other devices which could allow air into the vapor collection system downstream of the injection point; or

(2) An additional analyzer is used to monitor the downstream vapor concentration and a means is provided to inject additional inerting or enriching gas.

(d) A vapor control system that uses analyzers to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least 2 analyzers. The analyzers must be connected so that:

(1) When oxygen analyzers are used, the higher oxygen concentration reading controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j) or (k)(2) of this section;

(2) When hydrocarbon analyzers are used, the lower hydrocarbon concentration reading controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) or (k)(1) of this section; and

(3) When hydrocarbon analyzers are used, the higher hydrocarbon concentration reading controls the diluting system and activates the alarm and automatic shutdown system required by paragraph (l) of this section.

(e) A vapor control system that uses volumetric measurements to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least one analyzer to activate the alarms and automatic shutdown systems required by this section.

(f) Each oxygen or hydrocarbon analyzer required by this section must:

(1) Be installed in accordance with API Recommended Practice 550;

(2) Have a response time of not more than 30 seconds from the time the vapor is sampled; and

(3) Sample the vapor concentration continuously not more than 30 pipe diameters from the gas injection point.

(g) Oxygen analyzers which operate at elevated temperatures (i.e. zirconia oxide or thermomagnetic) must not be used.

(h) An inerting system must:

(1) Supply sufficient inert gas to the vapor stream to ensure that the oxygen concentration throughout the vapor collection system is maintained below 8.0 percent by volume;

(2) Activate an alarm when the oxygen concentration in the vapor collection line exceeds 8.0 percent by volume;

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this part when the oxygen concentration in the vapor collection line exceeds 9.0 percent by volume; and

(4) If a combustion device is used to produce the inert gas, have a hydraulic seal and non-return valve between the combustion device and the vapor collection line.

(i) An enriching system must:

(1) Supply sufficient compatible hydrocarbon vapor to the vapor stream to ensure that the hydrocarbon concentration throughout the vapor collection system is maintained above 170 percent by volume of the upper flammable limit;

(2) Activate an alarm when the hydrocarbon concentration in the vapor collection line falls below 170 percent by volume of the upper flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the hydrocarbon concentration in the vapor collection line falls below 150 percent by volume of the upper flammable limit.

(j) Oxygen analyzers may be used in lieu of hydrocarbon analyzers in an enriching system at a facility that receives cargo vapor only from a vessel with non-inerted cargo tanks, provided that the analyzers:

(1) Activate an alarm when the oxygen concentration in the vapor collection line exceeds 15.5 percent by volume; and

(2) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the

oxygen concentration in the vapor collection line exceeds 16.5 percent by volume.

(k) An enriching system may be used in a vapor collection system that receives cargo vapor from a vessel with inerted cargo tanks if:

(1) Hydrocarbon analyzers are used to comply with paragraph (i)(2) and (i)(3) of this section; or

(2) If oxygen analyzers are used, the analyzers activate an alarm when the oxygen concentration in the vapor collection line exceeds 8 percent by volume, and close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the oxygen concentration exceeds 9 percent by volume.

(l) An air dilution system must:

(1) Supply sufficient additional air to the vapor stream to ensure that the hydrocarbon concentration throughout the vapor collection system is maintained below 30 percent by volume of the lower flammable limit;

(2) Activate an alarm when the hydrocarbon concentration in the vapor collection line exceeds 30 percent by volume of the lower flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the hydrocarbon concentration in the vapor collection line exceeds 50 percent by volume of the lower flammable limit.

§ 154.826 Vapor compressors and blowers.

(a) Each inlet and outlet to a compressor or blower which handles vapor that has not been inerted, enriched, or diluted in accordance with § 154.824 of this subpart must be fitted with:

(1) A detonation arrester;

(2) A flame arrester; or

(3) An explosion suppression system acceptable to the Commandant (G-MTH).

(b) If a reciprocating or screw-type compressor handles vapor in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive discharge gas temperature at each compressor chamber or cylinder;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperatures.

(c) If a liquid ring-type compressor handles vapor in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Low level of liquid sealing medium;

(2) Lack of flow of liquid sealing medium;

(3) Excessive temperature of the liquid sealing medium;

(4) Low lube oil level;

(5) Low lube oil pressure, if pressurized lubricating system; and

(6) Excessive shaft bearing temperature.

(d) If a centrifugal compressor, fan, or lobe blower handles vapor in the vapor collection system, construction of the blades and/or housing must meet one of the following:

(1) Blades or housing of nonmetallic construction;

(2) Blades and housing of nonferrous material;

(3) Blades and housing of corrosion resistant steel;

(4) Ferrous blades and housing with one-half inch or more design tip clearance; or

(5) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert sleeve at the periphery of the impeller.

§ 154.828 Vapor recovery and vapor destruction units.

(a) The inlet to a vapor recovery unit which receives cargo vapor that has not been inerted, enriched, or diluted in accordance with § 154.824 of this subpart must be fitted with one of the following:

(1) A detonation arrester;

(2) A flame arrester; or

(3) An explosion suppression system acceptable to the Commandant (G-MTH).

(b) The inlet to a vapor destruction unit must:

(1) Have a liquid seal; and

(2) Have two quick-closing stop valves installed in the vapor line.

(c) A vapor destruction unit must:

(1) Not be within 30 meters (98.6 ft.) of any tank vessel berth or mooring at the facility;

(2) Have a flame arrester or detonation arrester fitted in the vapor line; and

(3) Alarm and shut down when a flame is detected on the flame arrester or detonation arrester.

(d) When a vapor destruction unit shuts down or has a flame-out condition the vapor destruction unit control system must:

(1) Close the quick-closing stop valves required by paragraph (b)(2) of this section; and

(2) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart.

§ 154.840 Personnel training.

(a) A person in charge of a transfer operation utilizing a vapor control system must have completed a training program covering the particular system installed at the facility. Training must include drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures.

(b) The training program required by paragraph (a) of this section must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Principles of the vapor control system;

(3) Components of the vapor control system;

(4) Hazards associated with the vapor control system;

(5) Coast Guard regulations in this subpart;

(6) Operating procedures, including:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 154.850 Operational requirements.

(a) A facility must receive vapors only from a vessel which has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.10-13(e).

(b) The following must be performed not more than 24 hours prior to each transfer operation:

(1) All alarms and automatic shutdown systems required by this part must be tested; and

(2) The analyzers required by § 154.820(a), § 154.824 (d) and (e) of this subpart must be checked for calibration by use of a span gas.

(c) The position of all valves in the vapor line between the vessel's tanks and the facility vapor collection system must be verified prior to the start of the transfer operation.

(d) A tank barge overfill control system that meets the requirements of 46 CFR 39.20-9(b) must not be connected to an overfill sensor circuit that exceeds the system's rated cable length, inductance, and capacitance.

(e) When vapor is being received from a vessel with inerted cargo tanks, the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart must not be opened until the pressure at the facility vapor connection exceeds the pressure on the downstream side of the remotely operated cargo vapor shutoff valve.

(f) The initial cargo transfer rate must not exceed the rate agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter and 46 CFR 39.30-1(h).

(g) The cargo transfer rate must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) A transfer rate corresponding to the maximum vapor processing rate for the vapor control system, as specified in the facility operations manual required by § 154.300 of this chapter; or

(2) The vessel's maximum transfer rate determined in accordance with 46 CFR 39.30-1(d).

(h) While transferring cargo to a vessel connected to a vapor control system, compressed air or gas may be used to clear cargo hoses and loading arms, but must not be used to clear cargo lines.

(i) If one of the two analyzers required by § 154.824(d) of this subpart becomes inoperable during a transfer operation, the operation may continue provided the remaining analyzer remains operational; however, no further transfer operations may be started until the inoperable analyzer is replaced or repaired.

(j) Whenever a condition results in a shutdown of the vapor control system, the person in charge shall immediately terminate cargo loading.

(k) If it is suspected that a flare in the vapor control system has had a flare-back, or if a flame is detected on the flame arrester required by § 154.828(c)(2) of this subpart, the transfer operation must be stopped and not be restarted until the flame arrester has been inspected and found to be in satisfactory condition.

5a. Appendices A and B are added to part 154 to read as follows:

Appendix A to Part 154—Guidelines for Detonation Flame Arresters

This appendix contains the draft ASTM standard for detonation flame arresters. Devices meeting this standard will be accepted by the Commandant (G-MTH).

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of detonation flame arresters.

2. *Intent*

2.1 This standard is intended for detonation flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60 °C. For all tests, the test media defined in 14.1.1 can be used except where detonation flame arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Detonation flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in attachment 1.

2.2 The tests in this standard are intended to qualify detonation flame arresters for all in-line applications independent of piping configuration provided the operating pressure is equal to or less than the maximum operating pressure limit specified in the manufacturer's certification and the diameter of the piping system in which the detonation arrester is to be installed is equal to or less than the piping diameter used in the testing.

Note: Detonation flame arresters meeting this standard as Type I devices, which are certified to be effective below 0 °C and which can sustain three stable detonations without being damaged or permanently deformed, also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev.1).

3. *Applicable Documents*

3.1 ASTM Standards (1)

A395 Ferritic Ductile Iron Pressure-Retaining Castings For Use At Elevated Temperatures.

F722 Welded Joints for Shipboard Piping Systems

F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards (2)

B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code (2)

Section VIII, Division 1, Pressure Vessels

Section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee (3)

MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission (4)

Publication 79-1—Electrical Apparatus for Explosive Gas Atmospheres.

4. *Terminology*

4.1 $\Delta P/P_o$—The dimensionless ratio, for any deflagration and detonation test of 14.3, of the maximum pressure increase (the maximum pressure minus the initial pressure), as measured in the piping system on the side of the arrester where ignition begins by the device described in paragraph 14.3.3, to the initial absolute pressure in the piping system. The initial pressure should be greater than or equal to the maximum operating pressure specified in paragraph 11.1.7.

4.2 Deflagration—A combustion wave that propagates subsonically (as measured at the pressure and temperature of the flame front) by the transfer of heat and active chemical species to the unburned gas ahead of the flame front.

4.3 Detonation—A reaction in a combustion wave propagating at sonic or supersonic (as measured at the pressure and temperature of the flame front) velocity. A detonation is stable when it has a velocity equal to the speed of sound in the burnt gas or may be unstable (overdriven) with a higher velocity and pressure.

4.4 Detonation flame arrester—A device which prevents the transmission of a detonation and a deflagration.

4.5 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.6 Flame Passage—The transmission of a flame through a device.

4.7 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

5. *Classification*

5.1 The two types of detonation flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Detonation flame arresters acceptable for applications where stationary flames may rest on the device.

5.1.2 Type II—Detonation flame arresters acceptable for applications where stationary flames are unlikely to rest on the device, and further methods are provided to prevent flame passage when a stationary flame occurs. One example of "further methods" is a temperature monitor and an automatic shutoff valve.

6. *Ordering Information*

6.1 Orders for detonation flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the system and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation.

[1] Footnotes appear at the end of this article.

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the maximum design pressure drop for that maximum flow rate.

6.1.10 Maximum operating pressure.

7. *Materials*

7.1 The detonation flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code. Cast and malleable iron shall not be used; however, ductile cast iron in accordance with ASTM A395 may be used.

7.1.1 Arresters, elements, gaskets, and seals must be made of materials resistant to attack by seawater and the liquids and vapors contained in the system being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the detonation flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. *Other Requirements*

8.1 Detonation flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Detonation flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.

8.2.1 The net free area through detonation flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings, elements, and seal gasket materials shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14, and shall be capable of withstanding the hydrostatic pressure test of section 9.2.3.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with Section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

8.7 The design of detonation flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Detonation flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame. The housing may be fitted with one or more drain plugs for this purpose. The design of a drain plug should be such so that by cursory visual inspection it is obvious whether the drain has been left open.

8.9 All fastenings shall be protected against loosening.

8.10 Detonation flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Detonation flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 Detonation flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.13 Detonation flame arresters shall be tested in accordance with section 9.

9. *Tests*

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test detonation flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the detonation flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained. This shall include the maximum temperature reached and the length of testing time in section 14.2 in the case of Type II detonation flame arresters.

9.1.1.3 Description of approved attachments (reference 9.2.6).

9.1.1.4 Types of gases or vapors for which the detonation flame arrester is approved.

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested detonation flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II detonation flame arrester shall be tested. Where approval of more than one size of a detonation flame arrester model is desired, only the largest and smallest sizes need be tested provided it is demonstrated by calculation and/or other testing that intermediate size devices have equal or greater strength to withstand the force of a detonation and have equivalent detonation arresting characteristics. A change of design, material, or construction which may affect the corrosion resistance, or ability to resist endurance burning, deflagrations or detonations shall be considered a change of model for the purpose of this paragraph.

9.2.1 The detonation flame arrester shall have the same dimensions, configuration, and most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete detonation flame arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 °C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 The detonation flame arrester shall be subjected to a hydrostatic pressure test of at least 350 psig for ten minutes without rupturing, leaking, or showing permanent distortion.

9.2.4 Flow characteristics as declared by the manufacturer, shall be demonstrated by appropriate tests.

9.2.5 Detonation flame arresters shall be tested for endurance burn and deflagration/detonation in accordance with the test procedures in section 14. Type I detonation flame arresters shall show no flame passage when subjected to both tests. Type II detonation flame arresters shall show no evidence of flame passage during the detonation/deflagration tests in section 14.3. Type II detonation flame arresters shall be tested for endurance burn in accordance with section 14.2. From the endurance burn test of a Type II detonation flame arresters, the maximum temperature reached and the test duration shall be recorded and provided as part of the laboratory test report.

9.2.6 Where a detonation flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.7 Detonation flame arresters which are provided with a heating arrangement designed to maintain the surface temperature of the device above 85°C

shall pass the required tests at the maximum heated operating temperature.

9.2.8 Each finished detonation arrester shall be pneumatically tested at 10 psig to ensure there are no defects or leakage.

10. *Inspection*

10.1 The manufacturer shall afford the purchaser's inspector all reasonable access necessary to assure that the device is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished detonation arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to the checking of welds and the proper fit-ups of joints (see sections 8.5 and 8.6).

11. *Certification*

11.1 Manufacturer's certification that a detonation flame arrester meets this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.6). Installation instructions to include the device's limitations.

11.1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, maximum temperature and time tested (Type II).

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.

(Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.)

11.1.7 The maximum operating pressure for which the device is suitable.

12. *Marking*

12.1 Each detonation flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the detonation flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the detonation flame arrester.

12.1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases that the detonation flame arrester is suitable for.

12.1.8 ASTM designation of this standard.

12.1.9 Ambient air operating temperature range.

12.1.10 Maximum operating pressure.

13. *Quality Assurance*

13.1 Detonation flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The detonation flame arrester manufacturer shall maintain the quality of the arresters that are designed, tested and marked in accordance with this standard. At no time shall a detonation flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Detonation Arresters*

14.1 *Media/Air Mixtures*

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the deflagration/detonation tests in section 14.3. For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all Section 14 tests.

14.1.2 Hexane, propane, gasoline and other test vapors shall be mixed with air to form the most easily ignitable mixture. [5]

14.2 *Endurance Burn Test Procedure*

14.2.1 An endurance burning test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the detonation flame arrester and a firing source in close proximity to the test device (see Figure 1). The detonation flame arrester shall be installed so that the mixture emission is vertically upwards, or installed in the position for which it is designed and which will cause the most severe heating of the device under the prescribed endurance burn conditions. In this position the mixture shall be ignited.

14.2.1.2 Endurance burn test shall start by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. The flammable mixture may be reignited as necessary in the course of the endurance burn.

14.2.1.3 Temperature measurement will be performed on the surface of the arrester element half way between the center and its edge.

14.2.1.4 By varying the proportions of the flammable mixture and the flow rate, the detonation flame arrester shall be heated by a stable flame on the surface of the arrester until the highest obtainable temperature is reached on the ignited side or until the temperature on the side which was not ignited (protected side) rises 100 °C.

14.2.1.5 The flammable mixture proportions will then be varied again until the conditions which result in the highest temperature on the protected side are achieved. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. The highest attainable temperature is considered to have been reached when any subsequent rise of temperature does not exceed 0.5 °C per minute over a ten minute period.

14.2.1.6 If difficulty arises in establishing the highest attainable temperature on the protected side, the following criteria shall apply. When the increase in temperature on the protected side occurs so slowly that its temperature does not rise 100 °C, the conditions which produced the highest temperature on the ignited side of the arrester will be maintained for two hours. For the condition in which the temperature on the protected side continues to rise at a rate in excess of 0.5 °C per minute for a 10 minute period, endurance burning shall be continued, using the most severe conditions of flammable mixtures and flow rate, for a period of two hours. In either of these cases, at the end of the two hour period, the flow shall be stopped and the conditions observed. The two hour interval shall be measured commencing with the setting of the conditions which produced the most severe conditions of mixture and flow rate. For Type I detonation flame arresters, flame passage shall not occur during this test. For Type II detonation flame arresters, the maximum temperature obtained, and the time elapsed from the time when the most severe conditions are set to when flame passage occurs, shall be recorded. However, for Type II detonation flame arresters the test may be terminated 15 minutes after setting the most severe conditions on the protected side.

14.3 *Deflagration/Detonation Test Procedure*

14.3.1 A detonation flame arrester shall be installed at one end of a pipe of the same diameter as the inlet of the detonation flame arrester (see Figure 2). The length and configuration of the test pipe shall develop a stable detonation (8) at the device and shall be capable, by change in its length or configuration, of developing deflagrations and unstable (overdriven) detonations as measured on the side of the pipe where ignition occurs (run-up side). For deflagration testing, two test piping arrangements shall be used on the outlet side of the detonation flame arrester (the side which is not ignited). In both of the following end arrangements, the outlet side pipe diameter shall be equal to that on the run-up side. In one arrangement, the outlet side pipe shall be at least 10 pipe diameters long with a plastic bag over the free end. (Alternate end of pipe closures are also acceptable provided they easily give way during the course of the test, and the closure allows the required gas concentration to be maintained throughout the test piping arrangement.) In the other arrangement the outlet side pipe shall be fitted with a restriction located 0.6 meters from the outlet side arrester flange. The size of the restriction for each nominal size detonation flame arrester shall be as follows:

Nominal pipe diameter (inches)	Restriction diameter (inches)
3	⅝
4	⅞
6	1
8	1⅛
10	1¼
12	2
18	2
24	2

The entire pipe shall be filled with the most easily ignitable vapor/air mixture to a test pressure corresponding to or greater than the upper limit of the device's maximum operating pressure (see 11.1.7). In order to obtain this test pressure, a device such as a bursting disc may be fitted on the open end of the device in place of the plastic bag. The concentration of the mixture should be verified by appropriate testing of the gas composition. The vapor/air mixture shall then be ignited.

14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of −5%. These devices shall be situated no more than a distance equal to 3% of the length of the run-up pipe apart with one device no more than 8 inches from the end of the test pipe to which the detonation flame arrester is attached. In addition, each outlet arrangement described in paragraph 14.3.1 shall be fitted with an optical device located no more than 8 inches from the detonation flame arrester outlet. (7)

14.3.3 Explosion pressures within the pipe shall be measured by a high frequency transducer situated in the test pipe no more than 8 inches from the run-up side of the housing of the detonation flame arrester.

14.3.4 Using the first end arrangement (10 pipe diameter outlet) described in paragraph 14.3.1, a series of tests shall be conducted to determine the test pipe length and configuration that results in the maximum unstable (overdriven) detonation having the maximum measured flame speed at the detonation flame arrester. (These tests may also be carried out using a single length of pipe with igniters spaced at varying distances from the arrester.) The flame speeds, explosion pressures and test pipe configurations shall be recorded for each of these tests. The piping configuration that resulted in the highest recorded unstable (overdriven) detonation flame speed shall be used, and the device shall be subjected to at least four additional unstable (overdriven) detonations. In the course of testing, the device shall also demonstrate its ability to withstand five stable detonations, five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was less than 1 and five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was greater than 1 but less than 10. Initiation of deflagrations shall be at several locations to generate a range for $\Delta P/P_o$. Deflagration tests using the restricted outlet arrangement described in paragraph 14.3.1 shall then be conducted. In these tests the device shall demonstrate its ability to stop five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being less than 1 during the deflagration tests which were conducted without the restricted end arrangements, and five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being greater than 1 but less than 10 during the deflagration tests which were conducted without the restricted end arrangements. No evidence of flame passage shall occur during these tests. The flame speeds and explosion pressures for each of these tests shall be recorded.

14.3.5 A device that successfully passes the tests of 14.3.4 shall be considered to be directional (suitable for arresting a detonation advancing only from the direction as tested) except:

14.3.5.1 A device may be tested according to 14.3.4 for detonations approaching from either direction, or

14.3.5.2 The design of the device is symmetrical where each end may be considered to be identical when approached by a detonation from either direction.

(1) Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

(2) Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

(3) Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

(4) Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland.

(5) See IEC Publication 79–1.

(6) Some data are available for the estimation of flame speeds in horizontal pipes without detonation flame arresters. Some data indicate that the presence of small obstacles, fittings or bends in the test pipe can accelerate the flame speeds appreciably.

(7) Other pressure and/or flame speed measuring techniques may be used if effective.

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FIGURE 1

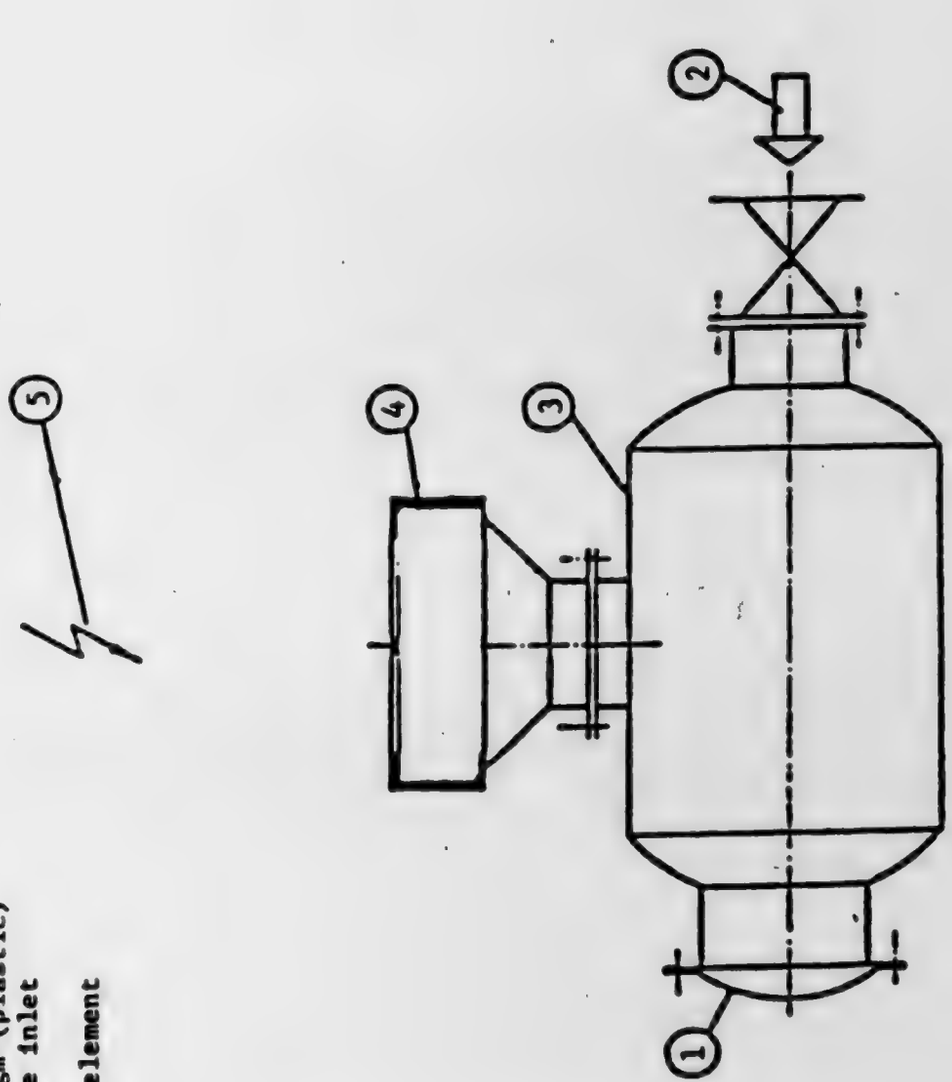
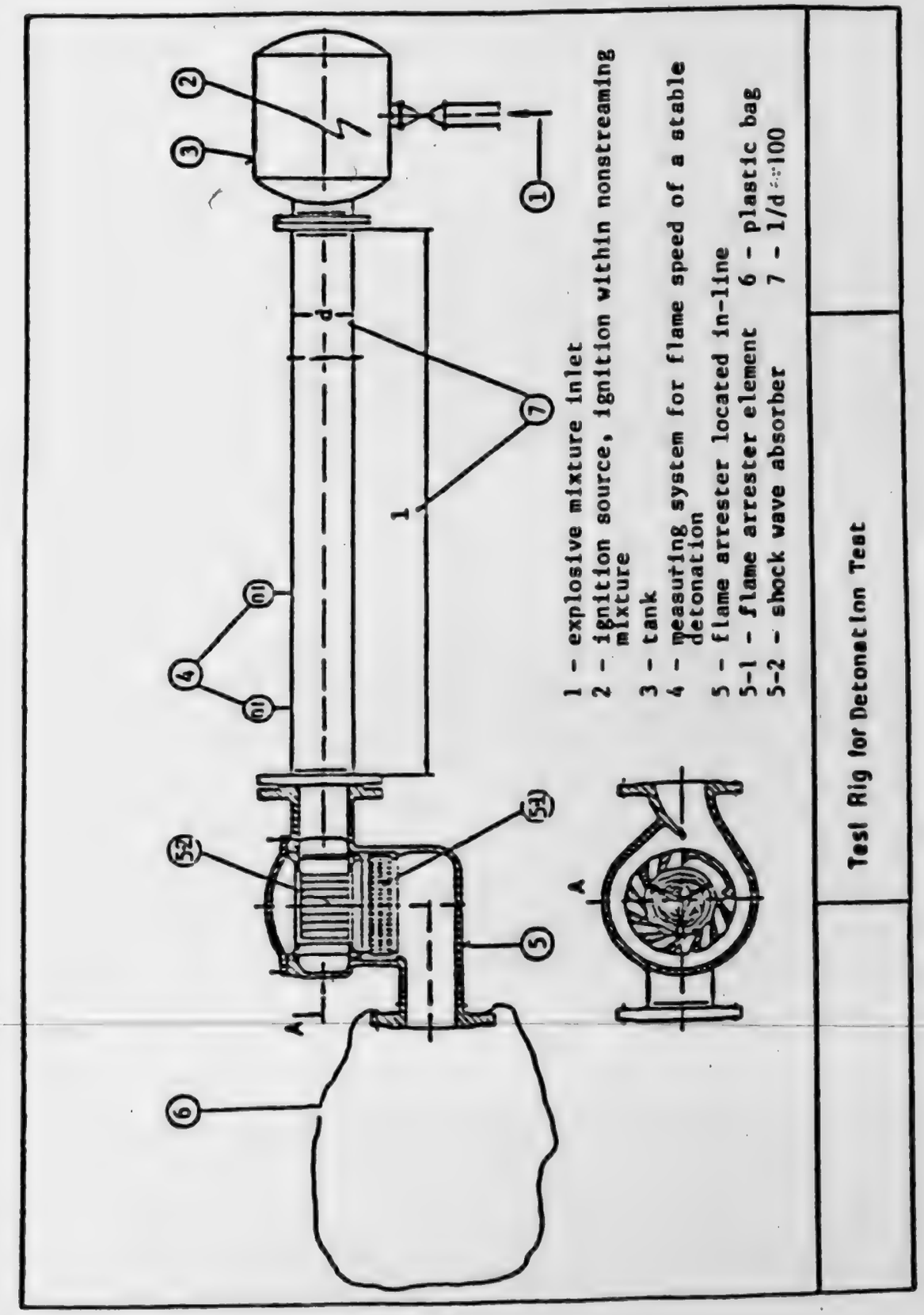

1 - bursting diaphragm (plastic)
2 - explosive mixture inlet
3 - tank
4 - flame arresting element
5 - ignition source
TEST RIG FOR ENDURANCE BURN TEST

Figure 2


1 - explosive mixture inlet
2 - ignition source, ignition within nonstreaming mixture
3 - tank
4 - measuring system for flame speed of a stable detonation
5 - flame arrester located in-line
5-1 - flame arrester element 6 - plastic bag
5-2 - shock wave absorber 7 - 1/d ≥ 100
Test Rig for Detonation Test

ATTACHMENT 1

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	[1] 3.33	[1] 0.133
Ethylene oxide	0.65	0.026
Ethyl nitrite	0.922	0.036

[1] Approximately.

Appendix B to Part 154—Standard Specification for Tank Vent Flame Arresters

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of tank vent flame arresters.

2. *Intent*

2.1 This standard is intended for flame arresters protecting systems containing vapors of flammable or combustible liquids with a flashpoint that does not exceed 60°C. The test media defined in 14.1.1 can be used except where arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in Attachment 1.

Note: Flame arresters meeting this standard also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev. 1).

3. *Applicable Documents*

3.1 ASTM Standards (1)F722 Welded Joints for Shipboard Piping Systems; F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards (2) B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code (2) section VIII, Division 1, Pressure Vessels; section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee (3) MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission (4) Publication 79.1—Electrical Apparatus for Explosive Gas Atmospheres.

(1) Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103

(2) Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

(3) Available from the International Maritime Organization, 4 Albert Embankment, London SEI 7SR, England.

(4) Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland

4. *Terminology*

4.1 Flame arrester—A device to prevent the passage of flame in accordance with a specified performance standard. Its flame arresting element is based on the principle of quenching.

4.2 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.3 Flame Passage—The transmission of a flame through a flame arrester.

4.4 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

5. *Classification*

5.1 The two types of flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Flame arresters acceptable for end-of-line applications.

5.1.2 Type II—Flame arresters acceptable for in-line applications.

6. *Ordering Information*

6.1 Orders for flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the tank being protected by the flame arrester, and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation (distance and configuration of pipe between the arrester, and the atmosphere or potential ignition source) (see section 9.2.4.2).

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the design pressure drop for that maximum flow rate.

7. *Materials*

7.1 The flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code.

7.1.1 Arresters, elements, gaskets, and seals must be of materials resistant to attack by seawater and the liquids and vapors contained in the tank being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of Section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. *Other Requirements*

8.1 Flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.

8.2.1 The net free area through flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings and elements shall be of substantial construction and designed for the mechanical and other loads intended during service. In addition, they shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

(1) Footnotes appear at the end of this article.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

8.7 The design of flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame.

8.9 All fastenings shall be protected against loosening.

8.10 Flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 End-of-line flame arresters shall be so constructed as to direct the efflux vertically upward.

8.13 Flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.14 Tank vent flame arresters shall show no flame passage when subjected to the tests in 9.2.4.

9. *Prototype Tests*

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained.

9.1.1.3 Specific advice on approved attachments (see section 9.2.4.1).

9.1.1.4 Types of gases or vapors for which the flame arrester is approved (see section 8.1.3).

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II flame arrester shall be tested. Where approval of more than one size of a flame arrester model is desired, the largest and smallest sizes shall be tested. A change of design, material, or construction which may affect the corrosion resistance, endurance burn, or flashback capabilities of the flame arrester shall be considered a change of model for the purpose of this paragraph.

9.2.1 The flame arrester shall have the same dimensions, configuration, and the most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 degrees C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 Performance characteristics as declared by the manufacturer, such as flow rates under both positive and negative pressure, operating sensitivity, flow resistance, and velocity, shall be demonstrated by appropriate tests.

9.2.4 Tank vent flame arresters shall be tested for endurance burn and flashback in accordance with the test procedures in section 14. The following constraints apply:

9.2.4.1 Where a Type I flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.4.2 Type II arresters shall be specifically tested with the inclusion of all pipes, tees, bends, cowls, weather hoods, etc., which may be fitted between the arrester and the atmosphere.

9.2.5 Devices which are provided with a heating arrangement shall pass the required tests at the heated temperature.

9.2.6 After all tests are completed, the device shall be disassembled and examined, and no part of the device shall be damaged or show permanent deformation.

10. *Inspection*

10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the material is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished flame arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to checking the proper fit-up of joints (see sections 8.5 and 8.6)

11. *Certification*

11.1 Manufacturer's certification that a flame arrester has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.4.1 and 9.2.4.2). Installation instructions to include manufacturer's recommended limitations based on all configurations tested.

11.1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when flame arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, including flow rates under both positive and negative pressures, operating sensitivity, flow resistance, and velocity.

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame. (Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.)

12. *Marking*

12.1 Each flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the flame arrester.

12.1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases for which the flame arrester is suitable for.

12.1.8 Ambient air operating temperature range.

12.1.9 ASTM designation of this standard.

13. *Quality Assurance*

13.1 Flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The flame arrester manufacturer shall maintain the quality of the flame arresters that are designed, tested and marked in accordance with this standard. At no time shall a flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Flame Arresters*

14.1 Media/Air Mixtures

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the flashback test in Section 14.2. For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all section 14 tests.

14.1.2 Hexane, propane, gasoline and chemical vapors shall be mixed with air to form the most easily ignitable mixture.(5)

14.2 *Flashback Test*

14.2.1 A flashback test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the flame arrester, a plastic bag (6) and a firing source in three positions (see Figure 1).(7)

14.2.1.2 The tank, flame arrester assembly and the plastic bag enveloping the prototype flame arrester shall be filled so that this volume contains the most easily ignitable vapor/air mixture.(8) The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. Three ignition sources shall be installed along the axis of the bag, one close to the flame arrester, another as far away as possible therefrom, and the third at the midpoint between these two. These three sources shall be fired in succession, one during each of the three tests. Flame passage shall not occur during this test.

14.2.1.3 If flame passage occurs, the tank diaphragm will burst and this will be audible and visible to the operator by the emission of a flame. Flame, heat and pressure sensors may be used as an alternative to a bursting diaphragm.

14.3 *Endurance Burn Test*

14.3.1 An endurance burning test shall be carried out as follows:

14.3.1.1 The test rig as referred to in 14.2 may be used, without the plastic bag. The flame arrester shall be so installed that the mixture emission is vertical. In this position the mixture shall be ignited.

14.3.1.2 Endurance burning shall be achieved by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. By varying the proportions of the flammable mixture and the flow rate, the arrester shall be heated until the highest obtainable temperature on the cargo tank side of the arrester is reached. The highest attainable temperature may be considered to have been reached when the rate of rise of temperature does not exceed 0.5°C per minute over a ten minute period. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. If difficulty arises in establishing the highest attainable temperature, the following criteria shall apply. When the temperature appears to be approaching the maximum temperature, using the most severe conditions of flammable mixtures and flow rate, but increases at a rate in excess of 0.5°C per minute over a ten minute period, endurance burning shall be continued for a period of two hours after which the flow shall be stopped and the conditions observed. Flame passage shall not occur during this test.

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(5) See IEC Publication 79-1.

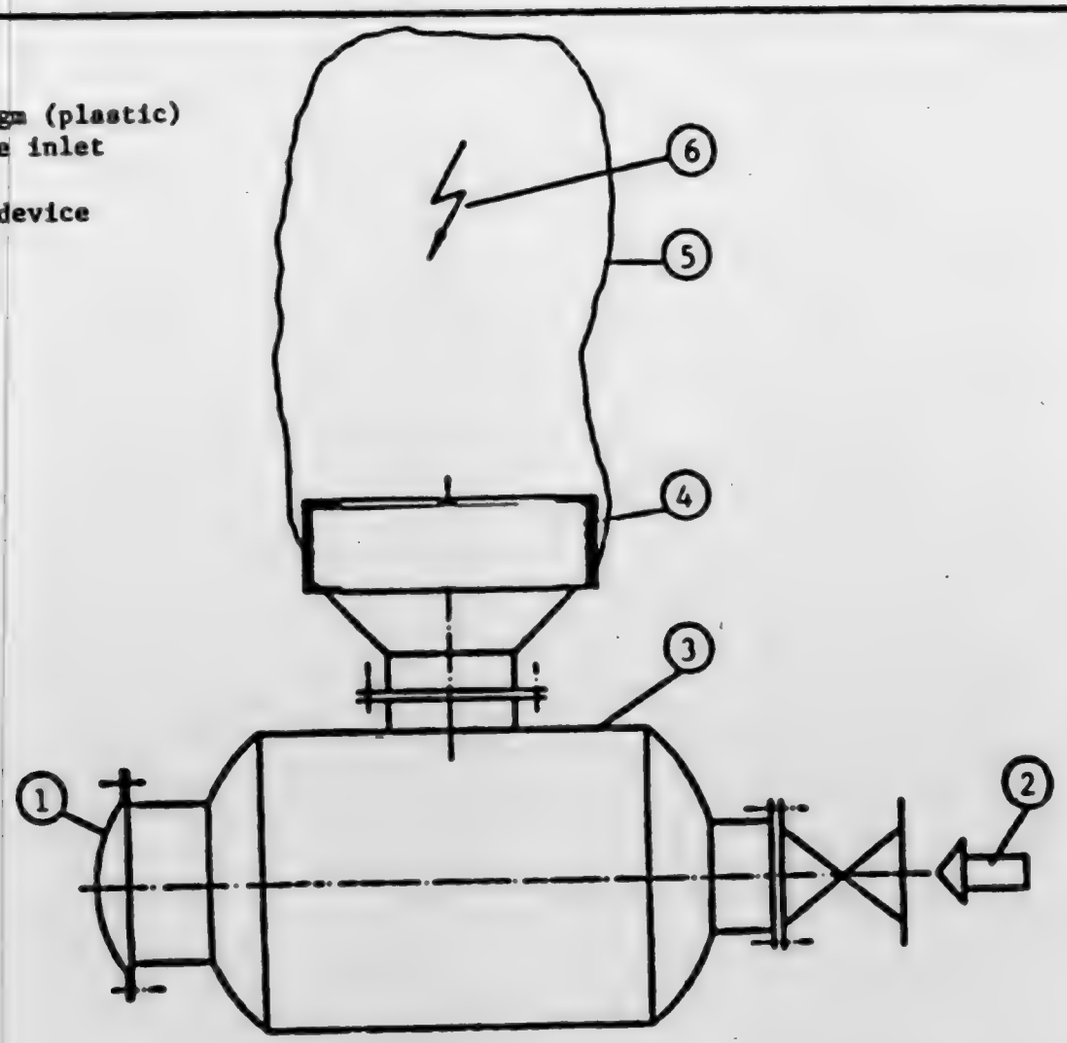
(6) The dimensions of the plastic bag are dependent on those of the flame arrester. The plastic bag may have a circumference of 3 m, a length of 2.5 m and a wall thickness of .05 m.

(7) In order to avoid remnants of the plastic bag from falling back on to the flame arrester being tested after ignition of the fuel/air mixture, it may be useful to mount a coarse wire frame across the flame arrester within the plastic bag. The frame should be constructed so as not to interfere with the test result.

(8) See IEC Publication 79-1.

BILLING CODE 4910-14-M

1 - bursting diaphragm (plastic)
2 - explosive mixture inlet
3 - tank
4 - flame arresting device
5 - plastic bag
6 - ignition source



TEST RIG FOR FLASH BACK TEST

FIGURE 1

BILLING CODE 4910-14-C

Inflammable gas or vapor	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	[1] 3.33	[1] 0.133
Ethylene oxide	0.65	0.026
Ethyl nitrite	0.922	0.036

[1] Approximately.

PART 155—[AMENDED]

6. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

7. Section 155.750 is amended by adding paragraph (d) and a parenthetical to the end of the section to read as follows:

§ 155.750 Contents of oil transfer procedures.

* * * * *

(d) If a vessel is fitted with a vapor control system, the oil transfer procedures must contain a description of the vapor collection system on the vessel which includes:

(1) A line diagram of the vessel's vapor collection system piping, including the location of each valve, control device, pressure–vacuum relief valve, pressure indicator, flame arresters, and detonation arresters, if fitted;

(2) The location of spill valves and rupture disks, if fitted;

(3) The maximum allowable transfer rate determined in accordance with 46 CFR 39.30–1(d) (1) through (d)(3);

(4) The initial transfer rate for each tank that complies with 46 CFR 39.30–1(h);

(5) A table or graph of transfer rates and corresponding vapor collection system pressure drops calculated in accordance with 46 CFR 39.30–1(b);

(6) The relief settings of each spill valve, rupture disk, and pressure-vacuum relief valve; and

(7) A description of and procedures for operating the vapor collection system, including the:

(i) Pre-transfer equipment inspection requirements;

(ii) Vapor line connection;

(iii) Closed gauging system;

(iv) High level alarm system, if fitted; and

(v) Independent automatic shutdown system, if fitted.

(Approved by the Office of Management and Budget under control number 2115–0120)

PART 156—[AMENDED]

8. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Subpart B is also issued under 46 U.S.C. 3715(b).

9. Section 156.120 is amended by adding paragraph (aa) and a parenthetical at the end of the section to read as follows:

§ 156.120 Requirements for oil transfer.

* * * * *

(aa) A transfer operation which includes collection of vapor emitted from a vessel's cargo tanks through a venting system not located on the vessel must have the following verified by the person in charge:

(1) Each manual valve in the vapor collection system is correctly positioned to allow the collection of cargo vapor;

(2) A vapor collection hose or arm is connected to the vessel's vapor connection;

(3) The electrical insulating device required by § 154.810(g) of this chapter or 46 CFR 39.40–3(c) is fitted between the facility vapor connection and the vessel vapor connection;

(4) The initial loading rate and the maximum transfer rate are determined;

(5) The maximum and minimum operating pressures at the facility vapor connection are determined;

(6) The tank barge overfill control system, if installed, is connected to the facility, tested, and operating properly;

(7) The following have been performed not more than 24 hours prior to the start of the transfer operation:

(i) Each alarm and automatic shutdown system required by subpart E of part 154 of this chapter and 46 CFR part 39 has been tested and found to be operating properly, and

(ii) Analyzers required by § 154.820(a), § 154.824 (d) and (e) of this chapter or 46 CFR 39.40–3(a) have been checked for calibration by use of a span gas;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapor through the hose material, and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement; and

(9) The oxygen content of the vessel's cargo tanks, if inerted, is at or below 8 percent by volume.

(Approved by the Office of Management and Budget under control number 2115–0508)

10. Section 156.170 is amended by adding new paragraph (g) and a parenthetical at the end of the section to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(g) If a facility or vessel collects vapor emitted from a vessel cargo tank with a vapor control system, the system must not be used unless the following tests and inspections are satisfactorily completed:

(1) Each vapor hose, vapor collection arm, pressure or vacuum relief valve, and pressure sensor is tested and inspected in accordance with paragraphs (b), (c), and (f) of this section;

(2) Each remote operating or indicating device is tested for proper operation in accordance with paragraph (f) of this section;

(3) Each detonation arrester required by § 154.820, § 154.828(a), and § 154.828(a) of this chapter or 46 CFR 39.40–3(d), and each flame arrester required by § 154.828(a), § 154.828 (a) and (c) of this chapter has been inspected internally within the last year, or sooner if operational experience has shown that frequent clogging or rapid deterioration is likely; and

(4) Each hydrocarbon and oxygen analyzer required by § 154.820(a) and § 154.824 (d) and (e) of this chapter or 46 CFR 39.40–3(a) is calibrated:

(i) Within the previous two weeks, or

(ii) Within 24 hours prior to operation when the vapor control system is

operated less frequently than once a week.

(Approved by the Office of Management and Budget under control number 2115-0098)

TITLE 46—[AMENDED]

PART 30—[AMENDED]

11. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01-2 also issued under the authority of 44 U.S.C. 3507.

12. Paragraph (b) of § 30.01-2 is amended by adding the following sections and OMB control numbers to the existing table to read as follows:

§ 30.01-2 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

§ 32.53-85	2115-0505
§ 35.35-30	2115-0506
§ 39.10-13	2115-0505

PART 32—[AMENDED]

13. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. Section 32.53-85 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 32.53-85 Instruction manual—T/ALL.

* * * * *

(b) If a vapor collection system required to meet part 39 of this subchapter is connected to the inert gas system, the instruction manual required by paragraph (a) of this section must include procedures relating to vapor collection operations.

PART 35—[AMENDED]

15. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 35.35-20 is amended by adding paragraph (m) to read as follows:

§ 35.35-20 Inspection prior to transfer of cargo—TB/ALL.

* * * * *

(m) When a transfer operation includes collection of cargo vapor from a vessel's cargo tanks through a vapor control system not located on the vessel:

(1) Each part of the vapor collection system is aligned to allow vapor to flow to a facility vapor control system, or if lightering, to the other vessel;

(2) Vapor collection hoses or arms are connected to the vessel vapor collection connection;

(3) The electrical insulation requirements of 33 CFR 154.810(g) or § 39.40-3(c) of this subchapter are provided between the vessel vapor connection and the facility or service vessel vapor connection;

(4) The maximum cargo transfer rate is determined in accordance with § 39.30-1(d) of this subchapter;

(5) The maximum and minimum operating pressures at the facility vapor connection, or vessel vapor connection if lightering, are determined;

(6) The overfill control system on a tank barge, if fitted in accordance with § 39.20-9(b) of this subchapter, is connected to the facility, tested and operating properly;

(7) Each alarm required by §§ 39.20-7, 39.20-9 and 39.40-3(a) of this subchapter has been tested not more than 24 hours prior to the start of the transfer operation and is operating properly;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement; and

(9) The oxygen content of the vessel's cargo tanks, if inerted, is at or below 8 percent by volume.

17. Section 35.35-30 is amended by adding paragraph (c) to read as follows:

§ 35.35-30 "Declaration of Inspection" for tankships—T/ALL.

* * * * *

(c) In addition to the requirements in paragraph (b) of this section, if a transfer operation includes the collection of cargo vapor from a vessel's cargo tanks through a vapor control system not located on the vessel, the Declaration of Inspection must include the following as an appendix:

(1) Is each part of the vapor collection system aligned to allow vapor to flow to the facility vapor connection or, if lightering, to the other vessel?

(2) Are the vapor collection hoses or arms connected to the vessel's vapor collection connection?

(3) Are the vessel and facility vapor connections electrically isolated?

(4) Have the initial transfer rate and the maximum transfer rate been determined?

(5) Have the maximum and minimum operating pressures at the facility vapor connection, or the vessel vapor connection if lightering, been determined?

(6) Have all alarms required by §§ 39.20-7, 39.20-9 and 39.40-3(a) of this subchapter been tested within 24 hours prior to the start of the transfer operation and found to be operating properly?

(7) Is each vapor recovery hose free of unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and gouges, cuts, or slashes that penetrate the first layer of hose reinforcement?

(8) Has the oxygen concentration of all inerted cargo tanks been verified to be 8 percent or less?

18. A new part 39 is added to read as follows:

PART 39—VAPOR CONTROL SYSTEMS

Subpart 39.10—General

Sec.

39.10-1 Applicability—TB/ALL.
39.10-3 Definitions—TB/ALL.
39.10-5 Incorporation by reference—TB/ALL.
39.10-9 Vessel vapor processing unit—TB/ALL.
39.10-11 Personnel training—TB/ALL.
39.10-13 Submission of vapor control system designs—TB/ALL.

Subpart 39.20—Design and Equipment

39.20-1 Vapor collection system—TB/ALL.
39.20-3 Cargo gauging system—TB/ALL.
39.20-7 Tankship liquid overfill protection—T/ALL.
39.20-9 Tank barge liquid overfill protection—B/ALL.
39.20-11 Vapor overpressure and vacuum protection—TB/ALL.
39.20-13 High and low vapor pressure protection for tankships—T/ALL.

Subpart 39.30—Operations

39.30-1 Operational requirements—TB/ALL.

Subpart 39.40—Lightering and Topping-Off Operations with Vapor Balancing

39.40-1 General requirements for vapor balancing—TB/ALL.
39.40-3 Design and equipment for vapor balancing—TB/ALL.
39.40-5 Operational requirements for vapor balancing—TB/ALL.

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 39.10—General

§ 39.10-1 Applicability—TB/ALL.

(a) Except as specified by paragraph (c) of this section, this part applies to each tank vessel operating in the navigable waters of the United States, when collecting vapors of crude oil, gasoline blends, or benzene emitted from a vessel's cargo tanks through a vapor control system.

(b) A tank vessel which transfers vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, to a facility covered by 33 CFR part 154 must meet the requirements prescribed by the Commandant (G-MTH).

(c) A tank vessel with an existing vapor collection system specifically approved by the Coast Guard for the collection of cargo vapor which was operating prior to July 23, 1990, is subject only to § 39.30-1 and § 39.40-5 of this part as long as it transfers cargo vapor only to the specific facilities for which it was approved.

(d) This part does not apply to the collection of vapors of liquefied flammable gases as defined in § 30.10-39 of this subchapter.

§ 39.10-3 Definitions—TB/ALL.

As used in this part:

Cargo deck area means that part of the weather deck that is directly over the cargo tanks.

Existing vapor collection system means a vapor collection system which was operating prior to July 23, 1990.

Facility vapor connection means the point in a facility's fixed vapor collection system where it connects with the vapor collection hose or the base of the vapor collection arm.

Independent as applied to two systems means that one system will operate with a failure of any part of the other system except power sources and electrical feeder panels.

Inerted means the oxygen content of the vapor space in a cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of § 32.53 or § 153.500 of this chapter.

Lightering or *lightering operation* means the transfer of a bulk liquid cargo from a tank vessel to a service vessel.

Marine Safety Center means the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590-0001.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

New vapor collection system means a vapor collection system which is not an existing vapor collection system.

Service vessel means a vessel which transports bulk liquid cargo between a facility and another vessel.

Topping-off operation means the transfer of a bulk liquid cargo from a service vessel to another vessel in order to load the receiving vessel to a deeper draft.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks and to transport the vapor to a vapor processing unit.

Vapor control system means an arrangement of piping and equipment used to control vapor emissions collected from a vessel. It includes the vapor collection system and vapor processing unit.

Vapor processing unit means the components of a vapor control system that recovers, destroys, or disperses vapor collected from a vessel.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects with the vapor collection hose or arm.

§ 39.10-5 Incorporation by reference—TB/ALL.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street, SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005
- API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987) 39.20-11

American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018
- ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981 ..... 39.20-1

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103
- ASTM F1271—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications, December 29, 1989 ..... 39.20-9

International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe', Geneva, Switzerland
- IEC 309-1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979 ..... 39.20-9
- IEC 309-2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981 ..... 39.20-9

National Electrical Manufacturers Association (NEMA), 2101 L St. NW., Washington, DC 20036
- ANSI/NEMA WD6—Wiring Devices, Dimensional Requirements, 1988 ..... 39.20-9

National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269
- NFPA 70—National Electrical Code, 1987 ..... 39.20-9

Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SW1E 5BH, England
- International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988 .. 39.30-1

§ 39.10-9 Vessel vapor processing unit—TB/ALL.

Each vessel which has a vapor processing unit located on board must meet the requirements of 33 CFR part 154, subpart E to the satisfaction of the Commandant (G—MTH) in addition to complying with the requirements of this part.

§ 39.10-11 Personnel training—TB/ALL.

(a) A person in charge of a transfer operation utilizing a vapor collection system must have completed a training program covering the particular system installed on the vessel. Training must include drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures.

(b) The training program required by paragraph (a) of this subpart must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Principles of the vapor control system;

(3) Components of the vapor control system;

(4) Hazards associated with the vapor control system;

(5) Coast Guard regulations in this part;

(6) Operating procedures, including:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 39.10-13 Submission of vapor control system designs—TB/ALL.

(a) Plans, calculations, and specifications for a new vessel vapor collection system must be submitted to the Marine Safety Center for approval prior to installation.

(b) An existing vapor collection system installation not exempted by § 39.10-1(c) of this part must have plans, calculations, and specifications submitted to the Marine Safety Center for approval by January 23, 1991. Modifications required to bring the installation into compliance with this part must be completed July 23, 1992.

(c) An existing vapor collection system installation that has been Coast Guard approved to transfer cargo vapor to specific facilities must be reviewed and approved by the Marine Safety Center prior to transferring vapors to other facilities.

(d) The owners/operators of a foreign flag vessel may submit certification by the classification society which classes the vessel that the vessel meets the requirements of this part as an alternative to meeting the requirements in paragraphs (a) and (b) of this section.

(e) Upon satisfactory completion of plan review and inspection of the vapor collection system or receipt of the certification provided for in paragraph (d) of this section, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels, that the vessel is acceptable for collecting the vapor from crude oil, gasoline blends, and benzene, or any other vapor it is found acceptable to collect.

Subpart 39.20—Design and Equipment

§ 39.20-1 Vapor collection system—TB/ALL.

(a) Each vapor collection system must meet the following requirements:

(1) Except as allowed by paragraph (a)(3) of this section or the Commandant (G-MTH), vapor collection piping must be permanently installed, with the vessel's vapor connection located as close as practical to the loading manifold;

(2) If the vessel collects vapors from incompatible cargoes simultaneously, it must keep the incompatible vapors separate throughout the entire vapor collection system;

(3) A vessel certified to carry cargo listed in Table 151.05 of part 151 or Table 1 of part 153 of this chapter may have vapor connections located in the vicinity of each tank in order to preserve segregation of cargo systems, in lieu of common header piping;

(4) A means must be provided to eliminate liquid condensate which may collect in the system, such as draining and collecting liquid from each low point in the line;

(5) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous; and

(6) An inerted tankship must have a means to isolate the inert gas supply from the vapor collection system. The inert gas main isolation valve required by SOLAS 74, as amended, chapter II-2, Regulation 62.10.8 may be used to satisfy this requirement.

(b) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(c) An isolation valve capable of manual operation must be provided at the vessel vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position, unless the valve position can be readily determined from the valve handle or valve stem.

(d) The last 1.0 meter (3.3 feet) of vapor piping before the vessel vapor connection must be:

(1) Painted red/yellow/red with:

(i) The red bands 0.1 meter (0.33 feet) wide, and

(ii) The middle yellow band 0.8 meter (2.64 feet) wide; and

(2) Labeled "VAPOR" in black letters at least 50 millimeters (2 inches) high.

(e) Each vessel vapor connection flange must have a permanently attached 0.5 inch diameter stud at least 1.0 inch long projecting outward from the flange face. The stud must be located at the top of the flange, midway between bolt holes, and in line with the bolt hole pattern.

(f) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 25 psig;

(2) Have a maximum allowable working pressure of at least 5 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of ten thousand (10,000) ohms;

(5) Have flanges with:

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges, and

(ii) One or more 0.625 inch diameter holes in the flange located midway between bolt holes and in line with the bolt hole pattern;

(6) Be abrasion resistant and resistant to kinking; and

(7) Have the last 1.0 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (d) of this section.

(g) Vapor hose handling equipment must be provided with hose saddles which provide adequate support to prevent kinking or collapse of hoses.

§ 39.20-3 Cargo gauging system—TB/ALL.

(a) Each cargo tank of a tank vessel that is connected to a vapor collection system must be equipped with a cargo gauging device which:

(1) Provides a closed gauging arrangement as defined in § 151.15.10 of this chapter that does not require opening the tank to the atmosphere during cargo transfer;

(2) Allows the operator to determine the liquid level in the tank for the full range of liquid levels in the tank;

(3) Indicates the liquid level in the tank at the location where cargo transfer is controlled; and

(4) If portable, is installed on the tank during the entire transfer operation.

(b) Except when a tank barge complies with § 39.20-9(a) of this part, each cargo tank of a barge must have a high level indicating device that:

(1) Provides a visual indication of the liquid level in the cargo tank when the cargo level is within 1.0 meter (3.28 feet) of the tank top;

(2) Has the maximum liquid level permitted under § 39.30-1(e) of this part at even keel conditions conspicuously and permanently marked on the indicating device; and

(3) Is visible from all cargo control areas on the tank barge.

§ 39.20-7 Tankship liquid overfill protection—T/ALL.

(a) Each cargo tank of a tankship must be equipped with an intrinsically safe high level alarm and a tank overfill alarm.

(b) The high level alarm and tank overfill alarm required by paragraph (a) of this section, if installed after July 23, 1990 must:

(1) Be independent of each other;

(2) Alarm in the event of loss of power to the alarm system or failure of electrical circuitry to the tank level sensor; and

(3) Be able to be checked at the tank for proper operation prior to each transfer or contain an electronic self-testing feature which monitors the condition of the alarm circuitry and sensor.

(c) The high level alarm required by paragraph (a) of this section must:

(1) Alarm before the tank overfill alarm, but no lower than 95 percent of tank capacity;

(2) Be identified with the legend "High Level Alarm" in black letters at least 50 millimeters (2 inches) high on a white background; and

(3) Have audible and visible alarm indications that can be seen and heard on the vessel where cargo transfer is controlled.

(d) The tank overfill alarm required by paragraph (a) of this section must:

(1) Be independent of the cargo gauging system;

(2) Have audible and visible alarm indications that can be seen and heard on the vessel where cargo transfer is controlled and in the cargo deck area;

(3) Be identified with the legend "TANK OVERFILL ALARM" in black letters at least 50 millimeters (2 inches) high on a white background; and

(4) Alarm early enough to allow the person in charge of transfer operations to stop the transfer operation before the cargo tank overflows.

(e) If a spill valve is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of § 39.20-9(c) of this part.

(f) If a rupture disk is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of § 39.20-9(d) of this part.

§ 39.20-9 Tank barge liquid overfill protection—B/ALL.

Each cargo tank of a tank barge must have one of the following liquid overfill protection arrangements.

(a) A system meeting the requirements of § 39.20-7 of this part which:

(1) Includes a self-contained power supply;

(2) Is powered by generators installed on the barge; or

(3) Receives power from a facility and is fitted with a shore tie cable and a 120 volt 20 amp explosion-proof plug which meets:

(i) ANSI/NEMA WD6;

(ii) NFPA 70, Articles 410-57 and 501-12; and

(iii) § 111.105-9 of this chapter.

(b) An intrinsically safe overfill control system which:

(1) Is independent of the cargo gauging device required by § 39.20-3(a) of this part;

(2) Actuates an alarm and automatic shutdown system at the facility overfill control panel, or on the vessel to be lightered if a lightering operation, 60 seconds before the tank becomes 100 percent liquid full;

(3) Is able to be checked at the tank for proper operation prior to each loading;

(4) Consists of components which, individually or in series, will not generate or store a total of more than 1.2 V, 0.1 A, 25 mW, or 20 microjoules;

(5) Has at least one tank overfill sensor switch with normally closed contacts per cargo tank;

(6) Has all tank overfill sensor switches connected in series;

(7) Has interconnecting cabling that meets § 111.105-15(b) of this chapter; and

(8) Has a male plug with a 5 wire, 16 amp connector body meeting IEC 309-1/309-2 which is:

(i) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high level alarm circuit meeting the requirements of this paragraph; and

(ii) Labeled "Connector for Barge Overflow Control System" and with the total inductance and capacitance of the connected switches and cabling.

(c) A spill valve which:

(1) Meets ASTM F1271;

(2) Relieves at a pressure higher than the pressure at which the pressure relief valves meeting the requirements of § 39.20-11 operate;

(3) Limits the maximum pressure at the cargo tank top during liquid overfill, at the maximum loading rate for the tank, to not more than the maximum design working pressure for the tank; and

(4) If the vessel is in ocean or coastwise service, has provisions to prevent opening due to cargo sloshing.

(d) A rupture disk arrangement which meets paragraphs (c)(2), (c)(3) and (c)(4) of this section and is approved by the Commandant (G-MTH).

§ 39.20-11 Vapor overpressure and vacuum protection—TB/ALL.

(a) The cargo tank venting system required by § 32.55 of this chapter must:

(1) Be capable of discharging cargo vapor at 1.25 times the maximum transfer rate such that the pressure in the vapor space of each tank connected to the vapor collection system does not exceed:

(i) The maximum design working pressure for the tank, or

(ii) If a spill valve or rupture disk is fitted, the pressure at which the device operates;

(2) Not relieve at a pressure corresponding to a pressure in the cargo tank vapor space of less than 1.0 psig;

(3) Prevent a vacuum in the cargo tank vapor space, whether generated by withdrawal of cargo or vapor at maximum rates, that exceeds the maximum design vacuum for any tank connected to the vapor collection system; and

(4) Not relieve at a vacuum corresponding to a vacuum in the cargo tank vapor space of less than 0.5 psi below atmospheric pressure.

(b) Each pressure-vacuum relief valve must:

(1) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API 2000; and

(2) Have a means to check that the device operates freely and does not remain in the open position, if installed after July 23, 1991.

(c) The relieving capacity test required by paragraph (b)(1) of this section must be carried out with a flame screen fitted at the vacuum relief opening and at the discharge opening if the pressure-vacuum relief valve is not designed to ensure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second.

§ 39.20-13 High and low vapor pressure protection for tankships—T/ALL.

Each tankship vapor collection system must be fitted with a pressure sensing device that senses the pressure in the main vapor collection line, which:

(a) Has a pressure indicator located on the vessel where the cargo transfer is controlled; and

(b) Has a high pressure and a low pressure alarm that:

(1) Is audible and visible on the vessel where cargo transfer is controlled;

(2) Alarms at a high pressure of not more than 90 percent of the lowest pressure relief valve setting in the cargo tank venting system; and

(3) Alarms at a low pressure of not less than four inches water gauge (0.144 psig) for an inerted tankship, or the

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lowest vacuum relief valve setting in the cargo tank venting system for a non-inerted tankship.

Subpart 39.30—Operations

§ 39.30-1 Operational requirements—TB/ALL.

(a) Vapor from a tank vessel may not be transferred to:

(1) A facility in the United States which does not have its letter of adequacy endorsed as meeting the requirements of 33 CFR part 154, subpart E; or

(2) In the case of a lightering or topping off operation, a vessel which does not have its certificate of inspection or certificate of compliance endorsed as meeting the requirements of this part.

(b) The pressure drop through the vapor collection system from the most remote cargo tank to the vessel vapor connection must be:

(1) Determined for each cargo handled by the vapor collection system at the maximum transfer rate and at lessor transfer rates;

(2) Based on a 50 percent cargo vapor and air mixture, and a vapor growth rate appropriate for the cargo being loaded; and

(3) Included in the vessel's oil transfer procedures as a table or graph showing the liquid transfer rate versus the pressure drop.

(c) If a vessel carries vapor hoses, the pressure drop through the hoses must be included in the pressure drop calculations required by paragraph (b) of this section.

(d) The rate of cargo transfer must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) Eighty (80) percent of the total venting capacity of the pressure relief valves in the cargo tank venting system when relieving at the set pressure required by § 39.20-11(a) of this part;

(2) The total vacuum relieving capacity of the vacuum relief valves in the cargo tank venting system when relieving at the set pressure required by § 39.20.11(a) of this part;

(3) The rate based on pressure drop calculations at which, for a given pressure at the facility vapor connection, or if lightering at the vapor connection of the vessel receiving cargo, the pressure in any cargo tank connected to the vapor collection system exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(e) A cargo tank must not be filled higher than:

(1) 98.5 percent of the cargo tank volume; or

(2) The level at which an overfill alarm complying with § 39.20-7 or § 39.20-9(b)(2) of this part is set.

(f) A cargo tank must not be opened to the atmosphere during cargo transfer operations except as provided in paragraph (g) of this section.

(g) A cargo tank may be opened to the atmosphere for gauging or sampling while a tank vessel is connected to a vapor control system if the following conditions are met:

(1) The cargo tank is not being filled;

(2) Except when the tank is inerted, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the vapor control system;

(3) The cargo is not required to be closed or restricted gauged by Table 151.05 of part 151 or Table 1 in part 153 of this chapter; and

(4) For static accumulating cargo, all metallic equipment used in sampling or gauging is electrically bonded to the vessel before it is put into the tank, remains bonded to the vessel until it is removed from the tank, and if the tank is not inerted, a period of 30 minutes has elapsed since loading of the tank was completed.

(h) For static accumulating cargo the initial transfer rate must be controlled in accordance with Section 7.4 of the OCIMF, International Safety Guide for Oil Tankers and Terminals, in order to minimize the development of a static electrical charge.

(i) If cargo vapor is collected by a facility that requires the vapor from the vessel to be inerted in accordance with 33 CFR 154.820(a) or (b), the oxygen content in the vapor space of each cargo tank connected to the vapor collection system must not exceed 8 percent by volume at the start of cargo transfer. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage.

(j) If the vessel is equipped with an inert gas system, the isolation valve required by § 39.20-1(a)(6) of this part must remain closed during vapor transfer.

(k) Unless equipped with an automatic self-test and circuit monitoring feature, each high level alarm and tank overfill alarm required by § 39.20-7 or § 39.20-9 of this part, on a cargo tank being loaded, must be tested at the tank for proper operation within 24 hours prior to the start of cargo transfer.

Subpart 39.40—Lightering and Topping-Off Operations with Vapor Balancing

§ 39.40-1 General requirements for vapor balancing—TB/ALL.

(a) Except as provided in paragraph (b) of this section, each vessel which uses vapor balancing while conducting a lightering or topping-off operation must meet the requirements of this subpart in addition to the requirements of subparts 39.10, 39.20, and 39.30 of this part.

(b) An arrangement to control vapor emissions during a lightering or topping-off operation which does not use vapor balancing must receive approval from the Commandant (G-MTH).

(c) A vapor balancing operation must not use a compressor or blower to assist vapor transfer without approval from the Commandant (G-MTH).

(d) Vapor balancing is prohibited when the cargo tanks on a vessel discharging cargo are inerted and the cargo tanks on a vessel receiving cargo are not inerted.

(e) A vessel which intends to engage in a lightering or topping, off operation while collecting cargo vapor from other than crude oil, gasoline, or benzene must receive specific approval from the Commandant (G-MTH).

§ 39.40-3 Design and equipment for vapor balancing—TB/ALL.

(a) If the cargo tanks on a vessel discharging cargo and a vessel receiving cargo are inerted, the service vessel must:

(1) Have a means to inert the vapor transfer hose prior to transferring cargo vapor; and

(2) Have an oxygen analyzer with a sensor or sampling connection fitted within 3 meters (9.74 ft.) of the vessel vapor connection which:

(i) Activates an audible and visible alarm at a location on the service vessel where cargo transfer is controlled when the oxygen content in the vapor collection system exceeds 8 percent by volume;

(ii) Has an oxygen concentration indicator located on the service vessel where the cargo transfer is controlled; and

(iii) Has a connection for injecting a span gas of known concentration for calibration and testing of the oxygen analyzer.

(b) If the cargo tanks on a vessel discharging cargo are not inerted, the vapor collection line on the service vessel must be fitted with a detonation arrester that meets the requirements of 33 CFR 154.822(a) located within 3 meters (9.74 ft.) of the vessel vapor connection.

(c) An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on the service vessel and the vapor connection on the vessel being lightered or topped-off.

§ 39.40-5 Operational requirements for vapor balancing—TB/ALL.

(a) During a lightering or topping-off operation each cargo tank being loaded must be connected by the vapor collection system to a cargo tank which is being discharged.

(b) If the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, the following requirements must be met:

(1) Each tank on a vessel receiving cargo which is connected to the vapor collection system must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space does not exceed 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage;

(2) The oxygen analyzer required by § 39.40-3(a) must be tested for proper operation prior to the start of each transfer operation;

(3) The oxygen content of vapors being transferred must be continuously monitored during the transfer operation;

(4) Cargo transfer must be terminated if the oxygen content exceeds 8 percent by volume and must not be restarted until the oxygen content in the tanks of the vessel receiving cargo is reduced to 8 percent by volume or less; and

(5) The vapor transfer hose must be purged of air and inerted prior to starting vapor transfer.

(c) The isolation valve, required by § 39.20-1(c) of this part, located on the service vessel must not be opened until the pressure in the vapor collection system on the vessel receiving cargo exceeds the pressure in the vapor collection system on the vessel receiving cargo.

(d) The cargo transfer rate must be controlled from the vessel discharging cargo, and must not exceed the maximum allowable transfer rate for the vessel receiving cargo.

(e) The pressure in the vapor space of any cargo tank connected to the vapor collection line on either the vessel receiving cargo or the vessel discharging cargo must not exceed 80 percent of the lowest setting of any pressure relief valve during ballasting or cargo transfer.

(f) All impressed current cathodic protection systems must be deenergized during cargo transfer operations.

(g) Tank washing is prohibited unless the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted or the tank is isolated from the vapor collection line.

Dated: March 14, 1990.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

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Part III

Environmental Protection Agency

40 CFR Parts 260, 261, 264, 265, 270, 271
Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emission Standards for Process Vents Equipment Leaks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 270, and 271

[FRL-3614-3]

Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emission Standards for Process Vents and Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is today promulgating standards that limit organic air emissions as a class at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA). Today's action is the first part of a multiphased regulatory effort to control air emissions at new and existing hazardous waste TSDF. The rule establishes final standards limiting organic emissions from (1) process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations that manage hazardous wastes with 10 parts per million by weight (ppmw) or greater total organics concentration, and (2) leaks from equipment that contains or contacts hazardous waste streams with 10 percent by weight or greater total organics. These standards were proposed in the Federal Register on February 5, 1987 (52 FR 3748).

The final standards are promulgated under the authority of section 3004 of the Hazardous and Solid Waste Amendments (HSWA) to the RCRA. The EPA is required by section 3004(n) of RCRA to promulgate standards for the monitoring and control of air emissions from hazardous waste TSDF as necessary to protect human health and the environment. The EPA plans to promulgate additional standards under this section in two further phases. Phase II will consist of air standards for organic emissions from surface impoundments, tanks, containers, and miscellaneous units. These standards are scheduled for proposal later this year. In Phase III, the residual risk from the first two phases will be assessed and, if necessary, EPA will develop further regulations or guidance to protect human health and the environment from the effects of TSDF air emissions.

EFFECTIVE DATE: This final rule is effective on December 21, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5 and October 11, 1989.

ADDRESSES: The official record for this final rulemaking is contained in Docket No. F-90-AESF-FFFFF. This docket and the proposal docket (Docket No. F-86-AESF-FFFFF) are available for public inspection at the EPA RCRA Docket Office (OS-300) in room 2427M of the U.S Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Additional information concerning the development of the equipment leak standards is contained in Docket No. A-79-27, which is available for public inspection at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street SW., Washington, DC 20460. For further information, see the discussion of supporting documentation for the rules under section X of this preamble.

Background information document: The background information document (BID) for the final standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Promulgated Organic Emission Standards for Process Vents and Equipment Leaks" (EPA-450/3-89-009). The EPA has prepared a technical guidance document to aid in implementation of these rules. This document may also be obtained from the U.S. EPA Library (see above address). Please refer to "Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks" (EPA-450/3-89-21).

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346. For further information on regulatory aspects of these standards, contact Rick Colyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5262. For further information on the technical aspects of these standards, contact Robert Lucas, Chemicals and Petroleum Branch, telephone number (919) 541-0884, at the same address. For further information on test methods associated with these standards, contact Terry Harrison, Emission Measurement Branch, telephone number (919) 541-5233, at the same address as above.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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  A. Vents on Hazardous Waste Management Process Units
  B. Equipment Leaks on Hazardous Waste Management Process Units
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  B. Regulatory Scope of Today's Standards
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V. Applicability and Requirements of Today's Final Standards
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I. Authority

These regulations are promulgated under the authority of sections 1006, 2002, 3001-3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921-6927, 6930, 6934, and 6974).

II. Summary of Final Standards

The standards limit emissions of organics from certain process vents and equipment leaks at new and existing hazardous waste TSDF requiring a permit under RCRA subtitle C (i.e., permitted TSDF and TSDF that need authorization to operate under RCRA section 3005(e)). This applicability includes all hazardous waste management units that require RCRA permits and recycling units that are not subject to RCRA permit requirements, if, independent of today's final rules, a RCRA permit is needed for another part of the facility operations.

A. Vents on Hazardous Waste Management Process Units

Today's final standards are applicable to vents on waste management units that manage hazardous waste with an annual average total organics concentration of 10 ppmw or greater (hereafter referred to as "process vents") and specifically include (1) process vents on distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations and vents on condensers serving these operations; and (2) process vents on tanks (e.g., distillate receivers, bottoms receivers, surge control tanks, separator tanks, and hot wells) associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes if emissions from these process operations are vented through the tanks. Up-to-date information and data used to determine whether or not a hazardous waste management unit and its associated process vent(s) are subject to the subpart AA standards must be maintained in the facility operating record (§ 264.1035(f) and § 265.1035(f)). For example, documentation of a waste analysis showing that the waste managed in the unit is less than the 10-ppmw applicability criterion must be kept in the facility operating record.

The final rules for process vents require that owners or operators of TSDF subject to the provisions of new subpart AA: (1) Reduce total organic emissions from all affected process vents at the facility to below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr), or (2) install and operate a control device(s) that reduces total organic emissions from all affected process vents at the facility by 95 weight percent. The owner or operator of the facility must determine through test data or engineering judgment and calculations that the facility is not expected to exceed the emission rate limit of 1.4 kg/h and 2.8 Mg/yr. Facilities with organic emissions from affected vents that never exceed the emission rate limit will not be required to install controls or monitor process vent emissions under this rule. For all other affected facilities, the owner or operator must install controls to reduce total facility process vent emissions from all affected vents below the emission rate limit or to reduce total facility process vent organic emissions after primary recovery by 95 percent; if enclosed combustion devices are used, the owner/operator has the option of reducing the organic concentration of each affected vent stream at the facility to no more than 20 parts per million by volume (ppmv). Selection of the emission rate limit is addressed further in section VI.B below and in chapters 4.0 and 7.0 of the BID.

The final standards for process vents do not require the use of any specific types of equipment or add-on control devices. Condensers, carbon adsorbers, incinerators, and flares are demonstrated emission control equipment for the regulated processes, although the choice of control is not limited to these.

To demonstrate compliance with the process vent provisions, TSDF owners/operators must document process vent emissions and emission reductions achieved by add-on control devices and certify the emission reduction capability of the control equipment. Documentation must (1) identify affected process vents, provide the throughput and operating hours of each affected unit, and provide emission rate determinations for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility); and (2) show whether installed add-on control devices achieve the emission rate limit by design and during operation. Where the emission rate limit is not attained, documentation must show whether the add-on control devices achieve a 95-percent reduction in organics or the 20-ppmv organics concentration limit by design and during operation. The documentation must include the basis for determining the design emission reduction.

The rules for process vents require that specific control device operating parameters be monitored continuously and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. For facilities with final RCRA permits, periods when monitoring indicates that control device operating parameters exceed established tolerances for design specifications must be reported semiannually. The records and reports must include dates, duration, cause, and corrective measures taken. There are no reporting requirements for interim status facilities. These monitoring and recordkeeping requirements are discussed below in section V.B and in the BID in chapter 11.0, section 11.4.

B. Equipment Leaks on Hazardous Waste Management Process Units

The equipment leak standards apply to emissions from valves, pumps, compressors, pressure relief devices, sampling connection systems, and open-ended valves or lines. Under the final standards, controls for these sources are required at TSDF where the equipment contains or contacts hazardous waste streams with organic concentrations of 10 percent by weight or greater. The owner or operator of a facility may choose any of the applicable test methods identified in the final rules for determining the organic content.

To comply with the equipment leak standards, the facility owner/operator must identify all affected equipment (i.e., pumps, valves, compressors, etc., that contain or contact hazardous waste streams with at least 10-percent-by-weight organics), establish which of the affected equipment is in heavy liquid service, and determine which valves are unsafe or difficult to monitor. By the effective date of this regulation, the facility owner/operator must conduct the initial monthly monitoring survey of pumps and valves in gas/vapor or light liquid service. A number of portable volatile organic monitoring devices are capable of detecting equipment leaks. Any analyzer can be used, provided it meets the specifications and performance criteria set forth in EPA Reference Method 21 (contained in appendix A of 40 CFR part 60).

Affected compressors must have a dual mechanical seal system that includes a barrier fluid system or must be designated as having "no detectable emissions," which means an instrument reading of less than 500 ppm above background using EPA Reference Method 21. Sampling connections must have a closed-purge system. Open-ended valves or lines must have a cap, blind flange, plug, or second valve. Pressure relief devices must operate with "no detectable emissions."

Recordkeeping and monitoring are also required by the equipment leak provisions. For example, leaking equipment as determined by Method 21 must be tagged as specified in the rule, and records of repair attempts, delay of repair, etc., must be recorded in a log and included as part of the facility's operating record. Monitoring of control device operating parameters is also required if a closed-vent system and control device are installed as a result of the equipment leak standards. The standards and recordkeeping

requirements are discussed below at section V.C.

III. Background

A. Regulatory Authority

In 1984, Congress passed HSWA, amending RCRA. Section 3004(n) of RCRA, as amended by HSWA, directs EPA to "* * * promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment." The standards being promulgated today address, in part, this congressional directive and are applicable to all TSDF that require authorization to operate under section 3005 of RCRA. These regulations are being promulgated under the authority of sections 1006, 2002, 3001–3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, and 6974).

B. Regulatory Scope of Today's Standards

Today's final rules apply to facilities that treat, store, or dispose of hazardous wastes as defined in 40 CFR 261.3 and, specifically, to certain hazardous waste management units at facilities requiring RCRA subtitle C permits. This includes facilities with permits and those operating under interim status. Today's rules, codified in new subparts AA and BB of 40 CFR parts 264 and 265, are applicable to the following units at TSDF: (1) Hazardous waste management units subject to the permitting requirements of part 270 (i.e., not 90-day accumulation tanks at TSDF), and (2) hazardous waste recycling units located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270. Under 40 CFR 260.10, the term "facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. (Note: This definition differs from the definition of "facility" for purposes of corrective action under RCRA section 3004(u). See 50 FR 28712, July 15, 1985.)

C. Air Standards Under RCRA Section 3004(n)

Air emissions from hazardous wastes are generated or released from numerous sources at TSDF, including distillation and other organic separation units, surface impoundments, tanks, containers, landfills, land treatment facilities, wastepiles, and leaks from equipment associated with these operations.

In considering the regulation of air emissions under RCRA section 3004(n) and within the RCRA regulatory framework, EPA has concluded that air emissions from hazardous waste management facilities that are subject to RCRA subtitle C should be regulated under the authority of RCRA section 3004(n). Air emissions from facilities or units that manage solid wastes that are not regulated as hazardous wastes pursuant to 40 CFR part 261 (e.g., cement kiln dust waste) and air emissions from hazardous waste from units or facilities that are exempt from the permitting provisions of 40 CFR 270.1(c)(2) (e.g., wastewater treatment units with National Pollutant Discharge Elimination System (NPDES) permits) will be subject to control techniques guidelines or standards developed as needed under either the Clean Air Act (CAA) or RCRA authority. Air emissions from wastes managed in units subject to subtitle D (nonhazardous solid wastes such as those managed in municipal landfills) also will be subject to guidelines or standards issued under CAA or RCRA authority as appropriate.

Air emissions from hazardous wastes include photochemically reactive and nonphotochemically reactive organics, some of which are toxic or carcinogenic, and also may include toxic or carcinogenic inorganic compounds. Depending on the source, particulates (including metals, aerosols of organics, dust, as well as toxics and carcinogens) also may be released or generated. These emissions, which are released to the atmosphere from a wide variety of sources within TSDF, present diverse health and environmental risks. Therefore, EPA has developed a multiphased approach for regulating TSDF organic air emissions. This approach, described generally below, reflects EPA's understanding of the problem and knowledge of applicable, effective controls at this time.

Organic emissions from TSDF managing hazardous wastes contribute to ambient ozone formation and increase cancer and other health risks. Phases I and II of EPA's TSDF regulatory approach will significantly reduce emissions of ozone precursors and air toxics and carcinogens from TSDF by controlling emissions of organics as a class rather than controlling emissions of individual waste constituents. The regulation of organics as a class has the advantage of being relatively straightforward because it can be accomplished with a minimum number of standards, whereas the control of individual toxic constituents will require multiple standards. Regulating organics as a class also makes efficient use of EPA resource, avoids many of the complexities of having multiple standards, and reduces the number of constituents for which separate standards may be required.

The health and environmental effects of ambient ozone are well documented: measured in terms of monetary losses, they total hundreds of millions of dollars each year. Other health impacts of TSDF organic emissions are summarized in section VII.D of this preamble and are discussed in more detail in the BID that accompanies this final rule and in the draft BID for Phase II organic standards titled, "Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards," available in Docket F–90–CESP–FFFFF. The substantial reductions in organic emissions achievable through implementation of Phase I and Phase II controls will reduce atmospheric ozone formation as a result of reductions in TSDF emissions of ozone precursors and will reduce nationwide cancer incidence and maximum individual risk due to exposure to air toxics and carcinogens emitted from TSDF.

Specifically, Phase I (which is being promulgated as final rules today) entails the promulgation of standards for the control of organic air emissions from selected hazardous waste management processes and equipment leaks. As discussed in the February 1987 proposal, EPA chose to develop this portion of its TSDF rulemaking first to prevent uncontrolled air emissions from land disposal restriction (LDR) treatment technologies. The technologies used in lieu of land disposal include the distillation/ separation processes subject to the Phase I rules. Publication of today's final rules for air emissions from hazardous waste management unit process vents from distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes and from leaks in piping and associated equipment handling hazardous wastes marks the completion of this first phase.

In the second phase, EPA will propose (in 1990) additional standards under section 3004(n) to control organic air emissions from other significant TSDF air emission sources not covered or not adequately controlled by existing standards. These sources include surface impoundments, tanks (including vents on closed, vented tanks), containers, and miscellaneous units.

The analyses of impacts indicate that, at some facilities, residual cancer risk to the most exposed individuals after implementing the first two phases of regulation will remain outside the risk range for other regulations promulgated under RCRA (which historically has been in the range of 1×10^{-4} to 1×10^{-6}). The EPA is therefore planning a third phase of the effort to control TSDF emissions in which various means for further reducing risk will be examined. In the interim, as explained in section VI.E, the omnibus permitting authority of RCRA is an available option for requiring additional emission and risk reductions beyond that achieved by today's final rules if it is decided, on a case-by-case basis, that additional control is needed to protect human health and the environment.

The EPA is currently involved in an effort to improve the data used in the current risk analyses and, in the third phase, will make use of any new data obtained. If additional constituent control is found to be necessary, the number of constituents for which additional control is needed is expected to be significantly less than if a constituent approach were used as the only means of regulating TSDF air emissions. Therefore, the EPA is convinced that the control of organics as a class followed by controls for individual toxic constituents, as necessary, will ultimately result in comprehensive standards that are protective while providing effective interim control.

Should additional regulation under Phase III be necessary, EPA is considering a variety of approaches for reducing residual risk associated with emissions from wastes managed at TSDF, and additional approaches may be developed in the future. For example, EPA could require additional technology control for toxic waste management (e.g., technology that ensures lower rates of leakage from equipment, if such technology can be developed for use at TSDF) or limit the quantities of specific constituents that can be managed at a TSDF. The constituents to be evaluated in Phase III will include those reported as being present in hazardous wastes managed by existing TSDF for which health effects have been established through the development of unit risk factors for carcinogens and reference doses for noncarcinogens.

D. Other RCRA Air Standards

The EPA has promulgated several standards under RCRA that reduce air emissions from TSDF. For example, several existing provisions in 40 CFR part 264 (40 CFR 264.251(f), 264.301(i), and 264.273(f)) require the implementation of general design and operating practices at permitted wastepiles, landfills, and land treatment operations to limit the release of particulate air emissions. The EPA has prepared a technical guidance document to aid in the implementation of these particulate rules; the document ("Hazardous Waste TSDF—Fugitive Particulate Matter Air Emissions Guidance Document," EPA–450/3–89–019) provides information on the sources of, and control technology for, particulate air emissions at TSDF. Additionally, 40 CFR part 264, subpart X, contains provisions that require prevention of air releases that may have adverse effects on human health or the environment at miscellaneous hazardous waste management units.

Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR part 264, subpart O). These standards require that incinerators be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. Higher efficiencies are required when the incinerator is burning certain specified waste types. These standards also limit air emissions of organics, hydrochloric acid, and particulates from incinerator stacks.

Air standards for interim status hazardous waste incinerators (40 CFR 265, subpart O) require monitoring of visible emissions and operating conditions. When burning specified wastes, these incinerators must receive a certification from the Assistant Administrator stating that the incinerator can meet the performance standards specified for permitted incinerators in 40 CFR 264, subpart O.

Interim status standards for other thermal treatment units are found in 40 CFR part 265, subpart P. These standards apply to facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion. The standards require monitoring of visible emissions and operating conditions of the combustion devices and prohibit open burning except for open burning and detonation of waste explosives.

The EPA has also proposed standards covering the burning of hazardous waste in boilers and industrial furnaces (52 FR 16987; May 6, 1987). These standards would require such burning to achieve a DRE of 99.99 percent for each principal organic hazardous constituent identified in the facility permit. In addition, a DRE of 99.99 percent must be achieved when burning certain specified constituents. The proposed standards also have provisions for burning low-risk wastes that allow an owner or operator to demonstrate that the burning of hazardous waste will not result in significant adverse health effects. To qualify for the low-risk waste exemption, an owner or operator would have to use dispersion modeling to demonstrate that emissions of carcinogenic compounds would not result in off-site ground-level concentrations that pose a risk to the most exposed individual of greater than 1×10^{-5}. For noncarcinogenic compounds, the dispersion modeling would demonstrate that the resulting air concentrations would not exceed the reference air concentration (RAC) of individual hazardous compounds. The proposed standards would also limit emissions of carbon monoxide, metals, and hydrochloric acid from boilers and furnaces burning hazardous wastes.

E. Relationship of Air Standards to Other Subtitle C Rules

In addition to the air emission standards discussed above, EPA has ongoing programs that indirectly affect air emissions from hazardous waste. Today's rules are designed to complement other air standards under RCRA and the rules that might otherwise affect air emissions. Existing RCRA regulations that have the potential for affecting air emissions from hazardous waste TSDF include: (1) The LDR and (2) the corrective action program.

The LDR, developed under section 3004(m) of the HSWA, require that hazardous waste be treated to reduce concentrations of specific chemicals or hazardous properties to certain performance levels or by certain methods before the waste may be disposed of on land. Affected land disposal units include surface impoundments, wastepiles, landfills, and land treatment units. The EPA anticipates that LDR will substantially reduce the potential for air emissions from these land disposal sources. The first set of LDR, for certain dioxins and solvent-containing hazardous wastes, was promulgated on November 7, 1986 (51 FR 40572); the second set of restrictions, the "California list," was promulgated on July 8, 1987 (52 FR 25760); the "First Third" was promulgated on August 17, 1988 (53 FR 31138), and the "Second Third" on June 23, 1989 (54 FR 26597).

The treatment technologies evaluated under LDR for both wastewater and

nonwastewater spent solvents include distillation and other separation processes subject to the requirements of the Phase I rules. Today's standards are designed to protect human health and the environment by reducing air emissions from technologies expected to be used to treat wastes prior to land disposal.

Under the authority of RCRA section 3004(u), EPA is developing rules to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMU) that pose a threat to human health and the environment. Because this authority applies to contamination of soil, water, and air media, organic air emissions from SWMU at some TSDF would be addressed by the corrective action program EPA intends to propose under a separate rulemaking. The draft rules would establish health-based trigger levels measured at the TSDF boundary for determining whether further remedial studies are required to assess air emissions from a particular SWMU. Health-based cleanup standards would then be set for air emission levels that exceed acceptable health-based levels at the point at which actual exposure occurs. When such exposure is determined either through monitoring or modeling techniques, corrective action will be required to reduce such emissions at the point of compliance.

The corrective action program is designed to achieve site-specific solutions based on an examination of a particular TSDF and its environmental setting. It is not intended to set national standards that regulate organic air emissions from all TSDF. At sites where there are releases from SWMU to the atmosphere, organic emissions will be controlled based on site-specific exposure concerns. Furthermore, releases from the SWMU that contain hazardous solid wastes will also be subject to corrective action. Therefore, for air emissions, corrective action is in part designed to expeditiously address threats to human health and the environment that are identified prior to implementation of more comprehensive air emission standards. In addition, because corrective action can address a wider universe of SWMU, it will address, in some respects, exposure concerns that today's final standards do not address.

F. Relationship of Today's Final Standards to CERCLA

The CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9601 et seq., authorizes EPA to undertake removal and remedial actions to clean up releases of hazardous substances, pollutants, or contaminants. Removal actions typically are immediate or expedited activities necessary to minimize exposure or danger to human health and the environment from the release of a hazardous substance, pollutant, or contaminant. Remedial actions are longer term, planned activities performed at sites listed on the National Priorities List to permanently clean up hazardous substances, pollutants, or contaminants and any soils, surface waters, or ground waters contaminated by these materials. On-site remedial actions are required by CERCLA section 121(d)(2) to comply with the requirements of Federal and more stringent State public health and environmental laws that have been identified by EPA or the delegated State authority as applicable or relevant and appropriate requirements (ARAR) to the specific CERCLA site. In addition, the National Contingency Plan (NCP) provides that on-site CERCLA removal actions "should comply with Federal ARAR to the extent practicable considering the exigencies of the circumstances" (40 CFR 300.65(f)). Today's final standards may be considered ARAR for certain on-site remedial and removal actions.

A requirement under a Federal or State environmental law may either be "applicable" or "relevant and appropriate," but not both, to a remedial or removal action conducted at a CERCLA site. "Applicable requirements," as defined in the proposed revisions to the NCP, means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site (40 CFR 300.5 (proposed), 53 FR 51475 (December 21, 1988)). "Relevant and appropriate requirements" means those Federal or State requirements that, while not applicable, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site (53 FR 51478).

Some waste management activities used for remedial and removal actions to clean up hazardous organic substances use the distillation/separation operations regulated under subpart AA of today's rules. For example, hazardous organic liquid wastes and ground and surface waters contaminated with hazardous wastes may be treated on site using air stripping processes. Therefore, the organic emission control requirements of today's subpart AA rules may be "applicable" for on-site remedial and removal action activities that use distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that treat substances that are identified or listed under RCRA as hazardous wastes and have a total organic concentration of 10 ppmw or greater. In addition, off-site storage, treatment, and disposal of all wastes classified under RCRA as hazardous waste must be performed at a TSDF permitted under RCRA subtitle C. Thus, CERCLA wastes that are defined as hazardous under RCRA, contain more than 10 ppmw of total organics, and are shipped off site for management in distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations, would be subject to today's final standards like any similar RCRA hazardous waste. The new subpart AA control requirements for process vents may also be "relevant and appropriate" to on-site CERCLA removal and remedial actions that use distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations to manage substances that contain organics that are not covered by this rule (e.g., organics less than 10 ppmw or organics from nonhazardous wastes).

Today's final rules do not include control requirements for process vents on operations not associated with organics distillation/separation but typically associated with CERCLA remedial or removal actions such as soil excavation, in situ soil vapor extraction, in situ steam stripping of soil, soil washing, stabilization, bioremediation (in situ or otherwise), dechlorination, and low temperature thermal desorption. Therefore, the final rule for process vents would not be "applicable" to remedial or removal actions involving these processes at CERCLA sites. Also, the final process vent standards may not be considered "relevant and appropriate" for these same activities at CERCLA sites. Waste management operations involving soil excavation, in situ soil vapor extraction, in situ steam stripping of soil, soil washing, bioremediation, dechlorination, and low temperature thermal desorption can be considerably different from the waste management operations (i.e., distillation/separation processes) regulated in subpart AA. Control technologies for reducing organic emissions from these types of processes

were not evaluated as part of today's rulemaking. However, the air emission potential of remedial and removal actions requiring excavation, land treatment, land farming, in situ treatment activities, and other treatment activities involving landfills and wastepiles should be determined, and, if necessary, the proper emission controls should be applied to these activities.

The organic emission control requirements of subpart BB for TSDF equipment leaks may also be considered as an ARAR for the equipment components (e.g., pumps and valves) installed at CERCLA cleanup sites that contain or contact substances containing 10 percent by weight or more total organics.

Although today's final standards would not be ARAR for all types of remedial and removal actions that are potential sources of organic air emissions, other existing RCRA or CAA regulations may qualify as ARAR for many of these activities. For example, subpart O of 40 CFR part 264 establishes standards of performance limiting organic emissions from thermal destruction processes (i.e., hazardous waste incinerators).

IV. Applicability and Requirements of Proposed Process Vent and Equipment Leak Standards

On February 5, 1987 (52 FR 3748), EPA proposed standards under RCRA section 3004(n) for the control of organic air emissions from certain equipment and process vents at hazardous waste TSDF. The proposed standards would have applied to equipment and process vents "in volatile hazardous air pollutant (VHAP) service" (i.e., containing or contacting liquids, gases, or other derivatives of hazardous waste in concentrations greater than 10 percent total organics) located at TSDF required to have a RCRA permit. The decision as to whether equipment or process vents would be covered by the rule (i.e., would ever contain or contact wastes greater than 10 percent total organics) could be based either on testing the waste and derivatives according to specified test procedures or on engineering judgment as to these materials, total organic content.

The proposed standards would have required a 95-percent reduction in organic emissions from vents in VHAP service on product accumulator vessels and on other process vent sources (e.g., vents on closed accumulator tanks on other processes). The preamble for the proposed standard, at 52 FR 3753, described "product accumulator vessels" as types of equipment that generate process emissions and include distillate receivers, surge control vessels, product separators, or hot-wells that are vented to the atmosphere either directly or through a vacuum-producing system. Product accumulator vessels included units used to distill and steam or air strip volatile components from hazardous waste; examples include distillation columns, steam stripping columns, air stripping units, and thin-film evaporation units at TSDF.

The proposed standards would have regulated actual reclamation processes for the first time. Only recycling units at TSDF already subject to RCRA permit requirements (e.g., because of storage activity on the facility) would have been subject to the proposed air standards. Both new and existing units would have been required to have add-on control devices designed to achieve a 95-percent reduction (based on the application of secondary condensers) and to operate within that design. Once in operation, the facilities would have demonstrated compliance by monitoring the operation of the control device.

The proposed standards also would have required implementation of a monthly leak detection and repair (LDAR) program for valves, pumps, compressors, pressure relief devices, and closed-vent systems used to handle hazardous wastes and their derivatives at TSDF. Control systems, leak definition methodology, leak definitions, and repair schedules were based on existing equipment leak standards developed under sections 111 and 112 of the CAA.

Since proposal, EPA has made several important changes to the standards based on the public comments received after proposal and analyses resulting from these comments. The applicability and requirements of the final standards, including the changes made since proposal, are discussed in section V. The EPA's responses to the major comments are summarized in section VI. Additional information is presented in the BID for the final standards.

V. Applicability and Requirements of Today's Final Standards

This section provides a detailed summary of the final standards as they apply to the affected TSDF community and to process vents and equipment subject to today's rule. Also summarized is the relationship of the final standards to existing exemptions under the RCRA regulatory program.

A. Scope of Final Standards

Today's final standards limit organic air emissions as a class at TSDF that are subject to regulation under subtitle C of RCRA. This action is the first part of a multiphased regulatory effort to control air emissions at new and existing hazardous waste TSDF. These rules establish final standards limiting organic emissions from (1) process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations that manage hazardous wastes with 10 ppmw or greater total organics concentration on an annual average basis, and (2) leaks from equipment that contain or contact hazardous waste streams with 10 percent by weight or greater total organics.

The final standards do not expand the RCRA-permitted community for the purposes of air emissions control. As promulgated, the final standards control organic emissions only from process vents and equipment leaks at hazardous waste TSDF that are subject to permitting requirements under RCRA section 3005 and are applicable only to specific hazardous waste management units. The rules apply to hazardous waste management units that are subject to the permitting requirements of part 270 and to hazardous waste recycling units that are located at facilities otherwise subject to the permitting requirements of part 270. Exempt units, other than recycling units (e.g., 90-day accumulation tanks and wastewater treatment units as specified in § 270.1(c)(2)), are not subject to the rules even when they are part of a permitted facility. Permitting aspects are further discussed in section IX.

The term "organics" is used in the final standards instead of "volatile organics" to avoid confusion with "volatile organic compounds" (VOC) that are regulated as a class under the CAA. To be subject to the standards, a TSDF: (1) Must have equipment that contains or contacts hazardous wastes that are 10 percent or more by weight total organics, or (2) must have distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that treat or process hazardous wastes with total organics concentrations of 10 ppmw or greater on a time-weighted annual average basis.

The final regulations require the facility owners or operators to determine whether their equipment is subject to the equipment leak rules, subpart BB of parts 264 and 265. The owner or operator of a facility may rely on engineering judgment for this determination, or, if the waste's organic content is questionable, the owner or operator may choose any of the test methods identified in the final rule for

determining whether a piece of equipment contains or contacts hazardous wastes that are 10 percent or more total organics by weight. As proposed, these methods include: ASTM Methods D–2267–88, E 169–87, E 168–88, and E 260–85 and Methods 9060 and 8240 of SW–846. The owner or operator also may use any other test method for determining total organic content that is demonstrated to be equivalent to the test methods identified in the rule using the petition process described in 40 CFR 260.21. The test method selected should be the one best suited for the characteristics of the waste stream. Regardless of the method chosen, the final standard requires the facility owner or operator to determine that the organic content is never expected to exceed 10 percent. The determination of organic content of the waste must at all times be appropriate to the wastes currently being managed in the relevant units. If any action is taken that would result in the determination no longer being appropriate to the facility's or a particular unit's operations (e.g., an upstream process change that results in a change in a waste's organic content), then a new determination is required.

To determine whether a particular hazardous waste management unit of the type specified in the rule (e.g., a steam stripping or air stripping unit) is subject to the provisions of subpart AA of parts 264 and 265, the owner/operator is required to determine the total organic concentration of the waste managed in the unit initially (by the effective date of the standards or when the waste is first managed in the waste management unit) and thereafter on a periodic basis (for continuously generated wastes). A waste determination for subpart AA applicability would not be necessary when an owner/operator manages the waste in a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping unit that is controlled for organic emissions and meets the substantive requirements of subpart AA.

Determination that the time-weighted, annual average total organic concentration of the waste managed in the unit is less than 10 ppmw must be performed by direct measurement or by knowledge of the waste as described later in this section. Direct measurement of the waste's total organic concentration must be performed by collecting individual grab samples of the waste and analyzing the samples using one of the approved reference methods identified in the rule.

The EPA is requiring that analytical results for a minimum of four samples be used to determine the total organic concentration for each waste stream managed in the unit. In setting the minimum number of samples at four, EPA will obtain sufficient data to characterize the total organic concentration of a waste without imposing an unnecessary burden on the owner/operator to collect and analyze the samples.

Waste determinations must be performed under process conditions expected to result in the maximum waste organic concentration. For waste generated on site, the samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation/separation operation. For waste generated off site, the samples must be collected at the inlet to the first waste management unit that receives the waste, provided the waste has been transferred to the facility in a closed system such as a tank truck, and the waste is not diluted or mixed with other waste.

The location where the waste's total organic content is determined is important because sampling location can greatly affect the results of the determination. This effect occurs because the concentration level can decrease significantly after generation as the waste is transferred to (and managed in) various waste management units.

If the waste is directly or indirectly exposed to ambient air at any point, a portion of the organics in the waste will be emitted to the atmosphere, and the concentration of organics remaining in the waste will decrease. For example, for highly volatile organic compounds such as butadiene, all of the compound would evaporate within a few seconds of exposure to air. To ensure that the determination of total organic concentration is an accurate representation of the emission potential of a waste upon generation, it is essential that the waste determination be performed at a point as near as possible to where the waste is generated, before any exposure to the atmosphere can occur.

For the reasons stated above, the waste determination must be based on the waste composition before the waste is exposed, either directly or indirectly, to the ambient air. Direct exposure of the waste to the ambient air means the waste surface interfaces with the ambient air. Indirect exposure of the waste to the ambient air means the waste surface interfaces with a gas stream that subsequently is emitted to the ambient air. If the waste determination is performed using direct measurement, the standards would require that waste samples be collected from an enclosed pipe or other closed system that is used to transfer the waste after generation to the first hazardous waste management unit. If the waste determination is performed using knowledge of the waste, the standards would require that the owner or operator have documentation attesting to the organic concentration of the waste before any exposure to the ambient air.

The location where the waste determination would be made for any one facility will depend on several factors. One factor is whether the waste is generated and managed at the same site or generated at one site and transferred to a commercial TSDF for management. Another important factor is the mechanism used to transfer the waste from the location where the waste is generated to the location of the first waste management unit (e.g., pipeline, sewer, tank truck). For example, if a waste is first accumulated in a tank using a direct, enclosed pipeline to transfer the waste from its generation process, then the waste determination could be made based on waste samples collected at the inlet to the tank. In contrast, if the waste is first accumulated in a tank using an open sewer system to transfer the waste from its generation process then the waste determination would need to be made based on waste samples collected at the point where the waste enters the sewer before the waste is exposed to the ambient air. Where the waste is generated off site, the owner or operator may make the determination based on samples collected at the inlet to the first waste management unit at the TSDF that receives the waste, provided the waste has been transferred to the TSDF in a closed system such as a tank truck and the waste is not diluted or mixed with other waste. If a waste determination indicates that the total organic concentration is equal to or greater than the applicability criterion, then the owner or operator would be required to comply with the standards.

As an alternative to using direct measurement, an owner/operator is allowed to use knowledge of the waste as a means of determining that the total organic concentration of the waste is less than 10 ppmw. Examples of information that might be considered by EPA to constitute sufficient knowledge include: (1) Documentation that organics are not involved in the process generating the waste, (2) documentation that the waste is generated by a process that is identical to a process at the same or another facility that has previously been determined by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or (3) previous speciation analysis results from which the total concentration of organics in the waste can be computed and it can be documented that no process changes have occurred since the analysis that could affect the waste's total organic concentration. The final standards include the provision that EPA can require that the waste be analyzed using Method 8240 if EPA believes that the documentation is insufficient to determine an exception by knowledge of the waste (§§ 264.1034(f) and 265.1034(f)).

To address the temporal variability that can occur both within a particular waste stream and within the various waste streams managed in a hazardous waste management unit, the final rules require a time-weighted, annual average concentration to characterize the waste managed in the unit. The final rules require that an owner/operator repeat the waste determination whenever there is a change in the waste being managed or a change in the process that generates or treats the waste that may affect the regulatory status of the waste or, if the waste and process remain constant, at least annually. For example, continuous processes are more likely to generate a more homogeneous waste than batch operations; batch operations involve processes that may frequently involve change in materials or process conditions. Batch operations, therefore, usually generate wastes with varying characteristics, including such characteristics as organics content. Ground water concentrations would also be expected to show significant variation if more than one well provides influent to a waste management unit such as an air stripper and the wells that feed the unit are varied over time or if the proportions from the wells that make up the influent are changed. This is because there is typically considerable spatial variability in contaminated ground water concentrations. The situation where feed wells are changed and the change is not accounted for in the initial waste determination would be considered a process change or change in the waste being managed that would require a new determination.

With the time-weighted, annual average applicability criterion, a hazardous waste management unit would not be subject to this rule if it occasionally treats wastes that exceed 10 ppmw if at other times the wastes being treated in the unit are such that the weighted annual average total organic concentration of all wastes treated is less than 10 ppmw. The time-weighted, annual average is calculated using the annual quantity of each waste stream managed in the unit and the mean organic concentration of each waste stream.

Determining the applicability of the standards to affected processes, units, and facilities is of paramount importance to the TSDF owner or operator in complying with the final standards. A mistake even an inadvertent one, will not excuse a facility owner or operator from the obligation to comply with either the requirements of the standards or with potential enforcement actions. Accurate determinations of what equipment and vents must be controlled are crucial to ensuring that all equipment and vents subject to this rule are in fact controlled. When the facility owner/operator and the Regional Administrator disagree on the determination of emissions or emission reduction achieved, then a performance test conducted as specified in the rules must be used to resolve the disagreement. In situations where the owner/operator and Regional Administrator disagree on whether a unit manages a waste with 10 ppmw or greater organics content or a piece of equipment contains or contacts a waste with 10 percent or more organics content, then procedures that conform to the test methods referenced in the rules may be used to resolve the disagreement.

Consistent with section 3010 of RCRA, the final standards for process vent and equipment leak control and monitoring become effective 6 months from today. Owners and operators must come into compliance with these requirements by the effective date; however, where compliance involves the installation of a control device, EPA is requiring that installation be completed as soon as possible but no later than 24 months from the date the regulatory action affecting the unit is published or promulgated. To obtain the extended time for compliance (18 months beyond the effective date), a facility must show that installation cannot reasonably be expected to be completed earlier. In these circumstances, an owner/operator must develop an implementation schedule that indicates when the installation will be completed and shows that additional time is necessary. The implementation schedule must be included in the operating record by the effective date of the rules. Changes in the implementation schedule are allowed within the 24-month time frame if the owner/operator documents that the change cannot reasonably be avoided.

B. Standards for Process Vents

Affected Equipment

A "process vent" is a pipe, stack, or other opening through which emissions from a hazardous waste management unit are released to the atmosphere either directly, through a vacuum-producing system, or indirectly, through another tank. The process vents that would have been covered by the proposed standard included vents associated with any hazardous waste management process or waste management unit.

Review of the hazardous waste TSDF industry has shown that process vents are most typically associated with processes related to distillation or other separation operations. These technologies were also the type being evaluated under the LDR for spent solvents. Therefore EPA concentrated its analysis of process vents on those hazardous waste management units that are involved in solvent or other organic chemical separation or reclamation by distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations. This should include the largest segment of process vents at TSDF and address those sources with the greatest emission potential. Vents on other types of waste management units (e.g. vents on storage tanks) are being addressed in the Phase II rulemaking.

Two basic changes have been made since proposal that clarify the applicability of the final vent standard. First, to avoid confusion with tanks not associated with the processing of waste streams, the term "product accumulator vessel" has been deleted from the final standard and affected equipment is more specifically defined. The applicability of the final standard for process vents also has been clarified since proposal to exclude air emissions from vents on other closed (covered) and vented tanks not associated with the specified distillation/separation processes to avoid regulatory duplication of the Phase II standards as discussed above.

Thus, the final vent standards apply to: (1) Vents on distillation fractionation, thin-film evaporation, solvent extraction, and air or steam stripping

processes and vents on condensers serving these processes; and (2) vents on tanks (e.g., distillate receivers, bottoms receivers, surge control tanks, separator tanks, and hot wells associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes) if emissions from these processes are vented through the tank. For example, *uncondensed overhead* emitted from a distillate receiver (which fits the definition of a tank) serving a hazardous waste distillation process unit is subject to these Phase I air controls. On the other hand, emissions from vents on tanks or containers that do not derive from a process unit specified above are not covered by these rules. For example, if the condensed (recovered) solvent is pumped to an intermediate holding tank following the distillate receiver mentioned in the above example, and the intermediate storage tank has a pressure-relief vent (e.g., a conservation vent) serving the tank, this vent will not be subject to the process vent standards. Emissions from vents that are not covered under today's rules will be addressed by Phase II of the air standards under section 3004(n).

Second, the terms "VHAP" and "in VHAP service" have been deleted from the final rule in response to public comments. Commenters found the terms inappropriate for transfer from equipment leak standards developed under section 111 or 112 of the CAA to RCRA standards for organic emissions from hazardous waste. The EPA agrees with these commenters; these terms can be confusing and they are unnecessary for these rules. Therefore, the cross-reference to part 61 has been eliminated and the wording of the final regulation has been revised to reflect applicability based on clearly specified hazardous waste management processes or unit operations that manage wastes with a 10 ppmw or greater total organic content.

Requirements of Final Standard for Process Vents

In response to public comments, several changes have been made to the proposed standard for process vents. While the proposed 95-percent emission reduction standard would have applied to individual process vents emitting organics with concentrations of 10 percent or greater by weight, the final process vent 95-percent emission reduction standard applies to total organic emissions from the combination of all affected vents (i.e., vents subject to the provisions of subpart AA) at the facility. As discussed in section VI of this preamble and in the BID for the final rules, the term "facility" refers to the entire site that is under control of the owner or operator engaged in hazardous waste management. Thus, organic emissions from affected process vents anywhere on the hazardous waste management facility are subject to the standards.

The 10-percent concentration criterion for process vents has not been included in the final rules because the promulgated standards contain a facility-based emission rate limit of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) that is more effective in controlling emissions from affected sources and excluding facilities with little emission reduction potential. Based on emissions and health risk analyses conducted in response to comments, this emission rate limit represents an emission level from process vents that is protective of human health and the environment and below which additional meaningful reductions in nationwide health risk and environmental impacts attributable to process vents cannot be achieved. Control of facilities with process vent emissions less than the emission rate limit would not result in further reductions of either cancer risk or incidence on a nationwide basis. Facilities with organic emissions from process vents that do not exceed these emission rates will not have to install controls or monitor emissions from affected process vents. Selection of the emission rate limit is addressed in section VI.B of this preamble and in chapters 4.0 and 7.0 of the BID.

Because the emission rate limits (3 lb/h and 3.1 ton/yr) provide health-based limits, EPA considered dropping completely the organic content criterion (i.e., at least 10 percent total organics). However, EPA decided not to completely eliminate the organic content criterion because it is not clear that the same controls can be applied to very low concentration streams as can be applied to the higher concentration streams that generally are associated with emission rates greater than the limits. For low-concentration streams, EPA questions whether controls are needed on a national or generic basis but is unable to resolve this question at this time. Thus, EPA decided to defer controlling very low concentration streams until it is better able to characterize and assess these streams and the appropriate controls.

Once EPA decided to consider facilities that manage very low concentration organic wastes as a separate category, there remained the problem of determining the appropriate criterion. The EPA examined existing data on air strippers, the treatment device most commonly used with low-concentration streams; it appeared that the quantity of emissions and the risk associated with air strippers treating streams with concentrations below 10 ppmw may be relatively small, thus minimizing the potential harm of deferring control until a later time. Examples of facilities managing low-concentration wastes are sites where ground water is undergoing remedial action under CERCLA or corrective action pursuant to RCRA. Given the limited set of precise data available, and the comments that the 10-percent criterion was too high, EPA determined that an appropriate criterion would be 10 parts per million (ppm) total organics in the waste by weight.

The 10-ppmw criterion is not an exemption from regulation; it is intended only as a way for EPA to divide the air regulations into phases. The EPA is deferring action on very low concentration streams (i.e., ones with less than 10 ppmw total organic content) from the final rule today but will evaluate and announce a decision later on whether to regulate these waste streams.

To comply with the final standards for process vents, the TSDF owner or operator is required to identify all process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes that are treating hazardous waste with a 10-ppmw or greater total organics concentration on a time-weighted annual average basis (i.e., vents affected by the rules). Organic emission rates for each affected vent and for the entire facility from all affected vents must be determined. The facility process vent emission rate must then be compared to the short- and long-term process vent emission rate limits (3 lb/h or 3.1 ton/yr) to determine whether additional emission controls are required. If the process vent emission rate limit is exceeded, the owner or operator must take appropriate action to reduce total facility emissions from affected process vents to below the cutoff level or install additional emission controls to reduce total facility process vent organic emissions by 95 weight percent. If an incinerator, process heater, or boiler is used as a control device, the volume concentration standard of 20 ppmv can be met instead of the 95-weight-percent reduction (§§ 264.1033(c), 264.1060, 265.1033(c), and 265.1060).

Because the final rules could apply to dilute process vent streams and the rule is formatted in terms of a weight-percent

reduction standard, it is necessary to include the volume concentration standard in the final control device standards to account for the technological limitations of enclosed combustion devices (48 FR 48933, October 21, 1983), one of the control technologies examined as part of the rulemaking, treating dilute streams. Below a critical concentration level, the maximum achievable efficiency for enclosed combustion devices decreases as inlet concentration decreases; thus, for streams with low organic vapor concentrations, the 95-percent mass reduction may not be technologically achievable in all cases. Available data show that 20 ppmv is the lowest outlet concentration of total organic compounds achievable with control device inlet streams below approximately 2,000 ppmv total organics. Therefore, a concentration limit of 20 ppmv has been added as an alternative standard for incinerators, process heaters, and boilers to allow for the drop in achievable destruction efficiency with decreasing inlet organics concentration. For consistency, the 20-ppmv concentration is expressed as the sum of the actual individual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen. For facilities that do not meet the emission rate limit, the final process vent standards require that control devices achieve a 95-percent reduction in total organic emissions for the facility or, in the case of enclosed combustion devices, a reduction of each process vent stream to a concentration of no more than each process vent stream to a concentration of no more than 20 ppmv total organic compounds.

The final standards for process vents do not require the use of any specific equipment or add-on control device; the standards can be met using several types of controls. Depending on the characteristics of the process vent stream, either a condenser or a carbon adsorber will likely be the control technology of choice. However, other control devices such as flares, incinerators, process heaters, and boilers, as well as any other device of the owner or operator's choice, also can be used where applicable to achieve compliance.

Operating requirements for closed-vent systems and control devices are included in §§ 264.1033 and 265.1033. A closed-vent system means a system not open to the atmosphere and composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device. If vapor recovery systems such as condensers and adsorbers are used as control devices, they must be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or more unless the total organic emission limits for affected process vents (§§ 264.1032 and 265.1032) can be attained at efficiencies less than 95 percent. Vapor recovery systems whose primary function is the recovery of organics for commercial or industrial use or reuse (e.g., a primary condenser on a waste solvent distillation unit) are not considered a control device and should not be included in the 95-percent emission reduction determination.

If enclosed combustion devices such as incinerators, boilers, or process heaters are used, they must be designed and operated to achieve a total organic compound emission reduction efficiency of 95 percent or more or must provide a minimum residence time of 0.5 s at a minimum temperature of 760 °C. The latter are general design criteria established by EPA, and used in numerous rulemakings, that can be used by facilities in lieu of conducting a site-specific design for enclosed combustion devices. The operating requirements for closed-vent systems and control devices include a provision allowing enclosed combustion devices to reduce organic emissions to a total organic compound concentration of 20 ppmv, by compound, rather than achieve the 95-weight percent reduction.

If flares are used, they must be designed and operated with no visible emissions as determined by the procedures of Reference Method 22, except for periods not to exceed a total of 5 min during any 2 consecutive hours. The final standard specifies that flares must be operated with a flame present at all times and must be operated at all times when emissions may be vented to them. In addition, flares must provide a net heating value of the gas being combusted of 11.2 megajoules per standard cubic meter (MJ/scm) or more, be steam-assisted or air-assisted, or provide a net heating value of 7.45 MJ/scm or more if the flare is nonassisted. Specific design and operating requirements for steam-assisted, air-assisted and nonassisted flares also are included in the final standard. Calculations and procedures for determining the net heating value of the gas being combusted the actual exit velocity and the maximum allowed velocity are included in the final provisions for closed-vent systems and control devices (see §§ 264.1033(d) and 265.1033(d)).

Facilities must maintain documentation in the operating record supporting waste determinations, identifying affected process vents, affected waste management unit throughputs and operating hours, emission rates for each affected vent and for the overall facility, and the basis for determining the emission rates (§§ 264.1035(b)(2) and 265.1035(b)(2)). Regardless of the type of control device used, the documentation must certify that add-on control devices achieve the emission rate limit by design and during operation, or that add-on control devices achieve a 95-percent reduction in organics or achieve the 20-ppmv organics concentration limit by design and during operation where the emission rate limit is not attained. The design documentation must present the basis for determining the design emission reduction and establish the basic values for operating parameters used to monitor the control device's operation and maintenance. The design control level (i.e., the emission reduction needed to achieve the emission rate cutoff or 95-percent emission reduction) can be documented by vendor/manufacturer certifications, by engineering calculations, or through source tests to show that the control device removes the required percentage of organics entering the device. All required information and documentation must be kept in the facility's operating record. The facility's waste determinations and process vent emission rate determinations must at all times reflect the facility's current waste management unit designs and wastes managed. If the owner/operator takes any action that would result in the determination no longer being appropriate to the facility's operations (e.g., if a waste of different composition is managed, the operating hours of the affected management units are increased beyond what was originally considered, or a new affected unit is added that may impact its regulatory status), then a new determination is required (§§ 264.1035(b)(2)(ii) and 265.1035(b)(2)(ii)). In addition, certain information regarding the facility's emission determination and control device design must be included in the facility's part B permit application.

The final rules require the continuous monitoring of specific parameters on all control devices needed to meet the standards to ensure that the devices perform according to their design (§§ 264.1033(f) and 265.1033(f)). The final rules clarify the general parameters listed in the proposal by describing the requirements in greater detail. Operating

parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. Although minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95-percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. Therefore, a recovery device must be designed for the particular application and monitored to ensure that it is being operated within design specifications. Proper design shall be determined through engineering calculations vendor certification, and/or emission testing.

The owner/operator is required to record the control device monitoring information, including the basis for the operating parameters used to monitor control device performance, in the facility operating record. Periods when monitoring indicates control device operating parameters are outside established tolerances on design specifications must be recorded. Facilities with final permits incorporating these standards (i.e., facilities subject to the provisions of 40 CFR part 264 subpart AA) must report exceedances that are not corrected within 24 hours to the Regional Administrator on a semiannual basis. The records and reports must include the dates, duration, cause, and corrective measures taken. (See §§ 264.1036(a) and 264.1065(a)(4).)

The specific monitoring requirements for control device operating parameters include: (1) Continuous monitoring of coolant fluid temperature and exhaust gas temperatures or the concentration level of organic compounds in the exit gas stream for condensers; (2) continuous monitoring of exhaust gas organic breakthrough for carbon adsorbers; (3) continuous monitoring of combustion zone temperature for incinerators, boilers and process heaters; and (4) the presence of a pilot flame using a thermocouple or any other equivalent device to detect the presence of a flame for flares.

The final standards would require that emission control equipment is properly designed, installed, operated, and maintained. Also, as previously described, the standards would require continuous monitoring of specific control device operating parameters. A control device monitor reading outside the operating range allowed by the standards (referred to in this preamble as a "control device exceedance") indicates that the control device is not operating normally or is malfunctioning (i.e., not operating at the design setting necessary to achieve at least 95 percent organic emission control efficiency). Action must be taken by the owner or operator to return the control device to operating at the design setting. When a control device exceedance cannot be corrected within 24 hours of detection, the final standards would require the owner or operator to record specific information concerning the control device exceedance. Facilities with final RCRA permits must report this information to EPA on a semiannual basis; interim status facilities are not required to report control device exceedances. The exceedance report would need to describe the nature and period of each control device exceedance and to explain why the control device could not be returned to normal operation within 24 hours. A report would need to be submitted to EPA only if control device exceedances have occurred during the past 6-month reporting period. These reports would serve to aid EPA in determining the owner's or operator's ability to properly operate and maintain the control device. The EPA recognizes that a control device malfunction may occur due to circumstances beyond the control of the owner or operator (e.g., defective equipment supplied by the manufacturer). Therefore, a single control device exceedance may not necessarily be indicative of improper control device operation or maintenance.

C. Equipment Leak Standards

Affected Equipment

The final standards apply to each valve, pump, compressor, pressure relief device, open-ended valve or line, flange or other connector, and associated air emission control device or system that contains or contacts hazardous waste streams with 10 percent or more total organics by weight.

In response to public comments, EPA has changed the applicability of the final LDAR standards for pumps and valves to better relate to the volatility of the wastes managed and thus to air emission potential. The requirements for pumps and valves have been revised to include the heavy liquid provisions contained in EPA's new source performance standard (NSPS) for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (SOCMI) (40 CFR part 60, part VV). The heavy liquid provisions (§§ 264.1058 and 265.1058) exempt pumps and valves processing lower vapor pressure substances from the routine leak detection monitoring requirements of the standards. By their nature, heavy liquids exhibit much lower volatilities than do light liquids, and because equipment leak rates and emissions have been shown to vary with stream volatility, emissions from heavy liquids are less than those for lighter, more volatile streams. For example, EPA analyses indicate that emissions from valves in heavy liquid service are more than 30 times lower than the emissions from valves in light liquid service.

Pumps and valves are in light liquid service if the vapor pressure of one or more of the components being handled by the piece of equipment is greater than 0.3 kilopascal (kPa) at 20 °C, if the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and if the fluid is a liquid at operating conditions. Pumps and valves not in light liquid service are defined to be in heavy liquid service.

The regulations governing equipment leaks also have been incorporated and reprinted in the final standards to eliminate cross-referencing to part 61 regulations and to consolidate the requirements under RCRA.

Equipment Leak Control Requirements

The control requirements for valves are based on LDAR requirements. Valves in light liquid or gas/vapor service (§§ 264.1057 and 265.1057) must be monitored using Reference Method 21: an instrument reading at or above 10,000 ppm indicates the presence of a leak. If a leak is detected, the valve must be repaired as soon as practicable but no later than 15 days after the leak is detected. A first attempt to repair the valve must be made no later than 5 days after the leak is detected. First attempts at repair include, but are not limited to, tightening or replacing bonnet bolts tightening packing gland nuts, or injecting lubricant into the lubricated packing.

Monthly monitoring is required; however, any valve for which a leak is not detected for 2 successive months may be monitored the first month of each succeeding quarter until a leak is detected (§§ 264.1057(c) and 265.1057(c)). If a leak is detected the valve must be monitored monthly until a leak is not detected for 2 successive months.

In addition, monthly monitoring is not required if: (1) A leakless valve, such as a sealed-bellows valve, is used to achieve a no-detectable-emissions limit (500 ppm above background, as measured by Method 21, with an annual performance test; §§ 264.1057(f) and 265.1057(f); (2) the owner or operator meets a performance level of 2 percent of all valves leaking (§§ 264.1061 and 265.1061); (3) the owner or operator elects to comply with a skip-period leak detection and repair program as described for valves (§§ 264.1062 and 265.1062); or (4) the valve is designated by the owner or operator as unsafe-to-monitor or difficult-to-monitor (§§ 264.1057 (g) and (h) and 265.1057 (g) and (h)). A valve may be designated as unsafe-to-monitor if monitoring personnel would be exposed to an immediate danger as a consequence of monitoring and if the owner or operator adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times. A valve may be designated as difficult-to-monitor if the valve cannot be monitored without elevating monitoring personnel more than 2 m above a support surface, the valve is in an existing hazardous waste management unit and the owner or operator follows a written plan that requires monitoring at least once a year.

The EPA is continuing to study the status of new technology available for the control of air emissions from valves. The EPA has issued a separate notice in the Federal Register that discusses available information on leakless valve technology (54 FR 30228, July 19, 1989). Public comments were requested in that notice on several aspects of the technology to assist EPA in determining applications for which leakless valve technology would be appropriate at hazardous waste TSDF.

The final standards also require monitoring for pumps at TSDF containing or contacting wastes with greater than 10 percent organics (§§ 264.1052 and 265.1052). Each pump in light liquid service must be monitored monthly with a portable vapor analyzer following the EPA Reference Method 21 protocol. In addition, each pump in light liquid service must be checked weekly by visual inspection for indications of liquids dripping from the pump seal. A pump is determined to be leaking if an instrument reading of 10,000 ppm or greater is measured or there are indications of liquids dripping from the pump seal. When a leak is detected, it must be repaired as soon as practicable, but not later than 15 days after it is detected unless the delay-of-repair provisions specified in the rule apply. The first attempt at repair must be made within 5 calendar days of the leak being detected.

Pumps in light liquid service are exempt from the monitoring requirements under §§ 264.1052 (d) and (e) and 265.1052 (d) and (e) if: (1) The pump is equipped with a dual mechanical seal system that includes a barrier fluid between the two seals, (2) a magnetically coupled or diaphragm pump is used to achieve a no-detectable-emissions limit (indicated by a portable organic vapor analyser reading of less than 500 ppm above background), or (3) the pump is equipped with a closed-vent system capable of transporting any leakage from the seal or seals to a 95-percent efficient control device. If pumps are equipped with a dual mechanical seal system, emissions from the barrier fluid reservoir must be vented to a control device designed and operated to achieve a 95-percent control efficiency, the barrier fluid must be purged and added to the hazardous waste stream, or the pressure of the barrier fluid must be maintained at a level above the pressure in the pump or exhauster stuffing box. A pressure or level indicator to detect any failure of the seal system or the barrier fluid system is required, with the indicator checked daily or equipped with an alarm to signal failure of the system. If leakless equipment is used, such as magnetically coupled or diaphragm pumps, the standards require an annual performance test by Method 21 to verify the no-detectable-emissions status of the equipment.

Compressors must be equipped with a seal system that includes a barrier fluid system that prevents leakage of organic emissions to the atmosphere. The seal system must be operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure, be equipped with a barrier fluid system that is connected by a closed-vent system to a control device that meets the design and operating requirements established in §§ 264.1060 and 265.1060, or be equipped with a system that purges the barrier fluid into a hazardous waste stream with zero total organic emissions to the atmosphere. In addition, the barrier fluid system must be equipped with a sensor that detects failure of the seal system, barrier fluid system, or both. A compressor is determined to be leaking if the sensor indicates failure of the seal system, the barrier fluid system, or both. When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected; a first attempt at repair must be made within 5 calendar days.

Except during emergency pressure releases, each pressure relief device in gas/vapor service must be operated with no detectable emissions (500 ppm above background, as measured by Reference Method 21) (§§ 264.1054 and 265.1054). No later than 5 calendar days after any pressure release, the device must be returned to a condition of no detectable emissions and be monitored to confirm that status. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage to a control device that meets the requirements of §§ 264.1060 and 265.1060 is exempt from these requirements.

Each open-ended valve or line must be equipped with a cap, blind flange, plug, or second valve (§§ 264.1056 and 265.1056). The cap, blind flange, plug, or second valve must seal the open end at all times except during operation requiring hazardous waste stream flow through the open-ended valve or line. Operational requirements for second valves and double block and bleed systems also are specified in the final regulation.

Pumps and valves in heavy-liquid service, pressure relief devices in light-liquid or heavy-liquid service, and flanges and other connectors must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method (§§ 264.1058 and 265.1058). A leak is detected if an instrument reading of 10,000 ppm or greater is measured. When a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after detection. The first attempt at repair must be made within 5 calendar days of the leak being detected.

The final standards also include provisions for delay of repair (§§ 264.1059 and 265.1059). Delay of repair of leaking equipment is allowed if the repair is technically infeasible without a hazardous waste management unit shutdown (i.e., a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit). However, repair of the leak must be performed before the end of the next shutdown of that unit. Delay of repair also is allowed for equipment (i.e., either pumps or valves) that is isolated from the hazardous waste management unit and is prevented from containing or contacting a hazardous waste with 10 percent or more organic content. For valves, delay of repair is allowed if: (1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair, and (2) when the valve is repaired the purged materials are

collected and destroyed or recovered in a control device complying with the requirements of the standards. Delay of repair beyond a hazardous waste management unit shutdown is allowed only if valve assembly replacement is necessary during the next shutdown of the unit, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before supplies were depleted (i.e., the owner/operator has made a good-faith effort to maintain adequate spare parts). For pumps, delay of repair is allowed if: (1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and (2) repair is completed as soon as practicable, but not later than 6 months after the leak is detected.

The final standards also include design and operating requirements for closed-vent systems that may be used to comply with the equipment leak standards (§§ 264.1060 and 265.1060). Closed-vent systems must be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background by Reference Method 21. A leak on a closed-vent system, indicated by an instrument reading of 500 ppm or by visual inspection, must be repaired within 15 calendar days after detection; a first attempt at repair must be made no later than 5 calendar days after detection. Monitoring must be conducted initially, annually, and at other times as requested by the Regional Administrator, to confirm the no-detectable-emissions status of the system. Like other control devices, closed-vent systems must be operated at all times when any emissions may be vented to them.

The provisions of 40 CFR 61.244, subpart V, which provide a formal mechanism for applying for use of an alternative means of emission limitation, were specifically not included in the proposed TSDF process vent and equipment leak rules and have not been included in these final standards. The alternative means of emission limitation provisions are not considered self-implementing; i.e., these provisions cannot be satisfied without the need for detailed explanation or negotiation between the facility owner/operator and EPA, and thus are not appropriate as requirements for interim status facilities under part 265. Therefore, the alternative means of emission limitation provisions were not included in the final subpart AA and BB rules. An owner or operator, however, may use an alternative means of emission limitation to comply with the process vent or equipment leak standards of part 264. The owner/operator can use part B of the permit application to provide information that demonstrates the effectiveness of any alternative means of emission limitation and can use the negotiation process associated with issuance of a final permit to establish conditions for use of an alternative means of emission limitation. The owner or operator would be responsible for collecting and verifying test data to document that the emission reduction achieved by the alternative is equal to or greater than the emission reduction achieved by the equipment, design, or operational requirements in the standard.

Additional general recordkeeping requirements include information on pump, valve, compressor, and pressure relief device leak repair attempts; reasons for repair delays; and design criteria for sampling connection systems and closed-vent systems and control devices. There are also recordkeeping and monitoring requirements for pieces of equipment covered by alternative requirements.

Compliance with the equipment leak standards will be assessed through plant inspections and the review of records that document implementation of the requirements as required by the final standards.

D. Summary of Changes from Proposal

Several changes have been made to the standards since proposal as the result of EPA's evaluation of comments and of additional information gathered in response to comments. These changes respond primarily to commenters' concerns that additional controls are unnecessary for TSDF process vents and equipment with very low emissions and that the applicability, implementation, and compliance provisions of the standards should be clarified. The EPA has addressed these problems in the final rules.

The proposed standards would have required that organic emissions from all process vents that emit organics in concentrations of 10 percent or greater on all TSDF waste management units be reduced by 95 percent. The final rules apply to process vents on specific hazardous waste management units that treat wastes with total organics concentrations of 10 ppmw or greater and include (1) process vents on distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations and vents on condensers serving these operations and (2) process vents on tanks associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations if emissions from these process operations are vented through the tanks.

While the proposed standard would have required 95 percent emission reduction from each affected vent, the final vent standard's weight-percent reduction applies to total emissions from the combination of all affected vents at each facility. The final rules also add facility-based emission rate limits for all affected process vents of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) (§§ 264.1032(a)(1) and 265.1032(a)(1)). Facilities with organic emissions from vents below the emission rate limits will not have to reduce process vent organic emissions. The owner or operator of the facility must determine and document that emissions from affected vents will not exceed the emission rate limits. The EPA estimates that baseline emissions will be reduced by about 90 percent by controlling process vent emissions from about 55 percent of affected facilities, i.e., those with emissions above the emission rate limit.

Another major change affects the applicability of the final standards for pumps and valves to better relate to the volatility of the wastes managed and thus to air emission LDAR potential. The proposed LDAR requirements for pumps and valves have been revised to distinguish between equipment in heavy liquid service and equipment in gas/light liquid service. The provisions exempt pumps and valves processing relatively low vapor pressure substances (heavy liquids) from the routine instrument monitoring requirements of the standards. These provisions are included to avoid requiring unnecessary controls on equipment that poses little emission problem even when leaking.

Because of commenters' concerns with the administrative problems associated with obtaining a major permit modification, the final standards do not require modifications of RCRA permits issued before the effective date of these rules (§§ 264.1030(c) and 264.1050(c)). In such cases, requirements for affected hazardous waste management units and associated requirements for process vents and equipment must be added or incorporated into the facility's permit at review under § 270.50 or at reissue under § 124.15. However, in the forthcoming Phase II air rules, EPA will be proposing to modify §§ 264.1030(c) and 264.1050(c) as they apply to control of air emissions under subparts AA and BB. This action, if adopted, would mean that the air rules promulgated under RCRA section 3004(n) would be applicable to all facilities as of the effective date of the Phase II rules. More details regarding implementation are presented in section IX of this preamble.

The proposed air emission standards for process vents and equipment leaks would have added part 269, Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. For consistency with standards for other TSDF sources under RCRA, the final standards have been incorporated into part 264, for permitted facilities, and part 265, for interim status facilities. In addition, whereas at proposal the equipment leak requirements of 40 CFR part 61, subpart V, were incorporated by reference, these provisions have been written into subpart BB with editorial revisions appropriate for a standard promulgated under RCRA authority rather than CAA authority.

E. Relationship of RCRA Exemptions to Final Standards

Under 40 CFR 261.4(c), hazardous wastes that are generated in process-related equipment such as product or raw material storage tanks or pipelines are exempt from RCRA regulation. This exemption applies until the waste is physically removed from the unit in which it was generated, unless the unit is a surface impoundment or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials. This exemption is not affected by this rule. Therefore, units such as *product* (not hazardous waste) distillation columns generating hazardous waste still bottoms containing organics are not subject to the standard while the wastes are in the product distillation column. However, distillation columns that receive hazardous wastes and that are used in hazardous waste treatment (i.e., hazardous waste management units) are subject to this standard if the waste's organic content exceeds the 10-ppmw applicability criterion. As discussed in the preamble to the proposed standard, only those recycling units that are part of a facility already subject to RCRA permit requirements are subject to the air standards. The EPA's authority to control air emissions from solvent reclamation operations not part of closed-loop systems is discussed further in section VI of this preamble and in the BID.

Totally enclosed treatment facilities also are exempt from RCRA subtitle C requirements under 40 CFR 264.1(g)(5), 40 CFR 265.1(c)(9), and 270.1(c)(2). A "totally enclosed treatment facility" is a hazardous waste treatment facility that is "directly connected to an industrial production process and which is constructed and operated in a manner that prevents the release of any hazardous waste or any constituent thereof into the environment during treatment" (40 CFR 260.10).

Treatment facilities located off the site of generation are not directly connected to an industrial process. Thus, commercial waste treatment facilities with equipment affected by the final standards, such as solvent reclamation facilities, by definition ordinarily would not be totally enclosed. In addition, storage facilities, disposal facilities, and ancillary equipment not used for treating hazardous waste do not fall within the definition of a totally enclosed treatment facility.

The EPA believes that many on-site treatment facilities also are not totally enclosed. Distillation columns and other treatment technologies typically are designed to release emissions into the air. Therefore, by definition, these on-site technologies generally are not totally enclosed. (See 45 FR 33218, May 19, 1980 (no constituents released to air during treatment).)

Two important characteristics define a totally enclosed treatment facility. The key characteristic of a totally enclosed treatment facility is that it does not release any hazardous waste or constituent of hazardous waste into the environment during treatment. Thus, if a facility leaks, spills, or discharges waste or waste constituents, or emits waste or waste constituents into the air during treatment, it is not a totally enclosed treatment facility within the meaning of these regulations. The second important characteristic is that it must be directly connected to an industrial production process.

The EPA also excludes elementary neutralization and wastewater treatment tanks as defined by 40 CFR 260.10 from regulation under the hazardous waste rules. The EPA amended these definitions (see 53 FR 34080, September 2, 1988) to clarify that the scope of the exemptions applies to the tank systems, not just the tank. For example, if a wastewater treatment or elementary neutralization unit is not subject to RCRA subtitle C hazardous waste management standards, neither is ancillary equipment connected to the exempted unit. The amendments also clarify that, for a wastewater treatment unit to be covered by the exemption, it must be part of an onsite wastewater treatment facility. Thus, emissions from process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations and ancillary equipment (piping, pumps, etc.) that are associated with a tank that is part of the wastewater treatment system subject to regulation either under sections 402 or 307(b) of the Clean Water Act are not subject to these standards. However, air emission sources not subject to RCRA may be subject to CAA guidance and/or standards.

As noted in the preamble to the proposal, under 40 CFR 262.34, generators that accumulate hazardous waste in tanks and containers for 90 days or less are not subject to RCRA permitting requirements, provided they comply with the provisions of 40 CFR 262.34, which include the substantive requirements for tanks and containers storing hazardous waste, 40 CFR part 265, subparts I and J. This remains unchanged, and the final standards do not apply to generator tanks that accumulate hazardous waste for 90 days or less. However, as part of the Phase II TSDF air emission regulations, EPA intends to propose to modify the exemption conditions to require that 90-day tanks meet the control requirements of the Phase I and Phase II standards.

Today's final rules regulate the activity of reclamation at certain types of RCRA facilities for the first time. The EPA is amending 40 CFR 261.6 under its RCRA authority over reclamation to allow covering reclamation of hazardous wastes in waste management units affected by today's final rules. It should be recognized, however, that these final rules apply only at facilities otherwise needing a RCRA permit. In addition, the closed-loop reclamation exemption in § 261.4(a)(8) is not changed by these rules. Therefore, not all reclamation units will necessarily be affected by these rules.

VI. Summary of Comments and Responses

Numerous comments on the proposed rule were received that relate to nearly all aspects of the RCRA standards development process. The comment summaries cover topics relating to regulatory issues, applicability of the standards, control technologies impact analyses and implementation and compliance issues. Detailed responses to these and other comments are included in the BID for the promulgated standards, which is available in the public docket for this rule.

A. Regulatory Issues

Statutory Authority

Comment: Several commenters argued that TSDF air emissions should be regulated under the CAA rather than RCRA because (1) CAA standards under sections 111 and 112 are already in place in the SOCMI and petroleum refining industries; (2) air emissions at some TSDF have already been permitted under State implementation plans (SIP), new source review programs, or under State regulations for VOC or air toxics control; (3) VOC and ozone control are the province of the CAA, not RCRA; and (4) a statutory mechanism already exists under the CAA for evaluating the risk posed by air emissions.

Response: Congress has required EPA to promulgate air emission monitoring and control requirements at hazardous waste TSDF, under section 3004(n) of RCRA, as may be necessary to protect human health and the environment. Congress was aware of the existence and scope of the CAA when it enacted section 3004(n) of RCRA. There is no indication that Congress intended that all air regulations be issued within the confines of the CAA. On the contrary, when adding section 3004(n), Congress specifically recognized EPA's dual authority to regulate these air pollutants (S. Rep. 98–284, page 63).

The EPA has conducted an analysis of current State and Federal controls and concluded that further regulation under section 3004(n) is necessary to protect human health and the environment. The EPA examined State regulations, as well as existing Federal standards (and those under development), to determine the potential for overlapping rules and permitting requirements. The EPA found that 6 States have established air toxics programs, 21 States have established generic standards for VOC independent of Federal regulations, and several States have extended control techniques guidelines (CTG) for VOC to TSDF. However, the standards vary widely in scope and application and in many cases controls have not been required when emissions are below 40 ton/yr, even in the 37 States with ozone nonattainment areas. The EPA believes that today's action will help alleviate the nonuniformity among the States' efforts and will help achieve emission reductions necessary to protect human health and the environment.

A few commenters also argued that the standards would duplicate existing CAA standards that apply to the SOCMI and petroleum refineries. The EPA disagrees because the standards being promulgated today apply to waste management sources whereas the CAA standards previously promulgated apply to the production process.

The EPA also disagrees with contentions that it is outside the province of RCRA to address VOC and ozone. As noted, section 3004(n) standards, like all RCRA subtitle C standards, are to protect "human health and the environment." VOC and ozone are threats to human health and the environment and thus are well within the regulatory scope of section 3004(n).

Organic emissions from TSDF contribute to ambient ozone formation. In fact, TSDF are estimated to emit nearly 12 percent of all VOC from stationary sources, and thus any reductions in these emissions will contribute to reducing ozone formation and associated health and environmental problems.

RCRA Authority Over Recycling

Comment: Several commenters argued that EPA does not have regulatory authority under RCRA to control solvent reclamation operations or units or equipment managing materials destined for reclamation such as spent solvent because they are producing or managing products and not wastes.

Response: The EPA disagrees with the commenters regarding EPA's authority to control solvent reclamation operations. In response to a court opinion *(American Mining Congress* v. *EPA,* 824 F.2d 1177, DC Circuit Court of Appeals, July 31, 1987) concerning the scope of EPA's RCRA authority, EPA proposed amendments to the RCRA definition of "solid waste" that would clarify when reclamation operations can be considered to be managing solid and hazardous wastes (53 FR 519, January 8, 1988). The EPA has accepted comments on its interpretation and proposed amendments. The EPA has not yet taken final action on this proposal. Thus, EPA is addressing the scope of its authority over reclamation operations under RCRA in the context of that rulemaking. This rule is based on EPA's current interpretation of its RCRA authority, as described in the January 1988 proposal.

The following summarizes EPA's proposed position. In general, the proposed amendments would exclude from RCRA control only those spent solvents reclaimed as part of a continuous, ongoing manufacturing process where the material to be reclaimed is piped (or moved by a comparably closed means of conveyance) to a reclamation device, any storage preceding reclamation is in a tank, and the material is returned after being reclaimed, to the original process where it was generated. (Other conditions on this exclusion relate to duration and purpose of the reclamation process. See proposed § 261.4(a)(8).)

However, processes (or other types of recycling) involving an element of "discard" are (or can be) within RCRA subtitle C authority. When spent materials are being reclaimed, this element of discard can arise in two principal ways. First, when spent materials are reclaimed by someone other than the generator, normally in an off-site operation, the generator of the spent material is getting rid of the material and so is discarding it. In addition, the spent material itself, by definition, is used up and unfit for further direct use; the spent material must first be restored to a usable condition. This type of operation has been characterized by some of the worst environmental damage incidents involving recycling (50 FR 658–661, January 4, 1985). Moreover, storage preceding such reclamation has been subject to the part 264 and 265 standards since November 19, 1980. (See generally 53 FR 522 and underlying record materials.) The *American Mining Congress* opinion itself indicates that such materials are solid wastes (824 F.2d at 1187).

When a spent material is reclaimed on site in something other than a closed-loop process, EPA also considers that the spent material is discarded (i.e., spent solvents removed from the process, transferred to an on-site distillation unit, and regenerated have been removed from the production process). The EPA's reasoning is that these materials are no longer available for use in an ongoing process and have been disposed of from that operation, even if the reclamation operation is on site. Finally, EPA also considers that when hazardous secondary materials are reclaimed but then burned as fuels, the entire operation—culminating in thermal combustion—constitutes discarding via destructive combustion (53 FR 523). Consequently, under this reading, any intermediate reclamation step in these types of fuel production operations remains within EPA's subtitle C authority.

In summary, under EPA's current interpretation of the court's opinion, air emissions from distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes involving reclamation of spent solvent and other spent hazardous secondary materials can be regulated under RCRA subtitle C whenever the reclamation system is not part of the type of closed-loop reclamation system described in proposed part 261.4(a)(8). Any changes to this interpretation as part of the solid waste definition final rule may affect the scope of this rule.

Selection of Source Category

Comment: Several commenters disagreed with the selection of TSDF and Waste Solvent Treatment Facility (WSTF) process vents and equipment leaks for regulation because they believed that (1) out-of-date data or extrapolated data were used in the analysis and, as a result, the estimate of the number of affected facilities nationwide and the number affected by the proposed rule is far too low; (2) the role of State regulations was not considered; (3) EPA should control larger, more hazardous air emission sources at TSDF, such as storage tanks, before controlling process vents and equipment leaks; and (4) air emissions from waste solvent reclamation operations do not pose a health risk warranting control.

Response: The EPA generally disagrees with the commenters that the selection of TSDF process vents and equipment leaks was inappropriate. However, EPA agrees that the standards will affect more than the 100 WSTF estimated at proposal. To respond to these and other comments, EPA conducted additional technical analyses. The EPA developed an industry profile using results of the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (hereafter called the "Screener Survey"). The Screener Survey data represent all of the TSDF active in 1985 with interim status or final RCRA permits, which totalled about 3,000 facilities. The Screener Survey data are for operations in 1985, the latest year for which such comprehensive data are available. A review of the Screener Survey data shows a total of about 450 facilities that need authorization to operate under RCRA section 3005 and report solvent recovery by operations such as batch distillation, fractionation, thin-film evaporation, or steam stripping at the facility; i.e., operations that would have process vents subject to the standards. The EPA used these facility counts together with the reported 1985 waste solvent throughputs as the basis for the final process vent standards impacts analyses. In addition, EPA estimates that about 1,000 on site and off site permitted TSDF that do not practice solvent recovery do manage hazardous waste streams containing 10 percent or more total organics and would be subject to the equipment leak requirements. In total, about 1,400 facilities are potentially subject to the provisions of subpart BB.

State and Federal regulations also were reviewed to help EPA better estimate baseline emission control levels. Although a few States have controls in place, it appears that there are no general control requirements for TSDF process vents. Moreover, because TSDF with solvent recycling generally are small operations, any new waste management units with process vents would likely have potential VOC emissions of less than 40 ton/yr; thus, prevention of significant deterioration (PSD) permit requirements would not apply. In addition, EPA sent section 3007 information requests to several large and small TSDF; respondents to the EPA section 3007 questionnaires did not indicate control requirements for process vents. Several of the facilities that were asked to provide information reported requirements for obtaining air contaminant source operating permits, but they reported no permit requirements for controlling process vent emissions. Therefore, the revised emission estimates (that are based on site-specific emission data) should reasonably reflect the current level of control of process vent emissions.

With respect to those commenters who argued that other air emission sources should be controlled instead of process vents and equipment leaks, it should be pointed out that section 3004(n) of RCRA requires EPA to promulgate regulations for the monitoring and control of air emissions from hazardous waste TSDF, *including but not limited to* open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment. Organic emissions are generated from process vents on distillation and separation units such as air strippers, steam strippers, thin-film evaporators, fractionation columns, batch distillation units, pot stills, and condensers and distillate receiving vessels that vent emissions from these units. Distillation and separation processes may be found in solvent reclamation operations, wastewater treatment systems, and in other pretreatment processes. Organic emissions also are released from equipment leaks associated with these processes as well as from nearly all other hazardous waste management units.

As discussed in section III.D of this preamble, the EPA chose to develop the process vent and equipment leak portion of its TSDF rulemaking as the first phase of the TSDF air emission rules partly to prevent uncontrolled air emissions from LDR treatment technologies since these technologies were likely to have increased use. In addition, EPA already had control technology information to support these regulations, and thus earlier development of these rules was possible. This is principally because effective controls now in place under the CAA to control emissions from the same types of emission points in chemical production facilities and petroleum refineries can be applied to reduce the health risk posed by air emissions from uncontrolled distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes and equipment leaks at TSDF. The EPA has limited the applicability of today's final standards to those types of process vents for which control techniques are well developed, i.e., those associated with processes designed to drive the organics from the waste, such as distillation, fractionation, thin-film evaporation, solvent extraction, and stripping operations.

Organic emissions also are generated from numerous other sources at TSDF. Preliminary estimates indicate that nationwide organic emissions (after control of process vents associated with distillation/separation units and equipment leaks) are about 1.8 million Mg/yr. The EPA is in the process of developing standards for these sources under section 3004(n) of RCRA, and the standards are scheduled for proposal in 1990. Source categories being examined include tanks, surface impoundments, containers, and miscellaneous units. These other TSDF source categories require different data and engineering evaluations; thus, standards for these other sources are on a separate rulemaking schedule. The emissions and risk analyses needed to support extension of the process vent standards to other closed (covered), vented tanks are also being developed in conjunction with this future rulemaking. These include vent emissions that are incidental to the process, such as emissions caused by loading or by agitation/ aeration of the waste in a treatment tank.

The EPA has determined that organic emissions from TSDF/WSTF process vents and equipment leaks pose a significant risk to human health and the environment and that section 3004(n) provides authority to control TSDF air emissions from these sources. Therefore, EPA has decided to take measures to reduce the atmospheric release of organic air pollutants from these sources as quickly as possible. The fact that distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes and equipment leaks are regulated before other sources is not

germane. There is no reason to delay these rules while others are under development.

Other commenters criticized the selection of the source category for regulation because their process vent emissions either are already controlled or are low enough so as not to pose a threat to human health and the environment. However, EPA's analysis of process vent emissions and impacts indicates that for a large segment of the industry, TSDF process vent emissions can pose significant environmental and health risks. These facilities are the target of the subpart AA process vent standards. As discussed in section VI.B of this preamble, the final standards include facility process vent emission rate limits designed to avoid control of facilities where meaningful reductions in nationwide risk to human health and the environment cannot be achieved.

Several commenters also criticized the source category for regulation because emissions from generators who conduct on-site reclamation and off-site reclaimers with no prior storage (i.e., those recycling activities conducted at facilities not requiring a RCRA permit) would not be controlled.

The standards being promulgated today (under section 3004[n]) apply only to waste management facilities that need authorization to operate under section 3005 of RCRA. Air emissions from subtitle C waste management facilities that are excluded from RCRA permit requirements will be subject to regulation under either the CAA or RCRA authority as appropriate. Waste management facilities that fall under the requirements of subtitle D (i.e., nonhazardous waste operations) will also be subject to regulation under the CAA. The EPA limited the scope of the standards at proposal and in this final rule to facilities required to have a permit under RCRA to minimize disruption to the current permitting system (i.e., not expand the permit universe) and not impose a permit burden on facilities not otherwise subject to RCRA permits. Although EPA is controlling only some sources in this rule, other sources of significant levels of air emissions will also be controlled; i.e., it is a matter of timing rather than a decision not to control these other sources. This phased regulatory approach is discussed in section III.C of this preamble.

RCRA Decision Criteria

Comment: Several commenters alleged that the standards do not meet the mandate of RCRA section 3004(n) because (1) the standards are not protective in all cases; (2) the standards are inconsistent with RCRA section 3004(m) that requires treatment standards based on best demonstrated available technology (BDAT); and (3) neither the RCRA statute nor its legislative history allows consideration of costs.

Response: The EPA believes that the standards promulgated today appreciably reduce health risks that are presented by air emissions at TSDF and provide protection to human health and the environment as required by section 3004(n) of RCRA, for the vast majority of the air emissions affected by these standards. The EPA's analysis of residual cancer risk after implementation of the standards for process vents indicates that maximum individual risk, even at the upper-bound emission rate, is well within the residual risk for other standards promulgated under RCRA, which historically has been in the range of 1×10^{-4} to 1×10^{-6}. On the other hand, the analysis indicates that residual cancer risk after implementing the equipment leak standards is higher than the residual risk for other standards promulgated under RCRA. However, EPA believes that the equipment leak standards achieve significant reductions in emissions and risk and, that after control, the vast majority of facilities are well within the risk range of other RCRA standards.

As was already described, EPA will be promulgating regulations to control TSDF air emissions in phases. Thus, in Phase III, EPA will be evaluating the need for additional control (e.g., control of individual toxic constituents after implementation of these standards) for cases where the risk from air emissions after implementation of the Phase I and II standards is higher than desirable. (This regulatory approach is discussed in section III.C of this preamble.) During the interim, permit writers should use EPA's omnibus permitting authority to require more stringent controls at facilities where a high residual risk remains after implementation of the standards for volatile organics. The permitting authority cited by section 3005 of RCRA and codified in § 270.32(b)(2) states that permits "* * * shall contain such terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." This section allows permit writers to require emission controls that are more stringent than those specified by a standard.

As has been described above, the approach that EPA is using to control TSDF air emissions is to proceed with promulgation of regulations to control organic emissions as a class (Phases I and II) and to follow this with regulations that would require more stringent controls for cases where the risk after implementing the organic standards remains high. The EPA believes that this approach will ultimately be protective of human health and the environment for all TSDF air emissions on a nationwide basis.

The question of whether these standards implement the requirements of RCRA section 3004(m) is irrelevant. Regulations implementing section 3004(m), which is a pretreatment-based program that defines when hazardous wastes can be land-disposed, have been (and will continue to be) separately promulgated by EPA. For example, see 40 FR 268 (November 7, 1986) and 52 FR 25787 (July 8, 1987). In contrast, today's regulations under section 3004(n) of RCRA do not specify technology-based treatment levels for hazardous wastes but regulate air emissions from treatment units as necessary to protect human health and the environment. Therefore, in developing today's rule EPA has focused on achieving acceptable levels of health and environmental protection rather than on specifying pretreatment levels for hazardous wastes. The two regulatory efforts (i.e., 3004(m) and 3004(n) rules) are integrated and coordinated to the extent possible to reduce duplicate and conflicting regulations. Furthermore, today's rules are designed to ensure that treatment required under 3004(m) is protective of human health and the environment.

The role of costs as a decision criterion under RCRA in subtitle C is not explicitly addressed in the statute. The EPA's position is that it can consider cost information as a basis for choosing among alternatives either (1) when they all achieve protection of human health and the environment or (2) for alternatives that are estimated to provide substantial reductions in human health and environmental risks but do not achieve the historically acceptable levels of protection under RCRA, when they are equally protective. However, EPA does not believe that the cost burden on industry is a basis for reducing the stringency of standards EPA considers necessary to protect human health and the environment.

Total Organics Approach

Comment: Commenters argued that applicability should be limited to known or suspected carcinogens. In addition, several commenters argued that applicability of the standards should be based on volatility and not on total organic content because the relative amount of organic content by weight does not determine potential air emissions and subsequent health effects.

Response: First, it should be pointed out that ozone presents a threat to human health and the environment that warrants control under RCRA. The EPA agrees that total organic content may not be a completely accurate gauge of potential environmental (e.g., ozone) or health (e.g., cancer) impacts for a source such as process vents, but it is a readily measurable indicator. In addition, the final rule's substantive control requirements do apply only to vents and equipment containing volatile components.

The final vent standard applies to certain process vents emitting organics if the vent is associated with one of the processes specified in the rule. A process vent is determined to be affected by the standard if the vent is part of a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping unit that manages wastes with 10 ppmw or more total organics; this includes vents on tanks (e.g., distillate receivers or hot wells) if emissions from the process operations are vented through the tank. Total organic content of the vent stream (i.e., the emissions to the atmosphere) is not a consideration in determining process vent applicability. As public commenters pointed out, the 10-percent total organics concentration cutoff for the vent stream does not limit total emissions or relate to emissions that escape capture by existing control devices and therefore was not included in the final rules.

Furthermore, the process vents covered by this rule are typically associated with distillation/separation processes used to recycle spent solvents and other organic chemicals. By definition, distillation is a process that consists of driving gas or vapor from liquids or solids by heating and then condensing the vapor(s) to liquid products. Wastes treated by distillation are expected to contain organics that are driven off in the process. Thus, by their nature, process vent emissions contain volatile organics.

Under the final standards, the term "organic emissions" is used in lieu of "volatile organic emissions" to avoid confusion with "volatile organic compounds." As at proposal, the final rule applies to total organics. Because of the hundreds of hazardous constituents that could be contained in and contacted by the equipment covered by today's rules, EPA recognizes the potential for the residual risk at some facilities to remain higher than the residual risk for other standards promulgated under RCRA. Regulations based only on specific constituents will therefore be developed, as necessary, in Phase III of EPA's regulatory approach. The constituents to be evaluated will include those reported as being present in hazardous wastes managed by existing TSDF for which health effects have been established through the development of unit risk factors for carcinogens and reference doses for noncarcinogens.

As is discussed in section VI.B of this preamble, emission potential from equipment leaks also was considered by incorporating the light-liquid definition in the section 111 CAA standards. Light liquids exhibit much higher volatilities than do heavy liquids, which are relatively nonvolatile. Equipment leak rates and emissions have been shown to vary with stream volatility; emissions from heavy liquids are far less than those for lighter, more volatile streams. For example, EPA analyses indicate that emissions from valves in heavy-liquid service are more than 30 times lower than the emissions from valves in light-liquid service (see the BID, § 4.6). The EPA examined the emissions and risk associated with light- and heavy-liquid waste streams and found that light-liquid streams are the overwhelming contributors to both emissions and risk. Thus, the final standards take into account the volatility of emissions and the subsequent impact on health and the environment.

Application of CAA Equipment Leak Standards

Comment: Several commenters did not agree that the standards should be based on the transfer of technology from the section 112 standards for benzene (40 CFR, subpart V) because TSDF waste streams and processes differ from the chemical plants and petroleum refineries upon which the CAA standards are based.

Response: Data used in establishing the benzene fugitive standards under CAA section 112 are based on extensive emission and process data collected at a variety of petroleum refinery and SOCMI operating units. Data were obtained for equipment and chemical component mixtures that include many of the same organic compounds that are treated, stored, and disposed of in hazardous waste management units. Because hazardous waste management units such as distillation units have the same sources of fugitive organic emissions (such as pumps and valves) and handle the same chemicals as do chemical manufacturing plants and petroleum refineries, it is reasonable to expect similar performance and efficiency of the technology for controlling organic emissions at hazardous waste management units. The EPA has no reason to believe that the equipment standards would not be applicable to TSDF. Moreover, although EPA has not conducted actual equipment leak testing at TSDF, observations of equipment during plant visits have confirmed that the assumptions and analyses used in other equipment leak standards apply to TSDF as well.

Changes have been made in the final standards and analyses to incorporate provisions included in the CAA standards that reflect the effect of volatility on emissions. As is discussed in section V of this preamble, the LDAR requirements for pumps and valves have been revised to include the light-liquid provisions in EPA's NSPS for VOC equipment leaks in the SOCMI. Correspondingly, the emission and health risk analyses have been revised to reflect this change to the standards. Additional information on the appropriateness of the CAA data on the SOCMI and petroleum refineries is presented in the next section.

B. Standards and Applicability

Standards for Accumulator Vessels

Comment: Commenters contended that the regulatory approach of applying a single standard to the wide varieties of accumulator vessels irrespective of the chemical constituents that are present and the size of the vessel is not appropriate because the proposed standards result in the control of already low emission rates at disproportionately high costs. Standards for tanks (whether accumulation or storage tanks) should be conditioned by the size of the vessel, the vapor pressure of the material being stored, and the type of units that pose a risk to human health and the environment. The EPA's approach should be similar to or consistent with the CAA NSPS for petroleum liquid storage vessels (40 CFR part 60, subpart Ka). These standards exempt vessels that store liquids less than 1.5 psia or that store less than 40,000 gal.

Response: Commenters recommending that the air emission standards be conditioned by the size of the tank and the vapor pressure of the material being stored have misinterpreted the applicability of the proposed standards. To clarify the applicability of the standards, the term "product accumulator vessel" has been dropped

from the promulgated rule, including the equipment definition, and the process vent definition has been revised to be specific to the applicable emission sources. "Process vent" is defined to mean "any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations." Similarly, the definition of "vented" has been revised to specifically exclude the passage of liquids, gases, or fumes "caused by tank loading and unloading (working losses)." Because tank working and breathing losses are not considered process emissions, the comments concerning vapor pressure and tank size exemptions are not relevant. (It should be noted, however, that EPA intends to regulate hazardous waste storage tanks, along with various other TSDF air emission sources in the Phase II, section 3004(n), TSDF air standards now being developed and evaluated by the Agency.)

In conducting the impact analysis of the WSTF/TSDF process vent standards, EPA considered and took into account the relative size of WSTF process units and the wide range of chemicals processed in the WSTF industry. For example, three sizes of WSTF model units were defined for analysis of emissions, health risks, and economic impacts in the final rulemaking (see section VI.D). In addition, the final standards for process vents promulgated by EPA contain emission rate limits and require controls only at facilities whose total process vent emissions are greater than 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr). More detailed descriptions of the model units and the process vent emission rate limits are provided in chapters 5.0 and 7.0, respectively, of the BID.

Comment: Several commenters objected to the proposed standard for process vents that requires a fixed 95-percent emission reduction. They believe that the process vent standard is inequitable because some operations could reduce emissions by 95 percent and still have higher emissions than some small uncontrolled operations and because facilities would have to install control devices on all condenser and still vents regardless of emissions or risk posed to human health or the environment. A few commenters asked EPA to consider exemptions for small solvent operations that have low emissions and thus pose little health risk.

Response: In response to these comments, EPA estimated the TSDF/WSTF air quality and health impacts using updated model unit, emission rate, and facility throughput data. Although total facility waste solvent throughputs were available, the data base did not contain any information on the number or capacities of process units at each site. Therefore, the risk analysis is based on overall facility operations and total facility process vent emissions as opposed to individual process vent emissions. The impacts analysis results show that nationwide reductions in emissions, maximum individual risk (MIR), and cancer incidence level off (i.e., yield only insubatantial incremental reductions) at a facility emission rate of about 2.8 Mg/yr (3.1 ton/yr). At a typical rate of 2,080 h/yr of operation, this annual emission rate corresponds to 1.4 kg/h (3 lb/h) of organic emissions. Control of facilities with process vent emissions less than these values does not result in further reductions of nationwide MIR or cancer incidence. At this emission level, larger facilities (i.e., those with uncontrolled emissions above the emission rate limit) that are controlled to a 95-percent emission reduction result in MIR values higher than the remaining uncontrolled small facilities (i.e., those with uncontrolled emissions below the limit). The same holds true for nationwide cancer incidence. The reduction in cancer incidence achieved by controlling facilities below the limit is not significant relative to the nationwide reductions achieved by controlling the larger facilities.

Consequently, the analysis results indicate that provision of small facility emission rate limits of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) for process vent emissions provides essentially the same level of protection for human health and the environment (in terms of risk, incidence, and emissions) as does covering all facilities. In addition, the MIR after control is within the range of residual risk for other standards promulgated under RCRA. As a result, the final rule requires control of only those facilities emitting greater than 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) organic emissions from all process vents. A more detailed discussion of the process vent emission rate limits is contained in chapter 7.0 of the BID.

Because the final standards contain process vent emission rate limits, it is anticipated that small solvent recovery operations would not be substantially affected by the final process vent standards. The EPA estimates, based on the high emission rates and 1985 waste solvent throughput data, indicate that about 45 percent of the WSTF identified in the industry profile will have process vent emissions of less than 2.8 Mg/yr (3.1 ton/yr). Consequently, it is expected that a large number of small facilities would not be required to install additional process vent controls.

Selection of 10-Percent Cutoff

Comment: Commenters believed that the 10-percent level proposed is comparable to 100,000 ppm and may be too high, particularly when compared to the 10,000-ppm level that defines an equipment leak, and that EPA should evaluate the health and environmental impacts associated with the proposed limit. The 10-percent limit will allow excessive emissions from leaking equipment and is based on costs, not technical limitations. Commenters also argued that the 10-percent limit does not adequately protect the environment because emissions could be substantial if there are numerous leaking components with relatively dilute streams and that controls, such as carbon adsorbers, are available to capture emissions from dilute streams.

Response: First, for clarification, the 10-percent organic content limit for equipment leaks in no way relates to the 10,000-ppm leak definition. The leak definition, which is a Method 21 instrument reading used to define when a leak is detected, is discussed in a later comment. As proposed, the 10-percent total organics cutoff level for applicability of the standards covered both equipment leak (fugitive) emissions and process vent emissions. Control technologies for fugitive emissions comprise the use of control equipment, inspection of equipment, and repair programs to limit or reduce emissions from leaking equipment. These control technologies have been studied and evaluated for equipment containing fluids with more than 10 percent organics (EPA–450/3–80–32b, EPA–450/3–80–33b, EPA–450/3–82–010, and EPA–450/3–88–002). The 10-percent criterion was chosen in EPA's original benzene/SOCMI studies to focus the analyses on air emissions from equipment containing relatively concentrated organics and presumably having the greatest potential for air emissions. Available data from the original benzene/SOCMI studies do not suggest that fugitive emissions from leaking equipment (e.g., pumps and valves) handling streams containing less than 10 percent organics are significant or that the 10-percent cutoff allows excessive emissions from dilute streams

However, to reevaluate this would require several years to conduct field studies to collect and analyze additional emissions and control effectiveness data for equipment leaks. Because available data support the need for, and effectiveness of, standards for equipment handling streams containing at least 10 percent organics, the EPA does not believe that a delay in rulemaking to assess emissions and controls for equipment handling streams containing less than 10 percent organics is warranted.

The effectiveness of fugitive emission control technologies has been thoroughly evaluated for equipment containing fluids with at least 10 percent organics, and fugitive emission standards have been proposed or established under both sections 111 and 112 of the CAA. (See 46 FR 1136, January 5, 1981; 48 FR 1165, January 5, 1981; 48 FR 279, January 4, 1983; 48 FR 37598, August 18, 1983; 48 FR 48328, October 18, 1983; 49 FR 22598, May 30, 1984; 49 FR 23498, June 6, 1984; and 49 FR 23522, June 6, 1984.) As elaborated in these rulemakings, a 10-percent cutoff deals with the air emissions from equipment most likely to cause significant human health and environmental harm.

With regard to process vent emissions, EPA agrees with the commenter. Emission test data show that the 10-percent cutoff potentially may allow significant emissions from process vents on a mass-per-unit-time basis (e.g., kg per hour or Mg per yr). As public commenters pointed out, the 10-percent cutoff for process vents does not limit total emissions, nor does it relate to emissions that escape capture by existing control devices. Therefore the 10-percent cutoff may not be appropriate; as a result, EPA has eliminated the 10-percent cutoff as it applies to process vents. The EPA believes that an emission rate limit more effectively relates to emissions, emission potential, and health risks than does a 10-percent organic concentration cutoff. Accordingly, a health-risk-based facility process vent emission rate limit has been added to the final rules in lieu of the 10-percent cutoff.

Because the emission rate limits (3 lb/h and 3.1 ton/yr) provide health-based limits, EPA considered dropping completely the organic content criterion (i.e., at least 10 percent total organics). However, EPA decided not to eliminate completely the organic content criterion because it is not clear that the same controls can be applied to very low concentration streams as can be applied to the higher concentration streams that generally are associated with emission rates greater than the limits. For low-concentration streams, EPA questions whether controls are needed on a national or generic basis, but is unable to resolve this question at this time. Thus, EPA decided to defer controlling very low concentration streams until it is able to better characterize and assess these streams and the appropriate controls.

Once EPA decided to consider facilities that manage very low concentration organic wastes as a separate category, there remained the problem of determining the appropriate criterion. The EPA examined existing data on air strippers, the treatment device most commonly used with low-concentration streams; it appeared that the quantity of emissions and the risk associated with air strippers treating streams with concentrations below 10 ppmw may be relatively small, thus minimizing the potential harm of deferring control until a later time. Examples of facilities managing low-concentration wastes are sites where ground water is undergoing remedial action under CERCLA or corrective action pursuant to RCRA. Based on the limited set of precise data available, and the comments that the 10-percent criterion was too high, EPA determined that an appropriate criterion would be 10 ppm total organics in the waste by weight.

The 10-ppmw criterion is not an exemption from regulation; it is intended only as a way for EPA to divide the air regulations into phases. The EPA is deferring action on very low concentration streams (i.e., ones with less than 10 ppmw total organic content) from the final rule today but will evaluate and announce a decision later on whether to regulate these waste streams.

Exemptions

Comment: Several commenters disagreed with EPA's interpretation that the definition of "totally enclosed treatment units" (which are exempt from regulation) may in certain circumstances include on-site treatment units that use engineered controls to prevent the release of emissions. One commenter stated that on-site treatment facilities directly tied with process equipment have the same potential for emissions as do other sources not exempted by the proposed regulation.

Response: This rule does not create or modify any exemption for totally enclosed treatment facilities; rather, the existing definition of an exemption for totally enclosed treatment facilities remains in effect, and existing regulatory interpretations remain in effect as well. Although the preamble to the proposed rule repeated the existing definition, it also contained a request for comments on an interpretation of the totally enclosed facility exemption whereby the "use of effective controls such as those required by the proposed standards" would meet the criteria of 40 CFR 260.10. Upon consideration of the comments, EPA has determined that this interpretation would have conflicted with the regulatory definition and previous interpretations of the exemption and, therefore, has decided to withdraw it.

As presented in the preamble to the proposed rule, under 40 CFR 264.1(g)(5) and 40 CFR 265.1(c)(9), totally enclosed treatment facilities are exempt from RCRA regulation. A "totally enclosed treatment facility" is a facility treating hazardous waste that is "directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or constituent thereof into the environment during treatment" (40 CFR 260.10). Therefore, as stated in the proposal preamble, process equipment designed to release air emissions are not "totally enclosed."

The EPA agrees with the commenter that on-site treatment facilities associated with process equipment generally are designed to release air emissions and, thus, are not "totally enclosed." The EPA specifically stated this in the preamble to the proposed rule. To be considered "totally enclosed," units must meet the test of preventing the release of any hazardous constituent from the unit not only on a routine basis but also during a process upset. Thus, the risks from these units are expected to be less than from units that are not totally enclosed.

Comment: Commenters stated that the exemption for tanks storing or treating hazardous wastes that are emptied every 90 days and that meet the tank standards of 40 CFR 262.34 is not justified based on risk, as RCRA requires. The exclusion of less-than-90-day storage tanks from air emission control requirements will increase the use of the 90-day storage exemption and the resultant air emissions.

Response: In 40 CFR part 270, hazardous waste generators who accumulate waste on site in containers or tanks for less than the time periods provided in § 262.34 are specifically excluded from RCRA permitting requirements. To qualify for the exclusions in § 262.34, generators who accumulate hazardous waste on site for up to 90 days must comply with 40 CFR

265, subpart I or J (depending on whether the waste is accumulated in containers or tanks) and with other requirements specified in § 262.34. Small-quantity generators (i.e., generators who generate more than 100 kilograms but less than 1,000 kilograms per calendar month) are allowed to accumulate waste on site for up to 180 days or, if they must ship wasteoff site for a distance of 200 miles or more, and if they meet certain other requirements set out in § 262.34, for up to 270 days.

The promulgated regulation does not create a new exemption for 90-day accumulation, nor does it modify the existing regulation. As the commenter notes, EPA is considering what changes (if any) should be made to § 262.34 (the "90-day rule") under a separate rulemaking (51 FR 25487, July 14, 1986). As part of that effort, EPA currently is evaluating whether air emissions from these and other accumulator tanks, mentioned above, at the generator site should be subject to additional control requirements. Preliminary analysis indicates that 90-day tanks and containers may have significant organic air emissions; consequently, as part of the second phase of TSDF air emission regulations, EPA is considering proposing to modify the exemption to require that 90-day tanks meet the control requirements of the Phase I and II standards. (The multiphased standards development approach for regulating organic air emissions is discussed in section III.C of this preamble.) Until a final decision is made on regulating the emissions from these units, they will not be subject to additional controls. However, EPA does not believe that more generators will use the 90-day exemption if air emission controls are not imposed on these units. Those generators who are eligible for inclusion under § 262.34 are probably already taking advantage of the provision now by storing their hazardous wastes for less than 90 days.

LDAR Program

Comment: Several commenters criticized the incorporation of the national emission standard for hazardous air pollutants (NESHAP) for benzene because of differences in scope from the SOCMI NSPS in that (1) the NSPS distinguishes between light and heavy liquids and the proposed standards based on the benzene NESHAP do not; (2) the NSPS does not require testing of all SOCMI units because process fluid vapor pressure is the overriding consideration in predicting leak frequencies and leak rates (the proposed standards incorporating the NESHAP do not recognize vapor pressure and require testing of all SOCMI units); and (3) the NSPS exempts facilities from routine fugitive emission monitoring, inspection, and repair provisions if a heavy-liquid product from a heavy-liquid raw material is produced and limits monitoring of equipment in heavy-liquid service only to where there is evidence of a potential leak.

Response: The EPA agrees with the commenters that the provisions for light and heavy liquids in the SOCMI NSPS should be incorporated in the section 3004(n) standards, even though the subpart V NESHAP does not contain the distinction. No distinction was made for the benzene NESHAP because benzene is a light liquid. By their nature, heavy liquids exhibit much lower volatilities than do light liquids and because equipment leak emissions have been shown to vary with stream volatility, emissions for heavy liquids are less than those for lighter and more volatile ones. As previously noted, EPA analyses have determined that the emission rate for a valve in heavy-liquid service is more than 30 times less than the emission rate for a valve in light-liquid service. In response to these comments, EPA examined the emission and risk associated with light- and heavy-liquid waste streams and found that light-liquid streams are the overwhelming contributors to both emissions and risk. Therefore, a routine LDAR monthly inspection is not necessary for heavy liquids.

Thus, the final regulations have been changed to incorporate the light/heavy-liquid service provisions for pumps and valves (40 CFR parts 264 and 265, subpart BB, §§ 264.1052, 264.1057 265.1052, and 265.1057). Equipment is in light-liquid service if the vapor pressure of one or more of the components is greater than 0.3 kPa at 20 °C, if the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and if the fluid is a liquid at operating conditions. The 0.3-kPa vapor pressure criterion is based on fugitive emission data gathered in various EPA and industry studies (EPA–450/3–82–010). Equipment processing organic liquids with vapor pressures above 0.3 kPa leaked at significantly higher rates and frequencies than did equipment processing streams with vapor pressures below 0.3 kPa. Therefore, EPA elected to exempt equipment processing lower vapor pressure substances (i.e., heavy liquids) from the routine LDAR requirements of the standards. In addition, monitoring of equipment in heavy-liquid service is required only where there is evidence by visual audible olfactory, or any other detection method of a potential leak.

Comment: Several commenters asked EPA to consider exemptions from fugitive emission monitoring for small facilities based on volume (as was done in the benzene NESHAP and the SOCMI NSPS), emission threshold, product applicability threshold or equipment component count, or equipment size. In support, the commenters pointed to similar exemptions in the CAA rules that were in the proposed standards.

Response: The commenters suggest that EPA consider other exemptions for fugitive emission monitoring that are applied in the benzene NESHAP or SOCMI NSPS (e.g., small facilities with the design capacity to produce less than 1,000 Mg/yr). The EPA recognizes that estimated emissions and health risks from small facilities should be considered in the final rules. With regard to the SOCMI NSPS small-facility exemption, the cutoff was based on a cost-effectiveness analysis. Under section 111 of the CAA, EPA may exempt units where costs of the standards are unreasonably high in comparison to the emission reduction achievable. Under RCRA, the statutory criterion is protection of human health and the environment. Therefore, any cutoff for RCRA standards must be risk-based. Cost effectiveness is only a relevant factor for choosing among alternatives either (1) when they all achieve protection of human health and the environment or (2) for alternatives that are estimated to provide substantial reductions in human health and environmental risks but do not achieve the historically acceptable levels of protection under RCRA, when they are equally protective.

In the benzene NESHAP (49 FR 23498, June 6, 1984), EPA concluded that control of units producing less than 1,000 Mg/yr did not warrant control based on the small health-risk potential. The benzene standards, however, did not have to deal with the many different pollutants covered by the TSDF process vent and equipment leak standards, some of which are much more carcinogenic than benzene. In addition to unit size (or throughput), fugitive emissions are also a function of the chemical characteristics of the hazardous wastes being handled.

Typically, TSDF have a variety of hazardous waste management processes (e.g., container storage, tank storage, treatment tanks, incinerators, injection wells, and terminal loading operations) located at the same facility, all of which have associated pumps, valves, sampling connections, etc., and therefore, fugitive emissions from equipment leaks. Also, several different types of hazardous waste typically are managed at a facility. Because of the various factors affecting facility fugitive emissions from equipment leaks (e.g., equipment leak emissions are a function of component counts rather than waste throughput), it would be very difficult to determine a small-facility exemption based on risk but expressed as volume throughput. For these reasons, EPA did not include exemptions for fugitive emission monitoring such as those applied in the benzene NESHAP or SOCMI NSPS (i.e., small process units with the design capacity to produce less than 1,000 Mg/yr).

Comment: Commenters stated that the TSDF fugitive emission standards should conform to the benzene NESHAP, which allows exemptions for vacuum systems, systems with no emissions, and systems whose leakage rate is demonstrated to be below 2 percent.

Response: The EPA has included in the final TSDF standards (§§ 264.1050 and 265.1050) the exemption for equipment "in vacuum service" found in the benzene NESHAP (40 CFR part 61, subpart V, 61.242–1). Also included are the identification requirements contained in the regulation. "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure. The EPA has concluded that it is unnecessary to cover equipment "in vacuum service" because such equipment has little if any potential for emissions and, therefore, does not pose a threat to human health and the environment. Accordingly, this equipment has been excluded from the equipment leak fugitive emission requirements.

The proposed standards stated that owners and operators of facilities subject to the provisions of the rule must comply with the requirements of 40 CFR part 61, subpart V (equipment leak standards for hazardous air pollutants), except as provided in the rule itself. The provisions of the proposed rule did not exclude §§ 61.243–1 and 61.243–2 (alternative standards for valves in VHAP service), and the alternative standards have been incorporated as §§ 264.1061, 264.1062, 265.1061, and 265.1062 of the final rule. Therefore, an owner or operator may elect to have all valves within a TSDF hazardous waste management unit comply with an alternative standard that allows a percentage of valves leaking of equal to or less than 2 percent (§§ 264.1061 and 265.1061), or may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of §§ 264.1062 and 265.1062.

Comment: One commenter suggested that releases from pressure relief devices in gas service should be directed to control equipment at least equal in performance to those for other process sources or an alternative means provided to prevent an uncontrolled discharge. According to the commenter, rupture discs or closed-vent systems restrict small leaks but not major releases; a closed-vent system connected to a control device is needed to capture releases. The commenter concluded that EPA has provided no data to support exempting flanges and pressure relief devices in liquid service from LDAR requirements and should not rely on operators to see, hear or smell leaks from this equipment.

Response: Pressure relief devices allow the release of vapors or liquids until system pressure is reduced to the normal operating level. The standards are geared toward control of routine low-level equipment leaks that may occur independently of emergency discharges. Pressure relief discharges are an entirely different source of emissions than equipment leaks or process vents and were not covered in the original equipment leak standards under the CAA. The new subpart BB rules require that pressure relief devices in gas service be tested annually by Method 21 (and within 5 days of any relief discharge) to ensure that the device is maintained at no detectable emissions by means of a rupture disc. In addition, because a pressure discharge constitutes a process upset that in many cases can lead to hazardous waste management unit downtime and might also pose a risk to workers, a facility has the incentive to minimize the occurrence of these events.

The frequency, duration, and air emissions associated with such emergency discharges at TSDF waste management units currently cannot be estimated with any certainty on a nationwide basis. However, if a pressure discharge does occur, records and reports (maintained at the site under §§ 264.1054, 264.1064, 265.1054, and 265.1064 of subpart BB) will indicate the frequency of such discharges, the estimated volume of excess emissions and other relevant information. If pressure discharges appear to be a problem at any facility the RCRA permitting system provides State or EPA permit writers the flexibility to require closed-vent systems for these discharges on a site-specific basis.

The LDAR program transferred from the CAA standards does not exempt pressure relief devices in light liquid or heavy liquid service and flanges, but requires formal monitoring of these sources if operators see, smell, or hear discharges. The EPA considers that this is the most practical way to manage these sources. Although scheduled routine maintenance may be a way of avoiding the need for formal monitoring, it may not be a successful method for all sites in eliminating leaks due to the numerous variables affecting leak occurrence. For example, flanges may become fugitive emission sources when leakage occurs due to improperly chosen gaskets, poorly assembled flanges, or thermal stress resulting in the deformation of the seal between the flange faces. In these situations, operators will be able to detect such leaks by sight, smell, or sound. Support for this approach was presented and evaluated in developing several CAA rulemakings (EPA–450/3–83–016b, EPA–450/3–80–033b, and EPA–450/3–81–015b).

Comment: One commenter stated that the LDAR program should require preventive maintenance, such as the periodic replacement of valve packings, before waiting for the valve to fail. In support, the commenter argued that EPA's own data show that directed maintenance could reduce leaks from valves to below 10,000 ppm. The commenter also criticized the 10,000-ppm leak definition as being too high and states that EPA must consider the level in terms of the health effects.

Response: The key criterion for selecting a leak definition is the overall mass emission reduction demonstrated to be achievable. The EPA has not concluded that an effective lower leak definition has been demonstrated. Most data developed for current CAA standards (EPA–450/3–82–010) on leak repair effectiveness have applied 10,000 ppm as the leak definition and therefore do not indicate the effectiveness of repair for leak definitions between 1,000 and 10,000 ppm. Even though limited data between these values were collected for support of CAA standards, they are not sufficient to support a leak definition below 10,000 ppm. Data are insufficient to determine at what screening value maintenance efforts begin to result in increased emissions.

As the commenter noted, although there is some evidence that directed maintenance is more effective, available data are insufficient to serve as a basis

for requiring directed maintenance for all sources.

(Note: In "directed maintenance" efforts, the tightening of the packing is monitored simultaneously and is continued only to the extent that it reduces emissions. In contrast, "undirected" repair means repairs such as tightening valve packings without simultaneously monitoring the result to determine whether the repair is increasing or decreasing emissions.)

The EPA's rationale for selecting the 10,000-ppmv leak definition and for not requiring directed maintenance under the CAA LDAR program also has been discussed in the proposal and promulgation BIDs for benzene emissions from coke by-product recovery plants (EPA–450/3–83–016 a and b), for SOCMI fugitive emissions (EPA–450/3–80–033 a and b), for petroleum refinery fugitive emissions (EPA–450/3–81–015 a and b), and for benzene fugitive emissions (EPA–450/3–80–032 a and b). (See also the "Response to Public Comments on EPA's Listing of Benzene Under section 112" (EPA–450/5–82–003) "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs" (EPA–450/3–82–010), and EPA's "Response to Petition for Reconsideration" (50 FR 34144, August 23, 1985).)

The commenter also criticizes EPA for not reanalyzing the health effects of the 10,000-ppmv level before applying the limit to TSDF under RCRA. Because section 112 of the CAA and 3004(n) of RCRA are comparable in their recognition of health risk as the predominant decision factor, the EPA believes that the leak definition has been adequately analyzed under the CAA and that further evaluation is not needed prior to transferring it as part of the LDAR program under RCRA. It must also be pointed out that transfer of the CAA equipment leak standards is only the first phase of EPA's regulatory actions related to control of TSDF air emissions. In thisphase, EPA transferred a known technology to reduce emissions. If new data show that a lower leak definition is appropriate, EPA will then consider whether it is appropriate to change the rules.

C. Control Technology

Feasibility of Condensers

Comment: Several commenters did not agree that condensers provide a feasible means of meeting the 95-percent emission reduction requirement for affected process vents in the proposed standard. Problems cited by the commenters limiting the application of condensers included the presence of water in the waste stream in the TSDF portion of the facility and the wide variety of waste solvents treated by WSTF. One commenter claimed that a higher emission reduction efficiency could be achieved through an increased condenser area or a different condenser refrigerant with a lower boiling point than was used in the analysis for the proposal.

Response: In response to this comment, the feasibility of using condensers to achieve a 95-percent reduction of emissions from WSTF process vent streams was reexamined using a state-of-the-art chemical engineering computerized process simulator that includes a refrigeration unit capable of producing a coolant at a temperature as low as −29 °C (−20 °F) and a primary water-cooled heat exchanger to remove water vapor from the vent stream.

A variety of chemical constituents and operating conditions were examined to determine the organic removal efficiency achievable through condensation. The constituents selected for the condenser analysis (toluene, methyl ethyl ketone (MEK), 1,1,1 trichloroethane (TCE), and methylene chloride) were judged to be representative of the solvents recycled by the WSTF industry, based on a review of a National Association of Solvent Recyclers (NASR) survey, numerous site-specific plant trip reports, and responses to EPA section 3007 information requests. Three of these four solvents had been used in the proposal analysis; methylene chloride, at the lower end of the solvent boiling point range (i.e., more difficult to condense), was added to provide a broader range of volatilities for the condenser analysis. A total of 40 WSTF model unit cases consisting of combinations of organic emission rates, concentrations, and exhaust gas flows representing the wide range of operating conditions found at WSTF were included in the condenser analysis.

The results of the condenser analysis indicate that condensers cannot universally achieve a 95-percent emission reduction when applied to WSTF process vents. With regard to increasing organic removal efficiency by increasing condenser area or changing the condenser refrigerant, the analysis shows that there are technical limits on condenser efficiency that go beyond the condenser design and operating parameters. Specifically, the physical properties of the solvents being condensed and the solvent concentration in the gas stream affect condenser efficiency. In some situations, the partial pressure of the organic constituent in the vapor phase was too low to support a liquid phase thermodynamically regardless of the refrigerant used or condensation area; as a result, no appreciable condensation could occur. Therefore, the analysis shows that condensers are not universally applicable to the control of WSTF process vents. However, the facility process vent emission reduction requirements are not based solely on the use of condensers; carbon adsorption and incinerators/flares are capable of attaining a 95-percent control efficiency for all WSTF organics, including cases where condensation is not feasible. In summary, although condensers may not by themselves achieve a 95-percent emission reduction at all process vents, condensers do provide a practical and economic means of reducing process vent emissions, and these devices will likely be the initial choice of control technology for cases where condensation is feasible.

Feasibility of Carbon Adsorbers

Comment: Several commenters objected to the identification of carbon adsorption as a control technique because of technical and safety concerns related to the application of carbon adsorbers to low organic concentration and multicomponent solvent streams. However, one commenter did cite authorities that support a 98-percent removal for this type of control device.

Response: First it should be noted that carbon adsorption is one of several control technologies that could be used to attain the standards. Other technologies include condensers, flares, incinerators, and any other device that the owner or operator can show will meet the standards.

Regarding carbon adsorption applications, EPA acknowledges that safety is an important consideration, but concludes that any safety problems can be avoided through proper design and sorbent selection. Multicomponent systems potentially can lead to excessive heat buildup (hot spots), particularly in large carbon beds with low flow rates, which in turn can lead to fire and explosion hazards. Multicomponent vapor streams can also lead to reduced removal efficiencies for particular components. However, these technical and efficiency problems can be overcome through proper design, operation, and maintenance.

In general, coal-based carbons have fewer heat generation problems than do wood-based carbons, and small diameter beds promote good heat transfer. The bed must be designed with consideration for the least heat adsorbent (or fastest) component in the mix, as well as the component concentrations and overall flow rate. Other considerations include component interaction, gas stream relative humidity, and close monitoring of the bed effluent for breakthrough.

In response to these comments, the EPA examined carbon adsorption design, operation, and performance data from a number of plants in a wide variety of industries; in addition, the EPA has reexamined, with the help of carbon manufacturers and custom carbon adsorption equipment designers, the elements that affect carbon adsorption efficiency. This analysis has reinforced EPA's original conclusion that a well-designed, -operated, and -maintained adsorption system can achieve a 95-percent control efficiency for all organics under a wide variety of stream conditions over both short-term and long-term averaging periods. The major factors affecting performance of an adsorption unit are temperature, humidity, organics concentration, volumetric flow rate "channelling" (nonuniform flow through the carbon bed), regeneration practices, and changes in the relative concentrations of the organics admitted to the adsorption system. The WSTF/TSDF process vent stream characteristics are typically well within design limits in terms of gas temperature, pressure, and velocity for carbon adsorbers. For example, the bed adsorption rate decreases sharply when gas temperatures are above 38 °C (100 °F); a review of plant field data showed no high-temperature streams in WSTF/TSDF process vents. If high-temperature gas streams are encountered, the gas stream can be cooled prior to entering the carbon bed. Also, gas velocity entering the carbon bed should be low to allow time for adsorption to take place. The WSTF/TSDF stream flows are typically quite low and, as a result, bed depth should not be excessive.

Therefore, EPA concluded that, for WSTF/TSDF process vent streams, carbon adsorption can reasonably be expected to achieve a 95-percent control efficiency provided the adsorber is supplied with an adequate quantity of high-quality activated carbon, the gas stream receives appropriate conditioning (e.g., cooling or filtering) before entering the carbon bed, and the carbon beds are regenerated or replaced before breakthrough. The data gathered in the EPA carbon adsorption performance study do not support a higher control efficiency (i.e., 98 percent as opposed to 95 percent) for carbon adsorption units applied to WSTF/TSDF process vents on an industrywide basis, particularly in light of the design considerations related to controlling multicomponent vent streams when the organic mix is subject to frequent change.

When carbon adsorption is used to remove organics from a gas stream, the carbon must periodically be replaced or regenerated when the capacity of the carbon to adsorb organics is reached. When either regeneration or removal of carbon takes place, there is an opportunity for organics to be released to the atmosphere unless the carbon removal or regeneration is carried out under controlled conditions. There would be no environmental benefit in removing organics from an exhaust gas stream using adsorption onto activated carbon if the organics are subsequently released to the atmosphere during desorption or during carbon disposal. The EPA therefore expects that owners or operators of TSDF using carbon adsorption systems to control organic emissions take steps to ensure that proper emission control of regenerated or disposed carbon occurs. For on-site regenerable carbon adsorption systems, the owner or operator must account for the emission control of the desorption and/or disposal process in the control efficiency determination. In the case of off-site regeneration or disposal, the owner or operator should supply a certification, to be placed in the operating file of the TSDF, that all carbon removed from a carbon adsorption system used to comply with subparts AA and BB is either (1) regenerated or reactivated by a process that prevents the release of organics to the atmosphere. (Note: The EPA interprets "prevents" as used in this paragraph to include the application of effective control devices such as those required by these rules) or (2) incinerated in a device that meets the performance standards of subpart O.

Feasibility of Using Controls in Series

Comment: One commenter stated that EPA should evaluate carbon adsorption in series with a condenser because condensers work best with concentrated streams and carbon adsorbers with low concentration streams. The two systems together could yield an overall efficiency of 99 percent, even if each unit were only 90-percent effective.

Response: As discussed in section VII.E, the MIR from process vents after control (i.e., 4×10^{-4}) is within the range of what has been considered acceptable under RCRA. Consequently, no further control for process vents was considered necessary at this time. Nonetheless, in response to these comments, EPA evaluated the feasibility of using a carbon adsorber in series with a condenser to control WSTF/TSDF process vent emissions. The objective of the analysis was to determine if the combination of control devices would yield an overall control efficiency greater than the 95 percent that is achievable using a single device. For example, if a 99-percent overall control efficiency is desired and it is assumed that the carbon adsorber is capable of achieving a 95-percent control efficiency in all cases (a reasonable assumption for a properly designed, operated, and maintained system), then a minimum efficiency of 80 percent would be required for the condenser followed in series by the 95-percent efficient carbon bed. However, in the EPA condenser analysis conducted for the WSTF model unit cases, an 80-percent control was not achieved for 16 of the 40 cases examined. (See section 7.7 of the BID.) In 7 of the 40 cases, the analysis showed that no appreciable condensation would occur because of low solvent concentration and/or the high volatility of some solvents. Because the model unit cases are considered representative of current WSTF operations, EPA does not believe that the use of carbon adsorption and condensation in series to achieve a 99-percent control is a technically feasible control option on an industrywide basis. Such control strategies will be considered further for Phase III standards for individual facilities, if necessary, should additional analyses reveal unexpectedly high risks in specific situations.

Feasibility of Flares

Comment: Several commenters objected to the use of flares at recycling facilities because of technical and safety concerns. A few commenters cite the requirement of a constant emission source for efficient flare operation, and other commenters contend that flares are not suitable on intermittant sources or the low-level emissions typical of recycling operations. With regard to safety, flares present the danger of explosion, especially if they malfunction; according to one commenter, many State laws prohibit the use of flares at recycling facilities.

Response: Available information on WSTF operations indicates that condensers, carbon adsorbers, and incinerators are the most widely used control technologies; therefore, they are expected to be the technologies of choice to reduce organic emissions at WSTF. The final technical analyses show that a 98-percent control efficiency can be achieved with secondary

condensers for many WSTF process vents or with carbon adsorbers in cases where secondary condensers are not feasible. Flares are not required controls, but are an available option for facilities so equipped provided they meet the criteria established in the final rules. Where State laws prohibit the use of flares at recycling facilities, other technologies are available.

With regard to the safety of flares, EPA has determined that the use of flares to combust organic emissions from TSDF process vents would not create safety problems if engineering precautions such as those used in the SOCMI are taken in the design and operation of the system. The following are typical engineering precautions. First, the flare should not be located in such proximity to a process unit being vented that ignition of vapors is a threat to safety. In the analysis conducted for this standard at proposal, it was assumed that the flare would be located as far as 122 meters from the process unit. Second, controls such as a fluid seal or flame arrestor are available that would prevent flashback. These safety precautions were considered in EPA's analysis for the proposed rule. Finally, the use of a purge gas, such as nitrogen, plant fuel gas, or natural gas and/or the careful control of total volumetric flow to the flare would prevent flashback in the flare stack caused by low off-gas flow.

Feasibility of LDAR Program

Comment: One commenter opposed the fugitive standards as proposed because they failed to require the proper technology to control releases from pumps and valves. The commenter claimed that the standards should require a 100-percent control, based on what available technology (e.g., sealed bellows valves, sealless pumps, or dual mechanical seals for pumps) can achieve. According to the commenter, superior emission controls cannot be rejected under RCRA solely on the basis of cost effectiveness.

Response: Control technologies for fugitive emissions from equipment leaks, as required by the proposed standards, include the use of control equipment, inspection of process equipment, and repair programs to limit or reduce emissions from leaking equipment that handle streams with total organic concentrations of greater than 10 percent. These control technologies have been studied and evaluated extensively by EPA for equipment containing fluids with 10 percent or more organics and are similar to those required by national emission standards for chemical, petrochemical, and refining facilities under the CAA.

A monthly LDAR program was proposed for WSTF/TSDF pumps and valves. Based on results of the EPA's LDAR model, once a monthly monitoring plan is in place, emission reductions of 73 percent and 69 percent can be expected for valves in gas and light liquid service, respectively, and a 61-percent reduction in emissions can be achieved for pumps in light-liquid service. For compressors, the use of mechanical seals with barrier fluid systems and control of degassing vents (95 percent) are required, although compressors are not expected to be commonly used at WSTF/TSDF. The use of control equipment (rupture disc systems or closed-vent systems to flares or incinerators) is the technical basis for control of pressure relief devices. Closed purge sampling is the required control for sampling connection systems and is the most stringent feasible control. For open-ended valves or lines the use of caps, plugs, or any other equipment that will close the open end is required; these are the most stringent controls possible. Flanges and pressure relief devices in liquid service are excluded from the routine LDAR requirements but must be monitored if leaks are indicated. For operations such as those expected at WSTF/TSDF, total reductions in fugitive emissions from equipment leaks of almost 75 percent are estimated for the entire program.

The EPA agrees with the commenter that the level of control required by the LDAR program does not result in the highest level of control that could be achieved for fugitive emissions from pumps and valves in certain applications. In some cases, there are more stringent, technologically feasible controls. For example, leakless equipment for valves, such as diaphragm and sealed bellows valves, when usable, eliminates the seals that allow fugitive emissions; thus, control efficiencies in such cases are virtually 100 percent as long as the valve does not fail. In appropriate circumstances, pumps can be controlled by dual mechanical seals that would capture nearly all fugitive emissions. An overall control efficiency of 95 percent could be achieved with dual mechanical seals based on venting of the degassing reservoir to a control device.

With regard to leakless valves, the applicability of these types of valves is limited for TSDF, as noted by EPA in the proposal preamble. The design problems associated with diaphragm valves are the temperature and pressure limitations of the elastomer used for the diaphragm. It has been found that both temperature extremes and process liquids tend to damage or destroy the diaphragm in the valve. Also, operating pressure constraints will limit the application of diaphragm valves to low-pressure operations such as pumping and product storage facilities.

There are two main disadvantages to sealed bellows valves. First, they are, for the most part, only available commercially in configurations that are used for on/off valves rather than for flow control. As a result, they cannot be used in all situations. Second, the main concern associated with this type of valve is the uncertainty of the life of the bellows seal. The metal bellows are subject to corrosion and fatigue under severe operating conditions.

Over 150 types of industries are included in the TSDF community, and EPA does not believe that leakless valves can be used in an environmentally sound manner on the wide variety of operating conditions and chemical constituents found nationwide in TSDF waste streams, many of which are highly corrosive. Corrosivity is influenced by temperature and such factors as the concentration of corrosive constituents and the presence of inhibiting or accelerating agents. Corrosion rates can be difficult to predict accurately; underestimating corrosion can lead to premature and catastrophic failures. Even small amounts (trace quantities) of corrosives in the stream can cause corrosion problems for sealed bellows valves; these tend to aggressively attack the metal bellows at crevices and cracks (including welds) to promote rapid corrosion. Sealed bellows valves particularly are subject to corrosion because the bellows is an extremely thin metallic membrane.

At proposal, it was estimated that 20 percent of all plants process halogenated compounds, which tend to be highly corrosive. The subsequently obtained 1986 Screener Survey data show that, of the TSDF indicating solvent recovery operations, at least 33 percent of the total handle halogenated organics. Furthermore, of the 12 major chemicals determined from site-specific data to be commonly occurring in waste solvent streams, all of the chemicals determined to be carcinogenic are halogenated (i.e., methylene chloride, chloroform, and carbon tetrachloride). Similarly, of the 52 constituents in TSDF waste streams contributing to the emission-weighted unit risk factor, about 50 percent are halogenated and account for the vast majority of the estimated nationwide emissions of carcinogens. Thus, TSDF are known to routinely handle and treat chemicals that may destroy sealed bellows and diaphragm valves.

The durability of metal bellows is highly questionable if the valve is operated frequently; diaphragm and bellows valves are not recommended in the technical literature for general service. The EPA does not believe that the application of sealed bellows and diaphragm valves is technologically feasible for all TSDF valve conditions or that their application would lead to a significant reduction in emissions and health risks. Valve sizes, configurations, operating temperatures and pressures, and service requirements are some of the areas in which diaphragm, pinch, and sealed bellows valves have limitations that restrict service. With regard to the emission reductions achieved by sealed bellows, diaphragm, and pinch valve technologies, these valves are not totally leakless. The technologies do eliminate the conventional seals that allow leaks from around the valve stem; however, these valves do fail in service from a variety of causes and, when failure occurs, these valves can have significant leakage. This is because these valves generally are not backed up with conventional stem seals or packing. The EPA currently is reevaluating the control efficiencies assigned to these technologies. Because these leakless types of equipment are limited in their applicability and in their potential for reducing health risks, EPA did not consider their use as an applicable control alternative at this time for nationwide TSDF standards. The EPA has requested, in a separate Federal Register notice (54 FR 30220, July 19, 1989), additional information on the applicability and use of leakless valves at TSDF.

For pumps, the most effective controls that are technologically feasible (e.g., dual seals) in some cases also were not selected as the basis for equipment leak standards. The impact analysis indicates that including LDAR results in less emission and risk reduction than does including equipment requirements for pumps. However, the difference in the emission and health risk reductions attributable to implementing a monthly LDAR program rather than the more stringent equipment standards for pumps appears to be small in comparison to the results of the overall standards (about 5 percent). The overall standards, including a LDAR program for pumps and valves, would achieve an expected emission reduction for TSDF equipment leaks of about 19,000 Mg/yr (21,000 ton/yr). The estimated MIR from equipment leak emissions would be reduced to 1×10^{-5} from 5×10^{-5} based on the TSDF equipment leak emission-weighted unit risk factor; cancer incidence would be reduced to 0.32 case/yr from 1.1 cases/yr. In comparison, including dual seals for pumps could achieve an additional fugitive emission reduction of about 1,200 Mg/yr (1,320 ton/yr) and an additional incidence reduction of about 0.06 case/yr. The MIR, with leakless controls for pumps, at 1×10^{-5} would be unchanged from that achieved by the LDAR program.

Given the small magnitude and the imprecise nature of the estimated emission and risk reductions associated with including dual seals for pumps in the overall standard, EPA considers the two control alternatives (i.e., LDAR and dual seals) as providing essentially the same level of protection. The data and models on which the risk estimates are based are not precise enough to quantify risk meaningfully to a more exact level. The data and models include uncertainties from the emission estimates, the air dispersion modeling, and the risk assessment that involves unit risk factor, facility location, population, and meteorologic uncertainties (see section VII.E).

The EPA considered these factors when deciding whether to require TSDF to install dual seals on pumps to control air emissions rather than to rely on monthly LDAR. Considering the limited applicability of additional equipment controls and the low potential for additional reductions in health risks of applying equipment controls for valves at TSDF and the estimated emissions and risk reductions if leakless equipment for pumps were required, EPA is not requiring leakless equipment at this time.

In Phase III, EPA will further examine the feasibility and impacts of applying additional control technology beyond the level required by today's standards. For example, dual mechanical seals may be an appropriate emission control method when applied selectively to wastes with high concentrations of toxic chemicals. In such applications, the reduction in toxic emissions (and consequently the reduction in residual risk) may be significant for select situations. A summary of the health impacts is presented in section VII.E of this preamble.

D. Impact Analyses Methodologies

Environmental Impacts Analysis

Comment: Numerous commenters criticized the environmental impact estimates for the proposed standards because (1) no actual data from operating facilities were used; (2) emission estimates were not supported by any technical data base; and (3) the waste constituents used in the analyses were not representative of waste solvent recycling operations and TSDF operations in general. Commenters also stated that the model plant solvent reclamation rates (throughputs), vent flow rates, and emission rates used at proposal were not representative of the industry.

Response: In response to these comments, EPA reviewed all available site-specific data on WSTF and TSDF, data submitted by commenters, and information generated through RCRA section 3007 questionnaires mailed to a limited number of small and large facilities. Based on all this information, EPA has revised both the TSDF model units and emission factors that serve as the bases for the impacts analyses.

With regard to the model unit revisions, the industry profile developed by EPA includes a frequency distribution of the waste volumes processed during 1985. Of the 450 facilities in the Screener Survey reporting solvent recovery by operations such as batch distillation, fractionation, or steam stripping that involved some form of hazardous waste, 365 reported the total quantity of waste recycled in 1985. The median facility throughput was slightly more than 189,000 L/yr (50,000 gal/yr); the mean throughput was about 4.5×10^6 L/yr (1.2×10^6 gal/yr). Based on the industry profile, three sizes of model units (small, medium, and large) were defined to facilitate the post-proposal analyses for control costs, emission reductions, health risks, and economic impacts.

The organic emission rates also were revised for the model units based on emission source testing conducted for EPA. The test data show that organic emission rates for primary condensers varied from a few hundredths of a kilogram (pound) to nearly 4.5 kg/h (10 lb/h), with six of the nine measurements less than 0.45 kg/h (1 lb/h). The two secondary condensers tested showed emission rates of 0.9 and 2.3 kg/h (2 and 5 lb/h), respectively.

The flow rate of 20 standard cubic feet per minute (scfm) used at proposal was found not to be generally valid for application to waste solvent recyclers. The flow rates specified for the revised model units, 3.9, 0.6, and 0.3 L/s, equivalent to 8.3, 1.2, and 0.6 scfm for the large, medium, and small model units, respectively, are based on a review of site-specific data from field

tests documented in site visit reports. The large and medium TSDF process vent unit flow rates also agree with those documented in the SOCMI Distillation NSPS BID (see Docket No. F–88–AESP, item S0006) as characterizing distillation units with low overhead gas flows. The revised impact analyses are based on actual data from the industry and provide a reasonable characterization of the industry's operations and environmental impacts.

The constituents selected for the analysis of control technologies are considered to be representative of the industry, based on a review of relevant information and literature, including (1) a survey of member companies submitted by NASR, (2) 23 site-specific plant visit reports, (3) responses to the EPA section 3007 Questionnaires from 6 small and 11 large facilities (two respondents provided information for 4 facilities each), (4) the Industrial Studies Data Base (ISDB) and (5) a data base created by the Illinois EPA. The NASR survey provided information on the types of solvents most frequently recycled at member facilities; the site-specific information and EPA survey responses included waste composition data. The ISDB is a compilation of data from ongoing, in-depth surveys by EPA's Office of Solid Waste (OSW) on designated industries that are major waste generators. The Illinois EPA data base contains information from about 35,000 permit applications. Generators must submit one application for each hazardous and special nonhazardous waste stream managed in the State of Illinois. Each of these data bases contains waste stream characterization data for numerous generic spent solvent waste streams (EPA Hazardous Wastes F001–F005) and D001 wastes (ignitable), which information from the Screener Survey indicates also are recycled.

The three constituents used for the model facilities in the proposal analysis were toluene (with a boiling point (bp) of 110 °C), MEK (bp of 79 °C), and TCE (bp of 74 °C). Methylene chloride (bp of 40 °C) was added to the list of constituents evaluated in the final analysis to provide an even greater range of solvent volatilities for the analysis. Therefore, the technical feasibility and costs of applying the recommended control techniques were evaluated for constituents representing the range of characteristics and volatilities of commonly recycled solvents at TSDF.

Comment: Commenters also stated that it is inappropriate to apply the fugitive emission factors to TSDF that were developed to estimate leaks from a typical hydrocarbon plant because they do not relate to the design, operating conditions, maintenance practices, or controls associated with processing of waste solvents and other toxic wastes. According to the commenters, the emission factors and model units also need adjustment to account for volatility because not accounting for differences in vapor pressure overestimates risk as well as emissions and underestimates costs for controls.

Response: The EPA disagrees; the data used in establishing the fugitive emission standards for TSDF are based on emission and process data collected at a variety of petroleum refinery and SOCMI operating units. The EPA Industrial Environmental Research Laboratory (IERL) coordinated a study to develop information on fugitive emissions in the SOCMI. A total of 24 chemical process units were tested; these data covered thousands of screened sources (pumps, valves, flanges, etc.) and included units handling such chemicals as acetone, phenol, MEK, ethylene dichloride, TCE, trichloroethylene, and perchloroethylene.

Refinery studies on fugitives also include tests on units handling both toluene and xylene. These same chemicals are included in those listed by the NASR as solvents commonly recycled by member facilities and are found in other sources of waste solvent constituent information that are described in the BID. The chemicals commonly recycled at TSDF are those produced in SOCMI operating units and handled in petroleum refineries, and the equipment involved in these industries is typically the same (pumps, valves, etc.). Therefore, it is reasonable to conclude that the emissions associated with these chemicals and equipment are similar and to expect similar emission control performance and efficiencies at hazardous waste management units.

The EPA agrees that the equipment leak standards should take component volatility into consideration. Previous EPA and industry studies have shown that the volatility of stream components, as a process variable, does correlate with fugitive emission and leak rates. An analysis of the vapor pressures and emission rates has shown that substances with vapor pressures of 0.3 kPa or higher had significantly higher emission and leak rates than did those with lower vapor pressures (EPA–450/3–82–010). This result led to the separation of equipment component emissions by service: gas/vapor, light liquid, and heavy liquid. These classifications have been used in most CAA fugitive emission standards to effectively direct the major effort toward equipment most likely to leak. Therefore the rules have been revised to account for volatility. For example, pumps and valves in heavy-liquid service must be monitored only if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. The determination of light- and heavy-liquid service is based on the vapor pressure of the components in the stream (less than 0.3 kPa at 20 °C defines a heavy liquid).

All of the constituents used in the model unit analysis, representing the ranges of characteristics of commonly recycled solvents, are light liquids to which the benzene and SOCMI fugitive emission factors are applicable. Therefore, the revised risk and cost analyses for WSTF equipment leak fugitive emissions are based on the fugitive emission factors used in the proposal analysis. The analyses of risk and cost impacts on TSDF with affected fugitive emission sources also were revised after proposal to account for the differences in light and heavy liquids.

Health Risk Impacts Analysis

Comment: Several commenters objected to the limited support provided for selection and derivation of the unit risk factors used in the analysis of cancer risks and contend that the risk analysis and unit risk factors are not representative of the wide variety of wastes handled. A few of the commenters stated that the upper-bound risk factor was too high, and others stated it was too low.

Response: The selection of the range of unit risk factors (i.e., 2×10^{-7} and 2×10^{-6} $(\mu g/m^3)^{-1}$ used at proposal to estimate the cancer risk resulting from TSDF emissions was based on an analysis of the organic chemicals associated with TSDF operations. This analysis found that carbon tetrachloride is the organic chemical with the most individual impact vis-a-vis emissions and risk. Thus, it was used as the upper bound on the range of unit risk factors used to calculate health impacts (i.e., cancer risk) at proposal. However, this range of unit risk factors was not used in the final analysis.

Based on public comments, EPA revised its health risk impacts analysis. To estimate the cancer potency of TSDF air emissions in the revised analysis, an emission-weighted composite unit cancer risk estimate approach was used by EPA to address the problem of dealing with the large number of toxic chemicals that are present at many TSDF. Use of the emission-weighted

composite factor rather than individual component unit cancer risk factors simplifies the risk assessment so that calculations do not need to be performed for each chemical emitted. The composite unit cancer risk factor is combined with estimates of ambient concentrations of total organics and population exposure to estimate risk due to nationwide TSDF emissions. In calculating the emission-weighted average unit risk factor, the emission estimate for a compound is first multiplied by the unit cancer risk factor for that compound; then the emission-weighted average is computed by summing these products and dividing the sum by the total nationwide TSDF emission value, which includes both carcinogenic and noncarcinogenic organic emissions. Using this type of average would give the same results as calculating the risk for each chemical involved. However, only those carcinogens for which unit risk factors are available were included in the analysis of cancer risk under this approach.

Through use of the EPA's TSDF Waste Characterization Data Base (WCDB) (discussed in appendix D of the BID) and a computerized model developed for analysis of the regulatory options for TSDF emission sources, EPA estimated total nationwide TSDF organic emissions by specific waste constituent. Thirty-nine chemicals were identified as TSDF organic air pollutant emission constituents emitted from equipment leaks at all types of TSDF waste management processes. Unit cancer risk factors for these constituents were then averaged based on both individual constituent and total nationwide TSDF equipment leak organic emissions to calculate an emission-weighted composite mean TSDF cancer unit risk factor.

Numerous constituents with higher unit risk factors than carbon tetrachloride (including acrylonitrile and ethylene oxide) were included in the calculation of the emission-weighted unit cancer risk factor for TSDF equipment leaks. This emission-weighted unit risk factor value was determined to be 4.5×10^{-6} $(\mu g/m^3)^{-1}$ and was used to determine the health-related impacts associated with TSDF equipment leak (fugitive) emissions rather than the range of the unit cancer risk factors used at proposal that represented a limited number of chemical compounds emitted at WSTF. A more detailed discussion of the hazardous waste TSDF unit risk factor determination is contained in appendix B of the BID.

Characterization of WSTF waste streams in the final analysis indicates that the constituents used at proposal in the risk analysis are appropriate and representative of the waste solvent recycling industry. However, insufficient nationwide data on WSTF (a subset of the TSDF industry) waste stream chemical constituent quantities and concentrations were available to develop an emission-weighted, arithmetic mean cancer unit risk factor for WSTF process vents. While information on a small number of process vent streams was available for the revised analysis, the data were too limited to support the conclusion that the mix and percentage of constituents found were representative of the entire industry.

The WSTF waste streams and their associated process vent emissions were found to contain a variety of chemical constituents. Those constituents with established risk factors were, in all cases for the plant-specific data, the halogenated organics; these halogenated organic constituent concentrations tended to be quite low, generally less than 1 percent of organics emitted. Therefore, EPA judged, based on the limited data available, that use of a midrange unit risk factor would be appropriate in estimating nationwide health impacts associated with WSTF process vents. The unit cancer risk factor assumed at proposal, 2×10^{-6} $(\mu g/m^3)^{-1}$, was the geometric midrange between the highest and lowest unit risk factor for the constituents found in the WSTF process vent streams. The composite unit cancer risk factor calculated for the equipment leak emissions agrees favorably with the process vent number used at proposal. Because it is not unreasonable to assume a similar mix of constituents in process vents as in equipment leaks, and because available data do not suggest otherwise, for the purpose of estimating impacts, the same unit cancer risk factor was used for both process vents and equipment leaks, 4.5×10^{-6} $(\mu g/m^3)^{-1}$.

Comment: Several commenters also stated that the failure to address the weight of evidence for carcinogenicity is inconsistent with EPA's risk assessment guidelines and the principles for assessing cancer risk.

Response: Early in the rulemaking for TSDF, EPA looked at the contribution to total estimated risk (annual incidence) by weight of evidence. At that time, "C" carcinogens accounted for about 5 percent of the total risk, and "A" carcinogens about 10 percent. Thus, for all practical purposes, calculating separate risk estimates for chemicals in each weight of evidence category adds little to the risk assessment. Moreover, EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992) and Guidelines for the Health Risk Assessment of Chemical Mixtures (51 FR 34014) do not describe a means to quantitatively incorporate weight of evidence into risk assessments. Thus, there is no inconsistency between the risk assessment guidelines and the presentation of health risk in this rulemaking.

Comment: Other commenters believed that the risk assessment for the proposed standards was flawed because EPA did not consider noncancer health effects and because large uncertainties are introduced when the additive or synergistic effects of carcinogens and the interindividual variability in response are not factored in.

Response: The EPA does recognize that health effects other than cancer may be associated with both short-term and long-term human exposure to the organic chemicals emitted to the air at WSTF/TSDF. The EPA believes, however, that a risk assessment based on cancer serves as the clearest basis for evaluating the health effects associated with exposure to air emissions from TSDF. A quantitative assessment of the potential nationwide noncancer health impacts (e.g., developmental, neurological, immunological, and respiratory effects) was not conducted due to deficiencies at this time in the health data base for these types of effects.

Although unable to numerically quantify noncancer health risks, EPA did conduct a screening analysis of the potential adverse noncancer health effects associated with short-term and long-term exposure to individual waste constituents emitted from TSDF. This analysis was based on a comparison of relevant health data to the highest short-term or long-term modeled ambient concentrations for chemicals at each of two selected TSDF. (A detailed presentation of the screening analysis is contained in the BID, appendix B.)

Results of this analysis suggest that adverse noncancer health effects are unlikely to be associated with acute or chronic inhalation exposure to TSDF organic emissions. It should be noted that the health data base for many chemicals was limited particularly for short-term exposures. The conclusions reached in this preliminary analysis should be considered in the context of the limitations of the health data; the uncertainties associated with the characterization of wastes at the

facilities; and the assumptions used in estimating emissions, ambient concentrations, and the potential for human exposure. Additional evaluation of noncancer health effects may be undertaken as part of the third phase of the TSDF regulatory program. To that effect, in the proposal preamble for the Phase II TSDF air rules, EPA is specifically requesting comments from the public on methodologies and use of health data for assessing the noncancer health effects of TSDF organic emissions. In addition, because there is a potential for cancer and noncancer health effects from TSDF chemicals from indirect pathways such as ingestion of foods contaminated by air toxics that have deposited in the soil, EPA will evaluate the need to include an indirect pathway element in the TSDF health risk analysis in the future.

The EPA is aware of the uncertainties inherent in predicting the magnitude and nature of toxicant interactions between individual chemicals in chemical mixtures. In the absence of toxicity data on the specific mixtures of concern, and with insufficient quantitative information on the potential interaction among the components (i.e., additivity, synergism, or antagonism), the EPA has assumed additivity to estimate the carcinogenicity of the mixtures of concern. This is consistent with guidance provided in the 1986 "EPA Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014).

The EPA also recognizes that there are uncertainties associated with the variability of individual human responses following exposures to toxicants. As stated in the 1986 "EPA Guidelines for Carcinogen Risk Assessment" (51 FR 33992) human populations are variable with respect to genetic constitution, diet, occupational and home environment, activity patterns, and other cultural factors. Because of insufficient data, however, the EPA is unable to determine the potential impact of these factors on the estimates of risk associated with exposure to carcinogens emitted from TSDF.

Cost Impacts Analysis

Comment: Various commenters questioned the cost estimates used in the analysis for carbon adsorbers and condensers as well as the nationwide recovery credits for WSTF and TSDF. Commenters contend that the costs for carbon adsorbers estimated at proposal are low because a device is needed for each vent if manifolding is not practiced as a result of (1) the potential for cross-contamination of new or recycled materials and (2) additional incurred costs when the carbon is regenerated or disposed of.

Response: In response to these comments EPA evaluated controls for 40 model unit cases representing ranges and combinations of solvent physical properties, total flow rates, and organic concentrations in the vent stream. Both carbon canisters and fixed-bed regenerable carbon systems were costed for process vent streams where condensers would not achieve a 95-percent reduction because of stream conditions. The analysis showed that, for a stream with an emission rate greater than 0.45 kg/h (1 lb/h), a carbon bed can achieve the same emission reduction at lower cost than can a carbon canister. Thus, there is a level of emissions at which the facility owner or operator for economic reasons will switch from the use of replaceable carbon canisters to the use of a fixed-bed regenerable carbon adsorption system. The capital costs (1986 $) of the fixed-bed regenerable carbon systems ranged from $97,300 up to $202,000, and annual operating costs ranged from $40,200 to $43,500 (from $33,100 to $43,100 when a recovery credit is included). The capital cost (1986 $) of a carbon canister was $1,050, and annual operating costs ranged from $7,880 to $24,800 (carbon canisters are not regenerated on site and a recovery credit is not included). The fixed-bed, regenerable carbon system operating costs include regeneration/disposal of spent carbon; carbon canister operating costs include carbon replacement and disposal. Thus, these costs were used in conducting the final impact analyses.

With regard to the requirement of a control device for each vent, EPA acknowledges that there are instances where vent manifolding is not allowed because of potential product contamination. However the product has already been recovered from the process prior to exhaust gases passing to the vents, which are sources of organic emissions to the atmosphere; therefore, manifolding of the vent streams should not lead to a product contamination problem.

In the absence of the site-specific information needed to determine control device requirements, for the purposes of estimating cost impacts, it was assumed in the revised analysis that one control device would be needed per WSTF. Although this assumption may underestimate the control cost for a facility that chooses to install carbon adsorbers on more than one vent, it is potentially a very small underestimate because the total annual cost of a carbon canister, for example, is comprised almost totally of annual operating costs, which are directly proportional to the emissions removed. Thus the potential underestimate in total annual cost resulting from assuming one carbon adsorber per facility is not significant. Furthermore, the addition of the process vent emission limit to the rules based on the total facility emission rate lessens the likelihood that a facility will need to control multiple process vents to attain the allowable emission rate of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr).

Several commenters also questioned the nationwide cost credit for secondary condensers estimated at proposal, stating that secondary condensers actually would result in substantial costs and that the cost estimates do not account for the more sophisticated systems needed in high-humidity areas to allow for equipment deicing or water removal. In response to concerns regarding the estimated condenser yields and the requirement for more sophisticated systems in high-humidity areas, EPA utilized a state-of-the-art computerized process simulator known as the Advanced System for Process Engineering (ASPEN) for reevaluating analyses of condenser design and cost. The ASPEN condenser configuration included an optional primary water-cooled heat exchanger to reduce the size of the refrigeration unit and to remove water vapor in order to avoid freezing problems because the condenser temperature is low enough to cause ice buildup on heat transfer surfaces. Therefore, the revised cost estimates account for water removal.

The model unit cases represent industrywide ranges and combinations of vent stream characteristics. For the large model unit cases (3.9 L/s total flow rate), total annual cost with recovery credit ranged from a credit of $4,980 up to a net of no cost. For the medium model unit cases (0.6 L/s total flow rate), the total annual cost with recovery credit ranged from $630 up to $2,000. For the small model unit cases (0.3 L/s total flow rate), the total annual cost with recovery credit ranged from $1,770 up to $2,000. Therefore, in many cases, the use of secondary condensers does result in positive costs; these costs, however do not result in adverse economic impacts.

The model unit control cost estimates and the WSTF industry profile were used to generate nationwide control cost estimates of implementing the process vent regulations. The cost estimates are for 73 large facilities and 167 medium facilities. The 208 small facilities (less than 189,000 L (50,000 gal) throughput/yr as defined in the post-proposal analysis) would not have to install additional controls because their emissions are less than the facility process vent cutoff.

Because there was insufficient site-specific information available to determine which facilities could apply condensation rather than carbon adsorption, upper- and lower-bound estimates were generated. The upperbound cost estimate is based on the assumption that fixed-bed, regenerable carbon adsorption systems would be required to control process vents at all facilities with emissions above the emission rate cutoff. Similarly the lower-bound cost estimate is based on the assumption that condensers could be used to control process vents at all facilities with emissions above the emission rate cutoff. The range in estimates of nationwide total annual cost is from a credit of $68,000 up to a cost of $12.9 million, assuming the installation of one control device per facility.

Finally, EPA agrees that a recovery credit is not applicable to TSDF in general because most of the hazardous wastes handled at TSDF are destined for disposal. In contrast, at a WSTF, the air emissions resulting from equipment leaks are potentially recyclable solvents. Thus, no recovery credit was applied for TSDF other than WSTF in the analyses for the final equipment leak standards.

E. Implementation and Compliance

Test Methods

Comment: Commenters argued that the test methods proposed for use in determining whether waste streams contain more than 10 percent total organics are inappropriate primarily because they do not measure volatile organics. One commenter objected to the use of weight percent when defining "in VHAP service" based on liquid sample analyses.

Response: The EPA recognized that each of the various test methods proposed for determining the organic content of waste streams had limitations and that none was universally applicable. The determination of subpart BB applicability should not require precise measurement of the 10 percent total organics by weight in most cases. The EPA anticipates that most waste streams will have an organic content much lower or much higher than 10 percent. Furthermore, because the regulation requires control if the organic content of the waste stream ever equals or exceeds the 10-percent value. EPA believes that few owners or operators will claim that a waste stream is not subject to the requirements of the standard based on a sample analysis with results near 10 percent. Therefore, a precise measurement of waste stream total organic content is not likely to be needed to determine applicability of the equipment leak standards.

If the facility does decide to test the waste, the choice of the appropriate method must be based on a knowledge of the process and waste. The EPA has prepared a guidance document that includes information to aid TSDF owners/operators and enforcement and permitting personnel in implementing the regulations. Additional detail is provided in the guidance document to aid in choosing the most appropriate test method. (Refer to "Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks." EPA–450/3–89–21.)

In response to the commenters' concerns that volatility of the waste stream should be considered, the LDAR provisions of the regulation were changed to establish two potential levels of required monitoring. Those processes with the greater emission potential are designated to be in light-liquid service and are required to implement a more restrictive LDAR program. Those processes with a lesser emission potential are designated to be in heavy-liquid service and are required to implement a less restrictive LDAR program. The determination of being in light-liquid service is based on the concentration of organic components in a waste whose pure vapor pressure exceeds 0.3 kPa. This addresses the commenters' concerns that volatility of the waste stream should be considered. For the process vent portion of the regulation, if an organic is present at the vent, it is presumed to be volatile. Therefore, volatility is considered by virtue of where the determination of applicability is made.

With reference to the use of weight percent when defining "in VHAP service" (a term that has been dropped from the promulgated regulations), EPA believes that weight percentage is the unit of choice when the determination of organic content is made on a solid, liquid, or sludge waste. It is also commonly associated with those types of wastes. For gaseous streams that exceed 10 percent organics by weight, the commenter's point is well taken. Volume fractions are more commonly reported for gaseous streams. However, it is not easier to calculate the volume percent rather than weight percent. Additional information on the calibration standard used, the carrier gas in the standard, and both the organic and other inorganic gases in the sample are required in both cases. For simplicity, the units of the standard are uniformly weight percent regardless of waste type.

Implementation Schedule

Comment: Several commenters objected to the time periods contained in the proposed standards for implementation schedules and requested that EPA not dictate a step-by-step schedule.

Response: The EPA agrees with the commenters that EPA should not dictate step-by-step implementation schedules for installing the control devices and closed-vent systems required to comply with these regulations because each affected facility needs some flexibility to budget funds, perform engineering evaluations, and complete construction. Therefore, EPA has dropped the interim dates in the schedule and retained only the final period of 2 years from the promulgation for completing engineering design and evaluation studies and for installing equipment. The final rules require that all affected facilities comply with the standards on the effective date; however, the rules allow up to 24 months from the promulgation date (i.e., 18 months after the effective date) for facilities to comply if they are required to install a control device and they can document that installation of the emission controls cannot reasonably be expected to be completed earlier. Existing waste management units that become newly regulated units subject to the provisions of subpart AA or BB because of a new statutory or regulatory amendment under RCRA (e.g., a new listing or identification of a hazardous waste) will have up to 18 months after the effective date of the statutory or regulatory amendments that render the facility subject to the provisions of subparts AA or BB to complete installation of the control device. New hazardous waste management units starting operation after the effective date of subparts AA and BB must meet the standards upon startup. This subject is discussed further in section IX. Implementation, of this preamble. The final standards require that both permitted and interim status facilities maintain the schedules and the accompanying documentation in their operating records. The implementation schedule must be in the operating record on the effective date of today's rule, which is 0 months after promulgation. No provisions have been made in the standards for extensions beyond 24 months after promulgation.

Permitting Requirements

Comment: Several commenters suggested that RCRA part B information requirements be limited to the units already included in the part B application. Units that must comply with this regulation because the facility is subject to RCRA permit requirements for other reasons should not be required to be added to the part B permit application. Other commenters objected to statements in the preamble regarding the role of the omnibus permitting authority under RCRA section 3005(c)(3). The commenters questioned the absence of criteria for establishing when such authority would be applied to require more stringent controls and argued that authorizing permit writers to impose more stringent controls based on unenforceable guidance is not a substitute for regulations.

Response: The EPA is aware that extending specific part B information requirements to those hazardous waste management units that are not subject to RCRA permitting but are located at facilities that are otherwise subject to RCRA permit requirements could result in the need for those facilities to modify RCRA permits or their part B applications. However, EPA believes that extending the part B information requirements to hazardous waste management units not subject to RCRA permitting is necessary to ensure compliance with the subpart AA and subpart BB standards.

The EPA also agrees that requiring a modification of RCRA permits (and part B applications) as part of this rule could result in delays in processing and issuing final RCRA permits. Therefore, the final rules do not require facilities to modify permits issued before the effective date of these rules. Consistent with 40 CFR 270.4, a facility with a final permit issued prior to the effective date is generally not required to comply with new part 264 standards until its permit is reissued or reviewed by the Regional Administrator. Hazardous waste management units and associated process vents and equipment affected by these standards must be added or incorporated into the facility permit when the permit comes up for review under § 270.50 or reissue under § 124.15. As previously noted, EPA intends to propose to modify this policy in the forthcoming Phase II rules such that permitted facilities must comply with the interim-status air rules.

Facilities that have obtained RCRA interim status, as specified in 40 CFR 270.70 (i.e., compliance with the requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity and the requirements of 40 CFR 270.10 governing submission of part A applications), will be subject to the part 265 standards on the effective date. Interim status facilities that have submitted their part B application prior to the effective date of the regulation will be required to modify their part B applications to incorporate today's requirements.

The omnibus permitting authority of § 270.32 allows permit writers to require, on a case-by-case basis, emission controls that are more stringent than those specified by a standard. The EPA has a mandate to use this authority for situations in which regulations have not been developed or in which special requirements are needed to protect human health and the environment. For example, this authority could be used in situations where, in the permit writers judgment, there is an unacceptably high risk after application of controls required by an emission standard. This aspect of the permitting process is discussed further in section IX of this preamble. The EPA is currently preparing guidance to be used by permit writers to help identify facilities that would potentially have high residual risk due to air emissions. The guidance will include procedures to be used to identify potentially high-risk facilities and will include guidance for making a formal, site-specific risk assessment.

Recordkeeping and Reporting

Comment: Commenters asked EPA to include a provision in the final standards to provide for the elimination of recordkeeping requirements that may be duplicative of State or Federal requirements for equipment leaks. Commenters also asked whether TSDF are subject to any notification requirements if their waste stream is less than 10 percent organics.

Response: The EPA agrees that duplicative recordkeeping and reporting should generally be eliminated to the extent possible. Because of the difficulties in foreseeing all situations in which this could occur, a provision to this effect has not been added to the final standards. However, when records and reports required by States are substantially similar, a copy of the information submitted to the State will generally be acceptable to EPA. When similar records and reports are required by other EPA programs (such as the visual observations required for pumps and valves associated with storage tanks and incinerators), EPA suggests that owners or operators of TSDF coordinate monitoring and recordkeeping efforts to reduce labor and costs. One set of records should be maintained with emphasis on the more detailed monitoring records required by these standards. The EPA considers that the monitoring required for equipment leaks under these standards differs significantly from the monitoring required for ground water protection purposes under other RCRA rules. However, the monitoring and recordkeeping programs can be combined for efficiency.

There are no notification requirements in the equipment leak rules for waste streams that have been determined never to exceed 10 percent total organics by weight.

VII. Summary of Impacts of Final Standards

A. Overview of the Source Category

Hazardous waste TSDF are facilities that store, treat, or dispose of hazardous wastes. A TSDF may generate and manage hazardous waste on the same site, or it may receive and manage hazardous waste generated by others.

The EPA has conducted a number of surveys to collect information about the TSDF industry. The most recent of these surveys, the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities, lists more than 2,300 TSDF nationwide. Available survey data further indicate that the majority (96 percent) of waste managed at TSDF is generated and managed on the same site and identifies more than 150 different industries, primarily manufacturing, that generate hazardous waste. Approximately 500 TSDF are commercial facilities that manage hazardous waste generated by others.

The types of wastes managed at TSDF and the waste management processes used are highly variable from one facility to another. The physical characteristics of wastes managed at TSDF include dilute wastewaters (representing more than 90 percent by weight of the total waste managed), organic and inorganic sludges, and organic and inorganic solids. Waste management processes differ according to waste type and include storage and treatment in tanks, surface impoundments, and wastepiles; handling or storage in containers such as drums, tank trucks, tank cars, and dumpsters; and disposal of waste in landfills, surface impoundments, injection wells, and by land treatment. In addition, hazardous waste may be managed in "miscellaneous units" that do not meet the RCRA definition of any of the processes listed above. Hazardous waste may also be handled

in research, development, and demonstration units as described in 40 CFR 270.65.

The promulgated standards limit organic emissions from (1) hazardous waste management unit process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air and steam stripping operations that manage waste with 10 ppmw or greater total organics concentration, and (2) leaks from equipment at new and existing hazardous waste management units that contain or contact hazardous waste streams with 10 percent or more total organics. The final equipment leak standards apply to each pump valve, compressor, pressure relief device, sampling connection, open-ended valve or line, flange, or other connector associated with the affected hazardous waste management unit. About 1,400 facilities are estimated to be potentially subject to the equipment leak standards (i.e., TSDF managing hazardous waste containing at least 10 percent organics). Of these, 450 are estimated to have process vents subject to the vent standards in subpart AA.

B. Use of Models in the Regulatory Development Process

In estimating baseline (i.e., unregulated) emissions, emission impacts of the regulatory options, and control costs for the options for equipment leaks, EPA made use of a combination of analytical and physical models of waste management processes. This approach was selected because insufficient facility-specific data are available to conduct a site-specific characterization of the entire TSDF industry. For example, the physicalmodels of waste management processes (or units) were used as simplified representations of the equipment component mix expected to be associated with each particular hazardous waste management process. The model unit provides an estimate of the number of pumps, valves, open-ended lines, pressure relief valves, and sampling connections that are used in the waste management process. Although these models are not exact for each type of process, they provide a reasonable approximation of what can be expected on average; precise equipment counts for each unit at each facility are not available.

In the absence of sufficient site-specific data, EPA developed a model to calculate nationwide health, environmental, and cost impacts associated with hazardous waste TSDF. Details of the national impacts model can be found in the BID, appendix D. This national impacts model was used to estimate the nationwide impacts necessary for comparison of the various TSDF equipment leak emission control options. The national impacts model is a complex computer program that uses a wide variety of information and data concerning the TSDF industry to calculate nationwide impacts through summation of approximate individual facility results. Information processed by the model includes results of TSDF industry surveys as well as characterizations and simulations of TSDF processes and wastes, emission factors of each type of management unit, the efficiencies and costs of emission control technologies, and exposure and health impacts of TSDF pollutants. This information is contained in several independent data files developed by EPA for use as inputs to the model. These data files are briefly described below.

Industry profile data identify the name, location, primary standard industrial classification (SIC) code, waste management processes, waste types, and waste volumes for each TSDF. The industry data were obtained from three principal sources: A 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities; the Hazardous Waste Data Management System's RCRA part A permit applications; and the 1981 National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA. The industry data are used in the model to define the location and the SIC code for each facility and to identify the waste management units at each facility as well as the types and quantities of waste managed in each unit.

The hazardous waste characterization consists of waste data representative of typical wastes handled by facilities in each SIC code. The waste data are linked to specific facilities by the SIC code and the RCRA waste codes identified for that facility in the industry profile. The waste characterization data include chemical properties information that consists of constituent-specific data on the physical, chemical, and biological properties of a group of surrogate waste constituents that were developed to represent the more than 4,000 TSDF waste constituents identified in the waste data base. The surrogate categories were defined to represent actual organic compounds based on a combination of their vapor pressures, Henry's law constants, and biodegradability. The use of surrogate properties was instituted to compensate for a lack of constituent-specific physical and chemical property data and to reduce the number of chemicals to be assessed by the model.

The emission factors data consist of emission factors, expressed as emissions per unit of waste throughput, for each combination of surrogate waste constituent and model waste management process. Each model waste management process was, in effect, a "national average model unit" that represented a weighted average of the operating parameters of existing waste management units. The EPA's LDAR model was used to develop emission control efficiencies and emission reductions for the TSDF equipment leak emission factors used in the analysis. This LDAR model is based on the Agency's extensive experience with equipment leaks in the petrochemical and synthetic organic chemical manufacturing industries.

Incidence data consist of estimates of annual cancer incidence for the population within 50 km of each TSDF. This information was developed using EPA's Human Exposure Model, 1980 census data, and local meteorological data summaries. Because some of the data used in the national impacts model are based on national average values rather than actual facility-specific data, maximum risk numbers generated by the model are not considered to be representative of facility-specific risks. Maximum individual risk has meaning only at the facility level. Therefore, EPA chose to use another methodology for estimating MIR for equipment leaks. This is discussed further in section VII.E.

Data related to emission control technologies and costs include information that describes control efficiencies, capital investment, and annual operating costs for each emission control option that is applicable to a particular waste management process. These data were obtained through engineering analyses of control device operations and the development of engineering cost estimates.

To make use of all of these data, the national impacts model contains procedures that (1) identify TSDF facilities, their waste management processes, waste compositions, and annual waste throughputs; (2) assign chemical properties to waste constituents and assign control devices to process units; and (3) calculate uncontrolled emissions, emissions reductions, control costs, and health impacts. Results produced by the model include, on a nationwide basis, uncontrolled emissions, controlled

emissions, capital investment costs, annual operating costs, annualized costs for controls, and annual cancer incidence. As previously stated, these nationwide values are obtained by summing the results of individual facility analyses across all facilities.

The primary objective and intended use of the national impacts model are to provide reasonable estimates of TSDF impacts on a nationwide basis. Because of the complexity of the hazardous waste management industry and the current lack of detailed information for individual TSDF, the model was developed to utilize national average data where site-specific data are not available. As a result, the estimated emissions and cancer incidence from the model do not represent the impacts for a specific individual facility. However, with national average data values used where site-specific data were missing, EPA believes that the estimates are reasonable on a nationwide basis and are adequate for decisionmaking.

C. Emission Impacts

Since proposal in February 1987, EPA has reviewed all available site-specific information and data on WSTF and TSDF, much of which has only become available since proposal. For example, EPA is conducting a multiyear project to collect information on the Nation's generation of hazardous waste and the capacity available to treat, store, dispose of, and recycle that waste. The initial phase of the project was the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities, which identified and collected summary information from all hazardous waste treatment, storage, disposal, and recycling facilities in the United States. The results of this "Screener Survey" together with data from other existing data bases (such as the Hazardous Waste Data Management System's RCRA part A applications; the National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981; the Industry Studies Database; a data base of 40 CFR 261.32 hazardous wastes from specific sources; the WET Model Hazardous Waste Data Base; and a data base created by the Illinois EPA) were used to support the development and analysis of these air emission regulations for hazardous waste TSDF. Additional sources of data on TSDF and waste solvent recycling operations included EPA field reports on hazardous waste facilities and responses to RCRA section 3007 information requests sent to a limited number of both large and small facilities. Based on all of this information, EPA has revised and expanded the impact analyses, including estimates of emissions, risks, costs, and the economic impact on small businesses and on the industry as a whole.

Using the revised impact analyses, nationwide (unregulated) baseline equipment leak organic emissions from TSDF waste streams of 10 percent or greater total organics are estimated at 28,200 Mg/yr. This estimate includes equipment leak emissions from waste solvent treatment facilities and from other TSDF with hazardous waste management processes handling wastes with organic concentrations of 10 percent or greater, a total of about 1,400 facilities. The bases for these estimates are contained in the BID, appendix D.

Nationwide (unregulated) organic emissions from process vents at about 450 TSDF with solvent recovery operations range from 300 Mg/yr (based on lower-bound emission rates) to 8,100 Mg/yr (based on upper-bound emission rates). This wide emission range occurs because of variations in primary condenser recovery efficiencies and the use of secondary condensers at some sites. The lower-bound rate represents high recovery efficiencies at all facilities, and the upper-bound rate represents low recovery efficiencies at all facilities. Actual nationwide emissions should fall between these values.

With the implementation of the standards, nationwide TSDF equipment leak emissions will be reduced to about 7,200 Mg/yr; nationwide organic emissions from process vents will be reduced to a range from 270 Mg/yr (lower-bound emission rates) to 900 Mg/yr (upper-bound emission rates).

D. Ozone Impacts

Reductions in organic emissions from TSDF sources will have a positive impact on human health and the environment by reducing atmospheric ozone formation as a result of reductions in emissions of ozone precursors, primarily organic compounds. Ozone is a major problem in most larger cities, and EPA has estimated that more than 100 million people live in areas that are in violation of the ambient ozone standards. Ozone is a pulmonary irritant that can impair the normal functions of human lungs, may increase susceptibility to bacterial infections, and can result in other detrimental health effects. In addition, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other crops, and can cause damage to conifer forests and a reduction in the fruit and seed diets of wildlife. Because TSDF organic emissions account for about 12 percent of total nationwide organic emissions from stationary sources, today's rules will contribute to a reduction in ozone-induced health and environmental effects and will assist in attainment and maintenance of the ambient air quality standards for ozone. Table 1 summarizes the emissions and health risk impact estimates.

Ozone precursors and chlorofluorocarbons, whose emissions will be reduced by this rulemaking, are both considered greenhouse gases (i.e., gases whose accumulation in the atmosphere has been related to global warming). Although the regulation's direct impact on global warming has not been quantified, the direction being taken is a positive one. Implementation of these rules will reduce tropospheric ozone, which contributes to global warming.

E. Health Risk Impacts

Human health risks posed by exposure to TSDF air emissions are typically quantified in two forms: Annual cancer incidence and MIR. Annual cancer incidence is the estimated number of cancer cases per year due to exposure to TSDF emissions nationwide. The MIR, on the other hand, represents the potential risk to the one hypothetical individual who lives closest to a reasonable worst-case TSDF for a lifetime of 70 years. The MIR is derived from modeling a reasonable worst-case scenario and is not based on actual measurement of risk. It is not representative of the entire industry, and, in fact, may be experienced by few, if any, individuals. As explained in appendix B of the BID, there are great uncertainties in both these types of health risk estimates. These two health risk forms were used as an index to quantify health impacts related to TSDF emissions and emission controls. As discussed in section VI.D., an equipment-leak-specific, emission-weighted unit risk factor of 4.5×10^{-6} $(\mu g/m^3)^{-1}$ was used to estimate the nationwide annual cancer incidence and the MIR of contracting cancer associated with TSDF equipment leak organic emissions. See appendix B of the BID for a detailed analysis of the health risk impacts.

At proposal, order-of-magnitude health impacts were estimated for cancer risks from exposure to organic air emissions from WSTF and TSDF. The Human Exposure Model (HEM) was used to calculate the magnitude of risks posed by WSTF at both typical and maximum emission rates. Based on an estimated urban/rural distribution, EPA selected six WSTF to represent the nationwide WSTF industry in performing the risk assessment. Using the results of the analysis of these "typical" facilities, health impacts were extrapolated to all WSTF and TSDF in general to provide nationwide estimates.

In the revised health impacts analysis for the final rules, annual cancer incidence and MIR were again used to quantify health impacts for the control alternatives for process vents and equipment leaks. However, in this followup analysis, the HEM was run using site-specific data on facility waste throughputs, emission rates, meteorology, and population density for each WSTF and TSDF nationwide identified in the various data bases.

The facility-specific information was obtained from three principal sources. Waste quantity and solvent recycling data were taken from the 1986 National Screener Survey; waste management processing schemes and waste types managed in each facility were based on the Hazardous Waste Data Management System's (HWDMS) RCRA part A applications; the National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981 (Westat Survey); and the 1986 National Screener Survey.

In revising the methodology applied in assessing cancer risks, EPA conducted facility-specific HEM computer runs for nearly all of the 448 WSTF that reported, in the 1986 National Screener Survey, recycling and/or reuse of solvents and other organic compounds (i.e., TSDF expected to have the specified process vents) and for each of the more than 1,400 TSDF in the industry profile of 2,300 TSDF that were determined to manage wastes with at least 10 percent organic content. These HEM results were used to estimate nationwide cancer incidence for both TSDF equipment leaks and process vents.

The nationwide annual incidence resulting from uncontrolled TSDF equipment leaks is estimated at 1.1 cases of cancer per year. Based on the estimated lower-bound emission rates, the nationwide cancer incidence from uncontrolled process vents is 0.015 case/yr. Based on the upper-bound emission rate, the incidence from process vents is 0.38 case/yr. With the application of the final process vent standards, based on lower-bound emission rates, the annual cancer incidence will be reduced to 0.001 from 0.015 case/yr. Based on upper-bound emission rates, annual incidence will be reduced to 0.027 case/yr from 0.38 case/yr. With the implementation of the LDAR programs for equipment leak emissions, the annual cancer incidence associated with fugitive emissions will be reduced to about 0.32 case/yr.

TABLE 1. SUMMARY OF NATIONWIDE ENVIRONMENTAL AND HEALTH RISK IMPACTS OF TSDF AIR EMISSION REGULATIONS

TSDF source category	Nationwide emissions, Mg/yr		Annual incidence [a], cases/yr		Maximum individual risk [a]	
	Uncontrolled	Controlled	Uncontrolled	Controlled	Uncontrolled	Controlled
Process vents [b]						
Lower bound	300	270	0.015	0.001	3×10^{-6}	2×10^{-6}
Upper bound	8,100	900	0.38	0.027	8×10^{-6}	4×10^{-5}
Equipment leaks	28,200	7,200	1.1	0.32	5×10^{-6}	1×10^{-6}

[a] Annual incidence and MIR are based on an emission-weighted average unit risk factor for TSDF.
[b] The lower- and upper-bound process vent emission estimates reflect the range of primary condensers' removal efficiencies and the use of secondary condensers on some primary condenser vents.

The HEM results were also used to estimate the MIR for process vents. For estimates of MIR associated with TSDF equipment leaks, a separate methodology was used for reasons discussed below.

There are three major problems in applying the methodology used to estimate cancer incidence, a nationwide value, to estimate MIR from equipment leaks, a site-specific value. The first problem concerns the emission estimation technique. Equipment count, and not the amount of waste handled, is the major determining factor for emission estimates from equipment leaks. Equipment counts do not double or triple accordingly as throughput is increased. Because the size of the model plant (and thus the equipment count) assigned to a waste management process was based on the amount of waste handled, emissions from equipment leaks will be overstated for larger facilities and understated for smaller facilities. This averages out on a nationwide basis, but individual facility estimates are not considered accurate for estimates of MIR.

The second problem deals with the waste compositions and forms (e.g., wastewater and concentrated organics) attributed to each RCRA waste code (e.g., F001). A waste code may involve wastes in several forms. The determination of impacts was based on the national average waste form distribution for each particular waste code occurring at each facility. For example, if on average across the Nation, a particular organic waste solvent appears as an aqueous waste (very dilute organics) 20 percent of the time, as a sludge 50 percent of the time, and as an organic liquid 30 percent of the time, those percentages were applied to every facility that was identified to handle that type of waste regardless of the actual percentages of waste form found at the facility. In some cases, this resulted in larger facilities being assigned a much greater percentage of an organic liquid form than would actually be the case. Again, this averages out on a nationwide basis, but for site-specific estimates such as MIR more refined determinations are required.

The third problem with using the HEM for equipment leaks is that the HEM does not model area sources directly; it collocates all emission sources at one central point and models the emissions as point sources. This is appropriate for estimates for process vents that are actual point sources, but not for equipment leaks. A typical TSDF would have several hundred equipment components with the potential for leaks that could be located over the entire facility area.

In estimating MIR for equipment leaks, EPA based its hypothetical, reasonable worst-case facility, in large part, on an actual facility. The EPA was able to characterize the facility in sufficient detail that dispersion estimates could be generated using a true area source dispersion model. This was possible because more detailed site-specific information has become

available on a limited basis since proposal. The preliminary results of a multiyear project to collect information on the Nation's generation of hazardous waste and the capacity available to treat, store, dispose of, and recycle that waste were used as the basis of the analysis. In the survey, all active treatment, storage, disposal, and recycling facilities (TSDR) were sent a detailed package of questionnaires appropriate to the processes they operate. The completed questionnaires were reviewed for technical accuracy; after independent verification, the information collected was entered into a complex data base. The TSDR survey questionnaire responses contain the most detailed up-to-date nationwide information regarding the hazardous waste management technologies each facility has on site. For each facility, detailed information is available in the data base, including facility area, numbers of hazardous waste management units by process type (i.e., number of surface impoundments, incinerators, recycling units), annual throughput by process unit, and types of waste (i.e., RCRA waste codes) managed by each unit at the facility. The availability of this information in computerized format made it possible to use the TSDR survey data base to identify facilities that represent the population of worst-case facilities with regard to equipment leak emissions and the potential for high MIR values. A detailed discussion of the health impacts methodologies is presented in appendix B of the BID.

The MIR estimate was made first by screening detailed TSDR Survey data for more than 1,400 TSDF to identify the facility that has the highest potential equipment leak emissions and the highest potential for these emissions to result in high ambient air concentrations (i.e., high emissions on a small facility area). Next, it was assumed that this facility handles hazardous wastes that have carcinogens with an emission-weighted potency equal to that of the nationwide average and that an individual was residing at the shortest distance from the TSDF management units to the nearest apparent residence. The highest annual-average ambient concentration, resulting from this high emission-rate facility, predicted to occur at the residence nearest the facility was then determined by dispersion modeling. The Industrial Source Complex Long-Term (ISCLT) dispersion model was used in the equipment leak MIR analysis to model the worst-case facility as a true area source with the actual facility area of about 1 acre as input. The highest annual average out of the results of 5 years of meteorological data modeled for each of the eight cities used to characterize nationwide meteorology was selected for use in the MIR calculation. Thus, this MIR estimate is considered a reasonable worst-case estimate for the industry and should not be interpreted to represent a known risk posed by any actual facility in the industry.

The MIR resulting from TSDF baseline (or uncontrolled) equipment leak emissions is estimated at 5×10^{-4}, i.e., 5 chances in 1,000. Based on the estimated lower-bound emission rates for process vents, the MIR for uncontrolled process vents is about 3 chances in 100,000 (3×10^{-5}); based on the upper-bound emission rate, the MIR is 8×10^{-4}. Because of the uncertainties inherent in nationwide emission and risk estimates that must characterize the many different constituents present in a variety of TSDF operations, EPA considered the upper-bound estimates in its decisionmaking.

With the application of the final process vent standards, based on lower-bound emission rates, the MIR will be reduced to 2×10^{-4} from 3×10^{-5}. Based on the upper-bound emission rates, the MIR will be reduced to 4×10^{-5} from 8×10^{-4}. With the implementation of control requirements for equipment leak emissions that include monthly LDAR requirements for pumps and valves, caps for open-ended lines, closed-purge sampling, and rupture discs for pressure relief devices, the MIR associated with fugitive emissions will be reduced to about 1×10^{-5} from 5×10^{-4}. Appendix B of the BID, EPA 450/3-89-008, presents a detailed explanation of the derivation of these risk estimates.

The MIR estimate for equipment leaks is sensitive to several factors. Emissions are the most obvious factor controlling risk. The facility associated with the reported MIR for equipment leaks is one of the highest emitting TSDF in terms of equipment leaks, in the upper 99.5 percent for potential equipment leak emissions. If the analysis were to use the 85-percentile emissions (i.e., 85 percent of the TSDF nationwide have lower equipment leak emissions than this value), then MIR would drop from 1×10^{-3} to 5×10^{-4} with all other factors held constant.

Another factor affecting the MIR estimates is area of the emitting source. For these types of sources, risk is inversely proportional to the area of the emitting source. For example, given equal emissions, a facility located over 10 acres generally poses less risk than a facility on 1 acre. For the facility presenting the highest risk in this rule, the MIR would drop from 1×10^{-3} to 2×10^{-4} if 10 acres were used in the estimate rather than 1 acre. It should also be pointed out that for the more than 1,400 TSDF surveyed in the EPA 1987 TSDR Survey, the median facility area was greater than 50 acres.

Distance to the nearest resident is another key variable in the risk estimate. The actual distance to the nearest residence (i.e., 250 ft) for the worst-case facility was used in calculating the reported MIR value; however, the median distance in a random sample of distances to the nearest residence reported in a survey of the hazardous waste generators was 1,000 ft. If this median distance were used in the estimate, even with the high emissions and the small area, the maximum risk value would drop from 1×10^{-3} to 2×10^{-4}. Meteorology is also a factor; the worst-case dispersion was used in the reported estimate. If an average case were used, then risk would drop to 6×10^{-4} with all other factors held constant.

As the above examples show, facilities with anything other than the combined worst-case factors would pose significantly less risk than the MIR reported for equipment leaks. The MIR estimates presented are, for the most part, based on worst-case or conservative assumptions; the one exception is the weighted-average cancer potency value, or unit risk factor (URF), used. The EPA believes it is unreasonable to make all worst-case assumptions for a single facility. However, because of the overall conservative nature of the analysis, for the industry as a whole, the vast majority of TSDF would pose significantly lower risk from equipment leak emissions than the reported reasonable, worst-case value.

F. Cost Impacts

The EPA developed a detailed estimate of the total capital investment, annual operating costs, and total annual costs of each emission control technology applied to each affected waste management unit. Total capital investment represents the total original cost of the installed control device. Total annual cost represents the total payment each year to repay the capital investment for the control device as well as to pay for the control device (or work practice) operating and maintenance expenses. The costs of attaining the 95-percent control or emission reduction for process vents are based on the use of condensers to control process vent streams for which condensation is technically feasible and on the use of carbon adsorption systems to control the remaining process vent streams subject to the regulations. Because site-specific information was insufficient to determine which facilities could apply condensers rather than carbon adsorbers industry-wide, upper- and lower-bound cost estimates were generated for process vent controls. The upper-bound cost estimates are based on the assumption that fixed-bed, regenerable carbon adsorption systems would be required to control process vents at all facilities with emissions above the emission rate limit. Similarly, the lower-bound cost estimate is based on the assumption that condensers could be used to control process vents at all facilities with emissions above the emission rate limit.

The nationwide capital investment and total annual cost of implementing the requirements of today's rule for process vent controls are estimated at $24.6 million and $12.9 million/year, respectively, for the upper-bound case. For the lower-bound case, capital investment is $1.5 million and total annual costs represent a small savings of $70,000/yr. These costs are based on an industry profile that includes 73 large recycling facilities and 167 medium-sized recycling facilities. The more than 200 small recycling facilities are not included in the cost estimates because they are projected not to have to install additional controls to meet the facility emission rate limit.

The capital investment and total annual costs of controlling TSDF equipment leak emissions with the LDAR program together with some equipment specifications are estimated at $126.6 million and $32.9 million/yr. respectively. Table 2 summarizes capital and annual costs associated with the final rules.

Further information on the economic impacts of the final standards for organic control from TSDF process vents and equipment leaks is presented in section VIII of this preamble. Details of the analysis are presented in the BID, chapter 9.0.

TABLE 2.—SUMMARY OF NATIONWIDE COST IMPACTS OF TSDF AIR EMISSION REGULATIONS

TSDF source category	Nationwide capital cost, $ millions (1988)	Nationwide annualized cost [a], $ millions/yr
Process vents [b]		
Lower bound	1.5	(0.1)
Upper bound	24.6	12.9
Equipment leaks	126.6	32.9

( ) indicates a cost credit.
[a] Includes a recovery credit for recycling. No recovery credit was applied for TSDF without recycling processes.
[b] The lower-bound cost estimates assume that condensers could be used to control process vents at all facilities with emissions above the emission rate limit; the upper-bound cost estimates assume that carbon adsorbers would be required to control process vents at all facilities with emissions above the emission rate limit.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility under section 7002.

Prior to the HSWA of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. The EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's rule is promulgated pursuant to section 3004(n) of RCRA, a provision added by HSWA. Therefore, EPA is adding the requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in this section of the preamble.

The EPA will implement today's rule in authorized States until (1) they modify their programs to adopt these rules and receive final authorization for the modification or (2) they receive interim authorization as described below. Because this rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or section 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire automatically on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that authorized States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1991 (or July 1, 1992, if a State statutory change is needed). These deadlines can be extended in certain cases [40 CFR 271.21(e)(3)]. Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

A State that submits its official application for final authorization less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

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States that are authorized for RCRA may already have requirements under State law similar to those in today's rules. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

IX. Implementation

As proposed, the air emission standards for process vents and equipment leaks were included as subpart C of part 269, Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Part 269 was to be added to the CFR with the promulgation of these standards. For consistency with standards for other TSDF sources under RCRA, the final standards have been incorporated into parts 264 and 265. Subpart AA applies to process vents and subpart BB to equipment leaks. In addition, whereas at proposal the equipment leak requirements of 40 CFR part 61, subpart V, were incorporated by reference, these provisions have been included in subpart BB with revisions appropriate for a standard promulgated under RCRA authority rather than CAA authority.

Under the current RCRA permitting system, a facility that has received a final permit must comply with all of the following requirements as specified in 40 CFR 270.4: (1) The specific conditions written into the permit (including conditions that demonstrate compliance with part 264 regulations); (2) self-implementing statutory requirements; and (3) regulations promulgated under 40 CFR part 268 restricting the placement of hazardous waste in or on the land. When new regulations are promulgated after the issuance of a permit, EPA may reopen the permit to incorporate the new requirements as stated in § 270.41. Otherwise, the new regulatory requirements are incorporated into a facility's permit at the time of permit reissuance, or at the 5-year review for land disposal facilities.

Facilities that have not been issued a final permit and that have fully complied with the requirements for interim status must comply with the regulations specified in CFR part 265. New regulations that are added to part 265 become applicable to interim status facilities on their effective dates.

Although EPA has the authority to reopen permits to incorporate the requirements of new standards, EPA is concerned about the resource burdens of this approach. To reopen permits for each new regulation at the time it is promulgated would impose a large administrative burden on both EPA and the regulated community because a major permit modification would generally require the same administrative procedures as are required for initial permits (e.g., development of a draft permit, public notice, and opportunity for public hearing). As a consequence, the requirements of new standards are usually incorporated into a permit when it is renewed. For standards implemented through the RCRA permit system, the effect of this policy is to "shield" facilities that have been issued a final permit from any requirements promulgated after the issuance of the permit until the time that the permit must be renewed and the new requirements are written into the permit. Thus, this policy is often referred to as the "permit-as-a-shield" policy. Although this policy is generally applied, EPA may evaluate the need to accelerate the implementation of standards developed under RCRA and, if warranted, make exceptions to the permit-as-a-shield policy. In today's rules, the permit-as-a-shield provision applies to control of air emissions from process vents and equipment leaks regulated under section 3004(n). However, as previously noted, in the Phase 11 TSDF air rules, EPA intends to propose modifications to permit-as-a-shield provisions as they apply to control of air emissions under these new subparts. With this proposed action, air rules promulgated under RCRA section 3004(n) would be applicable to all facilities, regardless of permit status.

Both interim status and permitted facilities must comply with the substantive control requirements of the final standards. However, facilities that have already been issued a final permit prior to the effective date of today's final rules are not required to comply with the rules until such time as the permit is reviewed or is reissued. Interim status facilities that have submitted their part B permit application are required to modify their part B applications to incorporate the requirements of today's rules.

The EPA considers that the part 265 standards promulgated here can be satisfied without the need for detailed explanation or negotiation between the facility owner/operator and EPA and therefore, interim status facilities can comply without awaiting permit action. The self-implementing nature of these rules is achieved by including specific criteria for facility owners or operators to identify waste management units that are subject to the regulation and by clearly specifying the emission control and administrative requirements of the rules.

The criteria for applicability are that certain hazardous waste management units at new and existing TSDF that need authorization to operate under RCRA section 3005 are covered by the rules. The applicability includes all hazardous waste management units and recycling units at facilities that require RCRA permits. For the equipment leak standards to apply, the equipment must contain or contact hazardous wastes with a 10-percent-or-more total organics concentration. For the process vent standards to apply, the vents must be associated with specific hazardous waste management units, i.e., distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations, that manage wastes with 10 ppmw or greater total organics concentration.

Control requirements in the final regulation include specific design requirements for equipment and specific performance criteria (i.e., a weight-percent reduction and a volume concentration limit) for emission control devices. Provisions of the final standards also list specific types of equipment required. Owners and operators who use one of the listed types of equipment within the specified design and operational parameters would therefore be in compliance with the regulation as long as the required design, inspection, monitoring, and maintenance provisions were met. Specifications for emission controls that achieve at least a 95-weight-percent reduction in volatile organic emissions are somewhat less specific, but engineering design practices are sufficiently established that the combination of a good control device design and subsequent monitoring of operating parameters, as required by the final regulation, would offer reasonable assurance that the specified emission reduction is being achieved. Regardless of the type of control selected, owners and operators must maintain their own

records of control device design, installation, and monitoring and must submit reports identifying exceeders of monitored control device parameters. Periodic review of the required reports and records by EPA may be used to ensure compliance.

Because today's rules are promulgated under HSWA, all affected facilities must comply with these requirements on the effective date of the rule, regardless of the authorization status of the State in which they are located. In addition, because EPA will implement these rules in every State on the effective date, all reports should be sent to the EPA Regional Offices until the State receives authorization to implement these rules. Therefore, owners and operators of TSDF with existing waste management units subject to the provisions of subparts AA and BB must achieve compliance with the process vent and equipment leak control and monitoring requirements on the effective date of these rules (i.e., 6 months following promulgation) except where compliance would require the installation of a closed-vent system and control device. Information developed under other EPA regulations has shown that in some cases, the design, construction, and installation of a closed-vent system and control device can take as long as 24 months to complete. As a result, EPA is allowing up to 24 months from the promulgation date of the regulation for existing facilities to complete installation if they are required to install a closed-vent system and control device and if they can document that installation of the emission controls cannot reasonably be expected to be completed earlier. In these circumstances, owners/operators are required to develop an implementation schedule that indicates dates by which the design, construction, and operation of the necessary emission controls will be completed. This implementation schedule must document that installation of closed-vent systems and control devices required by the final standards would be achieved within a period of no more than 2 years from today and must be included as part of the facility's operating record on the effective date of these final rules (i.e., 6 months after promulgation). Changes in the implementation schedule are allowed within the 24-month timeframe if the owner or operator documents that the change cannot reasonably be avoided.

This extension would also apply to those existing facilities that are brought under regulation because of new statutory or regulatory amendments under RCRA that render the facility subject to the provisions of subpart AA or BB (e.g., units handling wastes newly listed or identified as hazardous by EPA). That is, the owner or operator may be allowed up to 18 months from the effective date of the statutory or regulatory amendment to complete installation of a control device. However, for facilities adding new waste management units, EPA believes that the lead time involved in such actions provides adequate time for owners and operators to design, procure, and install the required controls. Therefore, all new units must comply with the rules immediately (i.e., must have control equipment installed and operating upon startup of the unit).

Under the approach discussed above, the standards promulgated today for process vents and equipment leaks would be implemented on the following schedule for existing TSDF:

—180 days following promulgation, the new subparts AA and BB standards become effective; all facilities become subject to the new standards.
—On the effective date of the standards, compliance with the standards is required. Each facility that does not have the control devices required by the standards in place and operating must have one of the following in the facility's operating record: (1) An implementation schedule indicating when the controls will be installed, or (2) a process vent emission rate determination that documents that the emission rate limit is not exceeded (therefore, controls are not required).
—No later than 18 months following the effective date (2 years following promulgation), any control devices required by the standards for process vents and equipment leaks must be installed at all facilities.
—All permits issued after the effective date must incorporate the standards.

An existing solid waste management unit may become a hazardous waste management unit requiring a RCRA permit when a waste becomes newly listed or identified as hazardous. Owners and operators of facilities not previously requiring a RCRA permit who have existing units handling newly listed or identified hazardous waste can submit a part A application and obtain interim status. The air emission standards promulgated today would be implemented at these newly regulated facilities on the following schedule:

—180 days following the date the managed waste is listed or identified as hazardous, the standards become effective; facilities become subject to the subpart AA and/or BB standards.
—On the effective date of the standards, each facility that does not have the control devices required by the process and/or equipment leak standards in place must have one of the following in the facility's operating record: (1) An implementation schedule indicating when the controls will be installed, or (2) a process vent emission rate determination that documents that the emission rate limit is not exceeded (therefore, controls are not required).
—No later than 18 months following the effective date (2 years following promulgation), the controls required by the standards must be installed at all facilities.

Newly constructed TSDF are required to submit part A and part B permit applications and to receive a final permit prior to construction as required by § 270.10. Following the effective date of the standards promulgated today, a part B application for a new facility must demonstrate compliance with the standards as contained in part 264, if applicable. Therefore, all controls required by the standards would have to be in place and operating upon startup.

Similarly, new waste management units added to existing facilities would have to be equipped with the required controls prior to startup. For a new unit added to an existing permitted facility, a permit modification would be necessary. Where a new unit is added to a facility in interim status, the owner or operator must submit a revised part A application (§ 270.72[c]), including an explanation of the need for the new unit, and then receive approval from the permitting authority.

For facilities with hazardous waste management units that previously were not subject to control requirements because the wastes in the units did not contain organics in concentrations greater than the applicability criterion of 10 ppmw or 10 percent, the owner or operator would be required to comply with all subpart AA or BB requirements on the date that the facility or waste management unit becomes affected by the rules (i.e., the date the facility begins to manage wastes in the units with organic concentrations greater than 10 ppmw for subpart AA or greater than 10 percent for subpart BB) irrespective of any change in permit status that is required by the change in waste concentration. In this situation, should the facility owner or operator elect to use a control device to comply with the process vent or equipment leak provisions, the control device must be installed and operating on the date when the unit becomes subject to the

rules; the 24-month extension is not applicable in this case. For the process vent emission rate limit, the situation is somewhat different. TSDF process vents associated with the distillation/separation operations specified in the rule that manage wastes with organics concentrations of 10 ppmw or greater are affected by the regulation regardless of whether the facility emissions are above or below the emission rate limit. Therefore, any change in the facility operations that results in a TSDF going above or below the emission rate limit does not cause a change in the applicability of the facility to subpart AA. The rules require that affected TSDF reduce total process vent organic emissions from all affected vents by 95 percent or reduce the facility's total process vent emissions to or below 1.4 kg/h and 2.8 Mg/yr. One of these conditions must be met at all times; the facility's emission rate determination, which documents the facility's status regarding compliance with the process vent standards, must also at all times reflect current design and operation and wastes managed in the affected units.

The permitting authority cited by section 3005 of RCRA and codified in § 270.32(b)(2) states that permits issued under this section "* * * shall contain such terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." This section, in effect, allows permit writers to require, on a case-by-case basis, emission controls that are more stringent than those specified by a standard. This omnibus authority could be used in situations where,in the permit writer's judgment, there is an unacceptably high residual risk after application of controls required by an emission standard. As has been stated, the approach that EPA is using in today's regulatory action is to proceed with promulgation of regulations to control organic emissions and to follow this with regulations that would require more stringent controls for individual hazardous constituents or would otherwise reduce risk where necessary. Until then, permit writers should use their omnibus permitting authority to require more stringent controls at facilities where a high residual risk remains after implementation of the standards for volatile organics.

X. Administrative Requirements

A. Regulatory Impact Analysis

Executive Order No. 12291 (E.O. 12291) requires each Federal agency to determine whether a regulation is a "major" rule as defined by the order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The final rule establishes the specific emission levels and emission control programs that facilities must meet in reducing air emissions from hazardous waste management units. A complete assessment of the costs,impacts, and benefits of these rules has been conducted by EPA. This analysis indicates that the requirements of the rules for TSDF equipment leaks and process vents result in none of the economic effects set forth in section 1 of the E.O. 12291 as grounds for finding a regulation to be major. The industry-wide annualized costs of the standards are estimated to be $46 million, which is less than the $100 million established as the first criterion for a major regulation in E.O. 12291. Price increases associated with the final standards are not considered a "major increase in costs or prices" specified as the second criterion in E.O. 12291. The final standard's effect on the industry would not result in any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in E.O. 12291).

The final rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). This analysis is not necessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state that if at least 20 percent of the universe of "small entities" is affected by the rule, then an RFA is required. In addition, the EPA criteria are used to evaluate if a regulation will have a "significant impact" on small entities. If any one of the following four criteria is met, the regulation should be assumed to have a "significant impact:"

1. Annual compliance costs increase the relevant production costs for small entities by more than 5 percent.

2. The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities.

3. Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities.

4. The costs of the regulation will likely result in closures of small entities.

At proposal, EPA's Administrator certified that the rule would not have a significant impact on small businesses because the only entities subject to the rule are those required to have a permit for treatment, storage, and disposal of hazardous waste. Few, if any, of these facilities are small entities. Based on comments received at proposal, EPA reviewed this conclusion in light of the revisions made to the proposed standards and closely examined the potential impacts on the industry segment comprised primarily of small commercial recyclers. As a result of the revisions made to exempt small facilities from having to install control devices, EPA again concluded that the economic impact on small businesses will be minimal and did not prepare a formal RFA in support of the rule.

Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. Therefore, this regulation does not require an RFA.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060-0195.

Public reporting burden resulting from this rulemaking is estimated to be about 9 hours per response (on average), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to require 180 hours a year for each facility.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs (Paperwork Reduction Project (2060-0195)), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Supporting Documentation

The dockets for this rulemaking (Docket No. F-88-AESP-FFFFF, which covers the development of the rules up to proposal, and Docket No. F-90-AESF-FFFFF, which covers development of the final rules from proposal to promulgation) are available for public inspection at the EPA RCRA Docket Office (OS-300) in room 2427M of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials and should call (202) 475-9327 for appointments. Docket A-79-27, containing support information used in developing the National Emission Standard for Hazardous Air Pollutants; Benzene Fugitive Emissions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20/page. The docket contains a copy of all references cited in the BID for the proposed and final rules, as well as other relevant reports and correspondence.

List of Subjects

40 CFR Part 260

Air stripping operation, Closed-vent system, Condenser, Control device, Distillation operation, Equipment, Fractionation operation, Process vent, Solvent extraction operation, Steam stripping operation, Thin-film evaporation operation, Vapor incinerator, Vented, Incorporation by reference.

40 CFR Part 261

Hazardous waste, Recyclable materials, Recycling, Hazardous waste management units.

40 CFR Parts 264 and 265

Hazardous waste, Treatment, storage, and disposal facilities, Air emission standards for process vents, Air emission standards for equipment leaks, Incorporation by reference, Process vents, Closed-vent systems, Control devices' Pumps, Valves, Pressure relief devices, Sampling connection systems, Open-ended lines, Alternative standards, Test methods, Recordkeeping requirements, Reporting requirements.

40 CFR Part 270

Administrative practices and procedures, Hazardous waste permit program, Process vents, Equipment leaks, Reporting and recordkeeping requirements.

40 CFR Part 271

Hazardous waste, State hazardous waste programs, Process vent and equipment leak air emission standards for TSDF.

Dated June 13, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I, title 40, of the Code of Federal Regulations, parts 260, 261, 264, 265, 270, and 271, are amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

2. Section 260.11 is amended by adding the following references to paragraph (a):

§ 260.11 References.

(a) * * *

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"ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography," ASTM Standard D 1946-82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," ASTM Standard D 2382-83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," ASTM Standard E 169-87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis," ASTM Standard E 168-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practice for Packed Column Gas Chromatography," ASTM Standard E 260-85, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," ASTM Standard D 2267-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteriscope," ASTM Standard D 2879-86, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6921, 6922, and 6937.

Subpart A—General

4. In § 261.6, paragraph (c)(1) is revised and paragraphs (c)(2)(iii) and (d) are added to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, and BB of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

(2) * * *

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

6. Section 264.13 is amended by revising paragraph (b)(6) to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314, 264.341, 264.1034(d), 264.1063(d), and 268.7 of this chapter.

* * * * *

7. Section 264.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.253, 264.254, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

8. Section 264.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 264.73 Operation record.

* * * * *

(b) * * *

(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F and §§ 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), and 264.1064.

* * * * *

9. Section 264.77 is amended by revising paragraph (c) to read as follows:

§ 264.77 Additional reports.

* * * * *

(c) As otherwise required by subparts F, K through N, AA, and BB.

10. 40 CFR part 264 is amended by adding subpart AA to read as follows:

Subpart AA—Air Emission Standards for Process Vents

264.1030 Applicability.
264.1031 Definitions.
264.1032 Standards: Process vents.
264.1033 Standards: Closed-vent systems and control devices.
264.1034 Test methods and procedures.
264.1035 Recordkeeping requirements.
264.1036 Reporting requirements.
264.1037–264.1049 [Reserved]

Subpart AA—Air Emission Standards for Process Vents

§ 264.1030 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 261).

(b) Except for §§ 264.1034(d) and 264.1035(e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10-ppmw, if these operations are conducted in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) If the owner or operator of process vents subject to the requirements of §§ 264.1032 through 264.1036 has received a permit under section 3005 of RCRA prior to December 21, 1990 the requirements of §§ 264.1032 through 264.1036 must be incorporated when the permit is reissued under § 124.15 or reviewed under § 270.50.

[Note: The requirements of §§ 264.1032 through 264.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 264.1(g) are not affected by these requirements.]

§ 264.1031 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and parts 260–266.

Air stripping operation is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

Bottoms receiver means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

Condenser means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

Connector means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

Continuous recorder means a data-recording device recording an instantaneous data value at least once every 15 minutes.

Control device means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

Control device shutdown means the cessation of operation of a control device for any purpose.

Distillate receiver means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

Distillation operation means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this subpart.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device that indicates whether gas flow is present in a vent stream.

First attempt at repair means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

Fractionation operation means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

Hazardous waste management unit shutdown means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

Hot well means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

In gas/vapor service means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

In heavy liquid service means that the piece of equipment is not in gas/vapor service or in light liquid service.

In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

In situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

Malfunction means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

Process vent means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Separator tank means a device used for separation of two immiscible liquids.

Solvent extraction operation means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Startup means the setting in operation of a hazardous waste management unit or control device for any purpose.

Steam stripping operation means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

Surge control tank means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

Thin-film evaporation operation means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Vented means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

§ 264.1032 Standards: Process vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of § 264.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 264.1034(c).

(d) When an owner or operator and the Regional Administrator do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in § 264.1034(c) shall be used to resolve the disagreement.

§ 264.1033 Standards: Closed-vent systems and control devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 18 months after the effective date that the facility becomes subject to this subpart for installation and startup. All units that begin operation after December 21, 1990, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 2-year implementation schedule does not apply to these units.

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 264.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4) (ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ (H_T)$$

where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 264.1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 264.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 264.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k)(1) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § 264.1034(b).

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator.

(3) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(l) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 264.1034 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 264.1033(k), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the

procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with § 264.1032(a) and with the total organic compound concentration limit of § 264.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 in 40 CFR part 60 for organic content.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1}.

(v) The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Regional Administrator's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW–846 (incorporated by reference under § 260.11).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later, and

(2) For continuously generated waste, annually, or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8240 may be used to resolve the dispute.

§ 264.1035 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of § 264.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in § 264.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 264.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records including the dates of each compliance test required by § 264.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average

temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 264.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 264.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 264.1033 (f)(1) and (f)(2).

(3) Monitoring, operating, and inspection information required by paragraphs (f) through (k) of § 264.1033.

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 264.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 264.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 264.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 264.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in § 264.1033(g) or § 264.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in § 264.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3)–(c)(8) of this section need be kept only 3 years.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 264.1032 including supporting documentation as required by § 264.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

(Approved by the Office of Management and Budget under control number 2060-0195)

§ 264.1036 Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Regional Administrator by dates specified by the Regional Administrator. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period, dates when the control device exceeded or operated outside of the design specifications as defined in § 264.1035(c)(4) and as indicated by the control device monitoring required by § 264.1033(f) and such exceedances were not corrected within 24 hours, or that a flare operated with visible emissions as defined in § 264.1033(d) and as determined by Method 22 monitoring, the duration and cause of each exceedance or visible emissions, and any corrective measures taken.

(b) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in § 264.1035(c)(4) for more than 24 hours or a flare does not operate with visible emissions as defined in § 264.1033(d), a report to the Regional Administrator is not required.

(Approved by the Office of Management and Budget under control number 2060-0195)

§§ 264.1037-264.1048 [Reserved].

11. 40 CFR part 264 is amended by adding subpart BB to read as follows:

Subpart BB—Air Emission Standards for Equipment Leaks

264.1050 Applicability.
264.1051 Definitions.
264.1052 Standards: Pumps in light liquid service.
264.1053 Standards: Compressors.
264.1054 Standards: Pressure relief devices in gas/vapor service.
264.1055 Standards: Sampling connecting systems.
264.1056 Standards: Open-ended valves or lines.
264.1057 Standards: Valves in gas/vapor service or in light liquid service.
264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
264.1059 Standards: Delay of repair.
264.1060 Standards: Closed-vent systems and control devices.
264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.
264.1063 Test methods and procedures.
264.1064 Recordkeeping requirements.
264.1065 Reporting requirements.
264.1066–264.1079 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1050 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 264.1).

(b) Except as provided in § 264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) If the owner or operator of equipment subject to the requirements of §§ 264.1052 through 264.1065 has received a permit under section 3005 of RCRA prior to December 21, 1990, the requirements of §§ 264.1052 through 264.1065 must be incorporated when the permit is reissued under § 124.15 or reviewed under § 270.50.

(d) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of § 264.1052 to § 264.1060 if it is identified as required in § 264.1064(g)(5).

[Note: The requirements of §§ 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under § 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 264.1(g) are not affected by these requirements.]

§ 264.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260–266.

§ 264.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If a instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is

detected, except as provided in § 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, *provided* the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 264.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 264.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 264.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 264.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 264.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 264.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 264.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 264.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

§ 264.1054 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 264.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 264.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 264.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 264.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 264.1055 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed purge system or closed-vent system.

(b) Each closed-purge system or closed-vent system as required in paragraph (a) shall:

(1) Return the purged hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere, or

(2) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere, or

(3) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of § 264.1060.

(c) *In situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 264.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 264.1057 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section, and §§ 264.1061 and 264.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 264.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 264.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(g) Any valve that is designated, as described in § 264.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 264.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 264.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 264.1057(e).

§ 264.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 264.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

§ 264.1060 Standards: Closed-vent systems and control devices.

Owners or operators of closed-vent systems and control devices shall comply with the provisions of § 264.1033.

§ 264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 264.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) An owner or operator must notify the Regional Administrator that the owner or operator has elected to comply with the requirements of this section.

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Regional Administrator.

(3) If a valve leak is detected, it shall be repaired in accordance with § 264.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in § 264.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in § 264.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 264.1057 for which leaks are detected by the total number of valves subject to the requirements in § 264.1057 within the hazardous waste management unit.

(d) If an owner or operator decides to comply with this section no longer, the owner or operator must notify the Regional Administrator in writing that the work practice standard described in § 264.1057(a) through (e) will be followed.

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a)(1) An owner or operator subject to the requirements of § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(2) An owner or operator must notify the Regional Administrator before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in § 264.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves subject to the requirements in § 264.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves subject to the requirements in § 264.1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operator shall monitor monthly in compliance with the requirements in § 264.1057, but may again elect to use this section after meeting the requirements of § 264.1057(c)(1).

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§ 264.1063 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 264.1052–264.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 264.1052(e), 264.1053(i), 264.1054, and 264.1067(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under § 260.11);

(2) Method 9060 or 8240 of SW–846 (incorporated by reference under § 260.11); or

(3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Regional Administrator do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 264.1034(c)(1) through (c)(4).

§ 264.1064 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For each piece of equipment to which Subpart BB of Part 264 applies:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that comply with the provisions of § 264.1033(a)(2), an implementation schedule as specified in § 264.1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(4) Documentation of compliance with § 264.1060, including the detailed design documentation or performance test results specified in § 264.1035(b)(4).

(c) When each leak is detected as specified in §§ 264.1052, 264.1053, 264.1057, and 264.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 264.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in §§ 264.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in §§ 264.1052, 264.1053, 264.1057, and 264.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with § 264.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 264.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with § 264.1059(c).

(8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 264.1060 shall be recorded and kept up-to-date in the facility operating record as specified in § 264.1035(c). Design documentation is specified in § 264.1033 (c)(1) and (c)(2) and monitoring, operating, and inspection information in § 264.1035(c)(3)–(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in §§ 264.1052 through 264.1060 shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 264.1052(e), 264.1053(i), and 264.1057(f).

(ii) The designation of this equipment as subject to the requirements of §§ 264.1052(e), 264.1053(i), or 264.1057(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 264.1054(a).

(4)(i) The dates of each compliance test required in §§ 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(h) The following information pertaining to all valves subject to the requirements of § 264.1057 (g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with § 264.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) Criteria required in § 264.1052(d)(5)(ii) and § 264.1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous waste management unit.

(2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in §§ 264.1052 through 264.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 264.1052 through 264.1060. The record shall include supporting documentation as required by § 264.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in §§ 264.1052 through 264.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to determine compliance with this subpart by documentation either pursuant to § 264.1064 of this subpart, or pursuant to those provisions of 40 CFR part 60 or 61, to the extent that the documentation under the regulation at 40 CFR part 60 or part 61 duplicates the documentation required under this subpart. The documentation under the regulation at 40 CFR part 60 or part 61 shall be kept with or made readily available with the facility operating record.

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§ 264.1065 Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Regional Administrator by dates specified by the Regional Administrator. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period:

(i) The equipment identification number of each valve for which a leak was not repaired as required in § 264.1057(d).

(ii) The equipment identification number of each pump for which a leak was not repaired as required in § 264.1052 (c) and (d)(6).

(iii) The equipment identification number of each compressor for which a leak was not repaired as required in § 264.1053(g).

(3) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

(4) For each month during the semiannual reporting period, dates when the control device installed as required by § 264.1052, 264.1053, 264.1054, or 264.1055 exceeded or operated outside of the design specifications as defined in § 264.1064(e) and as indicated by the control device monitoring required by § 264.1060 and was not corrected within 24 hours, the duration and cause of each exceedance, and any corrective measures taken.

(b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in §§ 264.1057 (d), 264.1052 (c) and (d)(6), and 264.1053 (g), respectively, and the control device does not exceed or operate outside of the design specifications as defined in § 264.1064(e) for more than 24 hours, a report to the Regional Administrator is not required.

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§§ 264.1066-264.1079 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6095, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

13. Section 265.13 is amended by revising paragraph (b)(6) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034(d), 265.1063(d), and 268.7 of this chapter.

14. Section 265.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, and 265.1056.

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Subpart E—Manifest System, Recordkeeping, and Reporting

15. Section 265.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data when required by §§ 265.90, 265.94, 265.191, 265.193, 265.195, 265.278, 265.278, 265.280(d)(1), 265.347, 265.377, 265.1034(c)-265.1034(f), 265.1035, 265.1063(d)-265.1063(i), and 265.1064.

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16. Section 265.77 is amended by adding paragraph (d) as follows:

§ 265.77 Additional reports.

* * * * *

(d) As otherwise required by Subparts AA and BB.

17. 40 CFR part 265 is amended by adding Subpart AA to read as follows:

Subpart AA—Air Emission Standards for Process Vents

265.1030 Applicability.
265.1031 Definitions.
265.1032 Standards: Process vents.
265.1033 Standards: Closed-vent systems and control devices.
265.1034 Test methods and procedures.
265.1035 Recordkeeping requirements.
265.1036—265.1049 [Reserved]

Subpart AA—Air Emission Standards for Process Vents

§ 265.1030 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except for §§ 265.1034(d) and 265.1035(d), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

[Note: The requirements of §§ 265.1032 through 265.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 265.1(c) are not affected by these requirements.]

§ 265.1031 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260-266.

§ 265.1032 Standards: Process vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction or air or steam stripping operations managing hazardous wastes with organic concentrations at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section, the closed-vent system and control device must meet the requirements of § 265.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 265.1034(c).

(d) When an owner or operator and the Regional Administrator do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in § 265.1034(c) shall be used to resolve the disagreement.

§ 265.1033 Standards: Closed-vent systems and control devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 18 months after the effective date that the facility becomes subject to this subpart for installation and startup. All units that begin operation after December 21, 1990 must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 3-year implementation schedule does not apply to these units.

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 265.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater, if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, of less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4) (ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section, and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[\sum_{i=1}^{n} C_i H_i \right]$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i, kcal/g mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

H_T = The net heating value as determined in paragraph (e)(2) of this section.

28.8 = Constant.

31.7 = Constant.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ (H_T)$$

where:

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

(vii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f) (1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 265.1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 265.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 265.1035(b)(4)(iii)(G).

(i) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(j)(1) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § 265.1034(b).

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator.

(3) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(k) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 265.1034 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 265.1033(j), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with § 265.1032(a) and with the total organic compound concentration limit of § 265.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 in 40 CFR part 60 for organic content.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd} \left[\sum_{i=1}^{n} C_i MW_i \right] [0.0416] [10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);
10^{-6} = Conversion from ppm, ppm^{-1}.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_h)(H)$

where:

E_A = Total organic mass emission rate, kg/y;
E_h = Total organic mass flow rate for the process vent, kg/h;
H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h, as determined in paragraph (c)(1)(v) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Regional Administrator's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW-846 (incorporated by reference under § 260.11).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later; and

(2) For continuously generated waste, annually; or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8240 can be used to resolve the dispute.

§ 265.1035 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in § 265.1032, including:

(i) Information and data identifying all affected process vents, annual throughput end operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 265.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records including the dates of each compliance test required by § 265.1033(j).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 265.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 265.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 265.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 265.1033(f)(1) and (f)(2).

(3) Monitoring, operating and inspection information required by paragraphs (f) through (j) of § 265.1033.

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section; or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section; or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 265.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 265.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (3) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For carbon adsorption systems operated subject to requirements specified in § 265.1033(g) or § 265.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For carbon adsorption systems operated subject to requirements specified in § 265.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(8) of this section need be kept only 3 years.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 265.1032 including supporting documentation as required by § 265.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

(Approved by the Office of Management and Budget under control number 2060-0105)

§§ 265.1036-265.1049 [Reserved]

18. 40 CFR part 265 is amended by adding subpart BB to read as follows:

Subpart BB—Air Emission Standards for Equipment Leaks

265.1050 Applicability.
265.1051 Definitions.
265.1052 Standards: Pumps in light liquid service.
265.1053 Standards: Compressors.
265.1054 Standards: Pressure relief devices in gas/vapor service.
265.1055 Standards: Sampling connecting systems.
265.1056 Standards: Open-ended valves or lines.
265.1057 Standards: Valves in gas/vapor service or in light liquid service.
265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
265.1059 Standards: Delay of repair.
265.1060 Standards: Closed-vent systems and control devices.
265.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.
265.1063 Test methods and procedures.
265.1064 Recordkeeping requirements.
265.1065-265.1079 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1050 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except as provided in § 265.1084(j), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(d) Equipment that is in vacuum service is excluded from the requirements of § 265.1052 to § 265.1060 if it is identified as required in § 265.1064(g)(5).

[Note: The requirements of §§ 265.1052 through 265.1064 apply to equipment associated with hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 265.1(c) are not affected by these requirements.]

§ 265.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260–266.

§ 265.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a), *provided* the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 265.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 265.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 265.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates

failure of the seal system, the barrier fluid system or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 265.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 265.1064(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

§ 265.1064 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 265.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 265.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1065 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge system or closed-vent system.

(b) Each closed-purge system or closed-vent system as required in paragraph (a) shall:

(1) Return the purged hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere, or

(2) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere, or

(3) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of § 265.1060.

(c) *In situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1066 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 265.1067 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section and §§ 265.1061 and 265.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 265.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 265.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(g) Any valve that is designated, as described in § 265.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 265.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 265.1068 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 265.1057(e).

§ 265.1069 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 265.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

§ 265.1060 Standards: Closed-vent systems and control devices.

Owners or operators of closed-vent systems and control devices shall comply with the provisions of § 265.1033.

§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) An owner or operator must notify the Regional Administrator that the owner or operator has elected to comply with the requirements of this section.

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Regional Administrator.

(3) If a valve leak is detected, it shall be repaired in accordance with § 265.1057 (d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in § 265.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in § 265.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 265.1057 for which leaks are detected by the total number of valves subject to the requirements in § 265.1057 within the hazardous waste management unit.

(d) If an owner or operator decides no longer to comply with this section, the owner or operator must notify the Regional Administrator in writing that the work practice standard described in § 265.1057 (a) through (e) will be followed.

§ 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a)(1) An owner or operator subject to the requirements of § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(2) An owner or operator must notify the Regional Administrator before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in § 265.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves subject to the requirements in § 265.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves subject to the requirements in § 265.1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operators hall monitor monthly in compliance with the requirements in § 265.1057, but may again elect to use this section after meeting the requirements of § 265.1057(c)(1).

§ 265.1063 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 265.1052–265.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by § 265.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under § 260.11);

(2) Method 9060 or 8240 of SW–846 (incorporated by reference under § 260.11); or

(3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Regional Administrator do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 265.1034 (c)(1) through (c)(4).

§ 265.1064 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For each piece of equipment to which subpart BB of part 265 applies:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule as specified in § 265.1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 265.1035(b)(3).

(4) Documentation of compliance with § 265.1060, including the detailed design documentation or performance test results specified in § 265.1035(b)(4).

(c) When each leak is detected as specified in §§ 265.1052, 265.1953, 265.1057, and 265.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 265.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 265.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in §§ 265.1052, 265.1053, 265.1057, and 265.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with § 265.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 265.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with § 265.1059(c).

(8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 265.1060 shall be recorded and kept up-to-date in the facility operating record as specified in § 265.1035(c). Design documentation is specified in § 265.1035 (c)(1) and (c)(2) and monitoring, operating, and inspection information in § 265.1035 (c)(3)–(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(g) The following information pertaining to all equipment subject to the requirements in §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 265.1052(e), 265.1053(i), and 265.1057(f).

(ii) The designation of this equipment as subject to the requirements of §§ 265.1052(e), 265.1053(i), or 265.1057(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 265.1054(a).

(4)(i) The dates of each compliance test required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(h) The following information pertaining to all valves subject to the requirements of § 265.1057 (g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with § 265.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) Criteria required in §§ 265.1052(d)(5)(ii) and 265.1053(e)(2) and an explanation of the criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous waste management unit.

(2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in §§ 265.1052 through 265.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 265.1052 through 265.1060. The record shall include supporting documentation as required by § 265.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in §§ 265.1052 through 265.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to determine compliance with this subpart by documentation either pursuant to § 265.1064 of this subpart, or pursuant to those provisions of 40 CFR part 60 or 61, to the extent that the documentation under the regulation at 40 CFR part 60 or part 61 duplicates the documentation required under this subpart. The documentation under the regulation at 40 CFR part 60 or part 61 shall be kept with or made readily available with the facility operating record.

(Approved by the Office of Management and Budget under control number 2060–0185)

§§ 265.1065–265.1079 [Reserved]

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

19. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937–6939, and 6974.

Subpart B—Permit Application

20. Section 270.14 is amended by revising the last sentence of paragraph (b)(5) and by revising paragraphs (b)(8)(iv), (v), and by adding paragraph (b)(8)(vi) to read as follows:

§ 270.14 Contents of Part B: General requirements

* * * * * *

(b) * * *

(5) * * * Include, where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

* * * * * *

(8) * * *

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

* * * * * *

Section 270.24 is added to read as follows:

§ 270.24 Specific Part B information requirements for process vents.

Except as otherwise provided in § 264.1, owners and operators of facilities that have process vents to which subpart AA of part 264 applies must provide the following additional information:

(a) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart AA on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart AA, an implementation schedule as specified in § 264.1033(a)(2).

(b) Documentation of compliance with the process vent standards in § 264.1032, including:

(1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(3) Information and data used to determine whether or not a process vent is subject to the requirements of § 264.1032.

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of § 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation of compliance with § 264.1033, including:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records including the dates of each compliance test required by § 264.103(k).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of § 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(Approved by the Office of Management and Budget under control number 2060-0195)

22. Section 270.25 is added as follows:

§ 270.25 Specific part B information requirements for equipment.

Except as otherwise provided in § 264.1, owners and operators of facilities that have equipment to which subpart BB of part 264 applies must provide the following additional information:

(a) For each piece of equipment to which subpart BB of part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart BB on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart BB, an implementation schedule as specified in § 264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under § 264.1064. The Regional Administrator may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records including the dates of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(Approved by the Office of Management and Budget under control number 2060-0915)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

23. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

24. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1. REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * *	*	*
[Insert date of publication].	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Insert FR reference on date of publication].	[Insert effective date.]

[FR Doc. 90-14260 Filed 6-20-90; 8:45 am]

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Thursday
June 21, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Interim and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45, 52, and 53

[Federal Acquisition Circular 84-58]

RIN 9000-AD33, 9000-AD39, 9000-AD42, 9000-AB73, 9000-AD67, 9000-AD25, 9000-AD64, 9000-AC79, 9000-AD10, 9000-AD60, 9000-AC95, 9000-AD68, 9000-AD66, 9000-AD74, 9000-AC71, 9000-AD22, 9000-AD07

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments, and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-58 amends the Federal Acquisition Regulation (FAR) with respect to the following: Women-Owned Business Subcontract Reporting (SF 295); Certification of Commercial Pricing; Independent Price Determination Certificate Outside the United States; Small Business Act Notice Thresholds and Small Business—Small Purchase Set-Aside; Timely Completion of Justifications; Technical Corrections to FAR subpart 7.3; Vehicle Leasing Certification; First Article Test Pricing; Price Reasonableness Threshold; Thresholds—part 14; Size Standards; Microprocessor Chips; Revaluation of Assets; Independent Research and Development and Bid and Proposal Cost (IR&D/B&P); Advance Payments—Alternate Provision; Special Tooling/Special Test Equipment (ST/STE), Eliminate Remarking; Return of Inventory to Suppliers; Interpretation of Overtime Policy; Revision of Preaward Survey Forms; Standard Forms 294 and 295; Editorial Corrections; Nonmanufacturers Rule; Commerce Patent Regulation, Pub. L. 98-620; and FAR Index Revision through FAC 84-58.

DATES: *Effective Date:* July 23, 1990, except for (the interim rule, Item I) 53.219(b) and the related Standard Form (SF) 295 in 53.301-295 that are effective June 21, 1990.

Comment Date: Comments on the interim rule, Item I, should be submitted to the FAR Secretariat at the address shown below on or before August 20, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 84-58, Item I, in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 84-58.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue an Interim Rule

FAC 84-58, Item I. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-58 as an interim rule. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

FAC 84-58, Item II. On November 18, 1988 (53 FR 46792), Certification of Commercial Pricing, was published as a proposed rule implementing Pub. Laws 98-577 (applicable to civilian agencies), and 98-525 and 98-591 (applicable to DoD, NASA, and the Coast Guard) requiring that acquisitions of commercial items be subject to a certification regarding the lowest price charged the public for items.

This final rule revises the interim rule currently in the FAR and published as Item III in FAC 84-10, in the Federal Register on July 3, 1985 (50 FR 27560).

FAC 84-58, Item X. Part 14 contains a $10,000 threshold for the inclusion of several provisions and clauses in construction contracts. Given the extremely narrow class of construction contracts that fall under $10,000, this threshold is no longer justified. This rule deletes this threshold in FAR parts 14 and 52.

Additionally, the requirement in 14.201-6(d) and the provision at 52.214-8 are satisfied by the rule found at 4.904 and the provision at 52.204-3. Consequently, this rule deletes 14.201-6(d) and the clause at 52.214-8 in their entireties.

FAC 84-58, Item XIV. Section 203 of Pub. L. 91-441, as amended by section 208 of Pub. L. 96-342, authorizes periodic adjustment of the threshold amounts at which advance agreements must be negotiated covering independent research and development and bid and proposal costs. Effective October 1, 1989, the Department of Defense has raised these thresholds to $5,400,000 for companies and $675,000 for profit centers. This change is being incorporated into 31.205-18.

FAC 84-58, Item XV. FAR 32.409-3(e) currently permits contracting officers to omit the requirement for deposit of advance payments in a special bank account in connection with advance payment agreements with instrumentalities of the Government, a State, a local government, or agencies or instrumentalities of State or local governments, if the official approving the advance payment determines that adequate security exists to protect the Government. Special bank accounts are also not required in connection with advance payments by letters of credit (see FAR 32.409-3(g)). FAR 32.412(f) authorizes contracting officers to omit the terms pertaining to a special bank account if the requirement for a special bank account is eliminated in accordance with 32.409-3(e) or (g), but places the burden on contracting officers to delete the related language from the clause at 52.232-12.

Since the deletion of language pertaining to special bank accounts is a complex task, this rule establishes an alternate clause with pertinent language deleted to facilitate use of the option provided by 32.409-3 (e) and (g). No change in existing requirements is intended or made in this final rule.

FAC 84-58, Item XVI. FAR 45.506(c) requires contractors to mark Government-owned special tooling and special test equipment with a serial number and the identity of the agency owning the property. When property is transferred to contracts awarded by another agency, re-marking is required.

This rule requires marking to identify a serial number and an indication of Government ownership, as opposed to agency ownership, which is consistent with the requirement for marking plant equipment in 45.506(d).

FAC 84-58, item XVII. FAR 45.605-2 states that Plant Clearance Officers shall encourage contractors to return allocable quantities of excess Government-owned, contractor-acquired property for appropriate credit. FAR 45.606-3(b) states that Plant Clearance Officers shall verify that contractors have endeavored to effect such returns.

The terms "encourage" and "verify" have led to some confusion regarding the Government's responsibilities in this area.

The most practical way to determine whether contractors are attempting to return inventories to suppliers, where appropriate, is during property control system surveys. Thus, compliance is reviewed on a system basis rather than by individual transactions.

FAC 84-58, Item XVIII. A question has been raised concerning whether or not during the FAR preparation a substantive change was intended with respect to the overtime policy in the clause at 52.222-2, Payment for Overtime Premiums. Recent interpretations of the policy appear to impose a two-part requirement for the legitimacy of all overtime. Not only must the overtime be covered by a dollar amount, as specified in paragraph (a) of the clause, it must also only be of the type described under subparagraphs (a)(1) through (a)(4) of the clauses. Clarification of the policy had been requested.

C. Regulatory Flexibility Act

FAC 84-58, Items I, II, III, IV, IX, XIII, XV, and XX. DoD, GSA, and NASA certify that these final rules in FAC 84-58 will not have a significant economic impact on a substantial number of small entities under the Regulatoy Flexibility Act (5 U.S.C. 601, et seq.) because—

Item I. Small businesses are exempt from the requirement to submit the report form.

Item II. Information required should be readily available to small businesses since they are less likely to have decentralized sales records and the large volume of sales transactions normally associated with larger businesses. No public comments were received from small entities that addressed the Initial Regulatory Flexibility Analysis published with the proposed rule. A Final regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

Item III. There is no cost or administrative impact on U.S. contractors or offerors. It affects only contractors and offerors outside the United States, its possessions, and Puerto Rico.

Item IV. The final rule implements statutory direction by amending the FAR to increase the small business, small purchase set-aside threshold from $10,000 to $25,000. This revision will result in an increase in the number of procurement actions reserved for small business participation, thereby benefiting such firms. The threshold increase for Commerce Business Daily (CBD) notices of pending procurement actions may affect those small businesses which rely exclusively upon the CBD for their information about pending procurements. However, our experience indicates that a preponderance of small purchase awards are made to firms which have responded to solicitations issued pursuant to bidders' mailing lists or which have learned of pending procurements through local posting of the requirements.

Item IX. Existing regulations address the establishment of a special category of set-asides, for acquisitions of supplies or services that have an anticipated dollar value of $25,000 or less. This rule does not affect those set-asides. It merely reduces the Government's administrative costs for low dollar value set-asides.

Item XIII. Most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply.

Item XV. No changes to existing rules are being made. An alternate contract clause is being added to the FAR to facilitate use of a clause which current rules require contracting officers to modify on a case-by-case basis.

Item XX. Small businesses are exempt from the requirement to submit the report forms.

Therefore, the Regulatory Flexibility Act does not apply.

FAC 84-58, Items V, VI, VII, X, XI, XII, XIV, XVI, XVII, XVIII, and XIX. The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 90-610 in correspondence pertaining to the appropriate item in FAC 84-58.

FAC 84-58, Item VIII. It is expected that this final rule will have a significant impact on a number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

FAC 84-58, Item I. The information collection requirements in this rule, pertaining to Standard Form (SF) 295, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000-0007.

FAC 84-58, Item II. The information collection requirements in this rule, pertaining to Certification of Commercial Pricing, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000-0105.

FAC 84-58, Items III through XIX. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-58, Item XX. The information collection requirements in this rule, pertaining to Standard Form (SF) 294, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000-0005.

E. Public Comments

FAC 84-58, Items II, III, IV, VI, VIII, IX, XIII, XV, and XX. The comments that were received were considered by the Councils in the development of the following final rules:

Item II. On July 3, 1985, an interim rule (FAC 84-10, Item III) was published in the Federal Register (50 FR 27560) and on November 18, 1988, a proposed rule was published in the Federal Register (53 FR 46792).

Item III. On January 4, 1988, a proposed rule was published in the Federal Register (53 FR 100).

Item IV. On July 9, 1987, an interim rule (FAC 84-23, Item I) was published in the Federal Register (52 FR 21684).

Item VI. On July 13, 1988, a proposed rule was published in the Federal Register (54 FR 29214).

Item VIII. On January 27, 1989, a proposed rule was published in the **Federal Register** (54 FR 4230).

Item IX. On May 4, 1989, a proposed rule was published in the **Federal Register** (54 FR 19339).

Item XIII. On May 1, 1989, proposed rule was published in the **Federal Register** (54 FR 18634).

Item XV. On March 23, a proposed rule was published in the **Federal Register** (54 FR 12126).

Item XX. On November 30, 1988, a proposed rule was published in the **Federal Register** (53 FR 48495).

List of Subjects in 48 CFR Parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45, 52, and 53

Government procurement.

Dated: June 15, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84-58]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-58is effective July 23, 1990, except for (the interim rule, Item I) 53.219(b) and the related Standard Form (SF) 295 in 53.301-295 that are effective June 21, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

S. J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-58 amends the Federal Acquisition Regulation as specified below:

Item I—Women-Owned Business Subcontract Reporting (SF 295)

Section 503, Public Law 100-656, the Business Opportunity Development Act of 1988, requires agencies to report subcontracts awarded to women-owned small businesses, effective October 1989. In order to collect this information, the Standard Form (SF) 295 is revised to add a block for reporting of subcontract dollars awarded to women-owned small business concerns.

Item II—Certification of Commercial Pricing

FAR 1.105, 15.813, 15.813-1, 15.813-2, 15.813-3, 15.813-4, 15.813-5, 15.813-6, 15.813-7, and the clause at 52.215-32 are revised, and 14.214 and the clause at 52.215-37 are added to implement the requirements of Public Laws 98-525, 98-577, and 99-591 pertaining to commercial pricing certificates.

Item III—Independent Price Determination Certificate Outside the United States

FAR 3.103-1(b) is removed and 3.103-2(b)(1) is revised to make the Independent Price Determination Certificate applicable to solicitations for work to be performed outside the United States. FAR 3.303(e) is added to permit contracting officers to refer suspected collusive offers from foreign contractors to authorities of the foreign government.

Item IV—Small Business Act Notice Thresholds and Small Business—Small Purchase Set-Aside

FAR 5.205(d)(2) is revised to require posting of notices of all architect-engineer solicitations which are not synopsized; this rule makes final Item I of FAC 84-28 published in the **Federal Register** on June 9, 1987 (52 FR 21884).

Pub. L. 99-500 amended the Small Business Act and the Office of Federal Procurement Policy Act to raise the threshold for publicizing proposed acquisitions in the Commerce Business Daily from $10,000 to $25,000 but retained the $10,000 synopsis threshold for acquisitions if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.

Item V—Timely Completion of Justifications

FAR 6.303-1(e) is revised to require that justifications for other than full and open competition based on the urgency exception that are prepared after contract award be prepared and approved within a reasonable time after award.

Item VI—Technical Corrections to FAR Subpart 7.3

FAR 7.300(b), 7.302, 7.303(b)(1), 7.304(b)(1), 7.306(a)(2), 7.306(a)(3), 7.306(b)(3), 7.307(a), and the clauses at 52.207-1 and 52.207-2 are revised to include technical corrections needed to comply with recent changes made to OMB Circular A-76.

Item VII—Vehicle Leasing Certification

FAR 8.1102 is revised to delete the requirement for the contracting officer to obtain certifications of fuel efficiency and availability from the requiring activity before leasing motor vehicles for less than 60 days. This change conforms the FAR with the Motor Vehicle Information and Cost Savings Act and the regulations implementing that law.

Item VIII—First Article Test Pricing

FAR 9.308(j), 14.404-2(f), 14.404-2(g), 14.407-2(b) and 15.814 are added, and the clauses at 52.214-10, 52.215-16, and 52.217-5 are revised to provide notice to offerors and guidance to contracting personnel concerning unbalanced bids and proposals.

Item IX—Price Reasonableness Threshold

FAR 13.106 is revised to increase from $1,000 to "ten percent of the small purchase limitation" the threshold above which price reasonableness must be based on competitive quotations and under which purchases may be made without securing competitive quotations, if the contracting officer considers the prices to be reasonable.

Item X—Thresholds—Part 14

FAR 1.105, 14.201-6(c), 14.201-6(1), 14.201-6(m), 52.214-6 are revised, 14.201-6(d) is removed, and the provision at 52.214-8 is removed and reserved to eliminate separate thresholds for provisions prescribed by Part 14 when the invitations for bids are for construction and to eliminate the provision "Parent Company and Identifying Data," the requirements of which are satisfied by the provision at 52.204-3, Taxpayer Identification.

Item XI—Small Business Size Standards

FAR 19.102(f)(5) is revised to add a list of Product and Service Codes for which a nonmanufacturer is not required to provide the product of a small business concern in order to qualify for small business set-asides. The Small Business Administration has determined that there are no small business manufacturers for these product and service codes.

Item XII—Microprocessor chips

FAR 25.108(d)(1) is revised to add an item, microprocessor chips (brought onto the Government construction site for incorporation into building systems during construction or repair and alteration of real property), to the Buy American List of Exempt Items which is published in the FAR for information only.

Item XIII—Revaluation of Assets

FAR 31.205-10, 31.205-11, 31.205-16 are revised, and 31.205-52 is added to assure that the Government does not recognize depreciation, amortization, or the cost of money expense flowing from asset write-ups that result from the "purchase method" of accounting for business combinations.

Item XIV—Independent Research and Development and Bid and Proposal Cost (IR&D/B&P)

FAR 31.205-18(c)(1) is being revised to adjust thresholds to $5,400,000 for companies and $675,000 for profit centers. Pursuant to section 208 of Pub. L. 98-342, the Department of Defense adjusted the IR&D/B&P threshold amounts, effective October 1, 1989.

Item XV—Advance Payments—Alternate Provision

FAR 32.412(f) is revised, and Alternate V is added to the clause at 52.232-12 to provide an alternate contract clause for use when advance payments are authorized, but a special bank account is not required.

Item XVI—Special Tooling/Special Test Equipment (ST/STE), Eliminate Marking

FAR 45.506(c) is revised to require contractors to mark Government-owned special tooling and special test equipment in their possession with a serial number and an indication of Government ownership, as opposed to agency ownership.

Item XVII—Return of Inventory to Suppliers

FAR 45.605-2 and 45.606-3(b) are revised to require contractors' property control systems to include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible. Additionally, the reference to verification that contractors have endeavored to return excess property to suppliers has been deleted from FAR 45.606-3(b).

Item XVIII—Interpretation of Overtime Policy

FAR 52.222-2 is revised to clarify current policy concerning payment of overtime premiums.

Item XIX—Revision of Preaward Survey Forms

FAR 53.209-1 and 53.301-1403 through 1408 (Standard Forms 1403 through 1408) are revised to illustrate new editions of the preaward survey forms prescribed by the FAR.

Item XX—Standard Forms 294 and 295

The requirement for agencies to collect subcontracting data from prime contractors originated in October 1978 with the enactment of Public Law 95-507. This public law requires that all contractors, with the exception of small businesses, who receive a Federal prime contract or subcontract over $500,000 ($1 million for construction) that has subcontracting opportunities, include a plan for subcontracting with small and small disadvantaged businesses. Following the enactment of Public Law 95-507, Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, were developed to serve as the standard Government-wide data collection forms to monitor a contractor's subcontracting program.

Several changes to the forms were issued as a proposed rule on November 30, 1988 (53 FR 48495). Based on the comments received in response to the proposed rule and on new statutory requirements, an additional change to the SF 295 has been made.

Item XXI—Editorial Corrections

FAR 14.201-6(c) to conform with revisions made at 52.214-22 and 52.215-34 in FAC 84-56, Item XIII.

FAR 15.402(i) to correct FAC 84-53 and revise the reference to read "15.407(j)."

FAR 19.508 (b), (c), and (d) to correct FAC 84-48 and add a prescription to each Alternate I of the clauses at 52.219-5, 52.219-6, and 52.219-7.

FAR 19.811-3(d)(3) to correct FAC 84-52 and add a prescription to Alternate III of the clause at 52.219-18.

FAR 19.812(d) to correct FAC 84-56 and revise in the first sentence the referenced Pub. L. to read "100-656".

FAR 28.201(a)(2) to correct FAC 84-53 and revise the reference to read "28.204."

FAR 32.902 to correct FAC 84-45 in the definition "Receiving report," and revise the reference to read "32.905(f)."

FAR 36.520 is reserved to correct FAC 84-53 and to be consistent with the clause reserved at 52.236-20. FAR 36.521 is added to correct FAC 84-53 and to be consistent with the clause at 52.236-21.

FAR 52.209-3 to correct FAC 84-51 and revise in the introductory text the reference to read "9.308-1."

FAR 52.215-18 to correct FAC 84-53 and revise in the introductory text the reference to read "15.407(j)."

FAR 52.219-18 to correct FAC 84-52 and revise reference in Alternate III to read "19.502-2(b)."

FAR 52.227-15(b) to correct, in the first sentence, "this clause" to read "this provision." Date of clause is not changed; revision is editorial only.

FAR 52.227-17 to correct FAC 84-51, in the introductory text, the reference to read "27.409(i)."

FAR 52.227-20 to correct the reference "paragraph (g)" to read "paragraph (f)."

FAR 52.243-7 to correct the reference to the prescription to read "43.107."

FAR 53.228 is revised, and 53.301-24, 53.301-25, 53.301-25-A, 53.301-28, 53.301-34, 53.301-35, 53.301-1416, 53.302-90, and 53.302-91 illustrate the final version of the forms pertaining to Individual Sureties.

Item XXIII—FAR Index Revision Through FAC 84-58

The FAR Index has been—

Updated to reflect the current FAR contents, and reformatted to facilitate its use and its subsequent maintenance.

The revised Index provides an alphabetical listing of selected key words, showing each key word in its context. The key words are sufficient to permit a reader to locate almost any subject area that is in the FAR.

The key words used in the revised Index have been chosen from the following documents:

Structure of the FAR to the Subpart Level.

Table of Contents to part 31, Contract Cost Principles.

Table of Contents to part 52, Solicitation Provisions and Contract Clauses.

Selected elements of the Tables of Contents not listed above. Since the FAR Index is not a regulatory document, the revised Index is being published in looseleaf form, but not in the Federal Register.

Therefore, 48 CFR parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 27, 28, 31, 32, 36, 45, 52, and 53 are amended as set fdorth below:

The interim rules in FAC 84-48, published in the **Federal Register** on July 12, 1989 (54 FR 25060), amending sections 19.102, 19.502-2, and the clauses at 52.219-5, 52.219-6, and 52.219-7 pertaining to FAC 84-48, Item II, Nonmanufacturers rule, and amending section 1.105, subpart 27.3, and the clauses at 52.227-11, 52.227-12, and 52.227-13 pertaining to FAC 84-48, Item V, Commerce Patent Regulation, are hereby adopted as final rules without change.

1. The authority citation for 48 CFR parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c)

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by removing FAR segment "52.214-8" and corresponding OMB Control Number "9000-0016"; by adding in numerical order, a FAR segment and corresponding OMB Control Number; and by removing FAR Segment "SF 25-B" and corresponding OMB Control Number "9000-0045", to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control Number
* * * * *	
52.215-32	9000-0105
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.103-1 [Amended]

3. Section 3.103-1 is amended by removing and reserving paragraph (b).

4. Section 3.103-2 is amended by revising paragraph (b)(1) to read as follows:

3.103-2 Evaluating the certification.

* * * * *

(b) * * *

(1) *Rejection of offers suspected of being collusive.* If the offeror deleted or modified subparagraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

* * * * *

5. Section 3.303 is amended by redesignating the existing paragraphs (e) and (f) as (f) and (g), and by adding new paragraph (e) to read as follows:

3.303 Reporting suspected antitrust violations.

* * * * *

(e) For offers from foreign contractors for contracts to be performed outside the United States, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.205 is amended by revising paragraph (d)(2) to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(2) When the total fee is expected to exceed $10,000 ($5,000 for Defense activities), but not exceed $25,000, the contracting officer shall comply with 5.101(a)(2). When the contract action is not required to be synopsized under subparagraph (d)(1) of this section, the contracting officer shall display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

* * * * *

PART 6—COMPETITION REQUIREMENTS

7. Section 6.303-1 is amended by revising paragraph (e) to read as follows:

6.303-1 Requirements.

* * * * *

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

PART 7—ACQUISITION PLANNING

8. Section 7.300 is amended by revising paragraph (b) to read as follows:

7.300 Scope of subpart.

* * * * *

(b) The Supplement to OMB Circular No. A-76

7.302 [Amended]

9. Section 7.302 is amended by removing in the introductory text and in paragraph (c) the word "Handbook" and inserting in both places the word "Supplement".

10. Section 7.303 is amended by revising paragraph (b) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) In making all reasonable efforts to identify such sources, the contracting officer shall assist in—

(1) Synopsizing the requirement in the Commercial Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted at least three times in a 90-day period with a minimum of 30 days between notices, (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them). If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled; and

(2) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

11. Section 7.304 is amended by removing in the first sentence of paragraph (a) the words "performance-oriented" and inserting in their place the word "performance"; and by revising paragraph (b)(1) to read as follows:

7.304 Procedures.

* * * * *

(b) * * *

(1) Enter on a cost-comparison form (see Part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

* * * * *

12. Section 7.306 is amended by removing in paragraph (a)(1)(iii) within the parentheses the words "(see Cost Comparison Handbook, Exhibit 1)" and inserting in their place the words "(see Supplement, Part IV, Illustration 1)"; by removing in paragraph (a)(1)(iv) within the parentheses the figures "5" and "15 working days" and inserting in their place "15" and "30 working days" respectively; and by revising paragraphs (a)(2), (a)(3), and the third sentence in (b)(3) to read as follows:

7.306 Evaluation.

* * * * *

(a) * * *

(2) After evaluation of bids (see subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost-comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(b) * * *

(3) * * * Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. * * *

* * * * *

13. Section 7.307 is amended by revising the third sentence in paragraph (a) to read as follows:

7.307 Appeals.

(a) * * * This review must be completed within 30 days after the deciding official receives a request under paragraph (b) of this section.

* * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

14. Section 8.1102 is amended by revising in paragraph (a) the introductory text; by redesignating existing paragraph (b) as (c); and by adding new paragraph (b) to read as follows:

8.1102 Presolicitation requirements.

(a) Except as specified in 8.1102(b), before preparing solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

* * * * *

(b) With respect to requirements for leasing motor vehicles for a period of less than 60 days, the contracting officer need not obtain the certification specified in 8.1102(a)—

(1) If the requirement is for type 1A, 1B, or II vehicles, which are by definition fuel efficient; or

(2) If the requirement is for passenger vehicles larger than 1A, 1B, or II, and the agency has established procedures for advance approval, on a case-by-case basis, of such requirements.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

15. Section 9.306 is amended by adding paragraph (j) to read as follows:

9.306 Solicitation requirements.

* * * * *

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.814) if first article test items or tests are to be separately priced.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.106 [Amended]

16. Section 13.106 is amended by removing in paragraph (a) heading, in (a)(4), and in paragraphs (b) and (c) headings, the figure "$1,000" and inserting in each place "10 percent of the small purchase limitation".

PART 14—SEALED BIDDING

17. Section 14.201-6 is amended by revising the introductory text of paragraph (c); by removing and reserving paragraph (d); by revising paragraph (l); and in paragraph (m) by removing the words "that is estimated to exceed $10,000" to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the following provisions in invitations for bids:

* * * * *

(l) The contracting officer shall insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work.

* * * * *

14.201-8 [Amended]

18. Section 14.201-8 is amended in the second sentence of paragraph (c) by removing the figure "$250" and inserting in its place "$500".

19. Section 14.214 is added to read as follows:

14.214 Commercial pricing certificates.

Sealed bid acquisitions of parts or components as defined in 15.813-2 are subject to the requirements of 15.813, Commercial pricing certificates, including the solicitation provision and contract clause prescription in 15.813-7, when conditions specified therein are applicable.

20. Section 14.404-2 is amended by revising paragraph (f); by redesignating existing paragraphs (g) through (k) as (h) through (l); and by adding a new paragraph (g) to read as follows:

14.404-2 Rejection of individual bids.

* * * * *

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.814).

* * * * *

14.405 [Amended]

21. Section 14.405 is amended in paragraph (e) by removing the words "52.214-8, Parent Company and Identifying Data, and".

22. Section 14.407-2 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

14.407-2 Responsible bidder—reasonableness of price.

* * * * *

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.814).

PART 15—CONTRACTING BY NEGOTIATION

15.402 [Amended]

23. Section 15.402 is amended in the first sentence of paragraph (i) by removing the reference "15.407(i)" and inserting in its place "15.407(j)".

24. Sections 15.813 through 15.813-7 are revised to read as follows:

Sec.
15.813 Commercial pricing certificates.
15.813-1 Scope and applicability.
15.813-2 Definitions.
15.813-3 Policy.
15.813-4 Requirements for submission of commercial pricing certificates.
15.813-5 Exemption from the requirement to submit commercial pricing certificates.
15.813-6 Procedures.
15.813-7 Solicitation provision and contract clause.

15.813 Commercial pricing certificates.

15.813-1 Scope and applicability.

This section prescribes policies and procedures for obtaining certificates from contractors relating to prices offered for parts or components as defined in 15.813-2. It implements the statutory provisions in 41 U.S.C. 253e for civilian agencies and in 10 U.S.C. 2323 for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard.

15.813-2 Definitions.

Lowest commercial price, as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(a) Any agency of the United States;

(b) Customers located outside the United States;

(c) A subsidiary, affiliate, or parent business organization of the contractor or any other branch of the same business entity; and

(d) For contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(1) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or

function has been performed by any such customer (see 15.813-6(c)); or

(2) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

Part or component, as used in this section, means—

(a) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(b) For acquisitions of civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

15.813-3 Policy.

Contracts entered into using other than full and open competition may not result in prices for parts or components (as defined in 15.813-2) offered for sale to the general public that exceed the contractor's lowest commercial prices for such parts or components unless the price difference is clearly justified by the seller or the contracting officer has determined to exempt the contractor from the requirement under 15.813-5(d). To this end, 41 U.S.C. 253e and 10 U.S.C. 2323 require offerors to certify that prices offered for parts or components are not more than their lowest commercial prices, or to submit a written statement specifying the amount of the difference between their lowest commercial prices for the parts or components and the prices offered, and providing justification for those differences. Because the forces of the competitive marketplace usually ensure that the Government does not pay an unreasonable price for commercial parts or components, commercial pricing certificates are necessary only when these forces are not present in a particular contract action.

15.813-4 Requirements for submission of commercial pricing certificates.

Unless a contract is exempt from the requirement pursuant to 15.813-5, commercial pricing certificates are required to be submitted with any offer/proposal that—

(a) Includes any parts or components that are offered for sale to the general public; and

(b) Is submitted in connection with any of the following:

(1) Offers/proposals in connection with contracts to be awarded with other than full and open competition.

(2) Contract modifications, including contract modifications for additional parts or components, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause (but see subparagraph (b)(5) of this subsection), or funding and other administrative modifications.

(3) Orders under the provisioning line item of a contract, a basic ordering agreement, or similar arrangement if the order is being placed with other than full and open competition.

(4) Definitization of price on a letter contract, unpriced order, or other contract, modification, or order awarded without a definitive price. (The commercial pricing certificate is not required before the initial award, but rather shall be submitted with the proposal to definitize.)

(5) Any modification issued pursuant to the Changes clause that results in the providing of new or different parts or components.

15.813-5 Exemption from the requirement to submit commercial pricing certificates.

A contract is exempt from the requirement that a commercial pricing certificate be submitted if—

(a) The simplified small purchase procedures of part 13 are used;

(b) An acquisition is being made under the procedures established by the General Services Administration for its multiple award schedule program; or

(c) An order is placed under an indefinite delivery type contract. (However, a certificate is required in connection with the award with other than full and open competition of an indefinite delivery type contract.); or

(d) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of—

(1) National security considerations; or

(2) Significant differences between the terms of the commercial sales of the parts or components to be acquired under the contract and the terms of the contract, including differences in quantity, quality, delivery requirements, or other terms and conditions.

§ 15.813-6 Procedures.

(a) If a commercial pricing certificate is required in accordance with 15.813-4, the contracting officer shall ensure that the certificate set forth in paragraph (b) of the clause at 52.215-32, Certification of Commercial Pricing for Parts or Components, is submitted with each offer/proposal. Notice of the requirement and requests for submission of a certificate in the solicitation are accomplished through use of the solicitation provision of 52.215-37. Contracting officers are encouraged to enter into advance agreements with contractors to consolidate submission requirements when detailed repetitive certifications and justifications would otherwise be required.

(b) When requested pursuant to paragraph (a) of this subsection, offerors/contractors are required to submit the commercial pricing certificate with their proposals unless the contracting officer determines to grant an exemption pursuant to 15.813-5(d). Exemptions from the requirement to submit a commercial pricing certificate should not be granted pursuant to 15.813-5(d)(2) unless the contracting officer has sufficient information to verify that the contractor's lowest commercial price for parts or components offered for sale to the general public are subject to such substantial differences (in quantity, quality, delivery, or other terms and conditions) from Government contract terms so as to warrant the exemption. If the contracting officer determines that use of the lowest commercial price for a part or component is not appropriate for a contract under 15.813-5(d), this determination should be communicated to the offeror/contractor in writing. Contracting officers may accept information supporting possible exemptions from offerors/contractors at any time prior to agreement on price. Exemptions relieve the offerors/contractors from the statutory and contractual submission requirement.

(c) For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, a contracting officer may make a determination that the definition of "Lowest Commercial Price" in the clause of 52.215-32 shall include the price at which a sale was made to any person or corporation for resale by the person or corporation. In making this determination, the contracting officer must be able to demonstrate that the parts or components are being procured by the contracting officer under the same terms and conditions at which a sale was made to the person or corporation for resale.

(d) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful before award because of submission of a new or revised proposal or as a result of discussions.

(e) If, after award, the contracting officer learns or suspects that a certificate was inaccurate, incomplete, or misleading, the contracting officer shall request an audit under the authority of paragraph (c) of the clause of 52.215-32. If the contracting officer determines that a certificate is inaccurate, incomplete, or misleading, the Government is entitled to a price adjustment for any overcharge (see paragraph (d) of the clause at 52.215-32).

(f) Individual or class determinations made under 15.813-5(d) (1) or (2), and advance agreements made under paragraph (a) of this subsection, shall be documented in the contract file.

(g) Possession of a commercial pricing certificate is not a substitute for examining a contractor's proposal and determining that the prices offered are fair and reasonable. The certificate represents a tool to assist the contracting officer in the determination. The contracting officer shall obtain sufficient information with regard to commercial parts or components to permit an understanding of the contractor's commercial pricing structure and where within that structure the acquisition fits. (See 15.804-3(h) and data obtained on the Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.)

15.813-7 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 52.215-32, Certification of Commercial Pricing for Parts or Components, in solicitations and contracts if a commercial pricing certificate is required by 15.813-4.

(2) The contracting officer shall insert the clause with its Alternate I in solicitations and contracts for sealed bids or negotiated acquisitions involving the furnishing of parts or components using full and open competition.

(b) The contracting officer shall insert the provision at 52.215-37, Commercial Pricing Certificate—Notice, in solicitations if a commercial pricing certificate is required by 15.813-4.

25. Section 15.814 is added to read as follows:

15.814 Unbalanced offers.

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if—

(1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

(2) The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers shall use either price analysis or cost analysis techniques, or a combination of the two techniques, to determine if offers are materially unbalanced. The following are examples of techniques that can be used to determine if an offer is unbalanced. Although these examples specifically relate to first article testing, they may also be used for other procurements where unbalanced offers may be of concern.

(1) Compare all offers to determine if the offerors have significantly higher prices for the first articles than for the production units. The comparison should consider whether the Government or the contractor will perform the first article test.

(2) For an individual offer, compare the relationship of first article prices to prices for production items. The cost to the offeror for first articles may be estimated (i) By comparing the total price offered, including the first article to an alternate proposal by the same offeror which does not include first article testing (see 9.308(d)); or (ii) if cost data has been submitted, by reviewing certain elements of cost to determine, for instance, whether manufacturing and special tooling, and test equipment costs, are prorated among the first articles and the production units, or are only applied to the first articles. If cost data are not available, it may be necessary for contracting officers to estimate contractor cost.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

26. Section 19.102 is amended in paragraph (f)(5) at the end of the second sentence by removing the word "None" and inserting in its place the list of Product and Service Codes (PSC) to read as follows:

19.102 Size standards.

* * * * * *

(f) * * *

(5) * * *

Backhoes (PSC 3805)
Graders, Road (Construction Machinery) (PSC 3805)
Scrapers, Construction (PSC 3805)
Cranes, Construction (PSC 3810)

* * * * * *

27. Section 19.506 is amended in paragraphs (b), (c), and (d) by adding a sentence to read as follows:

19.506 Solicitation provisions and contract clauses.

* * * * * *

(b) * * * The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(c) * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(d) * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

* * * * * *

28. Section 19.811-3 is amended by adding paragraph (d)(3) to read as follows:

19.811-3 Contract clauses.

* * * * * *

(d) * * *

(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business

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manufacturers in the Federal market in accordance with 19.502–2(b).

* * * * *

19.812 [Amended]

29. Section 19.812 is amended in the first sentence of paragraph (d) by removing the reference "Pub. L. 100–646" and inserting in its place "Pub. L. 100–656".

PART 25—FOREIGN ACQUISITION

25.108 [Amended]

30. Section 25.108 is amended in paragraph (d)(1) by alphabetically adding an item, "Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property)."

PART 28—BONDS AND INSURANCE

31. Section 28.201 is amended in paragraph (a)(2) by removing the reference "28.203" and inserting in its place "28.204".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

32. Section 31.205–10 is amended by removing "and" at the end of paragraph (a)(2)(ii); by adding "; and" at the end of (a)(2)(iii); by adding (a)(2)(iv); by revising (a)(5); by removing "and" at the end of (b)(2)(i)(B); by adding "; and" at the end of (b)(2)(i)(C); and by adding paragraph (b)(2)(i)(D) to read as follows:

31.205–10 Cost of money.

* * * * *

(a) * * *

(2) * * *

(iv) The requirements of 31.205–52, which limit the allowability of facilities capital cost of money, are observed.

* * * * *

(5) The cost of money resulting from including asset valuations resulting from business combinations in the facilities capital employed base is unallowable (see 31.205–52).

(b) * * *

(2) * * *

(i) * * *

(D) The requirements of 31.205–52, which limit the allowability of cost of money for capital assets under construction, fabrication, or development, are observed.

33. Section 31.205–11 is amended by adding paragraph (n) to read as follows:

31.205–11 Depreciation.

* * * * *

(n) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205–52, which limit the allowability of depreciation, shall be observed.

34. Section 31.205–16 is amended by revising paragraphs (a) and (e) to read as follows:

31.205–16 Gains and losses on disposition of depreciable property or other capital assets.

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205–19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205–52).

* * * * *

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

* * * * *

31.205–18 [Amended]

35. Section 31.205–18 is amended by removing in paragraphs (c)(1)(i) and (c)(1)(v) the figures "$4,400,000" and "$4 million" and inserting in each place the figure "$5,400,000"; and by removing in paragraph (c)(1)(ii) the figures "$550,000" and "$500,000" and inserting in each place the figure "$675,000".

36. Section 31.205–52 is added to read as follows:

31.205–52 Asset valuations resulting from business combinations.

When the purchase method of accounting for a business combination is used, allowable amortization, cost of money, and depreciation shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

PART 32—CONTRACT FINANCING

37. Section 32.412 is amended by revising paragraph (f) to read as follows:

32.412 Contract clause.

* * * * *

(f) If the requirement for a special bank account is eliminated in accordance with 32.409–3 (e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of 52.232–12, Advance Payments, instead of the basic clause.

32.902 [Amended]

38. Section 32.902 is amended in the definition "Receiving report" by removing the reference "32.905(e)" and inserting in its place "32.905(f)".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.521 [Redesignated from 36.520]

39. Section 36.520 is redesignated as 36.521.

36.520 [Added and Reserved]

40. New section 36.520 is added and reserved.

PART 45—GOVERNMENT PROPERTY

41. Section 45.506 is amended in paragraph (c) by revising the first sentence to read as follows:

45.506 Identification.

* * * * *

(c) In accordance with procedures approved by the property administrator, the contractor shall mark Government owned special tooling and special test equipment with a serial number and an indication of Government ownership. * * *

* * * * *

42. Section 45.605–2 is amended by adding a fourth sentence to read as follows:

45.605–2 Return to suppliers.

* * * A contractor's property control system shall include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

45.606–3 [Amended]

43. Section 45.606–3 is amended by inserting in the first sentence of paragraph (b)(4), a period following the word "work" and removing the remainder of the sentence.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.207–1 [Amended]

44. Section 52.207–1 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its placed "(JUL 1990)"; and by removing in the italicized text within the brackets in paragraph (c), the words "5 to 15" and inserting in their place "15 to 30".

45. Section 52.207–2 is amended by revising the introductory text of the provision; by removing in the title of the provision the date "(APR 1984)" and inserting in its place "(JUL 1990)"; by removing in the italicized text within the bracket in paragraphs (c)(1) and (c)(2), the words "5 to 15" and inserting in both places "15 to 30"; and by removing the derivation line following "(End of provision)" to read as follows:

52.207–2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

* * * * *

52.209–3 [Amended]

46. Section 52.209–3 is amended in the introductory text by removing the reference "9.308–2" and inserting in its place the reference "9.308–1".

52.214–6 [Amended]

47. Section 52.214–6 is amended in the introductory text by inserting a colon following the word "provision" in the first sentence and removing the remainder of the paragraph.

52.214–8 [Removed and Reserved]

48. Section 52.214–8 is removed and reserved.

49. Section 52.214–10 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1990)"; and by adding paragraph (e) to read as follows:

52.214–10 Contract Award—Sealed Bidding.

* * * * *

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

52.214–18 [Amended]

50. Section 52.214–18 is amended in the introductory text by inserting a colon following the word "provision" in the first sentence and removing the remainder of the paragraph.

51. Section 52.215–16 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1990)"; and by adding paragraph (g) to read as follows:

52.215–16 Contract Award.

* * * * *

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

52.215–18 [Amended]

52. Section 52.215–18 is amended in the introductory text by removing the reference "15.407(i)" and inserting in its place "15.407(j)".

53. Section 52.215–32 is revised to read as follows:

52.215–32 Certification of Commercial Pricing for Parts or Components.

As prescribed in 15.813–7(a), insert the following clause:

Certification of Commercial Pricing for Parts or Components (JUL 1990)

(a) *Definitions.*

Lowest commercial price, as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(1) Any agency of the United States;

(2) Customers located outside the United States;

(3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity; and

(4) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(i) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813–6(c)); or

(ii) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

Part or component, as used in this section, means—

(1) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(2) For acquisitions of civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) *Submission requirements.* The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813–4 when requested by the Contracting Officer:

Certificate of Commercial Pricing for Parts or Components

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, *provided* that in no event shall this period be less than 1-month in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached [list as necessary]:

Part or Component	Price Difference

Offer/Proposal No. _____

Time period for sales data _____

Firm _____

Typed name and signature _____

Title _____

Date _____

(End of certificate)

(c) *Audit.* The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed. Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) *Price reduction.* If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced

accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (JUL 1990). As prescribed in 15.813-7(a)(2), insert the following paragraph in the clause without a paragraph identifier, before paragraph (a) of this clause:

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

54. Section 52.215-37 is added to read as follows:

52.215-37 Commercial Pricing Certificate—Notice.

As prescribed in 15.813-7(b), insert the following provision:

Commercial Pricing Certificate—Notice (JUL 1990)

Line items _____ of this solicitation are parts or components to be acquired under conditions that require the submission of a commercial pricing certificate. The Offeror shall comply with the clause at FAR 52.215-32, Certification of Commercial Pricing for Parts or Components, and execute and submit a certificate with its offer.

(End of provision)

52.217-5 [Amended]

55. Section 52.217-5 is amended by removing in the title of the provision the date "(JUL 1988)" and inserting in its place the date "(JUL 1990)"; by removing the designation "(a)" from paragraph (a); and by removing paragraph (b).

52.219-18 [Amended]

56. Section 52.219-18 is amended by removing in Alternate III the reference "19.502(b)" and inserting in its place "19.502-2(b)".

57. Section 52.222-2 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(JUL 1990)"; by revising paragraph (a) and its asterisked footnote preceding "(End of clause)"; and by removing the derivation line following "(End of clause)" to read as follows:

52.222-2 Payment for Overtime Premiums.

* * * * *

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed *_____ or the overtime premium is paid for work—

* * * * *

*Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (a)(1) through (a)(4) of the clause.

§ 52.227-15 [Amended]

58. Section 52.227-15 is amended in the first sentence of paragraph (b) of the clause by removing the words "of this clause" and inserting in their place "of this provision".

52.227-17 [Amended]

59. Section 52.227-17 is amended in the introductory text by removing the reference "27.409(a)(1)(iv)" and inserting in its place "27.409(i)".

52.227-20 [Amended]

60. Section 52.227-20 is amended in paragraph (b)(1)(iv) of the clause by revising the reference "paragraph (g)" to read "paragraph (f)".

61. Section 52.232-12 is amended by adding Alternate V to the clause to read as follows:

52.232-12 Advance Payments.

* * * * *

Alternate V (JUL 1990). If the requirement for a special bank account is eliminated in accordance with 32.409-3 (e) or (g), insert the clause set forth below instead of the basic clause.

If this Alternate is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), *Use of funds*, in *Alternate II*; substitute paragraph (e), *Maximum payment*, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), *Interest*, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this Alternate is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentences of paragraph (e) of this Alternate.

Advance Payments Without Special Bank Account (JUL 1990)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, _____ [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds.* The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(c) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $____ [*insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in subparagraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable worker's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(h) *Default.* (1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(k) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has takken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to

have been repeated by the submission of each invoice for advance payments.

(m) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accure excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over _____ a year.

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insure by the Federal Deposit Insurance Corporation.

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than ____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

52.243-7 [Amended]

62. Section 52.243–7 is amended in the first sentence of the introductory text by removing the reference "43.106" and inserting in its place "43.107".

PART 53—FORMS

63. Section 53.209–1 is revised to read as follows:

53.209–1 Responsible prospective contractors.

(a) *SF 1403 (REV. 9/88), Preaward Survey of Prospective Contractor (General).* SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) *SF 1404 (REV. 9/88), Preaward Survey of Prospective Contractor—Technical.* SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(c) *SF 1405 (REV. 9/88), Preaward Survey of Prospective Contractor—Production.* SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(d) *SF 1406 (REV. 9/88), Preaward Survey of Prospective Contractor—Quality Assurance.* SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(e) *SF 1407 (REV. 9/88), Preaward Survey of Prospective Contractor—Financial Capability.* SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(f) *SF 1408 (REV. 9/88), Preaward Survey of Prospective Contractor—Accounting System.* SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

64. Section 53.219 is amended by revising the section title; in paragraphs (a) and (b) by removing each date "(REV. 10/83)" and inserting in each place the date "(REV. 1/90)"; and by inserting in paragraph (b) a second sentence to read as follows:

53.219 Small business and small disadvantaged business concerns.

* * * * *

(b) * * * Standard Form 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

65. Section 53.228 is amended by revising the section title; in paragraphs (a), (b), (c), and (e) by removing each date "(REV. X/XX)" and inserting in each place the date "(REV. 1/90)"; and by revising paragraphs (f), (g), (m), (n), and (o) to read as follows:

53.228 Bonds and insurance.

* * * * *

(f) *SF 34 (REV. 1/90), Annual Bid Bond.* (See 28.106–1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(g) *SF 35 (REV. 1/90), Annual Performance Bond.* (See 28.106–1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

* * * * *

(m) *SF 1416 (REV. 1/90), Payment Bond for Other than Construction Contracts.* (See 28.106–1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(n) *OF 90 (REV. 1/90), Release of Lien on Real Property.* (See 28.106–1(n) and 28.203–5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(o) *OF 91 (REV. 1/90), Release of Personal Property from Escrow.* (See 28.106–1(o) and 28.203–5(a).) OF 91 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

BILLING CODE 6820-34-M

66. Section 53.301–24 is revised to read as follows:

53.301–24 Bid Bond.

BID BOND (See instructions on reverse)	DATE BOND EXECUTED (Must not be later than bid opening date)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION

SURETY(IES) (Name and business address)	

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR (Construction, Supplies or Services)	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal – (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Type)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Type)	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Type)	1.	2.	

NSN 7540–01–152–8059 EXPIRATION DATE: 12–31–92 24–106 STANDARD FORM 24 (REV. 1–90)
Previous edition not usable Prescribed by GSA – FAR (48 CFR) 53.228(d)

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

87. Section 53.301-25 is revised to read as follows:

53.301-25 Performance Bond.

PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)	
	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION	
	STATE OF INCORPORATION	
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND	
	MILLION(S)	THOUSAND(S) / HUNDRED(S) / CENTS
	CONTRACT DATE	CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal -

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which the bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) (Typed)	1.	2.		
CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SIGNATURE(S)	1.	2.		
NAME(S) & TITLE(S) (Typed)	1.	2.		

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Type)	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

68. Section 53.301-25-A is revised to read as follows:

53.301-25-A Payment Bond.

PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) / THOUSAND(S) / HUNDRED(S) / CENTS CONTRACT DATE / CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The principal and Surety(ies) executed the payment bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Type)	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) (Type)	1.	2.		
CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) (Type)	1.	2.		

CORPORATE SURETY(IES) (Continued)

SURETY B	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY C	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY D	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY E	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY F	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	
SURETY G	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.	
	NAME(S) & TITLE(S) (Typed)	1.	2.	

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(ES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 25-A (REV. 1-90) BACK

60. Section 53.301-28 is revised to read as follows:

53.301-28 Affidavit of Individual Surety.

AFFIDAVIT OF INDIVIDUAL SURETY

(See instructions on reverse)

FORM APPROVED OMB NO. 9000-0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0001), Washington, D.C. 20503.

STATE OF

COUNTY OF ss.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)	2. HOME ADDRESS (Number, Street, City, State, ZIP Code)
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment on the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 5 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED (MONTH / DAY / YEAR)	b. CITY AND STATE (Or other jurisdiction)	Official Seal
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)	d. SIGNATURE	e. MY COMMISSION EXPIRES

NSN 7540-01-152-8068 EXPIRATION DATE 12-31-92 25-106 STANDARD FORM 28 (REV. 1-90)
Previous edition is not usable Prescribed by GSA - FAR (48 CFR) 53.228(a)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall comp ete snd submit this form with the bond. (See 48 CFR 28.203, 53.228(e)) The surety shall have the completed form notarized.

2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.

3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations – any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.

4. All signatures on the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

STANDARD FORM 28 (REV. 1-90)BACK

70. Section 53.301–94 is revised to read as follows:

53.301–94 Annual Bid Bond.

ANNUAL BID BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION

SURETY(IES) (Name, business address, and State of Incorporation)

AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING
	September 30, 19____

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE:

The above obligation is void and of no effect if the Principal – (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

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EXPIRATION DATE 12-31-92 24-109

STANDARD FORM 24 (REV. 1-90)
Prescribed by GSA – FAR (48 CFR) 53.228(c)

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

STANDARD FORM 34 (REV. 1-90) BACK

71. Section 53.301-35 is revised to read as follows:

53.301-35 Annual Performance Bond.

ANNUAL PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name, business address, and State of Incorporation)	PENAL SUM OF BOND MILLIONS | THOUSANDS | HUNDREDS | CENTS FISCAL YEAR ENDING September 30, 19——

AGENCY REPRESENTING THE GOVERNMENT

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Government department or agency shown above, for furnishing supplies or services to the government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.

THEREFORE:

The above obligation is void if the Principal - (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made. Notice of those modifications to the surety(ies) is waived.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

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Previous edition not usable

EXPIRATION DATE 12-31-92

25-105

STANDARD FORM 35 (REV. 2-89)
Prescribed by GSA - FAR (48 CFR) 53.228(g)

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

72. Section 53.301-119 is revised to read as follows:

53.301-119 Statement of Contingent or Other Fees.

STATEMENT OF CONTINGENT OR OTHER FEES
(FOR SOLICITING OR OBTAINING, OR RESULTING FROM AWARD OF A CONTRACT)

FORM APPROVED OMB NUMBER 9000-0003

Public reporting burden for this collection of information is estimated to average .0041 hours per response, including the time for reviewing instructions, searching existing data sources; gathering and maintaining the data needed; and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0003), Washington, D.C. 20503.

1. SOLICITATION NO. (If any)	2. CONTRACT NO. (or other identification)	3. GOVERNMENT CONTRACTING OFFICE

The following information is furnished by the undersigned offeror concerning any company or person employed or retained to solicit or obtain the above identified contract, or concerning any company or person to whom the offeror has paid or agreed to pay any commission, percentage, brokerage, or other fee, contingent upon or resulting from the award of that contract.

4. FULL NAME AND BUSINESS ADDRESS OF SUCH COMPANY OR PERSON (If more than one, identify each AND INDICATE WHETHER CORPORATION, PARTNERSHIP, INDIVIDUAL, ETC.: (Include ZIP Code(s))

5A. DESCRIBE RELATIONSHIP TO OFFEROR OF THE COMPANY OR PERSON LISTED IN ITEM 4. (For example, is the company or person a sales agent or representative? A purchasing agent or representative? A broker? An employee? A corporate officer or principal?

5B. IF THERE IS A WRITTEN CONTRACT OR AGREEMENT COVERING SUCH RELATIONSHIP, ATTACH A COPY. IF NOT, STATE IN DETAIL THE TERMS OF SUCH ARRANGEMENT. (Include the amount and method of computation of compensation and expenses.)

(IF ADDITIONAL SPACE IS NECESSARY, USE ITEM 11 OR ATTACH A SEPARATE SHEET WHICH ALSO MUST BE SIGNED)

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable EXPIRATION DATE: 6-31-92 110-106

STANDARD FORM 119 (REV. 1-90) Prescribed by GSA - FAR (48 CFR) 53.203(a) FPMR (41 CFR) 101-45.313-5

NOTE: Complete Items 6A through 6D only if person listed in Item 4 is an employee.

6A. DURATION OF EMPLOYMENT (Dates) FROM	TO	6B. IS THE PERSON ON THE OFFEROR'S PAYROLL FOR PURPOSES OF SOCIAL SECURITY AND FEDERAL INCOME TAX WITHHOLDING? ☐ YES ☐ NO
6C. IS THE PERSON EMPLOYED BY ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete)	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN
6D. DOES THE PERSON REPRESENT ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete)	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN

7. DOES THE COMPANY OR PERSON LISTED IN ITEM 4 REPRESENT THE OFFEROR ON:	YES (✓)	NO (✓)
A. BOTH COMMERCIAL AND GOVERNMENT BUSINESS?		
B. ONLY GOVERNMENT BUSINESS?		
C. ONLY THIS CONTRACT?		
D. CONTRACTS OF PARTICULAR GOVERNMENT ACQUISITION OR SALES OFFICES?		

E. IF ITEM 7D CHECKED "YES," SPECIFY OFFICES

8. REGARDING THE CONTRACT, ARE THE DUTIES OF THE COMPANY OR PERSON LISTED IN ITEM 4 CONFINED TO SOLICITING, OBTAINING OR ASSISTING IN OBTAINING THE CONTRACT?
☐ YES ☐ NO (If "NO," describe other services included in the company or person's duties)

9. IS THE OFFEROR'S REGULAR PRACTICE TO HAVE AN ARRANGEMENT OF THE TYPE SPECIFIED IN ITEM 8? ☐ YES ☐ NO	10. HOW LONG HAS THE COMPANY OR PERSON SPECIFIED IN ITEM 4: A. BEEN ENGAGED IN THIS TYPE OF WORK (i.e., Sales or Purchasing representative, etc.)?	B. PERFORMED THIS TYPE OF WORK FOR THE OFFEROR?

11. ADDITIONAL COMMENTS (Key comments to item numbers)

IMPORTANT

U.S. Code, Title 18 (Crimes and Criminal Procedure) Section 1001 makes it a criminal offense to make willfully false statements or representations on this form or any attachment to it.

12A. OFFEROR (To be signed only by authorized principal, such as corporate officer of offeror, i.e., may not be signed by sales or purchasing agent, etc.)

BY

12B. TITLE | 12C. DATE

12D. ADDRESS OF OFFEROR (Include ZIP Code)

STANDARD FORM 119 (REV. 1-88) BACK

73. Section 53.301-294 is revised to read as follows:

53.301-294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(Whole dollar amounts should be indicated. See instructions on reverse)

FORM APPROVED OMB NUMBER 9000-0006

Public reporting burden for this collection of information is estimated to average 9.79 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0006), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.	1. REPORTING PERIOD: ☐ OCT 1 - MAR 31 ☐ APR 1 - SEP 30 FY _____	2. TYPE OF REPORT ☐ REGULAR ☐ FINAL ☐ REVISED	3. DATE SUBMITTED 4. REPORT NO.
5. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR	6. AGENCY OR CONTRACTOR AWARDING CONTRACT (Name, address and ZIP Code)	7. REPORTING CONTRACTOR (Name, address, and ZIP Code)	

8. DATES OF CONTRACT PERIOD OF PERFORMANCE (MM/DD/YY) FROM: TO:	12A. EST. AMT. OF SUBCONTRACT AWDS. UNDER ORIG. CONTRACT $0	12B. REV. AMT. OF SUBCONTRACT AWDS. UNDER MOD. CONTRACT (If applicable) $0
9. PRIME CONTRACT AND SUBCONTRACT NO. (If applicable)	13A. ORIGINAL GOALS	DOLLARS / PERCENT
10. ADMINISTERING AGENCY (If other than Awarding Agency)	1. SMALL BUSINESS CONCERNS	
	2. SMALL DISADV. BUSINESS CONCERNS	
11A. ORIGINAL CONTRACT AMOUNT $0 / 11B. REVISED CONTRACT AMOUNT (If applicable) $0	13B. REVISED GOALS (If applicable)	
	1. SMALL BUSINESS CONCERNS	
	2. SMALL DISADV. BUSINESS CONCERNS	

14. GOAL AMOUNTS IN 13A. AND 13B. ☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

DIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD DOLLARS	THIS REPORTING PERIOD PERCENT	CUMULATIVE (From beginning of Subcontract Plan) DOLLARS	CUMULATIVE (From beginning of Subcontract Plan) PERCENT
15A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 15C.)				
15B. LARGE BUSINESS CONCERNS ($ amt. and % of 15C.)				
15C. TOTAL (Sum of 15A. and 15B.)		100		100
16. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 15C)				

INDIRECT SUBCONTRACT AWARDS	DOLLARS THIS REPORTING PERIOD	DOLLARS CUMULATIVE (From beginning of Subcontract Plan)
17A. SMALL BUSINESS CONCERNS (Not Disadvantaged)		
17B. LARGE BUSINESS CONCERNS		
17C. SMALL DISADVANTAGED BUSINESS CONCERNS		

18. REMARKS (Enter a short narrative explanation if: (a) Small Business or Small Disadvantaged Business accomplishments fall below that which would be expected using a straight line projection of goals through the period of contract performance or (b) either goal is not met if this is the final report.)

19. TYPED NAME AND TITLE OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	SIGNATURE	TELEPHONE NO. ( )
20. TYPED NAME AND TITLE OF APPROVING OFFICER	SIGNATURE	DATE

NSN 7540-01-152-8070 Previous edition is not usable | EXPIRATION DATE: 8-31-92 | 294-103 | STANDARD FORM 294 (REV. 1-90) Prescribed by GSA - FAR (48 CFR) 53.219(d)

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over $500,000 ($1 million for construction); and (b) are required to report subcontract awards to small business (SB) and small disadvantaged business (SDB) concerns under a subcontracting plan pursuant to the Small Business Act of 1958.

2. Reports shall be submitted to the contracting officer semi-annually during the period of contract performance. A separate report is required for each contract at contract completion. This report is due by the 30th day of the month following the close of the reporting periods, in accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer. Reports are required when due, including negative reports (i.e., when there has been no subcontracting activity or there has been no change from the last reporting period).

3. This report should not be submitted by small business concerns.

4. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report (SF 295) is required for commercial products in accordance with instructions on that form.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. All dollar amounts shall be rounded to the the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

SPECIFIC INSTRUCTIONS (for those which are not self explanatory)

ITEM 1: Check the appropriate block for the reporting period though which the report is being submitted and enter the Federal fiscal year (October 1 through September 30). Leave blank if this is a final report.

ITEM 2: Check whether report is a regular report or final report and/or is a revision.

ITEM 4: Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1.

ITEM 5: Check whether the reporting contractor is reporting as a Federal Prime contractor or a subcontractor.

ITEM 6: Enter the name and address of the Federal Department or Agency awarding the contract, or the prime contractor awarding the subcontract.

ITEM 7: Enter the name and address of the contractor submitting the report.

ITEM 8: Enter the beginning and projected ending dates of the period of performance of the contract, including priced option periods.

ITEM 10: Identify the Federal agency administering the contract if other than the awarding agency. If DOD is the administering agency, identify the appropriate military department, i.e., Army, Navy, Air Force, or Defense Logistics Agency. This item is not required if reporting as a subcontractor.

ITEM 11A: Enter the total dollar value of the original contract. (State the estimated cost if cost-type contract, price if fixed-price contract, and maximum contract amount if indefinite quantity contract. Include all priced options.)

ITEM 11B: If the dollar value of the original contract has been modified, enter the revised contract amount.

ITEM 12A: Enter the estimated dollar value of subcontracts as set forth in the Subcontracting Plan in the original contract.

ITEM 12B: If the dollar value of the Subcontracting Plan has been modified, enter the revised amount under the modified contract.

ITEM 13A: Enter in the appropriate blocks the dollar amount and percent of the reporting contractor's total planned subcontract awards contractually agreed upon as goals for subcontracting with SB and SDB concerns. NOTE: In 13A(1) the amounts entered should include planned subcontracting with both SB and SDB concerns. In 13A(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs) in 13A(1) and 13A(2).)

ITEM 13B: If the original goals agreed upon at contract award have been revised as a result of contract modifications, the amounts entered should reflect those revised goals. NOTE: In 13B(1), the amounts should include planned subcontracting with both SB and SDB concerns, if applicable. In 13B(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to HBCUs/MIs in 13B(1) and 13B(2).)

ITEM 14: Check the appropriate block to indicate whether indirect awards are included in the goal amounts entered in items 13A and 13B as specified in the Subcontracting Plan.

ITEM 15A: Enter the dollar amount and percent of subcontracting with SDB concerns, including subcontracting with SDB concerns for this period and cumulatively. This item reflects progress toward Small Business goal accomplishment indicated in items 13A(1) or 13B(1) (if applicable), and includes indirect awards if such costs are included in goal amounts. For DOD contracts include subcontract awards to HBCUs/MIs.

ITEM 15B: Enter the amounts for subcontracting with Large Business concerns (excluding subcontracts with non-profit, educational institutions, and state/local government(s)) for this period and cumulatively. Include indirect awards if such costs are included in goal amounts.

ITEM 15C: Total the dollar amounts of items 15A and 15B.

ITEM 16: Enter the dollar amount of subcontracting with SDB concerns only (for DOD include subcontracts with HBCUs and MIs) and the percent that this amount represents of total subcontracting for this period and cumulatively. This item reflects progress toward Small Disadvantaged Business goal accomplishment as indicated in item 13A(2) or 13B(2) (if applicable), and includes indirect awards if such costs are included in goal amounts.

ITEM 17: For DOD activities, if indirect awards are included in goal amounts (as indicated in item 14), enter the dollar amount of indirect subcontracting with SB (including SDB and HBCUs/MIs), Large Business, and SDB concerns (including HBCUs/MIs). These amounts are subsets of items 15A, 15B, and 16, respectively, and represent the portion of goal achievement being accomplished by indirect subcontracting.

ITEM 19: Enter the name, title, signature and telephone number of the reporting contractor's administrator responsible for monitoring the Subcontracting Plan.

ITEM 20: The approving officer shall be the senior official of the company, division, or subdivision (plant or profit center) responsible for contract performance.

Definitions

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including the allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of insurance for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

STANDARD FORM 294 (REV. 1-90) BACK

74. Section 53.301–295 is revised to read as follows:

53.301–295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

FORM APPROVED OMB NUMBER 9000–0007

Public reporting burden for this collection of information is estimated to average 16.21 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0007), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.

1. REPORTING PERIOD (check one):
A. DOD — FEDERAL FY 19__ — QUARTER ENDING: ☐ DEC 31 ☐ JUN 30 ☐ MAR 31 ☐ SEP 30
B. CIVILIAN — FEDERAL FY 19__ — ☐ ANNUAL (OCT 1 – SEP 30) (except commercial product)
C. DOD & CIVILIAN — FEDERAL FY 19__ — ☐ ANNUAL (OCT 1 – SEP 30) (commercial product)

2. TYPE OF REPORT: ☐ REGULAR ☐ FINAL ☐ REVISED

3. CONTRACTING AGENCY

4. ADMINISTERING AGENCY (If different from Item 3)

5. DATE OF LAST GOV. REVIEW

6. REVIEWING AGENCY

7. CONTRACTOR ESTABLISHMENT CODE (If available)

8. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH

9. CORPORATION, COMPANY OR SUBDIVISION COVERED (Name, address, ZIP Code)

10. MAJOR PRODUCTS OR SERVICE LINES

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report in whole dollars.)

SUBCONTRACT AWARDS	CURRENT FY (Through Reporting Qtr.) DOLLARS	CURRENT FY (Through Reporting Qtr.) PERCENT	SAME PERIOD LAST YEAR DOLLARS	SAME PERIOD LAST YEAR PERCENT
11A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 11C.)				
11B. LARGE BUSINESS CONCERNS ($ amt. and % of 11C.)				
11C. TOTAL (Sum of 11A. and 11B.)		100		100
12. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 11C.)				
13. WOMEN-OWNED SMALL BUSINESS CONCERNS				
14. LABOR SURPLUS AREA CONCERNS ($ amt. and % of 11C.)				
15. HIST. BLACK COLLEGES & UNIV/MINORITY INST.				

16. REMARKS (Enter a short narrative explanation if: (a) zero is entered in Blocks 11A or 12 for the current fiscal year, (b) the percent entry in Block 11A for current fiscal year is more than 6 percentage points below the percent reported for the same period last year, or (c) the percent entry in Block 12 for the current fiscal year is lower than the percent reported for the same period last year.)

SUBCONTRACT GOAL ACHIEVEMENT
(Report in whole dollars)

CONTRACTS			NO. OF CONTRACTS WITH GOALS	TOTAL $ VALUE OF SUBCONTRACTS AWARDED	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT DOLLARS	ACTUAL GOAL ACHIEVEMENT PERCENT
17. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					
18. CONTRACTS WITH SMALL DISADV. BUSINESS SUB-CONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					

19. NAME AND TITLE OF LIAISON OFFICER	SIGNATURE	DATE	TELEPHONE NO.
			( )
20. NAME AND TITLE OF THE APPROVING OFFICER	SIGNATURE		DATE

AUTHORIZED FOR LOCAL REPRODUCTION — EXPIRATION DATE: 6-30-92 — 295-102 — STANDARD FORM 295 (REV. 1-90) Prescribed by GSA – FAR (48 CFR) 53.2 (90)
Previous edition is not usable

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over $500,000 ($1 million for construction), and (b) are required to report subcontract awards to Small Business (SB) and Small Disadvantaged Business Concerns (SDB) under a subcontracting plan and to report subcontract awards to Women-Owned Small Business Concerns (WOSB), pursuant to the Small Business Act of 1958.

2. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency awarding the contract. However, after submission of the first report on this form, the reporting organization shall submit succeeding reports on the same basis.

3. If a reporting organization is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 ($1 million for construction) and contains a subcontracting plan. (See special instructions for commercial products plans.)

4. For DOD activities, reports shall be submitted quarterly, except that, for contracts covered by an approved company-wide subcontracting plan for commercial products, reports shall be submitted annually. Reports are due 30 days after the close of each reporting period. For civilian agencies, reports shall be submitted annually. For civilian agencies, reports are due 30 days after the close of the fiscal year (September 30). See special instructions for commercial products plans below.

5. All dollar amounts shall be rounded to the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

6. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

7. Subcontract award data reported on this form shall be limited to awards made by the reporting organization to its immediate subcontractors. Reporting organizations may not take credit for awards made by lower tier subcontractors.

SPECIFIC INSTRUCTIONS

ITEM 2: Check whether report is a regular report or final report and/or revision. Final report should be checked only if contractor has completed all Government contracts containing subcontracting plans.

ITEM 3: If reporting as a "Prime Contractor" or "State" in Item 6, identify the agency (e.g., DOD, HUD, GSA, etc.) which awarded the prime contract(s) to the reporting organization. If reporting as a "Subcontractor" in Item 6, identify the department or agency responsible for the prime contract award(s) which resulted in the largest dollar value subcontract of those subcontracts reflected in this report.

ITEM 4: Identify the department or agency performing contract administration over the reporting organization (if different from Item 3). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the reporting entity (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."

ITEMS 5 & 6: Enter the date of the last formal surveillance review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD also identify the military department or Defense Contract Administration Service that conducted the review. In those cases where the Small Business Administration conducted its own review, enter "SBA" and the date.

ITEM 7: Enter the nine position number assigned by Dun & Bradstreet that identifies the contractor establishment, if available.

ITEM 8: Check whether the reporting organization is reporting as a Federal prime contractor or a subcontractor or both.

ITEM 9: Enter the name and address of the reporting organization, corporation, company, or subdivision thereof which is covered by the data submitted.

ITEM 10: Identify the major product or service lines of the reporting organization.

ITEMS 11 & 12: These entries include all subcontract awards, both those made under contracts with plans and goals and those made under contracts which do not have plans and goals. Amounts reported include both direct awards and an appropriate prorated portion of indirect awards. Base the indirect portion on the percentage of work being performed for the organization to which the report is being submitted (shown in Item 3) in relation to other work being performed by the reporting organization. Do not include awards made in support of commercial business being performed by the reporting entity. For DOD activities, report on a quarterly cumulative basis until the end of the fiscal year (September 30) and begin a new quarterly reporting cycle each October 1.

ITEM 11A: Report all subcontract awards to SBs (including subcontracts with SDBs and WOSBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. (For DOD contracts, include subcontracting awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).)

ITEM 11B: Report all subcontract awards to Large business, regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts exclude subcontracting awards to HBCUs and MIs.

ITEM 12: Report all subcontract awards to SDBs (including Women-Owned SDBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts include subcontract awards to HBCUs and MIs.

ITEM 13: Report all subcontract awards to WOSBs. This amount is a subset of Item 11A.

ITEM 14: Show dollar amount of subcontracts valued over $25,000 placed with labor surplus area (LSA) concerns (i.e., those that will perform substantially in labor surplus areas). Prime contractors are also encouraged to include awards valued less than $25,000 if such additional reporting does not impose a burden on the contractor. LSAs are identified in the Department of Labor publication "Area Trends in Employment and Unemployment" which can be obtained from the Federal agency contracting officer or by writing to Employment and Training Administration, (Attn: TPTL), Department of Labor, 601 "D" Street, Washington, D.C. 20213.

ITEM 15: For DOD, enter the dollar value of all subcontracts with HBCUs/MIs. This is a subset of awards to SDBs (Item 12).

ITEMS 17 & 18: For each item (as applicable), enter the number of prime and subcontracts valued over $500,000 ($1 million for construction) which have goals, the dollar value of all subcontracts awarded to date under those contracts, the dollar value of subcontract goals as set forth in subcontracting plans, and, for completed contracts, your actual goal achievement expressed in dollars and percent of goal. The percentage of actual goal achievement is determined by dividing the amount of dollars shown in the column entitled "Actual Goal Achievement" by the dollars shown in the column entitled "Value of Subcontract Goals." Information presented on this section represents subcontract awards from the inception of the subcontract and is not restricted to this fiscal year. The percentages reported in Item 18B(1) and 17B(1) will always be 100 or more and the percentages reported in Items 18B(2) and 17B(2) will always be less than 100.

ITEM 19: The liaison officer shall be the reporting contractor's official responsible for administering the subcontracting program.

ITEM 20: The approving official shall be the chief executive officer or in the case of a separate division or plant, the senior individual responsible for overall division plant operations.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. Reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall submit this report annually as of September 30 each year.

2. The annual report shall include all subcontracting activity under commercial products plans in effect during the Government fiscal year and shall be submitted in addition to required reports for other than commercial products, if any.

3. Enter in Items 11 and 12 the total of all subcontract awards under the reporting organization's commercial products plans. Show in Item 19 or in an attachment, the percentage of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each agency on that listing.

4. Do not complete Items 17 and 18.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of insurance for common or joint purposes, are not identified with specific Government contracts, those awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES

FOR DOD CONTRACTORS:
Prepare a consolidated report for all contracts awarded by military department/agencies for the Department of Defense (DOD) and/or subcontracts awarded by DOD prime contractors (i.e., do not segregate subcontract data by DOD component). DOD contractors involved in construction and related maintenance and repair, however, shall prepare separate reports for each DOD component, segregating subcontract data accordingly. All contractors shall distribute the original and copies as follows:
(1) The original of each report directly to the office listed below whose military activity is responsible for the administration of, the majority of the organization's DOD contracts/subcontracts. Contractors involved in construction and related maintenance shall submit separate, unique reports to each DOD component which administers their DOD contracts:
ARMY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Washington, D.C. 20310-0106
NAVY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360-5000
AIR FORCE - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Air Force, Washington, D.C. 20330-1000
DLA - Staff Director of Small and Disadvantaged Business Utilization, HQ Defense Logistics Agency (DLA-AD Cameron Station, Alexandria, VA 22304-6100
(2) A copy of each report directly to the Office of the Deputy Secretary of Defense, Attention: Director of Small and Disadvantaged Business Utilization, the Pentagon, Washington, D.C. 20301-3061
(3) A copy to the cognizant contract administration office.

FOR CIVILIAN AGENCY CONTRACTORS:
NASA - Forward reports to NASA - Office of Procurement (HS), Washington, D.C. 20546
DOE - Forward reports to DOE - Office of Small and Disadvantaged Business Utilization, Washington, D.C. 20545

OTHER FEDERAL DEPARTMENTS OR AGENCIES - Forward reports to the Department or Agency Director of Small and Disadvantaged Business Utilization or as otherwise provided for in instructions issued by the Department or Agency.

STANDARD FORM 295 (REV. 1-90) BACK

75. Section 53.301-1403 is revised to read as follows:

53.301-1403 Preaward Survey of Prospective Contractor (General).

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR (GENERAL)

1. SERIAL NO. (For surveying activity use) | FORM APPROVED OMB NO. 9000-0011

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I - REQUEST (For Completion by Contracting Office)

2. NAME AND ADDRESS OF SURVEYING ACTIVITY

3. SOLICITATION NO. | 4. TOTAL OFFERS INVOLVED: 0

5. TYPE OF CONTRACT

6A. NAME AND ADDRESS OF SECONDARY SURVEY ACTIVITY (For surveying activity use)

7A. NAME AND ADDRESS PROSPECTIVE CONTRACTOR

6B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

7B. FIRM'S CONTACT | 7C. TELEPHONE NO. (with area code)

8. WILL CONTRACTING OFFICE PARTICIPATE IN SURVEY?
☐ YES ☐ NO

12. NAME AND ADDRESS OF PARENT COMPANY (If applicable)

9. DATE OF THIS REQUEST | 10. DATE REPORT REQUIRED

11. PROSPECTIVE CONTRACTOR REPRESENTS THAT IT ☐ IS, ☐ IS NOT A SMALL BUSINESS CONCERN.

12. WALSH-HEALEY CONTRACTS ACT (Check applicable box(es))
☐ A. IS NOT APPLICABLE
☐ B. IS APPLICABLE AND PROSPECTIVE CONTRACTOR REPRESENTS HIS CLASSIFICATION AS:
☐ MANUFACTURER ☐ REGULAR DEALER
☐ OTHER (Specify)

14A. PLANT AND LOCATION (If different from Item 7, above)

15A. NAME OF REQUESTING ACTIVITY CONTRACTING OFFICER

14B. POINT OF CONTACT | 14C. TELEPHONE NO. (with area code)

15B. SIGNATURE

16A. NAME OF CONTACT POINT AT REQUESTING ACTIVITY (If different from Item 15A)

15C. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

17. RETURN PREAWARD SURVEY TO THIS ADDRESS:

16B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

ATTN:

SECTION II - DATA (For Completion by Contracting Office)

18A. ITEM NO.	18B. NATIONAL STOCK NUMBER (NSN) AND NOMENCLATURE		18C. TOTAL QUANTITY	18D. UNIT PRICE	18E. DELIVERY SCHEDULE				
					(a)	(b)	(c)	(d)	(e)
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					
		SOLICITED							
		OFFERED		0					

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable.

EXPIRATION DATE: 6-30-91

1403-103

STANDARD FORM 1403 (REV. 6-90)
Prescribed by GSA - FAR (48 CFR) 53.301-1403

SECTION III – FACTORS TO BE INVESTIGATED

19. MAJOR FACTORS	CHK. (a)	SAT. (b)	UN-SAT. (c)	20. OTHER FACTORS (Provide specific requirements in Remarks)	CHK. (a)	SAT. (b)	UN-SAT. (c)
A. TECHNICAL CAPABILITY				A. GOVERNMENT PROPERTY CONTROL			
B. PRODUCTION CAPABILITY				B. TRANSPORTATION			
C. QUALITY ASSURANCE CAPABILITY				C. PACKAGING			
D. FINANCIAL CAPABILITY				D. SECURITY			
E. ACCOUNTING SYSTEM				E. SAFETY			
21. IS THIS A SHORT FORM PREAWARD REPORT? (For completion by surveying activity)				F. ENVIRONMENTAL/ENERGY CONSIDERATIONS			
☐ YES ☐ NO				G. FLIGHT OPERATIONS/FLIGHT SAFETY			
22. IS A FINANCIAL ASSISTANCE PAYMENT PROVISION IN THE SOLICITATION? (For completion by contracting activity)				H. OTHER (Specify)			
☐ YES ☐ NO							

23. REMARKS (For Contracting Activity Use)

SECTION IV – SURVEYING ACTIVITY RECOMMENDATIONS

24. RECOMMEND	24a. NAME AND TITLE OF SURVEY APPROVING OFFICIAL	24b. TELEPHONE NO.
☐ A. COMPLETE AWARD ☐ B. PARTIAL AWARD (Quantity_____) ☐ C. NO AWARD	24c. SIGNATURE	24d. DATE

STANDARD FORM 1403 (REV. 9-88) BACK

76. Section 53.301-1404 is revised to read as follows:

53.301-1404 Preaward Survey of Prospective Contractor-Technical.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR TECHNICAL	REQUEST NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. NARRATIVE (Include the following information concerning key personnel who will be involved with the prospective contract: (1) Names, qualifications/experience and length of affiliation with prospective contractor; (2) Evaluate technical capabilities with respect to the requirements of the proposed contract or item classification; (3) Description of any technical capabilities which the prospective contractor lacks. Comment on the prospective contractor's efforts to obtain the needed technical capabilities.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

3. FIRM HAS AND/OR UNDERSTANDS (Give explanation for any items marked "NO" in 2. narrative)

a. SPECIFICATIONS	☐ YES ☐ NO	b. EXHIBITS	☐ YES ☐ NO
c. DRAWINGS	☐ YES ☐ NO	d. TECHNICAL DATA REQUIREMENTS	☐ YES ☐ NO

4. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE: 6-30-91 1404-100 STANDARD FORM 1404 (REV. 6-88)
Previous edition is unusable. Prescribed by GSA – FAR (48 CFR) 53.300-100

77. Section 53.301-1405 is revised to read as follows:

53.301-1405 Preaward Survey of Prospective Contractor-Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR PRODUCTION

SERIAL NO. (For surveying activity use)

FORM APPROVED OMB NO. 9000-0011

PROSPECTIVE CONTRACTOR

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. NARRATIVE (Cite those sections of this report which substantiate the recommendations. List any other backup information in this space or on attached sheet if necessary. Identify any formal systems reviews and state results.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

3. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable. EXPIRATION DATE: 6-30-91 1405-103 STANDARD FORM 1405 (REV. 6-88) Prescribed by GSA – FAR (48 CFR) 53.209-1(e)

SECTION II – PLANT FACILITIES

1. SIZE OF TRACT

2. SQUARE FEET UNDER ROOF

3. NO. OF BUILDINGS

4. DESCRIPTION AND TYPE OF BUILDING(S)

☐ OWNED

☐ LEASED (Give expiration date)

5. SPACE					6. MISCELLANEOUS PLANT OBSERVATIONS		
	TYPE	SQUARE FEET	ADEQUATE	INADEQUATE	(Explain any items marked "NO" on an attached sheet.)	YES	NO
MANUFACTURING	a. TOTAL MANUFACTURING SPACE				a. GOOD HOUSEKEEPING MAINTAINED		
	b. SPACE AVAILABLE FOR OFFERED ITEM				b. POWER AND FUEL SUPPLY ADEQUATE TO MEET PRODUCTION REQUIREMENTS		
					c. ALTERNATE POWER AND FUEL SOURCE AVAILABLE		
STORAGE	c. TOTAL STORAGE SPACE				d. ADEQUATE MATERIAL HANDLING EQUIPMENT AVAILABLE		
	d. FOR INSPECTION LOTS				e. TRANSPORTATION FACILITIES AVAILABLE FOR SHIPPING PRODUCT		
	e. FOR SHIPPING QUANTITIES						
	f. SPACE AVAILABLE FOR OFFERED ITEM				OTHER (Specify) f.		
	g. AMOUNT OF STORAGE THAT CAN BE CONVERTED FOR MANUFACTURING, IF REQUIRED				g.		
					h.		

SECTION III – PRODUCTION EQUIPMENT

	LIST MAJOR EQUIPMENT REQUIRED (Include GFP and annotate it as such) (a)	QUANTITY REQUIRED FOR PROPOSED CONTRACT (b)	TOTAL QTY. REQD. DURING LIFE OF PROPOSED CONTRACT (c)	QUANTITY ON HAND (d)	CONDITION (e) G	F	P	QUANTITY SHORT* (Col. (c) minus (d)) (f)	SOURCE, IF NOT ON HAND (g)	VERIFIED DELIVERY DATE (h)
MANUFACTURING	1.									
SPECIAL TOOLING	2.									
SPECIAL TEST	3.									

* Coordinate shortage information for financial implications.

STANDARD FORM 1405 (REV. 6-88) PAGE 2

SECTION IV – MATERIALS, PURCHASED PARTS AND SUBCONTRACTS

1. PARTS/MATERIALS/SUBCONTRACTS WITH LONGEST LEAD TIME OR CRUCIAL ITEMS

DESCRIPTION (a)	SOURCE (b)	VERIFIED DELIVERY DATE TO MEET PROD. (c)

2. DESCRIBE THE MATERIAL CONTROL SYSTEM, INDICATING WHETHER IT IS CURRENTLY OPERATIONAL, AND EVALUATE ITS ABILITY TO MEET THE NEEDS OF THE PROPOSED ACQUISITION.

SECTION V – PERSONNEL

1. NUMBER AND SOURCE OF EMPLOYEES

TYPE OF EMPLOYEES	NO. ON BOARD	ADD. NO. REQUIRED	AVAIL. YES	AVAIL. NO	SOURCE
a. Skilled Production					
b. Unskilled Production					
c. Engineering					
d. Administrative					
e. TOT. Lines a thru d					

2. SHIFTS ON WHICH WORK IS TO BE PERFORMED
☐ FIRST ☐ SECOND ☐ THIRD

3. UNION AFFILIATION

AGREEMENT EXPIRATION DATE ▶

4. RELATIONSHIP WITH LABOR INDICATES PROBLEMS AFFECTING TIMELY PERFORMANCE OF PROPOSED CONTRACT (If "Yes," explain on attached sheet)
☐ YES ☐ NO

SECTION VI – DELIVERY PERFORMANCE RECORD

SECTION VII – RELATED PREVIOUS PRODUCTION (Government)

PAST YEAR PRODUCTION: ITEM NOMENCLATURE (a)	PAST YEAR PRODUCTION: NATIONAL STOCK NO. (NSN) (b)	GOVERNMENT CONTRACT NUMBER 1/ (c)	PERFORMANCE: ON SCHED. (d)	PERFORMANCE: DELINQUENT (e)	QUANTITY (f)	DOLLAR VALUE (9000) (g)

1/ Identify identical items by an asterisk (*) after the Government contract number.

SECTION VIII – CURRENT PRODUCTION

(Government and civilian concurrent production schedule using same equipment and/or personnel as offered item.)

	ITEM(S) (Include Government Contract No., if applicable. Identify unsatisfactory performance with asterisk (*).)	MONTHLY SCHEDULE OF CONCURRENT DELIVERIES (Quantity) 1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	BAL.
BEING PRODUCED	1.											
PENDING AWARD	2.											

SECTION IX – ORGANIZATION AND MANAGEMENT DATA

Provide the following information in SECTION I NARRATIVE:

1. Describe the relationship between management, production, and inspection. Attach an organizational chart, if available.

2. Describe the prospective contractor's production control system. State whether or not it is operational.

3. Evaluate the prospective contractor's production control system in terms of (a) historical effectiveness, (b) the proposed contract, and (c) total production during performance of the proposed contract.

4. Comment on or evaluate other areas unique to this survey (include all special requests by the contracting office and any other information pertinent to the proposed contract or item classification).

73. Section 53.301-1408 is revised to read as follows:

53.301-1408 Preaward Survey of Prospective Contractor Quality Assurance.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000-0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I - RECOMMENDATION

1. RECOMMEND: ☐ AWARD ☐ NO AWARD (Provide full substantiation for recommendation in 4. NARRATIVE)

2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE, IS RECOMMENDED. ☐ YES ☐ NO

3. AN ON-SITE SURVEY WAS PERFORMED. ☐ YES ☐ NO

4. NARRATIVE

IF CONTINUATION SHEETS - MARK HERE ☐

	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY MADE BY			
6. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION EXPIRATION DATE: 6-30-91 0000-000
Previous edition is usable.

STANDARD FORM 1408 (REV. 5-89)
Prescribed by GSA - FAR (48 CFR) 53.208-1408

SECTION II - COMPANY AND SOLICITATION DATA

1. QUALITY ASSURANCE ORGANIZATION (Describe briefly and attach organization chart.)

2. QUALITY ASSURANCE OFFICIALS CONTACTED (Names, titles, and years of quality assurance experience)

3. QUALITY, RELIABILITY, MAINTAINABILITY REQUIREMENTS WHICH APPLY					
	☐ MIL-I-45208	☐ MIL-STD-45662	☐ OTHER (Specify)		
	☐ MIL-I-45607	☐ MIL-STD-785			
	☐ MIL-Q-9858	☐ MIL-STD-470	☐ MIL-S-52779		

4. ☐ IDENTICAL OR ☐ SIMILAR ITEMS HAVE BEEN ☐ PRODUCED ☐ SERVICED BY PROSPECTIVE CONTRACTOR

(If similar items, identify:)

SECTION III - EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. AS PERTAINS TO THE CONTRACT, THESE ITEMS ARE UNDERSTOOD BY THE CONTRACTOR	a. Exhibits, technical data, drawings, specifications, and approval requirements.		
	b. Preservation, packaging, packing, and marking requirements.		
	c. OTHER (Specify)		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used or reconditioned material and former Government surplus material will be furnished by the prospective contractor. (If Yes, explain in Section I NARRATIVE)			
4. Prospective contractor will require unusual assistance from the Government.			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract?			
6. Quality control, inspection, and test personnel.	NUMBER SKILLED / NUMBER SEMI-SKILLED		
7. Inspection to production personnel ratio.	RATIO		
The following are available and adequate. (If not applicable, show "N/A" in "Yes" column.)			
8. Inspection and test equipment, gauges, and instruments for first article and production (including solicitation specified equipment).			
9. Calibration/metrology program.			
10. Written procedures and instructions for inspections, tests, process controls, and other requirements; conformance thereto; in conjunction with other planning control functions.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. Quality assurance/control organizational structure.			
13. System for determining inspection, test, and measurement requirements.			
14. Controls for selecting qualified suppliers and assuring the quality of purchased materials.			
15. Material control: identification, segregation, maintenance, preservation, and correction of defects.			
16. Government furnished property controls.			
17. In-process inspection controls.			
18. System for timely identification and correction of deficiencies to prevent recurrence.			
19. Preservation, packaging, packing, marking controls.			
20. Quality control records (such as: inspection, test, corrective actions, calibration, etc.)			
21. Controls for investigation of customer complaints and correction of deficiencies.			
22. Reliability and/or maintainability program.			
23. Computer software (deliverable and/or non-deliverable) quality assurance program.			

STANDARD FORM 1408 (REV. 5-89) BACK

79. Section 53.301-1407 is revised to read as follows:

53.301-1407 Preaward Survey of Prospective Contractor-Financial Capability.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR FINANCIAL CAPABILITY

SERIAL NO. (For surveying activity use) | FORM APPROVED OMB NO. 9000-0011

PROSPECTIVE CONTRACTOR

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I - RECOMMENDATION

1. RECOMMENDED
☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. TOTAL OFFERED PRICE

3. NARRATIVE (Cite those sections of the report which substantiate the recommendation. Give any other backup information in this space or on an additional sheet, if necessary.)

IF CONTINUATION SHEETS ATTACHED - MARK HERE ☐

4. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable. EXPIRATION DATE: 6-30-91 1407-103 STANDARD FORM 1407 REV. 5-85 Prescribed by GSA - FAR (48 CFR) 53.209-1(e)

SECTION II - GENERAL

1. TYPE OF COMPANY
☐ CORPORATION ☐ PARTNERSHIP
☐ SUBSIDIARY ☐ DIVISION
☐ PROPRIETORSHIP ☐ OTHER (Specify)

2. YEAR ESTABLISHED:

3. NAME AND ADDRESS OF:
a. PARENT CO.
b. SUBSIDIARIES

SECTION III - BALANCE SHEET/PROFIT AND LOSS STATEMENT

PART A - LATEST BALANCE SHEET

1. DATE | 2. FILED WITH

3. FINANCIAL POSITION

a. Cash	$
b. Accounts Receivable	
c. Inventory	
d. Other Current Assets	
e. Total Current Assets	
f. Fixed Assets	
g. Current Liabilities	
h. Long Term Liabilities	
i. Total Liabilities	
j. Net Worth	
k. WORKING CAPITAL (Current Assets less Current Liabilities)	

5. RATIOS

a. CURRENT ASSETS TO CURRENT LIABILITIES	b. ACID TEST (Cash, temporary investments held in lieu of cash and current receivables to current liabilities)	c. TOTAL LIABILITIES TO NET WORTH

PART B - LATEST PROFIT AND LOSS STATEMENT

1. CURRENT PERIOD a. FROM b. TO | 2. FILED WITH

3. NET SALES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	
4. NET PROFITS BEFORE TAXES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	

PART C - OTHER

1. FISCAL YEAR ENDS (Date):
2. BALANCE SHEETS AND PROFIT AND LOSS STATEMENTS HAVE BEEN CERTIFIED ▶ a. THROUGH (Date) b. BY (Signature)
3. OTHER PERTINENT DATA

SECTION IV - PROSPECTIVE CONTRACTOR'S FINANCIAL ARRANGEMENTS

Mark "X" in appropriate column.	YES	NO
1. USE OF OWN RESOURCES		
2. USE OF BANK CREDITS		
3. OTHER (Specify)		

4. INDEPENDENT ANALYSIS OF FINANCIAL POSITION SUPPORTS THE STATEMENTS SHOWN IN ITEMS 1, 2, AND 3 ☐ YES ☐ NO (If "NO", explain)

SECTION V - GOVERNMENT FINANCIAL AID

1. TO BE REQUESTED IN CONNECTION WITH PERFORMANCE OF PROPOSED CONTRACT

Mark "X" in appropriate column.	YES	NO
a. PROGRESS PAYMENT(S)		
b. GUARANTEED LOAN		
c. ADVANCE PAYMENTS		

2. EXPLAIN ANY "YES" ANSWERS TO ITEMS 1a, b, AND c

3. FINANCIAL AID CURRENTLY OBTAINED FROM THE GOVERNMENT

a. PROSPECTIVE CONTRACTOR RECEIVES GOVERNMENT FINANCING AT PRESENT ☐ YES ☐ NO	b. IS LIQUIDATION CURRENT? ☐ YES ☐ NO	c. AMOUNT OF UNLIQUIDATED PROGRESS PAYMENTS OUTSTANDING $

Complete items below only if item a. is marked "YES."

DOLLAR AMOUNTS	(a) AUTHORIZED	(b) IN USE
a. Guaranteed loans	$	$
b. Advance payments	$	$

4. LIST THE GOVERNMENT AGENCIES INVOLVED | 5. SHOW THE APPLICABLE CONTRACT NOS.

STANDARD FORM 1407 REV. 5-85 PAGE 2

SECTION VI – BUSINESS AND FINANCIAL REPUTATION

1. COMMENTS OF PROSPECTIVE CONTRACTOR'S BANK

2. COMMENTS OF TRADE CREDITORS

3. COMMENTS AND REPORTS OF COMMERCIAL FINANCIAL SERVICES AND CREDIT ORGANIZATIONS (Such as, Dun & Bradstreet, Standard and Poor, etc.)

4. MOST RECENT CREDIT RATING ▶ a. DATE | b. BY

5. DOES PRICE APPEAR UNREALISTICALLY LOW? ☐ YES ☐ NO (If YES, explain in Section I NARRATIVE)

6. DESCRIBE ANY OUTSTANDING LIENS OR JUDGEMENTS

SECTION VII – SALES (000'S) FOR NEXT SIX QUARTERS

CATEGORY	1	2	3	4	5	6	TOTAL
1. CURRENT CONTRACT SALES (Backlog)	$	$	$	$	$	$	$
A. GOVERNMENT (Prime & Subcontractor)							
B. COMMERCIAL							
2. ANTICIPATED ADDITIONAL SALES							
A. GOVERNMENT (Prime and Subcontractor)							
B. COMMERCIAL							
3. TOTALS							

60. Section 53.301-1408 is revised to read as follows:

53.301-1408 Preaward Survey of Prospective Contractor-Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR ACCOUNTING SYSTEM

SERIAL NO. (For surveying activity use) | FORM APPROVED OMB NO. 9000-0011

PROSPECTIVE CONTRACTOR

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. PROSPECTIVE CONTRACTOR'S ACCOUNTING SYSTEM IS ACCEPTABLE FOR AWARD OF PROSPECTIVE CONTRACT

☐ YES ☐ NO (Explain in 2. NARRATIVE)

☐ YES, WITH A RECOMMENDATION THAT A FOLLOW ON ACCOUNTING SYSTEM REVIEW BE PERFORMED AFTER CONTRACT AWARD (Explain in 2. NARRATIVE)

2. NARRATIVE (Clarification of deficiencies, and other pertinent comments. If additional space is required, continue on plain sheets of paper.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

3. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable. EXPIRATION DATE: 6-30-91 1408-103

STANDARD FORM 1408 (REV. 5-88) Prescribed by GSA - FAR (48 CFR) 53.300-1408

SECTION II – EVALUATION CHECKLIST			
MARK "X" IN THE APPROPRIATE COLUMN (Explain any deficiencies in SECTION I NARRATIVE)	YES	NO	NOT APPLICABLE
1. EXCEPT AS STATED IN SECTION I NARRATIVE, IS THE ACCOUNTING SYSTEM IN ACCORD WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLICABLE IN THE CIRCUMSTANCES?			
2. ACCOUNTING SYSTEM PROVIDES FOR:			
a. Proper segregation of direct costs from indirect costs.			
b. Identification and accumulation of direct costs by contract.			
c. A logical and consistent method for the allocation of indirect costs to intermediate and final cost objectives. (A contract is a final cost objective.)			
d. Accumulation of costs under general ledger control.			
e. A timekeeping system that identifies employees' labor by intermediate or final cost objectives.			
f. A labor distribution system that charges direct and indirect labor to the appropriate cost objectives.			
g. Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account.			
h. Exclusion from costs charged to government contracts of amounts which are not allowable in terms of FAR 31, Contract Cost Principles and Procedures, or other contract provisions.			
i. Identification of costs by contract line item and by units (as if each unit or line item were a separate contract) if required by the proposed contract.			
j. Segregation of preproduction costs from production costs.			
3. ACCOUNTING SYSTEM PROVIDES FINANCIAL INFORMATION:			
a. Required by contract clauses concerning limitation of cost (FAR 52.232-20 and 21) or limitation on payments (FAR 52.216-16).			
b. Required to support requests for progress payments.			
4. IS THE ACCOUNTING SYSTEM DESIGNED, AND ARE THE RECORDS MAINTAINED IN SUCH A MANNER THAT ADEQUATE, RELIABLE DATA ARE DEVELOPED FOR USE IN PRICING FOLLOW-ON ACQUISITIONS?			
5. IS THE ACCOUNTING SYSTEM CURRENTLY IN FULL OPERATION? (If not, describe in Section I Narrative which portions are (1) in operation, (2) set up, but not yet in operation, (3) anticipated, or (4) nonexistent.)			

STANDARD FORM 1408 (REV. 9-88) BACK

81. Section 53.301–1416 is revised to read as follows:

53.301–1416 Payment Bond for Other than Construction Contracts.

PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address) (Include ZIP Code)	TYPE OF ORGANIZATION (Check one)	
	☐ INDIVIDUAL	☐ PARTNERSHIP
	☐ JOINT VENTURE	☐ CORPORATION
	STATE OF INCORPORATION	
SURETY(IES) (Name(s) and business address(es)) (Include ZIP Code)	PENAL SUM OF BOND	
	MILLION(S) / THOUSAND(S) / HUNDRED(S) / CENTS	
	CONTRACT DATE	CONTRACT NO.

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the Principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action –

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration of one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District Court for the district in which the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable — EXPIRATION DATE: 12-31-92 — 1410-102 — STANDARD FORM 1418 (REV. 1-90) Prescribed by GSA – FAR (48 CFR) 53.228(d)

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) & TITLE(S) (Typed)	1.	2.		
CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY B — NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
SURETY B — SIGNATURE(S)	1.	2.		
SURETY B — NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STANDARD FORM 1416 (REV. 1-90) BACK

82. Section 53.302-90 is revised to read as follows:

53.302-90 Release of Lien on Real Property.

RELEASE OF LIEN ON REAL PROPERTY

Whereas _____ (Name), of _____ (Place of Residence), by a bond for the performance of U.S. Government Contract Number _____, became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on _____ (Name of Land Records)

In the _____ (Locality) of _____ (State)

and

Whereas, I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom,

and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Date] [Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 90 (REV. 1-90)
Prescribed by GSA
FAR (48 CFR) 53.228(d)

BEST COPY AVAILABLE

83. Section 53.302-91 is revised to read as follows:

53.302-91 Release of Personal Property from Escrow.

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas _____ (Name), of _____ (Place of Residence), by a bond for the performance of U.S. Government Contract Number _____, became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

in Account Number _____ on deposit

at _____ (Name of Financial Institution)

located at _____ (Address of Financial Institution), and

Whereas I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to _____ (Name of Financial Institution).

[Date] [Signature]

Seal

OPTIONAL FORM 91 (1-90)
Prescribed by GSA
FAR (48 CFR) 53.228(a)

AUTHORIZED FOR LOCAL REPRODUCTION

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federal register

Thursday
June 21, 1990

Part V

Department of Transportation

Research and Special Programs Administration

State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-31; Docket IRA-49]

State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation

APPLICANT: State of Louisiana.

REGULATIONS AFFECTED: Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, 10501–10505 and 10901–10905.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 U.S.C. App. sec. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180) issued thereunder.

MODES AFFECTED: Rail and Highway.

ISSUE DATE: June 15, 1990 .

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Louisiana Revised Statutes 32:1501–1520 and Louisiana Administrative Code, title 33, part V, sections 10501–10505 and 10901–10905 are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

RULING: Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501–10505 and 10901–10905 are consistent with the HMTA and the HMR except that the following provisions thereof are inconsistent with the HMTA or the HMR to the extent indicated and thus preempted to that extent under section 112(a) of the HMTA (49 U.S.C. 1811(a)):

(1) La. Rev. Stat. 32:1502(5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La. Rev. Stat. 32:1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Tit. 33, §§ 10501(c) and 10901(c) definitions of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous materials transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512–1514 insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512 insofar as it imposes civil penalties for other than "knowing" violations; and

(8) La. Rev. Stat. 32:1504B. 32:1505, 32:1506, and 32:1509A(3) insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

This ruling does not address the issues of whether those Louisiana provisions are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. 2501 *et seq.*, or any statute other than the HMTA.

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I. Background

On September 18, 1989, the State of Louisiana filed an inconsistency ruling application. That application requested a ruling concerning the consistency of the above-cited State statutes and regulations with the HMTA and the HMR.

The State contends that those statutes and regulations, as they apply to rail carriers and shippers of hazardous materials in Louisiana, are consistent with the HMTA and the HMR.

On September 27, 1989, OHMT published a Public Notice and Invitation to Comment (54 FR 39822) soliciting public comments on Louisiana's application. It expanded the proceeding to include the consistency of those statutes and regulations as they pertain to carriers and shippers in all modes of transportation.

Comments in support of findings of inconsistency were filed by the Air Transport Association of America, the Association of American Railroads, Norfolk Southern Corporation, and Union Pacific System. Comments partially in support of, and partially opposing, findings of inconsistency were filed by National Tank Truck Carriers, Inc. and Olin Chemicals.

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 U.S.C. App. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in the [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state and local requirements that are not "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 U.S.C. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA and the HMR, only the question of statutory preemption under the HMTA will be considered. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state of local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. The Application for Inconsistency Ruling

On September 18, 1989, the State of Louisiana, Department of Public Safety and Corrections, through its Chief Counsel, applied for an inconsistency ruling concerning certain of its statutes and regulations as they pertain to rail carrier and shipper transportation of hazardous materials.

According to the State, in Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, §§ 10501–10505 and 10901–10905, Louisiana adopted without modification the provisions of 49 CFR parts 171 through 179 as they pertain to carriers and shippers of hazardous materials.

Louisiana said that in enforcing these provisions, its Office of State Police, Transportation and Environmental Safety Section cited the Illinois Central Railroad Company for violations and assessed a civil penalty after an administrative hearing. The application stated that the Illinois Central Railroad had appealed the imposition of the civil penalty to the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, based on a claim that Louisiana's Office of State Police and/or Department of Public Safety "are without authority to assess civil penalties in that these matters have been preempted by Federal Statutes and Regulations."

In its application, Louisiana maintained that its statutes and regulations, as they apply to rail carriers and shippers of hazardous materials in Louisiana, are consistent with the HMTA and parts 171–179 of the HMR because they were adopted in toto, without modification. The application further stated that the statutes and regulations "afford an equal level of protection to the public" as that afforded by the HMTA and the HMR and "do not unreasonably burden commerce." [The criteria in the preceding sentence are those for deciding nonpreemption determination applications under section 112(b) of the HMTA, 49 U.S.C. 1811(a), not for determining consistency or inconsistency under section 112(a) of the HMTA, 49 U.S.C. 1811(b).]

Louisiana stated that in enforcing these provisions it "has conformed to the civil penalties limitations" of the HMTA. Louisiana also contended that the regulatory scheme of the HMTA "obviously envisions state participation in the enforcement of regulations and penalties for violations." The application further stated that the number of Federal Railroad Administration inspectors in the Louisiana area makes it "physically impossible for the rail transportation of hazardous materials to be adequately policed by the Federal government alone."

Therefore, Louisiana requested a ruling that its statutes and regulations insofar as they pertain to rail carriers and shippers of hazardous maerials and the State's authority to administer these regulations are consistent with the HMR and, thus, are not preempted by section 112(a) of the HMTA.

Because, however, the above-cited Louisiana statutes and regulations apply to all modes of transportation, RSPA expanded this proceeding to include consideration of the issue of whether those Louisiana statutes and regulations as they pertain to carriers and shippers in all modes of transportation are consistent with the HMTA and the HMR.

IV. Public Comment Opposing Consistency

Comments favoring a finding of inconsistency were filed by the Association of American Railroads (AAR), Norfolk Southern Corporation (NSC), the Union Pacific Railroad Company (UPR), and Olin Chemicals (Olin).

AAR Comments

The AAR contends that the Louisiana statutes and regulations are preempted by both the HMTA and the FRSA, that both statutes preclude state regulation and enforcement in the area of hazardous materials transportation by rail, and that Louisiana's requirements differ from, and conflict with, the HMR.

Concerning its allegation of inconsistencies, AAR summarizes its position as follows:

Louisiana states that its statutes and regulations merely replicate the federal regulations, specifically 49 C.F.R. Parts 171–179. 54 Fed. Reg. 39823. That is not the case. Louisiana's statutes contain a broader definition of hazardous materials than that contained in the *Code of Federal Regulations*, require carriers to have liability insurance, impose requirements for the marking of rail cars in addition to what RSPA requires, contains additional shipping paper requirements, impose unique accident reporting requirements, require locomotive engineers to be licensed, and grant state inspectors unique rights to stop trains. La. Rev. Stat. Ann. §§ 32:1502, 1503, 1507, 1508, 1510, and 1516. The regulations implementing the statutory requirements fail to include the exemptions granted by RSPA pursuant to 49 U.S.C. § 1808 and 49 C.F.R. Subpart b. §§ 107.101–123, incorporate by reference superseded federal regulations, and conflict with RSPA's regulations by using an overly broad definition of "train." *See* La. Admin. Code Tit. 33, chapters 105 and 109. Thus, Louisiana's statutory and regulatory system for the transportation of hazardous materials contains requirements far beyond what is found in the federal regulations and conflicts with those regulations.

The AAR urges RSPA to depart from its usual practice of restricting inconsistency rulings to preemption issues under the HMTA. It argues that Louisiana's requirements should be found to be preempted under the FRSA because courts have held and will hold that such is the case. It cites *CSX*

Transportation, Inc. v. *Public Utilities Comm'n of Ohio*, 701 F. Supp. 608 (S.D. Ohio 1988), *aff'd* Case 88-4185 (6th Cir. Apr. 13, 1990).

The balance of AAR's comments address preemption under the HMTA and consistency with the HMTA and the HMR. It cites and quotes from a RSPA notice entitled "Preemption Under the Hazarous Materials Transportation Act," 54 FR 26710 (June 23, 1989). It cites the discussion therein of the "dual compliance" and "obstacle" tests used to determine consistency and Congress' objective to achieve uniform national standards in the field of hazardous materials transportation.

AAR then proceeds to argue that section 205 of the FRSA, 45 U.S.C. 434, is helpful in determining Congress' intent in enacting the HMTA. Citing the *CSX* case and 45 U.S.C. 421, it states that the FRSA preemption language encompasses hazardous materials transportation and that Congress could not have intended a course of action in the HMTA contradicting its intent in enacting the FRSA. It quotes 45 U.S.C. 434:

> The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

AAR concludes from this language and its legislative history that Congress intended that there should be a single, national system of regulation for the transportation of hazardous materials by rail.

It further contends that the District Court in the *CSX* case determined that this Congressional intent has continued. It cites *Atchison, Topeka & Santa Fe Railway* v. *Illinois Commerce Comm'n*, 453 F. Supp. 920 (N.D. Ill. 1977), as holding that State action was preempted when DOT issued hazardous materials regulations. AAR states that the RSPA Administrator testified before Congress in 1979 that states could not issue railroad hazardous materials regulations in areas regulated by DOT unless the state regulations addressed a local safety hazard. It then quotes the *CSX* District Court decision: "Congress' failure to amend the FRSA or the HMTA preemption provisions in response to either the *Atchison* decision or RSPA's (testimony) * * * can be read as acceptance of these interpretations." 701 F.Supp. at 615-6.

In addition, AAR cites a 1986 report issued by Congress' Office of Technology assessment, which stated, "Even where State inspectors have been trained in rail safety procedures, they cannot conduct hazardous materials inspections, because authority to do so has not been granted to States."

From the foregoing, AAR concludes that the language of the RFSA, its legislative history, case law, and Congressional testimony and reports show that Congress intended "uniform" hazardous materials regulation under the HMTA to mean that there was to be a single, national regulatory and enforcement system for the railroad industry. It further concludes that state adoption and enforcement of DOT regulations in the rail mode present an obstacle to the accomplishment of the Congressional objective of uniformity and thus are inconsistent. It notes that these principles do not apply to highway transportation and that, therefore, prior inconsistency rulings concerning highway transportation requirements are inapplicable.

Next AAR argues that Louisiana's requirements would be inconsistent even if they were identical to the Federal requirements because of allegedly unsafe, incorrect and improper enforcement thereof by State enforcement personnel. It cites case law for the proposition that in making preemption determinations Federal and state requirements must be evaluated as interpreted and applied and not solely as written. It also cites Inconsistency Ruling IR-9 (IR-9) (Decision on Appeal), 52 Fed. Reg. 13000, 13003 (Apr. 20, 1987), for the principle that the actual and potential effect of state or local rules, not their intent, determines their consistency.

After concluding that Louisiana's requirements are inconsistent even if identical because of the manner in which the State enforces them, AAR separately argues that, in fact, the Louisiana regulatory requirements are not identical to the HMR. It advances several arguments in support of that proposition.

First, AAR argues that Louisiana's failure to explicitly recognize exemptions which OHMT has issued under 49 U.S.C. App. 1806 and 49 CFR 107.101-123 results in Louisiana's regulations being inconsistent. AAR asserts that La. Rev. Stat. section 32:1507A apparently and vaguely directs the Secretary of the Department of Public Safety and Corrections to take OHMT's exemptions into account but that the Secretary has failed to do so in regulations (La. Admin. Code, Tit. 33, chapters 106 and 109).

AAR argues that states cannot be permitted to choose whether to accept or reject the 1,000 outstanding OHMT exemptions. It cites several examples of types of rail transportation exemptions which it claims Louisiana might not recognize: (1) Those authorizing transportation of hazardous materials in tank cars not authorized for such transportation by the HMR, (2) exemptions from HMR shipping paper requirements, and (3) exemptions authorizing transportation of railway track torpedoes and fusees in flagging kits without placards. It concludes that Louisiana's failure to recognize DOT's exemptions results in the State's regulations being inconsistent.

Second, AAR contends that Louisiana's statutory adoption of the October 1, 1987 version of the HMR is inconsistent because that version differs from the current HMR due to changes in the HMR which have occurred since that time. It cites IR-18, 52 FR 29404, 29410-1 (June 30, 1987), *affirmed* IR-19 (Decision on Appeal), 53 FR 11600, (Apr. 7, 1988) in support of its position.

Third, AAR alleges that the State has adopted a regulatory definition of "train" which differs from the HMR definition. It says that the State defines a train as "an engine or an engine coupled with one or more rail freight cars." La Admin. Code, tit. 33, secs. 10501(c) and 10901(c). It cites the following definition of a train in 49 CFR 171.8: "one or more engines coupled with one or more rail cars, *except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.*" [Emphasis added.] AAR contends that as a result of the unrestricted Louisiana definition of "train," the State is requiring that during switching and assembling operations a buffer car always be used between engines and tank cars and that shipping papers be carried by a train crew member—practices which AAR alleges are unsafe and impracticable.

In addition to alleging the foregoing regulatory inconsistencies, AAR argues that several Louisiana statutory provisions are not identical and, therefore, are inconsistent.

First, it discusses different definitions of hazardous materials. It cites Louisiana's definition:

> "Hazardous materials" means any gaseous, liquid, or solid material which because of its quantity, concentration, or physical, chemical, or biological composition poses a substantial present or potential hazard to human health, the environment, or property when transported in commerce, or which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretary of the Department of Public Safety and Corrections pursuant to the Louisiana Administrative Procedure Act. The secretary, in finding that a material is hazardous, shall consider the following factors with respect to each material.
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> * * * * *
>
> The rules and regulations adopted by the secretary of the Department of Public Safety and Corrections shall be consistent with the Code of Federal Regulations, Title 49. "Explosives" as defined and regulated by R.S. 40:1471.1 through 1471.22 shall be considered to be hazardous material subject to regulation by this Chapter.

La. Rev. Stat. sec. 32:1502(5).

AAR states that the foregoing definition, although mandating consistency with the HMR, itself differs from the HMR definition [49 CFR 171.8] of a hazardous material as:

> * * * a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

AAR cites a series of inconsistency rulings and *Missouri Pacific Railroad* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466, 481 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 267 (5th Cir. 1988), for the principle that definitions of hazardous materials differing from that in the HMR are inconsistent.

In addition, AAR specifically discusses Louisiana's allegedly inconsistent definition of "explosive" as:

> any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; * * * The term "explosives" shall further include * * *
>
> (a) "blasting agent" which shall mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive; * * *

La. Rev. Stat. sec. 40:1471.2(1). The AAR asserts that because this definition encompasses blasting agents "not otherwise defined as an explosive," it classifies as hazardous materials blasting agents which do not have the primary or common purpose of functioning by explosion and thus is inconsistent with 49 CFR 173.50, which only includes as explosives those blasting agents which do not have as their primary or common purpose the functioning by explosion.

Second, AAR contends that the State's requirement that carriers have evidence of liability insurance, self-insurance and other evidence of financial responsibility acceptable to the Secretary of the Department of Public Safety and Corrections is inconsistent. It cites IR-25, 54 FR 16308, 16310-1 (Apr. 21, 1989), for the proposition that the subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal.

Third, AAR claims that the State's requirement to mark the number of each exemption on the vehicle to which it is applied (La. Rev. Stat. sec. 32:1507B) is inconsistent because it seemingly requires that a tank car containing a hazardous material that is authorized in any way by an exemption have an exemption number stenciled thereon. It contends that this State requirement goes beyond the HMR (40 CFR part 106, Subpart B, Appendix B) by requiring the marking of tank cars when, for example, the only exemption involved is a shipping paper exemption.

Fourth, AAR contends that the following Louisiana incident reporting requirements are inconsistent:

> A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.
>
> [and]
>
> In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

La. Rev. Stat. secs. 32:1510 B and C. The HMR include a requirement for written reports concerning hazardous materials incidents. 49 CFR 171.16. AAR states that inconsistency rulings and court decisions have held that state and local requirements for written hazardous materials incident reports, including requirements for copies of such reports, are inconsistent. It cites IR-3 (Decision on Appeal), 47 FR 18457, 18462 (Apr. 29, 1982); IR-2, 44 FR 75568, 75572 (Dec. 20, 1979); IR-3, 46 FR 18918, 18924 (Mar. 26, 1981); and *Nat'l Tank Truck Carriers v. Burke*, 535 F. Supp. 508, 519 (D.R.I. 1982); *aff'd* 698 F.2d 559 (1st Cir. 1983).

Fifth, AAR asserts that Louisiana's requirement that locomotive engineers be licensed (La. Rev. Stat. sec. 32:1516A) is inconsistent. It argues that in IR-26, 54 FR 16314, (Apr. 21, 1989), correction 54 FR 21528 (May 10, 1989), OHMT ruled that a state could not require drivers of motor vehicles containing hazardous materials to have certificates indicating that a driver has met state training requirements. It says that multi-state licensing requirements could lead to chaos and adversely affect safety. In addition, it points to the licensing/certification requirements of the Rail Safety Improvement Act of 1988 as reflecting a Congressional intent that licensing requirements be nationally uniform.

Sixth, AAR contends that two Louisiana statutory enforcement provisions are inconsistent. It asserts that La. Rev. Stat. 32:1505A(2), authorizing state inspectors to stop and inspect any transport vehicle or part thereof for any violation, is inconsistent with the 49 CFR 174.14 requirement that a rail carrier must forward promptly each shipment of hazardous materials. It cites IR-26, *supra*, at 16323, quoting IR-2, *supra*, at 75576.

AAR also argues that La. Rev. Stat. sec. 32:1508 is inconsistent because it is too discretionary and likely to result in delays of hazardous materials transportation. That section authorizes state inspectors to take a rail car out of service if it would be hazardous to life or property during the transportation of a hazardous material and provides that the car cannot be returned to service until inspected and approved by a State inspector. AAR says that prior erroneous enforcement action by the State makes it possible that cars would be taken out of service for non-existent hazards.

ATA Comments

The Air Transport Association of America (ATA) filed comments opposing the issuance of any decision authorizing the State to issue or enforce hazardous materials regulations with respect to air transportation. ATA says that the State has not requested such a ruling and that OHMT, although it has broadened the scope of the proceeding, should not issue one—particularly since, ATA says, the State has not indicated an intention to enforce its hazardous materials law or regulations against air carriers. ATA argues that OHMT lacks statutory authority under 49 U.S.C. 1811(b) to issue such a ruling.

Alternatively, ATA contends that if OHMT issues a ruling addressing air transportation it should find that application of the Louisiana requirements to air transportation is inconsistent with HMTA. It contends that such a finding results from

applications of the two tests set forth in 49 U.S.C. App. 1811(b) and 49 CFR 107.209(c). (Although the latter regulatory citation is correct, the former statutory citation is incorrect, and many of ATA's comments focus on the irrelevant "equivalent safety" and "burden on commerce" criteria, which apply to nonpreemption determinations under 49 U.S.C App. sec. 1811(b) and 49 CFR 107.215–221 rather than to inconsistency rulings under 49 U.S.C. App. sec. 1811(a) and 49 CFR 107.209–209. Those irrelevant comments are not considered in this ruling.)

The following ATA comments are relevant to the applicable standards, the "dual compliance" and "obstacle" tests:

> Uniformity of regulatory activities is essential to air carrier operations. Without it, air transportation is substantially impeded. Our members perform over 18,000 flights daily. The vast majority of these flights involve origin and destination points in different states. Our industry cannot function in an environment where different regulators apply hazardous material transportation requirements.
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> Avoidance of a regulatory patchwork is precisely what Congress intended when it enacted section 112 of the HMTA. Further, an important purpose of the legislation "was to retain intact the authority over Hazardous Materials Transportation that presently exists under statutes such as the Federal Aviation Act * * *." 1974 U.S. Code Cong. & Ad. News 7699, 7699 (H.R. Report No. 93–1083).

ATA concludes that the Louisiana requirements should be found inconsistent as applied to air transportation.

Norfolk Southern Comments

Norfolk Southern Corporation (NSC) also filed extensive comments supporting a finding of inconsistency. Its initial contention is that OHMT should discard its policy of limiting inconsistency rulings to HMTA issues. NSC contends that OHMT cannot ignore "the primary vehicle for federal regulation of railroad safety," the FRSA, or its relationship with the HMTA and the HMR. It says that a ruling ignoring section 434 of the FRSA, which preempts state and local governments from all Federally regulated rail safety subject matters, would encourage a flood of both state and local governmental efforts to issue and enforce hazardous materials regulations for rail transportation.

NSC points out that the FRSA was enacted as the "Federal Railroad Safety and Hazardous Materials Transportation Control Act of 1970" and that it specifically states a Congressional intention "to reduce damage to property caused by accidents involving any carrier of hazardous materials." 45 U.S.C. 421. It also cites extensive FRSA legislative history reflecting an intent to establish a national rail transportation regulatory system with a minimal role for states.

Addressing the HMTA, NSC states that it was enacted to broaden Federal regulatory control, to provide uniform regulation, and to "preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation. It cites supporting legislative history and case law.

NSC then cites and discusses a series of Federal Court decisions applying the preemption provision (section 434) of the FRSA. Several of those cases are cited for the proposition that FRSA preemption results from the Secretary of Transportation issuing a regulation covering a particular rail transportation-related subject regardless of the statutory authority (including the HMTA) under which such a regulation is issued. *Missouri Pacific R. Co.* v *Railroad Comm. of Texas*, 653 F. Supp. 617, 623 (W.D. Tex. 1987), *modified*, 833 F. 2d 570 (5th Cir. 1988); *Atchison, Topeka & Santa Fe Ry. Co.* v. *Ill. Commerce Comm.*, 453 F. Supp. 920, 924 (N.D. Ill. 1977); *CSX Transportation, Inc.* v. *City of Tullahoma*, Case No. 4–87–47, slip op. at 11 (E.D. Tenn. Feb. 17, 1988).

Finally on this point, NSC cites *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio*, 701 F. Supp. 608 (S.D. Ohio 1988), *aff'd* Case 88–4185 (6th Cir. Apr. 13, 1990). NSC says that this case demonstrates that the FRSA preemption provision extends to state regulation of hazardous materials transportation by rail and preempts such state requirements, even those identical to the HMR. Thus, NSC concludes that Louisiana's requirements would be preempted to the extent they are applicable to rail transportation even if they were identical to the HMR.

Next, NSC argues that the State's requirements would be inconsistent even if they were identical to the Federal requirements because state enforcement is an obstacle to a single, Federal enforcement scheme. It contends that different enforcement and interpretations of the same regulatory language result in inconsistency. It cites instances where it allegedly was cited for using faded placards, for violations while cars still were being classified in the yard, and for violations which were shipper, not carrier, responsibilities. NSC says that none of the five state enforcement cases against NSC was brought to fruition, that the States asserted its right to interpret the regulations as it saw fit, and that the State's inspectors were not adequately trained to enforce the HMR requirements the State has adopted.

NSC further submits that the manner in which the State has adopted the HMR appears to make parts of the HMR which are applicable only to shippers and other types of carriers apply within Louisiana to the railroads. It asserts that this can lead to confusion and to decreased safety through failure to take enforcement action against the proper responsible parties.

NSC concludes, therefore, that "there cannot be uniform enforcement without uniform interpretation and application. Thus any enforcement of the HMR by the State is inconsistent with the HMTA as well as the FRSA."

Then NSC proceeds to list seven areas in which the Louisiana regulations allegedly are not identical to the HMR and thus are inconsistent. Therefore, it denies the State's assertion that it has adopted the HMR *in toto*.

First, NSC says that section 10501B and 10901B are inconsistent insofar as they provide that any term in the State rules is to be used in its commonly accepted meaning "except where the term has been specifically defined [in the State rules]. R.S. 32:1502 or the 49 CFR" NSC claims that the inconsistency arises because the State's regulations and statute define certain terms differently than the HMR.

Second, NSC points to the State's different definition of "train," which allegedly results in broader applicability of substantive requirements.

Third, NSC alleges that the States has altered the civil penalty structure of the HMTA and the HMR. It asserts that the State has omitted the "knowingly" requirement for civil penalty liability and the "willfully" requirement for criminal liability. Instead, says NSC, the State imposes strict liability for civil penalties and imposes criminal liability for what would be a civil penalty matter under the HMTA. It says that the result of the State's approach is to hold carriers strictly liable for shipper violations.

Fourth, NSC alleges that the State uses or could use the civil penalty process in an inconsistent manner (e.g., alleging 49 CFR 172.33 violations for a single missing identification number and conceivably bringing penalty actions based upon the State's different definition of "train").

Fifth, NSC alleges that inconsistency results from the fact that the HMR is constantly changing and that this results in a gap between the HMR and the State's requirements because of the State's adoption of the October 1, 1987 version of the HMR.

Sixth, NSC cites the State's substitution of State officials' titles for those of Federal officials in the HMR. It says that this results in rail carriers and shippers having to apply to the State Police for a certificate to operate within the State under a DOT-issued exemption or special approval.

Seventh, NSC contends that section 10005B(2) is inconsistent because it requires use of separate State incident reporting forms.

In addition, NSC argues that there are 12 inconsistencies between the State's statute and the HMTA and the HMR. These allegations are described in the following paragraphs.

First, NSC asserts that the State statute, specifically La. Rev. Stat. 32:1502 (5), (8) and (9), contains inconsistent definitions of "hazardous materials," hazardous wastes" and "transport vehicles." It says that the facts that the statute requires consistency with the HMR and that the State Police have adopted the HMR list of hazardous materials does not ameliorate the differing definitions because the State Police could designate any material it chooses as a hazardous material. NSC adds that the State's consistency requirement for hazardous materials does not apply to hazardous wastes.

Second, NSC alleges that La. Rev. Stat. 32:1503 is inconsistent in two respects. It says that it is inconsistent because, contrary to IR–25, *supra*, the State requires each carrier transporting hazardous materials or wastes to acquire and maintain liability insurance. It also states that it is inconsistent because it requires carriers to place placards on all four sides of each vehicle being used to transport hazardous materials while the HMR places the initial burden on shippers to provide proper placards.

Third, NSC contends that La. Rev. Stat. 32:1504 is inconsistent because it contains broad enforcement authority which violates the FRSA.

Fourth, NSC argues that La. Rev. Stat. 32:1505 is inconsistent with the HMTA and the HMR because it contains unfettered authority for State Police to stop and inspect transport vehicles for any violation of State statute or regulation.

Fifth, NSC asserts that La. Rev. Stat. 32:1506 and La. Rev. Stat. 32:1507 are inconsistent. It states that the former allows alternative compliance with State rules through discretionary State Police written authorization, exempts special permits from the written authorization requirement, and requires carriers to carry a copy of the State authorization on each vehicle to which it applies. It says that the latter section recognizes DOT exemptions and special permits but requires carriers to secure redundant State exemptions and to mark the State exemption number on the transport vehicle.

NSC argues that these provisions are inconsistent because they fail to recognize and honor OHMT special approvals ("special permits" being a Canada Transport term) and OHMT exemptions, they require redundant State approval (or possibly rejection) of OHMT exemptions, and they conflict with OHMT exemption requirements by themselves requiring the carrying of State authorizations and the marking of State numbers on vehicles.

Sixth, NSC avers that La. Rev. Stat. 32:1508 is inconsistent because it allows the State Police to put vehicles out of service and forbids their operation until required corrections have been made. It says that this section directly conflicts with an FRA rule (49 CFR § 215.9) prescribing how vehicles are to be returned to service and furthermore conflicts with FRA regulations authorizing the alerting of railroads as to defective cars and the recommending that they be taken out of service—*not* the tagging of cars as out of service.

Seventh, NSC maintains that La. Rev. Stat. 32:1509 is inconsistent in specifying how hazardous materials lading is to be described on shipping papers and prohibiting railroad acceptance of hazardous materials shipments unless shipping papers have been provided to the vehicle "operator" prior to departure. NSC cites IR–21, 52 FR 37072 (Oct. 2, 1987), IR–21 (Decision on Appeal), 53 FR 46735, (Nov. 18, 1988); IR–26, *supra*; and IR–27, 54 FR 16328 (Apr. 21, 1989), correction, 54 FR 20001 (May 9, 1989), for the principle that the Federal Government has exclusive jurisdiction over shipping papers. NSC asserts that

> the prohibition against acceptance of lading directly conflicts with the HMR, which only requires the shipping paper to be in the *possession of a member of the train crew* before a hazmat shipment can be accepted. Documentation is usually given to the conductor who is in charge of a train.

Eighth, NSC contends that the La. Rev. Stat. 32:1510 requirement for written reports of hazardous materials incidents/accidents is inconsistent with the FRSA, HMTA, and HMR. It cites the same legal authorities as the AAR.

Ninth, NSC argues that the penalty and enforcement provisions of La. Rev. Stat. 32:1512, 32:1513 and 32:1514 are inconsistent because they undermine the Congressional scheme of uniform national enforcement for railroads. they authorize civil penalties for other than "knowing" violations, they authorize seizure of rail equipment if penalties are not paid, and they authorize penalties of $25,000 per day in contrast to the HMTA maximum of $10,000.

Tenth, NSC contends that the injunctive provisions of La. Rev. Stat. 32:1515 are inconsistent for the same reasons as the enforcement provisions and also because they go beyond Section 434 of the FRSA in authorizing injunctive relief for alleged violations under the HMTA instead of just the FRSA.

Eleventh, NSC maintains that La. Rev. Stat. 32:1516, concerning driver qualifications, is inconsistent. It cites IR–26, *supra*, as stating that states cannot require drivers of motor vehicles containing hazardous materials to have certificates indicating the driver meets state training requirements. It also says that section 32:1516 is expressly preempted by FRA's regulation on alcohol and drug use, 49 CFR Part 219, insofar as it imposes drug and alcohol prohibitions and testing requirements.

Twelfth, NSC posits that La. Rev. Stat. 32:1517, authorizing State employment of enforcement personnel, is inconsistent because the State has no authority under the FRSA to conduct surveillance and investigative programs.

Subsequent to filing its initial comments, NSC submitted to the docket a copy of the April 13, 1990 decision of the U.S. Court of Appeals for the Sixth Circuit in *CSX Transportation, Inc.* v. *Public Utilities Commission of the State of Ohio*, which affirmed the decision of the U.S. District Court for the Southern District of Ohio.

Union Pacific Comments

Comments opposing the consistency of the Louisiana requirements as applied to rail transportation also were filed by the Union Pacific Railroad Company (UPR). It concludes that the HMTA and the FRSA do not authorize state enforcement of hazardous materials regulations against railroads, that Louisiana's concerns about allegedly insufficient FRA enforcement can be resolved by an increase in FRA inspectors or a change in law, and that certain specific provisions of Louisiana law are inconsistent with the HMTA and the HMR.

UPR first argues that state enforcement of railroad transportation hazardous materials requirements is an obstacle to obtaining the objectives of the HMTA. It says that OHMT must consider and give effect to the FRSA just as its HMR specifically recognizes and

refers to other Federal statutes. It contends that Congress clearly intended uniform national regulation of rail safety.

In support of its position, UPR cites *CSX Transportation, Inc.* v. *Public Utilities Comm. of Ohio, supra,* and summarizes the FRSA/HMTA legislative history discussed therein. It cites the strong preemptive approach taken by Congress in enacting the FRSA in 1970; Congressional failure to change the FRSA preemption or state participation provisions when enacting the HMTA and amending the FRSA in 1974, and Congressional failure to include the HMTA when it expanded the state participation provisions of the FRSA in 1980. It also cites previously-discussed legislative history and case law.

UPR points to pending proposed legislation, H.R. 3520, which includes a provision which would amend the HMTA to allow state participation in the enforcement of rail safety regulations pertaining to hazardous materials transportation, as evidence that Congress has not given such authority to the states.

In sharp contrast, UPR asserts, Congress has authorized state enforcement of the HMTA as it pertains to motor carriers. It points to the grants program under the Surface Transportation Assistance Act, 49 U.S.C. 2301 *et seq.*, and the specific authorization of HMR-related highway enforcement activities under the implementing grant regulations in 49 CFR part 350.

UPR finds further evidence of Congressional intent to involve states in hazardous materials highway transportation enforcement in the Motor Carrier Safety Act of 1984, 49 U.S.C. 2501 *et seq.*, and the Commercial Motor Vehicle Safety Act, 49 U.S.C. 2701 *et seq.* It points out that both statutes refer specifically to motor vehicles transporting hazardous materials. 49 U.S.C. 2503(1)(C) and 2716(6). It concludes:

> These statutes in conjunction with the Motor Carrier Safety Assistance Program (MCSAP) and the Cooperative Hazardous Materials Enforcement Development Program (COHMED) indicate that Congress and the federal agencies encourage state involvement in enforcement of hazardous materials regulations governing motor carrier movements. Congress has not bestowed that same enforcement authority on the states with respect to rail transportation of hazardous materials.

UPR contends that state verbatim adoption of the HMR and the HMTA penalty structure does not ensure uniformity in enforcement. It states that compliance with both Federal and State requirements may be impossible because Louisiana officials admit to being motivated by a desire to generate revenue and because that State's enforcement approach may be inconsistent with that of the FRA. It cites three instances when it allegedly was cited for non-violations and concludes that the State's pecuniary motives leads to a different and necessarily inconsistent approach to enforcement.

In addition, UPR cites several Louisiana statutory and regulatory provisions which allegedly are inconsistent with the HMTA and the HMR. Like other railroad commenters, it points to the State's definitions of "explosives" and "train", carrier liability insurance requirements, "stop and inspect" enforcement provisions, requirement for shipping paper exemption numbers to be marked on vehicles, shipping paper lading description requirements, written accident/incident reporting requirements, and operator licensing provisions.

Olin Chemicals Comments

In its initial comment, Olin Chemicals (Olin) supported a finding of inconsistency with respect to rail transportation. Olin states:

> Our position is based on our conviction that because railroad operations are so unique, enforcement personnel must have a thorough knowledge of railroad equipment and day to day operations. In this regard, we are aware of at least one or more federal inspectors who came from the ranks of the Association of American Railroads personnel. We do not believe that the Louisiana State Police personnel have the requisite experience and training to enforce the federal regulations (adopted by Louisiana), in the manner contemplated by the federal promulgators of said regulations.
>
> On the other hand, we do believe that the state of Louisiana has both a duty and an obligation to protect its citizenry and their property. We also sympathize with the frustration of state officials because of, what they believe, is inadequate staffing by the federal government.
>
> It is our understanding that the solution for the state of Louisiana's dilemma is already on the books in the form of the Federal Railroad Safety Act and court decisions. If in fact state enforcement personnel detect a possible violation of railroad regulations, they can inform the federal inspectors who can then take the appropriate action. In our view this is a marriage made in heaven i.e., the manpower of the Louisiana State Police and the expertise of the Federal Railroad Administration.

V. Public Comments Supporting Consistency

Olin Chemicals Comments

In a subsequent comment, Olin states:

> We wish to clarify our position by stating that Olin supports the Chemical Manufacturers Association position i.e., that state and local government should be allowed to enforce federal DOT Hazardous Materials Regulations (HMR), assuming the enforcement officials have been fully and properly trained. Further, should there be a disagreement as to interpretation of the HMR, the final arbiter should be the federal DOT.

NTTC Comments

The National Tank Truck Carriers, Inc. (NTTC) filed a comment generally supporting findings of consistency. It contends that the Louisiana statutes and regulations are consistent insofar as they: (1) Apply to highway transportation, (2) serve to reduce an essentially local safety hazard in rail transportation, (3) are compatible with regulations issued under the FRSA, impose no burden on rail commerce, and (4) regulate the actions of rail shippers and shippers' rail equipment which is not in the care, custody and control of a railroad company.

With respect to motor carriers, NTTC asserts that Louisiana's adoption of the HMR and the HMTA civil penalty limitations is consistent under the "dual compliance" and "obstacle" tests. Thus, it says, the State can use its agencies and personnel to carry out enforcement and compliance programs with respect to the highway mode.

With regard to railroads, NTTC recommends that OHMT defer to the District Court decision in *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio, supra,* with respect to hazardous materials transportation by rail generally but recognize that under the FRSA a state may regulate with respect to unique local safety hazards. NTTC asserts that the State's expressed concern about the alleged lack of sufficient FRA inspectors is sufficient to provide a basis for a finding of consistency.

Finally, NTTC argues that the *CSX* decision does not apply to shippers because the FRSA does not apply to them. From that hypothesis, it concludes that the State may consistently regulate most rail shippers:

> For instance, we note that most hazardous materials tank cars are owned or leased by shippers. More often than not, these cars are loaded and unloaded at private sidings and other points not on a railroad right-of-way; and, certain regulated operational functions may be performed prior to inspection and acceptance by a railroad company (and following release of the car to the consignee). Shippers are responsible for the maintenance of their equipment, compliance with HMR specifications, preparation of shipping documents, etc.
>
> Therefore, we conclude that Louisiana's compliance and enforcement program as it is applied to shipper-owned (or leased) equipment and when such equipment is not in the care, custody and control of a railroad company, is consistent with the HMR. Furthermore, we hold that the Administrator is under no compulsion to go beyond the HMTA when evaluating the lawfulness of Louisiana's program as applied to shippers.

VIII. Public Rebuttal Comments Opposing Consistency

Rebuttal comments were filed by AAR and UPR.

AAR Rebuttal Comments

AAR challenges NTTC's comments to the extent those comments contend that Louisiana's provisions are consistent insofar as they pertain to railroads. AAR says that NTTC does not address AAR's earlier comments that Louisiana's laws are not identical to the HMR and thus are inconsistent and that they would be preempted by the HMTA even if they were identical.

AAR agrees with NTTC that section 205 of the FRSA is relevant to a determination of consistency under section 112 of the HMTA. However, it contends that NTTC's assertion that identical state requirements can fall within the essentially local hazard provision of section 205 is directly contradicted by the legislative history thereof and court decisions thereon. AAR also says that there is no evidentiary basis for a finding that a hazardous materials rail transportation hazard exists in Louisiana that is not addressed by the U.S. DOT.

AAR argues that there is no such thing as a statewide local hazard. It points to the following legislative history concerning section 205:

> The purpose of [the local hazard provision of section 205] is to enable the States to respond to local situations not capable of being adequately encompassed within uniform national standards. The States will retain authority to regulate individual local problems or reduce essentially local railroad safety hazards. Since these local hazards would not be Statewide in character, there is no intent to permit a State to establish Statewide standards superimposed on national standards covering the same subject matter.

H.R. Rep. No. 1194, 91st Cong., 2d Sess., *reprinted in* 1970 U.S. Code Cong. & Ad. News 4104, 4117. AAR adds that courts unanimously have held that statewide standards are not permitted under the local hazard language of section 205—citing *Missouri Pacific Railroad* v. *Railroad Commission of Texas,* 671 F.Supp. 468, 471 (W.D. Tex. 1987) and cases cited therein.

It also states that Louisiana has not identified any areas DOT is incapable of addressing. Furthermore, it cites FRA accident statistics to show that no hazard exists in Louisiana to justify State action even if, contrary to AAR's assertion, section 205 permitted such statewide action.

UPR Rebuttal Comments

UPR filed similar comments rebutting the NTTC comments concerning local hazards. It cites the same legislative history and several court cases for the proposition that statewide standards cannot be justified under section 205 of the FRSA.

IX. Ruling

Scope of Ruling

The State of Louisiana's application for an inconsistency ruling pertained solely to rail transportation. To facilitate consideration of other relevant issues, OHMT broadened the scope of this proceeding to include all modes of transportation.

The record in this Docket, however, does not provide an adequate basis to address air or water transportation. This ruling, therefore, addresses only the consistency of Louisiana's specified statutes and regulations insofar as they apply to highway and rail transportation.

FRSA Issues

Several railroad industry commenters contended that OHMT should find all the Louisiana statutory and regulatory requirements at issue in this proceeding inconsistent because of the preemption provision of the FRSA and the application of that provision to hazardous materials rail transportation requirements of the State of Ohio in *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio, supra.*

That case involved the issue of whether the Ohio Hazardous Materials Transportation Act (OHMTA) is preempted by the FRSA. Both the U.S. District Court for the Southern District of Ohio and the U.S. Court of Appeals for the Sixth Circuit (the latter in an April 13, 1990 decision) held that the OHMTA is preempted by the FRSA. Specifically, they held that it is preempted by the following FRSA preemption language:

> A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement.

45 U.S.C. 434. The Court of Appeals held that this language was broad enough to include regulations issued under the HMTA. Furthermore, the Court of Appeals held that the enactment of the HMTA, with its different preemption language, subsequent to the FRSA has not resulted in repeal of the preemption language of the FRSA. In support of this conclusion, the Court cited a 1980 amendment to the FRSA broadening state participation in railroad safety investigative and surveillance activities, which amendment intentionally did not include HMTA enforcement activities.

Of particular relevance to this proceeding is the Court of Appeals' following disclaimer:

> Finding that the regulations issued pursuant to the OHMTA are preempted by the preemption provision found in the FRSA, we find it unnecessary to address the question of whether the Ohio regulations are also preempted by the preemption provision found in the HMTA.

Under the rationale of the Court of Appeals' decision, Louisiana's statutory and regulatory provisions under consideration in this proceeding would be deemed preempted by the FRSA. However, as indicated above, OHMT inconsistency rulings address only preemption issues under the HMTA. Because the Court of Appeals explicitly declined to address HMTA preemption issues, the *CSX* case is irrelevant to the consideration herein of whether Louisiana's requirements are consistent with the HMTA and the HMR. Therefore, comments based upon that case and the FRSA similarly are irrelevant and are not considered or addressed in this ruling.

State Adoption of the HMTA and the HMR

RSPA and OHMT have encouraged state governments to adopt the HMTA and the HMR as state law and to enforce such legal requirements. IR–17, 51 FR 20825 at 20829 (June 9, 1986); IR–19, *supra,* at 24410. In the early 1980's this effort was carried out through the State Hazardous Materials Enforcement Development (SHMED) Program; since 1988 it has been carried out through the Cooperative Hazardous Materials Enforcement Development (COHMED) Program. In its Report accompanying the Department of Transportation and Related Agencies Appropriation Bill, 1990, the Senate Appropriations Committee specifically directed RSPA to continue its financial support of, and involvement with, COHMED. Senate Report 101–121, Sept. 7, 1989.

State adoption and enforcement of the HMTA and the HMR as state law

multiplies the number of hazardous materials transportation enforcement personnel and fosters a uniform nationwide system of hazardous materials transportation regulation. Forty-nine states have followed this course of action with respect to highway transportation, and about 12 states have done so with respect to rail transportation.

State adoption of requirements identical to the Federal requirements is certainly a most effective means of fostering compliance with the "consistency" requirement of Section 112(a) of the HMTA. As this proceeding indicates, however, state adoption or incorporation by reference of the HMTA and the HMR is not necessarily an uncomplicated matter. Difficulties may arise in converting enforcement and other provisions from Federal to state legal verbiage and in determining the appropriate division of responsibility between state and Federal officials. Keeping state provisions reasonably up-to-date with Federal ones is a recurring issue. This ruling discusses those and other issues which may occur when states adopt the HMTA and the HMR.

In any event, the State of Louisiana's incorporation by reference and enforcement of the HMR through State statute and regulation is consistent with the HMTA and the HMR with respect to highway and rail transportation except as indicated below in this ruling.

Current Nature of Incorporated Regulations

Commenters alleged that the Louisiana incorporation of the HMR was inconsistent because it incorporated the October 1, 1987 Code of Federal Regulations (CFR) version of the HMR, which has been superseded by numerous amendments.

This issue was addressed in IR-19, *supra:*

> Some commenters contended that this regulation is inconsistent with the HMR because it adopts November 1, 1985 versions of the HMR, which have been superseded by the October 1, 1988 edition of the HMR and subsequent HMR amendments published in the **Federal Register**. This contention is without merit at this time. The HMR consist of an extensive body of regulations which are amended on a regular basis by changes published in the **Federal Register** and incorporated into the annual editions of the Code of Federal Regulations (CFR). RSPA encourages states to adopt and enforce the HMR as state requirements. IR-17, 51 Fed. Reg. 20825 at 20829 (June 9, 1986).
>
> It is impossible, however, for states to adopt new HMR requirements simultaneously with RSPA's issuance of them. This inconsistency ruling application was filed in November 1989, less than two months after the October 1, 1988 revision date of the current CFR version of the HMR. CFR volumes generally are not published and available for a few months after the dates as of which they are current. Therefore, the incorporation by reference in § 705.380 is reasonably current and thus consistent with the HMR.
>
> If a change to the HMR results in a direct conflict with a state requirement, the HMR would control as soon as the HMR change becomes effective. However, there is no basis for a wholesale preemption of state regulations which contain slightly outdated state incorporations by reference or adoptions of the HMR as state requirements.

52 FR at 24410-1. The situation here is similar. Like many states, Louisiana has incorporated by reference a specific version of the HMR. Because the version adopted was less than two years old at the time of the application for this ruling, the State's incorporation by reference is not deemed inconsistent *per se*. Instead, each specific alleged inconsistency will be judged on its own merits.

Definition of "Hazardous Materials"

Louisiana's statutory definition of "hazardous materials" provides:

> (5)(a) "Hazardous materials" means any gaseous, liquid, or solid material which because of its quanity, concentration, or physical, chemical, or biological composition poses a substantial present or potential hazard to human health, the environment, or property when transported in commerce, or which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretary of the Department of Public Safety and Corrections pursuant to the Louisiana Administrative Procedure Act. The secretary, in finding that a material is hazardous, shall consider the following factors with respect to each material:
>
> (i) Actual or relative potential for harm to human health, the environment, or property when transported in commerce.
>
> (ii) Scientific evidence of its potential for harm based upon quantity, concentration, or chemical or biological composition.
>
> (iii) State of current scientific knowledge regarding the material.
>
> (iv) Its history and current pattern of harm.
>
> (v) Actual or potential volatility when combined with other common substances likely to be encountered during transportation in commerce.
>
> (vi) Actual or relative potential for harm to human health if allowed to escape its containment.
>
> (b) The rules and regulations adopted by the secretary of the Department of Public Safety and Corrections shall be consistent with the Code of Federal Regulations Title 49. "Explosives" as defined and regulated by R.S. 40:1471.1 through 1471.22 shall be considered to be hazardous material subject to regulation by this Chapter.

La. Rev. Stat. Sec. 1502. In addition, under the cited statutory provisions on "explosives," the State law defines an explosive as

> any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; * * * The term "explosives" shall further include * * *
>
> (a) "blasting agent' which shall mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive; * * *

La. Rev. Stat. Sec. 40:1471.2(1).

Finally, the State statutes states that " 'hazardous waste' shall be as provided in R.S. 30:1133." La. Rev. Stat. sec. 32:1502(9). Furthermore, that section is not affected by the requirement for consistency with the HMR contained in the above-quoted definition of "hazardous materials."

At the Federal level, both the HMTA and the HMR address the definition/designation of hazardous materials. Section 103(2) of the HMTA, 49 U.S.C. App. sec. 1802(2) states that

> " 'hazardous material' means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce * * *"

Section 104 of the HMTA, 49 U.S.C. App. sec. 1803, is entitled "Designation of Hazardous Materials" and provides:

> Upon a finding by the Secretary [of Transportation], in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxodizing or corrosive materials, and compressed gases.

The HMR, at 49 CFR 171.8, further defines "hazardous material" as "a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated."

The materials which have been designated as hazardous materials subject to the HMTA and the HMR are lised in the Hazardous Materials Table, 49 CFR 172.101; the Appendix to that section (containing all hazardous substances); and the Optional Hazardous Materials Table, 49 CFR 172.102. Those regulations occupy over 200 pages of the CFR, list thousands of hazardous materials, and also establish over 40 "n.o.s." (not otherwise specified) categories of hazardous materials (e.g., flammable liquids, n.o.s.) which result in thousands of other materials being designated as hazardous materials. Specific definitions of these n.o.s. hazardous materials are located throughout part 173 of the HMR.

The complexity of the above-described HMR system of defining hazardous materials demonstrates the desirability, even the necessity, of a single, national system. Therefore, local hazardous materials definitions which result in regulation or more or different materials as hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMTA and the HMR. IR-5, 47 FR 51991 (Nov. 18, 1982); IR-6, 48 FR 760 (Jan. 6, 1983); IR-28, 55 FR 9304 (Mar. 8, 1990); IR-29, 55 FR 9304 (Mar. 12, 1990). The specific problems with different hazardous materials definitions were discussed in, among others, two earlier inconsistency rulings:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations.

IR-6, 48 FR at 764.

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety.

IR-12, 49 FR 46850 at 46851 (Nov. 27, 1984).

For those reasons, the Federal role in defining hazard classes and hazardous materials is exclusive, and thus such state and local definitions differing from the HMR are inconsistent with the HMR. IR-16, 52 FR 200 (Jan. 2, 1987); IR-18 (Decision on Appeal), 53 FR 28850 (July 20, 1988); IR-19, *supra;* IR-19 (Decision on Appeal), *supra;* IR-20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR-21, *supra;* IR-21 (Decision on Appeal), *supra;* IR-26, *supra; Missouri Pacific RR Co.* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds* 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989); *Union Pacific RR Co.* v. *City of Las Vegas*, CV-LV 85-932 HDM (D. Nev. 1986).

Therefore, La. Rev. Stat. 32:1502(5)(a) and (8) are inconsistent with the HMTA and the HMR insofar as they authorize the State's Secretary of the Department of Public Safety and Corrections to designate as "hazardous materials" any materials, including hazardous wastes, other than those designated as such in the HMR. It follows that the State's section 32:1502(5)(b) definition of "explosives" is inconsistent with the HMR to the extent that it defines as "explosives" any materials other than those defined as such in the HMR.

Definition of "Train"

Louisiana's definition of "train" differs from the definition of "train" in the HMR. The State defines "train" as "an engine or an engine coupled with one or more rail freight cars." La. Admin. Code, tit. 33, secs. 10501(c) and 10901(c). The HMR definition, however, provides that a train is "one or more engines coupled with one or more rail cars, *except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.*" 49 CFR 171.8 (emphasis added).

The effect of the State's different definition of "train" is that the State regulates aspects of switching and railroad yard operations which are not regulated under the HMR. According to unrebutted comments, this, in turn, leads to the State imposing additional impractical and unsafe requirements for those operations.

Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous materials should not be subject to the general requirements of the HMR, state or local regulation of that transportation is inconsistent with the HMR under the "obstacle" test because it impedes the accomplishment of the purposes of the HMR. Therefore, the State's definition of "train" is inconsistent with the HMR because its definition lacks the "except" clause contained in the HMR definition.

Exemption and Approval Provision

La. Rev. State. 32:1507 contains the following provisions with respect to exemptions issued by OHMT under the HMTA and the HMR:

> *Sec. 1507. Special permits and exemptions*
>
> A. The secretary shall exempt any carrier from compliance with this Chapter or any regulation issued pursuant thereto if the exemption is identical to an exemption or special permit issued by the United States Department of Transportation. However, the secretary shall enforce the exemption or special permit if it pertains to transportation subject to this Chapter.
>
> B. The number of each exemption granted shall be conspicuously marked on the vehicle to which it applied [sic].

Some commenters alleged that these provisions are inconsistent because they are ambiguous about whether OHMT exemptions and approvals are recognized as legally binding upon State enforcement personnel—particularly in light of the absence of regulatory provisions to that effect. In addition, they argued that paragraph B is inconsistent because it might require the marking of exemption numbers on rail cars for shipping paper exemptions and other types of exemptions not applicable to the cars themselves.

Exemptions from the requirements of the HMTA and the HMR may be issued by the Director of OHMT pursuant to section 107 of the HMTA, 49 U.S.C. App. 1806, and 49 CFR 107.101-123. To avoid regulatory chaos, the authority to issue, revoke, suspend or take other actions concerning exemptions from HMTA and HMR requirements must be exclusively Federal. This approach implements the Congressional mandate that, except for DOT-determined emergencies, "exemptions or renewals granted pursuant to [§ 107 of the HMTA] shall be the only means by which a person subject to the requirements of [the HMTA] may be exempted from or relieved of the obligation to meet any requirements imposed under [the HMTA]. "49 U.S.C. App. 1806(d).

The State's above-quoted statutory provisions appear to represent a good faith effort by the State to "dovetail" its legal requirements with the approximately 1,000 outstanding hazardous materials transportation exemptions issued by OHMT. To be consistent with the HMTA and the HMR, a state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program. Here the silence of the State's regulations concerning exemptions and approvals confirms rather than undermines the interpretation that § 32:1507 recognizes and gives effect to OHMT's exemptions and approvals. Furthermore, a fair reading of § 32:1505B is that it requires marking of the exemption number on a tank car or other vehicle only when the exemption pertains to the tank car or vehicle itself. As so construed, the State's exemption provisions are consistent with the HMTA and the HMR.

Insurance Requirements

La. Rev. Stat. 32:1503 requires each carrier that transports "hazardous material freight" or "hazardous waste" to carry at least $300,000 public liability and $200,000 property damage insurance for each vehicle. This required "financial responsibility" may be

established by one or more of: (1) Evidence of liability insurance, (2) self-insurance ("the level of self-insurance may not be less [sic] than twenty percent of equity"), and (3) other evidence of financial responsibility acceptable to the Secretary.

With respect to radioactive materials transportation, several prior inconsistency rulings have clearly stated that state and local governments may not impose indemnification, bonding or insurance requirements as prerequisites to such transportion. IR–10, 49 FR 46845 (Nov. 27, 1984); correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46847 (Nov. 27, 1984); IR–15, 49 FR 46860 (Nov. 27, 1984); IR–15 (Decision on Appeal), 52 FR 13062 (Apr. 20, 1987); IR–18, *supra*; IR–18 (Decision on Appeal), *supra*; IR–25, *supra*. In IR–15 (Decision on Appeal), the RSPA Administrator stated with respect to radioactive materials transportation "insurance" requirements that the Federal requirements "have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." 52 FR 13062.

With respect to non-radioactive hazardous materials transportation, it was determined in IR–25, *supra*, that the absence of a bonding, insurance or indemnification requirement in the HMR represented an affirmative decision by OHMT "that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." 54 FR 16311. Although that decision dealt with local bonding requirement, its rationale and language were applicable to similar state requirements.

As stated in IR–25, "[t]he subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal." 54 FR 16311. Therefore, any such state requirement, such as Louisiana's § 32:1508, not identical to Federal requirements fails the "obstacle" test and, therefore, is inconsistent with the HMTA.

Incident Reporting Requirements

La. Rev. Stat. Sec. 32:1510 contains requirements for the telephonic and written reporting of certain incidents, accidents and cleanups involving the transportation of hazardous materials. Its requirements for such reports are as follows:

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

(1) A fatality due to fire, explosion, or exposure to any hazardous material.

(2) The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

(3) A continuing danger to life, health, or property at the place of the incident or accident.

(4) An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

La. Rev. Stat. 32:1510.

Requirements for immediate telephonic hazardous materials transportation accident/incident reports for emergency response purposes generally are consistent with the HMTA and the HMR. IR–2, IR–3, IR–20, all *supra*; *National Tank Truck Carriers, Inc.* v *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

However, with respect to the State's telephonic reporting requirement applying to spent nuclear fuel, which also is called irradiated reactor fuel, it previously was determined that similar requirements were inconsistent with the HMR because of redundancy and possible conflict with the HMR. IR–8, IR–8 (Decision on Appeal), and IR–28, all *supra*. In IR–28, 55 FR 8884, 8893–94 (Mar. 6, 1990), the Director of OHMT stated:

Two HMR provisions are relevant to this issue. First, 49 CFR 177.861 requires the "earliest practicable" notification to the shipper of radioactive materials incidents. Second, 49 CFR 173.22(c) requires shippers of irradiated reactor fuel to provide physical protection in compliance with a plan established under Nuclear Regulatory Commission (NRC) requirements; those requirements include a 10 CFR 73.37[(b)(4)] provision for notification to appropriate agencies in the event of a "safeguards emergency."

However, 10 CFR 73.37(b)(6) also requires such shippers to arrange with local law enforcement agencies along its routes for their response to an emergency or call for assistance. Because they are clear and not in conflict with the HMR, the State's telephonic notification requirements are consistent with the HMR provision incorporating these requirements (49 CFR 173.22(c)).

Therefore, the State's requirements for telephonic notification concerning hazardous materials incidents/accidents are consistent with the HMTA and the HMR.

Furthermore, the provisions of State law which require the submission of *written* accident/incident reports, are redundant with Federal requirements (particularly 49 CFR 171.16), tend to undercut compliance with the HMR requirements, and thus are inconsistent. IR–2, IR–3, (Decision on Appeal), all *supra*; IR–30, 55 FR 9870 (Mar. 14, 1990), correction 55 Fed. Reg. 12111 (Mar. 30, 1990). This rationale also applies to requirements to provide copies of the incident reports filed with OHMT; as indicated in IR–8, *supra*, such a requirement is inconsistent but OHMT is prepared to routinely send copies of those reports to a designated state agency on request.

Licensing Requirements

La. Rev. Stat. 32:1516A and B provide for the licensing of persons in charge of vehicles transporting, *inter alia*, hazardous materials. Some commenters asserted that OHMT had indicated in IR–20, *supra*, that drivers of motor vehicles transporting hazardous materials could not be required to obtain State licenses. That Ruling was not so broad; it said that a State *could* impose hazardous materials transportation licensing requirements on its own domiciliaries as part of its motor vehicle licensing program but *could not* impose such requirements on non-domiciliaries (except after March 31, 1992, with respect to those not having current hazardous materials endorsements on their commercial drivers' licenses).

Applying those same principles to Louisiana, there is nothing in the HMTA or the HMR to preclude it from imposing hazardous materials transportation licensing requirements on its own domiciliaries. Therefore, the cited State licensing provisions are consistent insofar as they apply to Louisiana domiciliaries but inconsistent insofar as they apply to other persons.

Placarding Requirement

Louisiana's statute addresses hazardous materials placarding:

Each carrier transporting hazardous materials shall indicate the proper hazard class by placing a placard stating such class on all four sides of each vehicle as required by the rules and regulations promulgated by the secretary.

La. Rev. Stat. 1503D.

One commenter contended that this statutory provision is inconsistent with the HMTA and the HMR because the HMR places the initial burden on shippers to apply proper placards on transport vehicles. In fact, the HMR places responsibility for proper placarding on *both* shippers/offerors and transporters of hazardous materials. 49 CFR §§ 171.2 (a) and (b), 172.500, 172.504, 172.506, 172.508, 174.1, 174.7 and 177.800. (For example, § 172.508(b) states: "No rail carrier may accept a rail car containing a hazardous material for transportation unless the placards for the hazardous material are affixed thereto as required by this subpart.") Given the State's incorporation by reference of the HMR and the requirement in § 32:1504A for compatibility of the State's regulations with the HMR, there is no indication that the above-quoted language has the effect of placing placarding responsibility solely on carriers; therefore, it is consistent with the HMTA and the HMR.

The language of § 32:1503D, however, does raise an additional issue: whether it requires placards on *all* vehicles carrying *any* quantity of *any* hazardous material—in contrast to the HMR requirements for placarding of only certain vehicles, rail cars, freight containers, cargo tanks, etc. containing certain specified quantities of certain classes of hazardous materials.

Because of the critical hazard communication function of hazardous materials placards, requirements concerning them (as well as other hazard warning devices) are inconsistent if they are in addition to or different from Federal placarding requirements. IR–2, *supra*; IR–3, *supra*; IR–24, 53 FR 19848 (May 31, 1988); *Koppelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc.* v. *City of New York*, 677 F.2d 270 (2d Cir. 1982).

This issue was addressed in an early Inconsistency Ruling:

Hazard warning systems are another area where [DOT] perceives the Federal role to be exclusive * * *. Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information.

IR–2, 44 FR at 75566.

Shortly thereafter both DOT and a Federal Court found a City of Boston requirement for different placards and product identification inconsistent with the HMTA and the HMR. IR–3, *supra*; *American Trucking Ass'ns* v. *City of Boston*, 12 Envtl. L. Rep. (Envtl. L. Inst.) 20,789 (D. Mass. 1981).

Finally, in IR–24, *supra*, a definitive statement was made on the exclusive Federal nature of placarding requirements:

It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions.

52 FR 19848 at 19850.

It is critical, therefore, that Louisiana's placarding requirements not differ from those of the HMR. Although the applicability of § 32:1502 appears to be broader than the HMR placarding requirements, the State's provision does not contain any substantive standards requiring placarding and furthermore is qualified by the words "as required by the rules and regulations promulgated by the secretary [of the Department of Public Safety and Corrections]." Under § 32:1504, those rules and regulations must be compatible with the HMR. The only rules and regulations of the Louisiana Secretary of the Department of Public Safety and Corrections on this subject are those adopting the HMR. Therefore, the State's placarding requirements do not differ from those of the HMR, and § 32:1502D thus is not inconsistent with the HMR because of its *apparent* broader applicability.

Finally, the language of section 32:1503D raises one additional issue. On its face, it requires and authorizes only placards indicating the proper hazard classes of hazardous materials; it lacks a counterpart to the 49 CFR 172.504(b) provision authorizing the use of DANGEROUS placards—which do *not* indicate any specific hazard class—on a transport vehicle or freight container containing two or more classes of hazardous materials otherwise requiring different placards. However, section 32:1503D does not prohibit the use of DANGEROUS placards, and the State's adoption of the HMR results in DANGEROUS placards being authorized.

In summary, therefore, section 32:1503(D), considered in the overall context of the State's statutory and regulatory provisions, is consistent with the HMTA and the HMR.

Shipping Paper Requirements

La. Rev. Stat. 32:1508 imposes the following requirements concerning shipping papers for hazardous materials transportation:

A. (1) No carrier shall transport any hazardous material unless shipping documents describing the lading are provided to the operator of the vehicle prior to departure and shall be carried in the vehicle or combination of vehicles.

(2) The description of lading shall include at least the shipping name, classification, and weight or volume of the material.

State and local shipping paper requirements which differ from those of the HMR (49 CFR 172.200–204) are inconsistent because of the need for national uniformity of shipping papers. IR–4, 47 FR 1731 (Jan. 11, 1982); IR–4 (Decision on Appeal), 47 FR 33357 (Aug. 2, 1982), correction, 47 FR 34074 (Aug. 5, 1982). The issue here, therefore, is whether the State requirements differ from the HMR requirements. The information requirements themselves do not differ because they require no more information than the HMR; also, the State's adoption of the HMR incorporates the other detailed information requirements thereof.

One commenter argued that the State's requirement that the shipping papers be provided "to the operator of the vehicle" is inconsistent with an alleged HMR requirement that the shipping paper need only be in the possession of a member of the train crew (which, says the commenter, usually is the conductor). The relevant HMR provision is 49 CFR 174.24(a), which states that "* * * no person may accept for transportation by rail any hazardous material * * * unless he has received a shipping paper * * *." It also provides that "* * * no member of the train crew of a train transporting the hazardous material is required to have a shipper's certificate on the shipping paper in his possess if the original shipping paper containing the certificate is in the originating carrier's possession."

Both the Federal and State provisions are sufficiently ambiguous concerning exactly who is to receive the shipping papers and whether another person may serve as that person's agent that there is no basis in this record for finding the State requirement inconsistent—particularly in light of the State's adoption of the quoted (and all other)

HMR provisions. Therefore, section 32:1509 is consistent.

Penalty Provisions

A commenter contended that the State's penalty provisions (La. Rev. Stat. 32:1512–1514) are inconsistent because they authorize the imposition of a civil penalty for other than "knowing" violations, they authorize the seizure of rail equipment if penalties are not paid, and they authorize imposition of a $25,000 civil penalty per violation—in contrast to the HMR's $10,000 civil penalty per violation.

Insofar as they relate to the enforcement of consistent requirements (see "Inspection and Enforcement Provisions" discussion below), neither the $25,000 civil penalty provision nor the seizure provision facilitating penalty collections is inconsistent with the HMTA or the HMR. State penalty amounts and collection procedures need not be identical to those of the HMTA and the HMR. IR–3, IR–27, IR–28, all *supra*. Only penalties imposed for violations of inconsistent substantive requirements are themselves inconsistent. IR–18, IR–18 (Decision on Appeal), IR–27, IR–28, all *supra*; IR–30, 55 FR 9676 (Mar. 14, 1990), correction 55 FR 12111 (Mar. 30, 1990); *Jersey Central Power & Light Co. v. Township of Lacey*, 772 F. 2d 1103 (3rd Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986):

However, the absence of a "knowingly" requirement with respect to the imposition of civil penalty liability (the State having deleted "knowingly" from section 32:1512 in 1982) is inconsistent with the HMTA. In section 110(a) of the HMTA (49 USC 1809(a)), Congress established civil penalties for persons "knowingly" violating the HMTA, the HMR, or other regulations issued under the HMTA; it used the word "knowingly" in each of the first three sentences of that section. The second sentence demonstrates Congress' approach:

> Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation.

Thus, Congress has clearly demonstrated its intention that persons not be subject to civil penalties for violations of hazardous materials transportation regulations as the basis of strict or absolute liability. The legislative history of that section has led RSPA to adopt the following regulation setting forth the standard for determining civil penalty liability under the "knowingly" test:

> "Knowledge" or "knowingly" means that a person who commits an act which is a violation of the Act or of the requirements of this subchapter or Subchapter C of this Chapter commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter and Subchapter C of this chapter. Knowledge or knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter or Subchapter C of this Chapter.

49 CFR 107.299. In other words, Congress imposed a negligence standard for civil penalty liability for violations of the HMTA and regulations thereunder. *Contract Courier System, Inc.* v. *The Research and Special Programs Administration of the U.S. Department of Transportation*, No. 88 C 9320 (N.D. Ill. Sept. 22, 1989), *appeal pending*, Nos. 90–1349 and 90–1384 (7th Cir.). *See also Southern Railway Co.* v. *John H. Riley, Administrator, Federal Railroad Administration*, C84–1990A (N.D. Ga. Oct. 10, 1986), *appeal dismissed*, No. 87–8060 (11th Cir. Dec. 7, 1987) (adopting a "willful negligence" standard), and *Southern Railway Co.* v. *Carmichael, No. 1:84–CV–1990–RCF (N.D. Ga. Feb. 12, 1990) (entering summary judgment for FRA in enforcement case decided on remand on basis of "willful negligence" standard). Louisiana's imposition of strict or absolute civil penalty liability for such violations is inconsistent with the HMTA.*

Inspection and Enforcement Provisions

Inspection authority, including the authority to stop and inspect any transport vehicle, is addressed in La. Rev. Stat. section 32:1505 and 32:1509A(3). In addition, section 32:1508 provides authority to:

> * * * declare and mark any transport vehicle or container as out-of-service if its condition, filling, equipment, or protective devices would be hazardous to life or property during the transportation of hazardous material, freight or passengers.

Enforcement authority is addressed in § 32:1504B, which provides:

> The secretary may conduct investigations; make reports on; issue subpoenas, conduct hearings; require the production of relevant documents, records, and property; take depositions; * * *.

Some commenters have contended that these inspection and enforcement provisions are inconsistent because they can cause delays in transportation and thereby impede compliance with HMR provisions requiring prompt transportation of hazardous materials (49 CFR 174.14 and 177.853). They have argued that improper enforcement by State personnel demonstrates the likelihood of such delays resulting from implementation of these inspection and enforcement provisions.

State and local hazardous materials transportation inspection requirements relating to consistent substantive requirements are encouraged by RSPA and are themselves consistent. IR–2, IR–6, IR–15, IR–17, IR–20, IR–27, all *supra*; *Colorado Pub. Utilities Comm'n* v. *Harmon*, No. CV 88–Z–1524 (D. Colo. 1989), *appeal docketed*, No. 89–1288 (10th Cir. Aug. 25, 1989). On the other hand, such inspection requirements relating to inconsistent substantive provisions are themselves inconsistent. IR–20, IR–21, IR–21 (Appeal), IR–27, all *supra*.

Similarly, state and local hazardous materials transportation enforcement provisions are consistent insofar as they apply to violations of consistent substantive requirements. IR–3, IR–27, both *supra*. However, they are inconsistent insofar as they apply to violations of inconsistent substantive requirements, IR–18, IR–18 (Appeal), IR–27, all *supra*; *Jersey Central Powers Light Co.* v. *Township of Lacey*, 772 F. 2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

Because all state and local inspection and enforcement provisions have a tendency to cause some delay in transportation, that delay does not *per se* cause those provisions to be inconsistent. Also, isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent.

Therefore, the consistency of the cited Louisiana inspection and enforcement provisions depends upon the consistency of the requirements being enforced through use of them. They are consistent insofar as they relate to consistent substantive requirements and inconsistent insofar as they relate to inconsistent substantive requirements. For example, they would be inconsistent insofar as they would be used to enforce requirements applicable to (1) hazardous materials other than those included within the HMTA and HMR definitions of hazardous materials or (2) train switching and yard operations not subject to regulation under the HMR.

Injuction Provisions

La. Rev. Stat. 32:1515 authorizes the Secretary to seek a court injuction against imminent hazards with respect to hazardous materials transportation. That section provides that an "imminent hazard" exists "when the transportation may present an imminent and substantial endangerment to health or the environment."

Similarly, section 111 of the HMTA, 49 U.S.C. App. 1810, authorizes court actions to redress violations, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. It also authorizes the Secretary to petition a court for an order suspending or restricting the transportation of hazardous material responsible for an imminent hazard, which is defined as existing "if there is a substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm."

Given the differences between Federal and State courts and their proceedings and procedures, there is no necessity for identical injunction provisions. Like other enforcement provisions, therefore, those concerning injunctions generally are consistent insofar as they relate to the enforcement of consistent substantive requirements. Therefore, section 32:1515 is consistent with the HMTA.

Summary

For the foregoing reasons and on the basis of this record, I make the following findings.

Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501 through 10505 and 10901 through 10905 are consistent with the HMTA and the HMR except that the following provisions therefore are inconsistent with the HMTA or the HMR to the extent indicated and thus preempted to that extent under section 112(a) of the HMTA (49 U.S.C. 1811(a)):

(1) La. Rev. Stat. 32:1502 (5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the MHR;

(2) La. Rev. Stat. 32:1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Tit. 33 Secs. 10501(c) and 10901(c) definition of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous materials transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512–1514 insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512 insofar as it imposes civil penalties for other than "knowing" violations;

(8) La. Rev. Stat. 32:1504B, 32:1505, 32:1506, and 32:1508A(3) insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

This ruling does not address the issues of whether those Louisiana provisions are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. App. Section 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. Section 2501 *et seq.*, or any statute other than the HMTA.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on June 15, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–14347 Filed 6–20–90; 8:45 am]

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federal register

Thursday
June 21, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation and Determinations of Endangered Status; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Endangered Status for the Lower Keys Rabbit and Threatened Status for the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rules.

SUMMARY: The Service determines the Lower Keys rabbit (*Sylvilagus palustris hefneri*) to be an endangered species and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). These species are found only in Florida. The Lower Keys rabbit is restricted to a few keys in Monroe County and is endangered by loss of wetlands to residential development. The Squirrel Chimney cave shrimp is restricted to one site in Alachua County, Florida. It is threatened by potential development. This action will implement the protection and recovery provisions afforded by the Act for these species.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete files for these rules are available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Lower Keys rabbit (*Sylvilagus palustris hefneri*) is an island subspecies of the widespread marsh rabbit. The subspecies was described by Lazell in 1984, based on a specimen from Sugarloaf Key, Monroe County, Florida (Lazell 1984). The Lower Keys rabbit measures about 40 centimeters (16 inches) in total length and has brownish fur dorsally and gray fur ventrally. It differs from the marsh rabbit of peninsular Florida (*Sylvilagus palustris paludicola*) principally in skull characters.

In recent times, the Lower Keys rabbit was found on at least ten of the Lower Keys, but may now be extirpated from five of these. The rabbit does not occur east of the Seven Mile Bridge; it is replaced in the Upper Keys by the subspecies *Sylvilagus palustris paludicola*. The Lower Keys rabbit occurs primarily in marshes, ranging from saline to fresh water. It also feeds and disperses through adjacent upland pinelands and hammocks. Salt marshes in the area are typically vegetated with fringerush (*Fimbrystylis* sp.), buttonwood (*Conocarpus erectus*), cordgrass (*Spartina alterniflora*), saltwort (*Batis maritima*), glasswort (*Salicornia virginica*), sawgrass (*Cladium jamaicense*), and sea oxeye (*Borrichia frutescens*). Fresh water marshes support cattail (*Typha latifolia*), sedges (*Cyperus* sp.), and sawgrass. Marshes are very limited in the Lower Keys, since mangroves occupy many coastal areas and interior fresh water habitat is scarce. Known localities for the Lower Keys rabbit are on Federal (National Key Deer Refuge, KeyWest Naval Air Station), State (Florida Department of Transportation), and private lands. The primary cause of the decline of the Lower Keys rabbit is the filling of wetlands for residential, commercial, and military purposes.

The subspecies was considered a category 2 species (a species for which listing is possibly appropriate, but for which conclusive data is lacking) in the Service's vertebrate notice of review published September 18, 1985 (50 FR 37958), and as a category 1 species in the animal notice of review published January 6, 1989 (54 FR 554), indicating that listing was appropriate.

The Service was petitioned to list the Lower Keys rabbit as an endangered species by Ms. Joel Beardsley in a letter received April 17, 1985. Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires that for any such listing petition containing substantial information, a finding be made within 12 months of receipt of the petition. The Service made a finding that the petition presented substantial information and that the requested action may be warranted on August 30, 1985 (50 FR 35272). Subsequent 1-year findings for 1986 (51 FR 29673; August 20, 1986), 1987 (53 FR 25512; July 7, 1988), and 1988 (53 FR 31723; August 19, 1988) were that the petition was warranted but precluded by other listing activities. The August 30, 1989 (54 FR 35905) proposal to classify the Lower Keys rabbit as endangered constituted the final finding required for this species.

The Squirrel Chimney cave shrimp (*Palaemonetes cummingi*), a decapod crustacean of the family Palaemonidae, was described by Chace in 1954. It measures about 30 millimeters (1.2 inches) in total length and is transparent. The body and eyes are unpigmented, and the eyes are reduced in size in comparison to surface-dwelling species of *Palaemonetes*. The Squirrel Chimney cave shrimp (also known as the Florida cave shrimp) is restricted to Squirrel Chimney, a sinkhole near Gainesville, Alachua County, Florida. The site is privately owned. Squirrel Chimney is a small sinkhole which leads to a flooded cave system over 30 meters (100 feet) deep. Several other cave-dwelling invertebrates are found in Squirrel Chimney: McLane's cave crayfish (*Troglocambarus maclanei*), the light-fleeing crayfish (*Procambarus lucifugus*), the pallid cave crayfish (*Procambarus pallidus*) (a category 2 candidate for Federal listing), and Hobb's cave amphipod (*Crangonyx hobbsi*). The site supports one of the richest cave invertebrate faunas in the United States. In 1983, the site was proposed for recognition as a National Natural Landmark, but the National Park Service has not yet taken final action on the proposal.

The Squirrel Chimney cave shrimp is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals, while the other four species are considered species of special concern. The Squirrel Chimney cave shrimp was classified a category 2 species in the Service's May 22, 1984, invertebrate review notice (49 FR 21664), and also in the animal notice of review published January 6, 1989 (54 FR 554). It is threatened by potential residential development and changes in land use. The Service proposed this species as a threatened species on August 30, 1989 (54 FR 35905).

Summary of Comments and Recommendations

In the August 30, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, required by section 4(b)(5)(D) of the Act, were inadvertently not published during the comment period (August 30 to October 30, 1989) announced in the proposal; the comment period on the proposal was therefore reopened from December 4, 1989, to January 8, 1990, in a notice published on December 4, 1989 (54 FR 50008). Newspaper notices were published in the *Key West Citizen* (Key West, Florida) for the Lower Keys rabbit on December 10, 1989; and in the *Gainesville Sun* (Gainesville, Florida) for the Squirrel Chimney cave shrimp on December 14, 1989.

Twenty comments were received regarding the proposal to list the Lower Keys rabbit. The proposal was supported by the Florida Game and Fresh Water Fish Commission, the Florida Natural Areas Inventory, six conservation organizations, and seven individuals. Three individuals opposed the proposal; one such letter included a petition signed by 28 local residents who opposed the listing of the Lower Keys rabbit. One individual opposed further land acquisition and regulation in the Florida Keys, stating that the tax burden would increase. Service response: Listing decisions pursuant to the Act are required to be based solely on the factors enumerated under section 4(a) of the Act; see the "Summary of Factors Affecting the Species" below. Only biological and threat criteria can be used to determine whether species are endangered or threatened; potential economic effects are not allowed to influence the decision on whether or not a species is endangered or threatened. In any case, it is likely that little, if any, public land acquisition will take place for the Lower Keys rabbit. Some of the habitat of the subspecies is already in government ownership (National Key Deer Refuge and Key West Naval Air Station); much of the reminder is in small isolated parcels that, even if acquired, would have limited effects on the Florida Keys economy.

One comment indicated that the Lower Keys rabbit had been seen on Saddlehill Key in recent years, a site previously not recorded. In another comment the biologist who had carried out the status survey for the Lower Keys rabbit reported his belief that the rabbit had continued to decline since the 1987 survey work. The U.S. Navy, Key West Naval Air Station, indicated its willingness to cooperate in conservation of this species on Navy lands in the Lower Keys. Several other points were raised in the comments. The biologist who scientifically described the Lower Keys rabbit pointed out that the species uses pinelands and hammocks in addition to wetland hammocks; that fact has been incorporated into the final rule. Another individual stated that the Lower Keys rabbit no longer existed and that the only rabbits in the area were escaped domestic rabbits. Service response: While feral domestic rabbits (the European rabbit, *Oryctalagus cuniculus*) may be found in the Lower Keys, the Lower Keys rabbit (*Sylvilagus palustris hefneri*) represents a different genus, not closely related to the escaped domestic rabbits. Lower Keys rabbits continue to exist, as evidenced by recent sightings and road-killed animals.

Two conservation groups disagreed with the Service's proposal to not designate critical habitat for the Lower Keys rabbit. They felt that critical habitat designation would provide additional protection to the rabbit and its habitat, particularly in areas that appear to be suitable habitat but are currently unoccupied by the species. The Service continues to believe that the disadvantages of critical habitat designation for the Lower Keys rabbit outweigh the benefits. Critical habitat, by definition, applies only to Federal agency actions. Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species. The standards for establishing jeopardy to the species and for destruction and adverse modification of habitat are substantially identical. Since no apparent benefits would result from the designation of critical habitat for this species, the Service has not proposed such a regulation.

Four comments were received in response to the proposal to list the Squirrel Chimney cave shrimp as a threatened species. The proposal was supported by the Florida Game and Fresh Water Fish Commission, the Florida Natural Areas Inventory, and the Florida Speleological Society. The landowner of the site where the shrimp occurs opposed the listing of the shrimp, questioning the currentness of the data used to justify the proposal and fearing that the regulation might restrict development of the property. Service response: Although collections of the Squirrel Chimney cave shrimp have not been attempted for several years, there is no reason to believe that the species does not still occur at the site. Neither the landowner nor the Service has been able to identify any current or planned development activities that would be prevented by the listing of this species. No Federal agency activities are currently known or anticipated for the property.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Lower Keys rabbit should be classified as an endangered species and that the Squirrel Chimney cave shrimp should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lower Keys rabbit (*Sylvilagus palustris hefneri*) and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Lower Keys rabbit—This species probably originally occurred in suitable habitat throughout the larger Lower Florida Keys. Lazell (1984) reported the rabbit from Lower Sugarloaf, Geiger, Saddlebunch, Boca Chica, and Big Pine Keys. He documented 13 sites from these keys (records in Florida Natural Areas Inventory, Tallahassee, Florida). Based on interviews with local residents, he believes that the species also occurred on Cudjoe, Ramrod, Middle Torch, Big Torch, and Key West Keys, but has been extirpated at these sites (J.D. Lazell, The Conservation Agency, *in litt.*, 1985). Lazell (*in litt.* 1985) also provided a rough population estimate, based on pellet counts, of 250 remaining Lower Keys rabbits. Based on interviews with local residents, he believed that the Lower keys rabbit had been locally common as recently as the 1950's.

The Refuge Manager of the Service's National Wildlife Refuge Complex in the Florida Keys (Key Deer, Key West, and Great White Heron) reviewed the annual reports of that station for information on the Lower keys rabbit (*in litt.* 1988). The rabbit was known to be present on Refuge lands on Boca Chica, Saddlebunch, and Big Pine Keys, but not on the smaller, outer keys of these refuges. The species was not considered abundant, and was believed to be restricted to keys with available fresh water. Only a few rabbits have been seen since 1984. Howe (1988) surveyed Lazell's 13 sites, as well as additional areas, in a status survey funded by the Service and carried out by the Florida Game and Fresh Water Fish Commission. He found rabbits at 12 locations (one additional site was found following the conclusion of his survey), while they appear to have been extirpated from 4 or possibly 5 previously known sites. Filling for development or road construction has

resulted in the destruction of the rabbit's habitat at these sites. Only 6 of the 13 remaining known sites are secure from development. The species may also be extirpated from Saddlebunch Key, where most of the habitat has been destroyed. Howe estimates that 200-400 Lower Keys rabbits remain on Sugarloaf, Welles, Annette, Boca Chica, Big Pine, and Hopkins Keys in small, scattered populations. A few rabbits may also still occur on Saddlehill Key.

(2) Squirrel Chimney cave shrimp—This species is known from only one sinkhole. Any detrimental change to the sinkhole or the underlying aquifer has the potential to adversely affect or even cause the extinction of the species. The property surrounding the sinkhole is currently oak hammock and pine plantation, but it may be developed for residential use (single-family houses) in the foreseeable future. The property is in an actively developing area on the outskirts of Gainesville. Septic tanks and the use of pesticides and herbicides associated with residential development have the potential to degrade water quality in the aquifer, and human activities in the vicinity of the sinkhole could damage the vegetation in and around the sink. Forestry practices have the potential to damage the sinkhole through erosion or pesticides. The current property owners intend to give The Nature Conservancy the first option to purchase the land around the sinkhole, but even if this site is acquired, the sinkhole will remain vulnerable to development in the near vicinity.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Lower Keys rabbit was actively hunted in the past (Lazell 1985), but it is not known whether such activity continues. The current small population size and limited distribution of this animal would make any hunting a serious threat. The Squirrel Chimney cave shrimp is restricted to one small site that could be seriously damaged by a single act of vandalism.

C. *Disease or predation.* The Lower keys rabbit is vulnerable to predation by feral house cats, which are common on the Lower keys. Mammalian predators such as cats are not native to the Lower Keys, and wildlife there, as on many islands, may not be well adapted to withstanding such predation. Disease or predation are not known to be affecting the Squirrel Chimney cave shrimp.

D. *The inadequacy of existing regulatory mechanisms.* No existing regulatory mechanisms apply to the Lower keys rabbit or the Squirrel Chimney cave shrimp.

E. *Other natural or manmade factors affecting its continued existence.* The Lower keys rabbit occurs in small, disjunct populations which may persist only due to migration among colonies. The continuing urbanization of the Lower Keys makes such movements increasingly difficult. Other natural or manmade factors are not known to be affecting the Squirrel Chimney cave shrimp.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Lower Keys rabbit as an endangered species and the Squirrel Chimney cave shrimp as a threatened species. The Lower Keys rabbit is in danger of extinction throughout a significant portion, if not all, of its range. While not in immediate danger of extinction, the Squirrel Chimney cave shrimp is likely to become an endangered species in the foreseeable future. Critical habitat is not being designated for either species for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. Publication of critical habitat maps for the Lower Keys rabbit could result in hunting or poaching of this species in its few remaining sites. Federal agencies with Lower Keys rabbits on their properties have been notified. Their activities will be subject to section 7 of the Act, as discussed under "Available Conservation Measures."

The Squirrel Chimney cave shrimp is restricted to a single known locality that could easily be damaged by vandalism (see factor "B." above). The private landowners do not desire visitors at the site. No Federal activities are known or anticipated at the site.

Publication of critical habitat description would make both species more vulnerable to take or vandalism. For the above reasons, the Service has concluded that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. All involved parties and major land owners have been notified of the location and the importance of protecting the habitat of these species. Protection will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For the Lower Keys rabbit, affected Federal agencies are the U.S. Navy and the U.S. Army Corps of Engineers (Corps). The rabbit occurs on Key West Naval Air Station, and the Corps has jurisdiction over some of the wetlands used by the rabbit through its permitting authority pursuant to section 404 of the Clean Water Act. The Navy currently anticipates no conflicts with its mission on Key West Naval Air Station, and will assist in conserving the Lower Keys rabbit. The Corps must now evaluate wetland permit applications for potential effects on the Lower Keys rabbit. If appropriate, the Corps must consult with the Service concerning the Lower Keys rabbit. Wetland permitting in some areas may become more restrictive.

No Federal agency involvement is known or anticipated for the Squirrel Chimney cave shrimp.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import and export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or for special purposes consistent with the purposes of the Act.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chace, F.A., Jr. 1954. Two new subterranean shrimp (Decapoda:Caridea) from Florida and the West Indies, with a revised key to the American species. J. Wash. Acad. Sci. 44:318–324.

Howe, S.E. 1988. Lower Keys rabbit status survey. Final report of Florida Game and Fresh Water Fish Commission to Jacksonville Field Office of U.S. Fish and Wildlife Service under Cooperative Agreement 14–16–004–87–039. 10 pp.

Lazell, J.D., Jr. 1984. A new marsh rabbit (*Sylvilagus palustris*) from Florida's Lower Keys. J. Mamm. 65(1):26–33.

Author

The primary author of this rule is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under the groups indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * * * *							
Rabbit, Lower Keys	*Sylvilagus palustris*	U.S.A. (FL)	Entire	E	390	NA	NA
* * * * *							
Crustaceans							
* * * * *							
Shrimp, Squirrel Chimney (=Florida) Cave.	*Palaemonetes cummingi*	U.S.A. (FL)	NA	T	390	NA	NA
* * * * *							

Dated: May 15, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–14410 Filed 6–20–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Designation of the Freshwater Mussel, the Fanshell as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates a freshwater mussel, the fanshell (*Cyprogenia stegaria* [=*C. Irrorata*]), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Virginia. Presently, the fanshell is believed to be reproducing in only three rivers—the Green and Licking Rivers in Kentucky, and the Clinch River in Tennessee and Virginia. Additionally, small, apparently nonreproducing populations (based on the collection of a few old specimens in the 1980s) may still persist in the Muskingum River, Ohio; the Kanawha River, West Virginia; the Wabash River system in Illinois and Indiana; Tygarts Creek, Kentucky; and the Tennessee and Cumberland Rivers in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments and navigation facilities, dredging for channel maintenance, sand and gravel mining, and water pollution.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The fanshell (*Cyprogenia stegaria* (=*C. Irrorata*)) was described by Rafinesque (1820). This freshwater mussel is characterized as a medium to large river species (Bates and Dennis 1985). The mussel has a medium-size shell (seldom exceeding 3.2 inches [80 millimeters] in length) that is subcircular in outline (Johnson 1980). The shell exterior has green rays on a light green or yellow surface ornamented with green mottling. The inside surface of the shell (nacre) is usually silvery white. Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Since the turn of the century, the fanshell has undergone a substantial reduction in its range. It was historically widely distributed in the Ohio, Wabash, Cumberland, and Tennessee Rivers and their larger tributaries in Pennsylvania, Ohio, West Virginia, Illinois, Indiana, Kentucky, Tennessee, Alabama, and Virginia (Johnson 1980, Kentucky State Nature Preserves Commission 1980, Ahlstedt 1986, Bates and Dennis 1985, Lauritsen 1987, Cummings *et al.* 1987 and 1988, Starnes and Bogan 1988). The loss of many historic populations was likely due to the impacts of impoundments, navigation projects, pollution, and habitat alterations (such as gravel and sand dredging) that directly affected the species and reduced or eliminated its fish host.

Based on a review of current literature on the species (see above) and on the following personal communications and letters involving knowledgeable individuals and State and Federal agency personnel, it is believed that reproducing populations are now present in only three rivers—the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Green River, Hart and Edmonson Counties, Kentucky; and the Licking River, Kenton, Campbell, and Pendleton Counties, Kentucky (S. Ahlstedt and J. Jenkinson, Tennessee Valley Authority, personal communication, 1988; R. Anderson and M. Gordon, Tennessee Cooperative Fishery Research Unit, personal communication, 1988; C. Becker, Illinois Department of Conservation, *in litt.*, 1988; C. Bier, Western Pennsylvania Conservancy, *in litt.*, 1989; R. Connor and W. Sinozich, U.S. Army Corps of Engineers, *in litt.*, 1988; K. Cummings, Illinois Natural History Survey, *in litt.*, 1988; R. Cicarello and R. Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1988; W. Haag, Ohio State University Museum of Zoology, *in litt.*, 1988; E. Hansen, Indiana Division of Fish and Wildlife, *in litt.*, 1988; P. Jones, Ohio Department of Natural Resources, *in litt.*, 1988; R. Neves, Virginia Cooperative Fish and Wildlife Research Unit, *in litt.*, 1988; B. McDonald and M. Zeto, West Virginia Department of Natural Resources, *in litt.*, 1988 and 1989; J. Sickle, Murray State University, personal communication, 1989; C. Shiffer, Pennsylvania Fish and Game Commission, personal communication, 1989; W. Tolin, U.S. Fish and Wildlife Service, personal communication, 1988; and P. Yokley, University of North Alabama, personal communication, 1988).

Additionally, small remnant, apparently nonreproducing populations (based on collections of a few old individuals in the 1980s) may still persist in the Muskingum River in Morgan and Washington Counties, Ohio; the Wabash River in White and Wabash Counties, Illinois, and Posey County, Indiana; the East Fork White River, Martin County, Indiana; the Tippecanoe River, Tippecanoe County, Indiana; the Kanawha River, Fayette County, West Virginia; Tygarts Creek, Greenup and Carter Counties, Kentucky; the Cumberland River, Smith County, Tennessee; and the Tennessee River, Rhea, Meigs, and Hardin County, Tennessee.

The population in the Green River is likely the best of the three remaining reproducing populations. Fresh-dead fanshells of various age classes from juvenile to adults have been recently (1987 and 1988) found in muskrat middens (piles of mussel shells left by feeding muskrats) along the Green River (R. Cicerello, personal communication, 1988). However, the Green River, which lies partially within the Mammoth Cave National Park, is not free from threats. The river's mussel fauna have been seriously depleted. Cicerello (personal communication, 1988), based on his 1987 and 1988 surveys of the Green River within and above the Mammoth Cave National Park, believes that about 40 mussel species still survive in the area. Ortmann (1926) reported finding 68 species of mussels in the Green River. The Green River has been degraded by runoff from oil and gas exploration and production sites and by alteration of stream by an upstream reservoir.

The Clinch River fanshell population extends over about 66 river miles (Ahlstedt 1988). However, a Tennessee Valley Authority (1988) survey reported that the fanshell comprised less than 1 percent of the mussels collected at 11 Clinch River quantitative sampling sites in 1979 and 1986. The Tennessee Valley Authority (1988) also reported that overall mussel abundance in the Clinch River has decreased from an average of 11.64 mussels per square meter in 1979 to 6.00 per square meter in 1986. The Clinch River also has environmental problems. Sledd (Virginia Commission of Game and Inland Fisheries, personal communication, 1988) stated that land use practices along the Clinch River have contributed to a decline in water quality and mussel populations. The Clinch River has experienced some adverse impacts from coal mining, and the river has been subjected to two mussel kills caused by toxic substance spills from a riverside coal-fired power plant.

The Licking River also supports a reproducing fanshell population (R. Cicerello, personal communication, 1989). Live and fresh-dead individuals of several year classes have been collected. However, despite collections made throughout the drainage by Kentucky State Nature Preserves Commission biologists, the species is only known from the lower portion of the Licking River. This population could potentially be threatned by some of the water supply development alternatives presently under preliminary review for the Licking River watershed.

The fanshell was recognized by the Service in the May 22, 1984, Federal Register (49 FR 21604) and the January 6, 1989, Federal Register (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On December 6, 1988, the Service notified by mail (150 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review was being conducted specifically to determine if the fanshell should be protected under the Act. A total of 22 written responses was received as a result of the December 6, 1988, notification. No objections to the potential listing of the fanshell were received, and much information on the species' status and its former and present distribution was provided.

On October 2, 1989, the Service published in the Federal Register (54 FR 40450) a proposal to list the fanshell as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated October 6, 1989, and requested to comment. A legal notice was published in the following newspapers: *Lebanon Democrat*, Lebanon, Tennessee, October 18, 1989; *Savannah Courier*, Savannah, Tennessee, October 19, 1989; *Bedford Times-Mail*, Bedford, Indiana, October 20, 1989; *Daily News of Kingsport Inc.*, Kingsport, Tennessee, October 20, 1989; *Daily Republican-Register*, Mt. Carmel, Illinois, October 20, 1989; *Ashland Independent*, Ashland, Kentucky, October 21, 1989; *Carmi Times*, Carmi, Illinois, October 21, 1989; *Charleston Gazette*, Charleston, West Virginia, October 21, 1989; *Marietta Times*, Marietta, Ohio, October 21, 1989; *The Kentucky Post*, Covington, Kentucky, October 21, 1989; *Daily News*, Bowling Green, Kentucky, October 22, 1989; and *Oak Ridge*, Oak Ridge, Tennessee, October 22, 1989.

A total of 11 written comments was received. All 11 respondents (National Park Service, Mammoth Cave National Park; Tennessee Valley Authority; U.S. Army Crops of Engineers, Nashville District; U.S. Forest Service; Illinois Natural History Survey Division; Kentucky Department for Environmental Protection; Kentucky State Nature Preserves Commission; Ohio Biological Survey; West Virginia Department of Natural Resources; Virginia Department of Conservation and Recreation; and Virginia Cooperative Fish and Wildlife Research Unit) expressed support for designating the fanshell as an endangered species.

Summary of Factors Affecting the Species

After the thorough review and consideration of all information available, the Service has determined that the fanshell should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the fanshell (*Cyprogenia stegaria* [=*C. irrorata*]) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The fanshell was apparently once widespread in the Ohio River and its larger tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, Alabama, and Virginia (Johnson 1980). Johnson (1980) reported that the species was formerly known from at least 28 rivers. Many of these historically known populations were evidently lost when riverine habitat in the Ohio River system was converted to a species of large reservoirs. These reservoirs and other habitat-altering factors (e.g., navigation projects and gravel and sand dredging) have diminished the species' preferred riverine gravel/sand habitat and eliminated or reduced the availability of the mussel's fish host. As a result, this species' distribution has been substantially reduced.

The following is a review by State of the species' status (see "Background" section for additional information on the species' status).

Pennsylvania: No definitive study of Pennsylvania's mussel fauna has been conducted in more than 50 years. However, based on the mussel survey data that are available and the documented history of habitat degradation that has occurred in the Pennsylvania rivers where the species was found early in this century, it is presumed that the species has been extirpated from the State (C. Shiffer, personal communication, 1989; and C. Bier *in litt.*, 1989).

West Virginia: In 1982 one old fresh-dead fanshell was collected below Kanawha Falls on the Kanawha River (W. Tolin, personal communication, 1988). This is the only recent record of the species in West Virginia, and the species is believed to be very rare in the State (B. McDonald and M. Zeto, *in litt.*, 1988 and 1989).

Ohio: Based on letters from Wendal Haag (1988) and Patricia Jones (1989), the only recent (1980s) records for Ohio are from the Muskingum River, and these were all large old individuals. C. Lakes (Ohio Department of Natural Resources, *in litt.*, 1988) stated: "We believe *Cyprogenia stegaria* should be protected under the 1973 Federal Endangered Species Act."

Indiana: The species was found at a few sites in the Wabash River system during 1987 and 1988 (K. Cummings, *in litt.*, 1988; J. Engel, U.S. Fish and Wildlife Service, *in litt.*, 1989). However, these collections were presented by only a few live or fresh-dead old individuals. Hansen (*in litt.*, 1988) stated that the fanshell was historically common in the Wabash River system but that recent surveys (1987 and 1988) document a dramatic decline in the species. The State of Indiana has classified the species as endangered, and the Indiana Division of Fish and Wildlife supports protection of the species under the Endangered Species Act.

Illinois: The fanshell (based on the collection of a few old specimens) is presently known in Illinois only from the Wabash River (K. Cummings, *in litt.*, 1989). The species was added to the Illinois list of endangered species in March 1988 (C. Becker, personal communication, 1989). Becker further stated: "The Wabash River experienced heavy commercial musseling pressure from the mid-1950s to the mid-1980s. Since that time, none of the river's mussel population seem to have recovered very well."

Kentucky: The Kentucky State Nature Preserves Commission, which classifies the species as threatened (Warren *et al.* 1986), reported that the fanshell was historically taken from 10 reaches of Kentucky rivers (R. Hannan, *in litt.*, 1988). Presently, the species is known to survive in only three Kentucky rivers and to reproduce in only two.

Tennessee: In Tennessee, a few old specimens apparently still survive in the Cumberland and Tennessee Rivers (R. Anderson, S. Ahlstedt, M. Gordon, and P. Yokley, personal communication, 1989); however, there is no indication that the species is reproducing in either of these rivers. The only known Tennessee population that is believed to still be reproducing is in the Clinch River above Norris Reservoir (S. Ahlstedt, personal communication, 1989). The Tennessee Wildlife Resources Agency (R. Hatcher, *in litt.*, 1988) stated, "* * * we support any appropriate means of protecting this species and its habitats."

Alabama: Johnson (1980) reported that the species historically was taken in Alabama from the Tennessee River and one of its tributaries, the Flint River. Based on literature records and personal communications with species experts (see "Background" section of this rule), the species is believed to be extripated from the State of Alabama.

Virginia: The only historic record of the fanshell for Virginia is from the Clinch River (Johnson 1980), although rare, the species still survives as a reproducing population in the Clinch River (Tennessee Valley Authority 1988). The Virginia Commission of Game and Inland Fisheries supports consideration of the species for protection under the Act (C. Sledd, *in litt.*, 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in small numbers within some harvested mussel beds, and the species can therefore sometimes be taken by mussel fishermen. Also, the species is rare and prized by private and institutional collectors. Thus, take does pose some threat to the species. Federal protection could help to minimize the take of individuals.

C. *Disease or predation.* Although the fanshell is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (R. Neves, personal communication, 1988). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* States within the species' range prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act from mussel collectors by requiring Federal permits to take the species, and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Only 3 of the 12 remaining populations are believed to be reproducing. Therefore, unless methods can be developed to maintain the nonreproducing populations, about 75 percent of the known populations will be lost in the foreseeable future due to their inability to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the fanshell (*Cyprogenia stegaria (=C. irrorata)*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only three isolated, reproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the three remaining reproducing populations, endangered status appears to be the most appropriate classification for this species. (See "Critical Habitat" section for a discussion of why critical habitat is not being designated for the fanshell.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the fanshell at this time, owing to the lack of benefits from such designation. The National Park Service, Mammoth Cave National Park; U.S. Army Corps of Engineers; and the Tennessee Valley Authority are the three Federal agencies most involved, and they, along with the State natural resources agencies within the species' range, are already aware of the location of the remaining populations within their respective jurisdictions that would be affected by any activities in these river reaches. These Federal agencies have conducted numerous studies in these river basins and are knowledgeable of the fauna and of their projects' potential impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of specific critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms in this rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the "Addresses" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service requested information from Federal agencies to determine if they have active or proposed projects that might affect the species. No specific proposed Federal actions were identified. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met. In fact, many of the areas inhabited by the fanshell are also inhabited by other mussels that have been federally listed since 1976, and the Service has a history in many of these areas of successful section 7 conflict resolutions that protect federally listed

mussels and provide for project objectives to be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Richard G. Biggins (see **Addresses** above) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, exports, imports, reporting and record-keeping requirements, and transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Clams, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Fanshell	*Cyprogenia stegaria (=irrorata)*	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, WV)	NA	E	391	NA	NA

Dated: May 23, 1990.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 90-14411 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Mimulus glabratus var. michiganensis (Michigan monkey-flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This semi-aquatic perennial plant is known from only twelve sites in Michigan, eight of which contain fewer than 10 individual plants. The plant is endangered by habitat loss due to recreational and residential development. This action will implement Federal protection provided by the Act to *Mimulus glabratus* var. *michiganensis*. Critical habitat is not being designated.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Ronald L. Refsnider, Acting Endangered Species Coordinator (see ADDRESSES section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Mimulus glabratus var. *michiganensis* (Michigan monkey-flower) was first recognized as a separate taxon by Pennell (1935) in his monograph of the Scrophulariaceae. He identified it as a subspecies, while Fassett (1939) assigned it varietal status. Some researchers have noted considerable morphological overlap with other taxa. However, recent studies (Bliss 1983, Minc 1989) of floral characters of closely related taxa showed distinct morphometric differences between *M. glabratus* var. *michiganensis*, *M. glabratus* var. *fremontii* and *M. guttatus*. Statistical analyses of measurements of corolla length, corolla width, pistil length, style length, and ovary length demonstrated that *M. glabratus* var. *michiganensis* is consistently and distinctively intermediate between the other two taxa: smaller than *M. guttatus*, but larger than *M. glabratus* var. *fremontii*. As Minc (1989) reports, the two *M. glabratus* varieties are readily distinguished by differences in flower size, while some size overlap occurs between *M. glabratus* var. *michiganensis* and *M. guttatus*. However, the latter two taxa differ in the shape of the floral characters. These studies confirmed the validity of recognizing this taxon at least as a distinct variety and perhaps as a separate species.

Mimulus glabratus var. *michiganensis* is an aquatic or semi-aquatic glabrous, perennial herb with lax stems averaging 36 centimeters (14 inches) in length. It roots at the lower stem nodes to produce clones of up to several hundred stems. The rotund, coarsely-toothed leaves are opposite and evenly distributed along the stem. The plant blooms from about mid-June to mid-July and occasionally to mid-August. However, pollen viability is low, suggesting that var. *michiganensis* is primarily dependent on vegetative reproduction. The yellow tubular flowers range from 16 to 27 millimeters (.63 to 1.1 inches) long (Bliss 1983, Minc 1989) and emerge from upper leaf axils on slender stalks. The flowers have two-lobed upper lips and three-lobed lower lips, with the lower lip and tube irregularly red spotted. The ranges of var. *michiganensis* and var. *fremontii* overlap, though these plants have not been found to co-occur at any site. *Mimulus glabratus* var. *michiganensis* can be distinguished from var. *fremontii* by flower size. The smaller var. *fremontii* flowers are 8 to 16 millimeters (.32 to .71 inches) long. Pistil length is 11 to 21 millimeters (.43 to .83 inches) for var. *michiganensis*, and 5 to 10 millimeters (.2 to .39 inches) for var. *fremontii*. Although their ranges are not presently known to overlap, *Mimulus glabratus* var. *michiganensis* is generally smaller than *M. guttatus* and can be distinguished from this taxon by the larger opening in the corolla throat and the shape of the calyx lobes.

Crispin and Penskar (1989) report that var. *michiganensis* is narrowly restricted to cold, saturated soils of seepages on forest edges and in small openings located along streams and lakeshores. Nearly all known populations are associated with the current, or what were the ancient shorelines of the Great Lakes. Northern white cedar (*Thuja occidentalis*) is usually dominant in the overstory. The Michigan monkey-flower grows in muck or mucky sand that is saturated or inundated by cold, flowing spring water. Typical associates include *Impatiens biflora* (touch-me-not), *Myosotis scorpioides* (forget-me-not), *Nasturtium officinale* (watercress), *Mentha arvensis* (spearmint), and *Conocephalum conicum* (liverwort). Other species frequently present are *Caltha palustris* (buttercup), *Mitella nuda* (miterwort), *Cystopteris bulbifera* (bulblet fern), *Eupatorium maculatum* (joe-pye-weed), *Equisetum arvensis* (scouring-rush), and *Thuidium delicatulum* (feather moss).

Many of the earliest herbarium specimens of *Mimulus glabratus* var. *michiganensis* were not initially identified beyond the species level. They were subsequently identified as var. *jamesii*, var. *fremontii*, and finally var. *michiganensis*. The first reported collection of var. *michiganensis* was by Charles F. Wheeler in Harbor Springs, Emmet County, Michigan in July 1890. However, the specimen was not identified as var. *michiganensis* until 1980. The type specimen was collected in July 1925 by J. H. Ehlers along the banks of Niger Creek near Topinabee, Cheboygan County, Michigan. Whereas the *Mimulus glabratus* complex ranges from Canada to southern Chile, historical records and recent surveys have shown that var. *michiganensis* has a very narrow range, restricted to the Mackinac Straits and Grand Traverse regions of Michigan, specifically in Benzie, Cheboygan, Emmet, Leelanau and Mackinac Counties. The plant is no longer extant at four of the 10 known historical locations (including the type locality and the site of first collection). Two existing sites contain only one or two plants. Almost two-thirds of the extant occurrences are on privately-owned lands. The var. *michiganensis* also occurs at Sleeping Bear Dunes National Lakeshore, the University of Michigan Biological Station, a county park, a township park, and on land owned by the Michigan Nature Association, a private state-wide conservation organization.

Federal Government action on this plant began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report (Ayensu and DeFillipps 1978), designated as House Document No. 94-51, was presented to Congress on January 9, 1975. *Mimulus glabratus* var. *michiganensis* was listed as

"threatened" in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication.

Mimulus glabratus var. *michiganensis* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82479), November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**.

Mimulus glabratus var. *michiganensis* was included as a category 1 species in the 1980 notice. Category 1 species are those for which biological information in the Service's possession warrants their listing as endangered or threatened. In the 1983 and 1985 notices, var. *michiganensis* was dropped to category 2 when it became evident that further biological research and surveys were needed to determine its status and taxonomic validity. Since that time, additional research (Minc 1989) and an updated status survey (Crispin and Penskar 1989) were completed, which clarified the taxonomic distinctness of the plant and demonstrated more clearly the biological threat and the need for protection under the Act.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Mimulus glabratus* var. *michiganensis*, was October 13, 1983. On October 13, 1983, and again in 1984, 1985, 1986, 1987 and 1988, the petition finding was that listing of *Mimulus glabratus* var. *michiganensis* was warranted pending finding of further information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. A final finding to the effect that the petitioned action was warranted was incorporated in a proposed rule to determine endangered status for *Mimulus glabratus* var. *michiganensis* issued in the **Federal Register** of October 2, 1989 (54 FR 40454).

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, landowners, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in the following Michigan newspapers between October 23 and 27, 1989: *The Cheboygan Daily Tribune, Traverse City Record Eagle, St. Ignace News*, and *Petoskey News-Record*. Five comments supporting the listing were received and are discussed below.

Two of the comments were from the National Park Service, who advised that a population of *Mimulus glabratus* var. *michiganensis* is found within the boundaries of Sleeping Bear Dunes National lakeshore, and is well protected. The Michigan Technical Plant Committee recommended additional surveys be conducted in Mackinac County around the Epoufette and Cut River areas where *M. glabratus* var. *michiganensis* is found, and expressed concern about the sand mining operation in the area that might affect the temperature and availability of ground water, which is necessary for the plants survival. Another commenter, concerned about the increasing pressures on the Michigan monkey-flower as a result of development along the Great Lakes shorelines, believes other plant species requiring cold water habitat will also benefit once the Michigan monkey-flower is protected under the Endangered Species Act. Another person, who has published her findings on the distinctness of var. *michiganensis* from var. *fremontii*, reaffirms that position, and notes that she found all but one of the known populations of var. *michiganensis* to be sterile. None of the commenters were able to provide additional occurrence information.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Mimulus glabratus* var. *michiganensis* (Pennell) Fassett should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mimulus glabratus* var. *michiganensis* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Mimulus glabratus* var. *michiganensis* is restricted to the current and what was the historical Great Lakes shorelines in the Mackinac Straits and Grand Traverse regions in Michigan. These areas are rapidly being developed for recreational and residential purposes. The major threat to var. *michiganensis* is the destruction and adverse modification of its habitat. Since most populations lie along lakeshores and streams, the plant is particularly vulnerable to increasing vacation home development in its range (Crispin and Penskar 1989). Of the 10 extant and historical populations, three have been extirpated and at least two additional sites have been severely impacted by residential and other developments. The plant has been extirpated at an additional site (the type locality) due to unknown causes.

Mimulus glabratus var. *michiganensis* appears to be highly dependent on continuous supplies of cold spring water. Two of the smaller populations have survived artificial disturbances, such as overstory thinning, and cutting and pulling in spring-fed rivulets that have been maintained adjacent to lakeside residences. Therefore, the plant may be impacted by both direct destruction of its habitat as well as by disturbance to its water supply. Upstream water supply may be impacted by roads and other activities which divert water from the small drainages which support the plant. Excessive pumping of groundwater upgradient of the sites may reduce stream base flows. The plant may therefore be inadvertently impacted by offsite activities. One recent extirpation

of a population appears to have been due to such a disturbance to its water supply.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites. Some incidental commercial use has occurred. One population was discovered after a botanist was served a sprig of *Mimulus glabratus* var. *michiganensis* as a garnish on his restaurant dinner plate.

C. *Disease or predation.* None known that affects this taxon.

D. *The inadequacy of existing regulatory mechanisms. Mimulus glabratus* var. *michiganensis* is listed as threatened by the State of Michigan. It is illegal to take, possess, transport, import, export, process, sell, buy, collect, pick, cut, dig up, or destroy in any manner any listed plants or plant parts, without a permit. Although the State Endangered Species Act does not provide protection for habitat, State and Federal wetland laws regulate many activities within the streamside/wetland habitat of *Mimulus glabratus* var. *michiganensis*. However, there is no guarantee for preservation of this habitat nor the plant's water supply without the protection of the Act and subsequent recovery actions including development of specific management plans. The Endangered Species Act offers possibility for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Periodic high water levels of the Great Lakes impact the shoreline habitat of *Mimulus glabratus* var. *michiganensis*. Recent record high water levels and strong winter storms reshaped many shoreline areas, redirecting seepage streams which supported the plants and opening the overstory by felling cedars. At least one site occurrence listed as extant has not been resurveyed since these storms. Therefore, its present status is unknown. Other shoreline colonies appear to have survived the recent high water levels.

Mimulus glabratus var. *michiganensis* is particularly vulnerable because of the low numbers of individuals occurring at most sites and its limited capability for sexual reproduction. Since the plant roots at the lower stem nodes to produce new stems, it is impossible to distinguish the number of genetic individuals in each colony. However, if one assumes that each "clump" of stems is one individual plant, only four of 12 extant sites contain more than 10 plants. In addition, if, at Crispin and Penskar (1988) surmise, the largely clonal colonies have low genetic diversity, *Mimulus glabratus* var. *michiganensis* may have limited ability to survive or adapt to environmental change. Margaret Bliss (Groundwater Technology, Inc., personal communications, December 1989) advises that in her research she found *M. glabratus* var. *michiganensis*, to be sterile in all but one population. With the limited number of colonies and individuals in existence, and the limited gene pool, the loss of any individuals would appreciably reduce the chances of survival and recovery.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to make this rule final. Based on this evaluation, the preferred action is to list *Mimulus glabratus* var. *michiganensis* as an endangered species, because of its restricted range, the limited number of populations and individuals, its limited capability for sexual reproduction and hence its limited gene pool, and the severe threats to its habitat. Critical habitat is not being designated for reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no net benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description. The limited number of populations and individuals of *Mimulus glabratus* var. *michiganensis* make this plant particularly vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) Removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Mimulus glabratus* var. *michiganensis* more vulnerable and increase enforcement problems. The principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Mimulus glabratus* var. *michiganensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The National Park Service (NPS) has jurisdiction over one *Mimulus glabratus* var. *michiganensis* site in Leelanau County, Michigan. Currently, no activities to be permitted, funded, or carried out by any Federal agency, are known to exist which would affect this taxon. The NPS intends to conduct additional surveys for the species within Sleeping Bear Dunes National Lakeshore in the summer of 1990 (M. Holden, NPS, personal communications, 1990).

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damaging or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because *Mimulus glabratus* var. *michiganensis* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358-2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Fassett, N.C. 1939. Notes from the herbarium of the University of Wisconsin. Rhodora 14:524-525.

Minc, L.D. 1989. A morphometric comparison of *Mimulus glabratus* var. *michiganensis*, *M. glabratus* var. *fremontii*, and *M. guttatus* based on floral characters. Unpublished report prepared for the Michigan Natural Features Inventory. 20 pp.

Pennell, F.W. 1935. The Scrophulariaceae of eastern temperate North America. Monograph I, Academy of Natural Sciences, Philadelphia. 650 pp.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725-3276 or FTS 725-3276).

List of Subjects in 50 CFR Part 17

Endangered or threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500 unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scrophulariaceae—Snapdragon family:						
Mimulus glabratus var. *michiganensis*	Michigan monkey-flower	U.S.A. (MI)	E	392	NA	NA

Dated: May 16, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-14412 Filed 6-20-90; 8:45 am]

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Thursday, June 21, 1990

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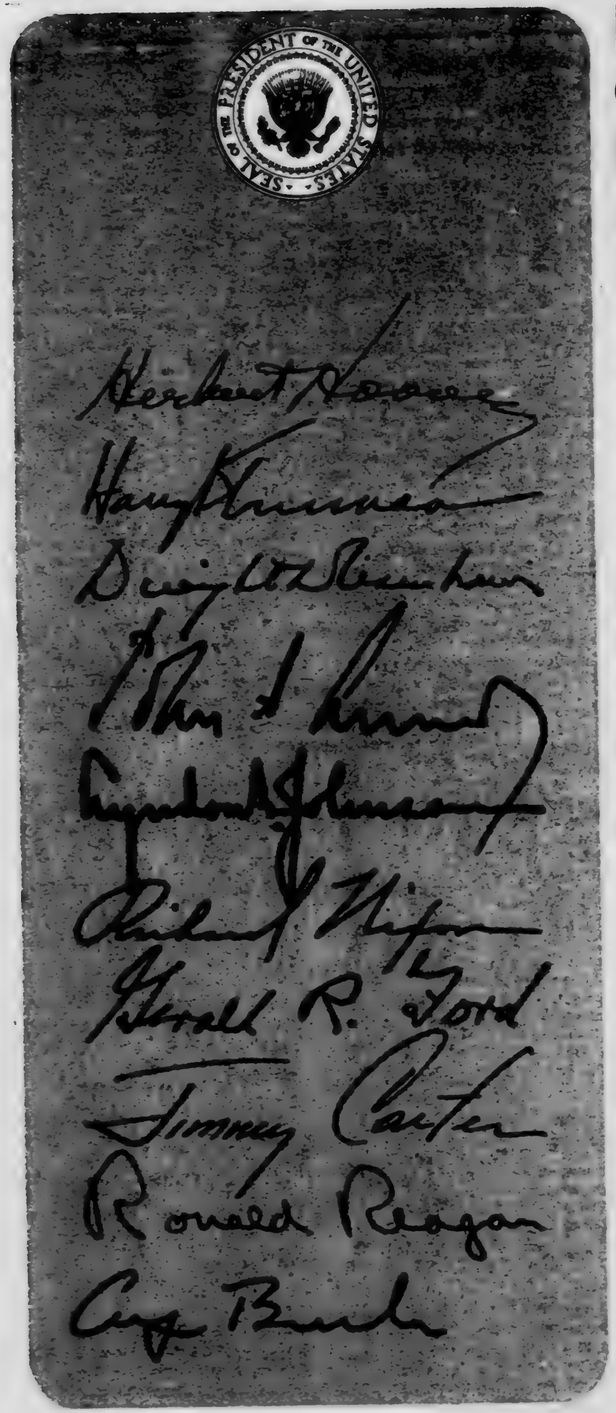
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S.J. Res. 251/Pub. L. 101-309

Designating "Baltic Freedom Day". June 18, 1990; 104 Stat. 264; 2 pages) Price: $1.00

H.J. Res. 516/Pub. L. 101-310

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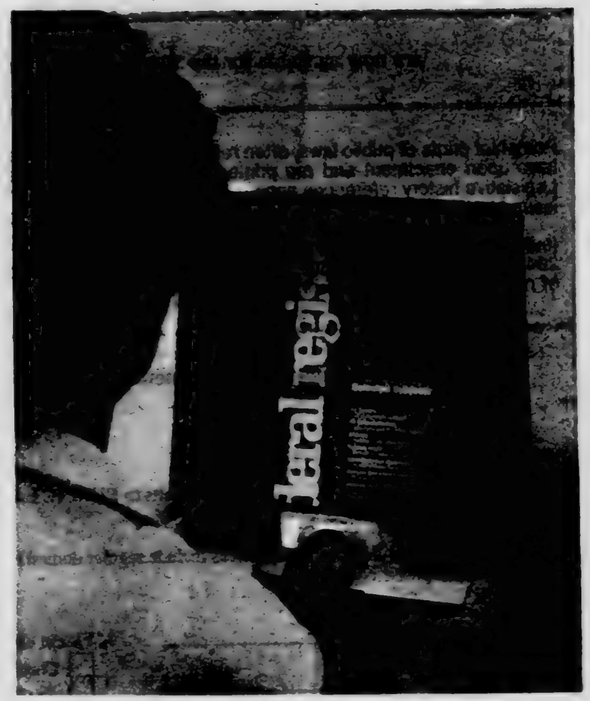
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Friday
June 22, 1990

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8301]

RIN 1545-AI91

Definition of Compensation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to temporary regulations relating to the scope and meaning of the term "compensation" in section 414(s) of the Internal Revenue Code of 1986.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman at 202-343-6954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations which are the subject of this correction amend the Income Tax Regulations (26 CFR part 1) under section 414(s) and under section 415(c)(3) of the Internal Revenue Code of 1986. These amendments conform the regulations to section 1115 of the Tax Reform Act of 1986 (TRA '86) and section 1011(j)(1) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, temporary regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the temporary regulations published May 14, 1990 (55 FR 19875) FR Doc. 90-10967, is corrected as follows:

Paragraph 1. On page 19875, column 1, the fifth line of the headings should be corrected to read "RIN 1545-AO70".

Par. 2. On page 19876, column 1, the first line of the last paragraph in the "*Definitions of Total Compensation Under Section 415(c)(3)*" portion of the preamble, should be corrected to read "Finally, § 1.415-2(d) has been".

Par. 3. On page 19877, column 3, the fourth line under the "*Effective Date of These Temporary Regulations*" portion of the preamble, should be corrected to read "beginning before May 14, 1990,".

§ 1.414(s)-1T [Corrected]

Par. 4. On page 19878, column 2, the heading for § 1.414(s)-1T(c)(2) is corrected to read "(2) *Compensation within the meaning of section 415(c)(3).*"

Par. 5. On page 19878, column 3, the second line of § 1.414(s)-1T(c)(3) is corrected to read "Under the safe-harbor alternative".

Par. 6. On page 19878, column 3, the last sentence of § 1.414(s)-1T(c)(3) is corrected to read "The compensation for any relevant self-employed individuals must be determined pursuant to the rules in paragrpah (e)(1) of this section."

Par. 7. On page 19879, column 3, the thirteenth line from the end of § 1.414(s)-1T(e)(1)(i) is corrected to read "(as defined in paragraph (d)(2)(ii) of this".

Par. 8. On page 19879, column 3, lines 3 and 4 of § 1.414(s)-1T(g)(1) is corrected to read "to years beginning on or after January 1, 1987."

Par. 9. On page 19879, column 3, a comma should be added to the end of line 2 of § 1.414(s)-1T(g)(2) to read "For years beginning before May 14, 1990,".

§ 1.415-2 [Corrected]

Par. 10. On page 19880, column 3, § 1.415-2(d)(11)(i) should be corrected to read "(i) *Section 3121(a) wages.* Wages as defined in section 3121(a), for purposes of calculating social security taxes, but determined without regard to the wage base limitation in section 3121(a)(1), the limitations on the exclusions from wages in section 3121(a)(5) (C) and (D) for elective contributions and payments by reason of salary reduction agreements, the special rules in section 3121(v) (applicable to certain elective contributions and nonqualified deferred compensation), any rules that limit covered employment based on the type or location of an employee's employer, and any rules that limit the remuneration included in wages based on familial relationship or based on the nature or location of the employment or the services performed (such as the exceptions to the definition of employment in section 3121(b) (1) through (20))."

Par. 11. On page 19881, column 1, the signature block should also have reflected that "Kenneth W. Gideon, Assistant Secretary of the Treasury" also signed the document.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-14425 Filed 6-21-90; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Grand Haven Regulation 90-03]

Safety Zone Regulations; Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on Muskegon Lake, Muskegon, MI, to protect the safety of life and property on the water during the Muskegon Lake Offshore Run on 24 June 1990.

EFFECTIVE DATE: This regulation becomes effective at 10:30 a.m. (e.d.s.t.) on 24 June 1990 and will terminate at 4 p.m. (e.d.s.t.) on 24 June 1990.

FOR FURTHER INFORMATION CONTACT: John R. Allyn, Radarman First Class, U.S. Coast Guard Group, 650 Harbor Ave., Grand Haven, MI 49417, (616) 847-4500.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels and equipment or injury to people in the vicinity.

Drafting Information

The drafters of this regulaiton are John R. Ailyn, Radarman First Class, U.S. Coast Guard Group Grand Haven and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from a high-speed power boat race which will be conducted on Muskegon Lake, Muskegon, MI. during this time. The safety zone is needed to ensure the protection of life and property during the high-speed power boat race.

This regulation is issued pursuant to 33 U.S.C. 1225 and all 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certificaiton

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0912 is added to read as follows:

§ 165.T0912 Safety Zone: Muskegon Lake, Muskegon, MI.

(a) *Location.* The following area is a safety zone: Muskegon Lake in its entirety.

(b) *Effective date.* This regulation will become effective at 10:30 a.m. (e.d.s.t.) 24 June 1990, and terminate at 4 p.m. (e.d.s.t.) 24 June 1990.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, except when expressly authorized by the Coast Guard Patrol Commander (Commanding Officer, U.S. Coast Guard Station Grand Haven, MI.)

(2) The Goast Guard will Patrol the Safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Operators of vessels, not participating in the event, desiring to transit the regulated area, may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area, under the direction of the Coast Guard Patrol Commander, shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: June 7, 1990.

L. L. Mixell,

Commander, U.S. Coast Guard, Captain of the Port, Grand Haven, MI.

[FR Doc. 90–14452 Filed 6–21–90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3727-3]

40 CFR Part 60

Standards of Performance for New Stationary Sources; Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 21 applies to the determination of volatile organic compounds (VOC) leaks from process equipment such as valves, flanges and connections, pumps and compressors, and pressure relief devices. Since Method 21 was promulgated in 1983, several deficiencies in the method that could lead to inconsistencies in the determination of VOC leaks from such devices have come to the attention of EPA in the form of questions as to the proper application of the method. On May 30, 1989, EPA proposed appropriate additions and revisions to Method 21 to alleviate any deficiencies (54 FR 22920). This action promulgates those additions and revisions.

DATES: *Effective Date.* June 22, 1990.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this notice. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–88–29, containing information considered by EPA in development of the promulgated rulemaking is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), room M–1500, First Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley or Roger T. Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Section 2.4 is being revised to remove a description of the leak determination procedure, which is already given, and more properly belongs in section 4.3.2. The example of an acceptable increase in surface concentration versus local concentration is incorrect, and is being removed, as all existing regulatory subparts state that any reading less than 500 ppm constitutes "no detectable emissions." The definition is now expressed in terms of the instrument readability specification.

Section 3.1.1(b) is being revised because it is important to call attention to the possibility that the leak definition concentration may be beyond the linear response range of some instruments for some VOC. This potential problem is not identified by the existing calibration procedure, which specifies a single upscale VOC calibration gas. An argument could be made that a multipoint calibration should, therefore, be required. However, adding that requirement would increase the method's performance burden and cost.

Section 3.1.1(c) is being revised in consideration of existing regulatory subparts, where the intention is for the readability to be to the nearest 500 ppm. Since the leak definition in existing subparts is 10,000 ppm, the nearest 500 ppm represents ±2.5 percent, not ±5 percent.

Section 3.1.1(d) is being revised to prevent any flow interruption from occurring, such as could occur if a manually operated device was used for a pump. The minimum flow rate specification of 0.50 liter per minute is reduced to 0.10 liter per minute to prevent the exclusion of some instruments that do meet the response time specification and could be acceptable if this change was made. The flow rate specification has been qualified as to where, and under what conditions, it applies in order to prevent misunderstandings that it might apply at the instrument detector, or with no flow restriction in the probe. The upper flow limit specification of 3.0 liters per minute is retained because some upper limit on flow rate is required to prevent dilution of any leaking VOC to a concentration below the definition of a leak.

Section 3.1.1(e) is being revised in consideration of comments that have been made to EPA that the existing wording in not clear and should be more specific. In addition, it has been reported that inexperienced sampling personnel have been observed to use a portable flame ionization analyzer with the exhaust flame arrestor not replaced after removal for cleaning.

Section 3.1.1(f) is being added to emphasize that the instrument is meant to sample a discrete area. Some probes have been observed to have a relatively large inlet area. The addition is necessary so as to provide as much consistency in the identification of leaks as in reasonably possible. All measurements made by EPA in support of its VOC-leaks regulatory development activities have been made with probes not over ¼ in. in outside diameter.

Section 3.1.2(a) is being revised to include a procedure that is needed for those instances where an instrument is not available that meets the response factor criteria when calibrated with the specified (in regulation) VOC calibration gas. The new procedure should meet the spirit of existing VOC-leak regulations.

Finally, section 3.1.2(b) is being revised by replacing the word "configuration" with all of the items of sampling equipment that might be between the probe tip and the detector during testing.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add methods for the achievement of emission testing requirements that would apply irrespective of this rulemaking.

II. Public Participation

The proposed amendment to 40 CFR part 60 that contained proposed revisions and additions to Method 21 was published in the Federal Register on May 30, 1989 (54 FR 22920). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed action, a public hearing was scheduled for July 14, 1989 beginning at 10 a.m., but was not held because no one requested to speak. The public comment period was from May 30, 1989 to August 14, 1989. Two comment letters were received that contained comments concerning the proposed methods. The comments were supportive of the proposed additions and revisions, with one exception. That comment has been carefully considered, but no changes were made to the proposed rulemaking.

III. Comments and Changes to the Proposed Standards

Two comment letters were received from synthetic organic chemical manufacturers on the proposed methods. All but one of the comments therein were statements to the effect that the commenter agreed with the proposed additions and revisions. The one exception stated that the commenter did not agree that an electrically driven pump should be required in section 3.1.1(d).

The EPA believes it is necessary to specify that an electrically driven pump be used in order to eliminate any potential for imprecise results due to variations or interruptions in sample flow arising from the use of a hand operated squeeze pump. It may be possible for a given person to use a hand operated pump satisfactorily, but EPA believes that technique is too prone to operator fatigue over the course of an extensive leak survey to permit its use in a reference method, and is, therefore, not making any change in the requirement for an electrically driven pump.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [Clean Air Act, section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, but instead, provides methods for performing emission measurement requirements that would apply irrespective of this rulemaking. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of an RFA in those instances

where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any economic impact on small entities, because the rule does not add either to the existing requirement for flow rate measurements, or increase their associated performance cost.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Synthetic Organic Chemicals Manufacturing Industry, Reporting and recordkeeping requirements.

Dated: June 7, 1990.

William K. Reilly,

Administrator.

Method 21, appendix A of 40 CFR part 60 is amended as follows:

1. The Authority for 40 CFR part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A—[Amended]

2. By revising section 2.4 to read as follows:

2.4 No Detectable Emission. Any VOC concentration at a potential leak source (adjusted for local VOC ambient concentration) that is less than a value corresponding to the instrument readability specification of section 3.1.1(c) indicates that a leak is not present.

3. By revising section 3.1.1 (b), (c), (d), and (e) and adding (f) to read as follows:

3.1.1 Specifications.

* * * * *

(b) Both the linear response range and the measurable range of the instrument for each of the VOC to be measured, and for the VOC calibration gas that is used for calibration, shall encompass the leak definition concentration specified in the regulation. A dilution probe assembly may be used to bring the VOC concentration within both ranges; however, the specifications for instrument response time and sample probe diameter shall still be met.

(c) The scale of the instrument meter shall be readable to ±2.5 percent of the specified leak definition concentration when performing a no detectable emission survey.

(d) The instrument shall be equipped with an electrically driven pump to insure that a sample is provided to the detector at a constant flow rate. The nominal sample flow rate, as measured at the sample probe tip, shall be 0.10 to 3.0 liters per minute when the probe is fitted with a glass wool plug or filter that may be used to prevent plugging of the instrument.

(e) The instrument shall be intrinsically safe as defined by the applicable U.S.A. standards (e.g., National Electric Code by the National Fire Prevention Association) for operation in any explosive atmospheres that may be encountered in its use. The instrument shall, at a minimum, be intrinsically safe for Class 1, Division 1 conditions, and Class 2, Division 1 conditions, as defined by the example Code. The instrument shall not be operated with any safety device, such as an exhaust flame arrestor, removed.

(f) The instrument shall be equipped with a probe or probe extension for sampling not to exceed ¼ in. in outside diameter, with a single end opening for admission of sample.

4. By revising section 3.1.2 (a) and (b) to read as follows:

3.1.2 Performance Criteria.

(a) The instrument response factors for each of the VOC to be measured shall be less than 10. When no instrument is available that meets this specification when calibrated with the reference VOC specified in the applicable regulation, the available instrument may be calibrated with one of the VOC to be measured, or any other VOC, so long as the instrument then has a response factor of less than 10 for each of the VOC to be measured.

(b) The instrument response time shall be equal to or less then 30 seconds. The instrument pump, dilution probe (if any), sample probe, and probe filter, that will be used during testing, shall all be in place during the response time determination.

* * * * *

[FR Doc. 90-13845 Filed 6-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 90-215]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends § 1.80 of the Commission's rules to codify recent amendments to section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(2). The amendments reflect increased forfeiture amounts for violations of the Communications Act or Commission rules.

EFFECTIVE DATE: December 19, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Linda Blair, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The Commission adopted on June 1, 1990, and released on June 18, 1990, the following *Order* amending § 1.80 of the Commission's rules, 47 CFR 1.80. These amendments reflect increases in the forfeiture amounts for violations of the Communications Act or Commission rules.

Order

Adopted: June 1, 1990; Released: June 18, 1990.

In the Matter of amendment of § 1.80 of the Commission's Rules to Modify Forfeiture Provisions.

1. Congress recently amended section 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(2), which governs forfeitures that can be imposed by the Commission.[1] By this *Order* we amend § 1.80 of our rules, 47 CFR 1.80, to reflect the amended statute.

2. Under the amended statute, if the entity subject to forfeiture penalty is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, the Commission may assess up to $25,000 per violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $250,000 for any single act or failure to act. If the entity subject to forfeiture penalty is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the Commission may assess up to $100,000 for each violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $1,000,000 for any single act or failure to act. In the case of any other entity subject to forfeiture penalty, the Commission may assess up to $10,000 for each violation or each day of a continuing violation, provided that the total amount assessed for a continuing violation may not exceed $75,000 for any single act or failure to act.

3. The changes to §1.80 adopted herein merely codify in our rules recent amendments to 47 U.S.C. 503(b)(2). Therefore, the Commission for good cause finds that compliance with the notice and comment and effective date provisions of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B), 553(d)(3).

4. Accordingly, pursuant to sections 4(i), 303(r) and 503(b)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 503(b)(2) *It is ordered*, That 47 CFR 1.80 is amended, effective December 19, 1989, as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.80 is amended by removing in the sentence immediately following paragraph (a)(4) the phrase "(b)(1) and (b)(2)" and adding in lieu thereof the phrase "(b)(1), (b)(2), and (b)(3)."

3. Section 1.80 is amended by revising paragraphs (b)(1) and (b)(2), redesignating paragraph (b)(3) as (b)(4) and adding a new paragraph (b)(3) to be followed by the note currently following paragraph (b)(2) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. *See* section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraph (b)(1) or (b)(2) above, the amount of any forfeiture penalty determined under this section shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

4. Section 1.80 is amended by revising paragraph (j) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(j) *Effective date.* Amendments to paragraph (b) of this section implementing Pub. L. No. 101-239 are effective December 19, 1989.

[FR Doc. 90-14487 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

[1] Pub. L. No. 101-239, 135 Cong. Rec. H9343 (daily ed. Nov. 21, 1989), signed into law December 19, 1989 (to be codified at 47 U.S.C. 503(b)(2)).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

RIN 2125-AC58

Commercial Driver Testing and Licensing Standards; Driving Record Prerequisites for Waiver of Skills Test

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects two of the driving record requirements which a State must impose on a commercial driver's license (CDL) applicant before waiving the driving skills test. First, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had more than one conviction for a serious traffic violation committed in any type of motor vehicle. Second, for the same period, the applicant must certify that he/she has not had any conviction for an accident-related violation of State or local traffic laws, and has no record of an accident in which he/she was at fault. All other driving record prerequisites to the substitute for driving skills tests in 49 CFR 383.77 remain without correction.

EFFECTIVE DATE: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neil E. Moyer, Office of Motor Carrier Standards, (202) 366-5844, or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: 49 CFR 383.77 allows States to waive the CDL driving skills test for applicants who meet certain driving record prerequisites and possess either a minimum level of driving experience, or evidence of prior classified testing, in a representative commercial motor vehicle (CMV). To fulfill the driving record prerequisites of § 383.77(a) as presently codified, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had—

(1) More than one license;

(2) Any license suspended, revoked, or cancelled;

(3) Any convictions for any type of motor vehicle for the disqualification offenses contained in § 383.51; and

(4) Any traffic-accident related violation of motor vehicle traffic control laws, nor any record of an accident in which he/she was at fault.

Under paragraph (3) above, "the disqualification offenses contained in § 383.51" include two distinct categories of infractions. The first category, defined in § 383.51(b), consists of driving under the influence of alcohol or drugs, leaving the scene of an accident, and committing a felony involving a CMV. A single conviction for an offense in this first category results in disqualification of the driver for a period of one year or more, and clearly obviates any possibility of exempting the driver from skills testing if he or she applies for a CDL within two years from the date of conviction. Since there is no ambiguity regarding the effect of a single offense in this first category on the State's ability to waive skills testing, this technical amendment retains the provision of paragraph (3) above, but with specific reference to driving under the influence, leaving the scene of an accident, and commission of a felony.

The second category of offenses includes the "serious traffic violations" for which § 383.5 provides the definition and § 383.51(c) prescribes the penalties. Disqualification of 60 or 120 days results from two or three convictions, respectively, for serious traffic violations within a three-year period. Thus, for this second category, the "disqualification offense" is two or more convictions, not the single conviction implied by paragraph (3) above. This technical amendment resolves this internal contradiction for offenses in the second category by creating a new paragraph (4) in § 383.77(a), stating that the driver applicant must not have had more than one conviction for serious traffic violations in the two years prior to applying for the CDL.

With the insertion of a new paragraph (4) in § 383.77(a), paragraph (4) above becomes new paragraph (5). As presently codified, the paragraph contains an error in that it requires the applicant to certify he/she has not had a violation of traffic control laws. In addition to the renumbering, this technical amendment changes the wording of the paragraph to read conviction.

The following is a summary of the structure of § 383.77(a) as revised by this technical amendment. To be eligible for possible waiver of the CDL skills test, an applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she has not had:

(1) More than one license [paragraph unchanged];

(2) Any license suspended, revoked, or cancelled [paragraph unchanged];

(3) Any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2) [paragraph revised to apply only to driving under the influence, leaving the scene of an accident, or commission of a felony];

(4) More than one conviction for any type of motor vehicle for serious traffic violations [new paragraph dealing solely with serious traffic violations as defined in § 383.5]; and

(5) Any conviction for a traffic control violation (other than a parking violation) arising in connection with any traffic accident, nor any record of an accident in which he/she was at fault. [New paragraph renumbering and correcting § 383.77(a)(4) as presently codified.]

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is technical in nature and needed solely to correct existing regulations. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

Since the changes in this document are technical in nature, the anticipated economic impact, if any, is minimal. Therefore, a full regulatory evaluation is not required. For the above reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: June 14, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, part 383, as set forth below.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 383.77 is amended by revising paragraph (a) to read as follows:

§ 383.77 Substitute for driving skills tests.

* * * * *

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

(5) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

* * * * *

[FR Doc. 90-14534 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. TSS-01; Notice 10]

[RIN: 2127-AC32]

Motor Vehicle Theft Prevention; Reporting Requirements for Motor Vehicle Rental and Leasing Companies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule marks the culmination of a four year effort by this agency to obtain the information necessary to implement authority for exempting a substantial number of self-insured motor vehicle rental and leasing companies form a statutory requirement to file annual theft data reports. To date, all self-insured rental and leasing companies with fleets of 20 or more motor vehicles have been required to file reports. Henceforth, theft reports will be required from only those rental and leasing companies (including franchisees and licensees) which have combined fleets of 50,000 or more vehicles. This change reduces the number of covered companies to fewer than two dozen.

The agency has taken this action after making two statutorily-specified determinations. First, NHTSA has determined that for those companies with combined fleets of fewer than 50,000 vehicles, the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Second, NHTSA has determined that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies.

EFFECTIVE DATE: This final rule is effective on July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's phone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION:

Background

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547; Theft Act) added title VI to the Motor Vehicle Information and Cost Savings act (15 U.S.C. 2021 *et seq.*; Cost Savings Act). Section 612 of the Cost Savings Act requires insurers to submit annual reports to NHTSA regarding a number of theft-related matters. As set forth in section 612(a)(2) of the Cost Savings Act, the reports are to include theft and recovery data, the rating rules and plans used by insurers to establish premiums for comprehensive insurance coverage for motor vehicles, and actions taken to reduce premiums, among other information.

In addition to including companies that issue insurance policies, the term "insurers" is defined in section 612 to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 612(a)(3)). The agency estimates that about 4,000 rental and leasing companies are "insurers" under this definition and are therefore required to file annual reports.

Section 612(a)(4) authorizes the agency to exempt certain insurers from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

The purpose of this notice is in effect to grant a class exemption to all companies that rent or lease fewer than 50,000 vehicles. This notice concludes a rulemaking proceeding begun with the issuance of a notice of proposed rulemaking on February 3, 1989 (54 FR 5519). NHTSA believes that reports form a representative sample of rental and leasing companies will provide the agency with the necessary information to allow it to fulfill all its obligations under title VI of the Cost Savings Act. NHTSA concludes that reports by many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies presently subject to the reporting requirements.

When it issued the initial regulations under title VI, NHTSA did not have sufficient information to allow it to make the first determination in section 612(a)(4), i.e., a determination that the cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer. Absent such information, NHTSA was unable to exempt rental and leasing companies from the reporting requirements. Therefore, in a final rule published on January 2, 1987 (52 FR 59), NHTSA required each rental and leasing company which fell within the definition of "insurer" to file an annual report with the agency. In the preamble to the ifnal rule, the agency stated that it would consider individual requests for exemption from smaller rental and leasing companies, as long as they provided information that would enable the agency to make a determination under section 612(a)(4) that the cost of preparing and furnishing the reports is excessive in relation to the size of the insurer's business.

The agency received approximately 150 petitions for exemption for the October 25, 1987 reporting period. Many of the petitioners requested that their petitions be made applicable to subsequent years. Those petitions from smaller, independent rental and leasing companies were granted, but petitions from large, nation-wide rental and leasing companies and their franchisees or licensees were denied.

Subsequent to the issuance of the January 1987 rule, the agency obtained information on the size of the fleets of rental and leasing companies and the market share for these companies. This information was obtained from the "Automotive Fleet Magazine" (for both rental and leasing companies) and "Travel Trade Business Travel News" (for rental companies only). These publications publish annual tabulations of the data which the motor vehicle rental and leasing companies voluntarily supply to them. Within the rental and leasing community, both publications are regarded as the most accurate data sources available for those businesses. NHTSA tentatively concluded that these sources are sufficiently accurate to determine which rental and leasing companies should be exempted from the theft reporting requirements.

Notice of Proposed Rulemaking

Using these data from the trade publications, the agency published a notice of proposed rulemaking (NPRM) (54 FR 5519, February 3, 1989) that explained how the agency proposed to make the statutory determinations that would exempt most self-insured rental and leasing companies from reporting. In the NPRM, the public was invited to comment on the several tentative conclusions reached by the agency in formulating the proposed rule. First, the agency had tentatively concluded that "Automotive Fleet" and "Travel Trade Business Travel News" were sufficiently accurate to be used in determining which rental and leasing companies should be exempted from the theft reporting requirements. Second, the agency tentatively concluded that franchisors and their franchisees or licensors and their licensees should be treated as single entities for purposes of reporting, with franchisors and licensors responsible for gathering the required data. The agency's rationale for this tentative decision was that since franchisees generally submit periodic reports to the franchisor in any case, it would be relatively simple to include information about theft experience. Further, NHTSA has no data on the size of all franchisees and licensees. Without this information, the agency had no basis to propose exemptions for rental and leasing companies if it were to treat each franchisee or licensee separately. Commenters who disagreed with this approach were asked to discuss how NHTSA could obtain franchisee number and fleet size information and to discuss whether the agency could structure an exemption from the reporting requirements for small rental and leasing companies while requiring reports from all franchisees of large franchisors. NHTSA also sought additonal information on the structure and procedures used by franchise operations in the car rental business.

Third, using the trade publication information, the agency tentatively determined that a representative sample of the theft experience of vehicles other than passenger cars would be obtained if it received reports only from rental and leasing companies (including franchisees and licensees) with fleets of 50,000 or more vehicles.

Fourth, the agency tentatively determined that the costs of requiring rental and leasing companies with fewer than 50,000 vehicles in their fleet to prepare and furnish reports were excessive in relation to the size of the company's business and would not in any way contribute to the agency's carrying out its responsibilities under Title VI of the Cost Savings Act. NHTSA asked commenters who disagreed with this determination to explain why they believed that the purposes of title VI would be furthered by reports from smaller companies.

Public Comments

The agency received a total of seven comments. All commenters supported the 50,000 vehicle threshold, and the general intent to exempt as many companies as possible from reporting requirements. One commenter argued that the costs of franchisors' providing theft data for franchisees is excessive in relation to the size of the business of the insurer, regardless of the company's size.

Chrysler Motors Corporation (Chrysler) and Volkswagen of America, Inc. (Volkswagen), two motor vehicle manufacturers not subject to the reporting requirements, wrote in support of the proposal, especially the 50,000 vehicle threshold. Chrysler offered a comment about the proposed change to wording in § 544.3, the "Application" section that describes companies subject to the reporting requirements of part 544. The NPRM had proposed that self-insured motor vehicle rental and leasing companies subject to reporting requirements be described as:

> * * * persons (including licensees and franchisees) who have a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by an insurer of motor vehicles listed in Appendix C.

Chrysler stated that it believed that the agency had erred in developing the wording for the exemption in § 544.3 since it did not correspond with the agency's intent to exclude from reporting requirements those self-insured rental and leasing companies with fleets of fewer than 50,000 vehicles. The agency notes that the description proposed is the statutory definition of "insurer" in section 612(a)(3) of the Theft Act. However, the agency agrees that there may be less confusion if the description of the self-insured rental and leasing companies were more simply worded. Therefore, the regulatory text adopted in this notice simply describes these companies as "the motor vehicle rental and leasing companies listed in Appendix C."

Chrysler also stated the agency's proposal to update Appendix C annually in November to identify the companies which must report the following October did not provide sufficient lead time in preparing the required report for a calendar year. It suggested that the requirements be amended to give a company listed in Appendix C a full year to collect theft and recovery data for reporting to the agency the following year. Under the procedure recommended by Chrysler, a company added to Appendix C in November 1990, would begin collecting data for calendar year 1991 on January 1, 1991, and would file its first report in October 1992.

The agency is not adopting this recommendation, for the following reasons. Although there may be merit in this comment, NHTSA could not adopt the recommended change in this rulemaking because it is not within the scope of the notice. This agency will consider the comment further after the completion of this rulemaking. In doing so, the agency will examine the following factors which are relevant to making a decision about the appropriate interval between the agency's final determination regarding which companies must report and the time that the reports must be submitted. First, the time period proposed in the NPRM would allow a company about 10 months after final notification to gather the needed data for the preceding calendar year, arrange it into the appropriate format, and report it to the agency. Second, the insurers listed in Appendices A and B are required to report under an identical schedule. In order to avoid confusion, the reporting timeframe should be consistent for all reporting companies. The agency's experience with insurers subject to Appendices A and B has been that the time between the finalization of the list of insurers required to report and the due date of the annual theft report has not been a problem.

The National Automobile Dealers Association supported the agency's proposal to exempt all self-insured rental and leasing companies with under 50,000 motor vehicles. The association resubmitted data, originally provided with a petition for reconsideration of the final rule issued by the agency on January 2, 1987 (52 FR 59), on the fleet size of members of the dealers' association. The agency was asked to consider the data to be representative of all franchised car and truck dealer leasing and rental fleets.

U-Haul International, another motor vehicle rental and leasing company, supported the proposed rule, but requested that the company be removed from Appendix C, stating that because of the unique nature of its business, any data it provided could not be extrapolated to the whole industry. The agency is unable to accommodate this request. U-Haul provided no contradictory data regarding the agency's determinations that, for those companies with combined fleets of more than 50,000 vehicles, the cost of preparing and furnishing such reports is not excessive in relation to the size of the business of the insurer, and that a report from U-Haul would not provide the agency with a representative sampling of the theft experience of rental and leasing companies. Since U-Haul is one of the largest rental and leasing companies of trucks, any information U-Haul provides to the agency is necessary to fulfill the requirements of the Theft Act. The agency further notes that despite this comment, U-Haul submitted timely comments on its theft experience for calendar years 1987 and 1988.

The American Automotive Leasing Association, a trade association representing members that lease motor vehicles on a long term basis to commercial businesses, supported the thrust of the proposed amendments.

The law firm of Collier, Shannon, Rill & Scott, commenting on behalf of the American Car Rental Association, asserted that: "The cost of car rental franchisors providing theft data on franchisees is excessive in relation to the size of the insurer's business because that information will not significantly contribute to providing the agency with better insight into car theft problems." It was further stated that obtaining this information from franchisees would impose "significant" costs on franchisors. The commenter also disagreed with NHTSA's statement that it would be simple to expand existing franchisee reporting information to franchisors, to include theft information, asserting that:

> Franchisors have no contractual right under the franchise agreement to such information because it is not material to the operation and fulfillment of the agreement. Franchisors do not report information about the franchisee's vehicles because franchisees own their own vehicles.

In view of these concerns, the commenter suggested that the reporting obligations of franchisors be limited to reporting the theft experience of company-operated facilities.

The agency is unable to assess this commenter's cost arguments since it did not submit any supporting cost data. Further, even though the commenter suggested that the costs would be significant, there was no suggestion that they would be excessive. As to the suggestion of difficulty under current contractual arrangements in obtaining theft information, the commenter did not argue that the task would be an impossible one. Further, no other commenter indicated any problem in obtaining such information from franchisees.

Accordingly, after taking into consideration the public comments, the agency adopts as final the tentative conclusions formulated in the NPRM, and makes final the language for part 544 set forth in the NPRM, including Appendix C, which lists the motor vehicle rental and leasing companies (including licensees and franchisees) which are not exempted with respect to calendar year 1988. In the next several months, the agency will issue a proposal setting forth its tentative determination regarding exemptions and listing the companies that would be required to file a report in October 1990 for the 1989 calendar year.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12201 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption continue to be required to file reports.

The agency estimates that costs of these reporting requirements for applicable rental and leasing companies will be reduced from less than 4 million dollars (as was estimated in 1986 for part 544) to less than $550,000 in the first year under the new blanket exemption and lesser amounts in succeeding years. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order. The agency believes that it will be better able to assess the effectiveness of the theft prevention standard as a result of exempting all but 22 motor vehicle rental and leasing companies from theft reporting requirements. The agency believes that the data provided by those rental and leasing companies with over 50,000 motor vehicles will allow NHTSA to adequately evaluate the effect of the standard on those companies and to extrapolate this data to industry as a whole. This should be the case since the data represent the summary of theft experiences of numerous franchisees, licensees, and company-owned locations. The agency also concludes that limiting the reporting requirement to the largest companies will facilitate the agency's efforts to conduct the evaulations and prepare the reports required by section 614 of the Cost Savings Act (15 U.S.C. 2034) after receiving and analyzing the information in these insurer reports. The agency provides a quantified estimate of these benefits in its discussion of the beneficial "significant economic impact" of the rule on small businesses.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Since this final rule exempts small businesses in the industry from reporting their theft statistics to NHTSA, the agency determines that this final rule will have a beneficial "significant economic impact on a substantial number of small entities." Therefore, pursuant to 5 U.S.C. 604, final regulatory flexibility analysis, the following represents the agency's analysis of the beneficial effect of the final rule on the affected industry.

The Small Business Administration's (SBA) definition of "small business" in this industry are those concerns that gross less than $12.5 million a year. (13 CFR 121.2 under Standard Industrial Code (SIC) Classification 7512—Passenger Car Rental and Leasing, Without Drivers, and SIC 7513—Truck Rental and Leasing, Without Drivers.) The SBA considers franchise operations as independent business concerns. The SBA has no information on fleet size of any motor vehicle rental or leasing concerns. "Automotive Fleet" car and light truck fleet and leasing management magazine, published by Bobit Publishing, report in its 1989 Fact Book that the average revenue for a rental car is $699 per car per month (or $8,388 per year). Therefore, a small business grossing less than $12.5 million per year would have fewer than 1490 passenger cars in its fleet ($12.5 million divided by $8,388). This figure is substantially less than the reporting threshold of 50,000 motor vehicles. Thus, none of the businesses that must report would be considered small businesses. This final rule exempts all but 22 large companies from reporting. The number of small businesses, using the Small Business Administration definition, that this final rule exempts, is unknown. It is somewhat lower than the roughly 4,000 firms identified previously by the agency as having fleet sizes of fewer than 2,500 vehicles.

3. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through July 31, 1990 (OMB approval number 2127-0547).

4. Federalism

This action has been analyzed in accordance with the principles and criteria contain in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Section 544.3 is revised to read as follows:

§ 544.3 Application

This part applies to the motor vehicle insurance policy issuers listed in Appendices A or B, and to the motor vehicle rental and leasing companies listed in Appendix C.

3. Section 544.6 is amended by revising paragraph (a)(2):

§ 544.6 Contents of insurer reports

(a) * * *

(2) In the case of a motor vehicle rental or leasing company listed in Appendix C, provide the information specified in paragraphs (c), (d)(2)(iv), and (g) of this section for each vehicle type listed in paragraph (b) of this section, for each State in which the company, including any licensee, franchisee, or subsidiary, did business during the reporting period. The information for each listed company shall include all relevant information from any licensee, franchisee, or subsidiary.

* * * * * *

4. A new Appendix C is added to part 544, to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
Automotive Rentals, Inc.
Avis Car Leasing—USA
(Subsidiary of Avis, Inc.)
Avis Rent a Car System, Inc.
(Subsidiary of Avis, Inc.)
Budget Rent A Car Corporation
Dollar Rent-A-Car
(Subsidiary of Systems Inc.)
Enterprise Fleets, Inc.
(Subsidiary of Enterprise Leasing Company)
GE Capital Fleet Services
Hertz Penske Truck Leasing, Inc.
(Subsidiary of Hertz Corporation)
Hertz Rent-A-Car
(Subsidiary of Hertz Corporation)
Lease Plan, USA
Lend Lease
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Peterson, Howell & Heather, Inc.
Rent A Car Company
(Subsidiary of Enterprise Leasing Company)
Rent A Car Corporation
(Subsidiary of American International)
Ryder Truck Rental
(Both rental and leasing operations)
Security Pacific Credit Corporation
U-Haul International, Inc.
(Subsidiary of AMERCO)
United States Fleet Leasing Inc.
(Subsidiary of Hertz Corporation, Leasing)
Wheels, Inc.

Issued on: June 18, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-14461 Filed 6-21-90; 8:45 am]

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Proposed Rules

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 321]

Food Stamp Program; Employment and Training Requirements; Nondiscretionary Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations to implement certain provisions of the Hunger Prevention Act of 1988, Public Law 100-435, 102 Stat. 1645 (1988) (hereinafter, "Pub. L. 100-435"). These proposed rule changes are intended to improve the operation of the Food Stamp Employment and Training (E&T) Program by: (1) Clarifying that educational programs or activities to improve basic skills or employability are allowable food stamp E&T activities; (2) establishing a conciliation procedure to resolve disputes involving participation in the E&T Program; (3) increasing the reimbursement for dependent care costs under the E&T Program up to $160 per dependent per month; (4) excluding any payment made to an E&T participant for work, training or education related expenses or for dependent care from consideration an income under the Food Stamp Program; (5) clarifying that Federal funds made available to a State agency for an E&T educational component cannot be used to supplant non-Federal funds for existing services and activities that promote the purposes of that component; and (6) extending the current performance standards for the placement of E&T participants beyond Fiscal Year 1990 until new performance standards can be developed and issued in accordance with the provisions of Pub. L. 100-435.

DATES: Comments on this proposed rulemaking must be received on or before August 21, 1990, to be assured of consideration.

ADDRESSES: Comments should be submitted to Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 718, Alexandria, Virginia 22302. All written comments will be open to public inspection at this same address during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ellen Henigan at the above address or telephone: (703) 756-3762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified by the Department as non-major. The annual effect of this rule on the economy will be less than $100 million. This action will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, investment, productivity and innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will have a beneficial effect on employment in that it will serve to improve the operations of the Food Stamp E&T Program, thereby improving efforts to assist food stamp recipients obtain and retain employment.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.511. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V, this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the program. Those applicants and participants required to participate in an E&T Program will be affected by this action to the extent that they have dependent care costs associated with E&T Program participation or they require conciliation.

Paperwork Reduction Act

The provision at 7 CFR 273.7(c)(2) and 273.7(g)(1)(ii) to issue a notice of adverse action (form FNS-441) to an individual or household, as appropriate, no later than the tenth calendar day following the end of the conciliation period does not alter or change burden estimates for the FNS-441 as approved under OMB No. 0584-0064. Public reporting burden for FNS-441 is estimated to average .1666 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The remaining provisions of this proposed rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Income Exclusions for E&T Payments—Section 273.9(c)

Current regulations at 7 CFR 273.9(c) echo the Food Stamp Act provisions that specify the items to be excluded from

household income. Public Law 100–435 (Sections 403(a), 404(c) and 404(f) amends the Food Stamp Act by adding new items to the list of income exclusions. Section 403(a) excludes from household income and payment made to the household under the E&T Program for expenses related to work, training, education or dependent care. Current regulations allow an income exclusion for reimbursements or flat allowances for job or training related expenses. Therefore, this amendment to the Food Stamp Act does not change current E&T operations but merely specifies that E&T Program payments shall be excluded. Section 404(c) further excludes the value of any dependent care services provided or arranged by the State agency in lieu of providing reimbursements or payments for dependent care expenses. Finally, section 404(f) extends the exclusion provision to payments or reimbursements for work related or child care expenses which are made under an employment, education or training program initiated under title IV–A of the Social Security Act (42 U.S.C. 001 et seq.) after September 19, 1988, the date of enactment of the Hunger Prevention Act of 1988 (Pub. L. 100–435). Accordingly, this rule proposes changes to 7 CFR 273.9(c) to provide that any payment made to a household under the E&T Program for work, training or education related expenses or for dependent care shall be excluded from household income, as well as the value of any dependent care services provided or arranged by the State agency in lieu of such payment. This rule also proposes changes to 7 CFR 273.9(c) to exclude any payments or reimbursements for work related or child care expenses made under an employment, education or training program initiated under title IV–A of the Social Security Act after September 19, 1988.

Education Programs or Activities—Section 273.7(f)(1)

Section 404(a)(4) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to clarify that educational programs or activities to improve basic skills or employability are allowable food stamp E&T components. Prior to the enactment of Public Law 100–435, many State agencies were already offering educational programs and activities as components under their E&T Programs. In Fiscal Year 1988, 33 State agencies offered educational components. For Fiscal Year 1989, 34 State agencies included an educational component in their State E&T plan.

Current Food Stamp Program regulations at § 273.7(f)(1)(ii) allow the State agencies to provide educational services within their E&T Program in an effort to expand the job search abilities or employability of individuals subject to E&T. This provision is based on language in the Food Stamp Act of 1977, as amended by the Food Security Act of 1985, which specifies that educational programs "determined by the State agency to expand the job search abilities or employability of those subject to the program" may be included (Pub. L. 99–198, 99 Stat. 1574 (1985)). Consequently, this amendment to the Food Stamp Act does not change current E&T operations but merely emphasizes Congress' intent that educational activities designed to enhance employability be allowable E&T components. This rule proposes changes to 7 CFR 273.7(f)(1) to specify that educational programs or activities to improve basic skills or employability are allowable as E&T components. Congress chose to use broad language in the statute rather than list the allowable educational activities a State agency may offer under its E&T Program. We have included a proposed listing of allowable educational activities in this rulemaking as guidance to the State agencies. This list of educational activities was taken from the legislative history accompanying Public Law 100–435 and is not inclusive. 134 Cong. Rec. S 11741 (daily ed. August 11, 1988). Also, changes are proposed to 7 CFR 273.7(f)(1)(ii) to remove references to educational activities or services from the job search training component description since educational activities or services will be included under a separate education component, as discussed under 7 CFR 273.7(f)(1)(vi).

Conciliation—Section 273.7(g); Section 273.7(c)

Section 404(b) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to require each State agency to establish conciliation procedures for the resolution of disputes involving the participation of individuals in the E&T Program.

Current regulations at 7 CFR 273.7(g) require the State agency to provide a noncomplaint individual or household with a notice of adverse action within 10 days of determining the noncompliance was without good cause. There is no requirement for conciliation in the food stamp regulations although some State agencies have incorporated an informal conciliation process into their E&T Program.

The legislative history accompanying Public Law 100–435 provides a brief description of the conciliation procedures envisioned by Congress. 134 Cong. Rec. H6842–43, S11741, S11745 (daily ed. August 11, 1988). Several members of Congress explained that whenever a State agency finds there has been apparent noncompliance in meeting a work related requirement or where there is a dispute relating to a household member's participation in E&T, the State agency would attempt to contact the non-complying household member and to arrange a meeting in an effort to work with the member to obtain compliance or otherwise resolve the dispute.

It is also noted in the legislative history that there is a longstanding policy in the Aid to Families with Dependent Children (AFDC) Program (specifically in the Work Incentive Program (WIN), which is being replaced on a State-by-State basis by the Jobs Opportunities and Basic Skills (JOBS) Program under the Family Support Act of 1988, Public Law 100–485, 102 Stat. 2343 (1988)) to emphasize conciliation practices. It is pointed out that in some States, these conciliation processes have resulted in the successful resolution of cases where recipients initially failed to comply with work requirements. However, if the conciliation process is unsuccessful, and the household member is not found to have good cause for noncompliance, Congress explains that the State agency would then send a notice of adverse action, thereby initiating the procedure to terminate benefits. The individual or the household would retain the normal rights to appeal the disqualification or to end the disqualification by curing the noncompliance.

Accordingly, this rule proposes changes to 7 CFR 273.7(g) to require State agencies to develop a conciliation process for food stamp work registrants. The purpose of the conciliation effort is to determine the reason(s) the work registrant failed or refused to comply with the E&T requirements and to provide an opportunity to resolve the noncompliance so that the work registrant may participate in an E&T component and work towards self-sufficiency rather than be sanctioned. This rule proposes that the State agencies develop their own conciliation procedures which may conform to AFDC practices. At a minimum, however, the State agency must contact the noncomplying household member to determine the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member must be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period.

This rule proposes a maximum time frame for the conciliation period during which the State agency must determine if good cause for the noncompliance exists and resolve the noncompliance. The proposed change allows the State agency to establish a conciliation period that lasts no longer than 20 calendar days and which begins the day following the date the State agency learns of the noncompliance. The Department believes 20 days is sufficient time for a State agency and the household member to conciliate and resolve the noncompliance. A longer period of time would unnecessarily delay the sanction process and allow an individual to continue to receive benefits while not complying with Food Stamp Program requirements. The legislative history supports a conciliation procedure that does not delay the sanction process. 134 Cong. Rec. H6842–43 (daily ed. August 11, 1988) (statements by Cong. Panetta, Cong. Emerson). The State agency may design a conciliation process with a conciliation period of less than 20 calendar days.

The proposed rule also provides that if the work registrant does not comply during the conciliation period, the State agency must issue a notice of adverse action to the individual or household no later than 10 calendar days following the end of the conciliation period. If it is apparent that an individual will not comply, i.e., the individual refuses to comply and does not have good cause, the State agency may end the conciliation period early and issue the notice of adverse action. The casefile must document the individual's refusal to comply. In addition, the State agency may cancel the notice of adverse action if it is able to verify that the individual complied with the E&T requirements subsequent to the end of the conciliation period. To achieve compliance, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond his or her control, such as the unavailability of a suitable component.

This rule also proposes changes to 7 CFR 273.7(c)(4) to require the State agencies to describe the conciliation procedures in their State E&T Plans. To the extent possible, State agencies should design conciliation procedures for the E&T Program that will be compatible with the conciliation process State agencies that administer the AFDC Program have or will establish for the JOBS Program mandated by the Family Support Act of 1988.

Changes have been proposed to the regulations at 7 CFR 273.7(c)(2), which describe the State agency responsibilities, to reflect the addition of a conciliation period to the E&T process under 7 CFR 273.7(g)(1).

Funding for Educational Programs or Activities—Section 273.7(d)(1)(i)

As discussed earlier, Public Law 100–435 specifies that State agencies may include in their EST Programs educational programs or activities to expand job search abilities or employability by improving basic skills. However, Congress does not want Food Stamp Program funds to supplant State or local funds previously used to finance a component that includes existing educational services and activities. Section 404(b)(2) of Public Law 100–435 prohibits supplanting non-Federal funds with Federal funds to pay for existing educational services and activities that promote the purposes of the E&T component authorized under section 6(d)(4)(B)(v) of the Food Stamp Act of 1977, as amended. This component provides educational programs or activities to improve basic skills or employability for food stamp work registrants. This amendment reinforces current regulations at 7 CFR 273.7(d)(1)(i)(F) which prohibit the supplanting of State or local funds dedicated to education programs.

Accordingly, this rule proposes changes to 7 CFR 273.7(d)(1)(i)(F) to better reflect Congress' instructions that E&T funds may not be used to supplant State or local funds used for existing educational services and activities that promote the purposes of the E&T education component authorized under section 6(d)(4)(B)(v) of the Food Stamp Act of 1977, as amended.

Participant Reimbursement—Section 273.7(d)(1)(ii)

Current regulations at 7 CFR 273.7(d)(1)(ii) require the reimbursement of expenses for costs (including dependent care) that are reasonably necessary and directly related to participation in the E&T Program up to $25 per participant per month. The State agency may reimburse participants for expenditures beyond $25 per month; however, only costs up to but not in excess of $25 per month per participant shall be subject to Federal cost sharing. Public Law 100–435 did not change the current $25 per month limit on the Federal cost sharing of reimbursements to E&T participants for transportation and costs other than dependent care. Any expense covered by a reimbursement under 7 CFR 273.7(d)(1)(ii) shall not be deductible in accordance with 7 CFR 273.10(d)(1)(i).

Section 404(c) of Public Law 100–435 amends section 6(d) of the Food Stamp Act to increase the amount of reimbursement for dependent care expenses allowable under Federal cost sharing. Effective July 1, 1989, State agencies shall provide payments or reimbursements to E&T participants (including volunteers) for the actual costs of all necessary dependent care expenses up to but not in excess of $160 per dependent per month. State agencies may reimburse participants for costs in excess of this amount, however, only costs up to but not in excess of $160 per dependent per month shall be subject to Federal cost sharing. This rule proposes a requirement that individuals be informed that allowable expenses up to the $160 per dependent per month limit for dependent care and the $25 per month limit for transportation and other costs will be reimbursed by the State agency upon the presentation of appropriate documentation.

This rule also proposes limits for dependent care reimbursements. A dependent care reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or subject to court supervision. This provision is consistent with regulations recently published by the Family Support Administration of the Department of Health and Human Services for the Jobs Opportunities and Basic Skills Training (JOBS) Program (54 FR 42146, October 13, 1989). That final rule implemented a limit on the guarantee of child care to families with dependent children under 13 and children with special needs. To allow for greater consistency between the two programs we are proposing the adoption of the same limits for dependent care reimbursements under the Food Stamp E&T Program.

There is no proposed age limit for dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision and require dependent care in order for a responsible household member to participate in the E&T Program. In keeping with current verification requirements, verification of

the physical and/or mental incapacity is necessary for dependents who are age 13 or older if the physical and/or mental incapacity is questionable. Similarly, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable.

In addition, we are proposing the adoption of a provision from the JOBS Program allowing a dependent care reimbursement for dependents age 13 or older who are subject to court supervision. These dependents have an officially established need for special supervision that would require dependent care in order for a responsible household member to participate in the E&T Program.

The Act further specifies that the caretaker relative of a dependent in an AFDC household who resides in a local area where an AFDC employment and training program is in operation or was in operation on September 19, 1988, the date of enactment of Public Law 100-435, would not be eligible for the dependent care reimbursement. This provision has been incorporated in this proposed rule.

This rule also proposes a change whereby an E&T participant would not be entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. In many instances the household does not incur an actual out-of-pocket expense when a service is provided by a household member. One household member may actually make a payment to another which might be characterized as an "expense". However, since another member of the same household receives the payment there is no net change in the household's income for food stamp purposes. Therefore, no reimbursement is necessary.

This rule proposes a change to 7 CFR 273.7(d)(1)(ii) to limit the dependent care reimbursements a household may receive in a month. If more than one household member is required to participate in an E&T Program, the household shall not receive more than the actual cost of such expenses up to $160 per dependent per month (or the optional reimbursement amount above $160 to be paid by the State agency). The State agency must verify the E&T status of other household members prior to issuing these payments in order to avoid unnecessary and duplicative payments to the household. No household is entitled to more than one reimbursement per dependent per month.

Changes are also being proposed to implement a provision of section 404(c) of Public Law 100-435 which allows the State agencies to provide or arrange for dependent care services in lieu of providing a reimbursement to the E&T participant for dependent care. The State agency may provide dependent care services directly to the household through State-operated dependent care facilities (including local agency-operated facilities) or arrange for dependent care through contracted providers. State agencies may urge, but not require, participants to utilize State licenced dependent care facilities, where available. The State agency will receive 50 percent of actual costs up to $80 per dependent per month in Federal funding as reimbursement for dependent care services provided or arranged for by the State agency. This cost to the State agency must be claimed on the SF-269, Financial Status Report, under the column designated for dependent care reimbursement expenses. This rule proposes changes to 7 CFR 273.7(d)(1)(ii) accordingly.

This rule also proposes a list of the types of allowable costs to be reimbursed under 7 CFR 273.7(d)(1)(ii)(A). This list is intended as a guide for the State agencies and is not inclusive. This list conforms to the list of allowable costs that are reimbursable under the participant reimbursement provision of the optional workfare program regulations at 7 CFR 273.22(f)(4).

Section 404(c) of Public Law 100-435 also provides that individuals may not be required to participate in a component in which they would incur E&T costs that exceed the allowable reimbursable amount paid by the State agency. This rule proposes changes to provide that these individuals shall be placed, if possible, in another suitable component in which their monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from participation until a suitable component is available or their circumstances change and their monthly E&T expenses no longer exceed the allowable reimbursable amount to be paid by the State agency. Further, Congress has suggested that mandatory E&T participants must be informed that they shall be exempted from E&T requirements if their expenses exceed the allowable reimbursable amounts. 134 Cong. Rec. S11742 (daily ed. August 11, 1988) (statement of Sen. Leahy). This proposed rule incorporates that provision. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts may volunteer to participate in the E&T Program. The volunteer must be informed that his/her expenses in excess of the allowable reimbursable amounts will not be reimbursed. Any allowable expense incurred and not reimbursed shall be considered in determining a dependent care deduction amount under 7 CFR 273.9(d)(4). Furthermore, as a volunteer the individual cannot be sanctioned for failure to complete the component or comply with any of the E&T requirements. Accordingly, this rule proposes changes to 7 CFR 273.7(d)(1)(ii) and replaces the term "child care" with "dependent care" in conformance with Public Law 100-435.

This rule also proposes a requirement that the State agency advise the E&T participant that he or she may have Federal tax responsibilities. These responsibilities may include the withholding of Social Security taxes and Federal income taxes from wages paid to a dependent care provider and notifying the Internal Revenue Service about these wages. The State agency may impose additional notice requirements for State tax responsibilities affecting E&T participants.

Performance Standards—Section 273.7(o)(7)

Current regulations establish performance standards through Fiscal Year 1990. Section 404(d) of Public Law 100-435 holds these standards in effect until the Department implements new performance standards to be developed and issued in accordance with provisions contained in Public Law 100-435. This rule proposes changes to 7 CFR 273.7(o)(7) to incorporate the above amendment and maintain a 50 percent performance standard until the new standards are implemented.

Implementation

The Department intends that the provisions of the final rulemaking resulting from the proposals contained in this rulemaking be implemented by all State agencies no later than 60 days following publication of the final rulemaking.

As required by Public Law 100-435, the provisions contained in §273.7(d)(1)(ii)(A) and §273.9(c)(5)(i) (A) and (F), which implement section 404(c) of the Hunger Prevention Act of 1988, are effective and must be implemented retroactively to July 1, 1988. Since prior notice and comment rulemaking could not be completed before the statutory effective date for this amendment, the Department issued directives on February 15, 1989 and May 26, 1989 instructing the State agencies to implement the above provisions on July 1, 1989. The State agencies were not directed to implement the remaining provisions of Public Law 100-435, therefore, the remaining provisions are effective October 1, 1988 and must be implemented no later than 60 days following publication of the final rulemaking.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

2. In § 273.7:

a. Paragraph (c)(2) is amended by revising the third sentence and adding two new sentences between the third and fourth sentences;

b. A new paragraph (c)(4)(xii) is added;

c. Paragraph (d)(1)(i)(F) is amended by revising the first sentence;

d. Paragraph (d)(1)(ii)(A) is revised;

e. Paragraph (d)(1)(ii)(B) is revised;

f. Paragraph (d)(1)(ii)(D) is amended by removing the word "child" in the two places it appears and adding in its place the word "dependent";

g. Paragraph (f)(1)(ii) is amended by removing the words "Education components" in the third sentence and adding in its place the words "Job search training activities"; and removing the word "education" from the last sentence and adding in its place the words "job search training activities";

h. A new paragraph (f)(1)(vi) is added;

i. Paragraph (f)(2)(iii) is amended by removing the phrase "and the unavailability of child care" and adding in its place the phrase "the unavailability of dependent care, and monthly E&T expenses that exceed the allowable reimbursable amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*)";

j. Paragraph (g)(1) is revised; and

k. Paragraph (o)(7) is amended by revising the last sentence.

The additions and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) * * *

(2) * * * The State agency shall initiate conciliation procedures, pursuant to paragraph (g)(1)(ii) of this section, upon determining that an individual has not complied with E&T requirements. The State agency shall issue a notice of adverse action to the individual or household, as appropriate, no later than the tenth calendar day following the end of the conciliation period. If the State agency verifies that compliance was achieved subsequent to the end of the conciliation period, the notice of adverse action may be cancelled.* * *

* * * * *

(4) * * *

(xii) The procedures developed by the State agency under paragraph (g)(1)(ii) of this section for conciliation. To the extent possible, State agencies should design conciliation procedures for the E&T Program that will be compatible with the conciliation process that State agencies that administer the AFDC Program will establish for the Job Opportunities and Basic Skills Training (JOBS) program as mandated by the Family Support Act of 1988.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Federal funds made available to a State agency under this section to operate a component under paragraph (f)(1)(vi) of this section shall not be used to supplant non-Federal funds for existing educational services and activities that promote the purposes of this component. * * *

(ii) * * *

(A) The State agency shall provide payments to participants in its E&T Program, including applicants required to perform job search and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T Program. These payments may be provided as a reimbursement for expenses incurred or in advance as payments for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section, however, only costs which are up to but not in excess of the amounts specified in this section shall be subject to Federal cost sharing. Reimbursement shall not be provided from E&T grants provided under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section shall not be deductible pursuant to 7 CFR 273.10(d)(1)(i). The State agency shall inform all mandatory E&T participants that they shall be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T Program exceed the allowable reimbursement amount. Reimbursements shall be provided as follows:

(*1*) The actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an household member in the E&T Program up to $160 per dependent per month. A dependent care reimbursement shall be provided to an E&T participant for all dependents requiring dependent care unless otherwise prohibited by this section. A reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or under court supervision. A reimbursement shall be provided for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of an household member in the E&T Program. Verification of the physical and/or mental incapacity shall be obtained for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable. If moe than one household member is required to participate in an E&T Program, the household shall not receive more than the actual cost of such expenses up to $160 per dependent per month (or the optional reimbursement amount above $160 to be paid by the State agency). An individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social

Security Act (42 U.S.C. 601 *et seq.*) in a local area where an employment, training, or education program under title IV of such Act is in operation, or was in operation on September 19, 1988, is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T Program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may not require that participants use State licensed facilities to be eligible for dependent care reimbursements. The State agency shall advise the E&T participant that he or she may have Federal tax responsibilities. The State agency may impose additional notice requirements for State tax responsibilities affecting E&T participants. The State agency may claim 50 percent of actual costs up to $80 per dependent per month in Federal matching for dependent care services provided or arranged for by the State agency.

(*2*) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T Program up to $25 per participant per month. Such costs shall be the actual costs of participation unless the State agency has a method approved in its State plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level or reimbursements which is established by the State agency.

(B) Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section shall not be required to participate in that component. These individuals shall be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the state agency. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts specified under paragraphs (d)(1)(ii)(A)(*1*) and (d)(1)(ii)(A)(*2*) of this section may volunteer to participate in the E&T Program. The volunteer must be informed that his/her allowable expenses in excess of the reimbursable amounts will not be reimbursed. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(A)(*1*) shall be considered in determining a dependent care deduction under 7 CFR 273.9(d)(4).

* * * * *

(f) * * *

(1) * * *

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program as specified under paragraph (f) of this section. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

* * * * *

(g) * * *

(1) Noncompliance with Food Stamp Program work regulations.

(i) If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph, and is treated as an ineligible household member, per § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through paragraph (b) of this section, other than through the exemptions of paragraphs (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member per § 273.1(b)(2).

(ii) The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E&T requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the Notice of Adverse Action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 20 calendar days. Within this conciliation period, the State agency must, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member must be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period. If it is apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The casefile must document the individual's refusal to comply.

(iii) If the work registrant does not comply during the conciliation period, the State agency shall issue a notice of adverse action to the individual or household, as specified in § 273.13, no later than the tenth calendar day following the end of the conciliation period. The notice of adverse action may be cancelled if the State agency is able to verify that compliance was achieved subsequent to the end of the conciliation period. To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component. The notice of adverse action shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(iv) Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

* * * * *

(o) * * *

(7) * * * The performance standards established for FY 1990 shall remain in effect for each subsequent fiscal year until new performance standards are implemented in accordance with the Hunger Prevention Act of 1988 (Pub. L. 100-435) on April 1, 1991.

* * * * *

3. In § 273.9:

a. Paragraph (c)(5)(i)(A) is amended by adding the words ", including reimbursements made to the household under § 273.7(d)(1)(ii)," after the words "flat allowances";

b. A new paragraph (c)(5)(i)(F) is added;

c. Paragraph (c)(5)(ii)(A) is revised; and

d. A new paragraph (c)(15) is added.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(F) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T Program.

(ii) * * *

(A) No portion of benefits provided under title IV of the Social Security Act, to the extent such benefit is attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

* * * * *

(15) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T Program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A)(*1*) would be excluded.

* * * * *

Dated: June 18, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-14467 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1036

[DA-90-022]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Temporary Revision of Supply Plant Shipping Percentages and Cooperative Association Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rules.

SUMMARY: This notice invites written comments on a proposal to increase temporarily the percentage of producer milk receipts that must be shipped by pool supply plants operated by both proprietary and cooperative association handlers under the Eastern Ohio-Western Pennsylvania Federal milk order. Beginning with the month of September 1990, the percentage of milk that must be shipped by pool supply plants to fluid milk processing plants would be increased from 40 percent to 50 percent during the months of September through November, and from 30 percent to 40 percent in other months. The monthly percentage of producer milk that is handled by a cooperative association that must be delivered to distributing plants in order to qualify plants operated by the cooperative association for pooling would also be increased by 10 percentage points, from 35 percent to 45 percent. The action was requested by a proprietary handler who operates a fluid milk processing plant that is pooled under the order. Proponent contends that this action is needed to assure consumers of an adequate supply of fluid milk products.

DATES: Comments are due no later than July 23, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that an adequate supply of fresh fluid milk will be available to consumers.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and paragraph (f) of § 1036.7 of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered, beginning with the month of September 1990.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 30th day after pubication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the pool supply plant shipping percentages set forth in § 1036.7(b) and the delivery percentage required of cooperative associations operating pool manufacturing plants pursuant to § 1036.7(d). The revisions would be effective beginning with the month of September 1990. The specific revisions would increase the supply plant shipping percentages by 10 percentage points, from 40 percent to 50 percent during the months of September through November, and from 30 percent to 40 percent during all other months. The percentage of a cooperative association's producer milk that must be shipped to pool distributing plants or to nonpool plants for Class I purposes if the plants of the cooperative are to be considered pool plants would be also be increased by 10 percentage points, from 35 percent to 45 percent, for all months. The cooperative association's manufacturing plants could also be qualified for pooling if the 45-percent delivery requirement had been met for the immediately preceding 12-month period.

Section 1036.7(f) of the Eastern Ohio-Western Pennsylvania milk order allows the Director of the Dairy Division to increase or decrease the order's minimum pooling requirements by up to 10 percentage points during any month to obtain needed shipments or to prevent uneconomic shipments.

United Dairy, Inc., a proprietary handler who operates a pool distributing plant at which more than 90 percent of the milk receipts are disposed of for Class I purposes, requested that the percentage of supply plant's and cooperative association producer milk that is required to be shipped to fluid milk plants be increased temporarily by 10 percentage points to enable handlers to continue providing consumers with an adequate supply of fluid milk products.

The minimum performance standards for pool supply plants and delivery requirements for cooperative associations operating pool plants were increased temporarily for the months of November 1989 through February 1990 at the request of proponent. Proponent handler contends that the market's milk production is running well below a year ago. The handler claims that the shortage this fall will be at least as severe as last year and possibly may be worse. In anticipation of this tight supply/demand situation, United Dairy has requested that the proposed revision be effective at the beginning of the shipping season which starts on September 1.

The market's major cooperative, from whom proponent handler buys most of its milk, has informed the handler that because milk supplies are again expected to fall short of fluid demand this year the cooperative will be unable to guarantee a supply of all of the handler's Class I milk needs this fall. Proponent further indicates that during the past year it tried without success to establish a long-term supply relationship with a major cheese manufacturing plant operator in an attempt to replace anticipated supply shortfalls.

In view of the foregoing, it may be appropriate to increase the shipping percentages for pool supply plants and delivery requirements for plants operated by cooperative associations, beginning with the month of September 1990, to obtain needed shipments of milk. Since proponent did not specify how long the higher standards should apply, interested parties are invited to comment on this aspect of the proposal in addition to commenting on the need for the proposed temporary revision.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on June 19, 1990.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 90-14504 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1005

[Docket Nos. AO-388-A1; AO-388-A1-RO1; DA-89-123]

Milk in the Carolina Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts a Federal milk order for the Carolina marketing area, which includes all the territory in the States of North Carolina and South Carolina. Ten dairy farmer organizations representing about 90 percent of the dairy farmers who are expected to have their milk priced under the milk order proposed the new milk order. The proposed order was considered at public hearings held April 17-20, April 24-25, and August 22, 1989. On the basis of evidence obtained at the hearings, the Department has concluded that a Federal milk order is needed to provide stable and orderly conditions for the marketing of milk in the proposed area. A referendum will be conducted to determine whether producers who supplied milk for the proposed area during March 1990 favor the issuance of an order.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule would promote orderly marketing of milk by producers and regulated handlers.

Paperwork Reduction Act

Information collection requirements contained in this regulation (§§ 1005.1 through 1005.94) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0581-0032.

Prior documents in this proceeding:

Notice of Hearing: Issued March 13, 1989; published March 17, 1989 (54 FR 11206).

Notice of Reopened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued March 21, 1990; published March 28, 1990 (55 FR 11506).

Preliminary Statement

Two public hearings were held upon a proposed tentative marketing agreement and order regulating the handling of mik in the Carolina marketing area. The initial hearing on the proposed Carolina order was held at Charlotte, North Carolina, on April 17-20 and April 24-25, 1989, pursuant to a notice of hearing issued March 13, 1989 (54 FR 11206). The second hearing was a reopening of the first hearing for the limited purpose of considering proposals that would change the manner in which the Class II milk price is determined and announced under the proposed Carolina order. The hearing was held at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of reopened hearing issued August 16, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on March 21, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Pool Plant", three new paragraphs are added after paragraph 32.

2. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Producer-handler.", a new paragraph is added at the end of the discussion.

3. Under the subheading "3(a) Handlers to be regulated and milk to be priced and pooled.", "Producer milk.", two new paragraphs are added after paragraph 17.

4. Under the subheading "3(c) Pricing of milk.", "Class I price and in-area location adjustments.", two new paragraphs are added at the end of the discussion.

5. Under the subheading "3(d) Distribution of proceeds to producers.", "Computation of uniform price." two new paragraphs are added at the end of the discussion.

6. Under the subheading "3(d) Distribution of proceeds to producers.", "Base and excess plan.", paragraph 7 is revised, seven new paragraphs are added after paragraph 7, paragraphs 9, 10 and the one at the end of the discussion are revised.

7. Under the subheading "3(d) Distribution of proceeds to producers.", "Multiple component pricing.", seven new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) Classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

Findings, and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

Description of the market. The population of North Carolina and South Carolina as of April 1, 1980, was 5,882,000 and 3,122,000, respectively (U.S. Department of Commerce, Bureau of the Census, "Current Population Reports: Population Estimates and Projections." Series P-26, No. 1017, U.S. Government Printing Office, October 1988). The projected population, as of July 1, 1988, for North Carolina was 6,512,000 and 3,464,000 for South Carolina, for a total population of 9,976,000 persons.

The three metropolitan statistical areas (MSA's) of North Carolina are (1) Raleigh-Durham, (2) Greensboro, High Point, Winston-Salem, and (3) Charlotte. These three MSA's contain approximately 40 percent of the population of North Carolina and are linked by Interstate Highway 85.

The five MSA's of South Caroline are (1) Anderson, (2) Charleston, (3) Columbia, (4) Florence, and (5) Greenville-Spartanburg. These five MSA's plus Buford and Horry Counties contain approximately 65 percent of the population of South Caroline.

While milk production for North Carolina and South Carolina is virtually unchanged from 10 years ago, the population of North Carolina increased by 10 percent during the last 8 years and South Carolina increased by 11 percent during the same period. To supply the fluid milk needs of this increase in population, bulk and packaged milk have been imported into the two-State area to meet the increased demand.

Proponents of the order estimate that the milk of 1,600 dairy farmers will be pooled under the two-State order. They estimate that these dairy farmers produce about 203 million pounds of milk per month.

Milk production data from 1978 to date for North Carolina shows that total milk production currently is about the same as it was in 1978. Although the number of dairy herds declined from 1,349 in 1978 to 913 in December 1988, the average daily deliveries per farm increased by 55 percent.

Milk production in North Carolina is concentrated in the central part of the State. The average size herd had about 112 cows and 71 of the 100 North Caroline counties contain one or more herds. Dairy farms are located reasonably close to the main population

centers except in the northwest corner of the State where the Grade B dairy farmers are located. There are a few dairy farmers located in the extreme western counties whose milk is pooled in the Georgia Federal milk order.

In South Carolina, as of December 1988, there were 242 Grade A dairy farmers who produced about 456 million pounds of milk in 1988. Milk production in this State is concentrated in 6 of the 46 counties (Newberry, Saluda, Anderson, Orangeburg, Bamberg and Greenville). These six counties account for about half of the dairy farms and production in the State. Approximately one-third of the State's milk production is located along the coastal plain.

Milk production by South Carolina producers increased during the early 1980's and fell sharply during the mid-1980's due to droughts, the Federal milk diversion and dairy termination programs, and because of a decline in the economy. South Carolina has long been a milk deficit State that imports substantial quantities of milk.

There are 16 fluid milk processing plants located in North Carolina, which include the plant associated with the University of North Carolina at Raleigh. These plants, excluding the plant associated with the University, received approximately 136 million pounds of milk in January 1989.

There are 10 fluid milk plants located in South Carolina, which include the milk plants associated with Clemson University and the State prison and a plant at Greenville which is a fully regulated plant under the Georgia milk order. These plants, excluding the plants associated with Clemson University, the State prison and the Georgia milk order, received approximately 66 million pounds of milk in January 1989.

The record shows that receipts of milk during 1988 by fluid milk plants located in these two States ranged from a low of 168 million pounds in July to a high of 221 million pounds in March. Class I utilization ranged from a low of 80 percent in March to 66 percent in September.

In North Carolina, the Milk Commission continues to regulate many aspects of the dairy industry, such as the individual handler pools, base plans and the pricing of milk produced, processed and distributed within that State. At the time of the hearing, authority for marketwide pooling was scheduled to become effective August 1, 1989.

In South Carolina, the Dairy Commission was rendered powerless by a court decision to impose prices on producer milk and bulk or packaged milk moving into or out of South Carolina. The Department of Agriculture for the State of South Carolina continues to operate individual handler pools and administer base plans.

1. *Character of commerce.* The proposed Carolina marketing area includes the entire States of North Carolina and South Carolina.

There are 22 milk distributing plants located within the two States that are expected to be fully regulated plants under the proposed order. These 22 plants received approximately 202 million pounds of milk in January 1989. In addition, it is expected that a plant located at Lynchburg, Virginia, will be a fully regulated plant under this proposed order. A fluid milk plant located at Greenville, South Carolina, is expected to be fully regulated under the Georgia order.

There is a substantial amount of bulk milk and packaged milk moving between North Carolina and South Carolina. Milk from farms located in the two States is received by plants located in other states.

Milk plants located in South Carolina sell substantial amounts of packaged milk into Georgia. Fluid milk plants located in North Carolina sell packaged milk in Tennessee and Virginia. Fluid milk plants located in Virginia sell substantial quantities of milk into North Carolina.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. On the basis of the record evidence summarized in the preceding paragraphs, it is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has the authority to establish a Federal milk order for this area.

2. *Need for an order.* A Federal milk marketing order for North Carolina and South Carolina was proposed by ten cooperative associations. Proponents of the order were Coble Dairy Cooperative, Inc. (Coble), Edisto Milk Producers Association (Edisto), Dairymen, Inc. (DI), Palmetto Milk Producers Association (Palmetto), Carolina-Virginia Milk Producers Association (Carolina-Virginia), Capital Area Milk Producers Association (Capital), Sumter Dairies, Inc., East Carolina Milk Producers, Dairy Farmers, Inc., and Southern Milk Sales (SMS).

At the hearing, an officer of DI testified on behalf of nine cooperative associations that included all of the above organizations except for East Carolina Milk Producers and Dairy Farmers, Inc. The ninth cooperative association was Maryland and Virginia Milk Producers Cooperative Association (Md-Va). Sumter Dairies, Inc., named above, at the time of the hearing was called Midlands Jersey Milk Producers Association (Midlands).

Proponents' witness stated that these nine cooperative associations represent about 173 million pounds of milk that will be pooled each month on the order. He said that the nine associations represent about 1,485 dairy farmers out of a total of 1,600 dairy farmers that are expected to be producers associated with the proposed order. These 1,485 producers, he said, represent about 85 percent of the milk volume and about 90 percent of the producers.

Witnesses for the following organizations testified in favor of the proposed order without any modifications:

1. North Carolina Farm Bureau.
2. South Carolina Farm Bureau.
3. Milkco, Inc. (proprietary handler).
4. Hunter Jersey Farms (proprietary handler).
5. Dairy Fresh, Inc. (proprietary handler).
6. Kroger Company (proprietary handler).

Witnesses for the following organizations testified in favor of an order with modifications that are discussed later in this decision:

1. Piedmont Milk Sales.
2. Carolina Jersey Milk Producers Association.
3. Land-O-Sun Dairies.
4. Edisto.

The proposed order was supported by the Commissioner of Agriculture for South Carolina and the Milk Commission for the State of Virginia. The proposed order was opposed by the North Carolina Milk Commission and the Carolina Guernsey Producers Association. A representative of Coburg Dairy, Charleston, South Carolina, indicated that the company disagreed in principle with Federal order regulation.

Testimony by the nine proponents of the order was presented by (1) an officer of DI, (2) an associate professor who is an extension economist at North Carolina University, and (3) a professor at Clemson University.

The DI officer testified about the operations of proponents. During the month of January 1989, Coble shipped 13.5 million pounds of milk (152 members) to their three fluid milk plants that will be fully regulated under the proposed order. The cooperative operates fluid milk processing plants located at Lexington and Goldsboro, North Carolina, and Florence, South Carolina. It also supplies a small volume of milk to a plant at High Point, North Carolina.

Edisto in January 1989 shipped 12.5 million pounds of milk (68 members) to Coburg Dairy in Charleston, South Carolina, a plant that will be fully regulated by the proposed order.

DI in January delivered 60.7 million pounds of milk (689 members) to eight fluid milk plants expected to be regulated by the proposed order. Three of the eight plants are their own plants and are located at Greensboro and Wilkesboro, North Carolina, and Florence, South Carolina. DI delivers milk to five other plants, two of which are located in High Point, North Carolina, and the other three plants are at Lynchburg, Virginia; Charleston, South Carolina, and Fayetteville, North Carolina.

Palmetto in January 1989 delivered 20.2 million pounds of milk (91 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Charlotte, North Carolina, and Spartanburg and Gafney, South Carolina.

Carolina-Virginia in January delivered 40.9 million pounds of milk (281 members) to three fluid milk plants expected to be regulated by the proposed order. The plants are in Winston-Salem, Asheville, and Charlotte, North Carolina.

Capital in January delivered 8 million pounds of milk (48 members) to their one plant at Raleigh, North Carolina.

Midlands in January delivered 2.4 million pounds of milk (20 members) to Sumter Dairies, Inc., at Sumter, South Carolina.

SMS in January delivered 6.5 million pounds of milk (81 members) to two fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point and Asheville, North Carolina.

Maryland-Virginia in January 1989 delivered 7.75 million pounds of milk (55 to 60 members) to six fluid milk plants expected to be regulated by the proposed order. The plants are located at High Point, Winston-Salem, Charlotte, Asheville and New Bern, North Carolina and at Lynchburg, Virginia.

The two professors from the University of North Carolina and Clemson University, in addition to testifying about the interstate commerce of the milk industry and marketing conditions in the two States, outlined the need and reasons for a milk order that would cover both States. The major reasons advanced by these two witnesses for the order are briefly summarized as follows:

1. Population patterns in the two States have resulted in changed marketing conditions.

2. The dairy processing industry has changed from one of intrastate commerce to interstate commerce. Also, the industry has changed from a local industry to a regional type of industry and to a large extent to the use of chain store operations.

3. Equity among handlers has deteriorated. Fluid milk handlers located within the proposed marketing area that are regulated under the neighboring Federal orders have a significant difference in their cost of bulk milk (skim and butterfat pricing) than competing unregulated fluid milk plants. Unregulated fluid milk plants located in North Carolina have the opportunity to purchase milk from out-of-state, process that milk within their plant and dispose of that milk outside of the State and not be subject to any minimum pricing regulations.

4. The individual handler pools that exist in both States result in varying pay prices (difference in Class I utilization among plants and base plans) among producers. Pay prices among producers become more confusing because some cooperative associations are able to pool returns from several handler pools.

5. There is no uniform audit program throughout the area. South Carolina has a limited auditing program and North Carolina does not have the statutory authority to audit sales of packaged milk coming into North Carolina from fluid milk plants outside the State.

6. The North Carolina Milk Commission cannot effectively price milk sold into the State by out-of-state plants. Also, the Commission cannot effectively price milk sold out of the State by plants located within the State.

7. There is much disparity in producer pay prices as the result of the inability of the North Carolina Milk Commission to price all fluid milk sales and because of the operation of individual handler pools in both States. Producers delivering to the same plant do not always receive the same pay price nor do producers delivering to different plants in the same area receive the same price.

8. Individual handler pools create inequity among producers in the balancing of the necessary reserve and the seasonal surplus of the market. The lack of surplus manufacturing plants in the Carolinas or nearby results in an inequitable distribution among producers of the costs of balancing the fluid market. A Federal order with marketwide pooling would provide better equity in the cost of disposing of surplus milk.

9. At the present time, there is a lack of equity among processors selling into this two-State area because the source of supply determines the cost of bulk milk. A Federal order would assure each fluid milk plant that its competitor is paying at least the minimum Federal order prices.

The Vice Chairman of the North Carolina Milk Commission testified that in the Commission's view, there is no justification for a Federal order at the present time. He indicated that if it is decided that a Federal order should be issued for this area, the Commission should be able to continue to operate in certain areas of milk regulation. In his opinion, this would be in the best interest of the consuming public, producers and processors.

The spokesman for the Carolina Guernsey Producers Association testified very briefly that their organization was opposed to a Federal order. However, if a Federal order is to be issued, he contended that the order should provide for component pricing. The subject of component pricing is discussed in a later section of this decision.

The proponent cooperative associations overwhelmingly agree that the two State programs are not providing marketing stability. They have stated that only a Federal order for this area that provides for marketwide pooling, minimum pricing and complete accounting can restore market stability to this area.

The main reason for instability of milk marketing in North Carolina and South Carolina is that both States lack the ability to price both bulk and packaged milk moving into or out of their respective State.

In 1985, the Circuit Court of South Carolina declared that the South Carolina Milk Commission's pricing authority was unconstitutional under the Commerce Clause of the United States Constitution. The Commission, as a result of this decision, decided that it was impractical to regulate in-State milk because milk becomes indistinguishable when commingled with milk flowing interstate. The Commission ceased to exist and milk bases are now being calculated by the South Carolina Department of Agriculture. That Department continues to perform monthly audits of fluid milk plants located in South Carolina and disposing of milk in South Carolina only.

In North Carolina, a Milk Commission regulates many aspects of the milk industry. In 1988, however, as the result of a consent decree, the Milk Commission's authority to establish Class I prices for sales made by North Carolina handlers outside North Carolina was terminated.

A federation of cooperative associations (Carolinas Federation) that represents about 90 percent of the dairy farmers in both States sets or announces Class I and Class II prices in South Carolina. Prices in North Carolina, although set by the Milk Commission, are significantly influenced by the prices set by the Carolinas Federation. The announced Class I price in North Carolina is based on the Minnesota-Wisconsin price series (used in all Federal milk orders for setting Class I prices) plus six dollars. The Milk Commission will adjust prices downward whenever North Carolina handlers have to meet competition by outside handlers selling into North Carolina who are able to purchase milk below this formula price.

For sales made by North Carolina handlers into Virginia, the North Carolina Milk Commission requires that dairy farmers be paid the Class I price announced by the Virginia Milk Commission. For sales made by North Carolina handlers into South Carolina or Federal order marketing areas, dairy farmers supplying these plants are paid the prevailing prices paid by the milk plants located outside the State and selling in those markets.

North Carolina fluid milk plants selling into Virginia are required by the Virginia Milk Commission to buy enough Virginia base-holder milk to cover these sales. The North Carolina handler can buy from a Virginia cooperative association that has base-holder milk or the North Carolina handler can acquire his own dairy farmers who hold Virginia milk base.

Handlers located in Virginia who are subject to the Virginia Dairy Commission regulations are accountable for fluid milk sales into North Carolina at the Virginia Class II price. These sales can affect the Class I price in North Carolina because the North Carolina Dairy Commission cannot regulate the price of milk entering North Carolina. The record shows that this volume is substantial.

South Carolina has long been a milk deficit State. The record shows that while exports of South Carolina producer milk increased from 66 million pounds in 1983 to 152 million pounds in 1988, or 130 percent, imports of bulk milk increased from 98 million pounds to 527 million pounds for the same period, or 841 percent. Packaged fluid milk sales by South Carolina plants outside the State increased from 235 million pounds in 1983 to 319 million pounds in 1988, or 36 percent. Packaged milk received at South Garolina plants increased from 6 million pounds in 1983 to 26 million pounds in 1988, or 333 percent. Packaged fluid milk sales into South Carolina (other than to South Carolina plants) increased from 112 million pounds in 1983 to 127 million pounds in 1988, or 13 percent.

For North Carolina, the record does not contain these same data that were made available for South Carolina. However, the record does show that milk production by North Carolina dairy farmers increased from 1.40 billion pounds in 1987 to 1.42 billion pounds in 1988, or 1.4 percent. Bulk imports into North Carolina decreased from 6.7 billion pounds in 1987 to 1.8 billion pounds in 1988, or 27 percent of the 1987 volume. Total fluid milk sales by North Carolina processors increased from 1.25 billion pounds in 1987 to 1.30 billion pounds in 1988, or 4 percent. Fluid milk sales outside the State by North Carolina processors increased from 242.6 million pounds in 1987 to 258.5 million pounds in 1988, or 6.6 percent. Fluid milk sales into North Carolina from outside processors decreased from 227.9 million pounds in 1987 to 209.8 million pounds in 1988, or 8 percent.

It is clear from these data that South Carolina relies substantially on imported bulk and packaged milk. North Carolina, on the other hand, is relatively self-sufficient. The substantial amount of milk moving into South Carolina which cannot be regulated by the State contributes significantly to disorderly marketing in that State.

Historically, Class I prices in South Carolina have been higher than Class I prices in North Carolina. The record shows for the period of October 1987 through March 1988, the Carolinas Federation's announced Class I price for South Carolina was slightly higher than for North Carolina. In April 1988, the two prices were the same and for the period of May 1988 through March 1989, the North Carolina announced Class I price was higher than for South Carolina. As a consequence of this price differential during the period of May 1988 through March 1989, a substantial amount of packaged milk was shipped from South Carolina processors into North Carolina.

Historically, the Georgia Federal order Class I price has been 70 to 80 cents lower than the announced South Carolina Class I price. The record shows that in January 1988, this price difference was $1.58 ($16.00 less $14.42). For the months of February through April 1989, this price difference was $.90 for all three months, which is closer to the historical relationship between the two States. A price difference of $1.58 versus $.90 can result in some shifting of packaged milk sales between these markets, contributing to disorderly marketing in South Carolina.

At the hearing, the two witnesses associated with the two universities testified about the disparity in pay prices received by dairy farmers delivering milk to the same fluid milk plant or to different plants located in the same general area. They testified (survey conducted for both States) that for January 1989, the pay prices received by six cooperative associations doing business in South Carolina ranged from a high of $15.36 to a low of $13.73, a difference of $1.63. In North Carolina, for January 1989; pay prices ranged from a high of $15.36 to a low of $13.99, a difference of $1.39.

Although the record shows that there has been considerable shifting of producers between handlers in North Carolina, this situation is even more prevalent in South Carolina. The disparity in pay prices caused by the individual handler pools and the individual base plans has contributed to disorderly marketing in North Carolina and South Carolina.

Another factor contributing to disorderly marketing in this two-State area is the butterfat differential used in paying producers. In both States, the butterfat differential is based on a factor of .1 of the Chicago 92-score butter price. In surrounding Federal order markets, the butterfat differential is based on a factor of .115 of the Chicago 92-score butter price. The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add 4 to 6 cents per hundredweight to producer pay prices.

From the foregoing, it is clear that the two State programs cannot assure dairy farmers associated with this marketing area of payments for their milk in accordance with its use and at minimum prices that are uniformly applicable throughout the market. These State programs, if allowed to continue, could lead to even a further dependence on outside milk supplies to meet the needs of the area. A Federal milk order providing for classified pricing at reasonable levels and marketwide pooling for distributing the returns uniformly among all producers will help provide the needed market stability. A Federal order will provide an environment of stable and orderly marketing throughout this area through the adoption of a classified pricing plan based on audited utilization of all Grade A milk purchased by handlers from producers and an equitable division among all producers of the proceeds obtained from the sale of their milk in the respective classes, including the lower-priced uses of reserve milk supplies not needed for fluid uses.

A Federal order will assure handlers that their competitors will pay not less than the minimum prices set by the order for milk and such prices will apply whether the milk comes from farms located in North Carolina or South Carolina, or other States, and without regard to whether the milk is disposed of inside or outside the marketing area.

This record shows that the dairy industry in the two-State area, particularly in South Carolina, does not have available detailed information regarding milk procurement and milk uses. A Federal order would provide such information on a continuing basis and would contribute to the development and maintenance of stable and orderly marketing conditions. The lack of such data, by itself, does not necessarily demonstrate the need for an order. Complete and accurate market information would, however, provide a substantial benefit to producers, cooperatives and handlers alike.

It is concluded that a Federal order for North Carolina and South Carolina as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high quality milk for consumers. Furthermore, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform minimum prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the order prices for both the higher-valued Class I milk and the lower returns from the sale of reserve milk that cannot be marketed for fluid use;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing; and

6. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market.

3(a). *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specific definitions to describe the marketing area, route disposition, the types of plants, the various categories of regulated persons (handlers), and the persons (producers) whose milk will be subject to the uniform prices.

Marketing area—The Carolina marketing area, as proposed, should include all the counties within North Carolina and South Carolina. The defined marketing area should include all piers, docks, and wharves connected therewith and all craft moored at such facilities. The marketing area should include, as well, all territory occupied by municipal, state or federal government reservations, installations, institutions, or other similar establishments if any part is within the boundaries specified above unless such territory is within the marketing area of any other Federal order. The marketing area should not include the Great Smoky Mountains National Park, which lies in North Carolina and in Tennessee. Such area is currently included in the Tennessee Valley marketing area. This is because some of the park is located in the Tennessee counties that are a part of the Tennessee Valley marketing area, and the Tennessee Valley order includes all of a Federal government establishment if any part is within the marketing area.

Proponents' witness testified that in analyzing the area to be included in the proposed marketing area and the proposed four pricing zones, consideration was given to (1) the location of population within the area, (2) the location of plants selling in the area, (3) the location of the milk supply for plants that are expected to be fully regulated under the proposed order, (4) the area of regulation covered by nearby and adjacent Federal milk marketing orders, and (5) the pricing zones established by such orders. Proponents' spokesman indicated that a Federal order should be applicable to all counties in both States and that no useful purpose would be served by excluding any of the territory of the two States or by attaching some part of the proposed marketing area to some adjacent Federal order.

The witness for the proponents stated that the inclusion of all counties within the States of North Carolina and South Carolina in the proposed marketing area will not result in the regulation of any plant that has not been subject to State regulation. He said that the proposed marketing area would not cause a fluid milk plant to shift regulation from another Federal order to the proposed Carolina Federal order. Furthermore, he said, including all the counties within the two States will simplify both the reporting requirements by handlers and the administration of the order.

The proposed marketing area covering North Carolina and South Carolina is bordered on the east by the Atlantic Ocean and on the west and southwest by the Federally regulated areas of the Tennessee Valley and Georgia milk orders, respectively. The northern border of the marketing area abuts the southern boundary of the State of Virginia. Milk marketing in the Virginia area immediately to the north of the marketing area is under the regulation of the Virginia Milk Commission. The major distribution areas of the plants physically located within the Carolina marketing area are within the proposed marketing area or in the marketing areas of the two adjoining Federal orders.

Only one of the 23 fluid milk plants that are expected to be fully regulated by the proposed order is located outside the Carolina marketing area. That plant is located at Lynchburg, Virginia, and is operated by the Kroger Company. A representative of the company testified in favor of Federal regulation for the two-State area and the provisions of the proposed order.

Of the remaining 22 fluid milk plants that would be fully regulated under the proposed order, 15 plants are located in North Carolina and 7 plants are located in South Carolina. In addition to the 7 South Carolina plants, there is one additional fluid milk plant at Greenville, South Carolina. That plant is currently regulated under the Georgia order. Testimony at the hearing indicated that the plant's sales in the Georgia marketing area are greater than its sales in the proposed Carolina marketing area. Consequently, the plant is expected to continue as a pool plant under the Georgia order.

With the exception of the plant at Lynchburg, Virginia, other Virginia fluid milk plants, according to the Deputy Administrator for the Virginia Milk Commission, have less than 15 percent of their sales in the Carolina marketing area. As discussed in a further section, a plant with less than 15 percent of its Class I sales in the proposed marketing area would not be a pool plant.

On the basis of this record, it is concluded that the inclusion in the proposed marketing area of all the territory in the States of North Carolina and South Carolina is appropriate. Such marketing area, in conjunction with the proposed pool plant standards, would not result in the full regulation of any fluid milk plants located outside the Carolina marketing area other than a plant at Lynchburg, Virginia. As previously noted, the operator of such plant testified in favor of regulation for the two-State area.

The four pricing zones, indicated earlier, will be discussed in a subsequent section of this decision.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by the order proponents, and adopted herein, route disposition would mean any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include the delivery of fluid milk products to a handler's distribution points. The distribution from such points would be considered a route disposition from the milk plant where the fluid milk products were processed and packaged.

Plant. The order should contain a "plant" definition for purposes of clarity, ease of order interpretation and reference. As proponents suggested and as adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged.

Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

Distributing plant. The order should define a distributing plant as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. The definition for a distributing plant is provided to describe the activities conducted at such a plant and to distinguish this type of plant operation from others. It also is helpful in referring to this particular type of plant throughout the order.

In North Carolina, the Grade A milk sanitation regulations are enforced by the North Carolina Department of Human Resources, Division of Health Services. The sanitation rules and regulations for North Carolina adopt by reference the Pasteurized Milk Ordinance recommended by the U.S. Public Health Service, Food and Drug Administration. The North Carolina Department of Agriculture, Pure Food and Drug Division, is responsible for checking the accuracy of milk plant butterfat tests of producer milk.

In South Carolina, health and sanitary regulations for producers and plants are enforced by the South Carolina Department of Health and Environmental Control. South Carolina has reciprocal agreements with other states with respect to producer and plant inspections. Butterfat testing regulations and some bulk tank calibration checks are provided by the South Carolina Department of Agriculture Laboratory Division. The Division also certifies weighers and testers employed by the industry.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk, and from which fluid milk products are transferred during the month to a pool distributing plant.

Although proponents' witness testified that DI does not anticipate pooling any milk on the proposed order through a supply plant or a balancing plant, the order should contain such provisions. The record shows that at this time, all milk received at fluid milk plants that are expected to be pool distributing plants are receiving only direct-shipped milk. Nevertheless, the order should contain such a provision because of the possibility that some time in the future, it may be in the best interest of some cooperative association or proprietary handler, as well as the market as a whole, to ship milk to this market through a distant supply plant.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. Because of differences in marketing practices and functions between distributing plants, supply plants and cooperative "balancing" plants, separate performance standards for each type of operation are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to the various types of pool plants. To facilitate the discussion, it is noted that the performance standards for pooling a distributing plant and a supply plant provide that the plant's required association with the market should be measured in terms of the proportion of its milk receipts that are disposed of in the market. It is intended that such receipts would include any producer milk that is diverted from the plant to nonpool plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of the plant's supply of milk and acquires producer milk status by virtue of its association with such plant. Therefore, diverted milk should be included in the total receipts of milk at the pool distributing plant or the pool supply plant from which the milk was diverted for the purpose of determining whether the plant qualifies as a pool plant.

Milk that a cooperative bulk tank handler diverts from a pool plant to a nonpool plant also should be included in such plant's receipts for purposes of determining the plant's pool status. Requiring all diverted milk to be included as a receipt at pool plants from which diverted in determining their pool status will insure the integrity of the order by requiring all producer milk to be associated with pool plants.

Along that same line, milk diverted to a supply plant from an other order plant should not be included as a receipt of milk at the supply plant for the purpose of determining whether the plant qualifies as a pool plant. Since such milk would be considered a part of the total supply of milk at the plant from which diverted, it should not be included in the supply plant's receipts. This will permit milk to be diverted to a supply plant with manufacturing facilities for processing without affecting the pool status of the supply plant. A pool supply plant may represent the nearest available outlet for milk surplus to the fluid needs of another Federal order area.

No similar accommodation needs to be made when milk is diverted to a distributing plant. Since these plants are essentially fluid bottling plants, there really is no reason to divert milk to these plants for any reason other than for bottling purposes. Hence, all milk physically received (including milk diverted to such plant) at the plant should be considered in the plant's total receipts for the purpose of determining whether the distributing plant qualifies as a pool plant.

Provision also is made for a cooperative association to pool a balancing plant that is located in the marketing area or in the State of Virginia. The pooling standard for such a plant would be measured in terms of the cooperative's overall supply function for the market, i.e., the proportion of the cooperative's member producer milk that is delivered to pool distributing plants.

Proponents' witness testified that the Class I utilization of a pool distributing plant should not be less than 60 percent for the months of August through November and January and February. He said that for the remaining months, the Class I utilization should not be less than 40 percent.

As proposed and adopted, a pool distributing plant would be required each month to have route disposition in the marketing area of not less than 15 percent of its total route disposition to be fully regulated. This route disposition requirement would not include filled milk.

At the hearing, a witness for Land-O-Sun Dairies, Inc. (LOS), a handler that is expected to have two plants fully regulated by the Carolina order, testified that the in-area route disposition requirement should be lower than 15 percent. He proposed that the in-area route disposition be not less than 15 percent of the total route disposition (except filled milk) or an average of not less than 5,000 pounds per day (except filled milk).

The witness testified that LOS was concerned because there are fluid milk plants selling substantial volumes of milk in the proposed marketing area that would not be fully regulated plants under the proposed 15 percent in-area distribution requirement. In some cases, he said, this volume could be over 3 million pounds per month. The witness alleged that partially regulated distributing plants have a competitive advantage over fully regulated plants in competing for Class I sales. He said that partially regulated plants serving government installations in the marketing area can use surplus milk to supply these installations.

An in-area monthly route disposition requirement for a pool distributing plant averaging not less than 10,000 pounds per day (except filled milk) was supported at the hearing by a witness for Dairy Fresh, Inc. He said that Dairy Fresh, Inc., was concerned about a fluid milk plant located in Virginia that was selling packaged milk in North Carolina.

A witness for the Milk Commission of the State of Virginia testified that the 5,000 pounds per day modification proposed by LOS is not appropriate. He said that any limit less than 15 percent is too restrictive. The witness stated that a plant located in Virginia was a fully regulated plant under the Middle Atlantic marketing area and that order has a similar 15 percent provision. He said that he expects four fluid milk plants that are located in Virginia, including the one fully regulated under the Middle Atlantic order, to become fully regulated under the Carolina order if the proposed 5,000 pounds per day limitation is adopted.

None of the three nearby Federal milk orders provides for a specific pound limitation on the amount of milk that a distributing plant may sell on routes in the marketing area as one of the conditions for meeting the pooling provisions of such order. The Middle Atlantic order has a less restrictive in-area percentage limitation than the 15 percent total Class I disposition on routes proposed for the Carolina order. Although the Middle Atlantic order's percentage limitation is 15 percent, it is based upon a larger volume of milk than the plant's Class I disposition. It is based upon the plant's Grade A receipts physically received at the plant and diverted from the plant. The Georgia order, too, has a 15-percent limitation on in-area sales but it is based upon the Plant's total Class I disposition, which would include packaged milk distribution on routes as well as bulk Class I sales to other plants. The Tennessee Valley order establishes an in-area sales limitation of 10 percent of the plant's Grade A receipts physically received at the plant as well as milk diverted from the plant. Thus, the pooling requirements on in-area sales under the Tennessee Valley order and the Carolina order are equivalent for a distributing plant that utilizes two-thirds of its total Grade A receipts as Class I milk. The 10-percent requirement applied to a plant's Grade A receipts are more restrictive than the 15-percent requirement applied to a plant's Class I disposition only when a plant's Class I utilization exceeds two-thirds of the plant's total receipts.

The 15 percent in-area route disposition requirements proposed for the Carolina order are similar to the requirements in surrounding Federal orders and are appropriate for the Carolina order. As previously noted, the in-area disposition requirements proposed for the Carolina order are somewhat more restrictive than the current requirements for the Middle Atlantic and Georgia orders. However, the 15 percent in-area requirement when applied to distributing plants that have route disposition in excess of two-thirds of their total receipts is less restrictive than the current requirements of the Tennessee Valley order. Furthermore, there was no opposition to the adoption of the proposed 15 percent requirement.

Several parties proposed, however, that in addition to the 15 percent requirement, an average daily limitation on in-area route disposition of either 5,000 or 10,000 pounds per day should apply. The proposed daily limitations, however, would regulate under the Carolina order four Virginia milk plants. One of the four plants is currently regulated by the Middle Atlantic milk order. Such plant's sales into the Carolinas market are unlikely to be a disruptive factor since the plant is already under Federal regulation. The volume of in-area sales and the total route sales of the other three plants were not presented at the hearing. Accordingly, there is no basis for concluding that in-area sales requirements other than a percentage limitation are needed. Furthermore, these three plants are regulated by the Virginia Milk Commission. It is concluded, therefore, that a sufficient basis does not exist for adopting a poundage limitation on in-area sales at this time.

The witness for proponents testified that a supply plant should qualify for pool status by transferring a certain percentage of its total receipts from dairy farmers to pool distributing plants. He said that for the months of August through November and January and February, 60 percent of the total quantity of milk that is physically received during the month at such plant or diverted therefrom and delivered to pool distributing plants is an appropriate standard based on Class I utilization for this marketing area. During all other months, he said, the requirement for pooling a supply plant should be 40 percent.

The proposed pooling standards for a supply plant contained in the notice of hearing provided that the operator of such plant may include milk diverted from such plant to a pool distributing plant as qualifying shipments in meeting up to one-half of the required shipments.

This provision is contained in the Tennessee Valley milk order, which is the basis for most of the regulatory provisions proposed for the Carolina order. Permitting up to one-half of the milk diverted from a supply plant to a pool distributing plant to be used as qualifying shipments would give the supply plant operator more flexibility in moving milk from the farm to a pool distributing plant. The provision will also allow for the more efficient movement of milk in those situations where there are producers associated with the supply plant who are located nearer to the distributing plant than to the supply plant. The proposed provisions appear to be appropriate for the Carolina order and should be adopted.

Proponents' spokesman testified that a cooperative association's plant should also be able to qualify for pooling as a "balancing plant." He testified that such a plant should be able to qualify by requesting pool plant status provided that 60 percent or more of the cooperative's member producer milk pooled on the proposed order is delivered to pool distributing plants.

Although proponents' witness testified that he did not expect any supply plants or balancing plants to be associated with this market, the order should contain such provisions. A supply plant would be expected to be located some distance from the consumption centers and perform the traditional functions of assembling milk and supplying distributing plants with supplemental milk supplies on heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm at the plant and then transfer it into larger over-the-road tank trucks for transshipment to distributing plants. Therefore, a "supply plant" has been defined on the basis of transfers to pool distributing plants.

The Carolina marketing area, like most Federal marketing areas, does not have any supply plants. The use of farm bulk tanks, refrigerated trucks and a greatly improved highway system have eliminated the need for the services that supply plants provide.

Because South Carolina does not produce enough milk to furnish the needs of its handlers and because North Carolina does not produce much more milk than is needed by its handlers, it is necessary to import milk from sources beyond the two States. Therefore, specific pooling standards for supply plants need to be included in the order in the event such a plant in the future should supply milk for this market to such an extent that it should participate in the marketwide pool.

The record of this proceeding shows that Class I utilization for 1987 and 1988 was about 80 percent or more for all months of these two years. For 1987, the month having the lowest Class I utilization was May (80.6 percent) and the month having the highest Class I utilization was October (88.5 percent). For 1988, the month having the lowest Class I utilization was March (79.7 percent) and the month having the highest Class I uilization was September (85.9 percent).

In view of the high level of Class I utilization in this market, the proposed Class I utilization percentages for a distributing plant and the proposed shipping requirements for a supply plant (60 percent during the months of August through November and January and February and 40 percent in all other months) are appropriate. The neighboring Tennessee Valley marketing area contains the same standards.

A witness for LOS testified that supply plants should have the right to automatic pooling for the months of March through June if the supply plant was a pool plant during each of the preceding months of July through February. This, he said, would be conditioned on the plant continuing to meet the requiremants of a duly constituted health authority. The plant operator, he said, by written application could request that the plant be designated as a nonpool plant.

The LOS witness stated that with the proposed base and excess pay period of March through June, there would be no need for a supply plant to meet a shipping requirement. He said that required shipments from supply plants to distributing plants located in the central markets during the spring months would not be economical or efficient.

Neither at the hearing nor in post-hearing briefs was there any other support for automatic pooling of supply plants.

Automatic pool plant status for supply plants for the months of seasonally higher milk production was not proposed by the proponents. The fluid requirements of distributing plants in this market are such that supply plants, if relied upon for milk for the future, should be required each month to transfer certain percentages of their receipts to distributing plants to participate in the order's marketwide pool. Supply plants likely would need to ship milk to distributing plants in this market even during the months when production tends to be heavier, because during the days of peak bottling demand, all of the milk supply available for this market will be needed to furnish the needs of distributing plants. Therefore, a supply plant's requirements for pool status should apply on a year-round basis.

Although this market, at the present time, receives only direct shipped milk, there could come a time when a balancing plant may be needed to make supplemental shipments. The amount of these shipments, however, may not be in sufficient amounts to qualify the plant as a supply plant. The plant, however, should qualify for pooling as long as the cooperative has demonstrated that it is providing the market as a whole with substantial quantities of milk.

With respect to a balancing plant, a cooperative should be able to move the milk in the least costly manner whether direct shipped or by plant transfer. In the interest of efficiency, the cooperative's deliveries from the farm and/or transfers from the plant should count as qualifying shipments in determining whether a balancing plant meets the minimum delivery requirement. This alternative should provide the cooperative flexibility in moving its milk supplies to customers.

Milk should not be permitted to be associated with the market merely for manufacturing purposes because this reduces returns to producers and discourages the production of an adequate supply of milk by those producers regularly supplying the fluid market. Therefore, it is necessary that the pooling standards for a balancing plant be structured to assure that milk pooled through a balancing plant is a part of the regular market supply. A requirement that the plant be located in the marketing area or in the State of Virginia, along with a requirement that 60 percent of the cooperative's total member producer milk be delivered to pool distributing plants, should assure that milk manufactured at the balancing plant represents reserve milk supplies for this market.

Proponents' witness was asked why the cooperative balancing plant provision for the Carolina order, unlike most other provisions of the proposed order, was not patterned after the Tennessee Valley order. The Tennessee Valley order requires that a cooperative balancing plant must be located in the marketing area.

The witness indicated that such a provision would preclude the pooling of a cooperative balancing plant located in the State of Virginia. He stated that while he was unaware at this time of any cooperative balancing plant or

supply plant that might qualify as a pool plant, he did not want to rule out the possibility that a Virginia plant might be needed to process reserve milk supplies for the Carolina market in the future. Proponents' concern in that regard has been overcome by providing that a cooperative balancing plant may be located in the marketing area or the State of Virginia.

The Carolina Federal Order Committee, representing nine cooperative associations who are proponents of a Federal order for the Carolinas, excepted to the requirement that a cooperative balancing plant be located in the marketing area or the State of Virginia to obtain pool status. They indicate they had supported at the hearing and continue to support no restriction on the location of a cooperative balancing plant.

As noted in the recommended decision, there needs to be some assurance that milk manufactured at the balancing plant represents reserve milk supplies for this market. If a need exists for milk from an area more distant than the marketing area or the State of Virginia, a cooperative has the option of qualifying a supply plant as a pool plant by shipments from such plant.

Arguments by the Committee that no restriction should be placed on the location of a cooperative's balancing plant are without merit. Accordingly, their exception in that regard is hereby denied.

As proposed and adopted, the order should provide for a temporary upward or downward adjustment in the total Class I utilization percentage that a pool distributing plant must meet each month. Also, the order should provide for a temporary upward or downward adjustment of the shipping percentages for supply plants. Such adjustments should be made only if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or to prevent uneconomic shipments of milk to such plants. The adjustments should be limited to 10 percentage points. Under such an arrangement, the Director would investigate the need for the revision of the performance standards for distributing plants and/or supply plants.

There is always a possibility that temporary or emergency situations affecting the market's supply-demand conditions could develop for a short time that would warrant a timely adjustment in these performance standards. Absent the discretionary authority to respond, these changes could be accomplished only through an amendment proceeding or by a suspension action. Amendment proceedings normally take considerable time, and suspension actions often are limited in their effects. Inclusion of provisions to temporarily adjust these performance standards by up to 10 percentage points will provide more flexibility to respond to short-run or emergency marketing situations on a timely basis.

The performance standards adopted herein for the various types of pool plants should be adequate to insure that the milk pooled under the Carolina order is associated with the market's fluid use. They are sufficient to prevent the development of Grade A milk supplies and the association of such supplies with the order solely for the purpose of obtaining milk for other than Class I use. The provisions are adequate considering the proposed market's Class I needs and the historical utilization of producer milk in such area.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. A distributing plant that has route disposition in this marketing area as well as in another marketing area should be regulated in the market in which such plant has the greatest route sales.

A supply plant that meets the shipping requirements of this order and another Federal order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. Also, a supply plant pooled under another Federal order on the basis of its automatic pool plant status would not be a pool plant under the Carolina order even if such plant meets the shipping requirement under this order.

The proposed and adopted order language in this respect complements the neighboring Tennessee Valley and Georgia orders.

In addition, certain types of plant operations that are exempt from the pooling provisions of the order should be specifically excluded from the order's pool plant definition. In that regard, the term "pool plant" should not apply to a producer-handler's plant or a governmental agency plant.

Nonpool plant. The new order should include a definition of "nonpool plant." Under the order, a nonpool plant would mean any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth five specific categories of plants that cannot be pool plants under the order. With the exception of the producer-handler definition, they are adopted essentially as proposed by the order proponents.

A definition of "nonpool plant" is provided in the new order to facilitate the formulation of the various order provisions as they apply to such a plant. The various types of nonpool plants are described further hereinafter.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant operated by a "producer-handler", as defined in this or any other Federal order, would be considered a nonpool plant. Due to the nature of the operation, as discussed later, such a plant is specifically exempt from pool status.

A "partially regulated distributing plant" also would be considered a nonpool plant. A partially regulated distributing plant would be a plant that does not qualify as a pool distributing plant, an other order plant, a producer-handler plant, or a governmental agency plant. Generally, such a plant would be a distributing plant that has route disposition in the defined marketing area, but not to an extent that would qualify it for pool status under the order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or a governmental agency plant. In essence, it is a plant that transfers milk to pool distributing plants, but not to an extent that would qualify it for pool status under the order (less than the specified percentage of its receipts from dairy farmers is transferred to pool distributing plants).

A distributing plant operated by a governmental agency (Federal, State, or local) would also be included among the nonpool plants specified in the order.

A governmental agency which operates its own dairy farm and processing plant and distributes such milk at a plant store, on a college campus, or to the inmates of a governmental institution should not be fully regulated under the order. Such operations are normally not a competitive factor in the overall market and for this reason should not be pooled.

Three governmental agencies whose dairy operations would qualify as nonpool plants under the order are North Carolina State University at Raleigh, Clemson University, and the South Carolina prison operation, which has 2 dairy herds and a processing plant at Watsree.

The proposed "exempt plant" definition is not adopted in this decision. This provision would have exempted a producer-handler plant that has monthly

route disposition of 150,000 pounds or less.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of one or more pool plants;

(2) A cooperative association with respect to producer milk that is picked up at the farm and delivered to a nonpool plant as diverted milk for the cooperative's account;

(3) A cooperative association with respect to milk of a producer that is picked up at the farm and delivered to a pool plant of another handler for the cooperative's account;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area; and

(7) The operator of an unregulated supply plant.

All of the categories of handlers listed above, with the exception of the operator of an unregulated supply plant, were proposed by the order proponents and are common to most milk orders. Each person who may have a reporting requirement or may incur a financial obligation under the order should be designated a handler. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator. For this reason, the operator of an unregulated supply plant and the other persons listed above should be defined as handlers under the new order.

A pool plant operator who receives milk from producers should be the responsible handler for such milk. As the responsible handler, such person should report, in the detail prescribed by the market administrator, the quantities of milk received from each producer and each other source. Such operator also should be responsible for reporting certain other information deemed necessary by the market administrator in order to determine the utilization of producer milk. Such handlers should be responsible for making payments to producers, cooperative associations and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant or diverted to a nonpool plant. In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their milk among distributing plants.

In the event a plant operator is receiving milk from a cooperative association, the cooperative is the only party that has the opportunity to measure and sample the milk of individual member producers that is received at the plant. Therefore, in the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

The pool plant operator's obligation on milk purchased from a cooperative as a "bulk tank handler" is the same as for producer milk received directly from the farm of an individual producer. The plant operator must account to the pool for the milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator, in turn, settles with the cooperative on the basis of the uniform price for the milk. Under this arrangement, the pool plant operator is obligated to the producer-settlement fund, the administrative fund and the cooperative on the quantity of milk the cooperative delivers to such handler's pool plant directly from the farms of producers. The cooperative, in turn, is obligated to the producer-settlement fund and administrative fund on only that portion of milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The order provides that a cooperative could be a handler on the milk of a producer which it diverts for its account from a pool plant to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative expense funds on the diverted milk. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation on such milk under the order.

This order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with regard to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

Producer-handler. The order should exempt "producer-handlers" from the pricing and pooling provisions of the order. The producer-handler definition of the Tennessee Valley milk order, with some modification in the quantity of fluid milk products that may be acquired from other sources, is typical of the producer-handler definition in Federal milk orders in the southeastern United States and should be adopted herein.

Under proponents' producer-handler proposal, operations disposing of more than 150,000 pounds per month of fluid milk products that had both production and processing facilities would be limited to disposing of fluid milk products directly to consumers through home delivery retail routes or through a retail store located on the same property as the milk processing plant in order to qualify as a producer-handler. Any other type of distribution would result in a disqualification of producer-handler status, which proponents claimed would recognize those points in the marketing channel where a pricing advantage over regulated handlers contributes to disorderly marketing. In addition, the proposal would prohibit a producer-handler from having a financial interest in any other handler or dairy farm operation. It also would require that any producer-handler who loses such status meet all the conditions for such status for a period of one month before reacquiring producer-handler status. The purpose of these conditions is to preclude a producer-handler from changing its regulatory status to fit sales conditions or change its organizational structure to gain benefits at the expense of others.

The proposed definition would limit a producer-handler's purchase of fluid milk products from pool plants to the lesser of five percent of Class I disposition or 5,000 pounds per month. In addition, the proposals would require that producer-handlers pay the administrative assessment that is applicable to handlers.

It was the position of proponents that since there are no producer-handlers located within the proposed marketing area, now is an appropriate time to incorporate the proposed producer-handler provision as part of the proposed order. As a part of the nonpool plant provision, proponents proposed an exempt plant definition that would exempt from the pricing and pooling provisions those producer-handlers with monthly route disposition of 150,000 pounds or less.

A significant proportion of proponent's testimony was centered on the legislative history of the Act as it relates to the authority to regulate handlers who sell fluid milk products derived solely from own-farm production. Proponents contended that it was the intent of Congress to fully regulate such type of handlers who are large enough to have an impact in the marketplace and that only relatively small operations were intended to be exempt from regulation. Proponents testified that the purpose of the Act, which they contend is to stabilize marketing conditions for producers, is primarily accomplished by establishing classified pricing and by the pooling of returns from the sale of milk among all producers. They further testified that, to the extent that unpriced milk is free to enter the regulatory scheme, the objective of the Act—to promote orderly marketing—is frustrated. Furthermore, they contend that a failure to regulate large producer-handlers results in nonuniform prices to handlers, which they claim also is contrary to the requirements of the Act. Thus, they conclude that inequities exist between fully regulated handlers and exempt producer-handlers, which they contend caused the very same market disruption that is intended to be rectified by Federal regulation.

Proponents maintain that the proposals are consistent with the intent of Congress in that relatively small operations would continue to be exempt from full regulation. Also, producer-handlers, however large they might be, would also be exempt from full regulation if their sales of fluid milk products were not in direct competition with those of regulated handlers. Proponents testified that disruptive competition would not result to the extent that sales of large producer-handlers are restricted to home delivery and to sales from a plant store on the same premises as the processing plant. Proponents contend, however, that to the extent that sales are made in the same commercial channels used by regulated handlers, the same regulatory provisions should apply to producer-handlers as to handlers. Otherwise, proponents contend, producer-handlers who have a significant pricing advantage can disrupt the marketing of milk to the detriment of regulated handlers and to the producers who supply the milk requirements of the market.

Proponents testified that it is necessary, as a result of changes in marketing conditions, to alleviate the potential for market disorder that may result because of unfair competition between regulated handlers and exempt producer-handlers. Proponents contend that with the trend toward fewer and larger producers and handlers, there is an increasing potential for the vertical integration of production and processing operations of sufficient size to be disruptive factors in Federal order markets.

Experience under Federal orders has demonstrated that effective regulation can be achieved without the full regulation of those persons who produce, process, and distribute essentially only the milk produced on their own farms and who buy no milk from other dairy farmers or plants other than pool plants and other order plants. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operations in disposing of any daily or seasonal surplus they may produce.

As adopted herein, a producer-handler is any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than such person's own farm production, pool plants, and other order plants. Any such receipts from pool plants and other order plants during the month may not exceed the lesser of five percent of Class I disposition or 5,000 pounds per month. A producer-handler may not dispose of any other source milk in the form of a fluid milk product except through the addition of nonfat milk solids to fortify fluid milk products received from such person's own farm, pool plants or other order plants.

To qualify as a producer-handler, such person must provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for such person's own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

As long as the producer-handler retains exempt status, the only obligation imposed on such person by the order is to keep records, to file reports with the market administrator and to permit their verification. The purpose of such reports is to permit the market administrator to verify that the operation continues to be one of a bona fide producer-handler. Such reports are necessary regardless of the size of the producer-handler operation.

Under the order, a producer-handler must provide milk for such person's processing operation essentially only from such person's own-farm production. The operations of processors with own-farm production who rely on other plants for substantial supplemental supplies either in bulk or packaged form are not significantly

different from the operations conducted by pool handlers. In addition, such individuals do not assume the risk or cost of providing a full supply for their own needs. If such operations are not pooled, the pool does not receive the benefit of their Class I sales but acts as a supply balance by carrying their necessary reserve milk supplies.

Notwithstanding the above conclusion, it is appropriate that producer-handlers be permitted some tolerance for purchasing fluid milk products from other plants. A limitation of the lesser of five percent of Class I disposition or 5,000 pounds per month on a producer-handler's purchases from pool plants and other order plants will insure against unintentional involvement in regulation of producer-handlers as a group while at the same time deterring larger handlers with own-farm production from evading the pooling of such production by seeking producer-handler status.

Except for the limited privilege of using receipts from other order plants as described above, the provisions of the order preclude a producer-handler from using other source milk for Class I, except nonfat dry milk used solely to increase the nonfat milk solids content of the fluid milk products the producer-handler processes. Such provisions are necessary since a producer-handler to gain that status for all practical purposes must carry on a self-contained operation. If such an individual were permitted to reconstitute or otherwise use other source milk as a source of supplemental supplies, there would be no basis for distinguishing the operations of such individuals from the operations conducted by pool handlers. Furthermore, since a producer-handler is not regulated, and therefore does not incur a pool obligation, it is not appropriate that such person have access to supplemental supplies other than from fully regulated sources. In the absence of such a requirement, a producer-handler could find it advantageous to reconstitute nonfat dry milk, for example, and sell it in fluid form to consumers. With nonfat dry milk carrying only a surplus milk value, competing regulated handlers would be at a disadvantage on their Class I sales.

As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated upon the basic self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or such person's plant. All resources necessary for such person's own farm production of milk must be such person's personal risk. Similarly, all risks associated with the operation of the processing plant must be that of the producer-handler.

Although producer-handlers have not been fully regulated as a general practice, the Act provides the authority to regulate handlers of milk to carry out the purposes of the Act. With respect to producer-handlers, guidelines from the legislative history indicate that there is authority to regulate such operations if they are so large as to disrupt the market for producers. However, on the basis of the overall history of the treatment of producer-handlers, a size consideration, in and of itself, is not particularly relevant to the issue. Even large operations in relation to the markets they serve have continued to be exempt from full regulation. Consequently, any decision to fully regulate a producer-handler type operation must be supported by substantial evidence of the existence of disorderly marketing that is a direct result of producer-handler activity.

In the Carolina market, there are no producer-handlers. Obviously, the disorderly marketing that exists in the Carolinas is not a result of producer-handler activity. Consequently, no basis exists for fully regulating a producer-handler operation on the basis of this record.

The Carolina Federal Order Committee excepted to the Department's decision not to adopt their proposed producer-handler definition. The exception reiterates arguments they presented at the hearing and contains no basis for changing the Department's findings set forth in the recommended decision. Accordingly, the exception is denied.

Producer—The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows the one proposed and supported by the order proponents.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank handler for delivery to a pool plant. Producer status also should be accorded to a dairy farmer who has established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator, either for fluid use or for surplus disposal.

To establish a producer's association with the market and to insure the marketability of such producer's milk, it is reasonable to require that a dairy farmer's milk be received at a pool plant each month to qualify such dairy farmer's milk for diversion to a nonpool plant. The "touch base" requirement is discussed more fully in the findings dealing with the definition of "producer milk."

The order would provide an exemption for producer-handler operations and for plants operated by a governmental agency. Since these operations are exempt from the order's pricing and pooling provisions, milk which is excess to the needs of such operators should not be treated as producer milk when it is moved directly from the farms of such operators to a pool plant. Accordingly, the producer definition adopted herein would specifically exclude producer-handlers and governmental agency plants. Any such milk delivered to a pool plant from such operations would be other source milk.

In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if any portion of such person's milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein, except for the "touch base" provision, follows the one proposed and supported by the proponents.

"Producer milk" would include milk of a producer that is (1) received at a pool plant directly from such producer by the operator of the plant; (2) received by a cooperative association acting as a bulk tank handler; (3) diverted by a cooperative association or a pool plant operator from a pool plant to a nonpool plant that is not a producer-handler plant; or (4) diverted from a pool plant for the account of the handler operating such plant to another pool plant.

The order should provide for "diversions" to nonpool plants by pool

plant operators and cooperative associations. When milk is not needed at a pool plant, it usually is diverted to a nonpool plant where it is used to produce manufactured milk products. Diversion limitations are necessary, however, to insure that the pool distributing plants in the market are adequately supplied first. A portion of an individual producer's milk would have to be received at a pool plant each month (touch base provision) to qualify the producer's milk for diversion to nonpool plants during the month. Also, pool plant operators and cooperative associations would be limited in the total quantity of milk that they can divert during the months of seasonally short milk production.

As proposed and adopted, pool plant operators and cooperative associations should be permitted to divert during the months of July through November and January and February an amount equal to one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler during the month.

The order would require that each producer's milk be received at a pool plant each month. This "touch base" provision would require that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February.

Proponents' witness testified that each individual producer should be required to deliver to a pool plant at least 4 days' milk production in each of the months of March through June and 10 day's production in each of the other months of July through February. This requirement, he said, is necessary so as to have some direct association between the producer each month and a pool plant. The witness said that without a "touch-base" requirement milk of a producer could be pooled without ever having to come to a pool plant.

The spokesman for the proponent testified that 10 days' production is a reasonable minimum number of days for associating an individual producer's milk with the marketwide pool during the short production months. He said that the demand for milk at distributing plants is at its highest on Wednesday, Thursday and Friday of each week (12 days per month). Without a delivery requirement for individual producers, he said, a pool plant operator could associate enough milk with the Carolina pool so that the plant's utilization would always be at the minimum permitted under the order. He said that marketing conditions in the proposed area support 10 days of delivery during the months of short production. In his view, the small amount of inconvenience and cost that might be associated with bringing milk of producers who are normally associated with the proposed Carolina order on the number of days required would be minimal as compared to the cost (reduction in the blend price) of having milk associated with the order pool to the extent that the supply plants or distributing plants could pool milk to the maximum allowed and still meet the performance requirements.

Proponents' witness testified that the proposed diversion limits are appropriate for this market because Class I utilization is expected to exceed 80 percent during the months of July through November and January and February. He said that such a high utilization requires that the milk pooled on the order during this period be available for fluid use. Proponents' witness said that their proposed diversion limits will, however, permit the efficient disposition of milk that is not required at pool plants for fluid use.

The limits on total diversions of producer milk to nonpool plants by a handler should be established at a rate that will accommodate the market's need to efficiently dispose of milk not needed for fluid use. At the same time, it is necessary to assure that milk supplies will be available for fluid use.

Based on the record, it is concluded that handlers' diversions of milk to nonpool plants should not exceed an amount equal to one-fourth of the milk physically received at pool plants during the months of July through November and January and February.

A pool plant operator, other than a cooperative association, should be allowed to divert any milk that is not under the control of a cooperative that is diverting producer milk during the month. The total quantity of milk that such plant operator may divert during any month should be limited to one-fourth of the producer milk physically received at such plant during the month. Also, a cooperative association should be allowed to divert milk for its account. In this case, the percentage limit should be one-fourth of the cooperative association's producer milk that is delivered to and physically received at pool plants during the month.

The record indicates that the diversion allowance proposed and adopted is expected to accommodate the efficient movement of milk supplies in excess of the market's fluid needs by handlers. Having set that allowance at an appropriate level, the individual producer "touch-base" standard should be set at a minimal level in order to allow handlers the maximum flexibility to receive milk from producers in the least costly manner.

Handlers should be able to move producer supplies that are under their control in the most efficient manner. Producers supplying a particular pool plant can be widely dispersed. Because of the various farm locations, handlers may receive milk from several farm routes, some of which likely would be nearer to the plant than others. Therefore, it is more economical to receive the milk of those producers located closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when their milk is needed. On the other hand, a handler wanting to dispose of reserve milk would want to divert to nonpool manufacturing plants the milk of the distant producers more often than the milk of those producers who are located closest to the pool plant, assuming that the manufacturing plant is located further from the metropolitan centers than distributing pool plants.

It is reasonable, however, that the order include a minimal "touch base" provision that would require each producer's milk to be received at a pool plant each month. As indicated previously, proponents proposed that each individual producer deliver his milk to a pool plant at least 4 days' production in each of the months of March through June and 10 days' production in each of the other months of July through February.

The witness for LOS proposed that each individual producer deliver to a pool plant at least 2 days' production in each of the months of March through June and 6 days' production in each of the other months of July through February. He said that the proposed marketing area is limited in the number of manufacturing plants that can handle surplus milk or balance the supply for fluid needs. The witness said that the additional milk that is needed for fluid use in this market from time to time is produced in Tennessee, Kentucky and Virginia. This, he said, should be considered in determining the appropriate "touch-base". In his view, proponents' 10 days and 4 days proposal, coupled with a limited diversion provision, would result in the moving of distant producers to the central market and at the same time moving other producers located closer to pool distributing plants back out to manufacturing plants just to comply with the "touch base" requirement.

It is concluded that a 6 days and 2 days "touch base" is more appropriate for this market. The neighboring Tennessee Valley order contains a 6

days and 2 days "touch base" provision. Such order also provides that the total quantity of milk that may be diverted by a cooperative association or proprietary handler may not exceed one-fourth of the milk that was received at or diverted from pool plants as producer milk of such handler during months of seasonally short production. Since the Carolina order would likewise apply a percentage limitation on the quantity of milk that may be diverted to nonpool plants as producer milk during the months when production is short relative to demand for milk for fluid use, there appears to be no reason to require other than a minimal producer "touch-base" requirement during such period. Therefore, a touch-base requirement of 6 days' production (three deliveries for producers whose milk is picked up every other day) each month of July through February is reasonable. Such a standard is adequate to establish that a producer is eligible to have milk diverted to a nonpool plant during the months when production is short relative to the demand for milk for fluid use.

Only 2 days' production of each producer would have to be received at a pool plant during the months of March through June. This is the period when the market's fluid needs generally would require a lesser proportion of the available milk supply. Thus, the 2 days' production requirement should provide the flexibility needed during the months of March through June to dispose of reserve milk supplies that are not needed for fluid use.

The Carolina Federal Order Committee excepted to the Department's decision to use 6-day and 2-day "touch base" requirements instead of the 10-day and 4-day requirements proposed by the Committee. They argue that the "touch base" requirements of the Tennessee Valley order are not appropriate for the Carolina market because this market will have a higher utilization than the Tennessee Valley market.

As previously noted, the requirement that additional days of production be delivered to pool plants to qualify the milk of dairy farmers for delivery to nonpool plants as producer milk could result in uneconomic movements of milk. If there is a need to limit the amount of milk that may be associated with the market by diversions to nonpool plants, it should be accomplished by reducing the percentage of milk that may be diverted as producer milk to nonpool plants. Accordingly, the Committee's exception to the "touch base" requirements is hereby denied.

The order should provide a procedure to be followed for determining pool status of the milk if a pool plant operator or cooperative association diverts milk in excess of the percentage allowance specified in the order. As adopted herein, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. In such cases, the diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such designation, no milk diverted by the handler would be producer milk. The order proponents proposed this method of identifying over-diverted milk.

The order should also provide a method to determine which producers' milk should not be qualified as producer milk when a cooperative's diversions from a pool plant to nonpool plants would cause such plant to lose its pool status. In such cases, the cooperative should be responsible for identifying which dairy farmers' milk would not be producer milk. Because the cooperative is the accountable handler to the pool for the producers' milk, such handler is in the best position to identify those producer deliveries that would not be producer milk for purposes of assuring continued pool status for the plant involved.

If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, no milk diverted by the cooperative to nonpool plants would be considered producer milk. This procedure is consistent with the method used to specify which dairy farmer deliveries should not be considered producer milk in excess of the percentage allowance specified in the order.

As proposed by proponents of the order, all diverted milk should be priced at the location of the plant to which the milk was diverted. Pricing diverted milk at the location of the plant where such milk is physically received removes the possibility of subsidizing distant producers when their milk is diverted to distant manufacturing plants. This would occur if such producers received a blend price f.o.b. the city plant (as if the milk had actually moved to the city) when in fact no transportation cost to the city had been incurred because the milk was diverted to a manufacturing plant located near the producer's farm.

Since the proposed order would allow limited quantities of milk that are diverted to count as qualifying shipments for the purposes of pooling a supply plant, the order also should provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a plant operator who wants to retain regular producers on the plant's payroll for the entire month would have to physically receive the milk of such producers into the plant (so that it will be considered "producer milk"), then pump it back into the truck and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of determining whether such plants have met the requirements for pooling under the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The order provides that milk which is transferred from one distributing plant to another shall be included in the receipts of both the transferor plant and the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but are excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

Other source milk. An other source milk definition should be adopted for the new Carolina order. In addition to milk received from producers, a regulated pool plant may receive milk or milk products from other sources. An "other source milk" definition will serve to specifically identify the various categories of such receipts.

The order proponent suggested that the "other source milk" definition that was adopted when a uniform milk classification plan was provided for 39 Federal order markets on August 1, 1974, be included in the new order. There was no opposition to this proposal, which is adopted.

As provided herein, "other source milk" would be all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also would include a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of "other source milk." Receipts of milk products (other than fluid milk products or fluid cream products) for which the handler fails to establish a disposition also would be included under the "other source milk" definition.

Although fluid cream products would be Class II products and would not be included in the order's fluid milk product definition, bulk fluid cream products should be treated in the same manner as fluid milk products for purposes of applying the other source milk definition. This procedure will facilitate the application of the other provisions of the order.

Receipts of fluid cream products, eggnog or yogurt (or any filled product resembling such products) in packaged form from other plants would be considered other source milk. These products are Class II under the classification plan provided for this market. Although no handler obligation would apply under the order provisions adopted herein with respect to such receipts, it is desirable for accounting purposes that receipts of packaged Class II products be defined as other source milk. This accounting technique will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest class of utilization as is provided in some cases for other types of other source milk.

The order should provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant be considered as other source milk. For accounting purposes, such manufactured products would include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the provisions adopted herein directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

The order also should provide that products manufactured in a pool plant during the month and then reprocessed, converted into or combined with another product in the same plant during the same month not be defined as other source milk. For example, assume that a handler makes condensed skim milk from producer milk and then uses the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Any disappearance of manufactured milk products for which the handler fails to establish a disposition would be considered other source milk. It is reasonable that each handler be required to account for all milk and milk products received or processed at the handler's regulated plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over competitors who properly account for all of their receipts of milk and milk products. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Filled milk. Filled milk should be defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

This definition and the treatment afforded such products under the order are consistent with the provisions and treatment of filled milk adopted in the Assistant Secretary's decision for all Federal orders issued October 13, 1989 (54 FR 16661). Official notice was taken of the 1989 decision at the hearing held April 17-20 and April 24-25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1989 decision are equally applicable under current marketing conditions in the proposed marketing area.

Cooperative association. A definition of "cooperative association" should be adopted as suggested by the order proponents.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or milk products for, its members.

Defining such an organization of producers will facilitate the formulation of the various other order provisions as they apply to such an association of producers.

(b) *Classification of Milk*

The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponents, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area for fluid consumption are required to be produced in compliance with the inspection requirements of a duly constituted regulatory agency. This is in contrast to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting high-quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a "uniform" price that will

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encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of as filled milk in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under this and all other Federal orders is set forth in the earlier findings concerning the definition of filled milk.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) and evaporated or condensed skim milk (plain or sweetened) in consumer-type packages. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products, but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk should also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it should include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponents and is identical to the uniform classification plan contained in many of the other Federal order markets. The plan was based on exhaustive hearings held on this issue in 1971 for 39 markets. The final decision on the uniform classification plan was issued February 19, 1974 (39 FR 9012). Official notice was taken of this decision at the hearing held April 17–20 and April 24–25, 1989, for the Carolina market. It contains a detailed discussion of the classification issue. Official notice also was taken of the Assistant Secretary's decision issued July 17, 1975 (40 FR 30119), which modified certain provisions originally adopted in the 39-market decision.

Proponents testified that this classification system (as modified in 1975) would be fully appropriate for the proposed order. Adoption of the uniform classification plan in this new order will coordinate these essential provisions with the same provisions under most other orders.

The record evidence indicates that the findings and conclusions of the above-mentioned decisions are equally applicable under current marketing conditions in the proposed marketing area.

Classification of shrinkage. The Carolina order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess should be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for a cooperative association handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to a nonpool plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative bulk tank deliveries to pool plants when similar handling is involved.

This division of the 2 percent shrinkage allowance, both in the case of deliveries from cooperative bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies. Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will promote plant efficiency in the Carolina market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

Transfers from a cooperative bulk tank handler to the pool plant of another handler should be assigned classification pro rata with producer milk received at the plant.

The provisions governing transfers between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant or an other order plant in the form of a fluid milk product or transferred from a pool plant to an other order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions should apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the Carolina market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers should be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Carolina order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers from a pool plant to a producer-handler or in transfers or diversions from a pool plant to a governmental agency plant. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of such operations.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler or a governmental agency plant should be assigned to the extent possible to the receiving plant's Class III use, and then to Class II use. If the producer-handler or governmental agency plant does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available to the market administrator books and records for the purpose of verifying the receipts and utilization of milk and milk products at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Carolina marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Carolina pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Carolina order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Carolina order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Carolina order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

The order proponents testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the Assistant Secretary's decision dealing with the classification, allocation and pricing of other source milk issued July 7, 1964 (29 FR 9110), commonly known as the "compensatory payment" decision.

The "compensatory payment" decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponents' representative testified that the method developed for all Federal milk marketing orders as discussed in the 1964 decision is appropriate in the proposed marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or in any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from any other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

One of the witnesses testifying for Coburg Dairy proposed that the provisions of the Carolina order be modified with respect to the charge imposed upon a handler that uses a non-fluid milk product to produce a fluid milk product. The charge proposed for the Carolina order is the difference between the Class I price and the Class III price.

Coburg's witness indicated that with the assignment of other source milk to Class III and the imposition of a rate of payment at the difference between the Class I and the Class III price, the total cost to a handler for a fluid milk product reconstituted from a non-fluid milk product will, under normal circumstances, exceed the price set under the Federal milk order. This occurs because the costs associated with the manufacture, marketing, and transporting of the non-fluid milk product also accrue to the handler.

The witness proposed two alternative methods of equating the cost of reconstituted milk with the cost of milk obtained from producers in the local market. One alternative would allow for the reclassification in the market of origin of the non-fluid milk product used to reconstitute the fluid milk product as an option for the handler who can establish the source of the non-fluid milk product as an other order plant. The second alternative would be to base the rate of payment on the difference between the market price of the nonfat milk solids and the Class I value of such solids in the market of origin.

Coburg's witness also indicated that recognition should be given to the likelihood that if reconstitution takes place today, it will be from concentrated milk manufactured by a reverse osmosis process. He noted that such concentrated milk product is classified as Class II milk in most Federal milk orders. He contended that if the concentrated milk product were reconstituted into a fluid milk product, a charge at the difference between the Class III price and the Class I price would not be appropriate.

The reconstitution charge adopted in the Carolina order is the same as the one applicable in most other Federal milk orders. Thus, if the reconstitution charge were modified in the Carolina order, there would not be uniformity of classification of the reconstituted milk product with other Federal milk orders. It is concluded, therefore, that a reconstitution charge at the difference between the Class III and the Class I price should apply in the Carolina order until such time that this issue can be reviewed on a national basis.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt and eggnog on hand in packaged form at the end of the month

be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new order, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Carolina market, minimum class prices for producers should be established at levels that reflect economic conditions affecting the market supply and demand for milk. Such prices should result in returns to producers that will encourage a supply of milk sufficient to meet the fluid needs of the market, plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price should be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing milk price to compensate producers for at least a part of the cost of delivering Grade A milk to regulated handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

The class prices and uniform producer prices for milk should be announced on a per hundredweight basis. Because the order would not establish different values for butterfat in each class, the class prices would not be announced for a particular butterfat content of milk. Uniform prices to producers, however, would be announced on a 3.5 percent butterfat basis, and handlers would be required to pay producers for their milk at the uniform price adjusted by a butterfat differential to reflect any variation from 3.5 percent in the butterfat content of their milk. These provisions are consistent with such provisions widely applicable throughout the Federal order system.

Class I price and in-area location adjustments. The Class I price for the Carolina market should be computed by adding a Class I differential of $3.08 to the "basic formula price" for the second preceding month. The Class I price applicable at specific locations within the marketing area should be determined by adjusting the announced Class I price by the location adjustment established for the zone in which a plant is located. The in-area zones and applicable location adjustments are defined as follows:

Northwestern Zone—Minus 15 cents ($2.93)

North Carolina Counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin and Yancey.

Base Zone—No Adjustment ($3.08)

North Carolina Counties: Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake and Warren.

South Carolina Counties: Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union and York.

Southeastern Zone—Plus 15 cents ($3.23)

North Carolina Counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne and Wilson.

South Carolina Counties: Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Dillon, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter and Williamsburg.

The basic formula price should be the average pay price for manufacturing grade milk at plants in the States of Minnesota and Wisconsin. The price for milk used for fluid purposes in the market has a direct relationship to the prices paid for milk used for manufacturing purposes. The Minnesota-Wisconsin price, or "M–W" price, used in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and is equally appropriate for use in the Carolina order. The differential over manufacturing milk prices is necessary to reflect the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to market.

Proponents of the order proposed that the Minnesota-Wisconsin manufacturing milk price be the basic formula price each month. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk f.o.b. the plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the 5th day of the following month.

The proponents of the order proposed that the base zone include the metropolitan areas of Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte, North Carolina, as well as Greenville, South Carolina, where no location adjustment would apply. The proposed in-area zone pricing system would have a minus 15-cent adjustment to the northwest, a plus 15-cent adjustment to the southeast, and a plus 30-cent adjustment in the southern zone. The southern zone would include the South Carolina counties of Allendale, Beaufort, Berkeley, Charleston, Colleton, Dorchester, Hampton and Jasper.

Proponents' witness testified that a $3.08 Class I differential should apply in the base zone, which is the major population corridor of the proposed marketing area. The $3.08 Class I differential, he said, is the same as contained in the Georgia Federal order for the Atlanta and Athens areas. He said that the $3.08 Class I differential is 31 cents higher than the differential for Bristol, Virginia, and Kingsport and Knoxville, Tennessee, under the Tennessee Valley Federal order. The witness said that the $3.08 Class I differential is 5 cents higher than the Class I differential applicable at Washington, DC, under the Middle Atlantic Federal order.

The spokesman for proponents testified that the proposed graduated pricing system covers a marketing area of approximately 250 miles and reflects a location adjustment rate of about 2 cents per hundredweight per 10 miles. He said that the proposed pricing structure will provide the proper balance between adequate milk supplies and the necessary alignment of prices, not only with nearby and adjacent Federal order areas, but also among handlers located within the proposed Carolina marketing area.

At the hearing, opposition testimony to the proposed pricing zones was presented by the Commissioner of Agriculture for South Carolina, Regis Milk Company (Regis), Coburg Dairy (Coburg) and Edisto Milk Producers Association (Edisto).

The Commissioner of Agriculture for South Carolina expressed the view that only two pricing zones should apply to South Carolina and that the southern zone should be eliminated. The witness for Regis, which is located in Charleston, South Carolina, testified that there should be only one zone for South Carolina. He said that Regis sells about 90 percent of its packaged milk in the proposed southeastern and base zones. The proposed plus location adjustment for the southeastern zone, he said, would put their operation (in the southern zone) at about a one to two cent per gallon disadvantage with distributing plants located in the southeastern zone.

The President of Coburg testified that Coburg, which is in Charleston, South Carolina, distributes packaged milk throughout most of South Carolina and into Savannah, Georgia. He said that if the Department believes that a location adjustment is necessary in South Carolina, the proposed southeastern and southern zones should be combined into one zone with no more than a 10-cent higher price than the base zone. The proposed northwestern zone, he said, should be combined with the base zone. The witness said that the proposed plus 30-cent location adjustment for the southern zone would be disruptive to Coburg. Milk distribution, he said, is dominated by large grocery chains with warehouses and some of these grocery chains have distributing plants located in the proposed lower-priced zones.

Another witness for Coburg testified that location adjustments have done little to move bulk milk from production areas to metropolitan centers in recent years, but continue to help align minimum prices among competitors regulated by different Federal milk orders. In his view, location adjustments for South Carolina would not be appropriate, in part, because South Carolina has been without zone pricing and competition with distributing plants to the south and east is minimal. He said that Coburg does not compete with any distributing plant to the east or south of Charleston. Charleston, he said, is the main distribution area for Coburg and that its nearest competitor under another Federal order is located about 200 miles southwest of Charleston and that they compete in the Savannah, Georgia, area. The witness said that the proposed southeastern and southern zones should be combined and that the price should be $3.18, which is the Class I price applicable to the central zone of the Georgia order. He said that Coburg receives about 75 percent of its milk supply from farms located within 75 miles of its plant. These farms, he said, are located within the proposed plus 15-cent location adjustment zone. The witness said that Coburg pays the same price to its supplier (Edisto) as is paid by other buyers of milk from producers located in the central South Carolina area.

The witness for Edisto testified in support of Coburg's position. He said that the order proponents' proposed zoning in the short-run may benefit Edisto. However, in the long-run he believes that Edisto's milk supply would not be as attractive to Coburg. He said Edisto then would have to incur higher hauling costs to move their milk production to more distant plants.

This decision provides for three pricing zones rather than the proposed four pricing zones. The proposed southeastern and southern zones are combined into one zone, the southeastern zone, with an applicable plus 15-cent location adjustment.

Proponents of a higher price for the southern zone have not made a case for the proposed pricing on the basis that a higher price is needed to obtain a milk supply for plants in the Charleston area or to align Class I prices in the southern zone with a neighboring Federal order market.

There is no indication on this record that handlers located in the proposed southern zone are paying any more for milk than their competitors who are located in the proposed plus 15-cent location adjustment zone. Furthermore, if supplemental milk supplies are needed by one of the plants at Charleston, South Carolina, the plants should be able to procure a milk supply at no greater cost than a plant located at Goldsboro, North Carolina, which is located within the proposed plus 15-cent location adjustment zone. In that regard, it is noted that the Charleston plants are located nearer to alternative milk supply locations in the Knoxville, Tennessee, area or Asheville, North Carolina, area than the Goldsboro plant. (The Household Goods Carrier Bureau, Guide No. 13, of which official notice is taken, indicates that the highway mileages from Knoxville to Charleston and Goldsboro are 362 and 384, respectively, and from Asheville to Charleston and Goldsboro are 257 and 279, respectively.)

A plus 15-cent location adjustment for plants in the southeastern zone (a $3.23 Class I differential) also provides reasonable alignment with the $3.36 Class I differential applicable at the Savannah, Georgia, plant that is regulated under the Georgia order. The distance between Charleston and Savannah according to the mileage guide officially noticed is 105 miles.

The pricing structure provided under the 3 zones should result in an adequate milk supply for the various population centers of the two States. The pricing zones increase from the northwest to the southeast in recognition that supplemental milk supplies for the Carolinas are obtained primarily from dairy farmers in Kentucky and Tennessee. The 15-cent incremental increases from zone to zone should result in an adequate milk supply for plants in the 3 zones. The proposed zone pricing should make dairy farmers in Kentucky and Tennessee indifferent as to whether their milk is delivered to plants in the northwestern zone, the base zone or the southeastern zone by providing additional compensation to them for the added cost of transporting their milk to the progressively more distant plants in the marketing area.

The Carolina Federal Order Committee excepted to the Department's decision to combine the proposed "Southern" and "Southeastern" zones into a single zone. They indicated that milk to meet the needs of Charleston, South Carolina, handlers must be obtained from supplies located in other price zones to the west and/or northwest.

The arguments presented in the exception were also presented at the hearing. Accordingly, such arguments were fully considered in formulating the recommended decision to combine the proposed "Southern" and "Southeastern" zones into a single zone. The exception to combining the two zones is hereby denied.

Out-of-area location adjustments. The Class I price at plant locations outside the marketing area should be the base zone price plus or minus the following location adjustments:

(1) For a plant located within the Tennessee Valley Federal order marketing area, except Kentucky and West Virginia counties, the adjustment should be minus 31 cents;

(2) For a plant located within the State of Florida, the adjustment should be a plus 50 cents;

(3) For a plant located outside the marketing area and the areas specified in paragraphs (1) and (2) above and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment should be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(4) For a plant located outside the area specified in paragraph (1) above and in the State of Virginia, the adjustment should be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest; and

(5) For a plant located outside the marketing area and the areas specified in paragraphs (1), (2), (3), and (4) above, the adjustment should be minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

The out-of-area location adjustments provided herein should reasonably align any plant that might be pooled on the Carolina Federal order with nearby Federal orders. For a plant located in one of the Tennessee counties included in the marketing area of the Tennessee Valley Federal milk order, the out-of-area adjustment provided herein results in the same Class I price such plant would have if regulated under the Tennessee Valley order. A plant located in the State of Florida would have the same Class I differential under the Carolina order that a plant located in the Upper Florida marketing area would have under the Upper Florida order. For plants located in Georgia or Virginia (exclusive of the Virginia counties in the Tennessee Valley marketing area), the location adjustment applicable at such plants would be based upon the location adjustments at the nearer of certain selected cities in South Carolina and North Carolina, respectively. In general, such pricing should result in a Class I price equivalent to the handler's nearest competitor located in the Carolina marketing area.

For plants located outside the State of Virginia and in areas north of the southern boundary of Tennessee (except the Tennessee counties in the Tennessee Valley marketing area) and west of the Mississippi River, the location adjustment rate should be 2.5 cents per hundredweight per 10 miles from the nearer of (Greenville, South Carolina, or Charlotte or Greensboro, North Carolina. Such rate is the same as the rate used in the two adjoining Federal order markets for pricing milk received at plants located quite some distance from the marketing area. Accordingly, the 2.5-cent rate should be appropriate for this market.

Location adjustment credits. In conjunction with its pricing proposal, proponents of the order proposed that a pool plant transferring fluid milk products in bulk form for Class I use to a pool distributing plant at which a higher Class I price applies be accountable for such products at the higher price applicable at the transferee plant. Under the proposal, however, the transferor plant would receive a location adjustment credit against the higher price equal to the difference between the Class I differentials applicable at the two plants. This is intended to encourage the movement of milk to market center for Class I use.

When the operator of a supply plant located in an outlying area ships milk to a distributing plant where a higher Class I price is applicable, the supply plant operator cannot pay both the higher price and the transportation costs for hauling the milk to the distributing plant. Thus, a lower Class I price is needed at the supply plant location to reflect the cost of moving the milk to the distributing plant. Such price reductions, however, reduce the total value of the pool. In addition, if supply plant milk replaces local milk going to a distributing plant for Class I use, this further reduces the total pool value. Thus, shipments from outlying supply plants to distributing plants should be made only when such shipments are necessary to meet the fluid milk needs of distributing plants.

Therefore, the limitations on location adjustment credits proposed are adopted. These provisions limit the amount of location adjustment credit on the transferee plant's Class I sales that remain after subtracting receipts of milk from producers, cooperative bulk tank handlers and packaged fluid milk products from other pool plants. Unnecessary transfers are further discouraged by the provision which gives priority in receiving credits to transferor plants located nearest the transferee plant. The adopted location adjustment provisions complement the zone price structure as a means of encouraging the movement of bulk fluid milk products to centers of demand for Class I use. However, the provisions do not give price credits to cover unnecessary hauling of milk between pool plants for other than Class I use.

To accommodate the intent expressed by proponents, the location adjustment credit provisions that were set forth in the notice of hearing have been modified accordingly.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponents.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of the excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk and cheese, which are usually the last-resort uses for surplus milk. The M-W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M-W pay price series for the Carolina market will provide consistency between this order and other Federal order markets which also use the M-W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The order should provide that the market administrator shall announce on or before the 15th of the month a Class II price that is to be effective the following month. The Class II price for the month should be the Minnesota-Wisconsin (M-W) price for the second preceding month, as adjusted by an "updating" formula, plus a Class II differential computed from a 12-month moving average of past Class II differentials. To the extent that the announced Class II price without adjustment for any prior month is less than the Class III price for such month, such difference would be included in computing subsequent months' Class II price.

For example, the Class II price for January would be announced on December 15th. On February 5, the January Class III price would be announced. If the January Class II price was less than the Class III price for January, that difference would be included in computing the Class II price for March, which would be announced on February 15. Thus, handlers would pay essentially a Class II price that would be floored by the Class III price. However, if the Class II price is less than the Class III price, the adjustment to reflect this difference would not be returned to producers until they receive payment for milk produced in the second succeeding month.

The procedures adopted are patterned after those that were provided for 29 markets in a final decision issued July 8, 1981, and published in the **Federal Register** on July 14, 1981 (46 FR 36151) and a 14-market final decision issued August 17, 1982, and published in the **Federal Register** on August 25, 1982 (47 FR 37167). In addition, the procedures adopted herein incorporate the modifications contained in an interim decision issued November 8, 1989, and published November 15, 1989. These changes are based upon a hearing held on August 23, 1989, at Alexandria, Virginia, to consider changing the manner in which the Class II milk price is determined and announced in 39 Federal milk orders and the proposed Carolina milk order.

To achieve the foregoing, the order should provide for a "basic Class II formula price" for the month, which would be the order's basic formula price (i.e., the M-W price) for the second preceding month plus or minus an amount computed from the "updating" formula. In essence, a tentative estimate of the M-W price for the preceding month would be derived from the mechanics of the updating formula. This would permit the Class II price to be based on selected dairy industry data for that month rather than for the second preceding month.

The updating formula would determine first the amounts by which the gross values of milk used to manufacture cheddar cheese and butter-nonfat dry milk for the first 15 days of the preceding month are greater than or less than the respective values of such milk for the first 15 days of the second preceding month using yield factors provided by the Dairy Price Support Program. Thus, the relative proportions of milk used in Minnesota and Wisconsin combined in the manufacture of cheddar cheese and butter-nonfat dry milk would be determined from data reported by the Department. From the foregoing data, a weighted average of the changes in gross values per hundredweight of milk would be computed.

The Class II price for the month would be the basic Class II formula price for the month plus a differential that would be the amount by which a 12-month moving average of the basic formula price plus the 10-cent Class II differential of the order exceeds a 12-month moving average of the basic Class II formula price. This should result in a Class II price that on the average exceeds the Class III price by a 10-cent differential.

The basic Class II formula price and the Class II price would be computed by the Dairy Division, AMS, and transmitted to the market administrator on or before the 15th day of the preceding month, enabling the market administrator to announce by that time the Class II price for the following month. The adoption of the proposal for advance notice of the Class II price is a reasonable means of assisting handlers in the marketing of milk. Handler witnesses said that the dairy industry is somewhat unique in that regulated handlers process and sell products without knowing the cost of the raw milk. This practice makes it difficult, if not impossible, to adjust resale prices to changes in ingredient costs. To them, this is an unwarranted and unnecessary situation which creates undue business risks and other difficulties without any real benefit to others.

The provision for advance pricing under the Carolina order will contribute to more orderly marketing for the processors of Class II products. Handlers will be in a better position to plan their processing and marketing with advance knowledge of their raw milk costs. Also, the advance pricing procedure will enable handlers to establish and adjust resale prices of Class II products more currently relative to the changes in raw milk costs.

The procedure provided herein for announcing a Class II price for a month on or before the 15th day of the previous month is identical to the procedures adopted for the 29 markets in the final decision of July 8, 1982, and, with some exceptions, to a 14-market final decision issued August 25, 1982. The above procedures as modified by the interim decision on changing the manner in which the Class II milk price is determined and announced (54 FR 47327) are appropriate for the Carolina order. The market administrator would announce publicly on or before the 15th day of each month a Class II price for the following month. Such price would be provided to the administrator of the Carolina order by the Dairy Division and would be determined from the method of computation specified in the order.

As provided in the attached order, the announced Class II price for the month would be the sum of the following price components: (A) The basic Class II formula price; and (B) the Class II differential.

A. Basic Class II formula price. The basic Class II formula price, which would be used in computing the Class II price that is announced for the month, would be determined by the Dairy Division, AMS, on or before the 15th day of the preceding month. Under the formula provided herein, it would be computed by increasing or decreasing the M-W price of the second preceding month by an amount that reflects changes in the gross value of milk used to produce cheddar cheese (including returns from whey fat and whey solids-nonfat), butter, nonfat dry milk and edible whey powder during the first 15 days of the preceding month compared to the first 15 days of the second preceding month. The gross value of milk used to produce these products would be determined by multiplying the price of each product by a yield factor which represents the pounds of product that results from the manufacture of a hundredweight of milk. The yield factors used in the formula adopted herein would be those that are used under the Dairy Price Support Program for determining similar gross values. Whenever the yield factors are changed, the new yield factors would be used in the formula beginning with the effective date of the announced support price or announced purchase prices.

The yield factors used under the Price Support Program are for milk of average butterfat content of 3.67 percent, while prices under the Federal milk order

program are announced for milk containing 3.5 percent butterfat. Milk containing higher proportions of butterfat yield more pounds of product per hundredweight of milk than does milk containing a lower butterfat content. However, using the price Support Program yield factors in the adopted formula should not appreciably affect the basic Class II formula prices. Only changes in gross values of milk from one month to another would raise or lower the basic Class II formula price. Those changes in gross values of milk should not be much different whether they are based on milk containing 3.67 percent butterfat or 3.5 percent butterfat.

The product prices that are used in the formula adopted herein would be those that are reported and published each week by the Dairy Division, AMS. The butter price would be that of the Chicago Mercantile Exchange for Grade A (92-score) butter. The cheddar cheese price would be that of the National Cheese Exchange for cheddar cheese in 40-pound blocks. The nonfat dry milk price would be the average price per pound (using the midpoint of any price range as one price) for high-heat, low-heat and Grade A nonfat dry milk for the Central States production area. If any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported. The price for whey powder would be the average price per pound (using the midpoint of any price range as one price) reported for edible whey powder (nonhygroscopic) for the Central States production area.

Based on yield factors used currently under the Price Support Program, a hundredweight of milk used to produce cheddar cheese yields 10.1 pounds of cheddar cheese 0.25 pounds of butter and 5.5 pounds of whey powder. Prior to the Food Security Act of 1985, under the Price Support Program, the price of whey powder increased the gross value of milk used to produce cheddar cheese only to the extent of the portion of the price of powder that exceeded 12.5 cents per pound. This was because the processing cost of drying the whey into powder was 12.5 cents. If the price of whey powder were less than 12.5 cents per pound, the processing costs would be absorbed in the price of cheddar cheese. If the price of exceeded 12.5 cents, only that portion of the price that exceeded 12.5 cents would contribute to the gross value of milk.

A **Federal Register** document published on July 22, 1986 (51 FR 26254), containing a determination of the current Class II price in 39 Federal orders is officially noticed. The document points out that because of recent changes in the Price Support Program, the processing cost and yield factor for edible or dry whey are no longer being determined under that program and thus are not available for use under the Federal orders. The changes stemmed from the Food Security Act of 1985, which precludes the use of any market value of whey in determining the purchase price for cheese under the Price Support Program. The document notes that the use of a whey value in computing the basic Class II formula price in the 39 orders is needed. The document also points out that equivalent pricing factors were adopted for this purpose in a determination issued January 29, 1986, and published February 4, 1986 (51 FR 4374). The determination issued July 14, 1986, and published July 22, 1986 (51 FR 26254), states in part as follows:

"It is therefore ordered that a whey processing cost of 12.5 cents per pound and a yield factor of 5.5 pounds continue to be used as equivalent factors determining any positive whey value in computing the basic Class II formula price under the above-named orders, effective upon issuance of this determination".

Accordingly, in the formula adopted herein, the gross value of a hundredweight of milk used to produce cheddar cheese would be the sum of the following computations:

1. The average daily price per pound of cheddar cheese during the first 15 days of each respective month would be multiplied by 10.1. The National Cheese Exchange meets on Friday morning for trading in cheddar cheese. Generally, the prices reported for each session establish the prices of cheddar cheese sold by the dairy industry during the following week. When Friday is a holiday, the exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. A workday would be each Monday through Friday, except national holidays. This definition of workday would apply also to the other product prices described in the following paragraphs. During a week that the Exchange does not meet, the prices applied for the following week would be the last Exchange price that was established.

2. The average daily price per pound of butter during the first day of each respective month would be multiplied by 0.25. The Chicago Mercantile Exchange also meets on Friday morning for trading in butter. When Friday is a holiday the Exchange meets on a Thursday morning. In the formula adopted herein, a price reported by Friday (or Thursday) would be applied to that day plus each workday of the following week prior to the day the Exchange meets. When there are workdays in a month that precede the first Friday of the month, the last price reported in the previous month would be applied to each such workday that precedes the first Friday. During a week that the Exchange does not meet, the price applied for the following week would be the last Exchange price that was established.

3. The average daily price per pound of edible whey powder during the first 15 days of each respective month would be reduced by 12.5 cents and any amount remaining would be multiplied by 5.5. The whey powder price is determined by the Department on Thursday of each week and reflects the selling price of whey powder during the preceding seven-day period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, a price determined on Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous Price reported had been on Wednesday.

The gross value of a hundredweight of milk used to produce butter and nonfat dry milk would be determined in the following manner. The yield factor presently used by the Price Support Program indicates that one hundredweight of milk yields 4.48 pounds of butter and 8.13 pounds of nonfat dry milk. Thus, the average daily butter price per pound during the first 15 days of each respective month, as determined by the method described in (2) above, would be multiplied by 4.48.

Added to this value would be the value of milk used to produce nonfat dry milk. This would be computed by multiplying the average of the daily prices per pound of high-heat, low-heat and Grade A nonfat dry milk during the first 15 days of each respective month by 8.13. As with the whey powder prices, the prices of nonfat dry milk are determined on Thursday of each week and reflect the selling prices of nonfat dry milk during the preceding seven-day

period. When Thursday is a holiday, the price is determined on Wednesday. In the formula adopted herein, the average of the prices of the high-heat, low-heat and Grade A nonfat dry milk determined for Thursday (or Wednesday) would be applied to that day plus each previous workday through the preceding Friday, or Thursday if the previous price reported had been on Wednesday. As described previously, if any of these nonfat dry milk prices are not reported at some future date, the price used in the formula would be the average of the remaining prices that are reported.

The next computation in the formula adopted herein determines the amounts by which the gross values of milk used to produce cheddar cheese and used to produce butter-nonfat dry milk during the first 15 days of the preceding month exceed or are less than the respective gross values during the first 15 days of the second preceding month. This would be done by subtracting the respective gross values during the first 15 days of the second preceding month from the respective gross values during the first 15 days of the preceding month.

The quantity of milk used to produce cheddar cheese in the States of Minnesota and Wisconsin greatly exceeds the quantity used to produce butter-nonfat dry milk. Accordingly, the changes in gross values described in the previous paragraph should be weighted by the relative proportions of milk used to produce cheddar cheese and butter-nonfat dry milk in these two States. This would be done by converting the quantity of American cheese (cheddar cheese accounts for over 70 percent of all American cheese) and separately, the quantity of nonfat dry milk produced in the two States combined, as reported and published by the National Agricultural Statistics Service of the Department into the respective milk equivalents (i.e., dividing the two-State quantity of American cheese produced by the 10.1 yield factor for cheddar cheese and dividing the corresponding quantity of nonfat dry milk produced by its yield factor of 8.13). The percentage that the milk equivalent for each separate product is of the total for the two products combined would be multiplied by the respective change in gross values, as described in the previous paragraph, to determine a weighted change in gross values for milk used to produce cheddar cheese and used to produce butter-nonfat dry milk. The weighted changes in gross values would be combined and this combined value would be used to adjust the second preceding month's M–W price. If the combined value for the 15 days of the preceding month exceeds the corresponding value for the second preceding month, the adjusted M–W price would be increased. If it is lower, the adjusted M–W price would be the basic Class II formula price for the month.

B. *Class II differential.* In the formula adopted herein, the Class II differential would be an amount added to the basic Class II formula price for each month to yield a Class II price. It would be computed on or before the 15th day of the preceding month for use in determining the announced Class II price for the month. The differential would be the amount that the average M–W price during the most recent 12-month period plus the current Class II differential of the order exceeds the average basic Class II formula price during the same 12-month period.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by the order proponents and is common to most other Federal milk orders.

At the hearing, a witness on behalf of Milkco, Inc., Hunter Jersey Farms and Dairy Fresh, Inc., testified in opposition to the Proposed use of a factor of .115 in computing the butterfat differential. The spokesman said that for years in North Carolina and South Carolina, the butterfat differential has been based on the average wholesale price for Grade A (92-score) bulk butter per pound at Chicago times .1. He said that the proposed .115 factor would make it more costly for handlers to dispose of excess cream at various times during the year.

The witness testifying about marketing conditions in South Carolina estimated that the difference in the computation of the butterfat differential cost South Carolina dairy farmers about $400,000 per year. The witness testifying about marketing conditions in North Carolina estimated that the use of a factor of .115 would add 4 to 6 cents per hundredweight to producer pay prices.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Weighted average and uniform prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

The butterfat differential adopted herein is the same as provided in two decisions to adopt uniform classification provisions in 39 markets. (These two decisions have previously been noticed.) Since the classification provisions of those decisions are adopted herein, it is appropriate to provide also for the same butterfat differential. This is clearly in line with order proponents' intent in this regard.

With regard to a proposal by a representative of 3 handlers that the butterfat differential be established by multiplying the Chicago butter price by a factor of .1, such modification is denied. If such modification were adopted, the value of butterfat and skim milk in the Carolina market would not be aligned with such values under neighboring Federal order markets. As previously noted, the proposed modification also conflicts with providing a classification for milk in the Carolina market that is consistent with the classification of milk in most other Federal milk orders.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

(d) *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The record indicates that 23 fluid milk plants will most likely qualify for pooling under the new order. Most of these plants, if not all, are expected to have very high levels of Class I utilization. There are few Class III products produced in this market. Nevertheless, there will be some differences in utilization among the plants because of the production of Class II products such as ice cream and cottage cheese. A marketwide pool will facilitate the orderly marketing of producer milk by removing disruptive competition by producers for the high

Class I use outlets. Under individual handler pooling, the type of operations conducted at a plant would be a determining factor in the price the plant could pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations and pool plant operators to divert any weekly or seasonal reserves of milk to nonpool plants and maintain continuous producer milk status for such dairy farmers if their milk is needed to fulfill the year-round requirements of the market. This pooling technique will assist further in apportioning among all producers the lower returns from reserve milk in excess of the market's fluid requirements. In the absence of marketwide pooling, this burden would vary by individual plants and groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of prices to pay producers. Under the order adopted herein, which includes a seasonal base-excess plan, a weighted average price would be computed each month. During the months of July through February, the weighted average price would be the uniform price and would be used to pay producers. Essentially, such price is the weighted average value of all of the milk in the pool. It would be computed by adding together the classified use value (or total pool obligation) of all of the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" for producers.

In the months of March through June, uniform prices for base and excess milk would be computed by the market administrator. During each of these months, each producer would be paid on the basis of the producer's deliveries of base and excess milk. The findings on the base-excess plan describing the computation of the uniform prices for base and excess milk and the computation of an individual producer's base are found in a subsequent section of this decision.

In order to compute the uniform price or prices, the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool.

Under the proponent cooperatives' proposed order, handler reports of receipts and utilization would have to be received by the market administrator by the 6th day of each month. Proponents' witness said that a reporting date of the 6th was needed to provide the market administrator with sufficient lead time to receive all of the reports, compute the marketwide pool and announce the uniform price or prices by the 10th day of each month.

Two witnesses, representing several handlers who would be fully regulated under the proposed order, stated that the dates included in the proposed order would not provide handlers sufficient time to accumulate the data necessary to file their reports of receipts and utilization. They proposed that the 7th rather than the 6th day be used as the reporting date.

The order should provide that a handler's report of receipts and utilization is due on or before the 7th day after the end of each month. This will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk and classified prices, compute the uniform price or prices and announce such price or prices by the 11th day of the month.

Also, each handler that is required by section 32 of the order to report the aggregate quantity of base milk during the months of March through June should do so on or before the 7th day after the end of the month rather than the 6th. All of the other dates (for reports, price announcements, and payments) specified in the order should be adopted as they were proposed by the proponents of the order.

It should be noted that the Georgia Federal milk order also provides that the report of receipts and utilization by handlers is due on the 7th day of the month and that the uniform price or prices are announced by the 11th day of the month. The Tennessee Valley Federal milk order, however, contains a reporting date of the 6th and a price announcement date of the 10th. Under the arrangements provided herein, handlers under the new order will be meeting about the same deadline with respect to these reporting functions as handlers under nearby orders. Also, producers supplying this market will receive their payments at about the same time as producers located in the same general area but who are supplying a nearby Federal order market.

The Carolina Federal Order Committee excepted to using the 7th day of the month as the date for filing handler reports and the 11th day of the month for the announcement of the uniform price or prices. They point out that the Tennessee Valley order uses the 6th and the 10th day, the same date as proposed by proponents of the orders.

Several handlers objected to the use of the 6th day of the month for filing reports. They indicated that such reporting date would not provide handlers sufficient time to submit their report. Furthermore, exceptors provided no clue why it is preferable to have the reports filed earlier than the 7th day of the month. Accordingly, the exception to the use of the 7th day of the month for filing reports and the 11th day of the month for the announcement of the uniform price or prices is hereby denied.

Producer-settlement fund. Marketwide pooling requires the use of an equalization (producer-settlement) fund which enables all handlers in the market to pay the minimum uniform price or prices to their producers.

Payment into the producer-settlement fund would be made each month by each handler whose total classified use value of milk exceeds the value of the handler's milk at the uniform price or prices. Monthly payments out of the producer-settlement fund would be made to each handler whose use value is below the value of milk at the uniform price or prices for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price or prices as handlers whose Class I utilization exceeds the market average.

As proposed and adopted herein, payments by handlers into the producer-settlement fund would be due by the 12th day of each month so that the market administrator could make payments out of the producer-settlement fund by the 13th day of each month.

Such timing will enable the market administrator to receive the money in the fund and make the payments out of the fund each month at the earliest feasible date. In the event that the balance in the producer-settlement fund on the 13th is insufficient to make the required payments out the fund, the market administrator would reduce uniformly such payments. However, the market administrator would complete such payments to handlers as soon as the necessary funds become available.

The payment schedule adopted herein has no slack time for the announcement of the uniform price or prices. This time schedule recognizes the desire of producers that payment to them be as timely as possible. It provides, however, adequate transaction time as indicated earlier but, nevertheless, will require the cooperation of all handlers in the market to make it work as intended. Should any problems in this regard develop, they could be examined at a future hearing.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price or prices. Provision also should be made for partial payments for milk received during the first half of the month.

Under the payment provisions adopted herein, a handler would be required to make a partial payment to producers who had not discontinued delivery of milk to such handler prior to the 25th day of the month for their producer milk deliveries during the first 15 days of the month. Such payment would be by the last day of the month and would be at not less than the Class III price for the preceding month or 90 percent of the preceding month's weighted average price, whichever is higher. Proper deductions authorized in writing by the producer could be deducted from the partial payment due such dairy farmers.

Under the payment provisions adopted herein, handlers would be required to pay producers on or before the 15th day of the following month at the applicable uniform price or prices for milk received from such producers for the preceding month. Final settlement for all of the producer's milk in the preceding month at the uniform price or prices would recognize the partial payment and any other proper adjustments verifiable by the market administrator.

In the event a handler has not received from the market administrator the full producer-settlement fund payment by the date such handler is required to pay producers, the handler may reduce the payments to producers on a pro rata basis. Such reduction should not exceed the amount of the underpayment. The handler would be required to complete the producer payments on the next date for making such payments following the receipt of the balance due from the market administrator.

Provision also is made in the attached order for a cooperative association to receive payment from handlers for milk of producers who elect to market their milk through such association. Providing for a cooperative association to collect payments due individual producers who have authorized the cooperative to collect such payments on their behalf will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. Also, it will facilitate the cooperative's movement of milk among pool plants and disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler upon request should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 2 days prior to the date payments are due to individual producers. This will enable cooperative associations to pay the producers for whom they market milk on the same day other producers supplying the market are paid.

The proposed order would permit cooperatives to collect payment with respect to the milk of nonmember producers who have authorized the cooperative to collect such payments. Such a payment procedure is appropriate in that it complements the treatment afforded the milk of producers for which the cooperative may be the handler.

The proposed order requires payment to a cooperative association on milk delivered to a pool plant by a cooperative association acting as a bulk tank handler. If such milk is paid for by the plant operator at the uniform price or prices, accounting for the milk under the order will be simplified considerably. This method of payment will facilitate any adjustment required when audits by the market administrator disclose an error in classification.

Payments to and from the producer-settlement fund for milk delivered to a pool plant by a cooperative bulk tank handler will be made directly between the pool plant operator and the market administrator. This procedure will place the responsibility for accounting for such milk and for its payments directly on the pool plant operator who processes the milk. If settlement were made through the cooperative association, i.e., when a pool plant operator settles with the cooperative at class prices and the cooperative pays into or collects from the producer-settlement fund, an unnecessary third party is entered into the transaction. By eliminating the cooperative as an intermediary between the pool plant operator and the market administrator with respect to transactions involving the producer-settlement fund, problems of financial responsibility, enforcement and subsequent audit adjustments will be greatly reduced.

For the foregoing reasons, the attached order would require a pool plant operator to pay the cooperative at least 2 days prior to the last day of the month for milk delivered to such plant during the first 15 days of the month by a cooperative bulk tank handler. The same partial payment rate that handlers pay individual producers would be used by handlers to make partial payments to cooperatives. By the 13th day of the following month, a pool plant operator would be required to make final settlement with the cooperative for the producer milk delivered to such plant in the preceding month by the cooperative as a bulk tank handler at not less than the appropriate uniform price or prices.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement would indicate the month and identity of the producer, the daily and total pounds and average butterfat content of producer milk received from the producer, the minimum rate of payment required under the order, the rate used if it is other than the minimum rate, the amount and nature of any deductions, and the net amount of payment to such producer or cooperative.

Base and excess plan. A seasonal "base and excess" plan should be incorporated in the new order.

The purpose of a base-excess plan is to provide an incentive to producers to even out their milk production throughout the year, i.e., to encourage production in the months of seasonally low production and discourage excess production in the months of seasonally high production.

The spokesman for the order proponents testified that a seasonal base-excess plan should be used to distribute to producers the returns from the sale of their milk. He said that most producers who will be shipping milk to the plants that will be fully regulated under the Carolina Federal order have previously been paid on the basis of some form of base plan. The witness said that some of these producers have been on a base plan administered by the Tennessee Valley or Georgia Federal orders or have been paid under a base plan operated by either the States of North Carolina, South Carolina or Virginia.

There was no opposition to the use of a base-excess plan in the proposed Federal order although several parties objected to the proposed use of the months of August through November as the base-forming period. A representative for Piedmont Milk Sales and Southern Milk Sales and a representative for Edisto Milk Producers Association, Midlands Jersey Milk

Producers Association and Carolina Jersey Milk Producers Association testified that their organizations preferred that the base-forming period be September through December.

The witness for the proponents of the August through November base-forming months said that the Class I demand for milk drops off sharply the last week in December; otherwise, there is little difference in the Class I demand between August and December. He said that for August, the demand for milk relative to the supply of milk is comparable to the Class I utilization for the months of September through November.

The representative for Edisto testified that many of their members are located in the low country or coastal plains of South Carolina where they experience very hot and humid weather in July and August. He said that these dairy farmers have found it very difficult to breed their herds to freshen in July for peak production in August and subsequent months. He indicated that most of the order proponents' members are located in the Piedmont and mountain areas of North Carolina, South Carolina, Georgia and Tennessee where the temperature and humidity are less severe.

The order should provide that the base-forming months be September through November. This represents a change from the recommended decision in which the months of August through December were selected as the base-forming months. In view of the exceptions received to using the month of December as one of the base-forming months and the objections voiced at the hearing and in the exceptions received to using the month of August as one of the base-forming months, it is concluded that the base-forming period should be the months of September through November. These three months are months of high Class I utilization and should be appropriate for the base-forming months.

In their exceptions the North Carolina and South Carolina Farm Bureau Federations opposed using the months of August and December as base-forming months. Carolina Virginia Milk Producers Association also excepted to including the months of August and December as base-forming months. Both Farm Bureau Federations and the Carolina Virginia cooperative association suggested that a three-month base-forming period of September, October and November be used instead of the five-month period initially recommended.

The Carolina Federal Order Committee in their exceptions indicated that while they had not proposed using December as one of the base-forming months, they were not opposed to its inclusion.

An individual dairy farmer excepted to using August as one of the base-forming months.

The primary objection to using December as one of the base-forming months was that the Class I utilization was not great enough to warrant increased production that would result from using December as one of the base-forming months.

The principal objection to including August as one of the base-forming months was that dairy farmers in North Carolina and South Carolina would have difficulty in changing their milk production cycle to obtain increased milk production in the month of August due to heat and high humidity.

In view of the opposition expressed to the inclusion of the months of August and December, it is concluded that the base-forming months should be September through November.

In changing from a 5-month to a 3-month base-forming period, it is necessary to revise the minimum number of days that a dairy farmer must deliver milk to the market to receive an undiminished base. Since the months of September through November contain 91 days, a producer should be required to deliver at least 77 days of production to be accorded a full base. Such minimum delivery requirement will permit a producer who has been degraded a two-week period in which to regain Grade A status.

A base-excess plan for the proposed Carolina Federal order will provide a means of encouraging a level seasonal production pattern so that the milk production and fluid milk sales will be better coordinated during the year. For 1988, the record shows that for the two-State area, March had the lowest Class I utilization with about 80 percent while September had the highest Class I utilization with about 88 percent.

A low variation in milk production is beneficial to producers, handlers and consumers. This is because the cost of obtaining additional milk supplies in the months of short production is minimized. Also, the cost of disposing of excess milk production in the months of heavy milk production is also minimized.

The base-excess plan adopted in this decision, except for the base-forming months, is identical to that proposed by the order proponents. Each producer would be assigned a base computed by dividing the producer's total pounds of producer milk in September through November (the base-forming period) by the number of days' production represented in such producer milk deliveries or by 77, whichever is more. A single delivery by a producer on every-other-day delivery would be considered 2 days' production in computing a base.

The uniform (weighted average) price would be the minimum order price payable to producers for producer milk delivered during the base-forming months of September through November. Such price would also be payable to producers in the months of December, January, February, July, and August which would be neither base-forming nor base-paying months.

The base-paying months should be March through June, as proposed. These months form a period when milk production generally is high and Class I utilization of milk is low. Thus, it is a period when the base plan should discourage excessive production. This would occur because during the base-paying months, payments to producers would reflect a lower price for any excess producer milk delivered to the market. Thus, the operation of the base-excess plan should serve to maintain or perhaps improve, the seasonal production pattern of dairy farmers supplying the two-State area.

"Base milk" would be the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month. "Excess milk" would be the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month. Excess milk would include all of a producer's milk deliveries during March through June if such dairy farmer has no base.

The market administrator each year would compute a new base for each producer and, by February 1, would notify each producer and the handler receiving the milk from such producer of the producer's base. The market administrator would also notify a cooperative, if requested, of the amount of base assigned to each producer-member.

In computing the uniform prices for base and excess milk, Class III production would be assigned to excess milk first. If Class III producer milk in the market exceeds the pounds of excess milk deliveries by producers, the uniform price for excess milk will be the Class III price. In such case, the additional value for the remaining Class III producer milk as well as the values for Class I and Class II producer milk will be reflected in the uniform price for base milk.

As proposed by producers, the uniform price for excess milk should not

be subject to a location adjustment. Since excess milk would represent basically producer milk classified in Class III (milk for manufacturing uses) to which no location adjustment is applicable, the uniform price for excess milk should not be subject to a location adjustment. There is essentially no difference in the location value of milk for Class III uses. The Class III price under the Carolina order and other Federal milk orders is equal to the average price per hundredweight for the month of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. If a location adjustment were applied to the uniform price for excess milk, it could result in applying an excess price to the producer milk at various plant locations that is less than the value of manufacturing grade milk delivered to those same plant locations.

A producer generally would deliver milk continuously throughout the base-forming period. However, because of various circumstances (e.g., storm damage at the farm or to roads, temporary suspension of a health permit or temporary loss of market when cut off by a buying handler), a producer may be off the market for a limited number of days during the base-forming period. In recognition of this, a producer who delivered at least 77 days' production during the base-forming period would have average daily deliveries computed on the same basis as a producer who delivered continuously throughout the entire period (by dividing the total producer milk deliveries by such dairy farmer during the three-month period by the number of days' production represented in such deliveries).

The requirement that a producer supply the market in the base-forming months in order to earn a base provides an incentive to ship to the Carolina market instead of to other markets in the months when production is low relative to the demand for Class I milk. A producer who ships at least 77 days' production during the three-month base-forming period can reasonably be considered as being fully associated with the market. A producer who delivered less than 77 days' production should have a base determined by dividing total production in the base-forming period by 77. Thus, a producer who may have been supplying the Class I needs of another market for a substantial part of the base-forming period would receive a base that reflects the producer's contribution toward supplying the fluid needs of the Carolina market in such period.

New producers coming on the market during the base-paying period would generally be dairy farmers who had supplied the fluid needs of another order market or an unregulated market during the base-forming period. Milk produced on their farms in the base-paying months would represent substantially milk that is surplus to the Class I needs of the market with which they had been previously associated. The deliveries of such producers during the base-paying months should be paid for at the excess milk price.

Also, persons who have not previously supplied a Class I market may become new producers on the new Carolina market. Included in this category would be dairy farmers who had previously been shipping manufacturing grade milk and persons starting new dairy farm operations. Before coming onto the market as a new producer, such a person would be expected to have anticipated in advance whether to begin shipping during the base-paying months of March through June or in any of the other eight months of the year. If the choice is to begin delivering as a new producer in one of the four base-paying months, presumably that decision would be made in recognition of the fact that the uniform price for excess milk would be received for milk delivered to the market in those months by producers without bases.

In some instances, a "natural disaster" may cause a producer to suffer a significantly reduced rate of production or force the producer to discontinue temporarily the production of milk on the farm. Unless provision is made in the order to give consideration to such occurrences in computing a producer's base, the producer would suffer an undue hardship. The order should specify the conditions under which relief may be granted to a producer whose production is adversely affected in the base-forming period as the result of an occurrence beyond the producer's control.

This can be achieved by providing that the base assigned to a person who was a producer within the preceding base-forming period may be increased to 90 percent of such person's daily average producer milk deliveries in the month immediately preceding the month during which such person's production was adversely affected by an allowable "hardship condition." Such relief would be granted only after the producer submitted to the market administrator by March a written statement that established to the satisfaction of the market administrator that the amount of milk produced on that farm in the preceding base-forming period was substantially reduced because of a condition beyond the producer's control which resulted from: (1) Loss by fire or windstorm of a farm building used in the production of milk on the producer's farm; (2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd, as certified by a licensed veterinarian; or (3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

The conditions under which we have proposed hardship relief encompass most natural disasters that could result in reduced production or in the temporary discontinuance of production on a dairy farm. Such a standard will provide the market administrator the guidance necessary for applying the provision in an objective manner.

Allowing hardship relief by assigning a producer a base of 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which the hardship occurred provides an equitable standard for this purpose. Such a producer generally would not have shipped enough days' production in the base-forming period to have earned a base equal to such producer's average daily deliveries. To assign the producer a base equal to the producer's average daily deliveries in a single month could result in giving the producer more base than would have been earned if the producer had not suffered the hardship throughout the full base-forming period.

Producers whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period should be assigned bases in the same manner as if they had been producers during the base-forming period. Their bases would be calculated from their deliveries to that plant in the preceding September through November period.

To acquire pool plant status under the order, a plant must dispose of a specified percentage of its route dispositions on routes in the marketing area or to other pool plants. It is expected that when such a plant becomes a pool plant, it will add Class I sales to the pool comparable to such sales in prior periods when it was a nonpool plant. It is appropriate, therefore, that those dairy farmers who have been supplying that plant have bases computed for them according to their deliveries to the plant in the base-forming period.

Bases assigned to producers who supplied a nonpool plant in the base-forming period that became a pool plant

in the following base-paying period should not be transferable. If such a plant did not retain its pool plant status in the base-paying period and its producers had been permitted to transfer their bases, inequities could result. This is because the Class I milk in the pool would then be diminished by the plant's Class I sales in the month the plant lost its pool plant status while the aggregate producer bases for the month would be inflated by the bases that had been assigned its producers. This would have enabled these producers to sell their bases to producers still on the market and for the latter to obtain the benefit of a greater share of the market's Class I sales at the expense of other producers on the market.

The base earned by any producer who supplied the market in the preceding base-forming period should be transferable. This will facilitate the transfer of property when a baseholder dies or when the farm of a baseholder is sold. It will also facilitate adjustments by those producers desiring to expand or contract their operations. However, proper safeguards should be provided so that the transfer provisions may not be exploited at the expense of producers regularly supplying the market.

The amount of a base transferred could be in its entirety or in amounts of not less than 300 pounds. These limits, which were proposed at the hearing, are administratively practicable and should be adequate under conditions in the Carolina market.

The proposed order provisions did not specify that base may be transferred only to another dairy farmer. However, under the base plan provisions adopted herein, only a producer may establish base, and only producer milk could be base milk. Since a base is useful only to producers, only producers should be permitted to hold base. There was no testimony presented at the hearing to indicate an intent that other persons should be permitted to hold base. Accordingly, the order provides, in this regard, that base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective.

Base transfers would be effective on the first day of the month following the date on which an application for transfer is received by the market administrator. Such application should be on a form approved by the market administrator, signed by the baseholder or the baseholder's heirs and the person to whom the base is to be transferred. If a base is held jointly, the application for transfer should be signed by all joint holders or their heirs. These provisions will insure that there is no misunderstanding between the parties involved concerning transfers.

The base established by a partnership may be divided between partners on any basis agreed on in writing by them if written notification of the agreed upon division, signed by each party, is received by the market administrator prior to the first day of the month in which the division is to be effective. This will facilitate the division of the assets of a partnership that is dissolved during the base-paying period. On the other hand, it will in no way affect the total quantity of base milk in the pool, irrespective of the manner in which the division of the base is made between the partners.

Likewise, two or more individual producers who establish bases separately and decide to form a partnership should be permitted to combine their bases. Although the proposed order would not have provided this, the new order is drafted to accommodate this situation. The combination of individual bases by producers forming a partnership would not affect the quantity of base milk in the pool.

A producer who transferred all or part of such producer's base on or after February 1 should not be permitted to receive other base by transfer that would be applicable within the March-June period of the same year. Further, a producer who receives base by transfer on or after February 1 should not be permitted to transfer a portion of such producer's base to be applicable within the March-June period of the same year, but should be permitted to transfer the entire base. These provisions will tend to insure that the exchange of bases between producers are bona fide transfers. Absent these provisions, the transferring of bases back and forth by two or more producers throughout the base-paying period could result in unwarrantedly increasing their share of the total payments under the order for producer milk at the expense of all of the other producers.

The first base-forming period under the proposed order would be September 1990 through November 1990. Complete data would be available at the end of that period to compute bases. The first application of the base and excess payment provisions would then be for March 1991 deliveries.

Multiple component pricing. A plan for pricing milk on the basis of its nonfat solids and butterfat components should not be adopted on the basis of this record.

Proponents of a multiple component pricing (MCP) plan proposed that the differential value of milk used in Class I and Class II be pooled to determine producers' shares of the higher-valued uses, and the value of nonfat milk solids used in Class II and Class III be pooled with the value of skim milk used in Class I to determine the value of nonfat milk solids in producer milk.

Proponents of an MCP system were the Carolina Jersey Milk Producers Association, Midlands Jersey Milk Producers Association and Sumter Dairies, Inc. The two producer associations consist of 35 dairy farmers. The 15 members of the Carolina Jersey Milk Producers Association ship their milk to Hunter Jersey Farms. The 20 members of the Midlands Jersey Milk Producers Association ship their milk supply to Sumter Dairies.

The Carolina Guernsey Producers Association, while opposed to a Federal milk order for the Carolinas, indicated that it supported MCP in the event a Federal order was made effective. This dairy farmer association consists of 12 members who ship to Carolina Dairy.

Eight of the nine dairy farmer organizations who favored a Federal order for the Carolinas opposed the use of MCP. The eight organizations represent about 84 percent of the milk that is expected to be pooled under the order. Piedmont Milk Sales, a milk marketing organization, also opposed MCP.

Proponents of MCP expended a lot of time and effort in the preparation and presentation of their proposal. They brought in an expert witness from California to testify on the testing procedures used in California to determine the nonfat solids content of milk and on the cost of performing such tests. MCP proponents also brought in a professor from Cornell University to testify on the validity of milk testing methods and procedures. Proponents also brought in an Ohio University professor to rationalize why MCP would be appropriate in a market with a high Class I utilization.

The principal witness for MCP was an economist with 35 years of experience in the field of milk marketing and classified milk pricing programs. The witness testified at length on why he believed that MCP was superior to butterfat and skim milk pricing. He also explained in detail how the proposed pricing procedure would operate at the handler level and the producer level.

Another witness for the MCP procedure was the general manager of National All-Jersey, Inc. The witness indicated that his organization is promoting the nationwide adoption of MCP.

Proponents of MCP contended in their brief that the merits of MCP are well known. They indicated that the merits of such pricing have been recognized and agreed upon by scientists and others in this country and throughout the world.

Proponents' brief listed and countered the objections that are raised to the use of MCP. The objections which they noted and to which they responded were as follows:

(1) MCP is not appropriate in a market with a high Class I use.

(2) MCP will bring about an improper redistribution of money among producers.

(3) The cost of the additional testing if MCP is implemented would be 2 cents per hundredweight.

(4) Handlers' cost for milk in Class II and Class III uses would be increased due to additional testing required.

(5) MCP can serve no useful purpose but only redistributes among dairy farmers whatever money would be there anyway.

The sokesman for the 8 cooperative associations proposing the new order opposed the component pricing procedure for the following reasons:

1. The proposed pricing plan generally referred to as component pricing is not a true component pricing procedure. The pricing plan does not reflect a true market valua for solids-not-fat because their value would be computed by a residual valuation approach.

2. The proposed plan would pay producers a solids-not-fat differential for all the solids-not-fat that producers deliver while charging handlers only for the solids-not-fat differential for milk used in the production of Class II and Class III products.

3. The proposed pricing plan would result in the following costs:

a. Producers would incur the added cost of testing their milk for solids-not-fat; and

b. Keeping records of solids-not-fat tests, posting the tests to producer payrolls, paying producers on the basis of solids-not-fat, auditing and verification by the market administrator would be more costly.

4. Adoption of component pricing would result in lower net returns to producers. The proposed pricing would not generate any new revenues and there would be an added cost of redividing the total returns to producers on the basis of the solids-not-fat in each producer's milk.

5. Marketing conditions in the proposed Carolina marketing area differ in many respects from the marketing conditions that prevailed in the Great Basin marketing area when an MCP plan was adopted for that order.

There was no testimony in support of MCP from handlers. Kraft, Land-O-Sun and Dairy Fresh opposed such pricing. A representative of Milkco and Hunter Jersey Farms indicated these two handlers were not opposed to component pricing but he offered no supporting testimony on their behalf.

Kraft's position seemed to be that if MCP is adopted, the protein content of milk should be the basis of pricing instead of the nonfat solids content of milk. In addition, Kraft's witness emphasized that such payment should be conditioned upon the somatic cell count of the milk. The witness indicated that increased cheese yields from milk containing higher levels of protein are conditioned upon the somatic cell count.

Kraft, Inc., set forth in its brief the following arguments regarding the use of MCP:

(1) Quality factors, such as somatic cell count, must be included in any protein payment schedule.

(2) The pricing adjustments proposed for the Carolina market exceed adjustments paid in the competitive marketplace.

(3) The proposed MCP scheme would result in non-uniform prices to handlers receiving milk for the same use classification.

(4) The proposed MCP scheme would result in non-uniformity and inequity between producers.

(5) The proposal for solids-not-fat pricing would result in undue costs and burdens upon fluid milk handlers.

(6) Conditions in the Carolinas are very different from those relied upon by the Secretary in adopting MCP pricing in the Great Basin market.

Kraft, Inc., also noted that there is virtually no use of MCP by handlers and producers in the Carolinas or elsewhere in the Southeast. With regard to the contention of the proponents of MCP that their proposal would send a signal encouraging more skim and less fat solids in milk, Kraft pointed out that there is a direct correlation between fat and nonfat solids in milk. Kraft also noted that MCP adjustments would apply to only 15 percent of the milk purchased by handlers while all of the producer milk in the market would need to be tested for nonfat solids content. As a consequence of the additional testing, Kraft indicated that the net returns to producers would decline since expenses would be added without any offsetting new revenues.

The proponents and opponents of MCP at the hearing were primarily representatives of dairy farmers. Handlers of milk were somewhat indifferent to whether milk was priced on the basis of skim milk and butterfat or MCP. The operators of primarily fluid milk operations would not be significantly affected even though MCP were adopted. The reason for their indifference is that Class I milk utilized in the plant would continue to be priced on the basis of skim milk and butterfat content. The Class I operators would incur added costs if they elected to purchase and operate new testing equipment to test for multiple components. These plant operators would incur additional costs to hire or train technicians to operate the new equipment.

Plant operators who utilize milk in Class II uses would be the ones who would be primarily impacted by the adoption of MCP. These operators would have to pay on the basis of the butterfat and the nonfat solids content of the milk.

Distributing plants that would be pooled are not utilizing milk in Class III products. Milk that is priced in Class III uses under the order would be milk that is surplus to the fluid milk needs of the market. For the most part, such milk would be milk that is diverted to nonpool plants.

One of the reasons advanced by proponents for using MCP in the Carolina market is that such pricing is a means by which handlers would reimburse producers for the added value of milk with higher solids that is utilized in Class II and Class III uses. However, in this market no more that 15 percent to 20 percent of the producer milk is expected to be used for Class II or Class III purposes. At this level of Class II/Class III utilization, MCP would serve little purpose in compensating producers for higher solids milk. Furthermore, the use of MCP would require additional testing and record keeping at additional expense to handlers and producers while the returns from MCP would be very limited. Moreover, less than five percent of the producers who are expected to deliver their milk to the Carolina market favor MCP. In view of the limited returns that would accrue to producers, the additional record keeping that would be required for handlers, and the lack of support for such nonfat solids and butterfat pricing, it is concluded that MCP should not be adopted in this market at this time.

In lieu of incorporating MCP in the Carolina order, Kraft suggested that the section of the order dealing with butterfat differentials be modified to allow handlers to make equal deductions and additions to the uniform prices due producers on the basis of the protein and somatic cell content of each producer's milk. The suggestion would

not result in the uniformity necessary to assure equitable pricing of milk between handlers and among producers. Such deductions and premiums would be voluntary and their rates could vary between handlers. Furthermore, there is no reason to believe that such a system would be used by all handlers. Accordingly, the proposed modifications should not be adopted.

Exceptions to the Department's failure to include MCP in the regulatory provisions of the order recommended for the Carolinas were submitted by the Commissioner of the South Carolina Department of Agriculture, by the South Carolina Farm Bureau Federation, and by National All-Jersey, Inc. The Jersey association submitted its exceptions on behalf of Carolina Jersey Milk Producers Association, Inc., Midlands Milk Producers Association, and Sumter Dairies, Inc.

The Commissioner of the South Carolina Department of Agriculture indicated in his exceptions that he favored a Federal milk order for the Carolinas but that he opposed the traditional pricing system recommended for the regulatory program. The Commissioner considers the traditional system of pricing outdated because the "most valuable part of the milk, the solids-not-fat portion, is not considered in the payment to the producer."

The South Carolina Farm Bureau Federation indicated that they were "extremely disappointed that the order will not use a multiple component basis for setting prices." In their exceptions, the Federation states that there are two instances in which invalid conclusions are drawn based on testimony given at the hearing. In the first instance, they indicate that the recommended decision states that "eight of the nine dairy farmer organizations who favored a Federal order for the Carolinas opposed the use of MCP. The eight organizations represent about 84 percent of the milk that is expected to be pooled under the order."

The second instance in which the Federation contends an invalid conclusion was drawn refers to a statement in the decision that "* * * less than 5 percent of the producers who are expected to deliver their milk to the Carolina market favor MCP."

The National All-Jersey, Inc., in its exceptions took issue with the Department's conclusion that MCP would "serve little purpose in compensating producers for higher solids" and the three bases cited by the Department in support of that conclusion. The three bases, as summarized in the exceptions, were limited returns that accrue to producers, the additional costs involved and the lack of support for MCP.

The Carolina Federal Order Committee in its exceptions commented that "as at the hearing, the committee continues to oppose the adoption of the proposed multiple component pricing plan." At the hearing the Committee's representative testified "* * * And with the exception of the proponents of proposal No. 4, and that is the Midlands Jersey Milk Producers Association, the organizations I represent cannot support the adoption of the component pricing as it is contained in proposal No. 4. Now, we are not opposing component pricing per se, but find that we cannot support the procedure as contained in proposal No. 4. Now, these organizations that I represent, they do represent approximately 170 million pounds of milk to be pooled under the order, or about 84 percent of that producer milk that we expect will be pooled under the proposed Carolina Federal order."

In view of the limited returns to producers, the additional costs and paperwork burden involved, and the lack of support among dairy farmers for MCP, such pricing should not be adopted in the Carolina order. The exceptions to the Department's failure to adopt MCP in its recommended decision fail to indicate any factors that have not been fully considered earlier, and, accordingly, the exceptions are hereby denied.

(e) *Administrative provisions.*

Charges on overdue accounts. Late-payment charges should apply on all funds due the market administrator (sections 71, 76, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations (section 73—Payments to producers and to cooperative associations). The charge for late payments should be one and one-fourth percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts be computed monthly on each unpaid obligation, which should include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due should be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts should be paid to the administrative fund maintained by the market administrator.

Although the order proponents indicated in their testimony that a late-payment charge should apply to deductions for marketing services, their proposed order language did not include a reference to section 86. The order language adopted herein has been modified by including this section of the order.

The order proponents proposed that unpaid handler obligations to the market administrator and to producers and cooperative associations be increased one and one-fourth percent for each month or portion of a month that such obligation is overdue. The spokesman stated that the intent of the proposal was to encourage prompt payment of handler obligations to the market administrator. He testified that 1.5 percent per month was about the going annual rate for short-term (business) loans at the time of the hearing.

It is essential to the effective operation of the order that handler payments for obligations under the order be made promptly. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative and marketing service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay producers or cooperative associations late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by one and one-fourth percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by one and one-fourth percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed. Also, the charge should apply whether the obligation is paid 1 day late or 10 days late, and should be applicable to both fully regulated and partially regulated handlers alike.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing with the delinquent handler. Therefore, it is reasonable that late-payment charges assessed on noncomplying handlers be used to help defray the administrative costs.

If the order provided that charges on overdue amounts to producers and cooperatives be paid to the producer-settlement fund in this market where most of the milk received by handlers is from cooperatives, it would tend to reduce the incentive for cooperatives to insist on timely payments from handlers. This would detract from the basic intent of the late-payment charge. More importantly, as previously noted, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost of these activities comes from the administrative expense fund.

The order provides that a late-payment charge on delinquent report obligations be based on the date that the obligations were due if the report had been filed timely. This proposed provision is contained in several Federal orders and is intended to insure that handlers do not obtain any economic gain by intentionally reporting late.

Marketing services. The new order should provide for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

The order proponents proposed that a marketing services provision be included in the new order and that it be funded by an assessment of 5 cents per hundredweight of production to be paid by the producers for whom the market administrator performs the prescribed services. The spokesman testified that the 5-cent rate should provide adequate funds for the market administrator to provide marketing services to nonmembers, based on an analysis of the expense of such programs in other markets. Also, he noted that the rate provided in an order is a maximum rate that can be reduced by the Secretary if experience shows that the services can be provided for a lesser amount. He stated that a marketing services provision is needed because producers who are not members of a cooperative do not have such a program provided and that such producers would benefit from such services.

The spokesman for the order proponents testified that if a producer is a member of a cooperative association, these services are performed by the cooperative association and are paid for by the members of the cooperative association. The cooperative necessarily performs these services in an effort to assure their members of accurate butterfat tests and weights and reliable market information and other services.

The spokesman said that there is no need for the market administrator to duplicate the services which the cooperative association normally provides for its membership. The market administrator, he said, must rely on the cooperative's results in his auditing program insofar as it is involved with the full accounting of milk and butterfat. He said that it is essential that the performance of cooperative associations with respect to the performance of these marketing services be reviewed by the Secretary. The cooperative association, he said, will be entitled to perform these services only after application to the market administrator, and a demonstration that the cooperative is fully qualified and capable of performing the services.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Expense of administration. Each handler should be required to pay the market administrator a proportionate share of the cost of administering the order. For this purpose, a charge of 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and dispositions of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers (including milk diverted to nonpool plants) and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For pricing purposes, however, the handlers that receive such milk at their plants would treat it the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. Thus, the pool plant operator receiving such milk should pay the administrative assessment on it on the same basis as for producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route dispositions in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, the regulated handler should be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to avoid duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Proponents, in conjunction with their producer-handler definition, proposed that the administrative assessment also apply to all producer-handlers. Proponents contend that it is unfair to other handlers to incur an administrative assessment as a result of costs that are incurred in determining whether certain operations should be qualified as producer-handlers and thus be exempt from the pricing and pooling provisions. Basically, proponents contend that producer-handlers should pay their pro rata share of at least the administrative costs involved in determining and monitoring their exempt status. Proponents contend that handlers should not have to bear such cost since they do not benefit from the producer-handler exemption.

Contrary to proponents' views, handlers do derive a benefit from the administrative expense that they incur. To the extent administrative costs are incurred in administering the producer-handler provisions, handlers are assured that producer-handlers continue to operate in the manner provided under the order. As previously stated, this insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain a demonstrable advantage relative to producers or handlers. In addition, the producer-handler exemption from the administrative assessment is similar to the exemption of the assessment on other handlers for receipts of other source milk that is allocated to other than Class I use. Such receipts affect the administrative costs and complicate the verification process involved in determining the utilization of producer milk. Therefore, the proposal to apply an administrative assessment to producer-handlers is denied.

General provisions. The Carolina order adopted herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in part 1000 of the Code of Federal Regulations. These provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designations, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part, these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The general provisions of part 1000 have the same intent and purpose in each Federal milk order. They have worked effectively. Adopting part 1000 by reference for the Carolina order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). Official notice was taken of this decision at the hearing held April 17–25, 1989, for this market. The record evidence indicates that the findings and conclusions of the 1971 decision and the statement of consideration in the related 1980 termination order are equally applicable under current marketing conditions in the proposed Carolina marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In his brief, counsel for Kraft renewed his exception to two rulings of the Administrative Law Judge (ALJ). One of the rulings limited counsel's cross-examination of an expert witness on California's solids-not-fat testing procedures. The second ruling involved counsel's cross-examination of the same expert witness on the storability of milk samples.

In his complaint regarding the first ruling, counsel points out that the expert witness was called by the proponents of MCP "to testify on milk component test procedures used by the California Dairy Industry for the basis of producer payments" and discussed sub-components of SNF in his direct testimony. When counsel for Kraft cross-examined the witness concerning the sub-components of SNF included in California tests, proponent's representative objected that such examination was irrelevant. Counsel indicates that the ALJ sustained the objection and ruled that counsel could not examine the milk testing expert on the technicalities of testing but must limit cross-examination to the cost of testing. Counsel complains this ruling was clearly erroneous, and leaves the record without important information concerning the propriety of SNF testing. Counsel states the witness indicated that the California Dairy Industry is apparently considering moving away from SNF pricing on milk used to make cheese and moving towards casein pricing, which excludes pricing of whey protein and nitrogen gas.

The expert witness read a prepared statement regarding California's milk component pricing and testing that is the basis for payment by dairy processors for milk received from dairy farmers. The prepared statement appears on pages 4 through 9 of the transcript for April 20, 1989. Questions and responses by the expert witness on direct examination cover pages 9–41. Cross-examination of the expert witness by counsel for Kraft covers pages 41–64 and pages 67–85.

The Department's review of the proceeding does not indicate that the ALJ erred in limiting counsel's cross-examination of the expert witness. In the first instance, the ALJ was asked to rule on an objection to the line of cross-examination. The basis offered for the objection was that the expert witness had testified regarding the testing of the total solids (fat and nonfat solids) in milk. The person objecting stated that the make-up of the components of milk was not relevant since the proposed MCP was to be based upon the total solids-not-fat content of the milk.

In reviewing the transcript of the hearing, there is some question whether counsel for Kraft abandoned at the hearing the line of questioning that is in controversy. Counsel states on page 56 and 57 of the transcript of April 20, 1989, "In fact, let me go on to something else and I'll come back to that. I think I have just about finished it." However, counsel does not come back to the line of questioning during the remaining cross-examination of the expert witness.

In any event, the Department finds no fault with the ALJ in limiting cross-examination by counsel on the components of SNF. The expert witness for proponents of MCP was there to testify on testing for SNF in milk and the cost of various testing methods. Consequently, the ALJ appropriately sustained the objection to cross-examination regarding the make-up of the components of solids-not-fat.

With regard to the second exception, counsel for the Department initially objected to the line of questioning by counsel for Kraft stating that it was getting into minutiae about California's testing procedures. The Administrative Law Judge overruled that objection on the basis that the relevancy of the questions was borderline and permitted counsel for Kraft to continue. After additional questions and answers covering 5 to 6 pages in the transcript of the proceeding, the ALJ interjected that counsel for Kraft's line of questioning was really getting into minutiae now and that counsel had covered that (line of questioning) pretty well. Counsel responded, "I'm almost done. I have one more, one more question on that line, your honor, just one more." Counsel was asked by the ALJ to keep his question short. The question by counsel was not especially short and after receiving an answer to the question, counsel then wanted to ask a further question to clarify the answer. At this point the ALJ cut off the line of questioning on the basis that counsel had been allowed to ask his one question.

Counsel for Kraft's objection to the second ruling by the ALJ is without merit. The ruling by the ALJ was in accordance with the condition established by counsel, that he be permitted one more question. Furthermore, there was sufficient basis for the ALJ to have precluded the additional question on the basis that it was not relevant.

In addition, the rulings by the ALJ in limiting counsel's cross-examination did not adversely impact counsel's position that the use of SNF as one of the components in MCP is inappropriate. In that regard, it is noted that the use of MCP is not adopted in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers as defined in the tentative marketing agreement and the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1005.85 of the aforesaid tentative marketing agreement and the order.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Carolina marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents

annexed hereto be published in the Federal Register.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300-311), to determine whether the issuance of the attached order regulating the handling of milk in the Carolina marketing area is approved or favored by producers, as defined under the terms of the order who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be March 1990.

The agent of the Secretary to conduct such referendum is hereby designated to be Eugene E. Krueger.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

Signed at Washington, DC, on June 15, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Carolina Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

(a) Findings. Public hearings were held upon a proposed tentative marketing agreement and order regulating the handling of milk in the Carolina marketing area. The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1005.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Carolina marketing area shall be in conformity to and in compliance with the terms and conditions of the order as follows:

The provisions of the proposed marketing agreement and order contained in the recommended decision issued by the Administrator on March 21, 1990 and published in the **Federal Register** on March 28, 1990 (55 FR 11505), shall be and are the terms and provisions of this order and are set forth in full herein subject to modifications in §§ 1005.13, 1005.42, 1005.92, and 1005.93.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

Subpart—Order Regulating Handling

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Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1005.2 Carolina marketing area.

The "Carolina marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following counties, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties (in the event such provision conflicts with a similar provision of an adjacent Federal milk order, the provisions of the adjacent Federal order shall have precedence.):

(a) *Northwestern Zone:*

North Carolina counties of Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Rockingham, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

(b) *Base Zone:*

North Carolina counties of Alamance, Anson, Cabarrus, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Iredell, Lee, Lincoln, Mecklenberg, Montgomery, Moore, Nash, Northampton, Orange, Person, Polk, Randolph, Richmond, Rowan, Rutherford, Stanly, Union, Vance, Wake, and Warren.

South Carolina counties of Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Lancaster, Laurens, McCormick, Oconee, Pickens, Spartanburg, Union, and York.

(c) *Southeastern Zone:*

North Carolina counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson.

South Carolina counties of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg.

§ 1005.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except to a plant) either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1005.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1005.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1005.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1005.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month is:

(1) Route disposition, except filled milk, in the marketing area not less than 15 percent of its total route disposition, except filled milk, during the month; and

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13. The applicable percentage in this subparagraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to pool plants pursuant to paragraph (a) of this section. Such shipments must equal not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1005.13 but excluding milk diverted to such plant) and handlers described in § 1005.9(c). The operator of such plant may include milk diverted from such plant to plants described in paragraph (a) of this section as qualifying shipments in meeting up to one-half of the required shipments. The applicable shipping percentage of this paragraph may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(c) A plant located in the State of North Carolina, South Carolina or Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent or more of the producer milk of members of such cooperative association, excluding such milk that is received at or diverted from pool plants described in paragraph (b) of this section but including milk delivered by such cooperative as a handler described in § 1005.9(c), is delivered directly from their farms to pool plants described in paragraph (a) of this section or is transferred to such plants as a bulk fluid

milk product from the plant of the cooperative association, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle milk for fluid consumption.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.

§ 1005.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not a producer-handler plant, a governmental agency plant or an other order plant and from which fluid milk products are shipped to a pool plant.

(e) *Governmental agency plant* means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1005.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to milk of such producers diverted to nonpool plants for the account of such association pursuant to § 1005.13, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this section;

(c) Any cooperative association with respect to milk excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section, that it receives for its account from the farm of a producer for delivery to a pool plant or another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1005.7(d) (3) or (4); and

(g) Any person who operates an unregulated supply plant.

§ 1005.10 Producer-handler.

Producer-handler means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other order plants;

(c) Whose receipts of fluid milk products from pool plants and other order plants do not exceed the lesser of 5 percent of Class I disposition or 5,000 pounds during the month;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1005.9(c); or

(3) Diverted from a pool plant in accordance with § 1005.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) A governmental agency operating a plant exempt pursuant to § 1005.8(e);

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1005.44(a)(8)(iii) and the corresponding step of § 1005.44(b); and

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1005.9(c);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1005.9 (a) or (b) subject to the following conditions:

(1) A producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer's milk is physically received at a pool plant as follows:

(i) In any month of July through February, six days' production;

(ii) In any month of March through June, two days' production.

(2) During each of the months of July through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the producer milk that such cooperative caused that month to be delivered to or diverted from such pool plants;

(3) A handler described in § 1005.9(a) that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of July through November and January and February;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be producer milk;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farmer deliveries that are not producer milk pursuant to paragraph (d)(5) of this section. If the diverting handler fails to make such designation, no milk diverted by such handler shall be producer milk; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1005.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1005.40(b)(1) from any source other than producers, handlers described in § 1005.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1005.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1005.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1005.40(b)(1)) for which the handler fails to establish a disposition.

§ 1005.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1005.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1005.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1005.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and be exercising full authority in the sale of milk of its members.

§ 1005.19 [Reserved]

§ 1005.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1005.52:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the

day that such prices are reported and for each preceding workday until the day such prices were previously reported. A workday is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported. A workday is each Monday through Friday except national holidays.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1005.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1005.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1005.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1005.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1005.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) Each handler described in § 1005.9(a), (b) and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through June the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through June the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1005.30 and 1005.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

Except as provided in § 1005.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1005.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1005.15; and

(6) In shrinkage assigned pursuant to § 1005.41(a) to the receipts specified in § 1005.41(a)(2) and in shrinkage specified in § 1005.41 (b) and (c).

§ 1005.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1005.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (b)(6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1005.9(c), and in milk diverted to such plant from another pool plant, except that in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (b)(2), (b)(4), (b)(5), and (b)(6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1005.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1005.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1005.44(a)(7) or the corresponding step of § 1005.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1005.44(a) (11) or (12) or the corresponding steps of § 1005.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be

classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1005.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency plants. Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2)(ii) through (d)(2)(viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant to § 1005.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products to such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) Transfers by a handler described in § 1005.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1005.9(c) to another handler's pool plant shall be classified pursuant to § 1005.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1005.43 General classification rules.

In determining the classification of producer milk pursuant to § 1005.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1005.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1005.9(b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1005.40, 1005.41, and 1005.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1005.9(b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1005.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1005.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1005.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1005.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1005.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1005.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1005.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1005.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (a)(7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1005.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1005.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraphs (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (a)(11)(ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(6)(i) and (a)(8)(ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (a)(12)(iii), and (a)(12)(iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1005.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (a)(12)(ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (a)(12)(ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1005.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1005.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1005.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1005.46 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1005.44(a)(12) and the corresponding step of § 1005.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1005.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1005.50 Class prices.

Subject to the provisions of § 1005.53, the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $3.06.

(b) Class II price. The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1005.52 for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1005.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1005.52.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1005.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.52 Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1005.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1005.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month, and separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c)(1) and (c)(2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1005.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1005.9(c) which is classified as Class I

milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price specified in § 1005.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (a)(6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1005.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Northwestern	Minus 15 cents.
Base	No adjustment.
Southeastern	Plus 15 cents.

(2) For a plant located within the Tennessee Valley Federal order marketing area (part 1011), except Kentucky and West Virginia counties, the adjustment shall be a minus 31 cents;

(3) For a plant located within the State of Florida, the adjustment shall be a plus 50 cents;

(4) For a plant located outside the areas specified in paragraph (a)(1), (a)(2), and (a)(3) of this section and south of a line extending through the southern boundary of the State of Tennessee and east of the Mississippi River, the adjustment shall be the adjustment applicable at Anderson, North Augusta, or Hardeeville, South Carolina, whichever city is nearest;

(5) For a plant located outside the area specified in paragraph (a)(2) of this section and in the State of Virginia, the adjustment shall be the adjustment applicable at Reidsville, Roanoke Rapids, or Elizabeth City, North Carolina, whichever city is nearest;

(6) For a plant located outside the areas specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina or Charlotte or Greensboro, North Carolina.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferor-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1005.44(a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1005.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants.

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plant at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in the Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1005.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable location adjustment rate for such plant. If the aggregate of this computation for all plants having the same location adjustment rate exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

§ 1005.55 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1005.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk for each handler described in § 1005.9(a) with respect to each of its pool plants and for each handler described in § 1005.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1005.9(c) that were classified in each class pursuant to §§ 1005.43(a) and 1005.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1005.44(a)(14) and the corresponding step of § 1005.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1005.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1005.44(a)(9) and the corresponding step of § 1005.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44 (a)(7)(i) through (a)(7)(iv) and the corresponding step of § 1005.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1005.44 (a)(7)(v) and (a)(7)(vi) and the corresponding step of § 1005.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1005.44(a)(11) and the corresponding step of § 1005.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1005.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of July through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers who filed the reports prescribed in § 1005.30 for the month and who made the payments pursuant to § 1005.71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1005.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1005.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of July through February.

(b) For each month of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (a)(3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1005.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to § 1005.61 for such month.

Payments for Milk

§ 1005.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1005.71, 1005.76, and 1005.77, and out of which he shall make all payments pursuant to §§ 1005.72 and 1005.77: *Provided, That* any payments due any handler shall be offset by any payments due from such handler.

§ 1005.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1005.60.

(2) The sum of:

(i) The value at the uniform price(s), as adjusted pursuant to § 1005.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1005.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1005.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market

administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(a)(2) exceeds the amount computed pursuant to § 1005.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 25th day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1005.74 and 1005.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1005.80;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided, That* if by such date such handler has not received full payment from the market administrator pursuant to § 1005.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to the paragraph next following after the receipt of the balance due from the market administrator;

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

(1) On or before two days prior to the last day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) Each handler pursuant to § 1005.9(a) who receives milk from a cooperative association as a handler pursuant to § 1005.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before two days prior to the last day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 13th day of the following month for milk received during the month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1005.74 and 1005.75, and less any payments made pursuant to paragraph (c)(1) of this section.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of March through June the total pounds of base milk received from the producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is other than the applicable minimum rate(s);

(6) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1005.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1005.73, the uniform price and the uniform price for base milk pursuant to § 1005.61 for the month shall be adjusted by the amounts set forth in § 1005.53 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1005.71, the weighted average price shall be adjusted by the amount set forth in § 1005.53 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1005.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1005.30(b) and 1005.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1005.9(b), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1005.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1005.9(b), or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant or as classified pursuant to § 1005.42 with respect to receipts from a handler described in § 1005.9(b);

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1005.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1005.60 for such handler shall include, in lieu of the value of other source milk specified in § 1005.60(f) less the value of such other source milk specified in § 1005.71(a)(2)(ii), a value of milk determined pursuant to § 1005.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1005.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1005.30(b) and 1005.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1005.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1005.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1005.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1005.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1005.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1005.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1005.78 Charges on overdue accounts.

Any unpaid obligations of a handler pursuant to §§ 1005.71, 1005.73, 1005.76, 1005.77, 1005.85 or 1005.86 shall be increased one and one-fourth percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day

after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1005.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1005.9(c);

(c) Other source milk allocated to Class I pursuant to § 1005.44(a)(7) and (a)(11) and the corresponding steps of § 1005.44(b), except such other source milk that is excluded from the computations pursuant to § 1005.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1005.76(a)(2).

§ 1005.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1005.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1005.90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through June that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1005.91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through June in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1005.92 Computation of base for each producer.

(a) Subject to § 1005.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through November by the number of days' production represented by such producer milk or by 77, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (September-November) shall be calculated as if the plant were a pool plant for the entire base-forming period. A base thus assigned shall not be transferable.

§ 1005.93 Base rules.

(a) Except as provided in § 1005.92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during March through June of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during March through June of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during any of the immediately preceding months of September through November may be increased to 90 percent of such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraphs (e)(1), (e)(2), or (e)(3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through November base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1005.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through November and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Marketing Agreement Regulating the Handling of Milk in the Carolina Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1005.1 to 1005.94, all inclusive, of the order regulating the handling of milk in the Carolina marketing area (7 CFR part 1005) which is annexed hereto; and

II. The following provisions:

Section 1005.95 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of March 1990, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Section 1005.96 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

BY _____

(Name) (Title)

(Address)

(Seal)

Attest

Date

[FR Doc. 90-14379 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1250

[Docket No. PY-90-004]

Referendum on Amendment to Egg Research and Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service will conduct a referendum to determine whether egg producers favor elimination of the refund provision from the Egg Research and Promotion Order, as amended. Ballots and instructions will be mailed directly to all known egg producers owning over 30,000 laying hens.

DATES: The representative period for purposes of the referendum is January 1 through March 31, 1990. The referendum will be conducted between July 16 and August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, 202-447-3506.

SUPPLEMENTARY INFORMATION: The Egg Research and Consumer Information Act (7 U.S.C. 2701 et seq.) was amended October 31, 1988 (Pub. Law 100-575). The amendments required the Secretary to amend the Egg Research and Promotion Order to eliminate the producer refund provision. This change is subject to a producer referendum after the end of the 18-month period following issuance of the amended order.

An interim final rule removing the refund provision from the order (7 CFR 1250.349) was published in the **Federal Register** on January 4, 1989 (54 FR 98), with an effective date of January 1, 1989. Comments were solicited from interested persons through February 3, 1989. One comment in support of the interim final rule was received. The interim final rule was adopted without change on March 21, 1989 (54 FR 11492). In accordance with the procedures for the conduct of referenda (7 CFR 1250.200 et seq.), a referendum will be conducted beginning July 16, 1990, and ending on August 10, 1990, to determine whether producers favor elimination of the refund provision from 7 CFR 1250.349.

Section 9 of the Act requires approval by eligible egg producers who during the representative period were engaged in commercial egg production and who are engaged in the production of commercial eggs at the time of voting. The representative period for the conduct of the referendum is determined to be January 1, 1990, through March 31, 1990.

For the order amendment to be approved, it must be favored by at least two-thirds of the producers voting in this referendum, or by a majority of the producers voting if such majority produced not less than two-thirds of the commercial eggs produced, during January–March 1990.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum has been submitted for approval to the Office of Management and Budget (OMB) and will not be used until approved by OMB. It has been estimated that it will take an average of about 30 minutes for each of the approximately 800 egg producers to participate in the voluntary referendum balloting.

The agents of the Secretary to conduct the referendum are hereby designated to be Janice L. Lockard and Michael S. Newborg, both of the Poultry Division, Agricultural Marketing Service, USDA. The agents may appoint subagents to assist them in performing their functions.

Ballots, instructions, eligibility requirements, and other information pertinent to the referendum will be mailed to all egg producers owning over 30,000 laying hens. In accordance with Public Law 101-220 enacted December 12, 1989, producers owning 30,000 or fewer laying hens are exempt from paying assessments under the Act and therefore not eligible to vote in the referendum. If any eligible voter does not receive a ballot by July 16, 1990, the beginning date of the referendum period, such individual may obtain a ballot from the Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Copies of the complete text of the Egg Research and Promotion Order, as amended, may also be obtained from the Poultry Division.

Authority: Pub. L. 93-428, 88 stat. 1171, as amended; 7 U.S.C. 2701 et seq.

Signed at Washington, DC, on June 19, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-14503 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 113

[Docket No. 90-122]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a proposed rule which would amend the regulations concerning autogenous biologics under the Virus-Serum-Toxin Act by: (1) Specifying the data that would be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in herds or flocks

that are adjacent or non-adjacent to the herd or flock of origin; and (2) specifying data that would be submitted in support of a request to use an isolate for the production of an additional serial beyond 12 months. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments received on or before July 23, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Center Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-200. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1990, we published in the **Federal Register** (FR 15233-15236, Docket No. 89-200) a document proposing to amend the regulations pertaining to autogenous biologics by (1) specifying the data that would be required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use autogenous biologics in herds or flocks that are adjacent to the herd or flock of origin; (2) specifying data that would be required to use such autogenous biologics in herds which are not adjacent to the herd or flock of origin; and (3) specifying data that would be required to be submitted in support of a request to use organisms for the production of an additional serial of an autogenous biologic from cultures which are older than 12 months from the date of isolation.

The proposed rule requested the submission of written comments on or before June 22, 1990. We have received a request from a trade association that the comment period be extended to allow for a more thorough discussion of the proposed rule by the association's members.

In response to this request, we are reopening and extending the comment period for Docket No. 89-200 for 30 days from the original date of the close of the comment period. We will consider all written documents received on or before July 23, 1990. This action will allow the requestor and all other interested persons additional time to prepare comments.

Authority: 21 U.S.C. 151-159, 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 19th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14505 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM-40-23]

Sierra Club; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-40-23) submitted by the Sierra Club. The petitioner submitted an amendment to their petition which is also being denied. The original petition requested that the NRC amend its regulations pertaining to uranium mill tailings sites to require an NRC license for the possession of material being cleaned up under title I of the Uranium Mill Tailings Radiation Control Act (UMTRCA). The NRC believes that petitioner's proposal is inconsistent with both the intent and specific requirements of Title I of UMTRCA. In an amendment to its original petition, the petitioner requested that if their original petition is denied, that NRC ensure that the management of the material at, or derived from, inactive sites be conducted in a manner that protects the public health and safety and the environment. Prior to DOE cleanup at these sites, NRC is not authorized by either UMTRCA or the Atomic Energy Act (AEA) to perform such management oversight. UMTRCA has two very distinct parts: Title I for inactive sites to be cleaned up by the Department of Energy (DOE) with NRC concurrence, and title II which cover sites licensed by the NRC, AEC or Agreement States as of January 1, 1978 and all new sites. The petitioner's proposal would, in essence, require that the NRC regulate title I sites in a similar manner as title II sites. UMTRCA, however, clearly distinguishes the authorities and responsibilities of Federal agencies in regulating title I and title II sites.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3877.

SUPPLEMENTARY INFORMATION:

The Petition

On February 25, 1981 (46 FR 14021) and May 2, 1983 (48 FR 19722), the Nuclear Regulatory Commission published notice of receipt of a petition and subsequent amendment to the original petition for rulemaking filed by the Sierra Club. The petition and amendment requested that the NRC amend its regulations or practices regarding licensing or management of the possession of uranium mill tailings at inactive sites (title I of the Uranium Mill Tailings Radiation Control Act).

The petitioner proposed that the NRC take the following regulatory actions to ensure that public health and safety and the environment are adequately protected from the hazards associated with byproduct material:

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.

2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requested that, in the event that NRC denied the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC

ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

Whether the original petition is granted or not, the petitioner also requested that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq*). In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR part 40, appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requested that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

Basis for Request

As a basis for the requested action, the petitioner stated it is a national conservation organization with hundreds of thousands of members. Substantial numbers of Sierra Club members live, work, and travel in proximity to the inactive uranium mill tailings sites, as well as properties in the vicinity of the sites which have been contaminated with radioactive materials derived from them. The petitioner states that the presence of such hazardous materials at these locations constitutes an unreasonable risk to the health and safety of these members. These health hazards may also impair the value of the homes and properties of these local members. In addition, these members make substantial use of nearby lands and waters for hiking, climbing, fishing, boating, camping, photography, nature study, and other forms of physical and spiritual recreation. Their use of these lands and waters is adversely affected by the environmental degradation which results from the continued, unregulated presence of radioactive materials.

The Sierra Club's interest is the protection of present and future Sierra Club members, their progeny, and the public from increased risks of cancer and genetic mutations that may occur as the result of their exposure to unregulated radioactive materials at inactive uranium mill tailings sites and at other properties contaminated by this radioactive material. By the petition, the Sierra Club sought to insure that public exposure to the radioactive material at such sites and locations is minimized and that off-site migration of radioactivity is prevented.

The petitioner also states that for more than 80 years it has sought to create public-governmental cooperation in the preservation and enhancement of the natural environment and its resources of air, water, land, and wildlife. The Sierra Club has also endeavored to provide the public and government with information relevant to environmental issues and to stimulate informed public discussion of them.

The organizational objectives of the Sierra Club are fostered by its activities and its members, including their representation by counsel before legislative bodies, courts, and public agencies. In pursuit of its objectives, the Sierra Club has been involved in many proceedings before the Atomic Energy Commission, and now the Nuclear Regulatory Commission, to safeguard its members and the public at large from uses of radioactive materials which pose undue risks to public health and safety and the environment.

Public Comments on the Petition

The notices of filing of petition and amendment for rulemaking in the **Federal Register** invited interested persons to submit written comments concerning the petition. The NRC received three comments in response to the original petition and none in response to the amendment. All three were from industry or their representatives, and opposed the petition.

Staff Action on the Petition

The response to the petition for rulemaking was delayed because of other rulemaking actions related to uranium mill tailings sites. Because of a number of issues related to uranium mill tailings regulations at the time the petition and its amendment were received, including potential court actions, changing legislative requirements, and another petition, the NRC needed to reassess its entire uranium mill tailings regulatory program. Congressional actions imposed mandated changes to uranium mill tailings regulations. These required changes were not completed until the end of 1987. Another modification to part 40 regulations was required to allow for the licensing and long-term care of mill tailings sites in response to a rapidly approaching program end date (Congressional action has since provided additional time). This action was started in 1987. An Advance Notice of Proposed Rulemaking and a Proposed Rule have since been issued in the **Federal Register** (53 FR 32306; August 25, 1988, and 55 FR 3970; February 6, 1990, respectively).

Although the NRC was considering the petitioner's proposals during this reassessment period, none of the specific regulatory changes eventually made were directly related to the petition. Once the required regulatory changes were made or proposed, the NRC directed its attention to fully respond to petitioner's request.

Reasons for Denial

The petitioner's first proposal requests that the exemption for inactive mill tailings sites subject to the DOE Remedial Action Program should be repealed. The petitioner states that the Atomic Energy Act, as amended, requires the Commission to license the possession of byproduct materials at these sites, unless it makes an express finding that public health and safety will not be imperiled by a licensing exemption. The petition also states that no licensing exemption for DOE-designated inactive sites can be implied from the legislative history of the Uranium Mill Tailings Radiation Control Act. Finally, petitioner states that NRC should determine that licenses are required for the DOE inactive sites.

The NRC believes that the petitioner has misinterpreted both the intent and specific requirements of UMTRCA. UMTRCA has two very distinct parts: Title I for inactive sites to be cleaned up by DOE and Title II which covers sites licensed as of January 1, 1978 and all new sites. The exclusion of Title I sites in 10 CFR part 40 was specifically added to comply with UMTRCA during the active remedial action phase.

NRC's regulations, that petitioner is requesting be amended, deal exclusively with the regulation of Title II sites. Title I sites are not covered by these regulations for the following reasons:

(1) Unless specifically authorized by the Congress, DOE is not subject to NRC regulation.

(2) Title I specifically requires an NRC license only after completion of remedial actions to cover the long-term care of these sites.

(3) Congress specifically gave NRC only a review and concurrence role for DOE sites specified in Title I (inactive sites) during the remedial action phase of the program.

Petitioner appears to assume that since the residual radioactive material is

uranium mill tailings it should legally be considered equally subject to NRC jurisdiction as Title II material. However, even though the material under the Title I program may be chemically and physically similar to material under the Title II program, UMTRCA makes a very clear distinction in how this material is to be controlled and regulated.

The NRC concludes that the UMTRCA statutory basis for the DOE program under Title I does not provide a sufficient basis for NRC to bring DOE within NRC licensing jurisdiction during the active remedial action phase.

The petitioner's second proposal requests that the NRC should also require licensing of the tailings used for construction or other purposes off-site where public health and safety is imperiled thereby. Under Title I of UMTRCA these are called vicinity properties and are to be remediated by DOE under the Title I program. As with the disposal sites, NRC's role has been clearly defined in UMTRCA as one of concurrence and consultation. Use of residual radioactive material for construction and other purposes occurred prior to establishment of Federal authority, as stipulated in UMTRCA, Title I. Prior to that time, residual radioactive material and its use were not controlled. With the establishment of UMTRCA Title I authority, EPA promulgated standards by which DOE has been reclaiming the abandoned sites and remedying vicinity properties where residual radioactive material had been used for construction and for backfill and grading purposes.

Cleanup of these properties is conducted as part of the two general DOE remedial action programs—The Uranium Mill Tailings Remedial Action Program (established in 1978) and the Grand Junction Remedial Action Program (established in 1970). After the processing activities terminated at the Title I sites, windblown tailings and tailings hauled off for construction resulted in contamination of off-site locations. This material was not considered, legally, to be a controlled radioactive material until passage of UMTRCA in 1978. When the Environmental Protection Agency established regulations for conducting cleanup at processing sites, it also established criteria for cleanup of vicinity properties.

The number of off-site areas around each inactive site varies from a few, up to thousands (mostly around Grand Junction, Colorado). DOE has been cleaning up these areas, and transporting the residual radioactive material to the corresponding site for disposal. In some cases, the DOE with NRC concurrence, has stabilized the materials in place. These locations were judged to pose little risk to the public, and cleanup would have involved detrimental impacts far outweighing the benefits. The vicinity property cleanups have had to be done in coordination with the processing site cleanup, since this is where the contaminated material is disposed of.

Alternately, the petitioner requests that the NRC should conduct a rulemaking to determine whether a licensing exemption of such sites or classes of byproduct material will constitute an unreasonable risk to the health and safety of the public.

The NRC does not believe a rulemaking is necessary, because these sites are not exempted from inclusion in the remedial action program. They are being controlled and regulated under the provisions of title I of UMTRCA. As discussed previously, title I provides NRC a concurrence and consultation role during remedial actions and provides for long-term care licensing after remedial actions are completed. The NRC has and will continue to consult and concur with DOE actions to cleanup the inactive sites.

The NRC is completing a rulemaking providing criteria and procedures for the long-term (perpetual) care of these sites. Proposed amendments to 10 CFR part 40 were issued in the Federal Register on February 6, 1990, 55 FR 3870. The final rule is scheduled to be completed by the end of 1990. The inactive sites will be licensed under this new rule after completion of remedial actions as specified and required by title I of UMTRCA.

In the petitioner's amendment to their original petition they requested that, in the event that the NRC denies the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requested that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

The petitioner also requested, whether the original petition is granted or not, that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act, comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended. In the alternative, the petitioner suggested that NRC extend the coverage of the requirements in 10 CFR part 40, Appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requested that the NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

The NRC is denying this amendment for essentially the same reasons as the original petition. Title I of UMTRCA provides the NRC only a review and concurrence role in remedial actions. Management of the residual radioactive material prior to and during remedial actions is the responsibility of the Department of Energy. Licensing and concomitant regulation by the NRC occurs only after completion of the remedial action.

While it is true that the sites are not licensed by the NRC prior to completion of remedial action, the sites are managed by DOE under a comprehensive environmental, health, and safety program similar to the types of programs required by the NRC under 10 CFR part 20. This program includes the types of activities requested by petitioner, including monitoring and other actions necessary to provide adequate protection of public health and safety and the environment. In addition, the remedial action program operates under a series of State laws and regulatory programs intended to protect human health and the environment. Although the Commission does not have the authority to approve DOE's environmental, health, and safety program for these sites, the NRC has reviewed and commented on the adequacy of the program and DOE has considered these comments in the design and implementation of its program. Furthermore, NRC exercises oversight through its concurrence role in DOE's remedial program. NRC must concur with DOE's completion determination that the remedial action at any site complies with EPA standards for inactive milling sites. These standards require longevity of isolation from the unrestricted environment, reduction of radon exhalation from the disposal impoundment, geotechnical stability of the disposal structure and ground-water protection. Vicinity property cleanup must also be performed to reduce risks to specific unrestricted use levels. By means of these clearly stipulated responsibilities, UMTRCA title I established mechanisms in the performance of the remedial work, construction and performance monitoring and perpetual custody and surveillance under NRC license, which all contribute to the main goal of protection of the public health, safety and the environment. The added regulatory mechanism of direct licensing prior to final cleanup would not enhance this main goal; rather it would delay the completion of remedial action, because of the added administrative burden associated with the formal licensing process.

The DOE has essentially completed cleanup at eight sites. At seven sites DOE is actively proceeding toward final cleanup. Initial planning has been completed for the remaining nine sites although significant construction has not yet started. Construction activities at all the inactive sites is scheduled to be completed by the end of 1994.

Dated at Rockville, Maryland this 8th day of June 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-14479 Filed 6-21-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87-5 and 89-12]

RIN 2125-AC30

Truck Length and Width Exclusive Devices; Reopening of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) in the Federal Register on December 28, 1989 (54 FR 52951). In it, the FHWA requested comments from all interested parties to determine what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-425, 96 Stat. 2097), as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions.

The comment period was originally scheduled to close March 28, 1990. A petition was received from the Truck Trailer Manufacturers Association (TTMA) to extend the closing date to June 1, 1990, in order for them to obtain measurements of new, in-service, and repaired semitrailers; to describe the methods of manufacture; and to estimate the economic impact of the proposal in the ANPRM on manufacturers, carriers, shippers, and consumers. This request was granted in a decision published in the Federal Register on March 21, 1990 (55 FR 10468).

During this time, TTMA began developing a slide presentation to submit to the docket. TTMA requests a further 60-day extension of the comment period to complete this slide presentation. After carefully considering the request, the FHWA has decided to provide the additional opportunity for comment. The comment period is hereby reopened and extended to August 21, 1990.

DATES: Comments on this docket must be received on or before August 21, 1990.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 89-12, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4028) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

(Secs. 411 and 416 of Pub. L. 97-424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48)

Issued on June 15, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-14636 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-44-87]

RIN 1545-AK46

Minimum Participation

AGENCY: International Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a proposed regulation relating to minimum participation requirements under section 401(a)(26) of the Internal Revenue code of 1986.

FOR FURTHER INFORMATION CONTACT: Michael E. Lloyd at 202-343-8954 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulation which is the subject of this correction reflects changes made by section 1112(b) and (c) of the Tax Reform Act of 1986 (TRA '86), and sections 1011(h), 6055 and 6056 of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, the proposed regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the proposed regulation published May 14, 1990 (55 FR 19936) FR Doc. 90-10968, is corrected as follows:

Par. 1. On page 19937, column 1, in the preamble, the eighth line under the *"Testing Methodology"* portion, should be corrected to read "under sections 401(a)(26), 410(b), and".

Par. 2. On page 19938, column 2, between the paragraph entitled *"Delegation to the Commissioner"* and *"List of Subjects in 26 CFR 1.401-0—1.425-1"* portions of the preamble, the following should have appeared:

Reliance on this Proposed Regulation

Taxpayers may rely on this regulation for guidance pending issuance of a final regulation. If a future regulation is more restrictive, such guidance will be applied without retroactive effect.

§ 1.401(a)(26)-1 [Amended]

Par. 3. On page 19938, column 1, § 1.401(a)(26)-1(b)(1) should be revised to read "(1) *Plans that do not benefit any highly compensated employee.* A

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plan, other than a frozen defined benefit plan as defined in § 1.401(a)(26)–2(b)(2)(ii), satisfies section 401(a)(26) for a plan year if the plan is not a top-heavy plan under section 416 and the plan meets the following requirements:"

Par. 4. On page 19939, column 3, the eighth and ninth lines of § 1.401(a)(26)–1(b)(3)(iv) should be corrected to read "limits of section 415) except for the minimum".

§ 1.401(a)(26)–3 [Corrected]

Par. 5. On page19941, column 1, line 13 of § 1.401(a)(26)–3(c)(1) should be corrected to read "employees and former employees or 40 percent of the".

§ 1.401(a)(26)–6 [Corrected]

Par. 6. On page 19943, column 3, § 1.401(a)(26)–6(b)(7)(ii) should be revised to read "(ii) *Hours of service, etc.* For purposes of this paragraph (b)(7), the term "hour of service" has the same meaning as set forth in 29 CFR 2530.200b–2 under the general method of crediting service for the employee. If one of the equivalencies set forth in 29 CFR 2530–200b–3 is used for crediting service under the plan, the 500–hour requirement must be adjusted accordingly.".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14428 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–22–90]

Miscellaneous Regulations for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations about the $200,000 compensation limit under section 401(a)(17) and amendments to previously proposed regulations under sections 401(k), 401(l), 401(m), and 410(b) of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: The appropriate attorney as listed in the following table.

Regulation section	Subject	Attorney
1.401(a)(17)–1	$200,000 Limit	David Munroe.
1.401(k)–1	Cash or deferred arrangement.	Catherine Livingston Fernandez.
1.401(l)–1 through –4.	Disparity rules	Patricia McDermott.
1.401(m)–1	Employee and matching contributions.	Catherine Livingston Fernandez.
1.401(m)–2	Multiple use	Richard Lent.
1.401(b)–2 through –9.	Minimum coverage requirements.	Rebecca Wilson.

All of the listed attorneys can be reached at 202–535–3818 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations and amendments of previously proposed regulations which are the subject of this correction are proposed to conform the regulations to sections 1106, 1111, 1112, 1114, 1116, and 1117 of the Tax Reform Act of 1986 (TRA '86) and section 1011(d)(4), (d)(5), (d)(6), (i)(2) and (i)(3) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed rulemaking published May 14, 1990 (55 FR 19947) Doc. 90–10989, is corrected as follows:

Paragraph. 1. On page 19947, column 2, the last entry in the table under the **"FOR FURTHER INFORMATION CONTACT"** portion of the preamble, the language "1.401(b)–2 through –8." should be corrected to read "1.410(b)–2 through –9."

Par. 2. On page 19947, column 3, the fourth line under the *"Section 401(a)(17) $200,000 Limit"* portion in the preamble should be corrected to read "to a qualified plan in two ways. First, a".

Par. 3. On page 19948, column 1, the tenth line of the third paragraph under the *"Section 401(a)(17) $200,000 Limit"* portion in the preamble should be corrected to read "employee's accruals or allocations prior to the 1989 plan year that are based on compensation in".

Par. 4. On page 19950, column 3, the last entry in the table under the "Drafting Information" portion of the preamble, the language "1.401(b)–2 through –8." should be corrected to read "1.410(b)–2 through –9."

§ 1.401(a)(17)–1 [Corrected]

Par. 5. On page 19952, column 2, the next to last line in S 1.401(a)(17)–1(c)(2) should be corrected to read "year's compensation taken into account".

§ 1.401(l)–3 [Corrected]

Par. 6. On page 19953, column 3, in § 1.401(l)–3(b), the language "(iii) Uniform and maximum excess allowance * * *" should be corrected to read "(2) Uniform and maximum excess allowance * * *".

Par. 7. On page 19954, column 2, the fourth sentence of § 1.401(l)–3(b)(2)(iv) Example (2)(b) should be corrected to read "Thus, the amount by which the excess benefit percentage exceeds the base benefit percentage for Employee B is .65625%.".

Par. 8. On page 19954, column 3, in § 1.401(l)–3(c)(2)(iii), the heading "(d) *Cumulative deemed uniformities.*" should be corrected to read "*(D) Cumulative deemed uniformities.*".

Par. 9. On page 19955, column 1, the last line of § 1.401(l)–3(c)(2)(iv) Example (1) shoud be corrected to read "with a social security retirement age of 67).".

Par. 10. On page 19955, column 2, the thirteenth line of § 1.401(l)–3(l)(5)(iv) should be corrected to read "after March 31, 1984. See § 301.7701–17T".

Par. 11. On page 19955, column 2, the seventh line of § 1.401(l)–3(l)(7)(ii)(A) should be corrected to read "paragraph (l)(7)(ii)(B) of this section and".

Par. 12. On page 19955, column 3, the last line of § 1.401(l)–3(l)(7)(ii)(B) should be corrected to read "after November 15, 1988.".

Par. 13. On page 19955, column 3, the fifteenth and sixteenth lines of § 1.401(l)–3(l)(7)(ii)(D)(*1*) should be revised by have the language "the employee's average annual compensation determined as if" removed.

Par. 14. On page 19956, column 1, the last line of § 1.401(l)–3(l)(7)(iv) Example (1)(b) should be corrected to read "for X.".

Par. 15. On page 19956, column 2, the third line of § 1.401(l)–3(l)(7)(iv) Example (1)(d) should be corrected to read "compensation of $30,000; and A has average".

Par. 16. On page 19956, column 2, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (1)(d) should be corrected to read "of December 31, 1988)) plus $1,900 (4% times $30,000 plus 7% times $10,000)).".

Par. 17. On page 19956, column 3, the third line of § 1.401(l)–3(l)(7)(iv) Example (2)(d) should be corrected to read "compensation of $30,000; and A has average".

Par. 18. On page 19956, column 3, the fourth line in § 1.401(l)–3(l)(7)(iv) Example (2)(e) should be corrected to read "retirement benefit as of December 31, 1992, as".

Par. 19. On page 19956, column 3, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (2)(e) should be corrected to read "of December 31, 1988))) plus $960 (2.4% times $30,000 plus 4.8% times $5,000)).".

Par. 20. On page 19956, column 3, lines eight through ten of § 1.401(l)–3(l)(7)(iv) Example (3)(a) should be corrected to read "normal retirement benefit equal to 50% of the employee's average annual compensation, reduced or offset by 83 ⅓% of the employee's".

Par. 21. On page 19956, column 3, lines twelve and thirteen of § 1.401(l)–3(l)(7)(iv) Example (3)(b) should be corrected to read "benefit of $2,667 ($8,000 ($15,000 times $^{16}/_{25}$) minus $3,333 (83 ⅓% of $10,000 times $^{16}/_{25}$)). As of".

Par. 22. On page 19957, column 1, the third line of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "compensation of $30,000: and A has average".

Par. 23. On page 19957, column 1, line eight of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "1988, had been reduced or offset ($3,333) by".

Par. 24. On page 19957, column 1, the last two lines of § 1.401(l)–3(l)(7)(iv) Example (3)(d) should be corrected to read "1988))) plus $2300 (8% times $40,000 minus 3% times $30,000)).".

Par. 25. On page 19957, column 2, the first line of instructional Par. 8. 3. should be corrected to read "3. Paragraph (b)(3)(ii) is redesignated".

§ 1.401(m)–2 [Corrected]

Par. 26. On page 19957, column 3, line 6 of § 1.401(m)–2(b)(3)(i)(B)(*2*) should be corrected to read "the greater of the relevant actual deferral".

Par. 27. On page 19958, column 1, lines 3 and 8 following the table in § 1.401(m)–2(b)(3)(iii) Example 3, the word "of" should be removed.

Par. 28. On page 19958, column 2, in § 1.401(m)–2(c)(4) Example (1), the language "(6) 1.25 times of (3) . . . . 5.0" should be corrected to read "(6) 1.25 times (3) . . . . 5.0".

Dale Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14429 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–81–88]

RIN 1545–AM96

Nondiscrimination Requirements for Qualified Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: This document makes corrections to proposed regulations under sections 401(a)(4) and 410(b) of the Internal Revenue Code. The proposed regulations interpret both the section 401(a)(4) requirement that contributions or benefits provided under a tax-qualified retirement plan may not discriminate in favor of highly compensated employees and the related section 410(b) minimum coverage requirements.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson and David Munroe at 202–377–0372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations which are the subject of this correction reflect changes made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the proposed regulations published May 14, 1990 (55 FR 19897) FR Doc. 90–10972, is corrected as follows:

Par. 1. On page 19897, column 3, the first two sentences of the **"DATES"**portion of the preamble should be removed and the following two sentences added in their place: "Written comments must be received by July 13, 1990. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, September 26, 1990, at 10:00 a.m., and continuing at 10:00 a.m. each day, if necessary, on Thursday, September 27, 1990, and Friday, September 28, 1990, must be received by Wednesday, September 12, 1990."

Par. 2. On page 19902, column 2, the fifth line of the sixth paragraph under the "mployee Contributions" portion in the preamble should be corrected to read "section 401(a)(4) if all employees in the".

Par. 3. On page 19903, column 2, the third through fifth lines of that column under the "Permitted Disparity" portion of the preamble should be removed and replaced with the following added in its place: "percent (70 percent times 1.25 percent), which would support an excess rate of 1.825 percent for the nonhighly".

Par. 4. On page 19903, column 3, the seventh line of the third paragraph under the *"Cross-Testing Defined Benefit and Defined Contribution Plans"* portion of the preamble should be corrected to read "under section 401(a)(4) and may not use".

Par. 5. On page 19904, column 2, the fourth line of the third paragraph under the *"Plan Restructuring"* portion of the preamble should be corrected to read "requirements of sections 401(a)(4) and".

Par. 6. On page 19906, column 2, the last line of the second paragraph under the *"Additional Rules"* portion of the preamble should be corrected to read "410(b) and 401(a)(4)."

Par. 7. On page 19906, column 2, the first line of the first paragraph under the "Failure to Comply" portion of the preamble should read "In general, under section 402(b)(1) of".

Par. 8. On page 19906, column 2, the fourth line of the second paragraph under "Failure to Comply" portion of the preamble should read "plan fails to satisfy section 401(a)(28) or".

Par. 9. On page 19907, column 1, the fourth and fifth sentences of the "Comments and Request to Appear at the Public Hearing" portion of the preamble should be removed and the following two sentences added in their place: "Comments must be received by July 13, 1990. Requests to speak (with outlines of oral comments) must be received by September 12, 1990."

§ 1.401(a)(4)–0 [Corrected]

Par. 10. On page 19907, column 3, in # 1.401(a)(4)–0, the heading appearing thereunder as *"§ 1.410(a)(4)–2 Nondiscrimination in Amount of Contributions'* should be corrected to read *"§ 1.401(a)(4)–2 Nondiscrimination in Amount of Contributions"*.

§ 1.401(a)(4)–1 [Corrected]

Par. 11. On page 19911, column 1, the eighth line of § 1.401(a)(4)–1(c)(13) should be corrected to read "§ 1.401(a)(4)–12(f) and (a), unless".

§ 1.401(a)(4)–3 [Corrected]

Par. 12. On page 19913, sixth line of column 3, under § 1.401(a)(4)–3(b)(2)(v) Example 3, should be corrected to read, "more than 133 1/3 percent of 1.4 percent, plan C".

Par. 13. On page 19913, column 3, the 18th line of § 1.401(a)(4)–3(b)(2)(v) Example 4, should be corrected to read "excess rate of 1.6 percent. Thus, the greatest".

Par. 14. On page 19914, column 1, § 1.401(a)(4)–3(b)(3)(ii)(E) should be corrected to read "(E) The plan provides a uniform retirement age for all employees in the plan.".

Par. 15. On page 19914, column 3, lines 7 and 8 § 1.401(a)(4)–3(c)(1)(i) should be corrected to read "normal accrual rate that exceeds the normal accrual rate for any".

§ 1.401(a)(4)–6 [Corrected]

Par. 16. On page 19920, column 1, line 28 of § 1.401(a)(4)–6(a) should be corrected to read "not allocated to separate accounts satisfy".

Par. 17. On page 19920, column 1, line 8 of § 1.401(a)(4)–6(b) should be corrected "employee contributions (the".

Par. 18. On page 19920, column 3, § 1.401(a)(4)–6(b)(4) should be revised to read "(4) *Government plan method.* A plan that includes employee contributions not allocated to separate accounts and that is established and maintained for its employees by the government of any state or political subdivision or by any agency or instrumentality thereof may treat all benefits as employer-derived benefits."

§ 1.401(a)(4)–7 [Corrected]

Par. 19. On page 19921, column 2, the first line following the section heading "*§ 1.401(a)(4)–7 Effect of section 401(l) permitted disparity*" should be corrected to read "(a) *Overview*—(1) *In general.* In".

Par. 20. On page 19921, column 2, line 14 of § 1.401(a)(4)–7(a)(1) should be corrected to read "order to determine an adjusted accrual or".

Par. 21. On page 19922, column 3, line 2 of § 1.401(a)(4)–7(c)(2)(ii) should be corrected to read "under paragraph (c)(2)(i) of this".

Par. 22. On page 19923, column 2, line nine of § 1.401(a)(4)–7(d)(1) should be corrected to read "or (m). See § 1.401(l)–1(a)(3) for other plans to".

§ 1.401(a)(4)–9 [Corrected]

Par. 23. On page 19927, second line of column 1, under § 1.401(a)(4)–9(c)(2)(ii)(A)(*2*) should be corrected to read "no defined contribution plans are the".

Par. 24. On page 19927, column 2, line 12 of § 1.401(a)(4)–9(c)(3)(i)(B) should be corrected to read "section 410(b)(2)(A)(ii) or to all".

Par. 25. On page 19928, column 1, line 31 of § 1.401(a)(4)–9(d)(2)(i)(C) should be corrected to read "plan containing B's 1 percent rate and the" is added in its place.

Par. 26. On page 19928, column 1, line 2 of § 1.401(a)(4)–9(d)(2)(iii) should be corrected to read "the grouping rules in §§ 1.401(a)(4)–".

Par. 27. On page 19928, column 2, next to last line of § 1.401(a)(4)–9(d)(2)(iii) should be corrected to read "the grouping rules are permitted to be".

Par. 28. On page 19928, third line of column 3, under § 1.401(a)(4)–9(d)(2)(v) Example 2 should be corrected to read "Z, and another providing benefits equal to".

§ 1.401(a)(4)–10 [Corrected]

Par. 29. On page 19929, column 2, lines 11 and 12 of § 1.401(a)(4)–10(b)(2)(iii) should have the brackets "[]" removed.

§ 1.401(a)(4)–12 [Corrected]

Par. 30. On page 19930, columns 1 and 2, § 1.401(a)(4)–12, paragraphs (h) through (r) are redesignated as paragraphs (g) through (q).

§ 1.401(a)(4)–13 [Corrected]

Par. 31. On page 19930, column 2, line 4 of § 1.401(a)(4)–13(a) should be corrected to read "1991. For plan years beginning before".

Par. 32. On page 19930, column 3, the last two lines of § 1.401(a)(4)–13(a) should be corrected to read "of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.".

§ 1.401(b)–5 [Corrected]

Par. 33. On page 19931, column 2, line 9 of § 1.410(b)(5)(d)(4)(ii) should be corrected to read "prescribed in § 1.401(a)(4)–8(c)(2)(ii).".

Par. 34. On page 19932, column 1, line 3 of § 1.410(b)–5(d)(iv) should be corrected to read "using the annual method in § 1.401(a)(4)–".

Par. 35. On page 19933, column 2, line 19 of § 1.410(b)–5(e)(3)(i) should be corrected to read "section. Also, the employee's".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 90–14427 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–90–37]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Lee County Department of Transportation, the Coast Guard is considering a change to the regulations governing the Sanibel Causeway drawbridge across the Caloosahatchee River (Okeechobee Waterway) at Punta Rassa by changing the hours of the regulated operations. This proposal is being made because of the back-to-back openings which are occurring during periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 6, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ian MacCartney, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Proposed Regulations

The draw presently opens on signal; except that from 3:45 p.m. to 5:15 p.m., Monday through Friday except federal holidays, the draw need open only at 4:15 p.m. and 4:45 p.m. On Saturdays, Sundays, and federal holidays from 3:45 p.m. to 5:15 p.m., the draw need open only at 4 p.m., 4:15 p.m., 4:30 p.m., 4:45 p.m., and 5 p.m. Exempt vessels shall be passed at any time.

At the request of Lee County, the Coast Guard conducted an analysis of highway traffic conditions and bridge openings. This evaluation revealed numerous back-to-back drawbridge openings were occurring during the heaviest traffic periods causing vehicular congestion. In October 1989, a 60 day temporary regulation was implemented to determine the feasibility of implementing a 15 minute opening schedule from 11 a.m. to 6 p.m. The results indicated this schedule would facilitate highway traffic flow while still meeting the reasonable needs of navigation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The Authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1g.

2. Section 117.317(k) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(k) Sanibel Causeway bridge, mile 151 at Punta Rassa. The draw shall open on signal; except that from 11 a.m. to 6 p.m., the draw need open only on the hour, quarter hour, half hour, and three-quarter hour. Exempt vessels shall be passed at any time.

Dated: June 4, 1990.

R.E. Kramek,

Commander, Sixth Coast Guard District.

[FR Doc. 90–14453 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 656

[Docket No. 90650–0157]

RIN 0648–AB25

Atlantic Striped Bass Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA requests public comment on proposed regulations that would prohibit fishing for Atlantic striped bass in the exclusive economic zone (EEZ) 3–200 nautical miles (5.6–270.6 km) offshore from Maine through Florida. This proposed rule is promulgated under the Atlantic Striped Bass Conservation Act Appropriations Authorization (Act), Public Law 100–589, reproduced at 16 U.S.C. 1851 note. The Act requires the Secretary of Commerce (Secretary), after certain consultations, to issue regulations governing fishing for Atlantic striped bass in the Atlantic EEZ. Under these proposed regulations, harvest of Atlantic striped bass from the EEZ would be prohibited. Possession by a person of Atlantic striped bass, even if taken outside the EEZ, would be prohibited while that person is engaged in fishing in the EEZ. Atlantic striped bass taken from the waters of a coastal state could be transported through the EEZ so long as the vessel transporting the Atlantic striped bass was not used for fishing while within the EEZ. Additionaly, no bycatch of Atlantic striped bass may be retained. The proposed ban would terminate upon the expiration of the Act on September 30, 1991. The intent of the ban is to provide protection to the Atlantic Coast striped bass and to ensure the effectiveness of state regulations.

DATES: Written comments must be received on or before July 23, 1990.

ADDRESSES: Send comments on this proposed rule or supporting documents to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the environmental assessment/regulatory impact review are available from the same address.

FOR FURTHER INFORMATION CONTACT: David G. Deuel or Austin R. Magill, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Background

Section 6 of the Act, reproduced at 16 U.S.C. 1851 note, requires that "[t]he Secretary of Commerce shall promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines to be consistent with the national standards in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and necessary and appropriate to (1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal state; and (2) achieve conservation and management goals for the Atlantic striped bass resource." In developing the regulations, the Secretary shall consult with the Atlantic States Marine Fisheries Commission (ASMFC), the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity. Section 6 of the Act specifies that any regulations imposed would cease to have force and effect at the close of September 30, 1991. Section 6 also states that the appropriate Councils may prepare a fishery management plan (FMP) for Atlantic striped bass in the EEZ, which if approved and implemented, would supersede any regulations promulgated by the Secretary.

The Atlantic striped bass occurs predominately in internal state waters and the territorial sea. Historically, only about 7 percent of commercial landings have been taken seaward of 3 miles (5.6 km) from the coastline. Management responsibility for Atlantic striped bass resides primarily with the coastal states; management occurs through the ASMFC's Interstate Fisheries Management Plan for the Striped Bass (ASMFC Plan). The ASMFC Plan was adopted in 1981 by the coastal states from Maine through North Carolina in response to a severe decline in commercial landings and in juvenile production in Maryland. Increasingly strict state regulations have been imposed by amendments to the ASMFC Plan from 1981 through 1989 to restrict

further the harvest of Atlantic striped bass by recreational and commercial fisheries and allow rebuilding of the stocks. Amendment 4 to the ASMFC Plan, approved by the ASMFC in October 1989, allows for a limited increase in harvest beginning in 1990. However, this transitional fishery does not signal full recovery of the stocks, and restrictive management measures will continue until full recovery occurs. A draft FMP was prepared by the Mid-Atlantic Council in 1984 for the EEZ to complement the ASMFC Plan, but it was not submitted for Secretarial approval.

Limited commercial catches of Atlantic striped bass were made in the EEZ off the Maryland coast in 1987 (24,000 pounds or 10.9 mt) and 1988 (27,000 pounds of 12.2 mt). Maryland's regulations, including a moratorium on the harvest of Atlantic striped bass in certain internal Maryland waters, did not prevent the landing of these fish in Maryland for transshipment to other states. These landings and the absence of regulations for the EEZ prompted concern for a potential increase in harvest from the EEZ and led to the adoption of section 6 of the Act.

Relevant Activities Pursuant to Section 6

In response to section 6 of the Act, NMFS considered several regulatory options for the EEZ and consulted with the ASMFC; the New England and Mid-Atlantic Councils; and other affected Federal and state entities. Based on rather divergent views, NMFS determined that a full record of comment was necessary before determining whether to proceed with a proposed rule. Therefore, an Advance Notice of Proposed Rulemaking (ANPR), published August 16, 1989, at 54 FR 33735, requested public comment on the following options:

Option 1A—Prohibit the harvest and the possession of Atlantic striped bass in the EEZ.

Option 1B—Prohibit the harvest of the Atlantic striped bass in the EEZ.

Option 2—Apply state regulations to fish caught in the EEZ.

Option 3—Promulgate specific Federal regulations on Atlantic striped bass fishing in the EEZ.

Option 4—Maintain status quo or take no action.

Options 1A and 1B both prohibit directed fishing for Atlantic striped bass, defined as a prohibition on the harvest of Atlantic striped bass in the EEZ. Option 1B differs from Option 1A by allowing transit through the EEZ with Atlantic striped bass taken from state waters. Since publishing the ANPR, NMFS has added to Option 1B a prohibition of possession of Atlantic striped bass, even if taken outside the EEZ, while a person is engaged in fishing in the EEZ.

Discussion

Responses to the ANPR totaled 12, though a second letter was received from both the New England and Mid-Atlantic Councils to reaffirm their earlier positions. There were five responses in support of Option 1(A and B), a complete ban on fishing for Atlantic striped bass in the EEZ. These were received from the Maine Department of Natural Resources, the Mid-Atlantic Council, the Sport Fishing Institute, the Delaware Division of Fish and Wildlife, and the U.S. Fish and Wildlife Service. Two responses, both from the Maryland Department of Natural Resources, supported Option 2 (state regulations to apply in the EEZ). Option 4, take no action at this time, was favored by the New England Council, the New York Department of Environmental Conservation, and the ASMFC. Overall, the comments favored Option 1. An issue identified by the New England Council was the need to transport Atlantic striped bass that were legally taken in state waters through the EEZ. For example, a fisherman catching a fish at Block Island, Rhode Island, may need to traverse the EEZ enroute by boat to the mainland. Option 1B would allow this to occur.

Proposed Action

The proposed action is a ban on harvest of Atlantic striped bass in the EEZ that would: (1) Prohibit directed fishing for Atlantic striped bass in the EEZ on the Atlantic coast; (2) prohibit the possession of Atlantic striped bass while engaged in fishing for other species of fish in the EEZ; (3) prohibit retention of Atlantic striped bass caught incidental to the catching of other species of fish; and (4) allow, while transiting the EEZ, the possession of Atlantic striped bass taken outside the EEZ. The ban applies to both commercial and recreational fishing. A ban (Option 1B) was selected for the following reasons:

(1) There is the potential for a major commercial harvest of Atlantic striped bass from the EEZ, which would be detrimental to the stock recovery efforts to date. A ban would prevent this from happening.

(2) The recent relaxation of the regulations on Atlantic striped bass fishing in state waters, through the ASMFC Plan (resulting from the high level of juvenile reproduction in Maryland in 1989), though encouraging, is not an indication that the stock has recovered. Rather, the additional allowed harvest will be very limited, effectively constituting a transitional fishery with very restrictive regulations. This low level of harvest will be maintained until full recovery of the stocks has occurred. During this transitional fishery, a major harvest of Atlantic striped bass from the EEZ would be contrary to the continued rebuilding of the stocks and would have the potential to damage the spawning stocks.

(3) The management of Atlantic striped bass is primarily the responsibility of the coastal states, and is accomplished through the ASMFC Plan. As such, with a ban in the EEZ, the total allowable harvest of Atlantic striped bass would be from state waters (territorial sea and internal state waters) and totally regulated by the states through the ASMFC Plan.

(4) The increased commercial harvest will begin to reestablish the commercial markets, which have been severely restricted in the last few years. The relatively high value of Atlantic striped bass in the market, combined with restrictive regulations allowing a very limited harvest in state waters, will likely encourage illegal harvest. A ban in the EEZ would preclude Atlantic striped bass from being harvested in the EEZ and illegally marketed, and also prevent persons from illegally harvesting Atlantic striped bass in state waters and claiming they were harvested in the EEZ.

(5) In 1987 and 1988, Atlantic striped bass were harvested from the EEZ off Maryland, landed in Maryland and shipped to another state for sale. Maryland law permitted this, even though there was a ban on Atlantic striped bass fishing in Maryland. In 1989, the statute was changed to prohibit the transport through Maryland of fish caught in the EEZ. There is the possibility that there are other states that might currently, or at some future date, have a similar "loophole", which would allow fish caught in the EEZ to be landed for shipment elsewhere. A moratorium in the EEZ would prevent this from happening.

The Act requires that any regulations promulgated by the Secretary be consistent with the national standards set forth in section 301 of the Magnuson Act. Following is a discussion related to each of the seven national standards:

National standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The basic management of the Atlantic striped bass occurs through the ASMFC Plan. This Plan provides for the conservation and preservation of the stocks, rather than achievement of maximum yield. Specifically, the goal of the Plan is "[to] perpetuate the [Atlantic] striped bass resource throughout its range so as to generate optimum social and economic benefits to the nation from its commercial and recreational harvest and utilization over time." The proposed regulations on Atlantic striped bass fishing in the EEZ complement the conservation goals of the Plan, and contribute toward prevention of overfishing.

National standard 2 requires that conservation and management measures shall be based upon the best scientific information available. The information base for the proposed regulations, as described in the Environmental Assessment/Regulatory Impact Review, include the most up-to-date information available on Atlantic striped bass from all known sources, including studies conducted by (1) the Emergency Striped Bass Research Study, (2) state fisheries agencies, and (3) researchers at various universities. These studies collectively represent the best scientific information available at this time.

National standard 3 requires, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. The ASMFC Plan provides for the management of Atlantic striped bass from the Maine border with Canada through North Carolina. Although the Atlantic striped bass is known to occur north of Maine, the Plan provides for management throughout the range of the migratory stocks in the coastal Atlantic waters of the United States. Although Atlantic striped bass are found south of North Carolina, they are resident stocks that are not migratory. The proposed regulations apply to Atlantic striped bass in the EEZ from Maine through Florida; thus, they cover the entire range of the Atlantic striped bass within the United States.

National Standard 4 states that conservation and management measures shall not discriminate between residents of different states and, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be: (A) Fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other such entity acquires an excessive share of such privileges. The ASMFC Plan provides for overall coastwise management measures, but allows some discretion at the state level to accommodate traditional fisheries or specific requirements in a state. The regulations proposed for the EEZ are uniform throughout the range of the Atlantic striped bass in the EEZ. Thus, there is no discrimination between residents of different states.

National standard 5 provides that conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no measure shall have economic allocation as its sole purpose. The ban on harvest in the EEZ supports efforts to rebuild the stocks of Atlantic coast striped bass. Allowable harvest would be restricted to state waters where traditional fisheries were, and are, being conducted.

National standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The proposed regulations are in response to the decline in abundance of Atlantic striped bass in the past, and are intended to accommodate rebuilding of the stocks. In the future, these regulations will be evaluated and changed to accommodate any changed status of the Atlantic striped bass stocks.

National standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The proposed regulations will be enforced in conjunction with all other fishery regulations in the EEZ, and contain no reporting requirements. Therefore, the costs of these regulations are minimal. There are no other Federal regulatons on the harvest of Atlantic striped bass, thus there is no duplication.

Classification

The Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. This determination is based on the draft regulatory impact review (RIR), which concludes that the benefits of the proposed rule outweigh the costs, there are no significant negative impacts on small businesses, and there are no mandatory reporting requirements.

This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A copy of the RIR may be obtained (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because in recent years there has been very limited fishing effort and harvest of Atlantic striped bass from the EEZ. As a result, a regulatory flexibility analysis was not prepared.

NOAA prepared an environmental assessment (EA) for this proposed action and concluded that there would be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 656

Fishing, Fisheries.

Dated: June 18, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR chapter VI is proposed to be amended by adding part 656 to read as follows:

PART 656—ATLANTIC STRIPED BASS FISHERY

Sec.

656.1 Purpose and scope.
656.2 Definitions.
656.3 Prohibitions.

Sec.
656.4 Relation to the Magnuson Act.
656.5 Civil procedures.

Authority: 16 U.S.C. 1851 note.

§ 656.1 Purpose and scope.

The regulations in this part implement section 6 of the Atlantic Striped Bass Conservation Act Appropriations Authorization, Pub. L. 100-569, reproduced at 16 U.S.C. 1851 note, and govern fishing for Atlantic striped bass in the EEZ on the Atlantic coast.

§ 656.2 Definitions.

The terms used in this part have the following meanings:

Act means the Atlantic Striped Bass Conservation Act Appropriations Authorization, 16 U.S.C. 1851 note.

Area of Custody means any vessel, building, vehicle, live car, pound, pier, or dock facility where Atlantic striped bass might be found.

Atlantic striped bass means members of stocks or populations of the species *Morone saxatilis*, found in the waters of the Atlantic ocean north of Key West, Florida.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the Act; or

(d) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

EEZ means the exclusive economic zone of the United States, from 3 to 200 nautical miles (5.6–370.6 km) offshore of the United States, beginning at the seaward boundary of the territorial sea of the coastal states.

Fishing or *to fish* means:

(a) The catching, taking, or harvesting of Atlantic striped bass;

(b) The attempted catching, taking, or harvesting of Atlantic striped bass; or

(c) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

(d) The term does not include any scientific research authorized by the Federal Government or by any state government.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(a) Fishing; or

(b) Aiding and assisting one or more vessels at sea in the performance of any activity related to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, state, local, or foreign government or any entity of any such government.

Retain means to fail to return Atlantic striped bass to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce or a designee.

§ 656.3 Prohibitions.

No person shall:

(a) Fish for, or take and retain, any Atlantic striped bass within the EEZ;

(b) Fail to return to the water immediately, with the least possible injury, any Atlantic striped bass taken within the EEZ incidental to the commercial or recreational fishing for species of fish other than Atlantic striped bass;

(c) Possess any Atlantic striped bass on board a fishing vessel while such vessel is engaged in fishing within the EEZ;

(d) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import or export, any Atlantic striped bass taken and retained in violation of the Act or these regulations;

(e) Interfere with, obstruct, delay, or prevent by any means a lawful investigation, search or seizure conducted in the process of enforcing the Act;

(f) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, transporting, purchase, sale, or transfer of any Atlantic striped bass;

(g) Refuse to allow an authorized officer to board any fishing vessel or to enter any area of custody for the purpose of conducting any search, inspection or seizure in connection with the enforcement of the Act or these regulations;

(h) Dispose of any Atlantic striped bass, or parts, or other matter, in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel;

(i) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connecton with enforcement of the Act or these regulations;

(j) Resist a lawful arrest for any act prohibited by the Act or these regulations;

(k) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the act or these regulations.

§ 656.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal forfeitures, and enforcement apply with respect to these regulations as if these regualtions were issued under the Magnuson Act.

§ 656.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and these regulations.

[FR Doc. 90-14488 Filed 6-21-90; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-108]

Medfly Cooperative Eradication Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement for the Medfly Cooperative Eradication Program. The environmental impact statement will analyze the potential environmental effects of a program to eradicate the Mediterranean fruit fly from the United States mainland. We are also requesting comments from the public, including government agencies and private industry, concerning issues that should be addressed in the environmental impact statement. Our request for comments is the first step in the development of an environmental impact statement.

DATES: Consideration will be given only to comments received on or before August 21, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-108. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. Originally native to Africa, it is now found in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. Recent outbreaks have occurred in California and Florida. The insect has the potential to establish itself in these two States, as well as the States of Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, and Texas. If established on the United States mainland, agricultural losses could range from $621 million to $831 million annually.

The Mediterranean fruit fly (Medfly) has been introduced to the United States mainland intermittently since its initial introduction in 1929, however, eradication programs have prevented it from becoming established. These programs have taken place in California, Florida, and Texas, and have been conducted as cooperative efforts between the United States Department of Agriculture and State departments of agriculture. From 1929 to the present, Federal and State expenditures for Medfly eradication programs on the United States mainland have totaled approximately $270 million.

The magnitude of these programs and their controversial nature now indicate the need for the Animal and Plant Health Inspection Service (APHIS) to develop, or cooperate in the development of, a programmatic environmental impact statement (EIS) that will analyze potential environmental effects of various alternative Medfly control activities. Because these control activities are emergency in nature and must be implemented quickly, it is imperative that APHIS and cooperating government entities prepared in advance an EIS that accurately predicts and comprehensively analyzes the effects of these control activities on the environment. Pursuant to section 1501.7 of the Council on Environmental Quality regulations (40 CFR 1501.7), we are issuing this Notice of Intent to prepare such an EIS.

Scoping Process

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public involvement in the form of either written or oral comments, and evaluation of these comments. This process is used for determining the scope of issues to be addressed. We are therefore asking for written comments that identify significant environmental issues that should be analyzed in the EIS. We invite comments from the interested public, from Federal, State, and local agencies that have an interest in the Medfly Cooperative Eradication Program or related programs, and from Federal and State agencies that have either jurisdiction by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS. After reviewing the comments, we will schedule public meetings to provide further opportunity for comment. The dates and locations of these meetings will be announced in a subsequent Federal Register notice.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive. The following alternatives have already been identified for comprehensive analysis in the EIS:

(1) Integrated control,
(2) Chemical control,
(3) Sterile insect technique,
(4) Physical control,
(5) Cultural control, and
(6) No action.

Major Issues

The following are some of the major issues that will be discussed in the EIS:

(1) Program and control alternatives,
(2) Use of aerially applied chemical insecticides,
(3) Potential impacts of the alternatives on the physical environment, the non-target biological environment (especially endangered and threatened species), and the human

environment (especially health and safety),

(4) Potential cumulative impacts, and

(5) Monitoring.

Preparation of the EIS

Following scoping, we will prepare a draft EIS for the Medfly Cooperative Eradication Program. A notice announcing that the draft EIS is available for review will then be published in **Federal Register**. The notice will also request comments concerning the draft EIS.

Done in Washington, DC, this 19th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14506 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption From Appeal; North Salvage, Tahoe National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, North Salvage, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal its decision to sell dead and dying trees that are being killed by the combined effects of bark beetles ans severe drought and to rehabilitate the affected area. The project area is located in the northeast quarter of the Downieville Ranger District, Tahoe National Forest. The proposed salvage and restoration project involves approximately 60,000 acres and proposes harvest of up to 20 million board feet (MMBF) with a combination of tractor, cable and helicopter yarding systems.

There are higher than normal levels of tree mortality occurring throughout the Tahoe National Forest as a result of three years of below normal precipitation. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands. True fir stands above 5,000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized and its value recovered.

The Forest Supervisor has determined through environmental analysis, which included public scoping, that there is good cause to expedite this project. Up to 50% of the trees in some stands within the analysis area are dead or dying. Regional entomologists have analyzed the infestation situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sale economically infeasible because of higher than normal harvesting costs. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg funds to restore forest values being lost as the result of extensive tree mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision for the salvage harvest and restoration of the North Salvage analysis area on the Downieville Ranger District, Tahoe National Forest. The project would recover timber that would otherwise be lost to deterioration if delayed. It would also reduce the severe risk of wildfire, which would result if the project is not implemented in a timely manner.

EFFECTIVE DATE: This decision will be effective June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 705-2848, or to Frank J. Waldo, Acting Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959 at (916) 265-4531.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal is documented in the North Salvage Environmental Assessment. Public participation in the analysis was solicited through a public meeting held March 14, 1990 in Grass Valley, California, a news release in mid-April, and through mailings to publics owning property adjacent to the Forest, mining claimants, holders of special use permits and those others known to be interested in timber management on the Tahoe National Forest. Comments received were considered in the issues, range of alternatives considered and the management requirements and mitigation measures developed.

The analysis indicates that up to 20 million board feet, primarily true fir, valued at approximately two million dollars, is being killed by the combined effects of drought and bark beetle attack. Up to 70% of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying or not harvesting this timber could result in an estimated loss of up to $500,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in Nevada, Placer, Plumas, Sierra, and/or Yuba Counties.

The environmental analysis documents that salvage harvesting can be conducted to protect other resource values such as wildlife habitat, soil productivity, and watershed values. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. The decision for the project will be issued in June 1990.

Dated: June 15, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-14493 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact for Three Creek Watershed, Holston River Soil and Water Conservation District, Washington County, VA

The watershed protection measures to be installed in the Three Creek Watershed will be funded on a cost-share basis under the authority of the Watershed Protection and Flood Prevention Act, Public Law 83-566. An interdisciplinary evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and federal agencies and interested persons during the planning of this measure.

The purpose of the watershed plan is to reduce erosion to sustain productivity and improve water quality. Community benefits will result through the installation of this plan which is sponsored by the Holston River Soil and Water Conservation District and the Washington County Board of Supervisors.

Planned Action

Treatment includes the protection of 2,664 acres of cropland, 6,458 acres of pastureland, 440 acres of forestland, and 207 acres of otherland through installation of enduring and management-type conservation practices.

Environmental Impact

The proposed plan will reduce sediment damages and improve water quality.

One endangered specie, one threatened specie, and four candidate species occur in the watershed. The conservation practices planned for this watershed would protect these species.

An inventory of all known archaeological and cultural resources has been made and the sites are located on U.S.G.S. Quadrangle Maps for reference by SCS personnel. This is to prevent any soil disturbing activity at any known sites.

The area receiving treatment has 2,675 acres of prime farmland.

Adverse Environmental Impacts Which Cannot be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust, and exhaust levels. These levels will increase only during construction.

Alternatives

1. No action. With no action, there would be continued erosion and sediment damage to the resource base and downstream.

2. The National Economic Development Plan (NED) would protect 2,101 acres of cropland, pastureland, and forestland. Erosion sediment reduction would be 16,021 tons *per* year.

3. The Resource Protection Plan (RP) would protect 9,789 acres of cropland, pastureland, and forestland. Sediment delivered to streams would be reduced by 94,222 tons *per* year.

Short-Term Uses vs. Long-Term Productivity

The reduction in erosion and sediment damages and the installation of conservation practices will improve the quality of life in this area.

Commitment of Resources

Labor, capital resources and energy used by these planned actions will be irretrievably and irreversibly committed.

Conclusion

This Watershed Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impacts described in this Finding of No Significant Impact. The Environmental Assessment and Environmental Evaluation file are available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, Room 9201, 400 North Eighth Street, Richmond, Virginia 23240-9998, telephone (804) 771-2455.

I have reviewed the Environmental Assessment and have determined this Watershed Plan will not result in significant impact on the human environment. I conclude that an Environmental Impact Statement is not necessary.

Dated: June 15, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90-14494 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-16-M

Three Creek Watershed, Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Three Creek Watershed in Washington County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, VA 23240-9998, telephone (804) 771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for the protection of 9,789 acres of cropland, pastureland, and forestland in Washington County, Virginia. This protection will be accomplished by installation of soil and water conservation practices.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist. No Administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable.)

Dated: June 15, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90-14495 Filed 6-21-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of Panel Review of a final determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Red Raspberries from Canada filed by Clearbrook Packers, Inc. (Clearbrook), Marco Estates Ltd./Landgrow Packers (Marco), and Mukhtiar & Sons Packers, Ltd. (Mukhtiar).

SUMMARY: Pursuant to Rule 82 of the Article 1904 Panel Rules ("Rules"), the Panel Review of the final determination described above has been completed, effective June 18, 1990.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC., 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Goverment of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 53165). The panel review in this matter was conducted in accordance with these Rules.

On March 15, 1989, a Request for Panel Review of the final determination made by the Department of Commerce ("Department") respecting Red Raspberries from Canada was filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. A panel was convened in accordance with the Rules and oral arguments were presented on all issues on October 20, 1989.

In a decision dated December 15, 1989 (54 FR 52838), the panel initially affirmed in part and remanded in part the Department's final determination. The panel held defective and remanded the Department's finding that home market sales of Clearbrook and Mukhtiar were not adequate for use as the basis for determining foreign market value. The panel directed the Department to provide explanations of the reasons why Clearbrook's and Mukhtiar's home market sales do not form an adequate basis for calculating foreign market value.

After considering the Determination on Remand filed by the Department on January 26, 1990, and the comments in opposition filed by complainants on February 9, 1990, the panel ordered the Department to file an amended final determination within 30 days, using home market sales of Clearbrook and Mukhtiar as the basis for foreign market value. Notice of the panel decision was published in the **Federal Register** on April 18, 1990 (55 FR 14847). On May 2, 1990, the Department filed its Determination on Remand, pursuant to Rule 75 of the Rules, in compliance with the panel decision.

No Notice of Motion for review of the Determination on Remand and no request for an extraordinary challenge committee has been filed with the responsible Secretary. Accordingly, pursuant to Rule 82, this Notice of Completion of Panel Review shall be effective on June 18, 1990, the 46th day following the filing of the Determination on Remand. Pursuant to Rule 85, the panelists are discharged from their duties effective June 18, 1990.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-14471 Filed 6-21-90; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in panel review of final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting New Steel Rail, Except Light Rail, from Canada, Secretariat File No. USA–89–1904–07.

SUMMARY: By a decision dated June 8, 1990, the Binational Panel remanded in part and affirmed in part the Department of Commerce's final affirmative countervailing duty determination published August 3, 1989, 54 FR 31,991 and amended September 22, 1989, 54 FR 39,032. A copy of the complete Panel decision is available from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC. 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

In its Final Affirmative Countervailing Duty determination, the Department of Commerce ("Commerce") discussed numerous federal and provincial programs which were allegedly used to subsidize the Canadian steel rail industry, and ultimately determined the estimated net subsidy for all manufacturers or producers, except Algoma Steel Corporation Ltd., to be 113.58% *ad valorem*, later reduced by amendment to 112.34% *ad valorem*. Sydney Steel Co-poration ("Sysco") challenged three aspects of the final determination and amended order:

(1) Commerce's treatment of grants for the payment of principal and interest on debentures as nonrecurring grants to be allocated over the life of the equipment (15 years in this instance) rather than expensed in the year received;

(2) Commerce's conclusion that the explicit guarantee by a government of a loan to a firm owned by that government is a countervailable benefit, on the grounds that the normal commercial practice in Canada countenances loan guarantees by parents to subsidiaries, regardless of whether the subsidiary is equityworthy or creditworthy; and

(3) Commerce's calculation of the benefit to Sysco of three studies funded under the Economic Planning Subsidiary Agreement of the Economic and Regional Development Agreement ("ERDA").

Panel Decision

Upon examination of the record and after consideration of the arguments presented by the participants in their briefs and at a hearing held in Washington DC on April 18, 1990, the Panel:

(1) Remanded to Commerce that aspect of the final determination that treats the payments of "Grants for Payment of Principal and Interest on Debentures" as non-recurring grants. Commerce was instructed to recalculate Sysco's subsidies by expensing the entire amount of each such grant in the year it was received by Sysco;

(2) Remanded to Commerce that aspect of the final determination that treats the loan guarantees of the Government of Nova Scotia to Sysco as a countervailable benefit. The Panel determined that Commerce must either: (i) Provide to the Panel from the administrative record substantial evidence as to the basis for Commerce's conclusion that notwithstanding the normal Canadian commercial practice of corporate parents providing loan guarantees to their subsidiaries, such practice does not include situations where the subsidiary is non-equityworthy and non-creditworthy, or (ii) recalculate Sysco's subsidy treating the loan guarantees as non-countervailable benefits; and

(3) Affirmed Commerce's calculation of the benefit to Sysco of three studies funded under ERDA.

The Panel had also received submissions from the participants relating to *Ipsco* v. *United States*, Slip Op. 89–1486 (Fed. Cir. April 3, 1990), and the possible relevance of that case to the issues before the Panel. The Panel determined that the holding in *Ipsco* relating to the calculation of countervailing duties using a country-wide rate did not concern an issue relevant to the Panel review.

The panel ordered that the results of the remand on issues (1) and (2), above, shall be provided by Commerce to the Panel within 30 days of the date of this decision (by not later than July 9, 1990). Other parties shall have 15 days thereafter to provide the Panel with any comments on Commerce's remand results.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary FTA Binational Secretariat.

[FR Doc. 90-14470 Filed 6-21-90; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of request for panel review of final results of Antidumping Duty Administrative Review made by the Department of Commerce, International Trade Administration, Import Administration, respecting replacement parts for self-propelled bituminous paving equipment from Canada, filed by Northern Fortress Ltd., successor to Fortress Allatt, Ltd., with the United States Section of the Binational Secretariat on June 14, 1990.

SUMMARY: On June 14, 1990, Northern Fortress Ltd., successor to Fortress Allatt, Ltd., filed a request for panel review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final results of an antidumping duty administrative review respecting replacement parts for self-propelled bituminous paving equipment from Canada, covering the period September 1, 1987 through December 31, 1988, made by the International Trade Administration, Import Administration, Import Administration File Number A–122–057. Notice of this determination was published in the **Federal Register** on May 15, 1990 (55 FR 20175). The Binational Secretariat has assigned Case Number USA–990–1904–01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on June 14, 1990, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 16, 1990);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel review (the deadline for filing a Notice of Appearance is July 30, 1990); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-14472 Filed 6-21-90; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council, Public Meetings and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will hold public meetings on July 9–11, 1990, at the Sheraton Royal Biscayne Beach Resort and Racquet Club, 555 Ocean Drive, Key Biscayne, FL. On July 9 the Council will hold a public hearing, from 10:30 a.m., to noon, on the proposed Amendment #1 to the Coral Fishery Management Plan (FMP). The Council will accept written comments until July 3, 1990, at its address, below.

Council

The Gulf of Mexico Council will begin its meeting on July 11 at 9:45 a.m. From 10 a.m., to 10:30 a.m., the Council will hear public testimony on the Tortugas Shrimp Sanctuary. From 10:30 a.m., to 11 a.m., the Council will hear public testimony on the draft Amendment #1 to the Coral FMP. It also will review committee recommendations and hear a report on red snapper alternatives for presentation at public hearings. The Council meeting will recess at 5 p.m.

On July 12 the Council meeting will reconvene at 8:30 a.m. The Council will continue discussion of red snapper alternatives for presentation at public hearings; review the overfishing definition for shrimp; and hear the enforcement and the Director's reports. The Council will adjourn its meeting at noon.

Committees

On June 9 at 1 p.m., the Coral Management Committee will meet. The Coral meeting will be followed by a meeting of the Shrimp Management Committee, which will recess at 5:30 p.m.

On July 10 at 8 a.m., the Joint Shrimp/Reef Fish Management Committees will meet, and will recess at 5 p.m.

On July 11 at 8 a.m., the Joint Shrimp/Reef Fish Management Committees will reconvene, and will adjourn at 9:30 a.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–14541 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will hold public meetings on July 9–12, 1990, at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR.

The Council will begin its meeting on July 11 at 8 a.m., to discuss anchovy management issues, including the spawning biomass and quotas for the 1990–1991 season, and revisions to Amendment #6 to the Anchovy Fishery Management Plan (FMP). This amendment was adopted by the Council in April 1990 and submitted to the National Marine Fisheries Service (NMFS) for review and approval. The NMFS has since responded that the amendment is incomplete because it does not address habitat and vessel safety issues. Additionally, the NMFS would like the Council to reconsider the overfishing definition for anchovy.

On July 11 at 4 p.m., the Council will accept public comments on issues not on the agenda.

Also, on July 11 and continuing on July 12 the Council will consider numerous groundfish management issues, including: (1) The status of the yellowtail rockfish stock assessment; (2) inseason management measure adjustments for rockfish and sablefish; (3) the status of the Pacific whiting fishery and reassessment of domestic annual processing; (4) allocation of Pacific whiting between Canada and the United States; (5) the limited entry amendment to the Groundfish FMP; (6) Amendment #4 to the Groundfish FMP, which is a major rewrite of the plan that provides the Council with more flexibility to adopt and revise measures; (7) the overfishing definition; (8) offshore processor reporting regulations; and (9) public proposals for 1991 management measures.

On July 12 the Council will discuss salmon management, habitat issues and administrative matters. Salmon issues include: (1) The sequence of events and the current status of the 1990 fishery; (2) Amendment #10 to the Salmon FMP; (3) consultation on Sacramento River winter chinook under the Endangered Species Act (ESA); and (4) the status of Columbia River stocks petitioned under the ESA.

The *Scientific and Statistical Committee* will meet on July 9 at 1 p.m., to discuss scientific issues on the Council's agenda, and will reconvene on July 10 at 8 a.m.

The *Groundfish Advisory Subpanel* will meet on July 10 at 8 a.m., to address groundfish management issues on the Council's agenda.

The *Habitat Committee* will meet on July 10 at 8:30 a.m., to discuss current significant habitat issues affecting fisheries under the Council's jurisdiction.

The *Budget Committee* will meet on July 11 at 5 p.m., to discuss the Council's budget matters.

Detailed agendas for the above meetings will be made available to the public after June 28, 1990. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–14542 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 617]

Endangered Species Permit Modification; Georgia Department of Natural Resources (P403)

Notice is hereby given that, pursuant to the provisions of sections 217–222 of the regulations governing endangered and threatened species permits, Scientific Research Permit No. 617 issued to the Georgia Department of Natural Resources, 1200 Glynn Avenue, Brunswick, Georgia 31523–8990, on December 4, 1987 (52 FR 47441), is modified as follows:

Section B.1 is replaced by:

1. This research effort shall be conducted by the means, in the areas, and for the purposes set forth in the application and modification.

Section B.9–11 are added:

9. The Permit Holder shall use the Protocol provided by Dr. Boyd Kynard, U.S. Fish and Wildlife Service, Northeast Anadromous Fish Research Laboratory, when implanting telemetry tags inside shortnose sturgeon.

10. A mortality of two shortnose sturgeon is authorized. If two fish die, tagging shall be discontinued. The Holder shall suspend research activities and provide a report to the Assistant Administrator for Fisheries. The report shall include necropsy results, a description of the events surrounding the mortality and identification of steps that will reduce the potential for additional mortalities. Authorization to proceed with subsequent research activities will be at the discretion of the Assistant Administrator for Fisheries.

11. Only one tag may be implanted in each of the 10 fish authorized for tagging.

As required by the Endangered Species Act of 1973, issuance of this modification is based on the finding that such modification (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species that is the subject of the modification, and (3) will be consistent with the purposes and policies in Section 2 of the Act. This modification was issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

Documents in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, MD 20910 (301/427–2289); and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–14445 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Application for Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#42)

Notice is hereby given that the Applicant has applied in due form for a Permit to take and import endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant*: Dr. Izadore Barrett, Director, Southwest Fisheries Center, NOAA, National Marine Fisheries Service, La Jolla, California 92038.

2. *Type of Permit*: Scientific Purposes.

3. *Name and Number of Species:* Hawksbill turtle *(Eretmochelys imbricota)*, Leatherback turtle *(Dermochelys coriacea)*, Olive ridley sea turtle *(Lepidochelys olivacea)*, Green turtle *(Chelonia mydas* and the eastern Pacific form of the green turtle is also known as the black turtle *(Chelonia mydas agassizi)*), Loggerhead turtle *(Caretta caretta)*.

A maximum of 180 turtles, caught incidentally to fishing efforts by the U.S. tuna purse seine fleet, will be captured, tagged and released.

4. *Type of Take*: The applicant proposes to identify, measure, examine, tag and release turtles that are caught incidental to the tuna/dolphin U.S. purse seine fishery in the eastern tropical Pacific (ETP). The objectives of the proposed project are to monitor the take of turtles by the fishery, to record data on the geographic distribution of turtles at sea, to investigate movements, and to study the life history of sea turtles. The investigation of sea turtles pelagic ecology is necessary to obtain information for use in developing effective management measures aimed at reversing the decline of sea turtle populations.

The applicant is also requesting to salvage and import any turtles found dead. Dead turtles, or parts, will be transported to the NMFS Southwest Fisheries Center for further life history analysis.

5. *Location and Duration of Activity:* The exact region of research will be determined by the activity of the U.S. purse seine fleet. The majority of fishing activity associated with the purse seine fishery occurs in the ETP (20°N to 15°S and westerly to 150°W). The applicant requests that the permit extend for five years with a starting date of 1 August 1990.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and Director, Southwest Region, NOAA, NMFS, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–14443 Filed 6–21–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 1 to Permit No. 584.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216, and § 220.24 of the Regulations Governing Endangered Species (50 CFR Part 217–222), Scientific Research Permit No. 584 issued to the National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 on April 24, 1987 (52 FR 13743) is modified as follows:

Delete A.1.a.

Revise B.1. to read:

1. This research shall be conducted by the means, in the areas, and for the purposes set forth in the application and the modification request.

Add the following new conditions to B.5.

a. A northern sea lion research activity shall be suspended and the experimental protocol and handling procedures for that facility shall be reviewed and, if necessary, revised, in consultation with the Marine Mammal Commission, if two northern sea lions die during any given field season as a direct result of this handling procedure, or if there is other evidence of adverse impacts upon the subject animals or population as a whole.

b. The intentional lethal taking of harbor seals shall only occur in areas where significant declines have not occurred or when lethal take is necessary to determine the cause(s) of or how to stop and reverse the declines. A research activity on harbor seals shall be suspended and the experimental protocol and handling procedurs for that activity shall be reviewed and, if necessary, revised in consultation with the Marine Mammal Commission, if two harbor seals are accidentally killed during any given field season as a direct result of this handling procedure, or if there is other evidence of

adverse impacts upon the subject animals or population as a whole.

c. The animals that are killed to retrieve instruments shall be counted against the total number of animals authorized to be sacrificed.

B.8. is revised to read:

8. Whenever feasible, the Permit Holder should have a veterinarian experienced in anesthesia of marine mammals present in the field during the chemical restraint/immobilization studies. Adequate resuscitation equipment shall be available for use at the experimental site in the event a sedated animal stops breathing. In addition, if a restraining bag is utilized in the capture/restraint process, it shall be used for the shortest possible time and be designed to insure that the animal has adequate ventilation.

Add to B.9:

9. * * * Authorization to continue research in subsequent years shall be deferred pending submission and approval of a report on each preceding year's activities and specific research proposed for the forthcoming year.

This modification is effective upon publication in the Federal Register.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East Highway, Rm. 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-14444 Filed 6-21-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATES: July 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 30, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 11994) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments were received from the current contractor prior to the issuance of the notice of proposed addition of this wiping cloth to the Procurement List and, during the comment period, from a national association representing wiping cloth manufacturers.

The current contractor claimed that the addition of this commodity to the Procurement List would have serious adverse impact on its sales, employment, and profitability. The Committee recognizes that some impacts are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The Committee has determined that the addition of these wiping cloths to the Javits-Wagner-O'Day Program would not have a severe adverse impact on the current contractor.

The Committee also considered concerns expressed about the loss of employment in arriving at its decision to add these wiping cloths to the Procurement List. The Committee has determined that the employment gains for persons with severe physical or mental disabilities, who have difficulty in finding and holding a job, outweigh the possible hardships on persons who do not have such disabilities.

The Association commented that the withdrawal of these wiping cloths from the competitive procurement system would be injurious to its members who had successfully furnished some of the Government's requirements for these items in the past. The estimated annual value of the Government procurement for these wiping cloths is approximately $84,000 which represents an insignificant portion of the total market for wiping cloths and would have minimal effect on the market for items of this type.

After consideration of material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current contractor and the significant comments received, the Committee has determined that these commodities are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1990:

Cloth, Wiping
6532-LL-N83-0490
6532-LL-N83-0491

(Requirements of the Norfolk Naval Shipyard, Portsmouth, VA only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-14520 Filed 6-21-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 23, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodity

Lanyard, Camouflage
1080-01-073-3195

Service

Mess Attendant Service, Ellsworth Air Force Base, South Dakota.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-14521 Filed 6-21-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 23, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 18, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Vocational and Adult Education

Type of Review: Extension.
Title: State Administered Vocational Education Improvement Projects.
Frequency: On Occasion.
Affected Public: State or local governments.
Reporting Burden:
Responses: 909.
Burden Hours: 727.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used to collect data from State Departments of Vocational Education, on State administered projects for research, personnel development and curriculum development in vocational education. The Department will use this information to analyze program improvement activities of the States.

[FR Doc. 90-14522 Filed 6-21-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Record of Decision; Waste Isolation Pilot Plant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Record of Decision, Waste Isolation Pilot Plant (WIPP).

SUMMARY: The U.S. Department of Energy (DOE) has decided to continue the phased development of the WIPP to demonstrate the safe disposal of post-1970 transuranic (TRU) waste resulting from the defense activities and programs of the United States by proceeding with the Test Phase. This Test Phase will involve emplacing, in a fully retrievable manner, a limited quantity of TRU waste underground at the WIPP to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether WIPP would comply with Environmental Protection Agency (EPA) disposal standards. Before proceeding with the Test Phase, the prerequisites listed in the Secretary's Decision Plan for WIPP must be satisfactorily completed. The Test Phase also may involve an Operations Demonstration. However, a decision on whether to proceed with an Operations Demonstration as a part of the Test Phase will not be made until, and only if, the DOE has a high level of confidence in complying with the EPA disposal standards for TRU waste, and a determination were made that additional operational experience with waste is required. Prior to a decision on whether to proceed with the Disposal Phase of the WIPP, the DOE will issue another Supplemental Environmental Impact Statement (SEIS). The DOE has prepared this Record of Decision (ROD) pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's Guidelines for Compliance with the National Environmental Policy Act (NEPA) (52 FR 47662, December 15, 1987).

FOR FURTHER INFORMATION CONTACT:

For further information on the WIPP, contact:
Mark W. Frei, Office of Environmental Restoration and Waste Management (EM-30), U.S. Department of Energy, Washington, DC 20545, 301/353-4469.
For further information on the NEPA process, contact:
Carol Borgstrom, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, Washington, DC 20585, 202/586-4600.

Background

The WIPP site is located in Eddy County in southeastern New Mexico. It is 26 miles east of Carlsbad in an area known as Los Medanos ("the dunes"), a relatively flat, sparsely inhabited plateau with little surface water and limited land uses. The land is used mainly for grazing, but other uses in the area include mining for potash, and oil and gas exploration and development.

The WIPP was authorized by Public Law 96-164, the "National Security and Military Applications of Nuclear Energy Act of 1980," to provide a research and development facility for demonstrating the safe disposal of radioactive waste produced by national defense activities. The DOE issued a Final Environmental Impact Statement (FEIS) on the proposed phased development of the WIPP in 1980 (DOE/EIS-0026, October 1980). The DOE's decision to construct the WIPP at a location in southeastern New Mexico was based on the FEIS and was announced in a Record of Decision (ROD) (46 FR 9162, January 28, 1981). The decision called for the phased development of the WIPP for the disposal of post-1970 defense-generated TRU waste. This decision included conducting experiments with small volumes of defense high-level waste. The DOE is no longer planning to conduct high-level waste experiments at the WIPP.

The WIPP is designed to dispose of 6.2 million cubic feet (ft^3) of contact-handled (CH) TRU waste and 250,000 ft^3 of remote-handled (RH) TRU waste in the mined repository over a 25-year operational life. TRU waste, which is waste contaminated with alpha-emitting radionuclides that are heavier than uranium and have half-lives longer than 20 years at concentrations higher than 100 nanocuries per gram or their equivalents, results primarily from defense-related plutonium reprocessing and fabrication, as well as defense-related research and development activities at various DOE facilities. TRU waste is generated and/or stored by 10 DOE defense facilities around the country. The waste exists in a variety of forms ranging from unprocessed laboratory trash (e.g., tools, glassware, and gloves) to solidified sludges from wastewater treatment. A substantial portion (approximately 60 percent) of the post-1970 TRU waste that would be emplaced in WIPP also contains hazardous chemical components. Such TRU waste (i.e., mixed waste) is similar in its physical and radiological characteristics to TRU waste that does not contain these components.

The WIPP includes surface and underground facilities that will support the emplacement of TRU waste in a geologic repository. The major construction activities at the WIPP are nearly complete; surface facilities are essentially complete, and most of the underground rooms for experimentation and for initial waste emplacement have been excavated. The principal surface structure at the WIPP is the Waste Handling Building, in which TRU waste will be received, inspected, and moved to a shaft for transfer underground. The building also contains change rooms, a health-physical laboratory, and equipment for ventilation and filtration. Other surface facilities include a fire and domestic water pumphouse, a sewage-treatment plant, a building for safety and emergency services, a guard and security building, and support buildings. The constructed underground facilities include four shafts, the first panel of the waste disposal area, an experimental area, an equipment and maintenance area, and connecting tunnels. These underground facilities were mined 2,150 feet beneath the land surface, in the Salado Formation, a 3,000-foot-thick bedded salt and anhydrite formation.

Data collected at the WIPP since completing the 1980 FEIS have led to better understanding of the hydrogeologic characteristics of the area and their potential implications for the long-term performance of the WIPP. In addition, there have been changes to the Proposed Action and in the information and assumptions used to analyze the environmental impacts in the FEIS. These changes include: (1) Changes in the composition of the TRU waste inventory, (2) consideration of the hazardous chemical constituents in TRU waste, (3) modification and refinement of the system for the transportation of TRU waste to the WIPP, and (4) modification of the Test Phase. Consistent with the regulations of the Council on Environmental Quality, a Supplement to the Environmental Impact Statement (SEIS) for the WIPP (DOE/EIS-0026-FS, January 1990) was prepared to evaluate the environmental impacts of proceeding with the phased development of the WIPP as modified by changes since 1980 and in light of new information.

In early 1989, the Department met with a variety of State agencies, environmental advocacy groups, representatives of Indian nations, elected officials, and others to inform them of the preparation of the Supplement and to solicit their suggestions regarding issues to be considered. On February 17, 1989, the DOE published in the Federal Register a notice of its intent to prepare a Supplement to the 1980 FEIS. The draft SEIS for WIPP (DOE/EIS-0026-DS) was issued and a Notice of Availability was published in the Federal Register on April 21, 1989. More than 2,000 copies of the draft SEIS were distributed to members of Congress, State and Federal agencies, and interested individuals. The DOE provided a 90-day public comment period on the draft SEIS between April 21, 1989, and July 20, 1989, that included twelve days of public hearings in nine locations nationwide. The DOE considered and responded to the comments raised by the public and by State and Federal officials during the public comment period by making appropriate changes or additions to Volumes I and II of the draft SEIS and/or by providing detailed responses in a new Volume III, Public Comments and Responses.

A Notice of Availability of the final SEIS was published in the Federal Register on February 2, 1990. Comments on the final SEIS were received from the EPA, the DOI, New Mexico's Environmental Evaluation Group, and jointly from the Environmental Defense Fund, Concerned Citizens for Nuclear Safety, the Office of the Texas Attorney General, and the Southwest Research and Information Center, which were subsequently adopted by the Natural Resources Defense Council. These comments were considered in preparing this ROD and were responded to individually. Copies of the comments and responses can be obtained from Mark W. Frei at the above noted address.

Alternatives Considered: A number of alternatives to the phased construction and operation of the WIPP for demonstrating the safe disposal of TRU waste were considered in the 1980 FEIS and in the January 1981 ROD. These included the No Action Alternative, the development of the authorized WIPP facility, the disposal of TRU waste in the first available repository for high-level radioactive waste, and the delayed selection of a site for the WIPP facility in order to consider additional sites. The 1981 ROD documented the DOE's decision to proceed with the phased construction of the WIPP at the Los Medanos site.

In the final SEIS, the DOE has analyzed the Proposed Action, which is to proceed with the Test Phase, and two alternatives.

Proposed Action. The Proposed Action is to continue with a phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970 defense-generated TRU waste by proceeding with the Test Phase.

The Test Phase would involve transportation to and emplacement, in a fully retrievable manner, of a limited quantity of CH TRU waste underground at the WIPP to conduct bin-scale tests and alcove tests designed to provide data to reduce the uncertainties in performance assessment. The bin-scale tests would be designed to provide information relevant to WIPP's ability to comply with EPA disposal standards for TRU waste, such as data on gas composition, gas generation and depletion rates, and the radiochemical source term. The waste used would be representative of the post-1970 TRU mixed waste inventory. Because of the potential uncertainties inherent in extrapolating from small laboratory or bin-scale results to the performance of the full-scale repository, alcove tests would be conducted in the WIPP as part of the Test Phase to validate gas-generation models and to predict realistic waste-inventory behavior. Some of the alcove tests would include waste modified to simulate the impacts of the actual repository environment on the long-term degradation behavior of the waste.

The second element of the Test Phase analyzed in the final SEIS would involve the conduct of an Operations Demonstration. The purpose of an Operations Demonstration would be to show the ability of the waste management system to safely and efficiently certify and package waste at generator/storage sites, transport waste to the WIPP, and emplace it underground. Testing and monitoring would be done on generating and storage facility operations, the transportation system, and the WIPP facility operations. These testing and monitoring activities would be designed to validate the safety and efficiency of WIPP operations and associated waste management systems under realistic conditions and at shipment rates similar to those expected during disposal operations.

The Test Phase would be conducted in accordance with the requirements of the Resource Conservation and Recovery Act (RCRA), other applicable regulations, and EPA standards for the management and storage of TRU waste (subpart A of 40 CFR part 191). To assure that the impacts for the Test Phase were conservatively assessed, the final SEIS assumed, as an upper bound assumption, that a waste volume of up to 10 percent of the design capacity of the WIPP would be used for the Test Phase.

If, during the Test Phase, there were a significant indication that the WIPP as proposed would not comply with the EPA disposal standards for TRU waste, a number of options would be considered (e.g., waste treatment and/or engineered barrier or design modifications) to facilitate demonstration of compliance with the EPA standards for disposal of TRU waste. If, after considering various options, it were determined ultimately that the WIPP still could not comply with EPA disposal standards or other applicable requirements, the waste emplaced during the Test Phase would be retrieved and placed in storage. The WIPP would be decommissioned as a facility for the demonstration of the safe disposal of TRU waste and potentially put to other uses.

No Action Alternative. Under the No Action Alternative, the DOE would not proceed with the phased development of the WIPP to demonstrate the safe disposal of post-1970 TRU waste. TRU waste would not be shipped to or emplaced in the WIPP for the Test or Disposal Phases. The WIPP would be decommissioned as a facility for the demonstration of the safe disposal of TRU waste and potentially put to other uses. Temporary storage of TRU waste at various DOE sites would continue indefinitely. Over the long-term, these storage sites would be subject to low probability natural disruptive events, as well as human intrusion, with potentially unacceptable environmental impact. Treatment of newly generated mixed waste might be required to avoid conflict with the RCRA Land Disposal Restrictions. Currently, capacity for such treatment does not exist at the DOE or at commercial facilities. The No Action Alternative would result in the indefinite continuation of extensive TRU waste storage, site monitoring, surveillance, and maintenance.

Alternative Action. This alternative is to conduct the bin-scale tests at locations other than the WIPP underground. There would be no emplacement of TRU waste in the WIPP underground until a determination were made of compliance with the EPA standards for the disposal of TRU waste. The bin-scale tests would be conducted in a specially-engineered aboveground facility that could be constructed for this purpose. The objectives of the bin-scale tests under this alternative would be identical to those described under the Proposed Action. Since the alcove tests could not be performed practically or usefully at a location other than the WIPP underground, the results of the alcove tests would not be available to increase confidence regarding extrapolation from laboratory and bin-scale results to full-scale representative repository loading. Under this alternative, the Operations Demonstration would not be conducted prior to a determination of compliance with the EPA disposal standards for TRU waste.

Environmentally Preferable Alternative: The final SEIS has analyzed the short- and long-term environmental consequences of the No Action, the Alternative Action, and the Proposed Action alternatives. In the short-term, the environmental effects of all alternatives are small. Considering short- and long-term impacts, the DOE believes that continued development of the WIPP is the environmentally preferred alternative.

Under the No Action alternative, TRU waste would continue to be generated and stored at existing storage facilities; no waste would be emplaced in the WIPP underground. The continuation of TRU waste storage would necessitate the construction of additional waste storage and/or treatment facilities. Leaving the waste in surface over the long-term rather than disposing of it in a mined geologic repository could lead to higher radiation exposures to numbers of the general public as a result of natural processes or human intrusion if government control of the storage sites were lost.

Under the Alternative Action, only the bin-scale tests would be conducted. These tests would be conducted in a specially-engineered aboveground facility that would be constructed for this purpose at an existing waste generation and storage site. Basically the same information would be gathered from these tests as with the bin-scale experiments under the Proposed Action. However, the results of the alcove-scale tests would not be available to increase confidence regarding extrapolation of laboratory and bin-scale results to a full-scale representative repository loading. Therefore, the confidence that the performance assessment is an appropriate representation of actual repository behavior would be less than under the Proposed Action, thus lowering the confidence in a timely Disposal Phase decision.

The Proposed Action continued the phased approach to the development of the WIPP to demonstrate the safe disposal of post-1970, defense-generated TRU waste. The Proposed Action, which would include the conduct of both bin-scale and alcove tests at the WIPP, would avoid establishment of comparable facilities at other locations. The facilities needed to organize, instrument, and record the large amounts of required data are already in place at the WIPP. The Proposed Action would allow for the large-scale study of the potential interaction between the

waste (representative of the waste inventory) and the underground environment, and its effect on gas generation and other phenomena. Acquisition of this in situ data would significantly reduce the uncertainties for performance assessment to support an expeditious Disposal Phase decision with minimal environmental risk.

Decision. The DOE, in compliance with NEPA and its implementing regulations, has weighed the need for the WIPP against its environmental and other impacts as updated in the Supplement to the Environmental Impact Statement, and has decided to proceed with the Proposed Action (i.e., continue with the phased development of WIPP by proceeding with the Test Phase). This Test Phase will involve emplacing, in a fully retrievable manner, a limited quantity of TRU waste underground at the WIPP to conduct tests designed to collect data to reduce uncertainties associated with performance assessment predictions that are necessary to determine whether WIPP would comply with EPA disposal standards. Proceeding with the Test Phase is in accord with the original Congressional mandate to develop a facility to demonstrate the safe disposal of radioactive wastes produced by national defense activities. The No Action Alternative is inconsistent with this Congressional intent. The Alternative Action would not provide the same degree of certainty in the data used for conducting performance assessment to determine compliance with EPA disposal standards. This decision to continue with the phased development of the WIPP is consistent with the recently released Environmental Restoration and Waste Management Five-Year Plan (DOE/S–0070), and the DOE goal to move from waste storage to final disposal.

The DOE has considered a variety of means to avoid or minimize environmental impacts from the continued phased development of the WIPP. The DOE is committed to complying with all applicable State and Federal environmental requirements and to evaluating further the potential mitigation measures described in section 6 of the Supplement. Waste emplaced during the Test Phase will be kept to the minimum quantities needed to support the purposes of the Test Phase. The DOE will work with all States through which waste will be transported to establish comprehensive training programs for emergency response personnel. The DOE also will be conducting further studies with regard to the use of rail transport for TRU waste. The DOE will continue to work with and solicit the input of State and Federal agencies, national scientific groups, and other review groups with regard to the operation of the WIPP.

The plans for the Test Phase call for initial emplacement of approximately 0.5 percent by volume of WIPP's design waste capacity for the bin-scale tests and the alcove tests. Before proceeding with the Test Phase, the institutional and technical prerequisites listed in the Secretary's Decision Plan for the WIPP must be satisfactorily completed. Examples of those prerequisites include: land withdrawal, a final decision by EPA on the RCRA no-migration petition for the purposes of testing and experimentation, and completion of the Final Safety Analysis Report (FSAR) and an FSAR Addendum that specifically analyzes safety at the WIPP during the Test Phase.

Review of the April 1989 proposed Operations Demonstration program by the National Academy of Sciences, New Mexico's Environmental Evaluation Group, the EPA, the Blue Ribbon Panel, and the Advisory Committee on Nuclear Facility Safety resulted in a variety of major comments being provided to the DOE. The comments primarily focused on the timing of the proposed program relative to a determination of compliance with the EPA disposal standards for TRU waste, and on the scope (i.e., quantities of waste and the rates at which it is received) relative to the operational experience to be gained from the performance assessment test program. Based on a reevaluation of the proposed Operations Demonstration, the DOE has decided that a decision on whether to proceed with an Operations Demonstration as part of the Test Phase should not be made until a high-level of confidence in complying with the EPA disposal standards has been achieved and a determination is made that additional operational experience with waste is required. The following activities must be completed before DOE can make a decision on the scope of the Operations Demonstration program (i.e., a determination of whether additional operational experience with waste is required):

(1) An evaluation of the feasibility of the EPA recommendation of monitoring the performance of the facility by emplacing waste (approximately 1.5 percent of design capacity) in 2 full-scale, instrumented, backfilled, sealed rooms after a satisfactory demonstration of retrieval using simulated wastes;

(2) Establishment of systems objectives and criteria for evaluating disposal operations readiness; and,

(3) A preliminary report is issued on operational experience gained from the handling and emplacement of TRU waste for the performance assessment tests and an assessment of this experience relative to the pre-established system objectives and criteria for WIPP disposal operations readiness.

The need for additional NEPA documentation will be evaluated during the Test Phase. Prior to a decision on whether to proceed to the Disposal Phase, the DOE will issue a second SEIS. The second Supplemental EIS will analyze the long-term performance of the WIPP in light of information generated during the Test Phase and will analyze in more detail the impacts of processing and handling TRU waste at each of the generator/storage facilities for shipment to the WIPP for disposal, including the impacts of any proposed waste treatment.

Proceeding with the Test Phase at the WIPP requires the receipt of TRU waste at the WIPP facility. Public Land Order 6403, issued in 1983, under which the DOE is currently developing the WIPP facility, does not allow the receipt of radioactive waste on the site. The DOE would prefer that the withdrawal of the WIPP site lands be made by Congress rather than continuing to acquire use of the lands through administrative means. Accordingly, the DOE submitted on April 3, 1990, a proposed bill to the Congress, which would provide for the withdrawal of the WIPP site lands. However, in order to continue the phased development of the WIPP in a manner consistent with Public Law 96–164, the DOE also is requesting that the Secretary of the Interior support a parallel option of administrative land withdrawal by modifying the current Public Land Order to allow the receipt of waste at the WIPP for the Test Phase in the event that the Congress does not enact land withdrawal legislation.

Issued at Washington, DC this 13th day of June, 1990.

Approved:

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90-14509 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award grant to Pickard Line-Up Boom Assoc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–90CE15476 to Pickard Line-Up Boom Associates to assist in the building and testing of the Pickard Line-Up Boom.

SCOPE: This grant will aid in providing funding in the amount of $80,000 to build an advanced prototype of the Boom and to enable it to be tested under field conditions by pipeline contractors in the Tulsa area. The system is a tractor-mounted system for handling large pipes, up to 4-ft. diameter, used in building cross-country oil and gas pipelines. The Pickard Boom controls and stabilizes the pipe, prevents swinging, and allows it to be moved and positioned precisely in any direction, vertically or horizontally, and at less hazard to personnel laying the pipe. The invention represents a marked change in design that is anticipated to result in a definite improvement.

ELIGIBILITY: Eligibility of this award is being limited to Pickard Line-Up Boom Associates. Mr. Kenneth Pickard, inventor and president, has worked for 50 years in the pipeline industry as a welder, welding foreman, welding inspector, welding instructor and pipeline superintendent. Mr. Pickard's company will be the licensor of this new system for ultrasonic inspection of oil country tubulars. It has been determnined that this is a project with a high technical merit, representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be for eighteen months from the effective date of award.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-14510 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90–41–NG]

ANR Pipeline Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an application for blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 11, 1990, of an application filed by ANR Pipeline Company (ANR), requesting blanket authority to import up to 100 Bcf of Canadian natural gas over a two-year term beginning on or about November 1, 1990 for short-term, spot-market sales, for compression fuel, and pipeline losses associated with transportation arrangements. ANR intends to use existing facilities for the transportation of the imported natural gas. ANR also proposes to submit reports to FE within two weeks after the first delivery of the natural gas and quarterly reports 30 days after the end of each calendar quarter giving the full details of the individual transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION: ANR, a Delaware corporation, has been organized for the purposes of purchasing, transporting, storing and selling natural gas in interstate commerce. ANR requests authority to import competitively priced natural gas from Canadian producers for resale to existing U.S. customers, for injection into storage for future withdrawal and resale, or for use as compression fuel and pipeline losses associated with transportation arrangements through the pipeline systems of Viking Gas Transmission Company and Great Lakes Transmission Company.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy gudelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comments in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), (42 U.S.C. 4321, et seq.) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application.

All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact,

law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANR's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC June 18, 1990.

Clifford P. Tomaszewski

Acting Deputy Assistant, Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14508 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-52-NG]

Granite State Gas Transmission, Inc.; Application for Blanket Autorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 22, 1990, of an application filed by Granite State Gas Transmission, Inc. (Granite State), for blanket authorization to import up to 25 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. Granite State would use existing pipeline facilities for the importation and transportation of the requested volumes. In addition, Granite State intends to notify DOE of the date of first delivery of the proposed volumes within two weeks after deliveries begin and would submit quarterly reports giving details of individuals transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6116.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Granite State, a New Hampshire corporation, is an interstate natural gas pipeline company which is wholly owned by Northern Utilities, Inc. (Northern Utilities), also a New Hampshire corporation, which operates gas distribution companies in New Hampshire and Maine. Northern Utilities is a wholly owned subsidiary of Bay State Gas Company (Bay State), a Massachusetts natural gas distribution company. Granite State's principal buisiness is to supply Northern Utilities and Bay State with firm supplies of both Canadian and domestic natural gas. In addition, Granite State purchases substantial quantities of domestic natural gas on the spot market for sale to Northern Utilities and Bay State.

Granite State proposes to utilize the requested blanket authorization to purchase and import natural gas from a variety of Canadian suppliers at competitive prices for its system supply for resale to Northern Utilities and Bay State. The purchases would be interruptible and the price for the gas would be negotiated based on prevailing market prices. Any imports under the proposed blanket authorization would utilize existing pipeline capacity and no new construction would be required.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additioanl written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Granite State's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14513 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-44-NG]

Northwest Natural Gas Co.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 14, 1990, of an application filed by Northwest Natural Gas Company (NNG) requesting blanket authorization to import up to 30 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed gas imports would be transported form the border between the United States and Canada on the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Expansion Project for which an application for a Certificate of Public Convenience and Necessity (CP89-460) has been filed and is pending at the Federal Energy Regulatory Commission (FERC). NNG agrees to make quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office fo Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: NNG, an Oregon corporation with its principal place of business in Portland, Oregon, is a local distribution company that serves approximately 310,000 residential, commercial, and industrial customers in Oregon and southwest Washington. The company proposes to import natural gas from various Canadian suppliers for sale to residential, commercial, and industrial customers in NNG's service territory in the states of Oregon and Washington. NNG would import gas on its own behalf, as well as on behalf of suppliers and purchasers for whom it might act as agent. If the requested authorization is granted, the gas would be transported through facilities in Canada belonging to NOVA Corporation, Foothills Pipeline Corporation, Ltd., and Alberta Natural Gas Company to the point of entry near Kingsgate, British Columbia, on the international border between the United States and Canada at the interconnection with the proposed PGT-PG&E Expansion Project. Northwest Pipeline Corporation would transport the gas from its interconnection with PGT pipeline to NNG's facilities in Oregon and Washington.

NNG states that the proposed import transactions would be conducted on a short-term basis while longer term agreements are negotiated. When such agreements are finally completed, NNG states it contemplates filing additional applications for authority to import gas pursuant to the provisions of specific contract arrangements.

In support of its application, NNG asserts that the gas imported under its gas purchase contracts would be with producers and aggregators having access to substantial or developmental reserves and that Canada is a reliable source of supply. NNG maintains that the proposed import transactions are premised upon the gas being competitive in the U.S. market. It asserts that gas purchase contracts will be competitive because they will be voluntarily negotiated at arms length having market-responsive contract terms. Prices will be determined on the basis of competitive factors in the gas market. NNG states that its service territory is served by Northwest pipeline, giving NNG access to other suppliers in the U.S. and Canada. Given the availability of competing suppliers, NNG asserts that customers will not purchase imported gas unless it is needed and the price is competitive. Additionally, the company maintains that the importation of competitively priced Canadian gas would augment the supply of competitively priced gas available to U.S. consumers, furthering the Secretary's policy encouraging competitive and market responsive pricing.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person

wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures by provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NNG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14514 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-45-NG]

Pancontinental Oil Ltd.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 14, 1990, of an application filed by Pancontinental Oil Ltd., (Pancontinental) requesting blanket authorization to import up to 8 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The proposed gas imports would be transported from the border between the United States and Canada on the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Expansion Project for which an application for a Certificate of Public Convenience and Necessity (CP89-460) has been filed and is pending at the Federal Energy Regulatory Commission (FERC). Pancontinental agrees to make quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 23, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Pancontinental, an Alberta corporation with its principal place of business in Calgary, Alberta, Canada, is engaged in oil and gas exploration, development, production and marketing. The company proposes to import its own supplies of natural gas from a variety of reliable Canadian supply sources for sale to local distribution companies, municipalities and end-users in California and the Pacific Northwest. Pancontinental would import gas on its own behalf, as well as on behalf of suppliers and purchasers for whom it might act as agent. If the requested authorization is granted, the gas would be transported through the following facilities: (1) New/existing facilities in Canada belonging to NOVA Corporation of Alberta, Foothills Pipelines, Ltd., Alberta Natural Gas Company and Westcoast Energy Inc. (2) new/existing facilities in the U.S. belonging to Northwest Pipeline Company, and PGT and PG&E including the proposed PGT-PG&E Expansion Project; and (3) local distribution company facilities in the Pacific Northwest and California. The points of entry will be near Huntingdon and Kingsgate, British Columbia on the international boundary between the United States and Canada.

Pancontinental states that the proposed import transactions would be conducted on a short-term basis pursuant to market-responsive contract terms, while a longer term agreement is negotiated. When the long-term agreement is completed, Pancontinental states it will file an additional application for authority to import that natural gas.

In support of its application, Pancontinental asserts that the proposed gas imports would be limited to a term of two years and that Canada is a reliable supply source. Pancontinental maintains that the proposed import transactions are premised upon the gas being competitive in the U.S. market. It asserts that gas purchased contracts will be competitive because they will be voluntarily negotiated at arms length having market-responsive contract terms. Prices will be determined on the basis of competitive factors in the gas market. Given the availability of competing suppliers, Pancontinental asserts that neither it nor its customers will purchase imported gas under the requested authorization unless it is needed and the price is competitive. Additionally the company maintains that the importation of competitively priced Canadian gas will advance the policy goals of reducing trade barriers by augmenting the supply of competitively priced gas available to U.S. consumers.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose the application should comment in their responses on the matters as they relate to the requested import authority. The applicant asserts that the import arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act NEPA (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Pancotinental's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 18, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14515 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Amendment to Existing Knolls Atomic Power Laboratory Designation of Property as Off-Limits Area

AGENCY: Department of Energy.

ACTION: Amendment to the Existing Designation of Knolls Atomic Power Laboratory property in Niskayuna, New York, as an off-limits area in accordance with 10 CFR part 860.

SUMMARY: The Department of Energy (DOE) hereby amends the existing designation of the Knolls Atomic Power Laboratory Niskayuna Site as an off-limits areas in accordance with 10 CFR part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Knolls Atomic Power Laboratory from River Road and 230 feet southwest of the center line of the main road entering the lower level. A second concrete monument is located 90.56 feet from this first monument on a bearing of S72° -00' -44"W. Beginning at the first monument, the property bounds proceed 285.00 feet on a bearing of N30° -16' -14"W to a point, then 400.03 feet on a bearing of N56° -59' -14"E to a point of the bank of the Mohawk river, then shall follow the bank of the river 194.14 feet on a bearing of S66° -00' -46"E to a point on the existing property line between the Knolls Atomic Power Laboratory and the General Electric Company where the line turns to follow this boundary 285 feet on a bearing of S36° -59' -14"W, then 125 feet on a bearing of S39° -16' -14"E, then 196.87 feet on a bearing of S66° -59' -14"W, to a point of beginning for this survey; the whole containing two and twenty-hundredths (2.2) acres, more or less.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 860.6.

Issued in Washington, DC on June 6, 1990.

Donald F. Knuth,

Acting Deputy Assistant Secretary for Operations, Defense Programs.

[FR Doc. 90-14512 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Revision to the Existing Knolls Atomic Power Laboratory Windsor Site Operation Designation As Off-Limits Area

AGENCY: Department of Energy.

ACTION: Amendment to the Existing Designation of the Knolls Atomic Power Laboratory property in Windsor, Connecticut, as an off-limits area in accordance with 10 CFR part 860.

SUMMARY: The Department of Energy (DOE) hereby amends the existing designation of the Knolls Atomic Power Laboratory Windsor Site as an off-limits area in accordance with 10 CFR part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the Knolls Atomic Power Laboratory Windsor Site.

Amending a previous notice published in the **Federal Register** on October 19, 1965 (30 FR 13292), notice is hereby given that DOE, pursuant to section 229 of the Atomic Energy Act of 1954, as amended, and 42 U.S.C. 2278a as implemented by 10 CFR part 860 published in the **Federal Register** on July 9, 1975 (40 FR 28789), prohibits the unauthorized entry, as provided in 10 CFR 860.3, and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.4, into or upon the Knolls Atomic Power Laboratory Windsor Site of DOE, said site being a track of land located in Windsor, Connecticut, County of Hartford, State of Connecticut, approximately 5 miles WNW from Windsor, Connecticut, one-fourth mile S of the Farmington River and one-half mile N of the intersection of Prospect Hill and Day Hill Roads and being more particularly described as follows:

Beginning at a point, which point of beginning is the south-easterly corner of the land is located the following courses and distances from a point on the northerly side of Prospect Hill Road, which point on Prospect Hill Road is also the southeasterly corner of land of Combustion Engineering, Inc., and the south westerly corner of land now or formerly of Herbert J. Nolan; N 28° 55'25"E a distance of 1,181.74 feet; S 65 10'54"E a distance of 151.8 feet; N 26° 46'51"E a distance of 568.1 feet; N 24° 48'50"E a distance of 2,158.1 feet; N 56 15'11"W a distance of 1,882.33 feet to the point of beginning which is recorded as a concrete monument "B" having horizontal grid coordinates of N 195, 698.02, E 158, 703.87 as recorded to the Metropolitan District Commission Datum;

Thence, N 10 25'04"E from the point of beginning a distance of 449.19 feet to a point;

Thence, N 34 25'30"W a distance of 131.97 feet to a point;

Thence, N 56 56'36"W a distance of 449.20 feet to a point;

Thence, S 60 12'24"W a distance of 105.14 feet to a point;

Thence, S 32 38'39"W a distance of 467.32 feet to a point;

Thence, S 09 32'01"E a distance of 266.96 feet to a point;

Thence, S 74 32'21"E a distance of 693.02 feet to a point;

Thence N 10 24'04"E a distance of 65.25 feet to a point of beginning, said site containing 10.81 acres, more or less. All bearings are referenced to a magnetic north which is 13 —07'31"W of the grid north of the Metropolitan District Commission Datum.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 860.6.

Issued in Washington, DC on June 6, 1990.

Donald F. Knuth,

Acting Deputy Assistant Secretary for Operations Defense Programs.

[FR Doc. 90-14511 Filed 6-21-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1454-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

June 13, 1990.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipline Corporation

[Docket No. CP90-1454-000]

Take notice that on May 30, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-1454-000 a request, as supplemented on June 11, 1990, pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212), for authorization to operate and utilize the Van der Salm Meter Station for the delivery of sales gas to Northwest Natural Gas Company (Northwest Natural), and to reallocate a portion of its maximum daily delivery obligation, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it was authorized on March 14, 1990, in Docket No. CP89-1740-000 to provide firm Rate Schedule ODL-1 gas sales service to Northwest Natural under an agreement dated May 15, 1989. Northwest further states that firm sales to Northewest Natural at the Van der Salm Meter Station would be under Northwest's ODL-1 Rate Schedule. It is stated that the gas provided at the Van der Salm Meter Station would be utilized to heat the Van der Salm bulb farm, a new firm sales end-user of Northwest Natural. Northwest further states that Northwest Natural has committed to provide service to the end-user commencing August 1, 1990, so that the end-user would not have to install alternate fuel heating capability. Northwest also proposes to reallocate 500 therms of the existing maximum daily delivery obligation from Multnomah County, Oregon, to the Van der Salm Meter Station.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket Nos. CP90-1515-000, CP90-1516-000, CP90-1517-000, CP90-1518-000, CP90-1519-000, CP90-1520-000, CP90-1521-000]

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [2] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-1515-000 (6-11-90)	NGC Transportation, Inc. (Marketer).	200,000 100,000 36,500,000	OLA, LA, TX	LA, TX, TN, MS	5-23-88 [3] ITS-1,2, Interruptible.	ST90-3125-000, 5-1-90
CP90-1516-000 (6-11-90)	Conoco Inc. (Producer)	75,000 15,000 5,475,000	OLA	LA	2-10-88, ITS-2, Interruptible.	ST90-3121-000, 5-1-90
CP90-1517-000 (6-11-90)	Noriech Energy Corp. (Marketer).	25,000 10,000 3,650,000	LA	LA	3-1-90, ITS-2, Interruptible.	ST90-3126-000, 5-6-90
CP90-1518-000 (6-11-90)	Kentucky Electric Steel Corp. (End user) (Marketer).	3,000 1,000 365,000	OLA	LA	4-25-90 ITS-2, Interruptible.	ST90-3116-000, 5-1-90
CP90-1519-000 (6-11-90)	Shell Offshore, Inc. (Producer).	50,000 10,000 3,650,000	OLA	LA	4-1-87 ITS-2, Interruptible.	ST90-3115-000, 5-1-90
CP90-1520-000 (6-11-90)	Louis Dreyfus Energy Corp. (Marketer).	50,000 10,000 3,650,000	OLA	LA	4-23-90 ITS-2, Interruptible.	ST90-3122-000, 5-1-90
CP90-1521-000	Coastal Gas Marketing Co. (Marketer).	25,000 25,000 9,125,000	LA	LA	12-15-89 FTS-2 Firm.	ST90-3123-000, 5-1-90

[2] Offshore Louisiana is shown as OLA.
[3] Columbia's proposal involves two contracts, both of which have been amended. The ITS-2 agreement is dated May 23, 1988, and the ITS-1 agreement is dated September 1, 1989.

3. Northern Border Pipeline Company

Docket Nos. CP90-1522-000, CP90-1523-000, CP90-1524-000, CP90-1525-000

Take notice that on June 11, 1990, Northern Border Pipeline Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-395-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (Date Filed)	Shipper name	Peak Day [1], average day, annual	Receipt [2] points	Delivery points	Start up date, rate schedule, service type	Related [4] docket contract date
CP90-1522-000 (6-11-90)	Energy Dynamics, Inc.	60,000 16,000 21,900,000	MT, ND	SD, MN, IA	4-27-90, IT-1, Interruptible.	ST90-3182-000, 12-27-89
CP90-1523-000 (6-11-90)	Mack Resources, Inc.	500,000 500,000 182,500,000	MT, ND	SD, MN, IA	4-27-90, IT-1, Interruptible.	ST90-3183-000, 1-19-90
CP90-1524-000 (6-11-90)	Exxon Corporation	150,000 150,000 54,750,000	MT, ND	MN, IA, ND, SD	4-26-90, IT-1, Interruptible.	ST90-3189-000, 1-1-88
CP90-1524-000 (6-11-90)	Mobil Natural Gas, Inc.	30,000 30,000 10,950,00	MT	IA	4-26-90, IT-1, Interruptible.	ST90-3194-000, 12-10-87

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[4] If an ST docket is shown, 120-day transportation service was reported in it.

4. Equitrans, Inc.

[Docket Nos. CP90-1503-000 [3], CP90-1504-000

Take notice that on June 7, 1990, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Equitran's blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Equitrans and is included in the attached appendix.

Equitrans also states that it would provide the service for each shipper under an executed transportation agreement, and that Equitrans would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name, contract no.	Peak day, [1] Avg, Annual	Points of		Start up date, rate schedule	Related dockets
			Receipt	Delivery		
CP90-1503-000	Transport Gas Corp., ITS-106.	294 215 51,600	WV	PA	5/1/90, ITS	ST90-3135-000
CP90-1504-000	Columbia Gas of PA, Inc., ITS-101.	29,400 18,026 3,200,000	PA, WV	PA, WV	4/2/90, ITS	ST90-2679-000

[1] Quantities are shown in Mcf unless otherwise indicated.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14454 Filed 6-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1530-000, et al.]

Texas Gas Transmission Corp.; et al.; Natural Gas Certificate Filings

June 14, 1990.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket Nos. CP90-1530-000; CP90-1531-000]

Take notice that on June 12, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regualtions under the Natural Gas Act for authorization to transport natural gas on behalf of two shippers under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Texas Gas and is summarized in the attached appendix.

Texas Gas states that each of the proposed services would be provided under an executed transportation agreement, and that Texas Gas would charge the rates and abide by the terms and conditions of the appropriate transportation rate schedule. It is asserted that both transportation services would be carried out on an interruptible basis. It is further asserted that existing facilities would be used for the transportation services and no construction of additional facilities would be required. It is explained that the gas would be received by Texas Gas at designated points on their systems and would be delivered for the shippers' accounts at designated points of interconnection.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket number	Shipper name	Peak day [2] avg, annual	Start-up date	Related [3] Dockets
CP90-1530-000	Centran Corporation	30,000 23,000 9,125,000	5/2/90	ST90-2948.
CP90-1531-000	Coastal Gas Marketing Company	200,000 150,000 54,750,000	5/3/90	ST90-2949.

[2] Quantities are shown in MMBtu equivalent.
[3] Texas Gas reported its 120-day transportation service in the referenced ST dockets.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-1514-000]

Take notice that on June 11, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed a request with the Commission in Docket No. CP90-1514-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Transok Ventures Company (Transok), a natural gas marketer, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes an interruptible natural gas transportation service up to 80,000 MMBtu equivalent per peak day, 60,000 MMBtu equivalent per average day, and 29,200,000 MMBtu equivalent per year for Transok. Northern would receive and deliver gas at various points on its system for Transok's account. Northern commenced its transportation service for Transok on April 7, 1990, under the self-implementing authorization provisions of § 284.223(a) of the Regulations, as reported in Docket No. ST90-2702.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company

[Docket Nos. CP90-1528-000, CP90-1527-000, CP90-1526-000]

Take notice that on Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Applicant: Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252

Blanket Certificate Issued in Docket No.: CP87-115-000

Docket number (date filed)	Shipper name	Peak day [2] avg. annual	Points of		Start up date rate schedule	Related [3] dockets
			Receipt	Delivery		
CP90-1526-000 (06-11-90)	Kentucky Electric Steel Corporation.	1,800 1,800 657,000	Offshore LA	KY	5-01-90, FT-A	ST90-3258-000.
CP90-1527-000 (06-11-90)	Kidder Exploration, Inc.	650 650 237,250	PA	PA	5-19-90, IT	ST90-3276-000.

Applicant: Midwestern Gas Transmission Company P.O. Box 2511, Houston, Texas 77252

Blanket Certificate Issued in Docket No.: CP90-174-000

Docket number (date filed)	Shipper name	Peak day [2] avg. annual	Points of		Start up date rate schedule	Related [3] dockets
			Receipt	Delivery		
CP90-1528-000 (06-11-90)	Superior Natural Gas Corporation.	25,000 25,000 9,125,000	LA, TX, MS, PA, KY, AL, MA, offshores LA and TX.	IL, IN	5-12-90, IT	ST90-3231-000.

[2] Quantities are shown in dekatherms unless otherwise indicated.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

4. Natural Gas Pipeline Company of America, Trunkline Gas Company, Trunkline Gas Company, Tennessee Gas Pipeline Company

Docket Nos. CP90-1507-000, CP90-1508-000, CP90-1509-000, CP90-1510-000

Take notice that on June 8, 1990, the above listed companies filed in the respective dorkets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name contract No.	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [3] Dockets
CP90-1507-000(6-8-90)	Natural Gas Pipeline Company of America.	Tejas Hydrocarbons Company.	65,000 20,000 7,300,000	Offshore TX, TX LA	TX	4-6-90, ITS	CP86-582-000, ST90-2925-000.
CP90-1508-000(6-8-90)	Trunkline Gas Company.	Texaco, Inc.	20,000Mcf. 20,000Mcf. 7,300,000Mcf.	Offshore LA	LA	4-1-90, PT	CP86-586-000, ST90-3170-000.
CP90-1509-000(6-8-90)	Trunkline Gas Company.	Amoco Production Company.	30,000Mcf. 30,000Mcf. 10,950,000Mcf.	Offshore LA	LA	4-1-90, PT	CP86-586-000, ST90-3168-000.
CP90-1510-000(6-8-90)	Tennessee Gas Pipeline Company.	Harbert Oil & Gas Corporation.	50,000Dt. 50,000Dt. 18,250,000Dt.	Offshore LA, LA TX, MS	LA, MS TN, MA PA, KY	5-3-90, ITS	CP87-115-000, ST90-3210-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-14455 Filed 6-21-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-025]

Kentucky West Virginia Gas Co.; Amended Compliance Filing

June 15, 1990.

Take notice that on June 14, 1990, Kentucky West Virginia Gas Company (Kentucky West) filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective July 1, 1990. Kentucky West states that these tariff sheets are filed in compliance with the Commission's order of March 15, 1989.

Kentucky West states that it is amending its March 30, 1989 compliance filing to address the operation of the proposed direct billing provisions of its tariff concerning any party with whom Kentucky West has reached a settlement agreement (settling party). Kentucky West states that the amended tariff sheets provide that the proposed direct billing provisions of its tariff will not be applied to any settling party pending Commission approval of the settlement related to that settling party. Kentucky West states that these tariff sheets also provide that the same treatment will be accorded any future settlements in these proceedings agreed to by Kentucky West and any party.

Kentucky West requests waiver of § 154.22 of the Commission's regulations and any other regulations necessary to permit the tariff sheets to become effective on July 1, 1990.

Kentucky West states that it has served copies of this filing to its jurisdictional customers, interested staff commissions and parties on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989).) All such motions or protests should be filed on or before June 22, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-14456 Filed 6-21-90; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3790-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed June 11, 1990 Through June 15, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900201, Draft, AFS, MT, Bitterroot National Forest Noxious Weed Control Program, Use of Herbicide on Eight Sites, Implementation, Ravilli County, MT, Due: August 6, 1990, Contact: B. John Losensky (406) 329-3819.

EIS No. 900202, Draft, AFS, CA, Goleta and Gaviota Substations 66-kv Transmission Line Construction, Phase I, Goleta Substation to Exgen Substation in Las Flores Canyon, Santa Barbara County, CA, Due: August 6, 1990, Contact: Paul Barker (705) 705-2870.

EIS No. 900203, Final, FHW, OK, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK, Due: July 23, 1990, Contact: Bruce A. Lind (405) 231-4624.

EIS No. 900204, Draft, AFS, MT, South Fork Complex Timber Sales Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Judith Ranger District, Judith Basin County, MT, Due: August 6, 1990, Contact: Jerome E. Dombrovske (406) 566-2292.

EIS No. 900205, Draft, USN, NV, Naval Air Station Fallon Geothermal Resources for Electrical Power Generation Phase I and II Development, Section 404 and Right-of-Way Permits, Churchill County, NV, Due: August 6, 1990, Contact: Dr. Francis Monastero (619) 939-3411.

EIS No. 900206, Final, BLM, UT, USPCI Clive Transfer/Storage/Incineration Facility and Associated Transportation/Utility Corridors, Construction and Operation, Right-of-Ways and/or Land Exchange, Tooele County, UT, Due: July 23, 1990, Contact: Ernie Eberhard (801) 977-4300.

EIS No. 900207, Final, FHW, CA, CA-237 Upgrading to Freeway Standards, Mathilda Avenue to I-880, Funding and 404 Permit, Santa Clara County, CA, Due: July 23, 1990, Contact: Glenn Clinton (916) 551-1314.

EIS No. 900208, Draft, COE, KS, Cross Creek Flood Protection Plan, Section 205 Small Flood Control Project, Implementation, City of Rossville, Shawnee County, KS, Due: August 7, 1990, Contact: Martin Schuettpelz (816) 426-5063.

EIS No. 900209, Draft, APH, Nationwide Cooperative Animal Damage Control Program, Integrated Pest Management Approach, Implementation, Due: August 31, 1990, Contact: Gary E. Larson (301) 436-8281.

EIS No. 900210, Draft, USN, CA, P-202 Naval Air Station Alameda and P-082 Naval Supply Center Oakland Dredging Project, Implementation, Section 404 Permit, Alameda and Oakland Cities, San Francisco Bay, CA, Due: August 6, 1990, Contact: Dr. Ronald Hudson (415) 877-7695.

EIS No. 900211, Draft, AFS, NM, Ward Timber Sale, Implementation, Gila National Forest, Luna Ranger District, Catron County, NM, Due: August 6, 1990, Contact: Jerry Hibbetts (505) 547-2611.

EIS No. 900212, Final, FRC, NY, MN, WI, MI, MA, RI, Niagara Import Point Project, Natural Gas Pipeine Facilities, Construction and Operation, Licenses, Section 10 and 404 Permits, NY, WI, MA, MN, MI, and RI, Due: July 23, 1990, Contact: Lonnie Lister (202) 208-2191.

EIS No. 900213, Draft, COE, LA, Comite River Basin and Tributaries Flood Protection Plan, Implementation, Amite River Basin, Baton Rouge and Livingston Parishes, LA, Due: August 6, 1990, Contact: Bill Wilson (504) 862-2527.

Amended Notices

EIS No. 900071, Draft, AFS, CA, Shasta-Trinity National Forests, Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA, Due: July 7, 1990, Contact: Robert R. Tyrrel (916) 246-5222. Published FR 3-09-90—Review period extended.

EIS No. 900150, Draft, SFW, CA, Seal Beach National Wildlife Refuge and Seal Beach Naval Weapons Station Endangered Species Management and Protection Plan, Development and Implementation, Orange County, CA, Due: July 17, 1990, Contact: Charles S. Houghter (916) 978-4420. Published FR—05-18-90—Incorrect due date.

EIS No. 900198, Draft, MMS, AK, 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK, Due: July 30, 1990, Contact: George Valiulis (703) 787-1662. Published FR—06-15-90—Title correction.

Dated: June 19, 1990.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 90-14548 Filed 6-21-90; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3790-3]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared June 4, 1990 through June 8, 1990 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-J02017-00, Rating EC2, Pike and San Isabel National Forests/Comanche and Cimarron National Grasslands, Fifteen Years Oil and Gas Leasing Program, Implementation, Several, CO and KS.

Summary

EPA recommends that site-specific NEPA analysis be required for each leasing activity. Establishment of a consistent process to evaluate environmental impacts from specific leases should be provided in the final EIS.

ERP No. D-AFS-K61105-CA, Rating EC2, Lake of the Sky Interpretive Center, Site Selection with the Sixty-fourth Acres Tract, Tahoe City, Lake Tahoe, Placer County, CA.

Summary

EPA has environmental concerns regarding potential adverse impacts to wetlands and other waters of the U.S. EPA suggested the final EIS should contain a commitment to implement a broad range of mitigation to minimize and control water pollution from nonpoint source, visitor use activities, and related project impacts.

ERP No. D-BLM-K61101-AZ, Rating EC2, Safford District Land and Resource Management Plan Implementation, Graham, Greenlee, Cochise, Pinal Pima and Gila Counties, AZ.

Summary

EPA expressed concern about the effects of resource management activities such as livestock grazing, mineral and energy developments and agricultural irrigation on existing watershed conditions and surface water quality in the District. EPA also supports the designation of Areas of Critical Environmental Concern, wildernesses

and wild/scenic rivers because these would help to protect and enhance the natural resources of the Safford District.

ERP No. D-UAF-11040-CA, EC2, Beale Air Force Base Realignment Relocation of 323rd Flying Training Wing out of Mather AFB, Implementation, Yuba County, CA.

Summary

EPA expressed concerns due to insufficient information in the draft EIS to assess the project's compliance with Section 404 of the Clean Water Act, which regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. EPA also asked for additional information and mitigation measures on hazardous waste volume, hazardous waste minimization, solid waste recycling, underground storage tanks and hazardous substances cleanup work.

Final EISs

ERP No. F1-BLM-J70005-WY, Lander Resource Area Wilderness Recommendations, Lankin Dome, Split Rock, Savage Peak, Miller Springs, Copper Mountain and Sweetwater Canyon Wilderness Study Areas (WSAs), Designation or Nondesignation, Rawlins District, Fremont, Carbon, Matrona, Sweetwater and Hot Springs, WY.

Summary

EPA finds that the majority of its comments were insufficiently addressed in the final Wilderness EIS. EPA recommends that the BLM prepare supplemental information which addresses EPA's concerns.

ERP No. F-COE-J36043-WY, Jackson Hole Flood Protection/ Levee Maintenance Plan, Operation and Maintenance (O&M), Snake and Gros Ventre Rivers, Funding, Teton County, WY.

Summary

EPA has not identified any potential environmental impacts requiring changes to the proposal.

ERP No. F-FAA-G51022-TX, New Austin Airport, Construction, Airport Layout Plan and Location Approval, Cities of Austin and Manor, Travis County, TX.

Summary

EPA understands that a supplemental EIS will be prepared based upon the information provided in the final EIS. EPA suggested that the measures and conditions of approval as set forth in Chapter 8 of the final EIS be incorporated into the supplemental document as appropriate.

Dated: June 19, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-14549 Filed 6-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 15, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0392.

Title: Sections 1.1404 and 1.1406, Pole Attachment Complaint Procedures.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 20 Responses; 60 Hours.

Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensure that the rates, terms, and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Section 1.1404 and 1.1406 of the Commission's rules were promulgated to implement section 224. The information will be used by the FCC to determine the merits of the complaint including calculating the maximum rate under the Commission's formula, if applicable. If the collection of information is not conducted, the Commission will not be able to adequately comply with the Congressional mandate.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14486 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Olive Branch Broadcasting Co., et al.

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
I		
A. Olive Branch Broadcasting Company; Olive Branch, MS.	BPH-880816MU	90-275
B. Jeffrey C. Floyd; Olive Branch, MS.	BPH-880816NI	
C. Mrs. J. J. Kirk d/b/a/ Olive Branch Broadcasting; Olive Branch, MS.	BPH-880816OE	
D. Olive Branch Communications, Inc.; Olive Branch, MS.	BPH-880816OP	
E. Gazelle Broadcasting Co., Inc.; Olive Branch, MS.	BPH-880817MA	
F. Louis M. Anzek; Olive Branch, MS.	BPH-880817MB	
G. Foster's Communications, Inc.; Olive Branch, MS.	BPH-880817MD	
H. Hermine A. Segal; Olive Branch, MS.	BPH-880817ME	
I. Cedarview Limited Partnership; Olive Branch, MS.	BPH-880817MF	
J. Cohn Broadcasting Company; Olive Branch, MS.	BPH-880817MG	
Issue heading and applicants 1. Air Hazard, D, F 2. See Appendix, D 3. See Appendix, D 4. See Appendix, D 5. Comparative, All 6. Ultimate, All		
II		
A. Kevin Potter; Gainesville, TX.	BPH-880707MC	90-290
B. Red River Radio; Gainesville, TX.	BPH-880707MF	
C. Mark Rodriguez, Jr.; Gainesville, TX.	BPH-880707MJ	
D. Cooke County Media; Gainesville, TX.	BPH-880707ML	

Applicant, city and state	File No.	MM docket No.
Issue heading and applicants 1. Air Hazard, A 2. Comparative, A, B, C, D 3. Ultimate, A, B, C, D		
III		
A. Kelly Lynne Billings; Lucerne Valley, CA.	BPH-880714MA	90-289
B. RASA Communications Corp.; Lucerne Valley, CA.	BPH-880714MB	
C. P.K.L. Partnership; Lucerne Valley, CA.	BPH-880714NA	
D. Lucerne Valley Broadcasting, Inc.; Lucerne Valley, CA.	BPH-880714NM	
Issue heading and applicant(s) 1. Comparative, A-D 2. Ultimate, A-D		
IV		
A. Donald G. Jones; Carlinville, IL.	BPH-881221MR	90-291
B. Carlinville Broadcasting Corp.; Carlinville, IL.	BPH-881222MA	
Issue heading and applicants 1. Air Hazard, A, B 2. Comparative, A, B 3. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Olive Branch, MS)

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (OBCI).

3. To determine whether D's (OBCI's) organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to issues 2 and 3, above, whether D (OBCI) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-14434 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Tarcom Communications, et al.

1. The Commission has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Tarcom Communications; Hill City, KS.	BPH-880718MA	90-289
B. KAYS, Inc; Hill City, KS.	BPH-880824MDO03	
Issue heading and applicants 1. Air Hazard, A 2. Comparative, A, B 3. Ultimate, A, B		
II		
A. Sugarland Broadcasting Inc.; Reserve, LA.	BPH-880815MC	90-278
B. Good Fortune Broadcasting; Reserve, LA.	BPH-880816MA	
C. Golden Girls Communications, Inc.; Reserve, LA.	BPH-880816MG	
D. Kathleen Pynes Hebert; Reserve, LA.	BPH-880816MV	
E. Virgie Haas du Trail; Reserve, LA.	BPH-880816NH	
F. Reserve Broadcasting Limited Partnership; Reserve, LA.	BPH-880816MF (Dismissed herein)	
Issue heading and applicants 1. See Appendix, A 2. See Appendix, A 3. See Appendix, A 4. Environmental, C, D, E 5. Air Hazard, B 6. Comparative, A-E 7. Ultimate, A-E		
III		
A. Macon Radio Associates Limited Partnership; Macon, Georgia.	BPH-880421MD	90-276
B. Nancy S. Cooper d/b/a Cooper Communications; Macon, Georgia.	BPH-880421MN	
C. Southeast Communications Limited Partnership; Macon, Georgia.	BPH-880421MO	
D. MBM Broadcasting Company; Macon, Georgia.	BPH-880421MX	
E. Cornutgas Radio Partners; Macon, Georgia.	BPH-880421NJ	
F. Pamela R. Jones; Macon, Georgia.	BPH-880421NL	
G. GKT Communications of Georgia Limited Partnership; Macon, Georgia.	BPH-880421NN	
H. Chisoman, Inc.; Macon, Georgia.	BPH-880421NF (Dismissed herein)	
J. Miracle Macon Radio Limited Partnership; Macon, Georgia.	BPH-880421NU (Dismissed herein)	
Issue heading and applicants 1. Air Hazard, A, C 2. Financial, E 3. Comparative, A, B, C, D, E, F, G, H 4. Ultimate, A, B, C, D, E, F, G, H		
IV		
A. Gloria Bell Byrd; Ormond-by-The-Sea, FL.	BPH-880912MC	90-277
B. Dr. Stephen Hollis; Ormond-by-The-Sea, FL.	BPH-880914MJ	
C. OMS Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880914MS	
D. Michael A. and Cynthia L. Kulsky; Ormond-by-The-Sea, Fl.	BPH-880914MZ	
E. T.D.L. Radio Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MC	
F. Benyan Broadcasting of Ormond-By-The Sea, Florida, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MD	

Applicant, city and state	File No.	MM Docket No.
G. Ormond-By-The-Sea Broadcasters, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MF	
H. Ormond Communications, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MG	
I. Ormond Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MI	
J. deHaro Radio, Ltd.; Ormond-by-The-Sea, Fl.	BPH-880915MJ	
K. O.B.S. Radio Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MN	
L. Sally S. DiLucente; Ormond-by-The-Sea, FL.	BPH-880915MP	
M. B H Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MQ	
N. McFayden Broadcasting Limited Partnership; Ormond-by-The-Sea, FL.	BPH-880915MR	
O. Volusia Broadcasting Company; Ormond-by-The-Sea, FL.	BPH-880915MS	
P. Agape of Central Florida, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MT	
Q. Sunao Broadcasting Company, Inc.; Ormond-by-The-Sea, FL.	BPH-880915MU	
R. Joy Bryon; Ormond-by-The-Sea, FL.	BPH-880915MV	
S. Greene Communications, LTD; Ormond-by-The-Sea, FL.	BPH-880915MW	
T. Robin Gibson; Ormond-by-The-Sea, FL.	BPH-880915MZ	
U. Mid-Florida Broadcasting, Inc.; Ormond-by-The-Sea, FL.	BPH-880915NA	
V. KLT Broadcasting Company; Ormond-by-The-Sea, FL.	BPH-880915NL	
Issue heading and applicants		
1. Air Hazard, J, M		
2. Financial Qualifications, B, M, T		
3. Comparative, A-V		
4. Ultimate, A-V		
V		
A. Mildred D. Hall; Huntsville, TX.	BPH-881221ME	90-300
B. Helen Maryse Casey; Huntsville, TX.	BPH-881222MB	
Issue heading and applicants		

Applicant, city and state	File No.	MM Docket No.
1. Air Hazard, A		
2. Comparative, A, B		
3. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Reserve, Louisiana)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of A (Sugarland).

2. To determine whether A's (Sugarland's) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether A (Sugarland) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-14435 Filed 6-21-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., July 10, 1990.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC

Status: Open.

Matters To Be Considered:

Approval of the minutes of the March 14, 1990, meeting; report of the Executive Director on the status of the Thrift Savings Plan; F Fund investment policy; Thrift Savings Plan surveys; requests for proposals on Board contracts; legislation; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Dated: June 18, 1990.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 90-14464 Filed 6-21-90; 8:45 am]

BILLING CODE 6710-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the notice of June 13, 1990, closing the incident period, is rescinded. The incident period is May 18, 1990, and continuing.

Notice is herby given that Warren Pugh is appointed Federal Coordinating Officer, effective June 18, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant G. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14497 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 16, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The county of Harrison for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14498 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATES: June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The county of Monroe for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14499 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Belmont, Franklin, and Jefferson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14500 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Angelina, Cottle, Motley, and Tom Green for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-14501 Filed 6-21-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Virginia International Terminals Inc./P&O Containers Ltd./Nedlloyd Lines, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200343-001

Title: Virginia International Terminals, Inc./P&O Containers Limited/Nedlloyd Lines Terminal Agreement.

Parties:

Virginia International Terminals, Inc.
P&O Containers Limited
Nedlloyd Lines

Synopsis: The Agreement provides for a change in the name of a party to the Agreement from Trans Freight Lines to P&O Containers Limited effective June 1, 1990.

Agreement No: 224-200127-001

Title: Virginia International Terminals, Inc./Yang Ming Marine Line Terminal Agreement.

Parties:

Virginia International Terminals, Inc.

Yang Ming Marine Line

Synopsis: The Agreement extends the term of Agreement No. 224–200127, a terminal use agreement, for a thirty day period ending July 13, 1990.

Agreement No: 224–200372

Title: North Carolina State Ports Authority/Lauritzen Reefers A/S Terminal Agreement.

Parties:

North Carolina State Ports Authority (Authority)

Lauritzen Reefers A/S (Lauritzen)

Synopsis: The Agreement provides for a guarantee of at least six Lauritzen vessel calls per contract year at Wilmington and Morehead City, North Carolina with an average revenue to the Authority of at least $4,000.00. It provides for a flat throughout rate of $100 per container. This rate includes: the use of a container crane and one container handler for up to 8 hours; other services and facilities usually provided for handling containers; and dockage for one day for vessels not to exceed 13,000 gross registered tons. In the event that the minimum number of vessel calls does not reach six or more in any one contract year, a retroactive surcharge of 125% of all previous billings will be assessed.

Dated: June 18, 1990.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 90–14463 Filed 6–21–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[CRADA–5]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control (CDC), Center for Infectious Diseases, Division of Viral and Rickettsial Diseases, Retrovirus Diseases Branch, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop, evaluate and commercialize serological tests for detecting antibodies to human T-lymphotropic virus (HTLV) types I and II and discrimination of HTLV–I from HTLV–II infection. The immunoassays will be developed by using short, synthetic peptides from the envelope and core protein regions of HTLV–I and HTLV–II. CDC will provide both the peptides and well-characterized serum samples from continuing studies for the research and will participate in the development of assays.

It is anticipated that all inventions that may arise from this CRADA will be jointly owned by CDC and the collaborator(s). CDC will grant an option to the collaborator(s) to negotiate an exclusive, royalty-bearing license for CDC-owned technology. The CRADA will be executed for a 2-year period with the possibility of renewal.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of latitude is given to Federal agencies in implementing collaborative research. As a Federal agency, CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. The single restriction in this exchange is that CDC may not provide funds to the other participants in a CRADA.

SUPPLEMENTARY INFORMATION: This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary. For additional information contact:

Technical Contact(s)

Renu Lal, Ph.D., Division of Viral Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop G19, Atlanta, GA 30333, telephone (404) 639–1024.

Business Contact

Nancy C. Bridger, Technology Transfer Represenatative, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C19, Atlanta, GA 30333, telephone (404) 639–3766.

Respondents should provide evidence of expertise in the development and evaluation of immunoassays, evidence of experience in commercialization of products for diagnostic use, and supporting data (e.g. publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility;
4. Evidence of commitment and ability to develop and evaluate immunologic tests that will benefit the public interest; and
5. Willingness to provide financial support to the collaboration.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act, Public Law 99–502.

The responses must be made to: R. Eric Greene, Technology Transfer Coordinator, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop A20, Atlanta, GA 30333.

Dated: June 15, 1990.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc 90–14489 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 041]

Cooperative Agreement To Support Activities Related to Mammography Quality Assurance Program Announcement and Availability of Funds for Fiscal Year 1990

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for fiscal year 1990 for a new cooperative agreement for activities related to mammography quality assurance with activities focused on assessing and improving the quality of mammography. The project will address assessment, planning, development, coordination, and evaluation of programs designed to improve the quality of screening for breast cancer with mammography.

Authority

This cooperative agreement is authorized by sections 301(a) (42 U.S.C. 241(a)) and 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants for this program are national, non-profit organizations with broad experience and expertise in the field of radiology, breast imaging, and radiological physics. Limited competition is justified under this cooperative agreement because (1) of the highly technical and specific nature of the tasks to be addressed, and (2) because the need for broad implementation of findings and protocols related to improving mammographic image quality requires an organization that has recognized expertise in this area and is national in scope. Applicants must demonstrate that the organization is truly national (i.e., has a national structure with local affiliates), has national membership, use subcommittees or similar processes to address specific problems and issues, and convenes meetings which attract a national audience. Applicants must also demonstrate that organizational staff and/or consultants and collaborators will be adequate to meet project requirements.

Availability of Funds

Approximately $300,000 will be available in fiscal year 1990 to fund one project. It is expected that the cooperative agreement will begin on or about September 15, 1990. Award will be made for a 12-month budget period within a 1- to 3-year project period. Continuation awards for new budget periods within the approved project period will be made on the basis of satisfactory performance and the availability of funds.

Use of Funds

Cooperative agreement funds shall not be used for treatment or treatment services.

Purpose

The purpose of this cooperative agreement is to (1) promote improvement in the quality of mammography through the coordination of different professional groups presently conducting the examination, and those providing support for the mammography imaging system; (2) analyze data and literature related to quality assurance issues; and (3) design, test, and implement interventions focused on the practice of mammography and routine evaluation of the mammography imaging system. The demonstration projects should address the following programmatic goals for this procedure:

1. The data should permit examination of factors related to the performance of radiological technologists, the x-ray imaging system, and the film processing system. Assemble and analyze existing data and literature that can provide guidance for addressing current needs for improving mammographic image quality.
2. Evaluate the potential for and impediments to the development of quality assurance programs for various groups involved in mammography. These groups include, but are not limited to: State regulatory personnel (radiation control, survey, and certification), radiological technologists who perform mammography, radiological physicists, radiologists, film and chemistry supplier technical representatives, and x-ray equipment technical representatives.
3. Evaluate existing curricula, and if necessary, design and test curricula to train radiological technologists about the importance of routine quality assurance and techniques for improving the quality of taking the mammogram, inspecting the imaging system, and trouble-shooting. If appropriate, pilot testing of the curricula shall take place in a State with a comprehensive breast cancer control program.
4. Investigate the existence of curricula focused on mammography quality assurance, and if necessary, plan, test and evaluate directed information and education programs to radiologists, radiological technologists, and radiological physicists about the importance of image quality and strategies to implement a quality assurance program for mammography. If appropriate, pilot testing of program design shall take place in a State with a comprehensive breast cancer control program.
5. Evaluate the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under I. below and CDC will be responsible for conducting activities under II. below.

I. Recipient Activities

Activities A and B should begin in the first year and continue throughout the duration of the cooperative agreement. Activities C and D should begin in the second year and continue throughout the duration of the cooperative agreement.

A. Recipient should develop a system to: assemble, analyze and integrate data, literature, and existing materials that can provide guidance for addressing current needs for improving mammographic image quality. These should include factors related to the performance of radiological technologists, the x-ray imaging system, and the film processing system. These data should provide guidance for developing interventions to improve the quality of breast imaging.

B. Recipient should convene consultants from different organizations and professional backgrounds for periodic meetings to: (1) Evaluate data on the current status of mammography quality assurance, (2) plan strategies to meet the present and increasing needs for physics support and inspections, and for improving the performance of radiological technologiest and; (3) improve the performance of radiological technologists and increase their role in quality assurance practices. Representation should include, professional, and specialty groups.

C. Recipient should design, test, evaluate, and produce curricula to train relevant personnel about the importance of routine quality assurance and protocols for improving the quality of the mammogram, for inspecting the imaging system, and for trouble-shooting. Pilot testing of curricula shall take place in a State with a comprehensive breast cancer control program, utilizing expertise in the State to accomplish the training.

D. Recipient should evaluate and determine the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence.

II. Centers for Disease Control Activities

A. Provide consultation and guidance in data collection and analysis of data on quality assurance in mammography, and contribute data from existing CDC cooperative agreements.

B. Participate in the design, implementation, and evaluation of interventions focused on radiologists, radiological technologists, and radiological physicists.

C. Participate in planning meetings conducted with different specialty groups convened by the Recipient.

D. Participate in the development of project tracking and evaluation strategies.

Application Review and Evaluation Criteria

Applications will be reviewed and ranked with other applications, and evaluated based on the following factors:

1. Applicant's understanding of problems associated with

mammography quality assurance, the recipient activities specified in the announcement, and ability to apply appropriate scientific and programmatic methods to successfully address these activities; (15%)

2. Ability of the applicant to carry out the tasks of the cooperative agreement and to provide the staff and resources necessary to perform and manage the project, including the experience and expertise of the organization, principal investigator/project director, and the staff in the area of radiology, mammography quality assurance, radiologic physics, curriculum development, and training; (15%)

3. Applicant's plan to assemble, analyze and integrate data, literature, and existing materials to provide guidance for addressing current needs for improving mammographic image quality; (10%)

4. Applicant's plan to convene consultants from different organizations and professional backgrounds for periodic meetings to address technical and policy issues related to mammography quality assurance; (10%)

5. Applicant's plan to design, test, evaluate, and produce curricula to train relevant personnel about the importance of routine quality assurance and protocols for improving the quality of the mammogram; (20%)

6. Applicant's plan to evaluate and determine the potential for a methodology that would evaluate both phantom images and clinical images to identify likely problem sources with the imaging process with a measurable degree of confidence; (10%)

7. Consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period; (10%)

8. Adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project; (10%)

9. Extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds. (Not weighted)

Other Requirements

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction act.

Executive Order 12372

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Mailstop E–14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, on or before August 24, 1990.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Linda M. Long, Grants Management Specialist, Grants Management Branch, Mailstop E–14, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, telephone (404) 842–6575 or FTS 236–6575.

Please refer to Announcement Number 041 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be provided by Robert A. Smith, Ph.D., Cancer Prevention and Control Branch, Mailstop F–11, Division of Chronic Disease Control and Community Intervention, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, GA 30333, Telephone (404) 488–4300, or FTS 236–4300.

Dated: June 15, 1990.

Ladene H. Newton,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90–14460 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 041]

National Institute for Occupational Safety and Health; Occupational Health and Safety Surveillance Through Health Departments and Nurses in Agricultural Communities

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC) announces the availability of funds for cooperative agreements. Competitive applications are invited from state and territorial departments of health for programs to perform surveillance for the purpose of preventing occupational injury and illness in workers employed in agriculture. These programs will help develop intervention strategies to reduce injury and disease rates among Americans engaged in agricultural work and will develop more complete information on agricultural injury and disease problems. They will be designed to link state and territorial health departments to agricultural areas, and, in some instances, specifically to local hospitals. Through these programs, nurses will identify and report certain sentinel health events related to agricultural hazards.

Authority

This program is authorized in section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)). Regulations are set forth in 42 CFR part 87, National Institute for Occupational Safety and Health Research and Demonstration Grants.

Eligible Applicants

Eligible applicants are the official public health agencies of the states, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Awards will be limited to state and territorial health departments because it is only through the legislated authority of these health departments that cooperation among other health service agencies in the state or territory can be effected.

Availability of Funds

Approximately $1.6 million is available in Fiscal Year 1990 to fund 7–15 awards. It is expected that the average award will be approximately $155,000, ranging from $100,000 to $250,000. These funding estimates may vary and are subject to change. The awards are expected to be made prior to September 30, 1990, and to be for a 12-month budget period within a project period of three to five years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is to provide ongoing, responsive surveillance of agriculture-related disease and injury by placing nurses, preferably nurses with occupational health training, in up to 50 agricultural communities. The nurses would identify and report agriculture-related disease and injury cases to state or territorial health departments; assist in collecting other agriculture job-related fatality, safety, and health data; provide targeted educational interventions; and conduct community evaluations of occupational agriculture risk factors. They will work in collaboration with state and territorial and local health departments and, as appropriate, with county extension agents and other community resources.

Program Requirements

The cooperative activities of the recipient and the funding agency are:

A. Recipient Activities

1. Develop, implement and maintain a community-based system of reporting agricultural job-related diseases and injuries through the employment and assignment of nurses, preferably nurses with occupational health training, in agricultural locales (one nurse per community or medical service catchment area, 3–5 areas per State) that are representative of the state's agricultural population and would most benefit from such a nurse assignee. Data systems should be computerized and consistent with ongoing CDC and state reporting systems.

2. Select for epidemiologic follow-up by nurse assignee targeted sentinel health incidents associated with the work that agricultural workers and their families perform (*e.g.*, acute pesticide poisonings and dermatoses; bacteria-related diarrheal diseases and tuberculosis among migrant agricultural workers and their children; agricultural worksite- and farm implement-related amputations, fatalities, injuries and severe disabilities; hypersensitivity pneumonitis and other acute respiratory insults; musculoskeletal disorders; and noise-induced hearing loss).

3. Provide feedback to nurses on a regular basis. This could include case report tabulations by hospital, state, region, agricultural sector, diagnosis and other appropriate factors. On a regular basis, make this information available to providers in order to promote case reporting and cooperation.

4. In collaboration with county extension agents, agriculture workers, agricultural worksite owners, NIOSH staff and other health department personnel, develop a process of case follow-up with agricultural workers and families to provide disease and injury prevention information.

5. In collaboration with the local medical community, schools, county extension agents, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff and other health department personnel, provide health education and promotion outreach that incorporates agricultural vocation classes, health classes, and other appropriate areas.

6. Evaluate project activities in terms of the altered degree of case ascertainment, and the effectiveness of worksite follow-up and recommendations.

7. Collaborate with NIOSH, as needed, in training and providing orientation for nurse assignees in occupational safety and health and taking occupational histories, surveillance and reporting, health screening and testing, technical support ranging from site investigations to supplying handout literature, and final evaluation of the activity.

The responsibilities of the nurse assignee would include; provide liaison to local, state or territorial health departments and/or NIOSH personnel doing site evaluations; identify agriculture-related fatalities, injuries, and illnesses; maintain contact with workers after an illness or accident; and provide outreach for health education, health promotion and prevention efforts within agricultural regions of the state.

B. CDC/NIOSH Activities

1. Provide technical assistance in all phases of the development, implementation and maintenance of these cooperative agreements, including, but not limited to: Providing guidance on occupational conditions appropriate for reporting; recommending reporting guidelines; developing case reporting forms; developing and providing booklets and educational materials to be used by the nurse assignees in carrying out intervention and prevention functions; providing collaboration in ensuring data systems are consistent with ongoing CDC and state reporting systems; and providing NIOSH publications and other documents to nurse assignees or field location, when appropriate and needed.

2. Provide initial and follow-up training of assigned nurses. Depending on applicant's resources, provide expertise and assistance to site nurses and local health officials, as needed, to perform technical medical and testing procedures. Provide orientation for site nurses, as needed, including occupational history taking and an introduction to concepts in surveillance and reporting. Assist in problem identification and resolution, and provide technical support which may range from site investigation to supplying literature.

3. Assist in the development of criteria for initiating and conducting field investigations and intervention efforts, when requested, and respond to incident reports for field follow-up according to that criteria.

4. Provide technical assistance in the evaluation of the results of the reporting, intervention and outreach activities.

5. Promote and facilitate collaboration, if appropriate, with agricultural safety and health researchers funded under other NIOSH-sponsored surveillance and agricultural initiatives.

6. Assist in disseminating a descritpion of the impact of community-based outreach nurses in agricultural communities.

Evaluation Criteria

A CDC-convened at hoc committee will review the applications. The review will be based on the evidence submitted which specifically describes the applicant's ability to meet the folowing criteria:

1. The applicant's understanding of the objectives of the proposed initiative.

2. Appropriate designation and selection of the type of nurse to be hired, the geographical area in which she/he will function, and the suitability of her/his location.

3. Valid basis for selection of condition(s) to focus upon in this project, *i.e.*, documented and perceived risk to agricultural workers and their families in the area.

4. Appropriateness of the proposed schedule for initiating and accomplishing the activities of the cooperative agreement.

5. Experience of proposed staff, including the proposed project coordinator, in coordinating activities between the state or territorial offices and community agricultural and health facilities. Staff must provide assurances of substantial time and resource commitment to the program.

6. Plans for collaboration and coordination with local community expertise for the purpose of implementing the proposed outreach, reporting, intervention, consultation and training efforts.

7. Ability and willingness to incorporate surveillance for occupational disorders in this project, paritcularly agricultural job-related conditions, as an integral part of public health programs for identification, investigation, and prevention of agriculture-related health and safety incidents.

Surveillance includes the identification of workplace causes of agricultural related diseases and injuries, and the reporting of these causes to the appropriate occupational safety and health institution in the applicant's state.

8. The feasibility of approach to evaluation techniques for the outreach, reporting and follow-up strategies.

9. A defined, direct and strong relationship between the proposed activity and existing, if any, occupational health reporting and follow-back, activities currently ongoing in the applicant state or territory.

10. Applications with plans for effective collaboration and coordination among local community resources, extension officers and academic institutions.

Also, the budget will be reviewed to determine the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Those applications demonstrating a relationship of the proposed activity to the Farm Family Health and Hazard Surveillance Cooperative Agreement Program (Announcement Number 040), applications for which are also being considered by NIOSH, may be afforded higher consideration for funding.

Other Requirements

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372 entitled "Intergovernmental Review of Federal Programs."

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 13.283, Centers for Disease Control—Investigations and Technical Assistance.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Mr. Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E14, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 18, 1990.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commerical carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Mr. Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E14, 255 East Paces Ferry Road, NE, Room 300, Atlanta, Georgia 30305, or by calling (404) 842–6630 (FTS: 236–6630).

Announcement No. 031, "Occupational Health and Safety Surveillance Through Health Departments and Nurses in Agricultural Commmunities," must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Paul Seligman, M.D., NIOSH, Centers for Disease Control, 4676 Columbia Parkway, Mailstop R21, Cincinnati, Ohio 45226, or by calling (513) 841–4353 (FTS: 684–4353).

Dated: June 18, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90–14491 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 90N–0208]

Chelsea Laboratories, Inc., Proposal To Withdraw Approval of Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11442 (hereinafter referred to as Chelsea). The bases for the proposed withdrawals are (1) that the applications contain untrue statements of material fact; (2) that new evidence of clinical experience not contained in the applications or not available until after the applications were approved, evaluated together with the evidence available when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) that based upon new information, evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their landing.

DATES: A hearing request is due on July 23, 1990; data and information in support of the hearing request are due on August 21, 1990.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 90N–0208 and submitted to the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Walter A. Brown, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION:

Background

Chelsea holds the following approved ANDA's:

ANDA 70–421 for Verapamil Hydrochloride Tablets 80 milligrams (mg) and ANDA 70–422 for Verapamil Hydrochloride Tablets 120 mg, generic versions of Searle's Calan Tablets (the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355(j)(6)).

ANDA 71–020 for Disopyramide Phosphate Capsules 100 mg and ANDA 71–021 for Disopyramide Phosphate Capsules 150 mg, generic versions of Searle's Norpace Capsules (the listed drug).

ANDA 71–558 for Perphenazine 4 mg and Amitriptyline HCl 50 mg Tablets, a generic version of Merck Sharp & Dohme's Triavil Tablets (the listed drug).

ANDA 71–661 for Oxazepam Capsules 10 mg, ANDA 71–662 for Oxazepam Capsules 15 mg, and ANDA 71–663 for Oxazepam Capsules 30 mg, generic versions of Wyeth's Serax Capsules (the listed drug).

ANDA 89–700 for Perphenazine Tablets 8 mg, a generic version of Schering's Trilafon Tablets (the listed drug).

In support of approval of the ANDA's listed above, Chelsea submitted information to show that its products are bioquivalent to the relevant listed drugs. This information consisted of in vivo bioequivalance studies or in vitro dissolution studies and other information supporting a waiver of in vivo bioequivalence studies.

This information was critical to the approval of Chelsea's products. The listed drugs were approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the products are safe for their intended uses and have the effects claimed for them. Chelsea's generic versions of the listed drugs were approved without the submission of such studies. Instead, Chelsea's products were approved based on findings that the products were bioequivalent to the listed drugs. These findings of bioequivalence are necessary to support the conclusion that Chelsea's products will be therapeutically equivalent to the listed drugs.

In addition to the bioequivalence data, Chelsea submitted to each ANDA dissolution data, batch production records, analytical data (assay, content uniformity), and stability data. These data and information were also necessary for approval. FDA used the dissolution data to assess the comparability of Chelsea's products and the listed drugs, and to establish appropriate dissolution specifications for future, commerical batches of Chelsea's products. The dissolution specifications help provide assurance that Chelsea's commerical batches remain bioequivalent to the listed drugs.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of Chelsea's products shown to be bioequivalent to the listed drugs. In general, these same methods, facilities, and controls must be applied to the production of Chelsea's commerical batches to provide assurance that the products remain bioequivalent to the listed drugs.

The analytical data must demonstrate that Chelsea's products meet required specifications and help provide assurance that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drugs are adequate to preserve their identity, strength, quality, and purity.

The stability data help provide assurance that Chelsea's products will retain their physical, chemical, and bioequivalence characteristics throughout their labeled shelf-life.

For each of the ANDA's listed above, Chelsea manufactured one or more pilot batches of product in order to conduct the tests necessary for approval. Chelsea submitted to FDA copies of the batch production records for the pilot batches. These copies were purported to be copies of the original batch production records retained by the firm.

On August 21, 1989, FDA initiated comprehensive inspections of a cross-section of generic drug manufacturers as part of the agency's ongoing evaluation of the generic drug industry. The general objectives of these inspections are:

1. To determine if ANDA data (e.g., bioequivalence and stability data) are valid and relevant to the commercially marketed products;

2. To determine if manufacturers are adhering to ANDA and current good manufacturing practice (CGMP) requirements; and

3. To invoke regulatory actions as appropriate if violations are encountered.

Chelsea was selected for inspection as part of the cross-section of generic drug manufacturers.

FDA conducted an inspection at the firm's Inwood, New York, manufacturing facility between August 23, 1989, and October 5, 1989. At the conclusion of the inspection, FDA issued a Notice of Inspectional Observations (Form FDA 483) delineating instances of untrue statements, missing documents, and/or discrepancies in the batch records for various products. By letter dated November 9, 1989, Chelsea responded to the observations detailed in the Form FDA 483.

FDA's inspection revealed that Chelsea did not submit true and accurate copies of the original batch records for the pilot batches used to conduct tests necessary for approval of the aforementioned ANDA's. Instead, Chelsea submitted revised batch production records showing different manufacturing processes and data. The agency approved Chelsea's products based upon the untrue information and data contained in the ANDA's.

After careful review of all documents and facts obtained during the inspection, Chelsea's November 9, 1989, letter in response, as well as subsequent letters from Chelsea and meetings with the firm, the agency determined that there was sufficient justification to withdraw approval of ANDA's 70–421, 71–020, 71–021, 71–558, 71–661, and 89–700. FDA also determined that there was sufficient justification to change the therapeutic equivalence evaluation code for each product from therapeutically equivalent to not shown to be therapeutically equivalent. Chelsea was informed of the agency's conclusions in a letter dated February 1, 1990. Chelsea requested a meeting to respond to the February 1, 1990, letter. At a meeting on February 8, 1990, the firm agreed that the August–October 1989 inspection revealed discrepancies between records on file at the firm and those submitted to the ANDA's. The firm stated that these discrepancies fell into the following categories:

1. Site of film coating operation;
2. Order of mixing ingredients;
3. Screen size;
4. Mixing times; and
5. Identity of individuals performing operations.

Chelsea admitted that the data submitted to the ANDA's were not accurate. This February 8, 1990, admission reconfirmed admissions contained in Chelsea's letter of November 9, 1989. However, on February 9th, the firm presented to the agency a document that described the potential effects the differences in manufacturing procedures could have had on the products. The firm contended that there were no significant differences and effects. In addition, the firm stated that an independent outside

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consultant had performed a scientific evaluation of the bioequivalence data for the drug products and concluded that it was unlikely that the changes in manufacturing would affect the bioequivalence of the products. FDA disagrees with the firm's contentions. Chelsea has failed to demonstrate conclusively that the revised manufacturing procedures do not affect the bioequivalence, safety, and effectiveness of its products.

Based upon information obtained from inspections of Chelsea and Colorcon, Inc., information furnished by a former employee of Chelsea, and meetings and correspondences with Chelsea, the Director of the Center for Drug Evaluation and Research has determined that the ANDA's listed below should be withdrawn. These ANDA's include the six identified in the agency's February 1, 1990, letter and three additional ANDA's that relied on data from some of the six applications listed in the February letter. These ANDA's contain untrue statements of material fact. Moreover, based on this review, the drugs covered by these applications have not been shown to be safe and lack substantial evidence of effectiveness. A discussion of the evidence supporting these determinations follows:

ANDA 70-421; Verapamil Hydrochloride Tablets, 80 mg. In support of approval of ANDA 70-421, Chelsea submitted to FDA batch production records for batch PD 825. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

During the inspection of the Inwood, New York, facility, FDA noted various discrepancies between the records for batch PD 825 at the firm and the records for the batch submitted to FDA with the ANDA. The firm's files contained two versions of the batch record—a handwritten record that Chelsea identified as the original and a typed record that is identical to the record submitted with the ANDA. Comparison of the handwritten original record with the ANDA submission record reveals that the names of the individuals who created the master formula and approved the master formula are different on each record. The names of the individuals who checked the production order are also different on each record. Both the original handwritten record and the ANDA submission record lists the theoretical batch size as 50,000 tablets, however, the handwritten original record states the quantity completed to be 47,517 tablets with an actual yield loss of 2,483 tablets or 5.0 percent while the ANDA submission record identifies the quantity completed to be 48,220 tablets with an actual yield loss of 248 tablets or 0.5 percent.

The original handwritten record and the ANDA submission record contain standard operating instructions used in the preparation of the product. The ANDA submission record is marked Revision No. 1. Although the qualitative and quantitative formulations are the same on each record, the manufacturing steps used in the granulation process are different between the original handwritten record and the ANDA submission record. These differences include the order of mixing ingredients, the blending times of ingredients, and the screen sizes used in the various steps. Also, the ANDA submission record lists specific times when each step in the granulation process started and stopped whereas the original handwritten record does not specify any such times. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend while the original handwritten record fails to contain this information.

A comparison of the compression data for the tablets in the original handwritten record and in the ANDA submission record shows several discrepancies. The values presented for the actual run weight, hardness, and thickness of the tablets are different in each record. Further, the compressed tablets weight/yield data in the original handwritten record and in the ANDA submission record are also contradictory. Finally, the initials of the operator represented as having performed the compression process in the original handwritten record are not the same as the initials of the operator represented as having performed the compression process in the ANDA submission record.

Data on film coating are provided in both the original handwritten record and the ANDA submission record on a form identified as "Film Coating Instructions." In the original handwritten record, no creation date for this form is identified. In the ANDA submission record, the lower left-hand corner of the form has the notation "C-176 (10/84)." Data on the film coating of Verapamil Hydrochloride Tablets 80 mg contained in the original handwritten record state that the film coating process began on November 16, 1983, while the ANDA submission record states that it began on November 17, 1983. The discrepancies are further amplified by the fact that the film coating data contained in the ANDA submission record were placed on a form created 11 months after the date the form was purportedly filled out. Finally, the weight and yield data in the original handwritten record do not correspond to the weight and yield data in the ANDA submission record.

ANDA 70-422, Verapamil Hydrochloride Tablets, 120 mg. The approval of ANDA 70-422 for the 120-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Verapamil Hydrochloride Tablets 80 mg, batch PD 825, discussed above. The requirement for an in vivo bioequivalence study on the 120-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 80-mg product, both products met acceptable dissolution parameters, and both drugs were proportionately similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 80-mg product have been impugned by the untrue information concerning batch PD 825, the bioequivalence of the 120-mg product is now in question.

Batch PD 826 was used to conduct the required dissolution, analytical, and stability testing for the 120-mg product. Numerous discrepancies have been identified in the records for batch PD 826 at the firm versus the record for the batch submitted to FDA in support of the ANDA. The names and initials of the individuals who created the master formula and approved the master formula are different in each record. Both the original batch record and the ANDA submission record list the theoretical batch size as 50,000 tablets. However, the original record states the quantity completed to be 45,047 tablets while the ANDA submission record states the quantity completed to be 49,286 tablets.

Both the original batch record and the ANDA submission record contain standard operating instructions. However, the manufacturing steps used in the granulation process are different in the original batch record and in the ANDA submission record. In the original batch record, step VI of the granulation process calls for the addition of ingredients #1 and #2, step VII calls for the addition of ingredients #2, 3, 5, and 7, while step VIII requires the addition of ingredient #6. A major discrepancy exists as to when, where, and if ingredient #4 was incorporated into the blend. The ANDA submission record identifies all ingredients as being used. Additional discrepancies include the order of mixing ingredients, the blending times of ingredients, and the screen sizes and processes used in the various steps. Also, the standard operating instructions in the original batch record indicate that the starting date was October 25, 1983, with steps IV and V having been performed on October 31, 1983. However, the standard operating instructions in the ANDA submission record state the starting date to be October 27, 1983, with steps IV and V having been performed on November 1, 1983. In addition, the ANDA submission record lists specific times when each step in the granulation process started and stopped, whereas the original batch record does not specify any such times. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend, while the original batch record fails to contain this information. The compression data, as expressed in the original batch record, are different from the data contained in the ANDA submission record in several instances. The value listed for the thickness of the tablet is different in each record. Further, the compressed tablets weight/yield data contained in the original batch record and in the ANDA submission record are contradictory. Finally, the initials of the operator represented as having performed the compression process in the original batch record are not the same as the initials of the operator represented as having performed the compression process in the ANDA submission record.

Data on film coating are provided in both the original batch record and the ANDA submission record on a form identified as "Film Coating Instructions." While the form in the original batch record has no creation date, the form in the ANDA submission record has in the lower left-hand corner the notation C-176 (10/84). Chelsea has stated on the forms in both the original batch record and the ANDA submission record that the film coating process began and ended on December 9, 1983. Thus, the film coating data contained in the ANDA submission record were placed on a form created 10 months after the date the form was purportedly filled out. Finally, the weights designated in step II of the "Film Coating Instructions" contained in the original batch record and in the ANDA submission record are not the same, and the weight and yield data contained in the original batch record and in the ANDA submission record are not the same.

ANDA 71-020, Disopyramide Phosphate Capsules, 100 mg. The approval of ANDA 71-020 for Disopyramide Phosphate Capsules 100 mg relied on a bioequivalence study conducted on Chelsea's Disopyramide Phosphate Capsules 150 mg, batch PD 1032. The requirement for an in vivo bioequivalence study on the 100-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 150-mg product, both products met acceptable dissoulution parameters, and both products were proportionately similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 1032 used to conduct the in vivo bioequivalence study for the 150-mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 150-mg product. Thus, the bioequivalence of the 100-mg product is now in question.

In addition, batch PD 1031 was used to conduct the required dissolution, analytical, and stability tests for the 100-mg product. During the inspection between August 23, 1989, and October 5, 1989, FDA observed that the original batch record for PD 1031 in the possession of the firm was not an identical copy of the batch record submitted with the ANDA.

The firm provides standard operating instructions in both the original batch record and the ANDA submission record. However, the granulation process is different in the original record and the ANDA submission record in that the order of mixing ingredients, the blending times of ingredients, and the screening sizes and process are not the same. In addition, the original record does not contain the initials of the operator performing the manufacturing steps, the initials of the checker, the date on which the manufacturing steps occurred, and the specific times when each step in the granulation process started and stopped. The ANDA submission record contains this information. Further, the ANDA submission record contains the theoretical and actual weight, the loss in weight, and percent of the finished granulated blend while the original record does not contain these data.

The encapsulation page in the original batch record lacks the initials of the operator performing the encapsulation of the product, the initials of the checker, and the date on which the encapsulation occurred, while the initials of the operator, the initials of the checker, and the date of encapsulation are included in the ANDA submission. In addition, in the ANDA submission record, the initials of the operator who encapsulated the product in steps XI and XII under "Encapsulation" and the initials of the individual who checked the encapsulation process under these two steps are different from the initials and signature of the individuals identified on the "Capsule Run Weight Chart" as performing and checking the encapsulating operations.

ANDA 71-021, Disopyramide Phosphate Capsules, 150-mg. In support of approval of ANDA 71-021, Chelsea submitted a batch production record for batch PD 1032. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. The inspection of the firm revealed that the original batch record for Pd 1032 in the possession of Chelsea was not an exact copy of the batch record submitted with the ANDA.

Standard operating instructions are provided in both the original batch record and the ANDA submission record. However, the original batch record lacks the page under standard operating instructions—Granulation—with the specific manufacturing steps used to manufacture the product.

In a letter dated February 12, 1990, Chelsea attempted to explain the manufacturing procedures in relation to the ANDA batch and the initial production batch record. It states:

> The differences between the manufacturing procedure used in the ANDA batch (which was the basis of all analytical and bioequivalence data in the original ANDA) and initial production batches are defined below. The ANDA batch record for the 150-mg strength of Disopyramide Phosphate Capsules did not contain information regarding the manufacturing procedure used. For this review it is reasonable to assume, based upon our knowledge of company operations and the product formulation, that the manufacturing procedure was the same as the 100 mg strength, for which records are available.

The Center for Drug Evaluation and Research also assumes that batch PD 1032 was manufactured using the same procedures used to manufacture the Disopyramide Phosphate Capsules 100 mg, batch PD 1031. This is a logical assumption because the qualitative formulas are identical for both batches, the ingredients are listed in the identical order on both master formula cards, and batch PD 1032 (150-mg strength) was manufactured only 1 day after batch PD

1031 (100-mg strength) on the same equipment. However if these assumptions are correct, then the discrepancies previously delineated between the original batch record and the ANDA submission record for Disopyramide Phosphate Capsules 100 mg, batch PD 1031, regarding the different order of mixing ingredients, blending times of ingredients, and screening sizes and process would be true for Disopyramide Phosphate Capsules 150 mg as well.

There are also discrepancies in the original batch record for batch PD 1032. Included in the original batch record for the product is the "Capsule Run Weight Chart." The initials of the individual who set up the encapsulating equipment and the two operators who performed the encapsulation, and the signature of the individual who checked the equipment as listed on the capsule run weight chart are different from the initials of the operator and checker who performed the encapsulation process in steps XI and XII under "Encapsulation" of the standard operating instructions.

ANDA 71-558, Perphenazine and Amitriptyline HCl Tablets, 4-mg/50-mg. In support of ANDA 71-558, Chelsea submitted a batch production record for batch PD 1035. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

FDA's investigation identified three versions of the batch record for batch PD 1035; the original batch record, a typed version of the batch record, and the batch record submitted to FDA with the ANDA. Several omissions and discrepancies exist between the original batch record and the other two versions. In this regard, the names of the individuals who created and approved the master formula are different in the original batch record and in the ANDA submission record. While the original batch record has the initials of the individual who checked the production order, the ANDA submission record does not. In addition, the production order date is different in the two versions.

Standard operating instructions delineating pharmacy, granulation, and compression steps used in the manufacturing and tableting of the batch and subsequent data are included in the ANDA submission record. Also included in the ANDA submission are specific times when manufacturing steps occurred, equipment used in the manufacturing process, and the initials of the individuals who performed the manufacturing operations. The original batch record, on the other hand, lacked any standard operating instruction concerning the pharmacy and granulation processes. Thus, the original batch record contains no instructions concerning how the batch was manufactured and no subsequent data pertinent to the manufacturing process. Also lacking in the original batch record are the specific times in the manufacturing process, identification of the equipment used, and the initials of the individuals who performed the manufacturing steps. Although instructions were provided under "Compression" in the original batch record, only two data entries were recorded—theoretical run weight and average tablet weight. No other related data were included in the original batch record nor were the initials of the individuals who performed and checked the tableting operations in the original batch record.

Documentation contained in the original batch record states that film coating for batch PD 1035 occurred at Colorcon, Inc., West Point, PA, on March 25, 1985. However, documentation included in the ANDA submission record states that the film coating of the batch was performed on March 25, 1985, at Chelsea's facility at Inwood, NY, by Chelsea personnel. The film coating instructions for High Coater and Polishing Solutions #2 for Hi Coater are on Chelsea's forms with no indication that the initials of the individuals performing the operations are not Chelsea employees. The firm stated in its November 9, 1989, letter to FDA that, "the investigator's observation that the film coating on Batch PD 1035 was performed at Colorcon Inc., West Point, PA is true."

ANDA 71-663, Oxazepam Capsules, 30 mg. In support of approval of ANDA 71-663, Chelsea submitted a batch production record for batch PD 1041. Product from this batch was used to conduct the required in vivo bioequivalence study, in vitro dissolution tests, analytical tests, and stability tests.

During the inspection, FDA discovered numerous inconsistencies between the original batch record for PD 1041 maintained at the firm and the batch record for PD 1041 submitted with the ANDA.

Under the standard operating instructions—Granulation—the manufacturing steps, including the order of mixing ingredients, blending times of ingredients, and screening sizes and processes, that were in the original batch record and in the ANDA submission record, were different. In addition, the original batch record lacks the initials of the operator performing the manufacturing steps, the initials of the checker, the date on which the manufacturing steps occurred, and the specific times when each step in the granulation process started and stopped. The ANDA submission record contains this information. With regard to the specific times in the ANDA submission record when each step in the granulation process started and stopped, the listed times are as follows:

Step VI on 10:10 p.m., off 10:12 p.m.
Step VII on 10:25 p.m., off 10:38 p.m.
Step VIII on 3:50 p.m., off 4:00 p.m.
Step IX on 4:30 p.m., off 4:35 p.m.

Each of these steps was recorded in the ANDA submission record as being performed on January 4. According to these data, steps VIII and IX occurred approximately 6 hours before steps VI and VII. Further, the ANDA submission record contains the theoretical and actual weight and the loss in weight and percent of the finished granulated blend, while the original batch record does not contain this information.

The front page of the master formula and the capsule run weight chart in the original batch record and the front page of the master formula in the ANDA submission record list three different capsule colors for this product. Two of those colors were crossed out leaving only the Pink Cl/Nat Cl as the apparent final color. The bottom of the master formula page on both records—items 17 and 18—lists two color capsules with the quantity for each capsule color type. These entries list 7,200 black/green capsules and 17,760 Pink Cl/Nat Cl capsules.

In the ANDA submission record, under standard operating instructions—Encapsulation—the capsule is identified as a Pink Cl/Nat Cl. However, the quantity of capsules filled as stated in step XIV (24,960) does not correspond to the quantity of Pink Cl/Nat Cl as stated on the master formula page.

In the original batch record, there are documents indicating that three colored capsules were used in the encapsulation process. One encapsulation page in the original batch record shows that the product was filled in a size #4 Blue op/White op capsule totaling 24,960 capsules. The operator initialed and dated the document on January 8, 1985. A second encapsulation page in the original batch record shows that the product was filled in a size #4 Pink Cl/Nat Cl capsule totaling 24,960 capsules. The operator who performed this process initialed and dated the document on January 10, 1985. A third document is a handwritten statement which says, "Encapsulated in 2 different color of capsules (1) Black op/green op (4DE015) for 15 rings Lenny did not like this color then changed to (2) pink cl/Nat cl (2AU019) for 37 rings."

There are also discrepancies between the original batch record and the ANDA submission record with respect to the "weighed by" and "checked by" columns for empty capsules—lines 17 and 18—on the master formula page. The original record contains the initials of individuals who performed these operations whereas the ANDA submission record does not. Additional discrepancies include the failure of the operator's and checker's initials in the original batch record for each step in the encapsulation process to correspond to the same entries in the ANDA submission record.

ANDA 71-661, Oxazepam Capsules, 10-mg. The approval of ANDA 71-661 and for the 10-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Oxazepam Capsules 30 mg, batch PD 1041. The requirement for an in vivo bioequivalence study on the 10-mg product was waived by FDA because it thought that an acceptable bioequivalence study had been conducted on the 30-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 30-mg product have been impugned by the untrue information concerning batch PD 1041, the bioequivalence of the 10-mg product is now in question.

Batch PD 1039 was used to conduct the required dissolution, analytical, and stability testing for the 10-mg product.

An omission and several discrepancies have been found in the original batch record and the ANDA submission record. Standard operating instructions are provided in both the original batch record and the ANDA submission record. However, the original batch record lacks the page under standard operating instructions—Granulation—containing the specific manufacturing steps used to manufacture the product. Under "Encapsulation," a discrepancy exists in the initials of the operator and checker who performed step XI as listed in the original batch record versus the ANDA submission record. Also under "Encapsulation," the data listed in step XIV of the original batch record differ from the data listed in step XIV of the ANDA submission record.

ANDA 71-662, Oxazepam Capsules, 15-mg. The approval of ANDA 71-662 for the 15-mg product relied on the in vivo bioequivalence study conducted on Chelsea's Oxazepam Capsules, 30 mg, batch PD 1041. The requirement for an in vivo bioequivalence study on the 15-mg product was waived by FDA because at that time the agency thought that an acceptable bioequivalence study had been conducted on the 30-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients. Because the validity and integrity of the bioequivalence data on the 30-mg product have been impugned by the untrue information concerning batch PD 1041, the bioequivalence of the 15-mg product is now in question.

Batch PD 1039 was used to conduct the required dissolution, analytical, and stability testing for the 15-mg product.

An omission and several discrepancies have been found between the original batch record and the ANDA submission record. The initials of the weigher and checker of the empty capsules and the salt for cleaning appear on the original batch record but not on the ANDA submission record. Standard operating instructions are provided in both the original batch record and the ANDA submission record; however, the original batch record lacks the page under standard operating instructions—Granulation—containing the specific manufacturing steps used to manufacture the product. Under "Encapsulation," a discrepancy exists in the initials of the operator and checker who performed the various steps as listed in the original batch record compared to the ANDA submission record. Also under "Encapsulation," the data listed in step XIV of the original batch record differ from the data listed in step XIV of the ANDA submission record.

ANDA 89-600, Perphenazine Tablets, 8 mg. In support of approval of ANDA 89-700, Chelsea submitted to FDA a batch production record for batch PD 1054. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests.

During the inspection, several dissimilarities were identified between the records for batch PD 1054 found at the firm and the records for the batch submitted to FDA with the ANDA.

The signature of the individual who approved the master formula in the original batch record is different from the signature of the individual who performed the same function in the ANDA submission record. In addition, the initials of the individuals who weighed out the ingredients are also different on each record. Under standard operating instructions, the initials of the operator who performed each step under "Pharmacy" and "Granulation" are different in the original batch record and in the ANDA submission record. The initials of the checker are also different in several steps under "Granulation" in both records. Finally, with respect to the compression of the tablets, the data for the actual run weight and the thickness as stated in step XIII in each record are different.

The investigator obtained documentation from the original batch records establishing that the film coating on batch PD 1054 was performed at Colorcon, Inc., West Pont, PA, on March 2, 1985. Different documentation was incorporated in the ANDA submission record stating that the film coating on batch PD 1054 was performed by Chelsea personnel at the Inwood facility. The firm stated in its November 9, 1989, letter to FDA that, "the investigator's observation that the film coating on batch PD 1054 was performed at Colorcon Inc., West Point, PA is true."

Conclusion

The discrepancies discussed above show that the batch records submitted in support of ANDA's 70-421, 70-422, 71-020, 71-021, 71-558, 71-661, 71-662, 71-663, and 89-700 contain untrue statements of material fact. These statements are material in that they concern matters that could have influenced approval of the applications. The agency was never afforded the opportunity to evaluate how the products covered by these ANDA's were actually manufactured because Chelsea submitted a revised batch record containing untrue statements to each ANDA. The agency based its approval of each ANDA on the revised batch record containing untrue statements.

The order of mixing ingredients, the blending times of ingredients, the screen sizes, the screening of the proper ingredients, and the color coating of the product are all significant steps in the manufacturing of a finished dosage product and may materially impact on the product's physical, chemical, and bioequivalence characteristics. Untrue statements submitted to an ANDA concerning any one (or more) of these significant manufacturing steps could alter the agency's evaluation of the required test data, especially the bioequivalency data. Chelsea submitted untrue statements concerning these manufacturing steps to each ANDA and, therefore, the agency cannot be assured of the identity, strength, quality, purity, and bioequivalency of each product.

Further, as delineated above, the firm submitted records to each ANDA that repeatedly contained untrue statements,

including omissions and discrepancies. Each untrue statement is material. The firm completely disregarded acceptable standards for recordkeeping and consistently allowed untrue statements to be incorporated into the records submitted to FDA (e.g., freely substituting names, dates, batch sizes, granulation data, tableting and ecapsulating data) or omitted important documents and data in the batch records submitted to FDA. Thus, the agency can no longer be assured as to the accuracy and validity of any of the data contained in each application.

Moreover, the discovery of these untrue statements constitutes new information (1) showing that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (2) demonstrating that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. Without reliable information as to the manufacturing processes used for the test batches on which the bioequivalence studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed products. In the absence of reliable data demonstrating bioequivalence to the listed drugs, there is a lack of evidence of safety and a lack of substantial evidence of effectiveness.

Proposed Action and Notice of Opportunity for Hearing

The Director of the Center for Drug Evaluation and Research has evaluated the information discussed above concerning the filing of untrue statements of material fact by Chelsea and, on the grounds stated, is proposing to withdraw approval of the following ANDA's:

ANDA 70-421, Verapamil Hydrochloride Tablets, 80 mg; ANDA 70-422, Verapamil Hydrochloride Tablets, 120 mg, ANDA 71-020, Disopyramide Phosphate Capsules, 100 mg; ANDA 71-021, Disopyramide Phosphate Capsules, 150 mg; ANDA 71-558, Perphenazine and Amitriptyline HCl Tablets, 4 mg/50 mg; ANDA 71-661, Oxazepam Capsules, 10 mg; ANDA 71-662, Oxazepam Capsules, 15 mg; ANDA 71-663, Oxazepam Capsules, 30 mg; and ANDA 89-700, Perphenazine Tablets, 8 mg.

Notice is hereby given to the holder of the ANDA's listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act), withdrawing approval of the foregoing ANDA's, and all amendments and supplements thereto. The Director finds:

(1) That the applications contain untrue statements of material fact; (2) that new evidence of clinical experience, not contained in the applications or not available to him until after the applications were approved, evaluated together with the evidence available to him when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before July 23, 1990, a written notice of appearance and request for hearing, and (2) on or before August 21, 1990, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 (except that the limitations imposed by 21 CFR 314.200 (d)(1) and (d)(2) do not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the **Federal Register** notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 11, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-14474 Filed 6-21-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Dental Products Panel

Date, time, and place. July 11, 1990, 8 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

General function of the committee. The committee reviews and evaluates available data on safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 29, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a dental laser.

Anesthetic and Life Support Drugs Subcommittee

Date, time, and place. July 20, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss preclinical guidelines for reproduction studies for safety evaluation of neuromuscular blocking agents and general anesthetics for human use.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 15, 1990.

Alan L. Hosting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14438 Filed 6-21-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. June 29, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee

discussion, 9:30 a.m. to 10:30 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFB-400), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. In the morning, the committee will sit as a medical device panel in accordance with the requirements of 21 CFR 814.40 and 814.44. The committee will review and discuss data presented by University Hospital Laboratories Corp. relevant to a premarket approval application (PMA) for a blood collection kit for HIV-1 antibodies testing which involves over-the-counter sale of a home blood sample collection kit, mailing the blood sample to a testing facility, and counseling/education concerning the test results by telephone. Discussion will concern safety and effectiveness issues including risks and benefits of the testing system.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to the cited PMA application. These portions will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA is giving less than 15 days public notice of this meeting because of the need to complete the advisory committee review of this PMA within a limited time period. A meeting held on short notice is necessary for the committee to be able to make its recommendation to FDA on this matter within the time restrictions applicable to this particular PMA review.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committee under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committee shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 20, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-14654 Filed 6-20-90; 2:48 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

HIV Subacute Care Demonstration Projects; Availability of Funds and Response to Comments

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Response to public comments and notice of availability of funds.

SUMMARY: The Bureau of Health Resources Development (BHRD), Health Resources and Services Administration (HRSA), provides a response to public comments on the eligibility and review criteria, and announces that Fiscal Year (FY) 1990 funds are available for up to three Subacute Care Demonstration Project Grants to organizations providing subacute, medical and health care services to patients infected with the human immunodeficienty virus (HIV).

The Health Omnibus Programs Extension of 1988, Public Law 100-607, added title XXIV to the Public Health Service (PHS) Act. Section 2421 authorizes the Secretary to conduct three Subacute Care Demonstration projects to determine:

(1) The effectiveness and cost of providing subacute care services to patients infected with the HIV; and

(2) The impact of such services on the health status of HIV-infected patients.

Response to Public Comments

Proposed eligibility requirements and review and evaluation criteria were published for public comment in the Federal Register of April 6, 1990 (55 FR 12918). The HRSA received 14 letters during the 60 day comment period. The comments and HRSA's responses are summarized below.

Two respondents opposed the limitation of one demonstration per State. One respondent noted that California has three of the proposed 15 Metropolitan Statistical Areas (MSAs) and that there should be the flexibility to award more than one project per State. The second respondent believes that the limitation of one demonstration per State is inconsistent with the incidence data which demonstrates that New York's cumulative incidence exceeds that of the three communities in California by 25 percent. Furthermore, the same respondent believes that the population in New York is both more clinically and demographically diverse than any other State.

The HRSA has removed the restriction of one site per State. Nevertheless, applicants should note that HRSA remains concerned about meeting the legislative mandate that sites are to be geographically diverse. Among other considerations, a diversity in sites by States would demonstrate the impact of different reimbursement mechanisms, such as State Medicaid programs, on the cost of subacute services. An evaluation of cost is one important component to this demonstration program. Thus in addition to the evaluation ratings received by applicants and the recommendations of the Objective Review Committee, in the final selection of grantees, consideration will be given to geographic diversity as required by the statute.

Ten respondents supported the expansion of the list of eligible Metropolitan Statistical Areas (MSAs) to include more than the fifteen communities in the proposed announcement. In support of the Baltimore MSA, one respondent stated that this community meets the criteria of highest incidence of cases and the greatest need for subacute care services. A second respondent recommended that the eligible applicant pool be expanded to include the 20 cities with the highest number of cumulative cases of HIV infection, thus including Seattle as an eligible jurisdiction. Eight letters were received in support of including the Phoenix MSA. Several factors were given in justification of this recommendation, including: the lag time in reporting AIDS cases to the Centers for Disease Control (CDC); a large in-migration of cases (nearly 40%) initially diagnosed, and thus reported to the CDC, in other states; incidence rates that are as high as some of the communities listed among the eligible MSAs; subacute caseloads that often exceed the caseload of eligible MSAs; and consistency with the AIDS Service Demonstration program which includes Phoenix as an eligible jurisdiction.

Several valid reasons have been raised for expanding the list of eligible communities. Thus, in response to the numerous letters received and in order to maintain consistency with eligibility under the HRSA AIDS Service Demonstration Program, the HRSA has changed the eligibility requirements to the MSAs with a cumulative total of 700 or more AIDS cases as reported to the Centers for Disease Control through December, 1989. Twenty-nine MSAs are included under this requirement.

One respondent requested a realignment of counties from one MSA to another in order to increase HIV incidence for the non-eligible jurisdiction. The HRSA has determined that the use of an existing, standard reporting format for the alignment of counties within jurisdictions is necessary to maintain consistency among its AIDs programs. The Metropolitan Statistical Area is such a standard, and is also consistent with the collection and reporting of AIDs data by the Centers for Disease Control (CDC). Thus, the HRSA is not in a position to change the definition of specific MSAs.

One respondent proposed that the eligibility requirements be amended to include free standing home health agencies, such as Visiting Nurses Associations (VNAs), as examples of "singular subacute care facilities." Large urban VNAs have linkages to many hospitals and would be able to undertake a subacute care demonstration project.

The HRSA did not intend to eliminate potential applicants in its description of eligible organizations. In this particular situation, the VNA could be an eligible applicant if all other eligibility requirements were met. The HRSA has rewritten the program announcement to clarify program intent.

One respondent that funding should focus on HIV specific services frequently provided and necessary in long term care facilities, such as HIV prevention, substance abuse, ombudsman, staff education and training, and enhanced clinical services. The responent states that these services are necessary to meet the needs of the patient population.

The legislation is very specific about those services which must be provided and those which are optional. The services proposed by the respondent are not included in the legislation. While such services may be provided at the facility, grant funds from this demonstration may not be used to support those activities. Because of the

specificity of the legislation, the HRSA will retain the eligible services as proposed in the original notice.

One responent requested the removal of the requirement to perform studies of the effect of subacute care on patient health outcomes. Because such studies are methodologically complex, the respondent emphasized that the level of resources available in this program are not sufficient for credible studies.

The authorizing legislation requires that these demonstration projects address the impact of subacute services on the health status of patients. The HRSA needs to clarify, however, that these studies are not required to be conducted as part of the demonstration project by the grantee. The primary requirement of the grantee in this regard is to structure and make available a data collection system that can provide the type of information needed to carry out such studies. The HRSA will direct these studies.

One respondent noted that while research on neurological manifestations and psychological and mental health issues is important in the care of persons with HIV related illnesses, other research activities already underway, including clinical drug trials, studies of the wide range of manifestations of the HIV, and social research are of equal importance. Thus, the respondent recommends that the neurological and mental health research components not be required to qualify as a demonstration program.

The legislation requires that each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—clinical research on AIDS, concentrating on neurological manifestations resulting from HIV infection; and the study of psychological and mental health issues related to AIDS. Because of the level of funding available for this program, HRSA believes that funding for this research should not necessarily be paid for out of the grant. Nevertheless, the grantee will, at a minimum, be responsible for making their data available to such research projects.

One respondent recommended the inclusion of ambulatory care, day health and certified home care programs as participants in these demonstration projects to increase the number and diversity of participating patients. Since these services are not included in the statute, HRSA is not in a position to require the services, nor is the HRSA limiting a grantee to only the required and optional services. The services noted above may be offered by a project, but are not reimburseable under this grant.

Having taken into consideration the comments received with respect to the proposed program announcement for the HIV Subacute Care Demonstration program, the HRSA presents the following final program announcement on the availability of funds.

Notice of Funds Availability

DATE: To receive consideration, grant applications must be received by the Grants Management Officer by August 21,1990. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mrs. Diane McMenamin, Chief, Community Development and Assistance Branch, Room 9A–22, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–9090. Grant applications (Form PHS 5161–1 with revised face sheet Standard Form 424, approved under OMB control number 0348–0043) and additional information regarding business administration or fiscal issues related to the awarding of grants under this notice may be requested from Ms. Glenna Wilcom, Grants Management Specialist, BHRD, 12300 Twinbrook Parkway, Suite 100A, Rockville, Maryland 20852, (301) 443–1440. The original and two copies of the application must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Based upon section 2421 of the PHS Act, the following terms or definitions apply:

(1) The term "patients infected with the HIV" means persons who have a disease, or are recovering from a disease, attributable to the infection of such a person with the HIV, and as a result of the effects of such disease, are in need of subacute care services.

(2) The term "subacute care" means medical and health care services for persons recovering from acute care episodes that are less intensive than the level of care provided by acute care hospitals, and may include skilled nursing care, hospice care, and other types of health services.

The Subacute Care Demonstration projects will enable each grantee to provide care and treatment to HIV infected patients and technical assistance to other health care providers in meeting the needs of HIV-infected persons. According to section 2421, a grantee must provide or arrange for the following:

(1) Subacute care;

(2) Emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating HIV infection;

(3) Case management services through existing programs whenever possible to ensure appropriate discharge planning for patients;

(4) Technical assistance in the form of education and training of physicians, nurses, and other health care professionals involved in subacute care of HIV-infected patients in other facilities in the region; and

(5) Clinical research concentrating on neurological manifestations resulting from the HIV, and the study of psychological and mental health issues related to HIV infection.

A grantee may elect to include the following services:

(1) Hospice services;

(2) Outpatient care; and

(3) Outreach activities in the surrounding community to hospitals and other health-care facilities serving HIV infected patients.

Eligibility Requirements

Public and private organizations which have the capacity to provide the required services, technical assistance, and research are eligible to apply, including: State and local Governments, nonprofit and for-profit organizations, and organizations representing a coalition of public and private agencies which together provide a wide range of health and social services to HIV infected people. Eligible applicants must be located within Metropolitan Statistical Areas (MSAs) with a cumulative total of 700 or more AIDS cases as reported by the Centers for Disease Control through December 1989. (See Appendix for a listing of these MSAs.)

The following are examples of the types of facilities providing subacute services that will be considered for funding: (a) A singular subacute care facility; (b) a group of subacute care facilities which together provide the range of subacute care services; and (c) a hospital which has a dedicated unit/units providing or planning to provide subacute care services. Furthermore, while it is not necessary for the facility to provide services solely to HIV infected patients, the applicant must demonstrate that its data collection system can isolate information for these patients.

Availability of Funds

Approximately $1.5 million is available for FY 1990 for up to three Subacute Care Demonstration grants. The grants will be awarded competitively. The grant application must include a 4-year budget indicating how both grant funds and other resources necessary for financial solvency would be used each year of a 4-year project period. Funds are currently available for the first year of the project. Continued funding for future budget periods is subject to the availability of funds.

Collaboration/Coordination With Other HIV Programs

Applicants must provide documentation that the referral of patients and other collaborative efforts, such as care management, will be coordinated with the HRSA AIDS Service Demonstration Program, if operational, in the community. In addition, collaborative efforts should be maintained with other Federal programs, including the HRSA Pediatric AIDS Health Care Demonstration Projects; the HRSA AIDS Regional Education and Training Centers Program; numerous outreach and research projects of the Alcohol, Drug Abuse, and Mental Health Administration; the AIDS drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA; major private foundation supported programs; community-based AIDS service organizations; and State Medicaid Programs.

Review and Evaluation Criteria

The Subacute Care applications will be reviewed and evaluated by an objective review committee and rated on the basis of the following review criteria:

—Demonstration of the need for subacute care services, based upon factors such as numbers of persons not served due to a lack of available services or financial reimbursement;

—A plan to provide the required services and to assure a quality review system;

—Documentation of a plan to ensure the maintenance of financial viability over a 4-year project period;

—A plan to provide for the necessary adaptability of its subacute care services to reflect changes in treatment protocols and the demand for such services over a 4-year project period;

—Documentation that the proposed data collection system for its subacute care services will facilitate an evaluation of both the (1) Effectiveness and cost of providing different subacute care services, and (2) impact of such services on the health status of patients;

—Demonstration of a plan to ensure that services will be made available and provided to ethnic and racial minority populations most affected by the HIV within the MSA;

—Description of a research component on the clinical manifestations of neurological impairment and the psychosocial/mental health issues related to HIV;

—Documentation of referrals and other collaborative efforts, such as case management services, with the AIDS Service Demonstration Program in the MSA through contracts, memoranda of agreement, or other similar arrangements; and

—Documentation of a strategy to provide education and training on subacute care of HIV-infected patients to health care providers at other facilities in the MSA.

In addition to these review and evaluation criteria for individual applications, applicants should note that in the final selection of grantees, consideration will be given to geographic diversity as required by the statute.

Executive Order 12372

The AIDS Subacute Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The CMB Catalog of Federal Domestic Assistance number for the Subacute Care Demonstration Project Grants is 13.909.

Dated: June 14, 1990.

Robert Harmon,

Administrator.

Appendix—Metropolitan Statistical Areas With 700+ Cumulative Cases of AIDS[1] Through December 1989

Metropolitan statistical areas	Number
1. New York, NY	22,695
2. Los Angeles, CA	8,285
3. San Francisco, CA	7,368
4. Houston, TX	3,432
5. Newark, NJ	3,354
6. Washington, D.C.	3,308
7. Miami, FL	2,995
8. Chicago, IL	2,918
9. Philadelphia, PA	2,455
10. Atlanta, GA	2,318
11. Boston, MA	1,983
12. Dallas, TX	1,980
13. San Juan, PR	1,978
14. San Diego, CA	1,836
15. Ft. Lauderdale, FL	1,814
16. Oakland, CA	1,393
17. Jersey City, NJ	1,377
18. Nassau-Suffolk, NY	1,277
19. Baltimore, MD	1,235
20. Seattle, WA	1,149
21. Tampa, FL	1,144
22. West Palm Beach, FL	1,089
23. New Orleans, LA	1,032
24. Denver, CO	1,005
25. Detroit, MI	1,002
26. Bergen-Passaic, NJ	986
27. Anaheim, CA	930
28. Riverside-San Bernadino, CA	749
29. Phoenix, AZ	719

[1] Centers for Disease Control, "HIV/AIDS Surveillance," Year End Edition, 1989.

[FR Doc. 90-14637 Filed 6-21-90; 8:45 am]
BILLING CODE 4160-16-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1990.

Name: Advisory Commission on Childhood Vaccines

Date and Time: July 25–26, 1990, 9:00 a.m.—5:00 p.m.

Place: Conference Room D, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's

responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: status report on the Vaccine Injury Compensation Program; status reports from the National Vaccine Program; discussion of Federal Excise Taxes on vaccines; and other pertinent issues.

Public comment will be permitted at the end of each meeting day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by July 13th to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room D before 10 a.m. July 25 and 26. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 7–90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Date: June 18, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–14436 Filed 6–21–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of AIDS Research Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on July 30, 1990, at the National Institutes of Health, Building 31C, Conference room 10, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on July 30 to adjournment at 5 p.m. The committee will discuss the current status of the Clinical Research Subcommittee, plans for future meetings, and will review recent efforts by the Treatment Research Program. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, room 201N, telephone (301–496–0545), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 18, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–14462 Filed 6–21–90; 8:45 am]

BILLING CODE 4140–1–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting at the National Digestive Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on July 23, 1990. The meeting will begin at 8 a.m. and adjourn at 5 p.m. The meeting, which will be open to the public, will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will include a conference on liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the long-range digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting this office.

Dated: June 18, 1990.

Betty J. Beveridge,

[FR Doc. 90–14463 Filed 6–21–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be July 10, 1990. The meeting will begin at 8:30 a.m. and adjourn at approximately 3:45 p.m. The Board will meet at the Crystal Gateway Marriot Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: June 18, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–14464 Filed 6–21–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2806–N–77]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: June 22, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has detrermined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for user by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20310–2600; (202) 693–4583; Corps of Engineers: Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000; (202) 272–1750; U.S. Air Force: H. L. Lovejoy, Boiling AFB, HQ–USAF/LEER, Washington, DC 20332–5000; (202) 767–4191; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067. (These are not toll-free numbers.)

Dated: June 14, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

Georgia

Parcel A
VA Hospital Reservation
Industrial Blvd.
Dublin, GA Co: Laurens
Landholding Agency: GSA
Property Number: 549010062
Status: Excess
Comment: 1.11 acres; possible building restrictions.
GSA NO. 4–V–GA–445

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner, OR Co: Morrow
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011667
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Suitable Buildings (by State)

Arkansas

S.W. Terry USAR Center
3600 South Pierce Street
Little Rock, AR Co: Pulaski
Landholding Agency: Army
Property Number: 219014785
Status: Excess
Comment: 22350 sq. ft.; 1 story plus mezzadine; masonry frame; possible asbestos in boiler room.

California

Building on 0.8 acres
Adjacent to Former Madera Employ. Trng. Ctr.

(See County), CA Co: Madera
Location: Located near 19500 Road 28½
Landholding Agency: GSA
Property Number: 549010063
Status: Excess
Comment: 800 sq. ft.; concrete/wood building; possible asbestos; access is from the Former Training Center; most recent use—storage building on 0.5 acres.
GSA NO. 9–G–CA–864A

Bldg. T–220
Artillery Street
Presidio of Monterey, CA Co: Monterey
Landholding Agency: Army
Property Number: 219014784
Status: Unutilized
Comment: 3363 sq. ft.; 2 story wood frame; most recent use—bowling center.

Florida

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven, FL Co: Glades
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number: 319011688
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

Indiana

Dwelling #2
Cagles Mill Lake
Poland, IN Co: Putnam
Location: 5 miles west of Polano on SR 42
Landholding Agency COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Michigan

Bldg. 153
Calumet Air Force Station
Calumet, MI Co: Keweenaw
Landholding Agency: Air Force
Property Number: 189010686
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet MI. Co: Keweenaw
Landholding Agency: Air Force
Property Number: 189010687
Status: Excess
Comment: 8000 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet, MI Co: Keweenaw
Landholding Agency: Air Force
Property Number: 189010688
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Texas

11255 SGT F. Markle St.
Biggs Army Airfield
Fort Bliss
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219014094
Status: Unutilized
Comment: 1052 sq. ft.; 1 story cinder block frame; off-site use only; most recent use—storage.

[FR Doc. 90-14337 Filed 6-21-90; 8:45 am]
BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3074; FR-2807-N-2]

Housing Assistance Payments Program—Moderate Rehabilitation; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability for Section 8 Moderate Rehabilitation Assistance—Correction.

SUMMARY: On June 14, 1990, The Department published a Notice of Funding Availability (NOFA) announcing the availability of $168,717,000 of fiscal year 1989 carryover funds for HUD's section 8 Moderate Rehabilitation Program. The funds were made available to help meet special housing needs in two major disaster areas of the country—the areas inspected by Hurricane Hugo and by the 1989 California earthquake. This Notice corrects the June 14, 1990 document by adding one California county to the listing of designated jurisdictions invited to apply for available moderate rehabilitation units.

DATES: The application due date of July 16, as previously published, remains unchanged.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Interested persons are invited to review the content of the notice of funding availability published in the June 14, 1990 Federal Register for additional details. This document's purpose is to correct the inadvertent omission of Contra Costa County, California, from a listing of designated Region IX jurisdictions from which public housing agencies are eligible to apply for assistance under the NOFA.

Accordingly, the listing of Region IX places appearing at 55 FR 24204 (June 14, 1990) in the third column of the Notice entitled "Section 8 Housing Assistance Payments Program—Moderate Rehabilitation" is corrected to read as follows:

Region IX

Contra Costa County
Marin County
Solano County
San Francisco County
Alameda County
Monterey County
San Benito County
San Mateo County
Santa Clara County
Santa Cruz County
Isleton City (in Sacramento County)
Tracy City (in San Joaquin County)

PHAs in any of the designated jurisdictions are invited to apply for units in accordance with the provisions of 24 CFR 882.501 and the other information and specifications set out in the June 14, 1990 notice.

Dated: June 19, 1990.

Grady J. Norris,

Assistant General, Counsel for Regulations.

[FR Doc. 90-14617 Filed 6-21-90; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3116-10-9202-GPO-0110; NM NM 80744]

Issuance of Mineral Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to New Mexico and Arizona Land Company on April 10, 1990, for the oil and gas in certain land and all minerals in other land existing upon, in or under the following described land in Cibola, Catron, and Socorro Counties, New Mexico, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) and section 902 of the Act of December 31, 1987 (101 Stat. 1544):

New Mexico Principal Meridian

T. 4 N., R. 3 W.,
Sec. 24, NE¼ and S½.
T. 3 N., R. 6 W.,
Sec. 4, lots 3, 4, S½NW¼, and SW¼;
Sec. 22, all;
Sec. 34, E½;
T. 3 N., R. 8 W.,
Sec. 4, S½N½ and S½.
T. 4 N., R. 8 W.,
Sec. 10, all; (oil & gas)

Sec. 12, NE¼, N½NW¼, and SE¼NW¼; (oil & gas)
Sec. 24, NW¼, (oil & gas)
T. 1 N., R. 12 W.,
Sec. 3, lots 1–4, inclusive, S½N½, and SW¼;
Sec. 4, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–4, inclusive, W½E½, S½SE¼ NE¼, and NE¼SE¼.
T. 3 N., R. 14 W.,
Sec. 22, all;
Sec. 23, all;
Sec. 35, all;
T. 2 N., R. 15 W.,
Sec. 10, all;
Sec. 13, all;
Sec. 14, all;
Sec. 17, E½E½, (oil & gas)
Sec. 17, W½E½ and W½;
Sec. 20, N½;
Sec. 21, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 28, N½ and SW¼;
Sec. 29, E½SW¼, SW¼SW¼, and SE¼;
Sec. 30, lots 1, 2, and NE¼NW¼;
Sec. 34, E½;
Sec. 35, all.
T. 9 N., R. 15 W.,
Sec. 10, all;
Sec. 12, all;

Containing 15,944.16 acres.

In exchange for the mineral interests in the land described above, the oil and gas in certain land all minerals in other land existing upon, in or under the following described land in Cibola County, New Mexico, were reconveyed to the United States.

New Mexico Principal Meridian

T. 6 N., R. 11 W.,
Sec. 31, lots 1–4, inclusive, E½, and E½ W½;
Sec. 33, all;
T. 6 N., R. 12 W.,
Sec. 3, lots 1–4, inclusive, S½N½, and S½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
T. 7 N., R. 12 W.,
Sec. 29, all;
Sec. 33, all;
T. 8 N., R. 12 W.,
Sec. 5, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–4, inclusive, E½, and E½W½; (oil & gas)
Sec. 17, all; (oil & gas)
Sec. 19, lots 1–4, inclusive, E½, and E½ W½.
T. 8 N., R. 13 W.,
Sec. 1, lots 1–4, inclusive, S½N½, and S½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
T. 8 N., R. 13 W.,
Sec. 33, all;
Sec. 35, all.

Containing 15,946.28 acres.

The purpose of the exchange was to consolidate Federal mineral ownership for the Federal Government within El Malpais National Conservation Area (NCA) and National Monument (NM). The mineral interests acquired in the exchange will automatically become part of El Malpais NCA and NM without further action by the Bureau of Land Management and shall be managed in accordance with all laws, rules, and regulations applicable under section 502 of Public Law 100–225 of December 31, 1987, which established El Malpais NCA and NM.

The exchange was consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Management Plan (RMP) approved January 16, 1986, the Socorro RMP approved February 1989, and section 502 of Public Law 100–225 of December 31, 1987. The value of the mineral estates exchanged was equal.

Dated: June 14, 1990.

Monte, G. Jordan,

Associate State Director.

[FR Doc. 90-14465 Filed 6-21-90; 8:45 am]
BILLING CODE 4310-FB-M

[4333-02]

Montana Off-Road Vehicle Restriction

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area, Interior.

ACTION: Implementation of revised visitor use restrictions on Fort Meade Recreation Area.

SUMMARY: Restrictions for the use of Fort Meade Recreation Management Area near Sturgis, South Dakota, were originally published (on page 7321 of the Federal Register) February 18, 1963. They were published under the authority of section 202 (c)(5) and (a)(1) of the Sikes Act (68 Stat. 1369 and 1371) and as a result of the approval of the Fort Meade Recreation Management Plan.

The original regulations have been revised because of increased visitor use to the area. These amended regulations provide for the continuing safety and health of recreation users.

Maps describing the roads which are open for motorized vehicular travel have been posted at all of the Fort Meade Recreation Area entrances.

1. All motorized vehicle use is limited to maintained roads.

2. The use, possession afield, or discharge of all firearms is prohibited on the south end of the Fort Meade Area (all land south of Highway No. 34), except during such special big game seasons as may be established by the South Dakota Game, Fish and Parks Department.

The use and discharge of all firearms is prohibited on the North Unit from Highway No. 34 north to the posted boundary and within the marked boundaries around Fort Meade Reservoir.

Hunting with firearms is permitted in the remainder of the North Unit during seasons established by the State of South Dakota.

3. The possession and use of fireworks is prohibited.

4. The taking or attempt to take any wild animal by trap or snare is prohibited.

5. Camping is restricted to designated campsites.

6. Open fires are prohibited except in established fire grates and pits.

7. Dumping or littering is prohibited.

8. Horses are prohibited within the area designated as the Alkali Creek Trailhead and Recreation Site and as otherwise posted.

9. Equestrian use within the Alkali Creek Horse Camp is governed by posted regulations.

The purpose of these restrictions is to minimize hazards to visitors and surrounding residences, minimize the possibility of wildfire, reduce soil erosion, vegetation loss, wildlife habitat loss, and damage to historic and cultural resources.

These regulations apply to the public lands in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, T. 5 N., R. 5 E., BHM; and Sections 25, 26, 27, 34, 36, T. 6 N., R. 5 E., BHM.

The public lands within the designated area will remain open to other resource and recreation uses. Administrative access by Off-Road Vehicles is allowed for the Bureau of Land Management and BLM contractors, licensees, permittees, and all other Federal, State, and County employees when on official duty.

Pursuant to section 204(a)(2) of the Sikes Act any person who knowingly violates or fails to comply with any regulations prescribed under section 202(c)(5) of the Act shall be fined not more than $500.00 or imprisoned not more than six (6) months, or both.

EFFECTIVE DATE: Revised rules effective July 23, 1990.

ADDRESSES: Maps of the Fort Meade Recreation Area are available at the South Dakota Resource Area Office located at 310 Roundup Street, Belle Fourche, South Dakota 57717

FOR FURTHER INFORMATION CONTACT: Dennis Bucher, Outdoor Recreation Planner, Bureau of Land Management, 310 Roundup Street, Belle Fourche, South Dakota 57717, (605) 892–2526.

Mat Millenbach,
District Manager.

[FR Doc. 90–14468 Filed 6–21–90; 8:45 am]
BILLING CODE 4310–DR–M

[AZ–050–4214–10; AZA–13393, 400, 401, 402]

Arizona; Proposed Modification of Withdrawals and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Navy has filed an application to modify Secretarial Orders dated July 2, 1902, January 31, 1903, September 30, 1904, and March 14, 1929, to transfer jurisdiction over 28.794 acres from the Bureau of Reclamation to the U.S. Navy (San Bruno, California). Bureau of Reclamation has concurred. This parcel was formerly the headquarters site for the Yuma Projects Office, Bureau of Reclamation, which is now located at the Bureau of Reclamation's Desalting Plant site. The U.S. Marine Corps Air Station (which surrounds the subject parcel) needs the land for expansion purposes. The lands are currently segregated from settlement, sale location, or entry under the public land laws, including the mining laws, and will remain so segregated.

DATES: Comments and requests for meeting should be received on or before September 20, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management, P.O. Box 16563 (3707 N. Seventh Street), Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, Bureau of Land Management, Arizona State Office, 602–640–5547.

SUPPLEMENTARY INFORMATION: On June 18, 1990, the U.S. Navy filed an application to modify the four above-refereaced Secretarial Orders to transfer jurisdiction over the following described lands from the Bureau of Reclamation to the U.S. Navy:

Gila and Salt River Meridian

T. 9 S., R. 23 W., sec. 11, Tract B.

The area described aggregate 28.794 acres in Yuma County. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification of withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed modification of withdrawals.

All interested persons who desire a public meeting for the purpose of being heard on the proposed modification of withdrawals must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: June 18, 1990.

R. Keith Miller,
Acting State Director.

[FR Doc. 90–14492 Filed 6–21–00; 8:45 am]
BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

Services; Compilation and Identification of U.S. Measures That May Not Conform With Principles the United States is Seeking in the Uruguay Round

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: June 15, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202–252–1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332–293, following receipt on May 29, 1990 of a letter from the United States Trade Representative (USTR), requesting, under authority delegated by the President, that the Commission conduct an investigation pursuant to section 332[g] of the Tariff Act of 1930 (19 U.S.C. 1332[g]) to provide information for use by USTR in connection with trade negotiations on services in the Uruguay Round of mulitilateral trade negotiations

As requested by USTR, the Commission will undertake a study to provide a report which—

(1) Compiles information provided to USTR by State governments in response to a USTR questionnaire on state services regulations and examines applicable information on State and Federal regulations included in the Commission's previously submitted report (Service Sector Profiles and Barriers to Trade in Services: Phase II, investigation No. 332–257); and

(2) Identifies, to the extent practical from the information reported to USTR by State governments, U.S. measures (State and Federal) that may not be in conformity with the principles governing trade in services proposed by the U.S. Government in the Uruguay Round. These principles include the 10 principles identified in the U.S. services proposal which accompanied the USTR request letter.

USTR requested that the Commission submit a preliminary interim staff report containing a tabulation of the questionnaire responses and a preliminary assessment by July 31, 1990, and that the Commission submit its final report by October 31, 1990. The Commission's confidential reports in connection with this investigation are classified by USTR.

WRITTEN SUBMISSIONS: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rule of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but not later than September 24, 1990. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252–1810.

By order of the Commission.

Issued: June 15, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 90–14457 Filed 6–21–90; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Parent corporation and address of principal office: Sysco Corporation, 1390 Enclave Parkway, Houston, Texas 77077–2027.

Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

1. Allied-Sysco Food Services, Inc.—CA
2. Arrow-Sysco Food Services, Inc.—DE
3. Bell/Sysco Food Services, Inc.—NC
4. Deaktor/Sysco Food Services Co.—PA
5. Dipaolo/Sysco Food Services, Inc.—OH
6. Foodservice Specialists, Inc.—DE
7. Grants-Sysco Food Services, Inc.—MI
8. Hardin's-Sysco Food Services, Inc.—TN
9. Koon-Sysco Food Services, Inc.—KY
10. Lankford-Sysco Food Services, Inc.—MD
11. Maine/Sysco, Inc.—ME
12. Major-Sysco Food Services, Inc.—CA
13. Mid-Central/Sysco Food Services, Inc.—MO
14. Miesel/Sysco Food Service Co.—MI
15. Nobel/Sysco Food Services Co.—CO
16. Olewine's-Sysco Food Services Co.—PA
17. Robert Orr-Sysco Food Services Company—TN
18. Pegler-Sysco Food Services Co.—NE
19. Sugar Foods, Inc.—DE
20. The Sygma Network, Inc.—DE
21. Continental Food Services, Inc.—DE
22. Sysco/Continental Food Services of Portland, Inc.—DE
23. Sysco/Continental Food Services of Seattle, Inc.—DE
24. Sysco/Continental Institutional Food Services of Macon, Inc.—DE
25. Sysco/Continental Keil Food Services, Inc.—DE
26. Sysco/Continental Mulberry Food Services, Inc.—DE
27. Sysco Food Services Smelkinson Food Services, Inc.—DE
28. Sysco Food Services, Inc.—TX
29. Sysco Food Services of Arizona, Inc.—DE
30. Sysco Food Services of Atlanta, Inc.—DE
31. Sysco Food Services of Beaumont, Inc.—TX
32. Sysco Food Services of Central Florida, Inc.—DE
33. Sysco Food Services—Chicago, Inc.—DE
34. Sysco Food Services of Cleveland, Inc.—DE
35. Sysco Food Services of Eureka, Inc.—DE
36. Sysco Food Services of Indianapolis, Inc.—DE
37. Sysco Food Services of Iowa, Inc.—DE
38. Sysco Food Services of Los Angeles, Inc.—DE
39. Sysco Food Services of Minnesota, Inc.—DE
40. Sysco Food Services of Oklahoma, Inc.—DE
41. Sysco Food Services of South Florida, Inc.—DE
42. H.F.P.—Sysco Foods Services, Inc.—VA
43. Sysco Food Systems, Inc.—TX
44. Sysco/Frost Pack Food Services, Inc.—MI
45. Sysco/General Food Services, Inc.—ID
46. Sysco/Louisville Food Services Co.—DE
47. Sysco/Rome Food Service, Inc.—GA
48. Vogel/Sysco Food Service, Inc.—AR

Noreta R. McGee,
Secretary.

[FR Doc. 90–14517 Filed 6–21–90; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Philadelphia, PA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 23, 1990, a proposed Consent Decree in *United States* v. *City of Philadelphia*, Civil Action No. 88–6791, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree requires defendant to pay a civil penalty of $1.5 million and to undertake measures to ensure future compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable permit.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Philadelphia*, DOJ Ref. 90–5–1–1–929C.

The proposed Consent Decree may be examined at the Office of the United States Attorney, United States Court House, 3310 U.S. Courthouse, Independence Mall West, 601 Market St., Philadelphia, Pennsylvania 19106. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice, room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice at the above address. In requesting a copy, please enclose a check in the amount of $6.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–14540 Filed 6–21–90; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, Time and Place: July 10, 1990, 9:30 a.m.–12:00 noon, Rm. S2217, Frances Perkins, Department of Labor Building, 200 Constitution Ave, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For Further Information, Contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523–2752.

Signed at Washington, DC this 18th day of June, 1990.

Jorge Perez-Lopez,
Acting Deputy Under Secretary, International Affairs.

[FR Doc. 90–14524 Filed 6–21–90; 8:45 am]
BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Tree Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 2, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 11th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
American Tree Co., Inc. (company)	Cassadaga, NY	6/11/90	5/31/90	24,490	Christmas Trees.
Chatham County of Ohio (workers)	Heath, OH	6/11/90	5/31/90	24,491	Chairs, barstools & cabinets.
Circle Dress Co. (ILGWU)	E. Orange, NJ	6/11/90	4/16/90	24,492	Ladies' garments.
Clark/American (GCIU)	Baltimore, MD	6/11/90	6/4/90	24,493	Checks.
Crucible, Inc. (USWA)	Carrollton, GA	6/11/90	5/14/90	24,494	Steel tubes.
Dixon Ticonderoga Co	Sandusky, OH	6/11/90	6/01/90	24,495	Crayons.
Duke Mfg., Co. (Workers)	St. Louis, MO	6/11/90	5/31/90	24,496	Sinks.
Exxon/Western Exploration Div. (Workers)	Englewood, CO	6/11/90	5/29/90	24,497	Oil & gas.
Exxon/Western Exploration Div. (workers)	Midland, TX	6/11/90	5/29/90	24,498	Oil & gas.
Fante Clothing (ILGWU)	Philadelphia, PA	6/11/90	5/29/90	24,499	Misses' skirts, slacks & shorts.
Force Outboards (workers)	Gallipolis, OH	6/11/90	5/18/90	24,500	Boat engines.
Future Cedar Product, Inc	Amanda Park, WA	6/11/90	5/30/90	24,501	Cedar shakes & shingles.
(The) Gary Williams Co. (workers)	Denver, CO	6/11/90	5/16/90	24,502	Oil & gas.
Harbor Wood Treating (workers)	Aberdeen, WA	6/11/90	5/09/90	24,503	Shakes & shingles.
Independent Oil Well Cementing (workers)	Fairfield, IL	6/11/90	5/29/90	24,504	Oil & gas.
Jim Gold Logging (company)	Hoquiam, WA	6/11/90	5/01/90	24,505	Lumber.
Langshaw Mfg Co., Inc. (workers)	New Bedford, MA	6/11/90	5/30/90	24,506	Ladies blouses.
Magee's Enterprises (company)	Elma, WA	6/11/90	5/07/90	24,507	Lumber.
McDonald Oil Co. (workers)	Sweetwater, AK	6/11/90	5/30/90	24,508	Oil & gas.
McDowell Bros. Oil Co., Inc. (workers)	Albion, IL	6/11/90	5/30/90	24,509	Oil & gas.
NAPCO Scientific (SMWU)	Tualatin, OR	6/11/90	6/01/90	24,510	Laboratory equipment.
Pandora Industries (workers)	New York, NY	6/11/90	5/21/90	24,511	Knitwear.
(The) Playskill of (workers)	Dover-Foxcroft, ME	6/11/90	5/30/90	24,512	Toys & accessories.
Quality Cedar (workers)	Nellton, WA	6/11/90	5/15/90	24,513	Shakes & shingles.
Roytex, Inc. (workers)	Meriden, MS	6/11/90	5/31/90	24,514	Robes.
Texaco, Inc. (workers)	Bellaire, TX	6/11/90	5/25/90	24,515	Oil & gas.
Tektronix, Inc. (workers)	Beaverton, OR	6/11/90	5/30/90	24,516	Semi-conductor test systems.

[FR Doc. 90-14525 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24, 114]

Blackbourn, Inc., Olivia, MN; Negative Determination Regarding Application for Reconsideration

By applications dated May 21–24, 1990, former workers of Blackbourn requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 1, 1990 and published in the Federal Register on May 30, 1990 (55 FR 21955).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers claim that business was lost to foreign companies in 1982 and 1987. The former workers state that the remaining production at Olivia was transferred to a company plant in Eden Prairie, Minnesota.

Investigation findings show that the Olivia workers produced video and audio tape packages and ring binders. The findings also show that the Olivia plant closed on March 1, 1990 and all production was transferred to a company plant in Eden Prairie, Minnesota.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Increased imports must have contributed importantly to declines in sales or production and employment at Olivia. However, during the relevant time period of the petition, worker separations occurred as a result of a transfer of production to another company plant in Eden Prairie, Minnesota. A domestic transfer of production would not form a basis for worker group certification.

Also, declines in sales or production and employment in the period from 1982 through 1987 are beyond the scope of this investigation. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition which in this case is February 27, 1990.

Conclusion

After review of the application and investigative findings, I conclude that there may has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14526 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24, 175]

Cricketeer Manufacturing Co., Harrodsburg, KY; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the May 2, 1990 impact date for the subject firm published on June 13, 1990 in the Federal Register on page 23991 of FR Document 90-13714.

The impact date is corrected to read "June 23, 1989" instead of March 2, 1989.

Signed at Washington, DC, this 14th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-14527 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Johnson Controls, Inc.; Negative Determination Regarding Application for Reconsideration

TA-W-24,082	Milwaukee, Wisconsin.
TA-W-24,082A	North Greenbay Avenue Plant.
TA-W-24,082B	E. Chicago Street Plant.
TA-W-24,082C	W. Boden Court Plant.
TA-W-24,082D	E. Michigan Plant.
TA-W-24,082E	N. Humboldt Avenue Plant.
TA-W-24,083	Glendale, Wisconsin.

By an application dated May 15, 1990, District #10 of the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 20, 1990 and published in the Federal Register on May 3, 1990 (55 FR 18667).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that worker separations have occurred since 1984 because of the transfer of production of Reynosa, Mexico. It is also claimed that future machining will also be shipped to Reynosa.

The Humboldt plant produces automatic temperature controls (ATC) and the Glendale, Wisconsin plant produces building automation systems (BAS). No layoffs were reported at the E. Chicago Street plant, a shipping facility or the E. Michigan plant, a prototype development plant. Also, the Boden Court plant just started operations in late 1989 and the Greenbay plant housed the Battery Division headquarters which is not applicable to this investigation.

Investigation findings show that workers at the Humboldt plant were certified (TA-W-18, 439) eligible to apply for adjustment assistance through June 29, 1989. Since the expiration of the certification TA-W-19,436, company imports of automatic temperature controls (ATC) declined relative to company production in the first five months for FY 1990 compared to the same period of FY 1989. Investigation findings also show increased sales and production of ATC at Humboldt in FY 1989 compared to FY 1988 and the first five months of FY 1990 compared to the same period in FY 1989.

Other investigation findings show that workers at the Glendale plant produce building automation systems (BAS). The findings show increased production of BAS in FY 1989 compared to FY 1988 and in the first five months of FY 1990 compared to the same period in FY 1989. Company imports of BAS were small in FY 1989 compared to FY 1988. Company imports of BAS declined relative to company production in the first five months for FY 1990 compared to the same period of FY 1989.

Other findings show that in June 1989, the company transferred the production of printed circuit boards from the glendale plant to other domestic facilities. The printed circuit board accounts for a major part of the production value of a BAS. A domestic transfer of production would not provide a basis for a worker group certification.

With respect to layoffs in the period between 1984 and 1989, worker separations prior to one year of the date of the petition (February 16, 1990) cannot be considered for adjustment assistance purposes. Section 223(b)(1) of the Trade Act does not permit the certification of workers laid off more than one year prior to the date of the petition.

Also, investigation findings show that sales, production and employment data were collected through February 1990. If worker separations occurred after the Department's determination was issued, the Department would entertain a new petition for adjustment assistance. The Department's policy on refiling allows a worker group to file six months after the issuance of a denial.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of June 1990.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 90-14528 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-24,210]

Keene Corp; Metal Products Division; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 25, 1990, applicable to all workers of Keene Corporation, Metal Products Division, Parkersburg, West Virginia. The notice will soon be published in the Federal Register.

Based on new information from the company, additional workers were separated after the May 25, 1990 termination date. The notice, therefore is amended by deleting the May 25, 1990 termination date and adding a new termination date of July 1, 1990.

The amended notice applicable to TA-W-24,210 is hereby issued as follows:

All workers of Keene Corporation, Metal Products Division, Parkersburg, West

Virginia who became totally or partially separated from employment on or after January 1, 1990 and before July 1, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14529 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,069]

Performance Papers, Inc., Mills C and D; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 25, 1990, applicable to all workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan. The notice was published in the Federal Register on May 16, 1990 (55 FR 20330).

Based on new information from the union and the company, additional workers were laid off gradually throughout 1989 until the mills closed in November, 1989. Many of these layoffs were prior to the September 1, 1989 impact date. The notice, therefore is amended by deleting the September 1, 1989 impact date and adding a new impact date of February 15, 1989.

The amended notice applicable to TA-W-24,069 is hereby issued as follows:

All workers of Performance Papers, Inc., Mills C and D, Kalamazoo, Michigan who became totally or partially separated from employment on or after February 15, 1989 and before April 1, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14530 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Puerto Rico

This notice announces the ending of the Extended Benefit Period in the State of Puerto Rico, effective on March 31, 1990.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act as implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during and Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Puerto Rico on December 31, 1989, and has now triggered off.

Determination of an "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on March 10, 1990, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending March 31, 1990.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC on June 12, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-14532 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs Final Total Allocation, Allocation Formulas and Formula Rationales for Program Year 1990 Regular Program and Calendar Year 1990 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the final Native American allocations, distribution formulas, and rationales for the Program Year 1990 (July 1, 1990–June 30, 1991) title IV–A regular program funded under the Job Training and Partnership Act and for the Calendar Year 1990 for Summer Youth Employment and Training funded under title II–B of the Act.

FOR FURTHER INFORMATION CONTACT: Mr. Carmelo J. Milici, phone: (202) 535–0507 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training and Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations, allocation formulas and the rationales for those formulas for Native American grantees to be funded under JTPA, title IV–A, and JTPA title II–B. The total amounts to be allocated are $58,193,000 for the Program Year 1990 JTPA, title IV–A, section 401 regular program, and $12,901,614 for the JTPA title II–B Summer Youth Employment and Training Program (SYETP) for the summer Calendar Year 1990.

This information, along with individual grantee planning estimates, was published in the Federal Register, Vol. 55, No. 37, page 6548 as a proposal.

Written comments were invited from the public. No comments were received on or before the deadline of March 26, 1990. The allocations set forth in this notice remain unchanged from the allocations announced in the notice of proposed allocations.

The formula for JTPA, title IV–A, section 401 provides that 25 percent of the funding be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating the JTPA, title II–B, SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formula is that the number of poverty-level persons, unemployed persons and youth among the Native American population is indicative of the need for training and employment funds.

Statistics on poverty-level persons, unemployed persons and youth among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 8th day of May 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
POARCH BAND OF CREEK INDIANS ROUTE 3, BOX 243A ATMORE, ALABAMA 36502 GRANT NUMBER:99-7-0648-55-104-02	379,219	303,375	75,844	2,341	1,873	468
ALEUTIAN/PRIBILOF ISLANDS ASSOC. INC. 401 EAST FIREWEED LANE, SUITE 201 ANCHORAGE, ALASKA 99503-2111 GRANT NUMBER:99-7-0117-55-071-02	45,229	36,183	9,046	34,548	27,638	6,910
ASSOC. OF VILLAGE COUNCIL PRESIDENTS P.O. BOX 848 BETHEL, ALASKA 99559 GRANT NUMBER:99-7-2713-55-135-02	537,621	430,097	107,524	259,626	207,701	51,925
BRISTOL BAY NATIVE ASSOCIATION P.O. BOX 310 DILLINGHAM, ALASKA 99576 GRANT NUMBER:99-7-0116-55-070-02	133,271	106,617	26,654	78,833	63,066	15,767
CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TR 320 W. WILLOUGHBY, SUITE 300 JUNEAU, ALASKA 99801 GRANT NUMBER:99-7-0114-55-068-02	208,107	166,486	41,621	167,404	133,923	33,481
COOK INLET TRIBAL COUNCIL 670 WEST FIREWEED LANE ANCHORAGE, ALASKA 99503 GRANT NUMBER:99-7-3402-55-188-02	345,359	276,287	69,072	199,705	159,764	39,941
EKWOK INCORPORATED P.O. BOX 948 BOME, ALASKA 99762 GRANT NUMBER:99-7-0123-55-073-02	209,987	167,990	41,997	91,754	73,403	18,351
KENAITZE INDIAN TRIBE P. O. BOX 988 KENAI, ALASKA 99611 GRANT NUMBER:99-7-0089-55-067-02	28,648	22,918	5,730	17,414	13,931	3,483
KODIAK AREA NATIVE ASSOCIATION 402 CENTER AVENUE KODIAK, ALASKA 99615 GRANT NUMBER:99-7-0115-55-069-02	60,719	48,575	12,144	33,331	26,665	6,666
MANILAQ MANPOWER P.O. BOX 725 KOTZEBUE, ALASKA 99752 GRANT NUMBER:99-7-0124-55-074-02	164,779	131,823	32,956	88,383	70,706	17,677
METLAKATLA INDIAN COMMUNITY P.O. BOX 8 METLAKATLA, ALASKA 99926 GRANT NUMBER:99-7-0064-55-053-02	14,950	11,960	2,990	18,164	14,531	3,633

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
NORTH PACIFIC RIM 1300 C STREET ANCHORAGE, ALASKA 99503 GRANT NUMBER:99-7-0118-55-072-02	54,039	43,871	10,968	26,028	20,822	5,206
TANANA CHIEFS CONFERENCE, INC. 201 FIRST AVENUE - DOYON BLDG. FAIRBANKS, ALASKA 99701 GRANT NUMBER:99-7-3109-55-150-02	366,364	293,091	73,273	214,779	171,823	42,956
AFFILIATION OF ARIZONA IND. CNTRS. INC. 333 WEST INDIAN SCHOOL ROAD, SUITE 210 PHOENIX, ARIZONA 85013 GRANT NUMBER:99-7-0268-55-089-02	242,336	193,869	48,467	0	0	0
AMERICAN INDIAN ASSOC. OF TUCSON P.O. BOX 7246 TUCSON, ARIZONA 85725 GRANT NUMBER:99-7-0492-55-096-02	316,222	252,978	63,244	0	0	0
COLORADO RIVER INDIAN TRIBES ROUTE 1, BOX 23-B PARKER, ARIZONA 85344 GRANT NUMBER:99-7-0498-55-097-02	77,447	61,958	15,489	31,084	24,867	6,217
GILA RIVER INDIAN COMMUNITY BOX 97 SACATON, ARIZONA 85247 GRANT NUMBER:99-7-0054-55-049-02	463,079	370,463	92,616	133,886	107,109	26,777
HOPI TRIBAL COUNCIL BOX 123 KYKOTSMOVI, ARIZONA 86039 GRANT NUMBER:99-7-0057-55-050-02	362,876	290,301	72,575	106,547	85,238	21,309
INDIAN DEV. DIST. OF ARIZONA, INC. 4560 NORTH 19th AVE., SUITE 200 PHOENIX, ARIZONA 85015 GRANT NUMBER:99-7-0053-55-048-02	105,827	84,662	21,165	43,443	34,754	8,689
NATIVE AMERICANS FOR COMMUNITY ACTION 2717 NORTH STEVES BOULEVARD SUITE 11 FLAGSTAFF, ARIZONA 86004 GRANT NUMBER:99-7-1777-55-119-02	107,868	86,294	21,574	0	0	0
NAVAJO TRIBE OF INDIANS P.O. BOX 1689 WINDOW ROCK,ARIZONA 86515 GRANT NUMBER:99-7-0059-55-052-02	6,431,281	5,145,025	1,286,256	2,349,459	1,879,567	469,892
PASQUA YAQUI TRIBE 7474 S. CAMINO DE OESTE TUCSON, ARIZONA 85746 GRANT NUMBER:99-7-3289-55-160-02	36,360	29,088	7,272	9,269	7,415	1,854

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
PHOENIX INDIAN CENTER, INC. 333 WEST INDIAN SCHOOL ROAD, SUITE 200 PHOENIX, ARIZONA 85013 GRANT NUMBER:99-7-0195-55-084-02	665,340	532,272	133,068	0	0	0
SALT RIVER PIMA-MARICOPA IND. COMMUN. ROUTE 1, BOX 216 SCOTTSDALE, ARIZONA 85256 GRANT NUMBER:99-7-0476-55-094-02	90,533	72,426	18,107	46,532	37,226	9,306
SAN CARLOS APACHE TRIBE P.O. BOX'O' SAN CARLOS, ARIZONA 85550 GRANT NUMBER:99-7-0173-55-081-02	295,356	236,285	59,071	117,127	93,702	23,425
TOHONO O'ODHAM NATION P.O. BOX 837 SELLS, ARIZONA 85634 GRANT NUMBER:99-7-0181-55-083-02	403,642	322,914	80,728	126,676	101,341	25,335
WHITE MOUNTAIN APACHE TRIBE P.O. BOX 700 WHITE RIVER, ARIZONA 85941 GRANT NUMBER:99-7-0174-55-186-02	313,695	250,956	62,739	131,358	105,086	26,272
AR. INDIAN CENTER OF ARKANSAS, INC. 2 VAN CIRCLE, SUITE 7 LITTLE ROCK, ARKANSAS 72207 GRANT NUMBER:99-7-1778-55-120-02	439,388	351,510	87,878	0	0	0
CALIFORNIA INDIAN MANPOWER CONT. 4153 NORTHGATE BOULEVARD SACRAMENTO, CALIFORNIA 95834 GRANT NUMBER:99-7-2058-55-181-02	2,869,188	2,295,350	573,838	152,798	122,238	30,560
CAHUILLA/ANZA AMERICAN INDIAN COUNCIL 2635 HAGEN MEEKL ROAD OXNARD, CALIFORNIA 93030 GRANT NUMBER:99-7-0086-55-066-02	434,863	347,890	86,973	0	0	0
HOOPA VALLEY BUSINESS COUNCIL P.O. BOX 815 HOOPA, CALIFORNIA 95546-0815 GRANT NUMBER:99-7-1142-55-114-02	48,850	39,080	9,770	22,564	18,051	4,513
INDIAN CENTER OF SAN JOSE, INC. 935 THE ALAMEDA SAN JOSE, CALIFORNIA 95126 GRANT NUMBER:99-7-0499-55-098-02	223,215	178,572	44,643	0	0	0
INDIAN HUMAN RESOURCES CENTER 4040 30TH STREET SUITE A SAN DIEGO, CALIFORNIA 92104 GRANT NUMBER:99-7-2441-55-134-02	425,720	340,576	85,144	0	0	0

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
NORTHERN CALIF. IND. DEV. COUNCIL, INC. 241 F STREET EUREKA, CALIFORNIA 95501 GRANT NUMBER:99-7-0686-55-015-02	306,644	245,315	61,329	15,355	12,284	3,071
SOUTHERN CALIFORNIA INDIAN CENTER, INC. 12755 BROOKHURST STREET, P.O. BOX 2550 GARDEN GROVE, CALIFORNIA 92642-2550 GRANT NUMBER:99-7-0170-55-172-02	1,879,959	1,503,967	375,992	0	0	0
TULE RIVER TRIBE DEPT. OF HEALTH, SAFETY & WELFARE P.O. BOX 589 PORTERVILLE, CALIFORNIA 93258 GRANT NUMBER:99-7-3219-55-153-02	126,128	100,902	25,226	4,213	3,370	843
UNITED INDIAN NATIONS 1404 FRANKLIN STREET, SUITE 202 OAKLAND, CALIFORNIA 94612 GRANT NUMBER:99-7-2310-55-133-02	606,199	484,959	121,240	0	0	0
YA-KA-AMA INDIAN EDUC. AND DEV., INC. 6215 EASTSIDE ROAD FORESTVILLE, CALIFORNIA 95436 GRANT NUMBER:99-7-0082-55-065-02	124,861	99,889	24,972	0	0	0
DENVER INDIAN CENTER, INC. 4407 MORRISON ROAD DENVER, COLORADO 80219 GRANT NUMBER:99-7-0076-55-062-02	582,318	465,854	116,464	0	0	0
SOUTHERN UTE INDIAN TRIBE P.O. BOX 800 IGNACIO, COLORADO 81137 GRANT NUMBER:99-7-2714-55-136-02	53,871	43,097	10,774	15,261	12,209	3,052
UTE MOUNTAIN UTE TRIBE P.O. BOX 30 TOWAOC, COLORADO 81334 GRANT NUMBER:99-7-1143-55-115-02	64,954	51,963	12,991	18,444	14,755	3,689
AMERICAN INDIANS FOR DEVELOPMENT, INC. P.O. BOX 117 KENSEN, CONNECTICUT 06450 GRANT NUMBER:99-7-0361-55-091-02	181,358	145,086	36,272	0	0	0
WANTICOKE INDIAN ASSOCIATION, INC. RT. 4, BOX 187A MILLSBORO, DELAWARE 19966 GRANT NUMBER:99-9-3518-55-019-02	37,457	29,966	7,491	0	0	0
FLA. GOVERNORS COUNCIL ON IND. AFFAIRS 521 E. COLLEGE AVENUE TALLAHASSEE, FLORIDA 32301 GRANT NUMBER:99-7-0692-55-107-02	1,150,526	920,421	230,105	0	0	0

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
MICCOSUKEE CORPORATION P.O. BOX 440021, TAMIAMI STATION MIAMI, FLORIDA 33144 GRANT NUMBER:99-7-0052-55-047-02	115,369	92,295	23,074	39,698	31,758	7,940
SEMINOLE TRIBE OF FLORIDA 6073 STIRLING ROAD HOLLYWOOD, FLORIDA 33024 GRANT NUMBER:99-7-0004-55-009-02	64,976	51,981	12,995	7,771	6,217	1,554
AAW LAKE, INC. 1024 KAPUKAPUKA STREET HONOLULU, HAWAII 96819-4417 GRANT NUMBER:99-7-1179-55-116-02	2,393,061	1,914,449	478,612	2,060,902	1,648,722	412,180
AMERICAN INDIAN SERVICES CORPORATION 1405 NORTH KING STREET, SUITE 302 HONOLULU, HAWAII 96817 GRANT NUMBER:99-7-3404-55-189-02	84,376	67,501	16,875	0	0	0
KOOTENAI TRIBE OF IDAHO P. O. BOX 1269 BONNERS FERRY, IDAHO 83805 GRANT NUMBER:99-7-3334-55-161-02	31,166	24,933	6,233	1,311	1,049	262
NEZ PERCE TRIBE P.O. BOX 365 LAPWAI, IDAHO 83540-0305 GRANT NUMBER:99-7-0065-55-054-02	77,960	62,368	15,592	12,265	9,812	2,453
SHOSHONE-BANNOCK TRIBES FORT HALL BUSINESS COUNCIL P.O. BOX 306 FORT HALL, IDAHO 83203 GRANT NUMBER:99-7-1780-55-121-02	231,489	185,191	46,298	39,791	31,833	7,958
AMERICAN INDIAN BUSINESS ASSOCIATION 4753 NORTH BROADWAY, SUITE 700 CHICAGO, ILLINOIS 60640 GRANT NUMBER:99-7-0809-55-109-02	1,049,140	839,312	209,828	0	0	0
RED AMERICA ALL INDIAN CENTER, INC. 660 N. SENECA WICHITA, KANSAS 67203 GRANT NUMBER:99-7-0158-55-071-02	156,433	125,146	31,287	0	0	0
UNITED TRIBES OF KANSAS AND S.E. NEB. P.O. BOX 29 HORTON, KANSAS 66439 GRANT NUMBER:99-7-0178-55-082-02	478,370	382,696	95,674	9,737	7,790	1,947
INTER-TRIBAL COUNCIL OF LOUISIANA, INC. 5425 GALERIA DRIVE - SUITE A BATON ROUGE, LOUISIANA 70816 GRANT NUMBER:99-7-0026-55-026-02	433,503	346,802	86,701	5,430	4,344	1,086

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CENTRAL MAINE INDIAN ASSOCIATION, INC. 157 ARK STREET, SUITE 3C, P.O. BOX 2210 BANGOR, MAINE 04401 GRANT NUMBER:99-7-2719-55-182-02	88,280	70,624	17,656	0	0	0
TRIBAL GOVERNORS, INC. 93 MAIN STREET ORONO, MAINE 04473 GRANT NUMBER:99-7-0001-55-167-02	101,554	81,243	20,311	27,245	21,796	5,449
BALTIMORE AMERICAN INDIAN CENTER 113 SO. BROADWAY BALTIMORE, MARYLAND 21231 GRANT NUMBER:99-7-3405-55-192-02	344,850	275,880	68,970	0	0	0
WAMPANOAG INDIAN TRIBAL COUNCIL P.O. BOX 1048 MASHPEE, MASSACHUSETTS 02649 GRANT NUMBER:99-7-0408-55-093-02	80,146	64,117	16,029	0	0	0
GRAND RAPIDS INTER-TRIBAL COUNCIL 45 LEXINGTON AVE. N.E. GRAND RAPIDS, MICHIGAN 49504 GRANT NUMBER:99-7-0694-55-108-02	114,697	91,758	22,939	0	0	0
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA IND ROUTE 1 BOX 135 SUTTONS BAY, MICHIGAN 49682 GRANT NUMBER:99-7-2721-55-137-02	53,138	42,510	10,628	2,434	1,947	487
INTER-TRIBAL COUNCIL OF MICHIGAN, INC. 405 EAST EASTERDAY AVENUE SAULT STE. MARIE, MICHIGAN 49783 GRANT NUMBER:99-7-0172-55-080-02	63,657	50,926	12,731	30,241	24,193	6,048
MICHIGAN INDIAN EMPLOYMENT AND TRAINING SERVIC 2450 DELPHI COMMERCE DRIVE SUITE 5 HOLT, MICHIGAN 48842 GRANT NUMBER:99-7-1144-55-179-02	767,046	613,637	153,409	0	0	0
NORTH AMERICAN INDIAN ASSOC. OF DETROIT 23720 PLYMOUTH ROAD DETROIT, MICHIGAN 48239 GRANT NUMBER:99-7-0695-55-176-02	386,460	309,168	77,292	0	0	0
POTAWATOMI INDIAN NATION 53237 TOWNHALL ROAD DOWAGIAC, MICHIGAN 49047 GRANT NUMBER:99-7-3339-55-164-02	146,801	117,441	29,360	0	0	0
SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS 2151 SHUNK ROAD SAULT STE. MARIE, MICHIGAN 49783 GRANT NUMBER:99-7-0507-55-100-02	225,771	180,617	45,154	42,413	33,930	8,483

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
SOUTHEASTERN MICHIGAN INDIANS, INC. 22620 RYAN ROAD, P.O. BOX 851 WARREN, MICHIGAN 48090 GRANT NUMBER:99-7-3220-55-154-02	62,214	49,771	12,443	0	0	0
AMERICAN INDIAN FELLOWSHIP ASSN. 8 EAST FOURTH STREET DULUTH, MINNESOTA 55802 GRANT NUMBER:99-7-0254-55-087-02	131,135	104,908	26,227	2,060	1,648	412
AMERICAN INDIAN OPPORTUNITIES CTR. 1845 EAST FRANKLIN AVENUE MINNEAPOLIS, MINNESOTA 55404 GRANT NUMBER:99-7-3221-55-155-02	504,119	403,295	100,824	0	0	0
BOIS FORTE R. B. C. P.O. BOX 598 NETT LAKE, MINNESOTA 55772 GRANT NUMBER:99-7-0010-55-014-02	37,447	29,958	7,489	8,895	7,116	1,779
FOND DU LAC R.B.C. 105 UNIVERSITY ROAD CLOQUET, MINNESOTA 55720 GRANT NUMBER:99-7-0009-55-013-02	38,270	30,616	7,654	6,367	5,094	1,273
LEECH LAKE R. B. C. ROUTE 3, BOX 100 CASS LAKE, MINNESOTA 56633 GRANT NUMBER:99-7-0012-55-017-02	173,015	138,412	34,603	48,592	38,874	9,718
MILLE LACS BAND OF CHIPPEWA INDIANS STAR ROUTE-BOX 194 ONAMIA, MINNESOTA 56359 GRANT NUMBER:99-7-0008-55-012-02	31,584	25,267	6,317	8,801	7,041	1,760
MINNEAPOLIS AMERICAN INDIAN CENTER 1530 EAST FRANKLIN AVENUE MINNEAPOLIS, MINNESOTA 55404 GRANT NUMBER:99-7-0204-55-085-02	295,172	236,138	59,034	12,265	9,812	2,453
RED LAKE TRIBAL COUNCIL P.O. BOX 310 RED LAKE, MINNESOTA 56671 GRANT NUMBER:99-7-0027-55-029-02	138,537	110,830	27,707	62,636	50,109	12,527
WHITE EARTH R.B.C. BOX 418 WHITE EARTH, MINNESOTA 56591 GRANT NUMBER:99-7-0011-55-016-02	155,079	124,063	31,016	49,996	39,997	9,999
MISSISSIPPI BAND OF CHOCTAW INDIANS ROUTE 7, BOX 21 PHILADELPHIA, MISSISSIPPI 39350 GRANT NUMBER:99-7-0005-55-010-02	300,350	240,280	60,070	51,588	41,270	10,318

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	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
REGION VII AMERICAN INDIAN COUNCIL, INC. 310 ARBOUR ROAD, SUITE 205 NORTH KANSAS CITY, MISSOURI 64116 GRANT NUMBER:99-7-0967-55-177-02	556,489	445,191	111,298	0	0	0
ASSINIBOINE AND SIOUX TRIBES FORT PECK INDIAN RESERVATION P.O. BOX 1027 POPLAR, MONTANA 59255 GRANT NUMBER:99-7-0033-55-031-02	207,225	165,780	41,445	76,212	60,970	15,242
BLACKFEET TRIBAL BUSINESS COUNCIL P.O.BOX 1890 BROWNING, MONTANA 59417 GRANT NUMBER:99-7-0006-55-011-02	240,379	192,303	48,076	91,567	73,254	18,313
CHIPPEWA CREE TRIBE ROCKY BOY ROUTE - P.O. BOX 578 BOX ELDER, MONTANA 59521 GRANT NUMBER:99-7-0035-55-033-02	96,730	77,384	19,346	29,492	23,594	5,898
CONFEDERATED SALISH & KOOTENAI TRIBES P.O. BOX 278 PABLO, MONTANA 59855 GRANT NUMBER:99-7-0031-55-030-02	243,205	194,564	48,641	71,905	57,524	14,381
CROW INDIAN TRIBE P.O. BOX 159 CROW AGENCY, MONTANA 59022 GRANT NUMBER:99-7-0030-55-029-02	204,263	163,410	40,853	80,425	64,340	16,085
FORT BELKNAP INDIAN COMMUNITY P. O. BOX 249 HARLEM, MONTANA 59526 GRANT NUMBER:99-7-0032-55-158-02	77,982	62,386	15,596	36,140	28,913	7,228
MONTANA UNITED INDIAN ASSOCIATION P.O. BOX 6043 HELENA, MONTANA 59604 GRANT NUMBER:99-7-0074-55-060-02	419,390	335,512	83,878	0	0	0
NORTHERN CHEYENNE TRIBE P.O. BOX 368 LAME DEER, MONTANA 59043 GRANT NUMBER:99-7-0034-55-060-02	161,862	129,490	32,372	53,929	43,143	10,786
INDIAN CENTER, INC. 1100 MILITARY ROAD LINCOLN, NEBRASKA 68508 GRANT NUMBER:99-7-2722-55-183-02	166,924	133,539	33,385	0	0	0
NEBRASKA INDIAN INTER-TRIBAL DEV. CORP. ROUTE 1 - BOX 66-A WINNEBAGO, NEBRASKA 68071 GRANT NUMBER:99-7-0087-55-171-02	302,751	242,201	60,550	54,397	43,518	10,879

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
INTER-TRIBAL COUNCIL OF NEVADA P.O. BOX 7440 RENO, NEVADA 89510 GRANT NUMBER:99-7-0058-55-051-02	324,942	259,954	64,988	68,534	54,827	13,707
LAS VEGAS INDIAN CENTER, INC. 2300 WEST BONANZA ROAD LAS VEGAS, NEVADA 89106 GRANT NUMBER:99-7-0687-55-105-02	90,936	72,749	18,187	0	0	0
SHOSHONE PAIUTE TRIBES P.O. BOX 219 OWYHEE, NEVADA 89832 GRANT NUMBER:99-7-2723-55-138-02	160,122	128,098	32,024	19,100	15,280	3,820
POWHATAN RENAPE NATION RANCOCAS RESERVATION - P.O. BOX 225 RANCOCAS, NEW JERSEY 08073 GRANT NUMBER:99-7-3222-55-156-02	287,701	230,161	57,540	0	0	0
NAVAJO NAVAJO SCHOOL BOARD P.O. BOX 907 BACHAJNEN, NEW MEXICO 87325 GRANT NUMBER:99-7-2724-55-139-02	75,202	60,162	15,040	17,695	14,156	3,539
ALA INDIAN PUEBLO COUNCIL, INC. 3939 SAN PEDRO, NE P.O. BOX 3256 ALBUQUERQUE, NEW MEXICO 87190 GRANT NUMBER:99-7-3341-55-165-02	124,207	99,366	24,841	67,130	53,704	13,426
EIGHT NORTHERN INDIAN PUEBLO COUNCIL P.O. BOX 969 SAN JUAN PUEBLO, NEW MEXICO 87566 GRANT NUMBER:99-7-3223-55-157-02	77,411	61,929	15,482	39,604	31,683	7,921
FIVE SANDOVAL INDIAN PUEBLOS, INC. P.O. BOX 580 BERNALILLO, NEW MEXICO 87004 GRANT NUMBER:99-7-3336-55-162-02	116,584	93,267	23,317	67,785	54,228	13,557
JICARILLA APACHE TRIBE P.O. BOX 507 DULCE,NEW MEXICO 87528-0507 GRANT NUMBER:99-7-2725-55-140-02	52,451	41,961	10,490	30,990	24,792	6,198
MESCALERO APACHE TRIBE P.O. BOX 176 MESCALERO, NEW MEXICO 88340 GRANT NUMBER:99-7-3100-55-149-02	73,243	58,594	14,649	30,148	24,118	6,030
NATIONAL INDIAN YOUTH COUNCIL 318 6TH STREET SE ALBUQUERQUE, NEW MEXICO 87102 GRANT NUMBER:99-7-0077-55-063-02	696,027	556,822	139,205	0	0	0

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
PUEBLO OF ACOMA P.O.BOX 469 PUEBLO OF ACOMA, NEW MEXICO 87034 GRANT NUMBER:99-7-2199-55-128-02	98,320	78,656	19,664	41,102	32,882	8,220
PUEBLO OF LAGUNA P.O. BOX 194 LAGUNA, NEW MEXICO 87026 GRANT NUMBER:99-7-1583-55-117-02	73,794	59,035	14,759	57,580	46,064	11,516
PUEBLO OF TAOS P.O. BOX 1846 TAOS, NEW MEXICO 87571 GRANT NUMBER:99-7-2200-55-129-02	31,648	25,318	6,330	12,546	10,037	2,509
PUEBLO OF ZUNI ZUNI TRIBAL COUNCIL P.O. BOX 339 ZUNI, NEW MEXICO 87327 GRANT NUMBER:99-7-0021-55-023-02	282,220	225,776	56,444	127,238	101,790	25,448
NAVAJO NAVAJO SCHOOL BOARD, INC. DRAWER G PINE HILL, NEW MEXICO 87357 GRANT NUMBER:99-7-0146-55-075-02	90,114	72,091	18,023	23,219	18,575	4,644
SANTA CLARA INDIAN PUEBLO P.O. BOX 580 ESPANOLA, NEW MEXICO 87532 GRANT NUMBER:99-7-3224-55-158-02	18,867	15,094	3,773	5,618	4,494	1,124
SANTO DOMINGO TRIBE P.O. BOX 99 SANTO DOMINGO, NEW MEXICO 87052 GRANT NUMBER:99-7-1781-55-122-02	122,852	98,282	24,570	41,102	32,882	8,220
AMERICAN INDIAN COMMUNITY HOUSE, INC. 842 BROADWAY, 6TH FLOOR NEW YORK CITY, NEW YORK 10003-4889 GRANT NUMBER:99-7-0348-55-090-02	753,436	602,749	150,687	3,090	2,472	618
NATIVE AMERICAN CULTURAL CENTER, INC. 2115 EAST MAIN STREET ROCHESTER, NEW YORK 14609 GRANT NUMBER:99-7-3407-55-191-02	276,682	221,346	55,336	7,209	5,767	1,442
NATIVE AMERICAN MANPOWER PROGRAM, INC. 1047 GRANT STREET (REAR) - P.O. BOX 86 BUFFALO, NEW YORK 14207-0086 GRANT NUMBER:99-7-0689-55-106-02	224,390	179,512	44,878	10,112	8,090	2,022
ST. REGIS MOHAWK TRIBE COMMUNITY BUILDING HOGANSBURG, NEW YORK 13655 GRANT NUMBER:99-7-0522-55-103-02	160,059	128,047	32,012	27,433	21,946	5,487

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	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
SENECA NATION OF INDIANS 1492 ROUTE 438 SALAMANCA, NEW YORK 14881 GRANT NUMBER:99-7-0169-55-079-02	297,635	238,108	59,527	54,022	43,218	10,804
CUMBERLAND COUNTY ASSOC. FOR IND. PEOPLE 102 INDIAN DRIVE FAYETTEVILLE, NORTH CAROLINA 28301 GRANT NUMBER:99-7-1782-55-123-02	121,817	97,454	24,363	0	0	0
EASTERN BAND OF CHEROKEE INDIANS P.O. BOX 481 CHEROKEE, NORTH CAROLINA 28719 GRANT NUMBER:99-7-0803-55-008-02	229,595	183,676	45,919	86,136	68,909	17,227
GUILFORD NATIVE AMERICAN ASSOC. P.O. BOX 5623 400 PRESCOTT STREET GREENSBORO, NORTH CAROLINA 27435-0623 GRANT NUMBER:99-7-2727-55-142-02	92,593	74,074	18,519	0	0	0
HALIWA-SAPONI TRIBE, INC. P. O. BOX 99 HOLLISTER, NORTH CAROLINA 27844 GRANT NUMBER:99-9-3514-55-015-02	64,534	51,627	12,907	0	0	0
LUMBEE REG. DEV. ASSOC. P.O. BOX 68 PEMBROKE, NORTH CAROLINA 28372-0068 GRANT NUMBER:99-7-0067-55-055-02	1,251,431	1,001,145	250,286	0	0	0
METROLINA NATIVE AMERICAN ASSN. 6407 IDLEWILD ROAD - SUITE 103 CHARLOTTE, NORTH CAROLINA 28212 GRANT NUMBER:99-7-2726-55-141-02	94,635	75,708	18,927	0	0	0
NORTH CAROLINA COMM. OF IND. AFFAIRS P.O. BOX 27228 RALEIGH, NORTH CAROLINA 27611-7228 GRANT NUMBER:99-7-0070-55-057-02	308,500	246,800	61,700	0	0	0
DEVILS LAKE SIOUX TRIBE P.O. BOX 300 FORT POTTER, NORTH DAKOTA 58335 GRANT NUMBER:99-7-0037-55-034-02	115,294	92,235	23,059	38,293	30,634	7,659
STANDING ROCK SIOUX TRIBE BOX D FORT YATES, NORTH DAKOTA 58538 GRANT NUMBER:99-7-0046-55-041-02	241,281	193,025	48,256	93,065	74,452	18,613
THREE AFFILIATED TRIBES BOX 597 NEW TOWN, NORTH DAKOTA 58763 GRANT NUMBER:99-7-0062-55-170-02	163,069	130,455	32,614	55,333	44,266	11,067

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TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS P.O. BOX 900 BELCOURT, NORTH DAKOTA 58316 GRANT NUMBER:99-7-0075-55-061-02	327,880	262,304	65,576	108,138	86,510	21,628
UNITED TRIBES TECH. COLLEGE 3315 UNIVERSITY DRIVE BISMARCK, NORTH DAKOTA 58511 GRANT NUMBER:99-7-0206-55-173-02	165,403	132,322	33,081	0	0	0
NORTH AMERICAN INDIAN CULTURAL CENTERS 1062 TRIPLETTE BOULEVARD AKRON, OHIO 44306 GRANT NUMBER:99-7-3349-55-166-02	699,633	559,706	139,927	0	0	0
CADDO TRIBE OF OKLAHOMA P.O. BOX 487 BINGER, OKLAHOMA 73009 GRANT NUMBER:99-7-1783-55-124-02	26,942	21,554	5,388	12,265	9,812	2,453
CENTRAL TRIBES OF THE SHAWNEE AREA, INC. 624 NORTH BROADWAY SHAWNEE, OKLAHOMA 74801 GRANT NUMBER:99-7-0038-55-035-02	78,054	62,443	15,611	48,873	39,098	9,775
CHEROKEE NATION OF OKLAHOMA P.O. BOX 948 TAHLEQUAH, OKLAHOMA 74465 GRANT NUMBER:99-7-0027-55-027-02	1,363,640	1,090,912	272,728	733,749	586,999	146,750
CHEYENNE-ARAPAHO TRIBES P.O. BOX 67 CONCHO, OKLAHOMA 73022 GRANT NUMBER:99-7-0048-55-043-02	204,604	163,683	40,921	104,581	83,665	20,916
CHICKASAW NATION OF OKLAHOMA 520 EAST ARLINGTON, P.O. BOX 1548 ADA, OKLAHOMA 74820 GRANT NUMBER:99-7-0042-55-038-02	365,600	292,480	73,120	187,721	150,177	37,544
CHOCTAW NATION OF OKLAHOMA DRAWER 1210 DURANT, OKLAHOMA 74702-1210 GRANT NUMBER:99-7-0041-55-037-02	744,566	595,653	148,913	329,752	263,802	65,950
CITIZENS BAND POTAWATOMI INDIANS 1901 SOUTH GORDON COOPER DRIVE SHAWNEE, OKLAHOMA 74801 GRANT NUMBER:99-7-2202-55-131-02	184,518	147,614	36,904	154,109	123,287	30,822
COMANCHE TRIBE OF OKLAHOMA P.O. BOX 908 LAWTON, OKLAHOMA 73502 GRANT NUMBER:99-7-3150-55-151-02	151,853	121,482	30,371	118,718	94,974	23,744

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CREEK NATION OF OKLAHOMA P.O. BOX 580 OKMULGEE, OKLAHOMA 74447 GRANT NUMBER:99-7-0025-55-025-02	554,837	443,870	110,967	354,656	283,725	70,931
FOUR TRIBES CONSORTIUM OF OKLAHOMA P.O. BOX 1193 ARDMORE, OKLAHOMA 73005 GRANT NUMBER:99-7-2728-55-143-02	69,603	55,682	13,921	36,795	29,436	7,359
INTER-TRIBAL COUNCIL OF N.E. OKLAHOMA P.O. BOX 1308 MIAMI, OKLAHOMA 74355 GRANT NUMBER:99-7-1135-55-110-02	48,642	38,914	9,728	35,765	28,612	7,153
KIOWA TRIBE OF OKLAHOMA P.O. BOX 361 CARNEGIE, OKLAHOMA 73015 GRANT NUMBER:99-7-0047-55-042-02	197,164	157,731	39,433	84,919	67,935	16,984
OKLAHOMA TRIBAL ASSISTANCE PROGRAM, INC. 1806 EAST 15th STREET, P.O. BOX 2841 TULSA, OKLAHOMA 74101 GRANT NUMBER:99-7-0072-55-058-02	321,887	257,510	64,377	194,836	155,869	38,967
OSAGE TRIBAL COUNCIL P.O. BOX 147 - OSAGE AGENCY CAMPUS PAWHUSKA, OKLAHOMA 74056 GRANT NUMBER:99-7-0022-55-024-02	98,273	78,618	19,655	76,118	60,894	15,224
OTOE-MISSOURIA INDIAN TRIBE OF OKLA. P.O. BOX 99 RED ROCK, OKLAHOMA 74651 GRANT NUMBER:99-7-2730-55-145-02	13,402	10,722	2,680	8,052	6,442	1,610
PAWNEE TRIBE OF OKLAHOMA P.O. BOX 470 PAWNEE, OKLAHOMA 74058 GRANT NUMBER:99-7-1785-55-126-02	22,186	17,749	4,437	16,197	12,958	3,239
PONCA TRIBE OF OKLAHOMA WHITE EAGLE - BOX 2 PONCA CITY, OKLAHOMA. 74601 GRANT NUMBER:99-7-0029-55-028-02	52,311	41,849	10,462	47,843	38,274	9,569
SEMINOLE NATION OF OKLAHOMA P.O. BOX 1498 WEWOKA, OKLAHOMA 74884 GRANT NUMBER:99-7-0051-55-046-02	140,044	112,035	28,009	66,662	53,330	13,332
TONKAWA TRIBE OF OKLAHOMA P.O. BOX 70 TONKAWA, OKLAHOMA 74653 GRANT NUMBER:99-7-1136-55-111-02	41,317	33,054	8,263	46,907	37,526	9,381

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UNITED URBAN INDIAN COUNCIL 1501 CLASSEN BLVD., SUITE 100 OKLAHOMA CITY, OKLAHOMA 73106-5435 GRANT NUMBER:99-7-2731-55-146-02	289,994	231,995	57,999	218,805	175,044	43,761
CONFED. TRIBES OF SILETZ INDIANS P.O. BOX 549 SILETZ, OREGON 97380 GRANT NUMBER:99-7-3153-55-152-02	577,927	462,342	115,585	13,763	11,010	2,753
CONFED. TRIBES OF THE UMATILLA IND. RES. P.O. BOX 638 PENDLETON, OREGON 97801 GRANT NUMBER:99-7-3065-55-149-02	42,875	34,300	8,575	16,291	13,033	3,258
CONFEDERATE TRIBES OF WARM SPRINGS P.O. BOX C - TRIBAL ROAD WARM SPRINGS, OREGON 97761 GRANT NUMBER:99-7-0256-55-088-02	90,479	72,383	18,096	42,319	33,855	8,464
ORGANIZATION OF FORGOTTEN AMERICANS P.O. BOX 1257 4509 SOUTH 6TH STREET, RM. 206 KLAMATH FALLS, OREGON 97601-0276 GRANT NUMBER:99-7-2732-55-147-02	420,816	336,653	84,163	4,120	3,296	824
COUNCIL OF THREE RIVERS 200 CHARLES STREET PITTSBURGH, PENNSYLVANIA 15238 GRANT NUMBER:99-7-0642-55-175-02	668,120	534,496	133,624	0	0	0
UNITED AM. INDIANS OF THE DEL. VALLEY 225 CHESTNUT STREET PHILADELPHIA, PENNSYLVANIA 19106 GRANT NUMBER:99-7-0477-55-095-02	191,009	152,807	38,202	0	0	0
RHODE ISLAND INDIAN COUNCIL 444 FRIENDSHIP ST. PROVIDENCE, RHODE ISLAND 02907 GRANT NUMBER:99-7-0510-55-101-02	369,281	295,425	73,856	0	0	0
CATAWBA INDIAN NATION P. O. BOX 957 ROCK HILL, SOUTH CAROLINA 29731 GRANT NUMBER:99-9-3516-55-017-02	255,140	204,112	51,028	11,422	9,138	2,284
CHEYENNE RIVER SIOUX TRIBE P.O. BOX 768 EAGLE BUTTE, SOUTH DAKOTA 57625 GRANT NUMBER:99-7-0039-55-036-02	218,294	174,635	43,659	82,298	65,838	16,460
LOWER BRULE SIOUX TRIBE P.O. BOX 187 LOWER BRULE, SOUTH DAKOTA 57548 GRANT NUMBER:99-7-0073-55-059-02	55,321	44,257	11,064	14,418	11,534	2,884

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OGLALA SIOUX TRIBE P.O. BOX 6 PINE RIDGE, SOUTH DAKOTA 57770 GRANT NUMBER:99-7-0043-55-039-02	688,916	551,133	137,783	226,108	180,886	45,222
ROSEBUD SIOUX TRIBE BOX 430 ROSEBUD, SOUTH DAKOTA 57570 GRANT NUMBER:99-7-0044-55-040-02	408,067	326,454	81,613	114,973	91,978	22,995
SISSETON-WAHPETON SIOUX TRIBE P.O. BOX 509 AGENCY VILLAGE, SOUTH DAKOTA 57262 GRANT NUMBER:99-7-0045-55-169-02	158,934	127,147	31,787	48,686	38,949	9,737
UNITED SIOUX TRIBES DEV. CORP. P.O. BOX 1193 PIERRE, SOUTH DAKOTA 57501 GRANT NUMBER:99-7-0165-55-077-02	675,097	540,078	135,019	63,479	50,783	12,696
NATIVE AMERICAN INDIAN ASSOCIATION 211 UNION STREET, SUITE 401 STAHLMAN BUILDING NASHVILLE, TENNESSEE 37201 GRANT NUMBER:99-9-3515-55-016-02	325,398	260,318	65,080	0	0	0
ALABAMA-COUSHATTA INDIAN TRIBAL COUNCIL ROUTE 3 - BOX 645 LIVINGSTON, TEXAS 77351 GRANT NUMBER:99-7-1784-55-125-02	632,488	505,990	126,498	5,337	4,270	1,067
DALLAS INTER-TRIBAL CENTER 209 EAST JEFFERSON BLVD. DALLAS, TEXAS 75203-2690 GRANT NUMBER:99-7-0078-55-064-02	259,568	207,654	51,914	0	0	0
TIGUA INDIAN TRIBE P.O. BOX 17579 - YSLETA STATION EL PASO, TEXAS 79917 GRANT NUMBER:99-7-2099-55-127-02	432,029	345,623	86,406	11,703	9,362	2,341
INDIAN CENTER EMPLOYMENT SERVICES, INC. 1965 SOUTH MAIN, SUITE I SALT LAKE CITY, UTAH 84115 GRANT NUMBER:99-9-3517-55-018-02	396,586	317,269	79,317	0	0	0
UTE INDIAN TRIBE P.O. BOX 190 FORT DUCHESNE, UTAH 84026 GRANT NUMBER:99-7-0049-55-044-02	71,275	57,020	14,255	35,297	28,238	7,059
ABENAKI SELF-HELP ASSN./W.B.IND. COMM. BOX 276 SWANTON, VERMONT 05488 GRANT NUMBER:99-7-3064-55-185-02	105,611	84,489	21,122	0	0	0

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MATTAPONI PAMUNKEY MONACAN CONSORTIUM ROUTE 2 - P.O. BOX 280 WEST POINT, VIRGINIA 23181 GRANT NUMBER:99-7-3227-55-159-02	229,204	183,363	45,841	1,592	1,274	318
AMERICAN INDIAN COMMUNITY CENTER EAST 801 SECOND AVE. SPOKANE, WASHINGTON 99202 GRANT NUMBER:99-7-1139-55-112-02	681,468	545,174	136,294	118,250	94,600	23,650
COLVILLE CONFEDERATED TRIBES P.O. BOX 150 NESPELEM, WASHINGTON 99155 GRANT NUMBER:99-7-1726-55-118-02	193,320	154,656	38,664	50,090	40,072	10,018
LUMMI INDIAN BUSINESS COUNCIL 2616 KWINA ROAD BELLINGHAM, WASHINGTON 98225 GRANT NUMBER:99-7-2204-55-335-02	42,416	33,933	8,483	19,849	15,879	3,970
N.W. INTER-TRIBAL COUNCIL P.O. BOX 115 NEAH BAY, WASHINGTON 98357 GRANT NUMBER:99-7-0069-55-056-02	44,013	35,210	8,803	32,769	26,215	6,554
PUYALLUP TRIBE 2002 EAST 28TH ST. TACOMA, WASHINGTON 98404 GRANT NUMBER:99-7-1137-55-178-02	156,077	124,862	31,215	19,942	15,954	3,988
SEATTLE INDIAN CENTER 611 12TH AVENUE SOUTH - SUITE 300 SEATTLE, WASHINGTON 98144 GRANT NUMBER:99-7-0511-55-102-02	408,871	327,097	81,774	0	0	0
WESTERN WASH. IND. EMPL. AND TRNG. PROG. 4505 PACIFIC HIGHWAY EAST SUITE C-5 TACOMA, WASHINGTON 98424 GRANT NUMBER:99-7-1933-55-180-02	822,502	658,002	164,500	130,796	104,637	26,159
LAC COURTE OREILLES TRIBAL GOVERNING BOARD ROUTE 2, BOX 2700 HAYWARD, WISCONSIN 54843 GRANT NUMBER:99-7-0018-55-021-02	92,657	74,126	18,531	25,560	20,448	5,112
LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA P.O. BOX 67 LAC DU FLAMBEAU, WISCONSIN 54538 GRANT NUMBER:99-7-1139-55-113-02	44,611	35,689	8,922	19,662	15,730	3,932
MENOMINEE INDIAN TRIBE P.O. BOX 397 KESHENA, WISCONSIN 54135-0397 GRANT NUMBER:99-7-0013-55-018-02	70,770	56,616	14,154	47,937	38,350	9,587

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 17
PY 1990 TITLE IV-A AND PY 1989 II-B (SUMMER 1990) FINAL ALLOCATIONS FOR NATIVE AMERICAN GRANTEES
04-16-1990

	PY 1990 IV-A			PY 1989 II-B		
	TOTAL	PROGRAM	COST POOL	TOTAL	PROGRAM	COST POOL
MILWAUKEE AREA AM. IND. MANPOWER CONSC. 634 WEST MITCHELL STREET MILWAUKEE, WISCONSIN 53204-3512 GRANT NUMBER:99-7-0227-55-086-02	219,381	175,505	43,876	0	0	0
ONEIDA TRIBE OF INDIANS OF WIS., INC. P.O. BOX 365 ONEIDA, WISCONSIN 54155-0365 GRANT NUMBER:99-7-0015-55-019-02	194,482	155,586	38,896	31,739	25,391	6,348
STOCKBRIDGE-MUNSEE COMMUNITY ROUTE 1 BOWLER, WISCONSIN 54416 GRANT NUMBER:99-7-0530-55-099-02	59,110	47,288	11,822	9,456	7,565	1,891
WISCONSIN INDIAN CONSORTIUM P.O. BOX 181 ODANAH, WISCONSIN 54861 GRANT NUMBER:99-7-2207-55-132-02	86,895	69,516	17,379	26,684	21,347	5,337
WISCONSIN-WINNEBAGO BUSINESS COMMITTEE P.O. BOX 311 TOMAH, WISCONSIN 54660 GRANT NUMBER:99-7-0019-55-022-02	188,665	150,932	37,733	15,167	12,134	3,033
SHOSHONE/ARAPAHOE TRIBES P.O. BOX 217 FORT WASHAKIE, WYOMING 82514 GRANT NUMBER:99-7-0050-55-045-02	212,564	170,051	42,513	71,531	57,225	14,306
NATIONAL TOTAL	58,193,000	46,554,403	11,638,597	12,901,614	10,321,291	2,580,323

[FR Doc. 90-14531 Filed 6-21-90; 8:45 am]
BILLING CODE 4510-30-C

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice General Wage Determinations No. TX90-31 and TX90-35 dated January 5, 1990. See Wage Decision No TX90-47 for all areas formerly covered by these decisions, except Lampasas County, which is covered by Wage Decision No. TX90-27.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT90-1 (Jan. 5, 1990) ..... p. 63, pp. 65.
Pennsylvania:
PA90-14 (Jan. 5, 1990) ..... p. 1019, p. 1020.

Volume II

Iowa:
IA90-3 (Jan. 5, 1990) ..... p. 29, p. 30.
IA90-4 (Jan. 5, 1990) ..... p. 33, p. 34.
IA90-5 (Jan. 5, 1990) ..... p. 37, pp. 38-41.
IA90-6 (Jan. 5, 1990) ..... p. 47, p. 48.
Minnesota:
MN90-7 (Jan. 5, 1990) ..... p. 569, pp. 564-571, 572.
MN90-8 (Jan. 5, 1990) ..... p. 583, pp. 584-590, pp. 597-598.
MN90-15 (Jan. 5, 1990) ..... p. 613, pp. 614-616.
Missouri:
MO90-1 (Jan. 5, 1990) ..... p. 627, pp. 628-629, pp. 631-634.
MO90-9 (Jan. 5, 1990) ..... p. 699, p. 690.
MO90-10 (Jan. 5, 1990) ..... p. 703, p. 704.
Nebraska:
NE90-1 (Jan. 5, 1990) ..... p. 717.
New Mexico:
NM90-1 (Jan. 5, 1990) ..... p. 747, p. 748.
Texas:
TX90-3 (Jan. 5, 1990) ..... p. 987, p. 988.
TX90-6 (Jan. 5, 1990) ..... p. 1007, p. 1008.
TX90-18 (Jan. 5, 1990) ..... p. 1029, p. 1030.
TX90-27 (Jan. 5, 1990) ..... p. 1049, pp. 1050-1051.
TX90-28 (Jan. 5, 1990) ..... p. 1053, pp. 1054-1055.
TX90-29 (Jan. 5, 1990) ..... p. 1057, pp. 1058-1059.
TX90-30 (Jan. 5, 1990) ..... p. 1061, pp. 1062-1063.
TX90-38 (Jan. 5, 1990) ..... p. 1087, pp. 1088-1089.
TX90-43 (Jan. 5, 1990) ..... p. 1107, pp. 1108-1109.
TX90-45 (Jan. 5, 1990) ..... p. 1115, pp. 1116-1117.
TX90-47 (Jan. 5, 1990) ..... p. 1123, pp. 1124-1125.
TX90-48 (Jan. 5, 1990) ..... p. 1127, pp. 1128-1129.
TX90-49 (Jan. 5, 1990) ..... p. 1131, pp. 1132-1133.
TX90-54 (Jan. 5, 1990) ..... p. 1165, pp. 1166-1166b.

Volume III

California:
CA90-2 (Jan. 5, 1990) ..... p. 41, pp. 46-48, 54.
Colorado:
CO90-4 (Jan. 5, 1990) ..... p. 125, p. 127.
North Dakota:
ND90-2 (Jan. 5, 1990) ..... p. 228, p. 230.
Nevada:
NV90-5 (Jan. 5, 1990) ..... p. 286, pp. 290-306f.
Wyoming:
WY90-4 (Jan. 5, 1990) ..... p. 453, p. 454.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
(202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 15th Day of June 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-14327 Filed 6-21-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL SCIENCE FOUNDATION

Meeting; Materials Research Advisory Committee

Name: Materials Research Advisory Committee.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Date: July 9, 1990.

Time: 9 a.m.–5 p.m.

Type of Meeting: Closed.

Contact Person: Dr. William A. Sibley, Acting Division Director, Division of Materials Research, Room 406, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9794.

Purpose of Meeting: To provide advice and recommendations concerning the establishment of a new National High Magnetic Field Laboratory.

Agenda: Review and evaluation of National High Magnetic Field Laboratory proposals as part of the selection of an award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: June 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-14440 Filed 6-21-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.G of appendix R to 10 CFR part 50 to GPU Nuclear Corporation, et al. (the licensee) for the Oyster Creek Nuclear Generating Station, located at the licensee's site in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The licensee is requesting exemptions from certain technical requirements of section III.G of 10 CFR part 50 appendix R "Fire Protection of Safe Shutdown Capability." The licensee's request and bases for exemptions are contained in a letter dated August 25, 1986.

The Need for the Proposed Action

The exemptions are needed because additional modifications to achieve strict compliance with the regulations represents an unwarranted burden on the licensee since the cost associated with those modifications are significantly in excess of those required to meet the underlying purpose of the rule. These costs consist of engineering and construction resources and associated capital costs related to the following:

(1) Relocation of piping and valves which would complicate plant operations and decrease operator efficiency.

(2) Reconfiguration of electrical systems and complex rerouting of high power electrical cabling and associated circuits.

(3) Installation of new power panels and interconnection with existing systems.

(4) Rerouting of many large cables and cable trays to make room for fire barriers which are not necessary to assure safe shutdown when considering the existing protection in relation to the hazard.

(5) Additional congestion of plant areas which would complicate plant operations and future modifications.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemptions from certain technical requirements of section III.G of appendix R to 10 CFR part 50 for specific areas of the plant.

Based on its review, the Commission agrees with GPUN and in each case we have concluded that the requested exemption is valid and should be granted. Therefore, the proposed exemption does not increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to nonradiological impacts, the proposed exemptions from the requirements of section III.G of appendix R to 10 CFR part 50 involves various buildings in the reactor plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemptions; any alternatives to the exemptions will have either no environmental impact or great environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this proposed action, see the licensee's letter dated August 25, 1986. Copies of the request for exemption are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 14th day of June, 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulatory.

[FR Doc. 90–14477 Filed 6–21–90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the requirement to perform periodic containment leak rate testing as prescribed in 10 CFR 50.54(o) and appendix J to 10 CFR part 50. This exemption would be granted to the Long Island Lighting Company (LILCO), the licensee for the Shoreham Nuclear Power Station (SNPS), located in Suffolk County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR part 50, appendix J sections III.D.1, D.2, and D.3 to perform periodic containment leak rate testing, as requested by the licensee in its letter dated December 8, 1989. This exemption is the proposed action being considered by the Commission.

The Need for the Proposed Action

The licensee's letter of December 8, 1989 provided the following justification for an exemption from the requirements of appendix J to 10 CFR part 50 to perform periodic leak rate testing of the containment. Continuing to conduct unnecessary appendix J containment leak rate testing would result in undue hardship and costs that are not necessary for public safety. The request for an exemption from appendix J containment leak rate testing represents an appropriate ordering of priorities and a prudent allocation of resources.

Environmental Impact of the Proposed Action

The proposed exemption does not affect the manner of current facility operation, or the risk of facility accidents. (Shoreham is currently shutdown and defueled, and the reactor vessel internals are being removed.) The possibility of environmental impact from this exemption is extremely remote. The subject containment leak rate tests are conducted during shutdown periods prior to resumption of power operations, usually following refueling. LILCO is prevented, by agreement with the State of New York, from operating Shoreham. However, should conditions change, the staff requires that containment barriers be tested and demonstrated operable prior to refueling the reactor.

The proposed exemption would not authorize construction or operation, would not authorize a change in licensed activities, nor affect changes in the permitted types or amounts of radiological effluents. Post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there is no measurable environmental impacts associated with the proposed exemption, alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require the licensee to continue conducting containment leak rate tests. Such actions would not enhance the protection of the environment or the public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Shoreham Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption, dated December 8, 1989, and the NRC staff's letter dated March 16, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Dated at Rockville, Maryland, this 16th day of June 1990.

For the Nuclear Regulatory Commission.

James C. Stone,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14478 Filed 6-21-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-05004

Issuance of Environmental Assessment of Proposed Final Decommissioning of the Fuel Handling Building and Reactor Building at the Pathfinder Generating Plant and Finding of No Significant Impact; Northern States Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) has issued an Environmental Assessment and a Finding of No Significant Impact related to an application dated July 18, 1989 by Northern States Power Company (the applicant) for a license amendment to authorize final decommissioning of the Fuel Handling Building (FHB) and Reactor Building (RB) at the Pathfinder Generating Plant, near Sioux Falls, SD.

Environmental Assessment

Proposed Action: The proposed action is the issuance of a license amendment authorizing the applicant to perform final decommissioning of the FHB and RB at its Pathfinder Generating Plant. Nuclear power generation ended at Pathfinder in September, 1967. Subsequently, all nuclear fuel was shipped offsite, nuclear facilities were partially decommissioned and the plant was repowered with steam supplied by boilers fired by oil or natural gas. Since completion of repowering and partial decommissioning in 1971, the lower

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levels of the FHB and the RB have been maintained in protected isolation with controlled access allowed only for periodic inspection and radiation surveys.

The proposed action would restore the FHB and RB to a condition allowing unrestricted use by removal of contaminated equipment, materials, hardware and concrete. Decommissioning of the RB includes removal and transport of the reactor pressure vessel and reactor internal components by railroad to a low-level waste disposal site near Richland, WA. Following decontamination to unrestricted use conditions, the applicant would maintain and use the FHB for other purposes. The upper RB would be demolished and scrapped, and the concrete walls, floors, and foundation below grade would be buried in place. Underground cavities would be backfilled with clean material, and the surface area would be revegetated with grass.

Need for the Proposed Action: The proposed action is necessary to remove radiactive equipment, materials and concrete so that the FHB and RB need no longer be afforded protected isolation and the buildings and/or land can be returned to use for other purposes.

Environmental Impact of the Proposed Action: Expected radioactive releases to the air will be small, no more than about one millicurie, and will result in insignificant radiation doses to persons offsite. The highest dose would be via the external exposure pathway and would lead to a dose of about 0.02 millirem or less to the whole body. No liquid releases of radioactivity will be made.

Conservatively estimated projected total occupational exposures to workers (56 man-rem) will result in a potential chance of one induced cancer death of about 0.006, or about 8 chances in 1,000.

A worst-case plausible accident scenario for accidents onsite would result in no more than about 1.8 millirem to the lung of a person offsite. Exposures to onsite workers from potential accidents would be well within the occupational exposure limits for routine opeations prescribed in 10 CFR part 20.

Offsite transportation accidents would have low potential consequences and a very low probability of occurrence. The probability of one of the estimated 50 truck shipments of radioactive waste being involved in an accident and fire is estimated to be 0.0007, or about 7 chances in 10,000. The chance of an accident with fire for the railroad train transporting the reactor pressure vessel is about 0.00024, or less than 3 chances in 10,000. Even in the event of one of these low-probability accidents, resulting radiation doses would be well within 10 CFR part 20 limits for annual occupational exposure.

Nonradiological impacts of all kinds are negligible.

Conclusion: On the basis of the NRC staff's evaluation of the applicant's Environmental Report, and further analysis of the environmental impacts of the proposed action as set forth in the staff's Environmental Assessment, the staff concludes that the proposed action will not result in any significant environmental impact.

Alternatives to the Proposed Action: The Environmental Assessment considers the following alternatives: no action, delayed action, modified action. Modifications considered included: demolition and burial of the FHB, as is proposed for the RB; complete removal of the RB from the site, including all below-grade concrete walls and floors; entombment of the RB; and alternative waste transportation methods. The alternatives were generally more costly, had greater impacts and lacked significant benefits compared to the proposed action. Transportation of radioactive waste by railroad appeared favorable compared to truck transportation, as predicted occupational and population radiation exposures were both rduced. However, the resulting impacts from either transportation mode are small and uncertain.

Alternative Use of Resources: The proposed action would result in he irreversible use of energy resources in the conduct of decommissioning activities and the transportation of waste materials for disposal. A small amount of land at the low-level waste disposal site would be irreversibly committed for waste disposal. There are no reasonable alternatives to these resource uses, and the proposed action does not involve any unresolved conflicts concerning use of available resources.

Agencies and Persons Consulted, and Sources Used: The Environmental Assessment was prepared entirely by staff of the U.S. Nuclear Regulatory Commission. No other agencies or persons were consulted. No other sources were used beyond those identified as references in the staff's Environmental Assessment.

Finding of No Significant Impact: The Commission's staff has prepared an Environmental Assessment evaluating the environmental impacts related to the proposed licensing action. The Environmental Assessment has examined the radiological impacts associated with planned operations and potential accidents, both onsite and offsite, for both the general population and decommissioning and waste transportation workers. As the Environmental Assessment has not identified any significant environmental impact associated with the proposed licensing action, the Commission's staff has concluded that a Finding of No Significant Impact is justified and appropriate.

The Environmental Assessment is available for public inspection and copying at the Commission's Public Document room, located at 2120 L Street NW., Washington, DC. Single copies of the Environmental Assessment may be obtained by calling (301) 492–3438, or writing to the Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 15th day of June, 1990.

For the Nuclear Regulatory Commission.

John H. Austin,

Acting Chief, Regulatory Branch, Division of Low-Level Waste, Management and Decommissioning.

[FR Doc. 90-14475 Filed 6-21-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-280]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR part 50 to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Unit No. 1, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of 10 CFR part 50, appendix J, paragraph III.D.3 to perform a Type C test within a 2-year interval. In addition, related changes to the Technical Specifications would be made. The requested exemption would allow the licensee to defer the Type C testing until the next refueling outage scheduled for early October 1990, but no later than December 31, 1990.

The licensee's request for exemption and bases therefor are contained in a letter dated January 8, 1990, as clarified on March 20 and April 20, 1990.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type C test currently required to be performed no later than June 23, 1990, and enable Surry Unit 1 to continue normal plant operation and therefore prevent the premature shutdown of the Surry Power Station, Unit 1.

The purpose of the Type C testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage rate. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. During the last two Type C tests, the licensee took corrective actions for valve repair and valve replacement to reduce valve leakage. In addition, the licensee has provided projected valve leakage estimates which the NRC has reviewed. The staff finds that the methodology used for estimating the leakage for the extended period is acceptable.

Environment Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type C test within a 2-year period. The licensee has taken corrective action to repair valves and replaced certain valves during the last two Type C tests to minimize valve leakage. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Surry Unit 1 operations and would result in reduced operatioinal flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surrey Power Station, Unit 1.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR part 50, appendix J, dated January 8, 1990, as clarified on March 20 and April 20, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 20th day of June 1990.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14616 Filed 6-21-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12–14, 1990, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on May 22, 1990.

Thursday, July 12, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.–9:45a.m.: Systematic Assessment of Licensee Performance (Open)—Representatives of the NRC staff will breif the Committee and discuss proposed changes in the SALP process based on a survey of the regulatory impact on plant operations.

10 a.m.–12 Noon and 1 p.m.–2 p.m.: EPRI Requirements for Advanced Lighter-Water Reactors (Open)—The Committee will review and report on the NRC Safety Evaluation Report regarding Chapter 5 of the EPRI Requirements Document for Advanced LWRs. Representatives of the NRC staff and ERPI will participate as appropriate.

2:15 p.m.–3:45 p.m.: Emergency Operating Procedures and Probabilistic Risk Assessment for Shutdown Modes of Reactor Operation (Open)—Representatives of the NRC staff will brief the Committee regarding the status of emergency operating procedures and PRAs for shutdown modes of reactor operation.

3:45 p.m.–5:15 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of subcommittee activity in designated areas of responsibility including thermal-hydraulic phenomena, reliability of fire dampers, and related matters.

5:15 p.m.–6:00 p.m.: NRC Personnel Policies and Practices (Closed)—The Committee will discuss the status of proposed NRC pesonnel action.

This session will be closed to discuss internal personnel practices of the agency and information the release of which would represent an unwarranted invasion of personal privacy.

Friday, July 13, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–10 a.m. and 10:15 a.m.–11:15 a.m.: Nuclear Power Plant Operating Experience (Open/Closed)—Representatives of the NRC staff will breif the Committee and discuss recent operating events and incidents including the discovery of indications and cracks in reactor pressure vessel heads and a primary system pressurizer, malfunction of residual decay heat removal pumps, a proposed change in frequency of steam turbine stop valve testing in Westinghouse nuclear plants, and miscellaneous other items as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to these events.

11:15 a.m.–12 Noon: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1 p.m.–2:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports to NRC regarding items considered during this meeting.

2:45 p.m.–4 p.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss procedures for conduct of ACRS subcommittee and subgroup meetings.

4 p.m.–6 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports to the NRC, as appropriate.

Saturday, July 14, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md. (Open)

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports to the NRC.

11:30 a.m.–12:30 p.m.: Miscellaneous (Open)—The Committee will complete the discussion of items considered during this meeting and related matters.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limted to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subseciton 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss internal personnel practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be disucssed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: June 18, 1990.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 90–14480 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

On May 23, 1990, the licensee entered the 72 hour action statement associated with Technical Specification (TS) 3.8.1 after the Unit 1 "B" emergency diesel generator (EDG) failed the applicable Surveillance Requirements (SRs). Troubleshooting and additional EDG testing indicated that the most likely cause for the failure was the high jacket water temperature (HJWT) switches. These switches were new and had been recently installed and calibrated per the revised calibration procedure (incorporating lessons learned from Wyle Lab tests). The licensee left the 72 hour action statement of Limited Condition for Operation 3.8.1 on May 25, 1990, after having reinstalled the original HJWT switches into the 1B EDG and successfully performing the required surveillance testing. However, given recent operating experience, particularly the March 20, 1990 event, and the difficulties experienced with HJWT trips, the licensee thought it prudent in terms of enhanced plant safety to bypass the HJWT trip for all emergency starts.

The licensee promptly notified the Commission of its intention to install a modification to manually bypass the HJWT trips and the need for a TS change to TS 4.8.1.1.2h(6)(c). The licensee then subsequently submitted a TS change request in a expeditious manner. The Commission's staff concurred with the licensee's assessment and provided a Temporary Waiver of Compliance on May 25, 1990, from TS 4.8.1.1.2h(6)(c) until such time that the TS amendments could be processed. Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the May 25, 1990 amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the TS change request involves no significant hazards consideration as defined in 10 CFR 50.92. In support of this conclusion the licensee provided the following:

> In order to accomodate [sic] the current design, the Technical Specifications require verification that all automatic diesel generator trips are automatically bypassed upon loss of voltage on the emergency bus concurrent with a Safety Injection Actuation signal, except for engine overspeed, generator differential, low lube oil pressure and high jacket water temperature. The proposed Technical Specification change will note that the jacket water temperature trip may be bypassed. The high jacket water temperature trip is designed to protect the diesel generator from a loss of engine cooling. For such an event, the safety function would be provided by the diesel for the other train. During an accident, the advantage of the automatic trip is small relative to the increased reliability achieved by reducing the possibility of a spurious trip.
>
> (1) This change will not increase the probability of an accident previously evaluated because it does not affect any of the design basis events that have been previously evaluated in the FSAR. The analyses of accident consequences do not take credit for the ability to restart a diesel following a diesel generator trip. Therefore, this change will not affect the previously evaluated consequences.
>
> (2) The revision to the Technical Specification will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new modes of operation are being imposed on the plant and the diesel generators will continue to perform their function as designed.
>
> (3) The revision does not result in a significant reduction in the margin of safety provided for events involving a loss of electric power. The proposed revision will allow the implementation of a modification which is intended to improve the reliability of the diesel generators by minimizing the possibility of spurious trips.

The Commission's staff has reviewed the licensee's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendments does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 23, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists which the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves no significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may

be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: petitioners' name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suit 1400, 127 Peachtree Street NE., Atlanta, Georgia 30303, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 25, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, the Burke County Library, 412 Fourth Street, Waynesboro, Georgia, 30043.

Dated at Rockville, Maryland, this 15th day of June, 1990.

For the Nuclear Regulatory Commission.

Timothy A. Reed,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14479 Filed 6–21–90; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 on Public Law 100–203 of the Nuclear Waste Policy Amendments Act of 1987, the Board will meet July 23–25, 1990, at the Westin Peachtree Plaza Hotel (Henry Grady Room), 210 Peachtree Street, Atlanta, Georgia 30303; (404) 659–1400. The full Board will meet on Monday, July 23 from 8 a.m. to 12 p.m. for a briefing by the U.S. Nuclear Regulatory Commission on the licensing support system that will be used to license the design, construction, and operation of a permanent repository for high-level nuclear waste.

On July 24–25, the Board's Structural Geology & Geoengineering (SG&G) and the Hydrogeology & Geochemistry (H&G) panels will hold a two-day, joint meeting from 8 a.m. to 5 p.m. also in the Henry Grady Room. Discussions at this meeting will focus on the exploratory shaft facility and the surface-based testing program that are planned for the Yucca Mountain site. Both meetings are open to the public.

The Board, under authority of section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, has responsibility to oversee the efforts of the Department of Energy (DOE) to develop a geologic repository for the permanent disposal of commercial spent nuclear fuel and defense high-level nuclear waste. In the NWPAA, the U.S. Congress selected Yucca Mountain as the sole site for characterization by the U.S. Department of Energy as a potential repository.

In addition to the meetings outlined above, the Board will gather after lunch on July 23 and from 8 a.m. to 5 p.m. on July 26, 1990, to review the work of its panels to date and to discuss internal administrative and personnel matters. These portions of the Board's meeting will be closed to the public.

Anyone wishing to attend any portion of the above open meetings should contact Helen Einersen, if possible, on or before July 18, 1990, (202–254–4473). The open portions of the meetings will be transcribed and the transcripts will be available for loan to the public on a first-come, first-served basis beginning August 15, 1990.

For further information contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; 703–235–4473.

Dated: June 18, 1990.

Dr. William D. Barnard,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90–14539 Filed 6–21–90; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28128; File No. SR–PHLX–90–10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Warrants and the Ability of Specialists and Registered Options Traders to Provide Quotations for Their Respective Options during Extraordinary Market Conditions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX pursuant to Rule 19b–4 under the Act, hereby proposes to adopt Floor Procedure Advice F–10— Extraordinary Market Conditions [i.e., fast markets]. The following constitutes the text of the proposed rule change

F–10 Extraordinary Market Conditions (Fast Markets)

In the interest of maintaining a fair and orderly market under unusual trading conditions for one or more class of options, two floor officials may declare a "fast market" for these options. Regular trading procedures shall be resumed when two Floor officials determine that the conditions supporting that declaration no longer exist.

During the period for which a fast market is in effect, displayed quotes for the respective options are not firm and volume guarantees of Option Advice A–11 are not applicable, but the respective specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with Advice A–11.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change codifies existing practice on the Exchange's option floors respecting the determination of extraordinary market conditions, *i.e.*, fast markets. The proposed rule change operates to relieve options specialists and registered options traders of their responsibilities respecting bids and offers pursuant to PHLX Rule 1033 as well as the corollary to existing Floor Procedure Advice A–11—Ten Up Markets. It should be noted that the proposed rule change is substantially similar to the Chicago Board Options Exchange's ("CBOE") Rule 6.6—Unusual Market Conditions. The proposal would operate by allowing two floor officials to declare a "fast market" when unusual trading conditions for more than one class of options exist which is comparable to the CBOE's Rule 6.6. The proposal also provides that regular trading procedures shall be resumed when two floor officials determine that market conditions supporting the declaration no longer exists.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14518 Filed 6–21–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17535; 812–7520]

The One Germany Fund; Application

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The One Germany Fund, Inc., a closed-end-nondiversified investment company registered under the 1940 Act.

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) of the 1940 Act for exemptions from the provisions of section 12(d)(3) of such Act and Rule 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from the prohibitions of section 12(d)(3) of the 1940 Act to the extent necessary to allow it to acquire securities of foreign issuers engaged in securities-related activities in accordance with the conditions of proposed amendments to Rule 12d3–1 under the 1940 Act.

FILING DATE: The application was filed on May 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Application with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 55 Broad Street, New York, New York 10004, Attention: Robert Hock.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant represents that it is non-diversified closed-end management investment company organized as a Maryland corporation and registered under the 1940 Act.

2. Applicant seeks to achieve capital appreciation by investing primarily in equity securities of West German companies. Applicant's general investment policy under normal circumstances is to invest at least 75% of its total assests in equity and equity-linked securities of West German

companies. Up to 25% of Applicant's total assets may be invested in debt securities rated A or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation (or, in the opinion of Applicant's investment adviser, of equivalent quality) of West German companies, and equity and equity-linked securities of issuers domiciled in other European Community countries, Austria, Switzerland, Norway, Sweden, Finland, and Eastern Europe, including East Germany. Applicant's investment adviser is Commerz International Capital Management GmbH.

3. In order to diversify further, Applicant proposes investments in securities of foreign issuers engaged in securities-related activities to the extent set forth in the application.

4. Section 12(d)(3) of the 1940 Act prohibits a registered investment company from purchasing a security issued by a broker, dealer, underwriter or investment adviser unless, among other things, the security of such an issuer is a "margin security," as that term is defined in Regulation T of the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Until very recently, few equity securities issued outside the United States qualified as "margin securities." However, under recent amendments to Regulation T, certain equity securities issued outside the United States can now qualify as margin securities. In particular, any foreign equity security meeting specified qualification requirements will be eligible for marginability, provided that it appears on the list of "foreign margin stocks" to be published quarterly by the Federal Reserve. However, Applicant understands that the first such list may not be released for several months. Until such list is available, most securities issued outside the United States will not be "margin securities" for purposes of Rule 12d3–1(b)(4).

5. Applicant seeks relief from section 12(d)(3) and Rule 12d3–1 under the 1940 Act to the extent permitted by proposed amendments to Rule 12d3–1. See Investment Company Act Release No. 17098 (August 3, 1989). The proposed amendments to Rule 12d3–1 would, among other things, facilitate the acquisition by registered investment companies of equity securities issued by foreign securities firms.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the 1940 Act prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or an investment banker. Rule 12d3–1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities.

2. Applicant represents that its proposed acquisition of securities issued by foreign securities companies will comply with the provisions of current Rule 12d3–1, except subparagraph (b)(4) thereof. Subparagraph (b)(4) of Rule 12d3–1 provides that, "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one that is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, Applicant seeks an exemption only from the "margin security" requirements of Rule 12d3–1.

3. Proposed amendment Rule 12d3–1 provides that the "margin security" requirements would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17098 (August 3, 1989).

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. Applicant will comply with the proposed amendments to Rule 12d3–1 and agrees, in addition, to comply with the terms of the proposed amendments to Rule 12d3–1 as they may be further revised, adopted or amended, including provision, if any, with respect to the eligibility of "margin securities" for purchase by an investment company.

2. Applicant will not invest in any securities issued by Commerzbank or any of its affiliates engaged in securities-related activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14519 Filed 6–21–90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act [44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before July 23, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Application for Certification as a Certified Development Company
Form Nos.: SBA Forms 1246
Frequency: On occassion
Description of respondents: Applicants to become CDC's
Annual Responses: 15
Annual Burden Hours: 150

Title: National Training Participant Evaluation Questionaire
Form Nos.: SBA Form 20
Frequency: On occassion
Description of respondents: Individuals receiving SBA training and counseling assistance.
Annual Responses: 20,000
Annual Burden Hours: 5,000

Title: Representatives and Compensation Received for Services in Connection with the SBA 8(a) Program.
Form Nos.: SBA Form 1722
Frequency: Semi-Annual
Description of respondents: 8(a) program participants.
Annual Responses: 8,000
Annual Burden Hours: 8,000

Title: Survey of Commercialization Activities of SBIR Awardees
Form Nos.: n/a
Frequency: On occassion
Description of respondents: SBIR program participants
Annual Responses: 700
Annual Burden Hours: 63

William Cline,

Chief, Administrative, Information Branch.

[FR Doc. 90–14458 Filed 6–21–90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10–0154]

Enterprise Capital Corporation; Filing of Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Enterprise Capital Corporation (ECC), 515 Post Oak Blvd., suite 310, Houston, TX 77027, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.903 of the SBA Regulations governing Small Business Investment Companies (13 CFR 107.903 (1990)), for approval of a conflict of interest transaction falling within the scope of the above section of the Act and Regulations.

Subject to such approval ECC proposes to provide financing to U.S. Long Distance Corp. (USLD) 9331 San Pedro, suite 300, San Antonio, TX 78216. The facts and circumstances concerning this financing are as follows:

Mr. Gary Becker, son of Alen J. Becker (the sole stockholder of ECC), is a director of USLD. Messrs. Allen J. Becker and Barry M. Lewis directors of ECC, also own stock in USLD. The total stock ownership of the Becker's and Lewis is less than 4 percent of the total outstanding stock of USLD. Mr. Gary Becker is one of seven directors of USLD but is not an employee of USLD.

Therefore, the proposed financing is brought within the purview of § 107.903 of the Regulations since USLD is considered to be an Associate of ECC as defined in § 107.3(f) of the Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the San Antonio, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: June 15, 1990.

Robert G. Lineberry,

Associate Administrator for Investment.

[FR Doc. 90–14460 Filed 6–21–90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2431]

Indiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 4, 1990, and an amendment thereto on June 6, 1990, I find that the Counties of Brown, Clark, Crawford, Daviess, Dearborn, Floyd, Franklin, Gibson, Greene, Harrison, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Montgomery, Ohio, Orange, Pike, Posey, Ripley, Scott, Switzerland, Vermillion, Warrick, and Washington in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 15, 1990. Applications for loans for physical damage may be filed until the close of business on August 6, 1990, and for loans for economic injury until the close of business on March 4, 1991, at the address listed below.

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd, 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small business located in the contiguous counties of Bartholomew, Boone, Clay, Clinton, Decatur, Dubois, Fayette, Fountain, Hendricks, Johnson, Monroe, Morgan, Owen, Parke, Perry, Putnam, Rush, Spencer, Sullivan, Tippe-Canoe, Union Vangerburgh, Vigo, and Warren in the State of Indiana.; Crawford, Edgar, Gallatin, Lawrence, Vermilion, Wabash, and White Counties in the State of Illinois; Boone, Bullitt, Carroll, Daviess, Gallatin, Hardin, Henderson, Jefferson, Meade, Oldham, Trimble, and Union Counties in State of Kentucky; and Bulter and Hamilton Counties in the State of Ohio may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Indiana is 243106. For economic injury the numbers are 707800 for the State of Indiana; 707900 for the State of Illinois; 708000 for the State of Kentucky, and 708100 for the State of Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 1990.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 90–14459 Filed 6–21–90; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–74]

Suspension of Section 302 Investigation; Ban on Government Procurement of Foreign Satellites by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) with respect to the Government of Japan's ban on government procurement of foreign satellites, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 18, 1990.

FOR FURTHER INFORMATION CONTACT: Joe Massey, Assistant U.S. Trade Representative for Japan and China, (202) 395–3900, or D. Holly Hammonds,

Associate General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's exclusionary practices with respect to government procurement of satellities (54 FR 26136). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with he expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachments, concerning government satellite procurement. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under Section 302 of the Trade Act of exclusionary procurement of satellites by Japan was therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into with Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, application of those procedures to actual procurements by the Government of Japan, and review of the handling of any complaints. Monitoring questions may be discussed with Japanese Government representatives when consultations have been requested or at other times as appropriate.

Reasons for Determinations

Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's exclusionary practices with respect to government procurement of satellites (54 FR 24438). The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that as part of a "long range vision on space development" Japan had prohibited the procurement of foreign satellities by government entities if such a purchase interfered with "indigenous development objectives". Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellities applied to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long been the world leader in satellite production, and was thus denied significant market opportunities by this policy.

In accordance with section 310(b) of the Trade Act, on June 16, 1989, the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act of this "priority practice", in order to determine whether it is actionable udner section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking with effect from that date to improve access for U.S. firms to its market and specifying detailed new procedures for the procurement of satellites by the Japanese government and government controlled entities. This exhange of letters incorporated and amplified the agreement in principle that had been reached in March 1990. The Government of Japan also agreed in the June 15 exchange of letters to consult bilaterally as appropriate on the operation of the new procedures, as well as to provide a bid protest procedure for private parties.

More specifically:

- The Government of Japan stated its intention to adopt new procedures to procure satellites. Purchasing entities will follow open, transparent and non-discriminatory procedures in making acquisitions of satellites. Procedures will accord with the GATT Agreement on Government Procurement, as amended, as well as with the new procedures established by the Government of Japan.
- The Government of Japan has removed its explicit restriction on the procurement of foreign satellites by GOJ entities. The procurement of all satellites, other than R&D satellites and R&D payloads on non-R&D satellites, by the Government of Japan or any entity whose satellite procurement procedures are subject to direct or indirect government control, including NTT and NHK, will be conducted in accordance with the new satellite procurement procedures.
- The Government of Japan will take measures to alter the existing CS-4 project into an R&D satellite.
- "R&D" satellites and payloads will be defined as those designed and used entirely or almost entirely for the purpose of in-space development and/or validation of technologies new to either country, and/or non-commercial scientific research.
- The Government of Japan will review annually with the United States the operation of the procedures, and will consult on any matter at USG request.
- New procedures will be established to receive and consider complaints from private parties regarding the acquisition of satellites by the Government of Japan, and means will be provided to resolve such complaints promptly and equitably.
- The classification of satellites as R&D or non-R&D will also be transparent, and will be subject to bilateral consultations where questions arise.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachments, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of exclusionary government procurement of satellites by the Government of Japan (Docket No. 301-74) is suspended pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations and the annual reviews provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not been suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14543 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-76]

Suspension of Section 302 Investigation; Japanese Restrictions Affecting Imports of Forest Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) regarding the Government of Japan's policies and practices that restrict imports of wood products, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 15, 1990.

FOR FUTHER INFORMATION CONTACT: Don Phillips, Assistant U.S. Trade Representative for Industry, (202) 395-5656, or Richard Steinberg, Assistant General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's import restrictions on forest products (54 FR 28137). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachment, concerning forest products. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under section 302 of the Trade Act of Japan's policies and practices restricting the import of forest products is therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into by Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, provisions, and understandings in or relating to the agreement and the resolution of any complaints should any be filed. In monitoring and evaluating Japanese performance of the obligations undertaken in the agreement, consideration will be given to the intent and objectives of the provisions contained therein. Monitoring questions may be discussed with Japanese Government representatives when appropriate.

Reasons for Determinations

(1) Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's policies and practices which restrict imports of forest products (54 FR 28137).

The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that exports of United States forest products to Japan were being restricted by Japanese policies and practices. For example, U.S. forest products suppliers faced wood grading requirements, testing standards which impeded U.S. exports, as well as technical standards and specifications, certification processes, and building codes which limited the use and access of U.S. forest products.

In accordance with section 310(b) of the Trade Act, on June 16, 1989 the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

In consultations with the Government of Japan on April 26-27, 1990, Japanese Government officials gave U.S. negotiators a written, detailed set of commitments it will undertake with respect to forest products; subsequently, technical rectifications to those commitments and clarifications were made. On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking and will take to improve access for U.S. wood products to its market. This exchange of letters incorporated and amplified the commitments upon which agreement had been reached in April, as rectified and clarified.

More specifically:

- Japan agreed to take a positive stance on wood products tariff reductions in the Uruguay Round negotiations, to reduce overall tariff rates on certain wood products by a specified target amount, and to achieve low tariffs on these products as a result of these negotiations. Japan further agreed that initial staged reductions will be greater than subsequent staged reductions in order to achieve

immediate substantial improvement in market access.

• Japan agreed to change building standards and requirements so that they are based on performance requirements and so that they will permit increased use of wood products.

• Japan agreed to open and expeditious certification of wood products, to revise and adopt new certification standards, and to facilitate approval of U.S. wood products as meeting Japanese standards.

• Japan agreed to establish a Japanese Agricultural Standards (JAS) Technical Committee and a Building Experts Committee, in cooperation with the United States, to monitor these changes, consistent with the terms of the agreement.

• Japan agreed to change the tariff classification of certain laminated wood products.

• Japan agreed that in order not to undermine the objectives of the agreement, any existing or future subsidies to manufacturers of forest products shall be consistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, as well as the OECD Statement on Positive Adjustment Policies of 1982.

• Japan agreed to the establishment of a Wood Products Subcommittee of the U.S.-Japan Trade Committee, composed of senior officials from the Governments of the United States and Japan, to resolve disputes and oversee the implementation of the measures set forth in the agreement.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachment and associated understandings, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of the Government of Japan's policies and practices that restrict imports of forest products (Docket No. 301-76) is suspended pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14544 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-75]

Suspension of Section 302 Investigation; Exclusionary Government Procurement of Supercomputers by the Government of Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of suspension of investigation initiated under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has suspended an investigation initiated under section 302 of the Trade Act of 1974, as amended (Trade Act) regarding the Government of Japan's government procurement practices with respect to supercomputers, having entered into an agreement with the Government of Japan on this matter.

DATES: This investigation was suspended effective June 15, 1990.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant U.S. Trade Representative for Japan and China, (202) 395-5070, or D. Holly Hammonds, Associate General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended ("the Trade Act"), concerning Japan's government procurement practices with respect to supercomputers (54 FR 26137). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

Section 310(c)(2) of the Trade Act provides that if such an agreement is entered into with a foreign country before the date on which any action may be required under section 305 to be implemented, then the investigation in question shall be suspended.

On June 15, 1990, the USTR concluded with the Government of Japan an exchange of letters, with attachment, concerning supercomputer procurement. This exchange of letters constitutes an agreement as described in section 310(c)(1) of the Trade Act. The investigation under section 302 of the Trade Act of exclusionary procurement of supercomputers by Japan was therefore suspended, effective June 15, 1990.

The USTR further determined that it is appropriate to monitor the implementation of the agreement entered into by Japan. Monitoring will include but not be limited to consideration of overall compliance with the procedures, provisions for adequate funding of procurements of supercomputers, application of those procedures to actual procurements by the Government of Japan, including those currently underway, and review of the handling of complaints should any be filed. Monitoring questions may be discussed with Japanese Government representatives at annual reviews or at other times as appropriate.

Reasons for Determinations

(1) Suspension Under Section 310

Section 310 of the Trade Act of 1974, as amended (19 U.S.C. 2420) required the USTR in 1989 to identify as "priority practices" foreign trade barriers the elimination of which is likely to increase U.S. exports, either directly or through establishing a beneficial precedent. Accordingly, on May 26, 1989, the Administration identified as a "priority practice" the Government of Japan's exclusionary practices with respect to government procurement of supercomputers (54 FR 24438). The Administration also identified Japan as a "priority country" under section 310(a)(1) of the Trade Act. The announcement noted that the United States supercomputer industry had been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers, and that the Government of Japan had engaged in a veriety of practices affecting the procurement process which resulted in the purchase of supercomputers from indigenous producers. For example, U.S. supercomputer suppliers had found themselves excluded from serious consideration in Japanese Government procurements due to technical specifications favoring incumbent Japanese suppliers. U.S. firms had been further disadvantaged by extraordinarily low Japanese Government supercomputer budgets which required massive discounts of up to 80% off list price.

In accordance with section 310(b) of the Trade Act, on June 16, 1989 the USTR initiated an investigation pursuant to section 302(b)(1) of the Trade Act, of this "priority practice", in order to determine whether it is actionable under section 301 of the Trade Act. As required by section 303 of the Trade Act, the United States promptly requested consultations with the Government of Japan.

The United States then sought, as required by section 310(c)(1) of the Trade Act, to negotiate an agreement providing for (a) The elimination of, or compensation for, these priority practices by no later than the close of the 3-year period beginning on June 16, 1989, and (b) the reduction of such practices over a 3-year period with the expectation that United States exports to Japan will, as a result, increase incrementally during each year within such 3-year period.

In consultations with the Government of Japan on March 21-22, 1990, Japanese Government officials gave U.S. negotiators detailed written descriptions of procurement procedures for supercomputers. On June 15, 1990, the USTR executed an exchange of letters with the Japanese Ambassador regarding actions the Government of Japan is taking with effect from March 22, 1990 to improve access for U.S. firms to its market. This exchange of letters incorporated and amplified the procurement procedures upon which agreement had been reached in March 1990. The Government of Japan also agreed in the June 15 exchange of letters to consult bilaterally as appropriate on the operation of the new procedures, and to review them annually, with the first review planned for June 1991.

More specifically:

• The Government of Japan stated its intention to adopt new procedures to introduce supercomputers. Purchasing entities will follow open, competitive and transparent procedures in making acquisitions of supercomputers. Procedures will accord with the GATT Agreement on Government Procurement, as amended, as well as with the new procedures established by the Government of Japan.

• The Japanese Government will seek adequate funds to purchase supercomputers at prices related to those prevailing in the private sector for similar equipment in similar environments.

• Entities will establish specifications for supercomputer purchases based on actual minimum needs of users. Benchmark tests of representative workload will be relied upon primarily to determine the capacity of competing supercomputers to meet actual minumum needs.

• Japanese entities will give credit to bidders who offer superior products or services, and will establish a transparent procedure for allowing such credit.

• The purchase of newly designed computers which are not available for benchmark testing will be permitted only under clearly defined conditions which assure equal treatment of all bidders.

• New procedures are to be established to receive and consider complaints regarding the acquisition of supercomputers by the Government of Japan, and means will be provided to resolve such complaints promptly and equitably.

The USTR has determined that the exchange of letters of June 15, 1990, together with its attachments, constitutes an agreement pursuant to section 310(c)(1) of the Trade Act. Consequently, the investigation of exclusionary government procurement of supercomputers by the Government of Japan (Docket No. 301-75) is suspended pursuant to section 310(c)(2) of the Trade Act.

(2) Monitoring

The United States will monitor Japan's implementation of these market-opening actions, and will seek a satisfactory resolution of any additional concerns in bilateral consultations and the annual reviews provided for in the above agreement.

If the USTR determines that Japan is not in compliance with this agreement, then, pursuant to section 310(c)(3) of the Trade Act, the investigation suspended shall resume as if it had not been suspended.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14545 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-77]

Section 304 Determinations; Trade-Related Investment Measures Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of the Government of India with respect to foreign investment in India are unreasonable and burden or restrict U.S. commerce. The USTR has further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Trade Act is appropriate at this time given the potential for results through the Government of India's participation in the Uruguay Round of multilateral negotiations on trade-related investment measures under the General Agreement on Tariffs and Trade (the "GATT"). Therefore, the USTR has terminated the investigation initiated pursuant to section 302 of the Trade Act, and will review the status of India's practices after the conclusion of the Uruguay Round negotiations and determine at that time whether action under section 301 would be warranted.

DATES: This investigation was terminated effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Daniel Price, Deputy General Counsel, (202) 395-6800.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974 concerning India's trade-restricting investment measures (54 FR 26136). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under

subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

The United States has not yet been able to reach such an agreement with India, but will continue to seek one in the context of the Uruguay Round multilateral negotiations on trade-related investment measures.

Section 304 of the Trade Act required the USTR in this case to determine by June 16, 1990, whether India's practices are unreasonable or discriminatory and burden or restrict U.S. commerce and, if so, to determine what action, if any, to take under section 301 in response.

Reasons for Determinations

(1) India's Acts, Policies and Practices

On the basis of an investigation pursuant to section 302 of the Trade Act and consultations with the Government of India and affected U.S. firms, the USTR found that certain trade-restricting measures imposed by the Government of India are unreasonable, and a burden or restriction on U.S. commerce. Governmental approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including limits on foreign equity participation. Where approval is granted, the Indian Government often requires investors to use locally-produced goods in the items they produce in India, rather than allowing them to choose the best quality and most cost-effective products. Some investors are also required to meet export targets. These and other requirements adversely affect foreign investors, and result in significant trade distortions.

(2) U.S. Action

The USTR's determination that no responsive action under section 301 of the Trade Act is appropriate at this time takes into account the participation of India in multilateral negotiations on trade-related investment measures that are currently taking place in Geneva, Switzerland, under the GATT. Those negotiations are expected to be concluded in December 1990. If no progress is made on these issues in those negotiations, the USTR will consider at that time whether to take action under section 301 of the Trade Act.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14547 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-78]

Section 304 Determinations; Insurance Market Barriers Maintained by the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: The United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of the Government of India with respect to barriers to foreign insurance providers maintained by India are unreasonable and burden or restrict U.S. commerce. The USTR has further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Trade Act is appropriate at this time given the potential for results through the Government of India's participation in the Uruguay Round of multilateral negotiations on services under the General Agreement on Tariffs and Trade (the "GATT"). Therefore, the USTR has terminated the investigation initiated pursuant to section 302 of the Trade Act, and will review the status of India's practices after the conclusion of the Uruguay Round negotiations and determine at that time whether action under section 301 would be warranted.

DATES: This investigation was terminated effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian and Indian Affairs, (202) 395-6813, or Daniel Price, Deputy General Counsel, (202) 395-6890.

SUPPLEMENTARY INFORMATION: On June 16, 1989, the USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1974 concerning India's barriers to foreign insurance providers (54 FR 26135). These practices had been identified on May 25, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the Trade Act (54 FR 24438). Section 310(b) of the Trade Act requires that the USTR initiate, under section 302(b)(1), investigations with respect to any practice so identified, in order to determine whether it is actionable under section 301 of the Trade Act.

Under Section 310(c)(1) of the Trade Act, the USTR must consult with the foreign government concerned and seek in such consultations to negotiate an agreement which provides for—

(A) the elimination of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

The United States has not yet been able to reach such an agreement with India, but will continue to seek one in the context of the Uruguay Round multilateral negotiations on services.

Section 304 of the Trade Act required the USTR in this case to determine by June 16, 1990, whether India's practices are unreasonable or discriminatory and burden or restrict U.S. commerce and, if so, to determine what action, if any, to take under section 301 in response.

Reasons for Determinations

(1) India's Acts, Policies and Practices

On the basis of an investigation pursuant to section 302 of the Trade Act and consultations with the Government of India and affected U.S. firms, the USTR found that certain barriers to foreign insurance providers imposed by the Government of India are unreasonable, and a burden or restriction on U.S. commerce. Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the state-owned Life Insurance Corporation of India has a monopoly on the sale of life insurance in India.

(2) U.S. Action

The USTR's determination that no responsive action under section 301 of the Trade Act is appropriate at this time takes into account the participation of India in multilateral negotiations on services that are currently taking place in Geneva, Switzerland, under the GATT. Those negotiations are expected to be concluded in December 1990. If no progress is made on these issues in those negotiations the USTR will consider at that time whether to take action under section 301 of the Trade Act.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90-14548 Filed 6-21-90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 15, 1990

The following Agreements were filed with the Department of transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing:

Docket Number: 46983.
Dated filed: June 15, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Cargo Tariff Coodinating Conference.
Proposed Effective Date: July 1, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-14442 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 15, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings:

Docket Number: 46978.
Dated filed: June 11, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 1990.
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 137 so as to authorize air service between Chicago, Illinois, and Moscow, Union of Soviet Socialist Republics, nonstop or via intermediate points in American's certificate.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-14441 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 90-11; Notice 1]

Fuel Economy Standards; Rejection of Petitions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Rejection of petitions.

SUMMARY: This notice rejects petitions from Maserati to exempt it from the generally applicable corporate average fuel economy standards for model years (MY) 1986, 1987, and 1989 through 1991, and to establish alternative standards for the company for those model years. The agency has concluded that Maserati has not shown "good cause" for its late filing of the petitions. The agency will address separately Maserati's petition for MY 1992, which was timely filed.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION: Title V of Motor Vehicle Information and Cost Savings Act (Cost Savings Act), 15 U.S.C. 2001 *et seq.*, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of manufacturers of passenger automobiles and light trucks. The standards for passenger automobiles for MYs 1988-91, the years covered by the petitions for exemption, are: 26 mpg for MYs 1988-88, 26.5 mpg for MY 1989, and 27.5 mpg for MY 1990 and thereafter.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year.

NHTSA has promulgated regulations establishing the required contents of and procedures for processing petitions for low volume exemptions from the generally applicable passenger autombile average fuel economy standards. 49 CFR part 525. Section 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown. . . ." *See generally* 41 FR 53827, 53828 (December 9, 1976), and 44 FR 21061, 21065 (April 9, 1979).

Maserati Automobiles Incorporated (MAI) and Officine Alfieri Maserati, S.p.A. (OAM) filed two petitions on April 14, 1989. One petition requested exemption from the generally applicable standards for MYs 1986, 1987, and 1989 and the second petition was for exemption for MYs 1990 through 1992. (This notice refers to MAI and OAM collectively as Maserati). The petitions were untimely for every year except 1992. Maserati offered several arguments purporting to show "good cause" for the late filing. The company's arguments are discussed below.

First, Maserati stated that NHTSA had not responded to that company's May 1983 petition for exemption for MYs 1981 through 1985. "Because of the uncertainty over the status of that petition, MAI (Maserati Automobiles, Incorporated, the American division) was reluctant to file further petitions until the pending matter is resolved."

However, the pending petitions for MYs 1981 through 1985 were not related to petitions for exemption for subsequent model years. None of the factors cited by Maserati would have lessened the desirability of exemptions for MYs 86 and thereafter. Although the company may have been uncertain about the status of the petitions for MYs 1981 through 1985, it would be a certainty that they would not be granted any alternative standard for MY 1986 and thereafter if they did not submit timely petitions.

Maserati also argued that in MY 1984 (around October 1983 when, had they filed, the petition would have been timely for MY 1986), dramatic increases in sales and increasingly complex regulatory requirements strained that company's resources and overwhelmed its small staff. "As a result of the foregoing, compliance with timetables for alternate fuel economy petitions in the early 1980's was not monitored as closely as in the past and as closely as (OAM) and MAI would have preferred."

Maserati also stated that in September 1987, the fact that MAI had to pay attention to fuel economy was brought to MAI management. Because emphasis was placed on "resolving

serious financial and sales problems" resources were not devoted to preparing the fuel economy petitions until March, 1988 when a fact finding trip to Italy was approved. It was during this trip, however, that compliance problems with standard 208 (49 CFR 571.208) were discovered, and resources in both Italy and the United States were devoted to this.

Maserati also stated that its noncomputerized records and small staff made assembling needed information in timely fashion difficult. For example, there is no Italian counterpart to the U.S. concept of "model year" and they had to obtain data by U.S. model year. Maserati also asserted that, "Communication problems between OAM and MAI hindered the swift and efficient exchange of information."

NHTSA does not consider either general business difficulties or efforts to comply with other regulatory requirements to constitute good cause for failure to file a timely petition for exemption. Significant resources are not necessary to prepare a petition. Further, if sufficient in-house time or expertise are unavailable, outside companies can be hired to assist in preparing the petition. For example, Maserati itself has previously hired Olson Engineering to prepare its petitions.

The agency notes that business difficulties might constitute good cause for submitting a late petition if such difficulties were directly related to the need to submit a petition. For example, if a company did not file a timely petition because it expected to be out of business for the model year in question, and circumstances unexpectedly changed, the need to submit a petition may have been unforeseeable. Another possible example would be if a low volume manufacturer expected to comply with the generally applicable standard and its fuel economy unexpectedly dropped because the company supplying its engines went out of business. In such a situation, the need to submit a petition may have been unforeseeable. Maserati's petitions do not state any facts which suggest that its need to submit petitions for MYs 1988–91 was unforeseeable at a time 24 months in advance of each model year.

Maserati also attempted to draw an analogy between its situation and that of Ferrari's late filing of petitions for alternate standards for MYs 1985 through 1988, arguing that NHTSA had excused Ferrari's late filing so the agency should similarly treat Maserati. The agency notes that Ferrari's petitions were untimely only for MY's 1986–87.

NHTSA does not consider Ferrari's situation to be relevant to that of Maserati. When Ferrari originally applied for a low volume exemption in 1977, the agency determined that Ferrari was ineligible because Fiat (a large European auto manufacturer) had a 50 percent ownership interest in Ferrari. Fiat withdrew from the U.S. market at the end of the 1982 model year, although it remained a large European auto manufacturer, and Ferrari asked NHTSA in November 1984 to change its previous opinion. The agency sent an interpretation to Ferrari in February 1985, stating that it agreed that Ferrari was now eligible to apply for a low volume exemption. As was stated in the Federal Register notice of December 10, 1986 (51 FR 44492, since Ferrari learned of this decision in February of 1985, it could not have filed a petition for the 1986 and 1987 model years 24 months in advance of those model years. By contrast, not questions have been raised about Maserati's eligibility for MYs 1986–01 low volume exemptions, other than the question of timeliness raised by the April 1989 submission of the petitions.

Maserati also argued that its late filing is entirely unrelated to the level of the standard requested. According to Maserati, there is very little flexibility in its CAFE capabilities, and it did not purposely delay filing in order to put the agency in a position of approving a *fait accompli* at levels which fall short of its maximum feasible fuel economy. This argument addresses the significance of the lateness of the petition rather than whether there was "good cause" for the late submission. Maserati concedes that its petition was untimely. The issue which is determinative of whether NHTSA wil accept a late petition is not, as Maserati seems to imply, whether there would have been an unfair advantage to the manufacturer if the agency accepted the late petition. Instead, the issue is whether there is "good cause" for the manufacturer's late filing.

In sum, NHTSA has carefully considered the arguments presented by Maserati but has concluded that Maserati has not shown "good cause" for its late filing of petitions for low volume exemptions for MYs 1986, 1987, and 1989 through 1991.

(15 U.S.C. 2002; delegation of authority at 49 CFR 1.49 and 501.8)

Issued on: June 19, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–14538 Filed 6–21–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held July 9, 1990.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4 901 D Street, SW., Washington, DC 20024, Telephone No. (202) 252–8128, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on July 9, 1990 in Room 224 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90–14429 Filed 6–21–90; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include *butyl acrylate, methyl acrylate, ethyl acrylate,* and *2-ethylhexyl acrylate.*

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produced such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that butyl acrylate, methyl acrylate, ethyl acrylate, and 2-ethylhexyl acrylate should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petitions to add butyl acrylate, methyl acrylate, ethyl acrylate, and 2-ethylhexyl acrylate were submitted by Hoechst Celanese, a manufacturer and exporter of these substances. No material comments were received on these petitions.

$$\underset{\text{propylene}}{2\,C_3H_6} + \underset{\text{oxygen}}{1.5\,O_2} + \underset{\text{methane}}{CH_4} \rightarrow \underset{\text{butyl acrylate}}{CH_2CHCOOC_4H_9} + \underset{\text{hydrogen}}{H_2} + \underset{\text{water}}{H_2O}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.38 per ton. This is based upon a conversion factor for propylene of 0.7841 and a conversion factor for methane of 0.162.

Butyl Acrylate

Butyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.8 percent by weight of the materials used in its production.

HTS number: 2916.12.50.30
Schedule B number: 2916.12.5030
CAS number: 141–32–2

Butyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing butyl acrylate is by esterification of arcylic acid with butanol. Acrylic acid is produced by oxidation of propylene. Butanol is produced from propylene using the vapor phase technology.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{propylene}}{2\,C_3H_6} + \underset{\text{oxygen}}{1.5\,O_2} + \underset{\text{methane}}{CH_4} \rightarrow \underset{\text{butyl acrylate}}{CH_2CHCOOC_4H_9} + \underset{\text{hydrogen}}{H_2} + \underset{\text{water}}{H_2O}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.38 per ton. This is based upon a conversion factor for propylene of 0.7841 and a conversion factor for methane of 0.162.

Methyl Acrylate

Methyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 54.7 percent by weight of the materials used in its production.

HTS number: 2916.12.50.20
Schedule B number: 2916.12.5020
CAS number: 96–33–3

Methyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing methyl acrylate is by esterification of acrylic acid with methanol. Acrylic acid is produced by oxidation of propylene. Methanol is obtained by steam reforming natural gas.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{propylene}}{C_3H_6} + \underset{\text{oxygen}}{1.5\,O_2} + \underset{\text{methane}}{CH_4} \rightarrow \underset{\text{methyl acrylate}}{CH_2CHCOOCH_3} + \underset{\text{hydrogen}}{H_2} + \underset{\text{water}}{H_2O}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.29 per ton. This is based upon a conversion factor for propylene of 0.5534 and a conversion factor for methane of 0.483.

Ethyl Acrylate

Ethyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 59.3 percent by weight of the materials used in its production.

HTS number: 2916.12.50.10
Schedule B number: 2916.12.5010
CAS number: 140–88–5

Ethyl acrylate, a liquid, is derived from the taxable chemicals *propylene* and *ethylene*. The predominant method of producing ethyl acrylate is by esterification of acrylic acid with ethanol. Acrylic acid is producted by oxidation of propylene. Ethanol is produced from ethylene.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{propylene}}{C_3H_6} + \underset{\text{oxygen}}{1.5\,O_2} + \underset{\text{ethylene}}{C_2H_4} \rightarrow \underset{\text{ethyl acrylate}}{CH_2CHCOOC_2H_5} + \underset{\text{water}}{H_2O}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $3.85 per ton. This is based upon a conversion factor for propylene of 0.4861 and a conversion factor for ethylene of 0.3039.

2-Ethylhexyl Acrylate

2-ethylhexyl acrylate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 78.7 percent by weight of the materials used in its production.

$$3\ C_3H_6\ \text{propylene} + 1.5\ O_2\ \text{oxygen} + 2\ CH_4\ \text{methane} \rightarrow CH_2CHCOOCH_2CHC_4H_9C_2H_5\ \text{2-ethylhexyl acrylate} + H_2O\ \text{water} + 2\ H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $5.08 per ton. This is based upon a conversion factor for propylene of 0.8741 and a conversion factor for methane of 0.2376.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-14430 Filed 6-21-90; 8:45 am]
BILLING CODE 4830-01-M

Tax on Certain Imported Substances; Determination

AGENCY: International Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89-61, 1989-1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include *vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate,* and *isobutyl acetate.*

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89-61, 1989-1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate, and isobutyl acetate should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petitions to add vinyl acetate, normal propyl acetate, isopropyl acetate, normal butyl acetate, and isobutyl acetate were submitted by Hoechst Celanese, a manufacturer and exporter of these substances. No material comments were received on these petitions.

Vinyl Acetate

Vinyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 63.8 percent by weight of the materials used in its production.

HTS number: 2915.32.00
Schedule B number: 2915.32.0000
CAS number: 108-05-4

Vinyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing vinyl acetate is by oxyacetylation of ethylene with oxygen and acetic acid. Acetic acid is made by carbonylation of methanol.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4\ \text{ethylene} + 2\ CH_4\ \text{methane} + H_2O\ \text{water} + \tfrac{1}{2}\ O_2\ \text{oxygen} \rightarrow CH_3COOHCH_2\ \text{vinyl acetate} + 4\ H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.72 per ton. This is based upon a conversion factor for ethylene of 0.3689 and a conversion factor for methane of 0.2095.

Normal Propyl Acetate

Normal propyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.9 percent by weight of the materials used in its production.

HTS number: 2915.39.45.10
Schedule B number: 2915.39.4510
CAS number: 109-60-4

Normal propyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing normal propyl acetate is by esterifying normal propyl alcohol with acetic acid. Normal propyl alcohol is produced by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4\ \text{ethylene} + 3\ CH_4\ \text{methane} + 2\ H_2O\ \text{water} \rightarrow CH_3COOC_3H_7\ \text{n-propyl acetate} + H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.26 per ton. This is based upon a conversion factor for ethylene of 0.3148 and a conversion factor for methane of 0.2117.

Isopropyl Acetate

Isopropyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 67.9 percent by weight of the materials used in its production.

HTS Number: 2915.39.50.00
Schedule B number: 2915.39.6000
CAS number: 108-21-4

Isopropyl acetate, a liquid, is derived from the taxable chemicals *ethylene* and *methane*. The predominant method of producing isopropyl acetate is by esterifying isopropyl alcohol with acetic acid. Isopropyl alcohol is produced by the hydrogeneration of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4\ \text{ethylene} + 3\ CH_4\ \text{methane} + 2\ H_2O\ \text{water} \rightarrow CH_3COOC_3H_7\ \text{isopropyl acetate} + 5\ H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.34 per ton. This is based upon a conversion factor for ethylene of 0.326 and a conversion factor for methane of 0.2173.

Normal Butyl Acetate

Normal butyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 71.4 percent by weight of the materials used in its production.

HTS number: 2915.33.00
Schedule B number: 2915.33.0000
CAS number: 123-86-4

Normal butyl acetate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing normal butyl acetate is by esterifying normal butyl alcohol with acetic acid. Butyl alcohol is produced by the hydrogeneration of butyraldehyde. Butyraldehyde is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6\ \text{propylene} + 3\ CH_4\ \text{methane} + 2\ H_2O\ \text{water} \rightarrow CH_3COOC_4H_9\ \text{n-butyl acetate} + 5\ H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.72 per ton. This is based upon a conversion factor for propylene of 0.4242 and a conversion factor for methane of 0.1881.

Isobutyl Acetate

Isobutyl acetate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 71.4 percent by weight of the materials used in its production.

HTS number: 2915.34.00
Schedule B number: 2915.34.0000
CAS number: 110-19-0

Isobutyl acetate, a liquid, is derived from the taxable chemicals *propylene* and *methane*. The predominant method of producing isobutyl acetate is by esterifying isobutyl alcohol with acetic acid. Butyl alcohol is produced by the hydrogenation of butyraldehyde. Butyraldehyde is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$C_3H_6\ \text{propylene} + 3\ CH_4\ \text{methane} + 2\ H_2O\ \text{water} \rightarrow CH_3COOC_4H_9\ \text{isobutyl acetate} + 5\ H_2\ \text{hydrogen}$$

The rate of tax prescribed for this substance, under section 4671(b)(3), is $2.86 per ton. This is based upon a conversion factor for propylene of 0.4524 and a conversion factor for methane of 0.1920.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-14431 Filed 6-21-90; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 90-14558.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thrusday, June 28, 1990, 10:00 a.m.

This meeting will be open to the public.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor).

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: 1990 Management Plan Reallocations.

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-14611 Filed 6-20-90; 11:15 am]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 55, No.121
Friday, June 22, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

Correction

In interim rule document 90-7683 beginning on page 12811 in the issue of Friday, April 6, 1990, make the following corrections:

§ 1942.507 [Corrected]

1. On page 12813, in § 1942.507, in paragraph (d)(3)(i), in the first line "quality" should read "quantity".

§ 1942.521 [Corrected]

2. On page 12814, in § 1942.521, in paragraph (d), in the fifth line "state" should read "stage".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 900360-0060]

Imposition of Foreign Policy Controls on Propellant Batch Mixers

Correction

In rule document 90-7788 beginning on page 13121 in the issue of Monday, April 9, 1990, make the following corrections:

On page 13123, in the first column:

1. The second part heading should read PART 799-[AMENDED];

2. The headings to amendatory instructions 5 and 6 should read SUPPLEMENT NO. 1 TO § 799.1-[AMENDED]; and

3. In amendatory instructions 5 and 6, in the first lines "§ 779.1" should read "§ 799.1".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-404-000, et al.]

Georgia Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-13680 beginning on page 24299 in the issue of Friday, June 15, 1990, make the following correction:

On page 24300, in the first column, the second line should read "[Docket No. ER90-443-000]".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052-AA84

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions

Correction

In rule document 90-13862 beginning on page 24861 in the issue of Tuesday, June 19, 1990, make the following correction:

On page 24862, in the first column, beginning in the third line, the DATES paragraph should read as follows:

"DATES: These regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the Federal Register."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

[BQC-21-FC]

RIN 0938-AB66

Medicaid Program; Medical Eligibility Quality Control (MEQC) Program Requirements

Correction

In rule document 90-12247 beginning on page 22142 in the issue of Thursday, May 31, 1990, make the following corrections:

1. On page 22145, in the first column, in the fourth line, "Medicare" should read "Medicaid".

2. On page 22147, in the first column, in the first complete paragraph, in the sixth line, "to MAO stratum" should read "the MAO stratum".

3. On the same page, in the same column, in the ninth from last line, "weighting" was misspelled.

4. On page 22149, in the first column, in the first complete paragraph, in the 14th line, "110 percent" should read "100 percent".

5. On page 22151, in the third column, in the third paragraph, in the first line, "§ 431.816(d)" should read "§ 431.812(d)".

6. On page 22163, in the second column, in the second paragraph, in the fifth from last line, "just" should read "must".

7. On the same page,in the same column, in the 10th from last line, "not" should read "now".

8. On page 22164, in the first column, in the last paragraph, in the 20th line, "in correct" should read "is correct".

9. On page 22173, in the third column, immediately above the first signature, the date should read "August 15, 1990" and immediately above the second signature insert "Approved: February 6, 1990."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[BPD-306-F]

RIN 0938-AB54

Waiver of Certain Membership Requirements for Certain Health Maintenance Organizations (HMOs), and State Option for Disenrollment Restrictions for Certain HMOs Under Medicaid

Correction

In rule document 90-13543 beginning on page 23738, in the issue of Tuesday, June 12, 1990, make the following correction:

On page 23744, in the second column, in amendatory instruction 3., in the third line, "(b)(3) and" should read "(b)(3) as".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In rule document 90-11955 beginning on page 21173 in the issue of Wednesday, May 23, 1990, make the following correction:

On page 21182, in the first column, in § 170.31, in the table, the first three lines of entry "N" should read as follows:

N. Licenses that authorize services for other licensees, except (1) licenses that authorize calibration * * *.

Note: In the correction to this document published at 55 FR 23836, June 12, 1990, item five should be disregarded.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Power Reactor Local Public Document Rooms to Receive Documents on Microfiche Rather Than in Paper Copy

Correction

In notice document 90-12724 appearing on page 22419 in the issue of Friday, June 1, 1990, make the following correction:

In the second column, under FOR FURTHER INFORMATION CONTACT, in the last line the toll-free telephone number should read "800-638-8081".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-09; Notice 01]

RIN 2127-AC55

Federal Motor Vehicle Safety Satndards: Brake Hoses

Correction

In proposed rule document 90-13953 beginning on page 24278 in the issue of Friday, June 15, 1990, in the first column, under DATES, "July 16, 1990" should read "30 days after publication of the final rule in the Federal Register".

BILLING CODE 1505-01-D

federal register

Friday
June 22, 1990

Part II

Department of Education

34 Part 303
Early Intervention Program for Infants and Toddlers With Handicaps; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 303 to add an Office of Management and Budget (OMB) control number to one section of the regulations. This section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irwin, Office of Special Education Programs, U.S. Department of Education (Mary E. Switzer Building, Room 4618), 400 Maryland Avenue SW., Washington, DC 20202-7240, Telephone: (202) 732-1114.

SUPPLEMENTARY INFORMATION: On June 22, 1989, final regulations implementing the 1986 Amendments to the Education of the Handicapped Act (EHA) were published in the **Federal Register** (54 FR 26306-26348). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements for this section.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 303

Education, Education of the handicapped, Grant Programs—education, Medical personnel, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.181; Early Intervention Program for Infants and Toddlers with Handicaps)

Dated: June 18, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 303 of title 34 of the Code of Federal Regulations as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

1. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471-1485, unless otherwise noted.

§ 303.653 [Amended]

2. Section 303.653 is amended by adding "(Approved by the Office of Management and Budget under control number 1820-0578)" following that section.

[FR Doc. 90-14450 Filed 6-21-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
June 22, 1990

Part III

Department of Education

Pell Grant Program; Publication of the 1990-91 Award Year Zero Pell Grant Index (PGI) Charts; Notice

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Publication of the 1990–91 Award Year Zero Pell Grant Index (PGI) Charts.

SUMMARY: The Secretary publishes the Zero Pell Grant Index (PGI) Charts for institutions to use when verifying application information under the Pell Grant Program. The use of the Zero PGI Charts is authorized by § 668.59(a)(2) of the Student Assistance General Provisions regulations.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grant assistance to financially needy students to help them meet the cost of postsecondary education. In order to receive a Pell Grant, a student must submit an application to the Secretary that contains both financial and non-financial information which permits the Secretary to determine the student's expected family contribution (EFC). The EFC is an amount which the student and his or her family may reasonably be expected to contribute toward the student's cost of a postsecondary education. The EFC is now called the Pell Grant Index, or PGI; this index was previously called the Student Aid Index (SAI). Therefore, the Notice of Zero SAI Charts is renamed the Notice of Zero PGI Charts for the Pell Grant Program.

The Secretary notifies the student of his or her PGI on a document called a Student Aid Report (SAR). On the SAR, the Secretary also includes the information reported by the applicant on the application. The Secretary uses some of this information to calculate the student's PGI.

In order to assure that applicants for Pell Grants provide accurate information on their applications, the Secretary may require some applicants to verify and update the information submitted on the applications. The regulations governing this verification process are in the Student Assistance General Provisions regulations, 34 CFR part 668, subpart E. Generally, under these regulations, if an applicant is required to change any of the information on his or her application, the applicant must make the changes on the SAR that he or she received and must resubmit that revised SAR to the Secretary.

However, there are some circumstances where the changed application information will not change the student's PGI, and, under those circumstances, the Secretary does not require the applicant to resubmit the SAR. Under § 668.59(a)(2) of the Student Assistance General Provisions regulations, the Secretary does not require an applicant to resubmit the changed SAR to the Secretary if the applicant has a PGI of zero and the institution that the applicant is attending can determine that the applicant's PGI will remain at zero using verified information and the Zero PGI Charts.

The Zero PGI Charts are a simplified version of the formula the Secretary uses in calculating an applicant's PGI. The charts may be used only if:

- The applicant's dependency status does not change, and
- The applicant's (spouse's) income and assets and the parental income and assets of a dependent student do not exceed specified amounts.

An institution may use the Zero PGI Charts to calculate a Pell Grant applicant's PGI if the following criteria are satisfied. (These criteria are based upon sections 411A through 411F of the Higher Education Act of 1965, as amended (HEA).)

For Students Qualified To Use the Simplified Needs Test

1. The effective income of a single dependent student is less than $3,601 in calendar year 1989.
2. The effective income of a married dependent student and spouse is less than $5,501 in calendar year 1989.
3. The effective family income of an unmarried independent student without dependent children is less than $5,701 in calendar year 1989.
4. The effective family income of a married independent student without dependents is less than $7,201 in calendar year 1989, if the student does not qualify to use the full employment expense offset (EEO), or the effective family income is less than $8,701 if the student is qualified to use the full EEO.
5. The effective family income of an independent student with one dependent (other than a spouse) is less than $8,701 in calendar year 1989.

For Dependent Students[1] Using the Regular Needs Test

1. The effective income of a single dependent student is less than $3,801.
2. The effective income of a married dependent student is less than $5,501.
3. Dependent student and spouse net assets equal zero.[2]
4. Net home assets of parents are less than $30,001.[2]
5. Net business assets (exclusive of farm assets) of parents are less than $80,001.
6. Net farm (or a combination of net farm and net business assets) of parents are less than $100,001.
7. Net parental assets, other than home, farm, or business assets are less than $25,001.
8. Combined net parental business, home, and other assets (exclusive of farm assets) are less than $110,001.[2]
9. Combined net parental farm, business, home, and other assets are less than $130,001.[2]

For Independent Students[3] Using the Regular Needs Test

1. The effective family income of an unmarried independent student without dependent children is less than $5,701.
2. The effective family income of a married independent student without dependents is less than $7,201, if the student is not qualified to use the full EEO, or the effective family income is less than $8,701 if the student is qualified to use the full EEO.
3. The effective family income of an independent student with one dependent (other than a spouse) is less than $8,701.
4. The assets of an unmarried independent student without dependent children are equal to zero.[4]
5. Net home assets of an unmarried independent student with a dependent, or a married independent student without dependents, or a married independent student with dependents other than the spouse are less than $30,001.[4]
6. Net business assets (exclusive of farm assets) are less than $80,001.
7. Net farm assets (or a combination of net farm and net business assets) are less than $100,001.
8. The net value of assets, other than home, farm, or business assets is less than $25,001.
9. Combined net business, home, and other assets (exclusive of farm assets) are less than $110,001.[4]

10. Combined net farm, business, home, and other assets are less than $130,001.[4]

Zero PGI—Chart A

Use if applicant is eligible for full employment expense offset (EEO).[1]

An applicant's PGI is zero if:

The correct household size is:	And the verified effective family income (EFI) is less than:
2	$8,701
3	10,301
4	12,801
5	14,901
6	16,401
7	18,201
8	20,001
9	21,801
10	23,601
11	25,401
12	27,201
13	29,001
14	30,801

Zero PGI—Chart B

Use if applicant is not eligible for full employment expense offset (EEO).[2]

An applicant's PGI is zero if:

The correct household size is:	And the verified effective family income (EFI) is less than:
1	$5,701
2	7,201
3	8,801
4	11,301
5	13,401
6	14,901
7	16,701
8	18,501
9	20,301
10	22,101
11	23,901
12	25,701
13	27,501
14	29,301

[1] If a student, the student's spouse or parent(s) is a dislocated worker as defined in title III of the Job Training Partnership Act, use calendar year 1989 expected year income. For all others use income received during calendar year 1989.

[2] If a student, student's spouse or parent is a dislocated worker as defined in title III of the Job Training Partnership Act, or displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

[3] If a student or the student's spouse is a dislocated worker as defined in title III of the Job Partnership Training Act, use calendar year 1989 expected income. For all other students, use income received in calendar year 1989.

[4] If a student or the student's spouse is a dislocated worker as defined in title III of the Job Training Partnership Act, or a displaced homemaker as defined in section 480(e) of the HEA, the net asset value of a principal residence shall be considered zero.

[1] Use chart A if—

For a dependent student:

(1) The parents of the student are married and both parents earned income of $3,000 or more; or

(2) The parent of the student qualified as a head of household for Federal income tax purposes and the parent earned income of $3,000 or more.

For an independent student with dependents:

(1) Both the student and the spouse earned income of $3,000 or more; or

(2) The student qualified as a head of household for Federal income tax purposes and the student earned income of $3,000 or more.

[2] Use this chart if you cannot use Chart A.

Effective Family Income (EFI)

Effective family income equals total income minus the sum of (1) Federal income taxes paid or payable, (2) the tax allowance calculated under the Tax Allowance Percentage Table included in this Notice, and (3) excludable income, as defined below.

Effective Income (EI)

Effective income equals the adjusted gross income of the student (and spouse) reported in the U.S. income tax return of the preceding award year, or income earned from work not reported on a U.S. income tax return in the case of non-tax filers and, the total untaxed income and benefits minus (1) Any excludable income and (2) the amount of U.S. income tax paid or payable.

Total income equals the adjusted gross income (determined for tax filers from the U.S income tax return or income earned from work not reported on a U.S. income tax return in the case of non-tax filers), the total untaxed income and benefits of the student's parents for a dependent student, or of the student and spouse for an independent student, and one-half of the student's Veterans Administration (VA) educational benefits (under chapters 34 and 35 of title 38 of the United States Code).

Excludable Income

Excludable income includes:

- For a Native American student, individual payments of $2000 or less received by the Student (and spouse and the student's parents) under the Per Capita or Distribution of Judgement Funds Act, or any income received under the Alaska Native Claims Settlement Act or the Maine Indian Claims Settlement Act.
- Income of a divorced or separated spouse of a student, or of a student's spouse who has died.
- Student financial assistance, except certain veterans' or social security benefits.
- Unemployment compensation received by a dislocated worker in accordance with Title III of the Job Training Partnership Act.
- Income or capital gains from the sale of a farm or business assets of the family, if the sale resulted from a voluntary or involuntary foreclosure, forfeiture, bankruptcy or involuntary liquidation.

Tax Allowance Percentage Table

If state, or territory of residence is:	And total income is: Less than $15,000	And total income is: or $15,000 or more
	Then the percentage is:	
Alabama	.07	.06
Alaska	.03	.02
American Samoa	.04	.03
Arizona	.07	.06
Arkansas	.07	.06
California	.09	.06
Canada	.09	.06
Colorado	.06	.07
Connecticut	.06	.07
Delaware	.09	.06
District of Columbia	.11	.10
Federated Sates of Micronesia	.04	.03
Florida	.05	.04
Georgia	.06	.07
Guam	.04	.03
Hawaii	.11	.10
Idaho	.06	.06
Illinois	.06	.07
Indiana	.07	.06
Iowa	.09	.06
Kansas	.06	.07
Kentucky	.06	.07
Louisiana	.04	.03
Maine	.10	.09
Marshall Islands	.04	.03
Maryland	.11	.10
Massachusetts	.11	.10
Mexico	.09	.06
Michigan	.12	.11
Minnesota	.12	.11
Mississippi	.07	.06
Missouri	.07	.06
Montana	.07	.06
Nebraska	.06	.06
Nevada	.04	.03
New Hampshire	.07	.06
New Jersey	.10	.09
New Mexico	.05	.04
New York	.14	.13
North Carolina	.09	.05
North Dakota	.06	.05
Northern Mariana Islands	.04	.03
Ohio	.09	.06
Oklahoma	.07	.03
Oregon	.11	.10
Pennsylvania	.09	.06
Puerto Rico	.03	.02
Rhode Island	.11	.10
South Carolina	.09	.06
South Dakota	.05	.04
Tennessee	.05	.04
Texas	.04	.03
Utah	.09	.06
Vermont	.06	.06
Virgin Islands	.04	.03
Virginia	.09	.06
Washington	.06	.05
West Virginia	.07	.06
Wisconsin	.13	.12
Wyoming	.03	.02
Trust Territory of the Pacific Islands (Palau)	.04	.03
Blank or Invalid State	.09	.06

TAX ALLOWANCE PERCENTAGE TABLE—Continued

If state, or territory of residence is:	And total income is:	
	Less than $15,000	or $15,000 or more
Sections 411B, 411C, and 411D of the HEA.		

FOR FURTHER INFORMATION CONTACT:
Adara L. Walton, Acting Chief, or Joseph Vettickal, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., ROB-3, Room 4613, Washington, DC 20202, Telephone: (202) 708-4601.

(Catalog of Federal Domestic Assistance No. 84.063 Pell Grant Program)
(20 U.S.C. 1094)

Dated: June 12, 1990.
[FR Doc. 90-14451 Filed 6-21-90; 8:45 am]
BILLING CODE 4000-01-M

federal register

Friday
June 22, 1990

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan Programs; Notice

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan (Formerly the Guaranteed Student Loan Programs)

AGENCY: Department of Education.

ACTION: Notice of Procedures for certification of need analysis servicers' systems and notice of closing dates for requesting and returning agreements and transmittal of information.

SUMMARY: The Secretary of Education is informing individuals and organizations that operate need analysis systems (need analysis servicers) of the procedures the Secretary will use to certify need analysis systems for the 1991–92 award year.

FOR FURTHER INFORMATION CONTACT: Edith Bell, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4613, ROB–3, Washington, DC 20202–5346, Telephone (202) 708–4601. For information regarding the specification package contact Rafael Delgado, Telephone (301) 588–5484.

SUPPLEMENTARY INFORMATION:

Program Information

The Perkins Loan, College Work Study, Supplemental Educational Opportunity Grant (known collectively as the campus-based programs) and the Stafford Loan programs are "need based" student financial aid programs. In order to award or approve financial aid under each program, an institution must determine whether a student has financial need. The institution determines a student's financial need by subtracting from the student's educational cost his or her expected family contribution, i.e., the amount the student, his or her spouse and, in the case of a dependent student, his or her parents may reasonably be expected to contribute toward his or her educational costs.

Institutions participating in the Income Contingent Loan (ICL) program must make ICLs reasonably available first to all eligible students who demonstrate financial need.

Part F of Title IV of the Higher Education Act of 1965, as amended, (HEA) provides detailed formulas for determining a student's expected family contribution for the campus-based, ICL and Stafford Loan programs. The statutory formulas specify the criteria, data elements and tables used for determining schedules of expected family contributions for these programs

As authorized by the HEA, and as a service to institutions, the Secretary will certify that an individual's or organization's system has the capability for determining an expected family contribution that is consistent with the calculation prescribed by part F of title IV of the HEA. If an institution uses a certified need analysis system in the calculation of an expected family contribution for 1991–92 under the campus-based, ICL, and Stafford Loan programs, the institution can be assured that the expected family contribution produced by the system will accurately reflect the expected family contribution described in title IV, part F, of the HEA. A need analysis servicer may also agree to incorporate Department of Education (ED) edits, specifications and/or selection criteria for verification as described in § 668.54 of the Student Assistance General Provisions regulations. Need analysis servicers must follow the procedures set forth below to have their systems certified by the Secretary. The Secretary will provide educational institutions with a list of certified systems in May 1991.

Certification Procedural Requirements

In order to have its system certified by the Secretary for the 1991–92 award year, a need analysis servicer must enter into an agreement with the Secretary and follow the procedural steps below:

Step 1: The Secretary automatically sends an agreement package to need analysis servicers certified for the 1990–91 award year. Need analysis servicers that were not certified for the 1990–91 award year must request an agreement package by July 20, 1990. The request must be in writing and either hand-delivered or mailed to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., Room 4613, Regional Office Building 3, Washington, DC 20202–5346.

Step 2: The Secretary provides an agreement package to the need analysis servicer. The agreement package includes the agreement and information that will enable the need analysis servicer to determine whether it wishes its system to become certified and to determine its type of participation.

Step 3: A need analysis servicer selects its participation type by indicating that type on the agreement and returning its signed agreement to ED by August 17, 1990.

Agreements Delivered by Mail

Agreements delivered by mail must be addressed to the Department of Education, Office of Student Financial Assistance Division of Policy and Program Development, Student Verification Branch, 400 Maryland Avenue, SW., (Room 4613, Regional Office Building 3), Washington, DC 20202–5346.

A need analysis servicer must show proof of mailing the agreement. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If agreements are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Agreements Delivered by Hand

Agreements that are hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Policy and Program Development, Student Verification Branch, Seventh and D Streets SW. (Room 4613, Regional Office Building 3), Washington, DC 20202–5346.

Hand-delivered agreements will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays. Agreements delivered by hand will not be accepted after 4:30 p.m. on the closing date.

Step 4: Following submission of the signed agreement to ED, ED provides the need analysis servicer with the appropriate software development package based on the participation type selected.

Step 5: Test cases and additional information pertaining to the submission of the processed test cases will be transmitted by ED to the need analysis servicer at a date agreed upon between ED and the need analysis servicer. The complexity and number of the test cases depend on the participation type the need analysis servicer has selected. (A test case is a discrete set of hypothetical

applicant data which is used to test the accuracy and adequacy of a computer function and the need analysis servicer's implementation of part F of title IV of the HEA. A single test case may test one or more specific input, process, or output functions. An aggregate of test cases may test a particular computer process, computer run, process cycle, subsystem, or total system process.)

Each set of test cases is designed to provide evidence that will indicate the need analysis servicer's ability to perform accurately operational functions of the participation type selected. ED will evaluate two test case submissions at no charge; a fee of $3,000 will be charged for any additional test case submissions. A need analysis servicer will be given a choice of receiving its test cases by floppy disk or magnetic or cartridge tape.

Note: ED expects that a servicer will thoroughly test its system prior to submitting test cases to ED for evaluation.

Step 6: A need analysis servicer processes all the test cases provided and submits to ED the generated results on floppy disk or magnetic or cartridge tape by March 29, 1991. The need analysis servicer must demonstrate to the satisfication of ED that there were no system deficiencies in those test cases submitted by March 29, 1991. Any discrepancies in the test case results must be resolved to the satisfaction of ED by April 12, 1991 in order for the need analysis servicer's system to be certified and included in the list of certified systems to be provided by the Secretary in May 1991.

Test Case Results Delivered by Mail

Test cases delivered by mail must be addressed to Mr. William Schulte, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

A need analysis servicer must show proof of mailing the test case results. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipped label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If test case results are forwarded using the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. A need analysis servicer should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, confirmation should be obtained from the local post office. A need analysis servicer is encouraged to use certified or, at least, first-class mail.

Test Case Results Delivered by Hand

Test case results that are hand-delivered must be taken to Mr. William Schulte, National Computer Systems, 2510 North Dodge Street, Iowa City, Iowa 52244.

Hand-delivered test case results will be accepted between 8 a.m. and 4 p.m. daily (Iowa City time), except Saturdays, Sundays, and Federal holidays. Test case results delivered by hand will not be accepted after 4 p.m. on the closing date.

Closing Dates

1. Deadline date to request agreement package—July 20, 1990.
2. Deadline date to submit agreement to ED—August 17, 1990.
3. Deadline date to submit test case results to ED—March 29, 1991.
4. Deadline date to resolve test case results—April 12, 1991.

(Catalog of Federal Domestic Assistance No. 84.038, Perkins Loan Program (formerly National Direct Student Loan); 84.038, Income Contingent Loan Program; 84.228, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Stafford Loan Program (formerly Guaranteed Student Loan))

Dated: June 12, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–14449 Filed 6–21–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
June 22, 1990

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Demonstration Projects for National Significance Program in Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84-231]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Demonstration and Innovation Projects of National Significance Program in Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1990

Agency: Department of Education.

Purpose of Program: This program provides financial assistance to nonprofit and for-profit entities to establish demonstration and innovation projects in three categories relevant to technology-related assistance for individuals with disabilities. The three categories are: model delivery projects, model research and demonstration projects, and income-contingent direct loan demonstration projects.

Deadline for Transmittal of Applications: August 6, 1990.

Applications Available: June 25, 1990.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Program type	Priorities	No. of awards	Average award	Project period (months)
Model delivery projects	Demonstrations of the use of peers with disabilities * * * § 346.11(a)(1)(iii).	2	$125,000	36
	Models to provide technology-related assistance for employment § 346.11(a)(1)(vi).	2	125,000	36
	Model projects using technology to facilitate access * * * to direct support services § 346.11(a)(1)(xxi).	2	125,000	36
Research and development	The adaptation of technology developed for the population without disabilities to meet the specialized needs of individuals with disabilities § 346.11(a)(2)(ii).	1	150,000	36
	The development of devices to enhance transportation for individuals with disabilities § 346.11(a)(2)(xix).	1	150,000	36
Income-contingent direct loan demonstrations	The viability of loans made for the lease or purchase of technology-related assistance for work-related purposes § 346.11(a)(3)(ii).	1	150,000	24
	The viability of loans made for adults, children, or elderly individuals with disabilities § 345.11(a)(3)(iv).	1	150,000	24
	Methods to assess individuals with disabilities * * * as candidates for loans § 346.11(a)(3)(xi).	1	150,000	24

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732-1207; deaf and hearing-impaired individuals may call (202) 732-5316 for TDD services.

For Further Information Contact: Carol Cohen, National Institute on Disability and Rehabilitation Research, (202) 732-5066.

Program Authority: 29 U.S.C. 2201-2271.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, and 85, and (b) when effective after adoption in final, the proposed regulations for this program published in the **Federal Register** on April 16, 1990, at 55 FR 14220.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program because the Department must initiate the request for applications at this time in order for awards to be made in fiscal year 1990. However, the Secretary has carefully considered public comments on the NPRM, and expects to make some changes in the final regulations.

The Secretary expects to change the weights and points accorded to two of the selection criteria in § 346.31 in the final regulations. The weights and points that the Secretary expects to assign to each of the selection criteria in § 346.31 are as follows: Importance and innovativeness: Weight 4/Points 20; Goals and objectives: Weight 3/Points 15; Plan of activities: Weight 4/Points 20; Management plan: Weight 2/Points 10; Involvement of individuals with disabilities: Weight 4/Points 20; and Evaluation plan: Weight 3/Points 15.

Also on the basis of public comment, the Secretary expects to clarify the introductory wording in §§ 346.32(d) and 346.33(b)(4) to read, "The project includes substantive roles for individuals with disabilities, or their families or representatives in —", which is identical to the wording in § 346.31(e).

The comments received by the Secretary did not raise any other significant policy issues with respect to the proposed regulations. Applicants should prepare their applications based on the NPRM with the above modifications to the weights and points assigned to each of the two criteria, and the above clarification in wording. The Secretary does not expect to make further changes in the final regulations that would affect applicants for funds. If any other changes are made in the final regulations for this program, applicants will be given an opportunity to amend or resubmit their applications.

Dated: June 18, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90-14516 Filed 6-19-90; 1:37 pm]

BILLING CODE 4001-01-M

federal register

Friday,
June 22, 1990

Part VI

Department of Health and Human Services

Office of Human Development Services

The Abandoned Infants Assistance Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13551-901]

Abandoned Infants Assistance Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of financial assistance and request for applications to carry out demonstration projects to provide comprehensive services to abandoned infants and their families.

SUMMARY: The Children's Bureau of the Administration for Children, Youth and Families announces the availability of funds to carry out demonstration projects to prevent the abandonment in hospitals of infants and young children, specifically drug-exposed children and those with acquired immune deficiency syndrome (AIDS); and to develop, implement, and operate a comprehensive services program to address the needs of these children and their families.

DATES: The closing date for receipt of applications is August 21, 1990.

ADDRESSES: Applications should be sent to: Abandoned Infants Assistance Program, Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, Hubert H. Humphrey Building, Room 341–F, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson.

FOR FURTHER INFORMATION CONTACT: Cecelia E. Sudia, (202) 245–0764.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Background

Public Law (P.L.) 100–505, the "Abandoned Infants Assistance Act of 1988," (42 U.S.C. 670 note) (the Act) was signed into law on October 18, 1988. The purposes of the Act are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been exposed to drugs and those with AIDS; to identify and address the needs of those children who are, or might be, abandoned; to develop a program of comprehensive services for these children and their families including foster family care services, case management services, family support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children. In addition, the Secretary is required to carry out evaluation studies, submit reports to Congress and may provide technical assistance and training programs to support the planning, development and operation of the demonstration projects.

Definition: The term "abandoned infants and young children" means infants and young children who are medically cleared for discharge from a hospital setting, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. (42 U.S.C. 670 note, title I, section 103.)

B. Eligible Applicants

Public and nonprofit private entities.

C. Availability and Allocation of Funds

Total combined funding for fiscal year 1990 competitive grants and contracts under section 101 of the Act (42 U.S.C. 670 note), is $8,367,000.

The Office of Human Development Services proposes to award approximately 40 grants in amounts ranging from $50,000 to $450,000 depending on the priority area.

Applications under this announcement will be considered for:

- *Model Service Projects*—to organize or augment a comprehensive services program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment, and their families, and to evaluate the program.
- *Training Projects*—to recruit and train health and social service personnel, foster and biological parents and relative caregivers, and residential care providers who are providing or will provide care for abandoned infants and young children, or those at risk of abandonment, and their families.
- *Resource Development and Coordination Projects*—to assist States and localities to identify and coordinate existing funding sources and human resources to address the prevention of abandonment and to bring about optimal availability and utilization of services for abandoned infants and young children.

All applicants funded under this announcement will be required to cooperate with technical assistance efforts and provide information for special studies or evaluations funded by the Administration for Children, Youth and Families (ACYF).

All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

D. Statement of the Problem

Increasing numbers of infants and young children are being infected with HIV and exposed to drugs during their prenatal development. In particular, concern is mounting that an increasing number of women are using illicit drugs and alcohol during pregnancy with adverse consequences for their offspring. Some infants are drug dependent at birth or are born HIV positive. Some remain in hospitals beyond their need for in-hospital medical care, while others are placed in foster care or leave the hospital with their parent(s) but quickly come to the attention of the child protective services agency. Frequently, there are young siblings who may be at jeopardy in the home or who are already in out-of-home care.

Children exposed to drugs, and those who acquire AIDS, frequently pose difficult medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs and to provide respite for the caretakers themselves.

Although the need to protect the infant may be immediate, achieving premanency for the child is typically slow and complex. Some parents may be motivated to keep the child, but not to change their behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The service needs of the parent may be many, yet needed services may be fragmented among many different agencies. Some services may not be readily available. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

Yet, if permanency is to be achieved over a short period early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term solutions to provide premanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. A brief description of these programs with the name of a contact person is attached in the Appendix. Prospective applicants are urged to include these existing programs in the service network proposed.

Emphasis on Coordination

All applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. This may include public health, child welfare, substance abuse treatment and other relevant human services agencies. Insofar as possible, applicants are also encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers; and community parent education and parent support programs, including in-home visiting, respite care, and housing assistance in the community. Plans for coordination, joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the applicant's proposal and supported by documentation.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies must be explicit and supported by letters of specified commitment to the project. Pro forma support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State, and local resources to establish and maintain services beyond the life of the grant.

Part II: Responsibilities of the Grantee

A. Priority Area I—Model Service Projects

Proposals will be considered under this priority area which are designed to organize, make accessible, access and implement a comprehensive set of services to:

- Prevent the abandonment of infants and young children;
- Identify and address the needs of abandoned infants and children; and
- Assist abandoned infants and children to reside with their biological families, relatives, or foster and adoptive families, as appropriate. Short-term, transitional residential care services for small groups of infants or young children may be provided. However, it must be shown that a sufficient number of families cannot be recruited and trained to provide foster care for abandoned infants or young children in the community, and that these children would otherwise remain in hospitals inappropriately. Such proposals will be considered only if they are integral to a larger system of services working to achieve permanency for these children; they may not include the costs of construction or other structural changes for facilities.

In order to assure that consideration is given to the widest range of possible interests for program development, applicants must consider the broad range of possible circumstances confronting at-risk parents in the target community, including the following:

Before pregnancy: education about prenatal care, emphasizing the dangers of substance abuse, and other issues related to the prevention of abandonment.

During pregnancy: sensitizing all programs in the community to the importance of recognizing drug abuse during pregnancy, and providing voluntary services as often as possible.

Pregnant women in trouble where drug use is a factor: women who are arrested, victims of domestic violence, or reported to protective services for child maltreatment need special attention.

Women from high drug use areas seeking prenatal care, or entering a hospital for delivery.

Parents of infants who must remain in the hospital for any medical reasons related to HIV or possible drug involvement.

Families with drug exposed infants and young children in need of support programs.

Some promising strategies which may be considered in formulating proposals incude:

- Comprehensive programs with as many services as possible available at one site and located in areas accessible to the client population.
- Assured confidentiality to build client trust and encourage utilization of programs and services.
- Multidisciplinary collaboration to meet variable client needs including treatment, interagency agreements, use of a single case manager and integration of multi-agency case plans.
- Intensive interventions to meet the client's many needs over the long-term including home visits, child care, drop-in centers, and 24-hour crisis telephone lines.
- Supportive drug treatment services, adapted for women, with peer support to focus on common problems and avoiding confrontational group processes commonly used with men.
- Residential treatment and/or drug free housing before and after the birth for women and children to enable them to leave their provocative living environments where drugs and alcohol are readily available.
- Parent education and quality child care to support rehabilitation of the parent and the child.
- Respite care for biological, foster and adoptive parents.

Applicants for a model service project under this priority area may include training activities as a part of the project and need not apply separately for a training grant under Priority Area II. All applicants must address resource development and coordination as a goal of the program.

Each model service project must agree to fund a third-party evaluation as an integral part of the demonstration effort. This evaluation should be designed to collect systematic data to answer questions such as the following:

What are the characteristics of families who abandon children?

What are the service needs of children/mothers/families of drug exposed infants? Of HIV positive infants?

What are the outcomes of project services for children/mothers?

What are the barriers to comprehensive case management and to the coordination of service delivery?

What changes have been most helpful in improving the delivery of services?

The project director together with their third party evaluation contractor, must agree to meet with the Federal Project Officer within the first six months of the project to participate in the development of a coordinated evaluation plan.

Duration and funding level: Grants ranging from $150,000 to $450,000 per year, depending upon need and the scope of the proposed project, will be awarded for a two-year project period

with the possibility of a third year dependent upon satisfactory performance and the availability of funds. Approximately 20 projects will be funded.

B. Priority Area II—Training Projects

To meet the needs of this growing population of children and families, training is needed to increase the sensitivity of all service providers and to improve service delivery. Infants and young children at-risk of abandonment, or who have been abandoned, and their caretakers have special needs. Special efforts must be made to train caregivers to prevent abandonment, to help reunite families when children have been placed in foster care and when it is not feasible to reunify the family, to take the necessary steps to achieve permanency for the child in a nurturing and caring home.

Preventing abandonment requires early intervention and support to help women of childbearing age understand the risks of drug abuse to the unborn child; to avoid the use of illicit drugs and alcohol before and during pregnancy; to seek early prenatal care; to accept substance abuse treatment and supportive services; and to provide positive parenting. Mothers who learn that they are HIV positive need similar supports and access to treatment and other services.

Drug-exposed and HIV positive infants may differ in their needs, but both have special needs and frequently prove difficult to care for. Low birthweight, medical problems, and neurological and developmental delays are not uncommon. Often these children do not behave or respond in ways that correspond to the child's age and expected developmental stage. Bonding may be difficult and extraordinary patience may be needed in their care. Frequently, these infants have older siblings who may be in the home or in foster care who must also be considered in the case management plan for the family. Whether these children are cared for by parents, by relatives, or by foster parents, caregivers need training in what to expect of these children, how to nurture and care for them, and how to access respite care and other supportive services.

When children are placed in foster care, reasonable efforts to rehabilitate the family may involve multiple service providers. Coordination and communication among them is essential for comprehensive care and to avoid fragmented or duplicated services. The developmental needs of the infant dictate the importance of achieving early permanence for the child. Responsible decisions must be made concerning the feasibility of reuniting the child with the parent. When it is clear that children cannot be reunited with the family, immediate steps need to be taken to arrange for a permanent placement for the child.

To assure appropriate and timely services to this growing population of children and families, the combined efforts of the following service providers are needed:

- Health care, social service, and substance abuse treatment professionals;
- Hospital, court, other law enforcement, and community agency staff;
- Agency staff responsible for case management and permanency planning;
- Providers of respite care and other child care services;
- Biological parents, other caregiving relatives and their families; and
- Foster and adoptive parents.

Thoughtful consideration needs to be given to their varying and related training needs, the relevance of extant training materials, and methods for multidisciplinary training and improved communication among these groups.

Under this priority area, we will consider proposals to accomplish these training and coordination purposes. Proposals should reflect:

- An understanding of existing service structures and relationships affecting those who have been or are at-risk of abandonment;
- A description of those to be trained, and an understanding of their needs, with particular attention to multidisciplinary or cross-agency requirements;
- Knowledge and appropriateness of existing training materials, and how they would be used or modified;
- Consultation with and evidence of multidisciplinary or cross-agency participation among public and private social service, medical and health care agencies, the courts and community agencies, and others, as appropriate, in the geographic area to be served; and
- Agency commitments to provide follow-up training and training of newcomers to the network.

Duration and funding level: Grants ranging from $75,000 to $100,000, depending upon need and the scope of the proposed project, will be awarded for a 17-month project period. Up to 10 projects will be funded.

C. Priority Area III—Resource Development and Coordination Projects

Among the findings underlying the Abandoned Infants Assistance Act, the Congress observed a need for the development of funding strategies that coordinate and make optimal use of all private, Federal, State, and local resources to establish and maintain the comprehensive services needed to care for abandoned or at-risk HIV positive or drug-affected infants and young children. Few, if any, communities have sufficient funds available to meet the service needs of this population, and the limitation of resources is compounded by barriers to their effective utilization. While it is clear that categorical programs and specialized providers must be linked and their services coordinated if their actions are to be effective, organizational barriers may inhibit maximum use of resources and hinder program effectiveness.

In many instances, the problems of the children and families coming into care today far outstrip the capacity of any single agency's mandate. However, although many programs may refuse to take on additional clients when service limits are reached, public child welfare agencies cannot close intake. State child welfare agencies remain the responsible agency for children in need and their families and must respond.

Often an interim or crisis solution becomes long-term and life-shaping for children and families. The challenge for State and local governments is to arrange for accessible core services without regard for agency boundaries so that a local worker or administrator need not negotiate or barter for services for each individual child or family. All prevention programs should be considered as resources in developing strategies to coordinate funding, as well as treatment programs for child abuse, substance abuse, adolescent pregnancy prevention, prenatal health care, Women, Infant, Child (WIC), Early and Periodic Screening, Diagnosis and Treatment (EPSDT), mental health services, early education programs, parenting education, respite care, crisis services, child care and other family support programs.

Applications should reflect a sufficiently broad membership and authority to involve major service systems, related human resources, and funding sources so that their coordinated use will result in better utilization and increased cost effectiveness (e.g., pooled funds and re-deployed personnel and other resources). Proposed development and coordination activities should reflect identified goals and objectives rather than a single rearrangement of priorities in which other programs will have funding reduced.

Projects may be funded for two years: one year for planning and development, and the second year for implementation. However, agencies which have an existing plan may apply for an implementation grant of two years duration or less.

Applicants must develop or submit a proposed plan with assurances of cooperation from the major programs to be involved, and of their authority to implement their own recommendations. In many instances, the need for the services is centered in major metropolitan areas, while the funding sources are under State control. Therefore, it is particularly important that both of these entities express commitment in the application.

Project goals and program design, including target service areas, service delivery plans, and anticipated outcomes, must be clearly defined. Funding sources must be identified and the proposed funding strategy described; the implementation plan and its impact on future relationships between the entities including decision-making, coordination and resource utilization must be described. Barriers to implementation must be identified and plans for eliminating such barriers must be addressed.

Duration and funding level: Projects will be funded for two years, with an option for a third year dependent upon satisfactory performance and the availability of funds, at an amount ranging from $50,000 to $75,000. Approximately 10 projects will be funded.

Part III: Application Requirements

A. Standard Form 424

Applications for grants under section 101 of the Act (42 U.S.C. 670 note) must be submitted on the Standard Form 424, a copy of which is included with this announcement. Each application must be signed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. The applicant must provide an abstract or project summary which describes the proposed activities for the specified project period.

B. Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Abandoned Infants Assistance Program, Office of Human Development Services, Grants and Contracts Management, Division, HDS/OMS, Hubert H. Humphrey Building, Room 341–F1, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson.

Hand-delivered applications will be accepted Monday through Friday prior to and on the deadline date during the working hours of 9 a.m. to 5:30 p.m. in the lobby of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application prior to the deadline date, call (202) 245–0016 from the lobby and a staff person will arrive to receive the application.

C. Closing Date for Submission of Applications

The closing date for submittal of applications under this program announcement is August 21, 1990.

1. *Deadlines.* An application will be considered as meeting the deadline if it is either:

a. Received on or before the deadline date, at the HDS Grants and Contracts Management Office, or,

b. Sent on or before the deadline date, and received by the granting agency in time for the independent review under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

3. *Late Applications.* Applications which do not meet the criteria in paragraphs 1 and 2 of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of Deadlines.* The granting agency may extend the deadlines for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Grantee Share of the Project

HDS will not make awards for the entire project cost. Successful applicants must contribute $1 secured from non-Federal sources for every $3 received in Federal funding. The non-Federal share of total project costs may be in the form of third party in-kind contributions or cash. Applicants will be required to display in their budget any funds proposed as match.

E. Application Consideration

Applications conforming to the requirements of this announcement will be grouped by category, i.e., Model Service Projects, Training Projects, or Resource Development and Coordination Projects, and will be reviewed by non-Federal experts, and Federal staff from outside the Administration for Children, Youth and Families on the basis of the criteria set forth in this announcement. The results of this review will be a primary factor in the grant award decision process.

F. Description of Program

The application must describe the proposed plan for (a) Model Service Projects, (b) Training Projects, or (c) Resource Development and Coordination Projects as specified in the priority areas.

G. Evaluation and Reporting Requirements

Section 102(a) of the Act requires the Secretary to provide for evaluations of all projects carried out under section 101. All projects will be required to cooperate in this evaluation, and to provide program data as requested. In addition, all programs must submit quarterly program and fiscal reports as specified in the instructions attached to the Financial Assistance Award.

H. Dissemination

The application must set forth a plan for dissemination of the results of the project for which assistance is being requested and must agree to cooperate with the development of a Report on Effective Care Methods as required by section 102(c) of the Act.

I. Statutory Assurances

Each application must include a statement assuring the Department that the grantee will meet the following statutory requirements.

(1) The following assurances are required under section 101(b) of the Act if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from the parents:

- That a case plan of the type described in paragraph (1) of section 475 of the Social Security Act will be developed for each infant or young child (to the extent that such infant or young

child is not otherwise covered by such a plan) for whom funds would be expended for foster care; and

• That the program includes a case review system of the type described in paragraph five (5) of section 475 of the Social Security Act (covering each such infant and young child who is not otherwise subject to such a system).

Section 475(1)

Paragraph (1) of section 475 of the Social Security Act reads as follows: "The term 'case plan' means a written document which includes at least the following:

a. A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1); and

b. A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and addressing the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

c. Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living."

Section 475(5)

Paragraph five (5) of section 475 of the Social Security Act reads as follows: "The term 'case review system' means a procedure for assuring that:

a. Each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child;

b. The status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship; and

c. With respect to such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents."

(2) That funds provided under this section shall be used only as specified in the application approved by the Secretary (section 101(c)(1)).

(3) That fiscal control and fund accounting procedures must be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(c)(2)).

(4) That reports to the Secretary must be made annually on the utilization, cost, and outcome of activities conducted, and services furnished under this grant (section 101(c)(3)).

(5) That if during the majority of the 180-day period preceding the date of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children. The applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such services (section 101(c)(4)).

(6) That the applicant agrees to cooperate with and provide data to a Federally funded evaluation contractor (section 102(a)).

J. Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the States' Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposal Federal Assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirement.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. HDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

The Office of Human Development Services (HDS) must obligate the funds for these awards by September 30, 1990. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on (Insert date 30 days from the application deadline date) in order for HDS to receive, consider, and accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to Abandoned Infants Assistance Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 341–F, Hubert H. Humphrey Building, 200 Independent Avenue, SW., Washington, DC 20201. A list of the Single Points of Contact for each State and Territory is included in Appendix I of this announcement.

Successful applicants will be notified thorugh the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, and the amount of the non-Federal matching share.

Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration for Children, Youth and Families.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

L. Other Requirements

(1) The description of activities proposed as specified under Priority Areas I, II and III above shall be limited to no more than 50 typed pages, exclusive of attachments.

(2) All cooperating agencies having a role in the activities proposed must submit a letter signed by an official with authority to commit the agency or organization. This letter must specify the activities and level of involvement for the cooperating entity. Do not submit general letters of support.

(3) Maps indicating areas to be served, locations of services, or other geographic information may be attached.

(4) A table or chart showing the interrelationships and coordination patterns of agencies for the proposed program is required.

(5) All public agencies must certify that the program will not be delayed because of general hiring freezes or restrictions on travel when this relates to hiring, travel or other activities of the funded program. The responsible official signing the application must be able to authorize exemptions from such restrictions.

Part IV: Criteria for Review and Evaluation of Applications

Applications will be reviewed and evaluated against the following criteria:

(1) Objectives and Need for Assistance (20 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Results or Benefits Expected (20 points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

(3) Approach (35 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule for accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contibution.

(4) Staff Background and Organization's Experience (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationship between this project and other related work planned, anticipated or underway by the applicant with Federal assistance.

Catalog of Federal Domestic Assistance Number 13.551: Abandoned Infants Assistance Program.

Dated: May 29, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 30, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Appendix I

State Single Points of Contact

Alabama

Mrs. Mosnell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management,

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80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3320.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004 Telephone (202) 727-9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656-3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490.

Massachusetts

State Singel Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202-State Capitol, Helena, Montana 59620, Telephone (406) 444-5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, Attn: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827-3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770.

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #8, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

Appendix II

ACYF Discretionary Programs Related to the Abandoned Infants Assistance Act

• *The Child Welfare Research and Demonstration Program* provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstration grants supported under this program address services to families to prevent the need for out-of-home placement, the development of alternative placements for children including foster care and adoption, and reunification services so that children can return home, if at all possible. Several projects serving HIV positive children have been funded under this program. For further information, call Cecelia Sadia, (202) 245-0764.

• *The Child Welfare Services Training Grant Program* provides discretionary grants to accredited public or nonprofit institutions of higher learning to develop and improve educational and training programs related to child welfare and to assist child welfare agencies to improve the skills and qualifications of staff. For further information, call Phyllis Nophlin, (202) 245-0553.

• *The Adoption Opportunities Program* provides financial support to State and local agencies and other profit or non-profit organizations for research and demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs (including children who are HIV positive or who have been drug-exposed). For further information, call Delmar Weathers, (202) 245-0671.

• *Child Abuse and Neglect* discretionary activities are designed to assist and enhance national, State, and community efforts to prevent, identify, and treat child abuse and neglect. These activities include conducting research and demonstration grants; supporting services improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and providing grants to eligible States to strengthen child protective services programs. Several projects related to drug exposed babies and substance abusing mothers have been funded under this program, and preliminary findings are available. For further information, call Alan Hogle, (202) 245-0631.

• *The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program* provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Many of these projects provide services which will be needed for abandoned infants and these programs, where available, should be included in planning for abandoned infants. For further information, call Phyllis Nophlin, (202) 245-0553.

• *The Administration on Developmental Disabilities* (ADD) provides funding for State Planning Councils, Protection and Advocacy Agencies, University Affiliated Programs, and projects of national significance authorized under the Developmental Disabilities Act, 42 U.S.C. 6000, et seq. Networks of research and service delivery systems are supported to promote improvements in the quality, scope and range of services available for those who are developmentally disabled.

At present, in cooperation with the Children's Bureau, ADD has identified pediatric AIDS as a priority for funding under the Office of Human Development Services' Coordinated Discretionary Funds Program announcement, Priority Area 1.4B (published in the Federal Register, March 8, 1990). Project applications were sought to meet the needs of abandoned infants and young children who may test HIV positive or who may be placed in foster care because the mother is HIV positive and unable or unwilling to care for the child. Funded projects will emphasize the (1) Identification of children who are at risk; (2) development of early intervention strategies; (3) coordination of services; and (4) provision of training. For further information, call Kay Smith, (202) 245-2964.

Other DHHS Discretionary Programs Related to the Abandoned Infants Assistance Program.

• *The Office of Maternal and Child Health*, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Public Health Service, provides formula grants, special project grants, and research and training authorized under title V of the Social Security Act, as amended. State grants-in-aid emphasize interagency coordination, early identification of children in need of health services, follow-up care and treatment to reduce the effects of chronic conditions, and prevention of handicapping conditions originating at birth. Support is provided for maternal and child health services and crippled children's services, particularly for mothers and children in low-income areas.

In FY 1988, the Office of Maternal and Child Health launched an initiative that was launched towards "Building Systems of Care for Children with HIV Infection and Their Families." A variety of Pediatric AIDS Health Care demonstrations, and special projects as well as training and national leadership activities have been funded to promote effective ways to prevent HIV infection, especially through perinatal transmission; to develop community-based, family-centered, coordinated services for infants and children with HIV infection; and to develop programs to reduce the spread of infection to vulnerable populations of children and adolescents. For information concerning projects in your area, call Irene Forsman, (301) 443-1080.

• *The Office for Substance Abuse Prevention* within the Alcohol, Drug Abuse, and Mental Health Administration provides for a variety of activities authorized under the Anti-Drug Abuse Act, Public Law 100-690. Since 1988, model demonstration projects have been funded to promote interagency coordination in the delivery of comprehensive services for substance abusing pregnant and post-partum women and their infants; to increase the availability and accessibility of prevention, early intervention, and treatment services for these populations; to decrease the incidence and prevalence of drug and alcohol use among pregnant and post-partum women; to improve the birth outcomes of women who used alcohol and other drugs during pregnancy and to decrease the incidence of infants affected by maternal substance use; and to

reduce the severity of impairment among children born to women involved in substance abuse.

Primary prevention and early intervention projects have also been funded to demonstrate effective comprehensive service systems for the prevention, treatment and rehabilitation of drug and alcohol abuse among high risk youth, many of whom become teenage parents. For information concerning projects in your area, call Ellen Hutchins, (301) 443-5720.

BILLING CODE 4160-01-M

APPENDIX III

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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federal register

Friday
June 22, 1990

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 108 and 129
Use of X-Ray Systems; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket No. 26268; Notice No. 90-17]

RIN 2120-AD13

Use of X-ray Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airplane operator security regulations by removing the exception to meeting the current X-ray imaging standard for X-ray screening systems in use prior to July 22, 1985. Each United States air carrier conducting screening under a mandatory security program would be required to use X-ray systems for carry-on and checked articles that meet the X-ray imaging standard required under its approved security program. Likewise, each foreign air carrier that lands or takes off in the United States would be required to use X-ray screening systems for carry-on and checked articles in the United States that meet the X-ray imaging standard under its accepted security program. This action is needed due to the increased sophistication of terrorist acts. The intended effect is to increase the safety of passengers and crewmembers aboard aircraft by providing an upgraded aid at airport screening points to prevent the carriage of explosives, incendiaries, or deadly or dangerous weapons.

DATES: Comments must be submitted on or before August 20, 1990.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26268, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26268. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynne Osmus, Civil Aviation Security Division (ACS-101), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26268." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any interested person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

Attacks against civil aviation have increased in sophistication over the past decade. As a result, security has become an even greater concern of the aviation community. In recent years, sophisticated explosive devices have been used to damage or destroy civilian airliners resulting in the loss of many lives. The bombing of Pan American World Airways (Pan Am) Flight 103 demonstrates the continuing need to protect the safety and security of passengers and crewmembers aboard air carriers. Eliminating any exceptions to meeting the most current X-ray imaging standard would be one method by which to address this need.

History

The FAA's Civil Aviation Security Program, initiated in 1973, requires certain U.S. air carriers to conduct security screening to prevent or deter the carriage aboard aircraft of any explosive, incendiary, or deadly or dangerous weapon on or about any individual's person or accessible property. Part 108 of the Federal Aviation Regulations (FAR) (14 CFR part 108), which pertains to U.S. air carriers, was promulgated in 1981 (46 FR 3782; January 15, 1981). The pertinent provisions in part 129, which govern the operations of foreign air carriers that hold a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by those entities, were promulgated in 1976 (41 FR 30106; July 22, 1976).

On May 28, 1985, the FAA issued Amendments Nos. 108-1 and 129-13 (50 FR 25654; June 20, 1985), which established a new standard for testing the effectiveness of X-ray systems. This new standard was effective on July 22, 1985; however, it did not apply to X-ray systems in use prior to that date. In a parallel action, the FAA amended each air carrier's approved security program to include a "grandfather" provision for X-ray systems in use prior to July 22, 1985.

Nearly a decade prior to that, on November 29, 1976, the FAA promulgated new 14 CFR part 191 (41 FR 53777; December 9, 1976) establishing the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974. Air carrier security programs are documents detailing how U.S. and foreign air carriers will comply with the security requirements contained in the FAR. They contain sensitive security requirements, including specific performance criteria and operational information for X-ray systems, and are not available to the public.

Related Activities

For many years, the passenger screening system has been effective in countering the threat to domestic and international civil aviation, which primarily came from hijackers. In recent years, this threat has expanded to include aircraft bombings. The bombing of Pan Am Flight 103 is a reminder that civil aviation is still vulnerable to criminal and terrorist acts.

A comprehensive review of security procedures has been conducted to determine where existing procedures may be improved and where new procedures may be warranted. On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to ensure protection of travelers at airports in the United States and other countries. Significant among these initiatives was the commitment to propose the removal of grandfather provisions for older X-ray systems. Other initiatives include requiring the widespread deployment of explosives detection systems (EDS) and the establishment of a mandatory security directives system, both the subject of separate rulemakings that resulted in the issuance of final rules. The final rule requiring EDS was issued on August 30, 1989 (54 FR 36938; September 5, 1989). The final rule establishing the security directives and information circulars system was issued on July 6, 1989 (54 FR 28982; July 10, 1989).

Current Requirements

Presently, part 108 requires each holder of an FAA air carrier operating certificate required to conduct screening to use the procedures, facilities, and equipment described in its approved security program to prevent or deter carriage aboard airplanes of any explosives, incendiaries, or deadly or dangerous weapons on or about each individual's person or accessible property. Part 129 requires each foreign air carrier landing or taking off in the United States to adopt and use a security program acceptable to the Administrator and designed to prevent or deter the carriage aboard airplanes of any explosive, incendiary device, or deadly or dangerous weapon on or about each individual's person or accessible property, with certain exceptions, through screening by weapon-detecting procedures or facilities.

Future Actions

The U.S. Government has actively supported research and development efforts in X-ray systems and the FAA has been evaluating X-ray systems on a continuing basis. The FAA recognizes that there have been significant technological advancements made in X-ray systems. Consequently, the FAA is considering a separate action proposing to amend approved air carrier security programs and accepted foreign air carrier security programs to establish a more stringent imaging standard than the current standard established in 1985. The FAA expects to make a final determination regarding a more stringent imaging standard prior to taking any final action in this rulemaking. Any final action as a result of this rulemaking will consider the impact, if any, of revision to the imaging standard.

As previously stated, security programs are exempt from disclosure under 14 CFR part 191. In accordance with 14 CFR 191.5, the FAA will not provide the current or any future performance criteria or detailed operational information in any document generally available to the public. The Director of Civil Aviation Security has determined that disclosure of this information would be detrimental to the safety of persons traveling in air transportation or intrastate air transportation.

General Discussion of the Proposals

The FAA is proposing to amend part 108 to ensure that all certificate holders use X-ray systems for carry-on and checked articles that meet the imaging requirements of their approved security programs. The FAA is also proposing to amend part 129 to require foreign air carriers who land or take off in the United States and who conduct screening under an accepted security program to use X-ray systems for carry-on and checked articles in the United States that meet the imaging requirements in their accepted security programs.

Section 108.17

Revision of current paragraph (a)(5) of this section would eliminate a grandfather clause allowing for the exception of certain X-ray systems from the requirement to meet the imaging requirements set forth in an approved air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792-82.

Section 129.26

Revision of current paragraph (a)(5) of this section would eliminate a grandfather clause allowing for the exception of certain X-ray systems from the requirement to meet the imaging requirements set forth in an accepted air carrier security program using the step wedge specified in American Society for Testing and Materials Standard F792-82.

Regulatory Evaluation Summary

Introduction

This section summarizes a draft full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. The full evaluation quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits and impacts.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a draft Regulatory Impact Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the Executive Order, therefore a regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been performed. Instead, the FAA has prepared a regulatory evaluation of just this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates that there are 170 U.S. air carrier and 2 foreign air carrier X-ray systems currently in service that are incapable of meeting current imaging requirements using the step wedge specified in American Society for Testing and Materials Standard F792-82. Such systems would no longer be acceptable for airport security purposes under this proposed regulation. Thus, if issued as a final rule, air carriers would have to begin acquisition of new systems immediately. Even in the absence of this proposal, the 172 systems will some day cease to be used

for aviation purposes, anyway, once they reach the end of their useful lives. According to one manufacturer of X-ray systems, these units have a life expectancy of approximately 8 to 10 years. Because carriers have been prohibited since July 1985, from purchasing additional X-ray systems that do not meet the current imaging standard, all existing systems that fail to meet the standard must be at least 4 years old. Therefore, by assuming a 9-year average life for X-ray systems, the cost of this proposal is the difference between purchasing 172 new standard X-ray systems immediately (net of salvage value for replaced systems) versus purchasing new systems over a 5-year period as the existing systems wear out.

Carriers can choose to buy their replacement systems from several manufacturers. They also have a range of system capabilities to choose from. The proposed rule would reflect both carry-on and checked articles. For the purposes of this analysis, replacement system costs will reflect the price of a standard black and white X-ray system used for handcarried articles because this system meets the current standard. A sales representative for Astrophysics Research Corporation stated such systems retail for about $32,000 per system, including installation. Prices will vary, however, based on location and number of systems ordered. At $32,000 each, 172 new systems would cost about $5.50 million. The replaced system, which has somewhere between zero and 5 years of useful life remaining, will have some resale value for nonaviation purposes such as industrial security. The FAA estimates the current average resale value per system at $5,000, or about $0.86 million for all 172 systems still in use. Therefore, the total immediate outlay for new X-ray systems would be $5.50 million less $0.86 million = $4.64 million.

The net cost of this proposal would be $4.64 million less the cost of replacement systems that are not purchased until the existing systems wear out. In other words, the net cost of the proposal is the difference between the current cost of the systems and the discounted cost of the systems if purchased at a later date. No information is readily available concerning the exact age of each existing system that does not meet the current imaging standard or the current replacement rate of such systems. Therefore, it has been assumed for the purposes of this analysis that one-fifth (34.4) of these systems will be replaced in each of the next 5 years. By that time, each would be a minimum of 9 years old and have reached the end of the expected useful life. The discounted cost (a 10 percent discount rate is used) to purchase the systems over a 5-year period is $4.37 million. Therefore, the net cost of this proposal is $4.64 million less $4.37 million = $0.27 million, or about $1,570 per replacement X-ray system.

Another cost factor concerns anticipated differences in maintainance costs between the replaced systems and the replacement systems. The FAA expects their maintenance costs to be very similar, and will, therefore, not alter the above cost calculations. However, an Astrophysics Research Corporation representative indicated that many of the systems that would be replaced are equipped with image intensifiers that are relatively expensive, and might need replacing once a year. In comparison, technological improvements in the replacement systems have eliminated the need for image intensifiers. Therefore, it is possible that the overall costs of this proposal are somewhat overstated.

Benefits

The proposed regulation would make it more difficult to carry an explosive device onto domestic and international flights. Therefore, it is expected to provide an additional margin of safety and security for passengers and crew members aboard air carriers. The FAA cannot predict the number or severity of future incidents, let alone incidents that would be perpetrated if this proposal does not go into effect. The frequency of terrorist incidents would depend on several factors, including, but not limited to, the world-wide political climate, the skill and technical sophistication of terrorist organizations, and the success of efforts to avert these incidents.

The historical record reveals that 19 separate criminal acts and incidences of terrorism using explosives were perpetrated against U.S. air carriers between 1979 and 1988. Because the FAA expects the threat of sabotage to increase in the future, and because the current X-ray systems in question have been identified as a weak link in the overall U.S. civil aviation security system, it is assumed that some unknown amount of benefit will result from the proposal.

One way to assess the benefits of this proposal is to put expected costs into perspective. The total estimate cost of this proposal, discounted over 5 years (the estimated remaining life of the systems to be replaced), is $0.27 million. Therefore, if one life is saved sometime in the 5-year period after the proposed rule would become effective, the cost per life saved would be approximately $0.27 million. Similarly, if an aircraft with 200 passengers is saved from destruction as a result of this proposal, the cost per life saved would be only $1,350.

In comparison, using a minimum statistical value of a human life of $1.9 million, or about $0.79 million when discounted over 5 years, the benefits associated with saving a single life during the next 5 years would be nearly triple the estimated $0.27 million cost to accomplish it. Similarly, if an aircraft with 200 passengers and crew is saved as a direct result of this proposal, the ratio of benefits to costs would be 583 to 1.

Given the large difference between potential benefits and known costs, the FAA believes this proposed rule to be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

The FAA's criteria for a "substantial number" is a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA criteria for "a significant impact" is at least $3,700 per year for an unscheduled carrier and $51,800 or $92,700 per year for a scheduled carrier depending on whether or not the fleet operated includes small aircraft (60 or fewer seats). Although data collection on the carriers affected by this rule has not been completed, the FAA believes that it is very unlikely that the proposal would have a significant economic impact, positive or negative, on a substantial number of small entities. This is because the total estimated compliance cost associated with this rule is only $0.27 million spread over a 5-year period, and the estimated cost per replacement X-ray system is only $1,570. Unscheduled carriers would have to currently own and operate nearly 80 percent of the 172 X-ray systems in need of replacement for this rule to have a significant economic impact, positive or negative, on at least 11 small entities. The FAA believes that most of these X-ray systems are currently owned and operated by entities that are not defined as small.

International Trade Impact Analysis

The proposal, if adopted, would have little or no impact on trade for U.S. firms doing business overseas or for foreign firms doing business in the United States. The proposal affects all carriers of U.S. registry and foreign air carriers who land or take off in the United States, operating scheduled passenger service or public charter passenger operations, or both, that are required to screen passengers under a security program. The expected additional annual costs should not create an economic disadvantage to either domestic operators or foreign carriers operating in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of this proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 108

Air carriers, Airports, Air safety, Air transportation, Aviation safety, Baggage, Safety, Security measures, Transportation.

14 CFR Part 129

Air carriers, Airports, Weapons.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 108 and 129 of the Federal Aviation Regulations (14 CFR parts 108 and 129) as follows:

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. Section 108.17(a)(5) is revised to read as follows:

§ 108.17 Use of X-ray systems.

(a) * * *

(5) The system meets the imaging requirements set forth in an approved Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792-82.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. App. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983.)

4. Section 129.26(a)(5) is revised to read as follows:

§ 129.26 Use of X-ray systems.

(a) * * *

(5) The system meets the imaging requirements set forth in an accepted Foreign Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792-82.

* * * * *

Issued in Washington, DC, on June 6, 1990.

Monte R. Belger,

Associate Administrator for Aviation Standards.

[FR Doc. 90-14330 Filed 6-21-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
June 22, 1990

Part VIII

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3780-1]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's notice announces a tentative list of Article 5 Parties in appendix E to the final rule on stratospheric ozone protection (40 CFR part 82). An Article 5 Party is defined by the Montreal Protocol, the treaty that limits the production and consumption of ozone depleting chemicals, as a Party to the Protocol that is "a developing country whose annual calculated level (defined as the quantity of the ozone depleting chemical multiplied by its ozone depletion weight) of controlled substances of per capita consumption is less than .3 kilograms as of the date of the entry into force of the Protocol for it". Under the regulatory program for the protection of stratospheric ozone, companies that export to Article 5 Parties may increase their production of controlled substances up to the limits stated in Article 2 of the Protocol. The Agency considers this a tentative list of Article 5 Parties. It is based on the best available information, but may be revised as more relevant information is received for affected countries. The Agency reserves the right to revise this appendix should additional information become available that indicates that such countries are not Article 5 Parties, or to add to this list as more countries are eligible. These countries are Mexico, Venezuela and Thailand.

DATES: This final rule (appendix E) is effective June 22, 1990.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-87-20 at the Air Docket room M-1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 20 CFR part 2 a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460, (202) 475-7407.

SUPPLEMENTARY INFORMATION: On August 12, 1988, EPA promulgated a final rule to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC-11, -12, -113, -114, and -115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning in 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels is permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force on January 1, 1989.

The current rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities.

In addition, producers received potential production allowances equal to 10 percent of their 1986 production levels (15 percent in 1998 for CFCs). These potential production allowances can be converted to production allowances to replace exports to Article 5 Parties. An Article 5 Party is a developing country who is Party to the Protocol and whose calculated level per capita consumption of these chemicals is less than .3 kg as of the date that the Protocol entered into effect for it. A company may also convert potential production allowances to production allowances upon receipt of production rights from another Party that has agreed to decrease its production by an equal amount for the purposes of industrial rationalization. (A **Federal Register** Notice, published on February 13, 1990 (55 FR 5007), amended the conditions under which this offset or industrial rationalization could occur. Industrial rationalization is defined in Article 1 of the Montreal Protocol as "the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures).

Rulemaking for Appendix E

On July 12, 1989 the Agency proposed Appendix E, "Article 5 Parties" (54 FR 29353). The Agency proposed this list which included the following countries: Egypt, Ghana, Kenya, Maldives, Mexico, Nigeria, Panama, Uganda, Jordan, and Venezuela.

In this same notice, the Agency proposed an amendment that would amend the conditions under which a company could increase its production under the limits stated in the Protocol. Originally, companies operating under § 82.11 could increase their production for exports to any Party. However, Parties, in their first meeting in Helsinki, Finland in May 1989, agreed that such increases could occur only for exports to Article 5 Parties, or when two Parties had agreed to transfer production, resulting in one Party increasing its production while another decreases its production for the purposes of industrial rationalization. The proposal amended §§ 82.9 and 82.11 in order to institute the agreement of the Parties.

The Agency finalized this amendment on February 13, 1990 (55 FR 5007), but was unable to finalize the list of countries it had proposed as Article 5 Parties due to unresolved data issues. Since that time the Agency has received additional data that allows EPA to better estimate per capita consumption for the period specified by Article 5 (the date that the Protocol entered into effect for the developing country which is January 1, 1989 or after).

As the Agency stated in the February 13 **Federal Register** Notice, no developing country Party has yet to submit data on its consumption of controlled substances as of the date the Protocol entered into force for it, January 1, 1989 or later. Many countries, including most developing country Parties, have not yet complied with Article 7 of the Protocol that requires countries to report their levels of production and consumption of controlled substances in 1986 within three months of becoming Parties. As a result, there was little or no basis at that time for determining whether any developing country consumed controlled substances at an annual calculated level of less than .3 kilogram per capita on the date that the Protocol entered into effect for it, and thus whether any developing country Party could avail itself of the special treatment afforded by Article 5.

In response to a request from the United States, the Secretariat of the Protocol decided that under these circumstances, it could not and would not make a determination of which Parties should be considered to be operating under Article 5 until the country submits data demonstrating that its consumption of controlled substances as of the date the Protocol entered into force for it was less than .3 kilogram per capita. The Secretariat explained that a different approach to identification of Article 5 Parties would risk allowing higher production and consumption of controlled substances than the Protocol would otherwise allow, or make an incorrect assumption as to a Party's desire to operate under Article 5, or both. To remedy this situation, the Secretariat requested this data from all Parties that wish to be considered Article 5 Parties.

The United States also requested similar data from a subset of potential Article 5 Parties, relying upon U.S. embassies within these countries to convey the need for these countries to report their Article 5 status to both the Secretariat and the United States.

Based on information received to date from both the Secretariat and the United States' data request, the Agency believes that it is appropriate to identify a tentative listing of Article 5 countries at this time. The United States has expressed the need for a list of Article 5 Parties to other Parties of the Protocol, and the United States believes that it must proceed with identification of these countries at this time, based on the best available information in order to allow for effective use of the potential production allowances permitted under the Protocol during the first control period. U.S. industry had planned to increase its production based on good faith that countries would report in a timely manner the provisions stated in the Protocol. Indeed, several companies exported to countries that were proposed as Article 5 Parties in the **Federal Register** Notice published last July. In such cases, these countries have benefited from the supply of these chemicals, yet the U.S. producers have not been able to increase their production of these chemicals under the provisions of the Protocol. It is possible that domestic producers would not have exported to these countries, if they had known that they would be unable to increase their production. If such producers are unable to increase their production under the limits of the Protocol, it is the domestic users who are ultimately deprived of these chemicals.

For these reasons, the Agency believes that it must publish a tentative list of Article 5 Parties. EPA is publishing this list today to provide affected companies with sufficient time within this control period to adjust their production schedules. The Agency obtained individual country per capita consumption data directly from the countries or from information on 1988 consumption estimates recently received from the Secretariat.

Based on this information, the Agency announces three countries that tentatively qualify as Article 5 countries. These countries are Mexico, Venezuela, and Thailand. These three countries are Parties to the Protocol and are considered by the Secretariat as developing countries. The Agency has assumed, based on the best available information, that their individual calculated level per capita consumption is less than .3 kilogram. EPA emphasizes that these countries have not yet reported their calculated level of per capita consumption for the required period, the date on which the Protocol entered into effect for these countries, and that the Secretariat has not yet declared these countries as Article 5 Parties for this reason. However, based on information the Agency has recently received concerning these countries, EPA may tentatively assume that their per capita consumption was below .3 kilogram at the time that the Protocol entered into effect for these countries.

The Agency has received information from the Secretariat that Venezuela's calculated level per capita consumption was "below .3 kilograms" for 1988. Recent information from the United States' embassy in Venezuela indicates that based on discussion with the Venezuelan Environmental Ministry, Venezuela's per capita consumption has fallen to almost .2 Kg over the past year, and that Venezuela considers itself on Article 5 Party.

The Agency has also received information from the Secretariat that Mexico's 1988 calculated level per capita consumption is "well below .3 kilograms". Recent information from the United States' embassy in Mexico confirmed that Mexico has declared itself an Article 5 Party and that "Mexico's controls on the use of CFCs and halons are much stricter than those under the Protocol", and implied that per capita consumption of these chemicals have dropped since 1988.

EPA has also received information from the Secretariat that Thailand's per capita consumption of these chemicals is "well below .3 kg". However, the Secretariat warned EPA that Thailand has not reported all the controlled substances to the Secretariat. The Secretariat did not identify the missing controlled substances. The Agency has not yet received any communication from Thailand on its status as an Article 5 Party. Companies should be aware of Thailand's situation before increasing production to replace exports to this country as an Article 5 Party.

The Agency proposed Venezuela and Mexico as Article 5 Parties in Appendix E (54 FR 29353) on July 13, 1989. Today's notice completes rulemaking for these countries. The Agency did not propose Thailand since it was not a Party to the Protocol at that time. However, the Agency believes that it must now announce Thailand as an Article 5 Party without first proposing such status under 5 U.S.C. 553(6)(B) which provides that an Agency may dispense with notice and comment for good cause on grounds of impracticality or contrary to the public interest. The Agency does not believe that there is sufficient time for industry to take advantage of the provisions of the Montreal Protocol by the end of the control period (June 30, 1990) if the Agency were to proceed with notice and comment on this country. In addition, in the Notice of Proposed Rulemaking, EPA announced the criteria under which a country could be included as an Article 5 Party. The Agency has exhausted all authoritative resources (the Secretariat of the Protocol and the government of Thailand) who would have the best knowledge of Thailand's status, and believes that notice and comment would not likely provide additional data for this country.

In the future, the Agency intends to propose additional Article 5 Parties for notice and comment, and to review data, if any is available, received during the public comment period, before final promulgation of their status. EPA will proceed accordingly when the Secretariat cannot "officially" declare Article 5 Party status for technical reasons despite data and analysis that indicate the country so qualifies. However, if the Secretariat should formally designate a country as an Article 5 Party, the Agency would view the addition of that country to Appendix E as a purely ministerial task for which notice and comment was unnecessary. Therefore, the Agency shall at that time proceed to amend Appendix E through a technical amendment without any notice and comment period.

Domestic companies that have exported to these three countries will receive "authorizations" at their request to increase their production under the limits of the Protocol. Such authorizations are valid for only this control period.

However, since this designation is not based on consumption information for the specified time period, the date on which the Montreal Protocol entered into effect for the developing country, but on information that suggests such status, the Agency considers this list as tentative. If the Agency should learn at a later date that these countries are not Article 5 Parties (i.e., they do not appear on an eventual list developed by UNEP), the Agency shall delete these countries from appendix E, and rescind any authorizations to increase production for exports to these countries.

To date, the Agency has not received consumption estimates for many of the other developing countries that are Party to the Protocol, or have received reports that are inconsistent with reports to the Secretariat. The Agency will continue to work through its embassies and the Secretariat to determine the per capita consumption of controlled substances for all developing countries that are Party to the Protocol.

Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA determined that its August 12, 1988, final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Paperwork Reduction Act

The information collection requirements contained in the final rule published on August 12, 1988 (53 FR 3056) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. et seq. and have been assigned OMB control number 2060-0170.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and the Office of Information and Regulatory Affairs, Office of Management and Budget Paperwork Reduction Project (2060-0170), Washington, DC 20503, marked "Attention: Desk Officer of EPA".

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

Dated: June 15, 1990.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 82

Stratospheric ozone.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The Authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7457(b).

2. Part 82 is amended by adding appendix E to read as follows:

Appendix E—Article 5 Parties

Mexico, Venezuela, Thailand.

[FR Doc. 90-14523 Filed 6-21-90; 8:45 am]

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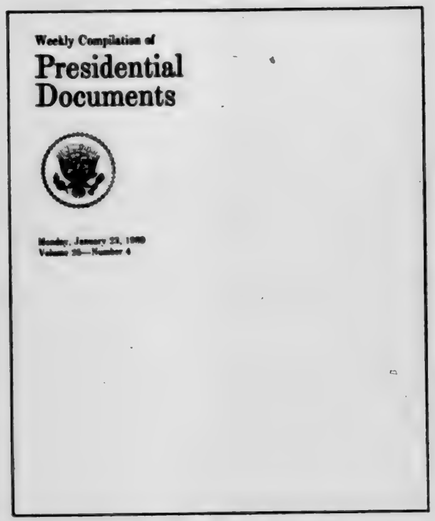
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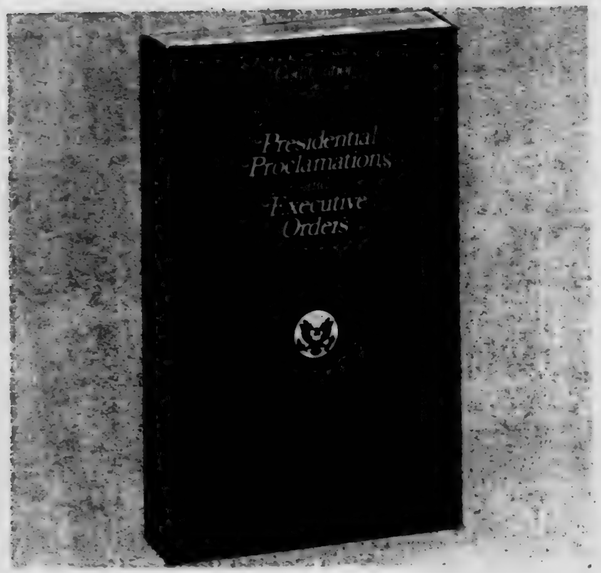
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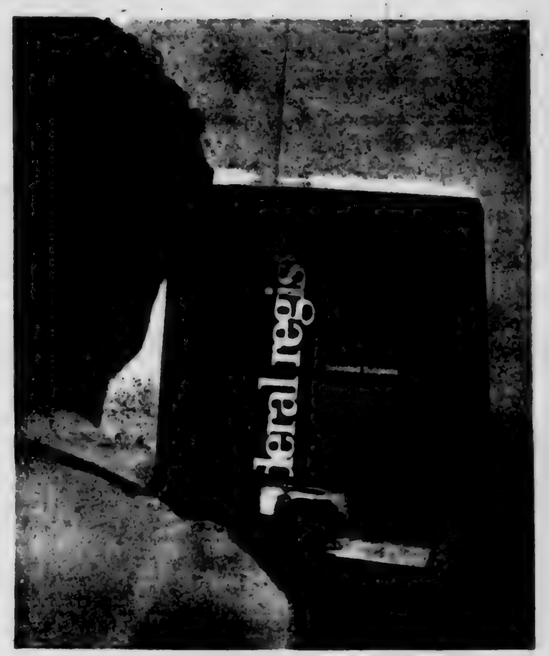
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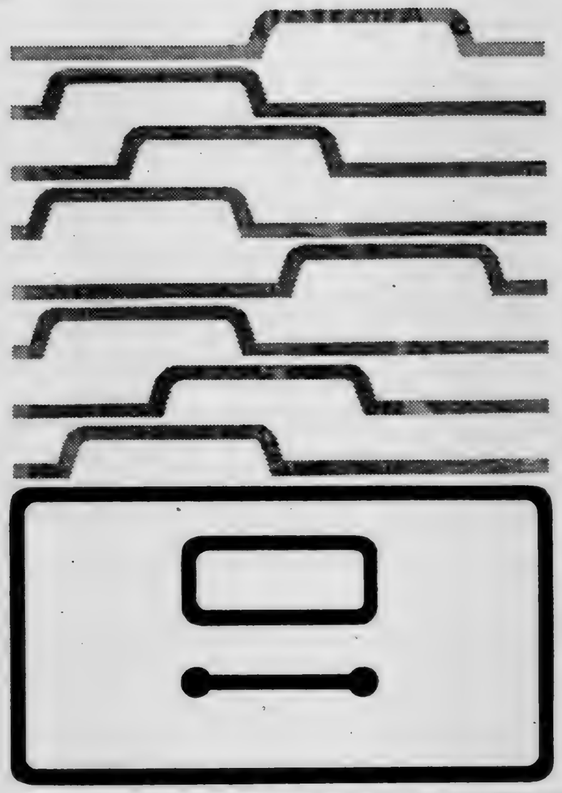
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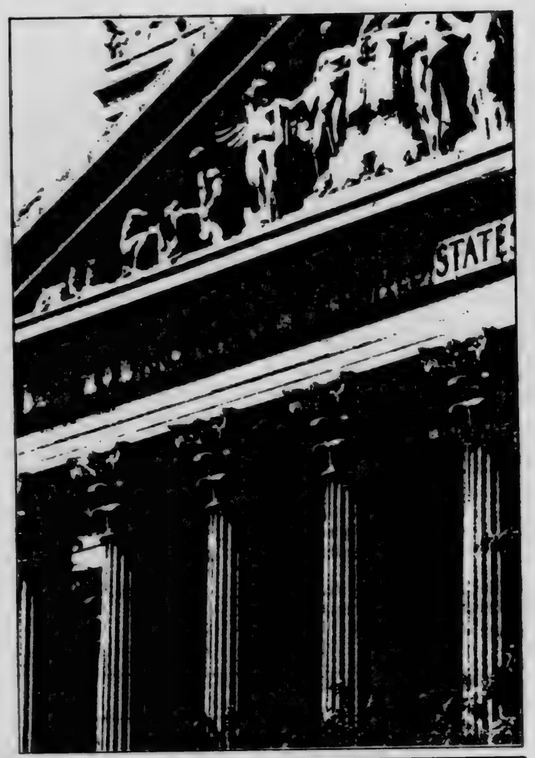
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The President

Proclamation 6140 of June 21, 1990

National Sheriffs' Week, 1990

By the President of the United States of America

A Proclamation

This year, the National Sheriffs' Association marks half a century of service to law enforcement officials and to the American public. Incorporated on September 26, 1940, in the State of Ohio, the Association was established to form and perpetuate an efficient organization of the sheriffs of the United States and to raise the level of professionalism in the office of the sheriff, among sheriffs' deputies, and among other law enforcement personnel.

The National Sheriffs' Association educates the public on law enforcement issues and maintains training programs for its members. It also represents the interests of sheriffs and other law enforcement officials before the executive and legislative branches of the Federal Government, as well as at the State and local levels of government.

Today the organization represents more than 26,000 city and county law enforcement officials nationwide, including more than 1,700 sheriffs. It is a leader in the Nation's law enforcement community.

In recognition of the 50th anniversary of the National Sheriffs' Association and in honor of all those individuals who serve their fellow Americans as sheriffs, the Congress, by S.J. Res. 264, has designated the week of June 24 through June 30, 1990, as "National Sheriffs' Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of June 24 through June 30, 1990, as National Sheriffs' Week. I call upon the people of the United States to honor all sheriffs during the week for their courageous and dedicated efforts to preserve the rule of law and ensure domestic tranquility.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-14803
Filed 6-21-90; 2:38 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 122
Monday, June 25, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 910

[Lemon Reg. 723]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from June 24 through June 30, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

DATES: Regulation 723 (7 CFR part 910) is effective for the period from June 24 through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The production area is divided into three districts which span California and Arizona. The largest proportion of lemon production is located in District 2, Southern California, which represented 57 percent of total production in 1988–89. District 3 is the desert area of California and Arizona and represented 31 percent of 1988–89 production. District 1 in Central California represented 12 percent. The Committee's estimate of 1989–90 production is 39,324 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 41,759 cars during the 1988–89 season.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. The Committee estimates that about 42 percent of the 1989–90 crop of 39,324 cars will be utilized in fresh domestic channels (16,500 cars), compared with the 1988–89 total of 16,500 cars, about 41 percent of the total production of 41,759 cars in 1988–89. Fresh exports are projected at 22 percent of the total 1989–90 crop utilization compared with 19 percent in 1988–89. Processed and other uses would account for the residual 36 percent compared with 39 percent of the 1988–89 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for lemons tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department

of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on June 19, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 400,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989-90 marketing policy. This recommended amount is 10,000 cartons above the estimated projections in the shipping schedule.

During the week ending on June 16, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 403,000 cartons compared with 392,000 cartons shipped during the week ending on June 17, 1989. Export shipments totaled 173,000 cartons compared with 138,000 cartons shipped during the week ending on June 17, 1989. Processing and other uses accounted for 294,000 cartons compared with 135,000 cartons shipped during the week ending on June 17, 1989.

Fresh domestic shipments to date this season total 14,354,000 cartons compared with 14,231,000 cartons shipped by this time last season. Export shipments total 6,749,000 cartons compared with 7,205,000 cartons shipped by this time last season. Processing and other use shipments total 11,171,000 cartons compared with 14,874,000 cartons shipped by this time last season.

For the week ending on June 16, 1990, regulated shipments of lemons to the fresh domestic market were 403,000 cartons on an adjusted allotment of 433,000 cartons which resulted in net undershipments of 30,000 cartons. Regulated shipments for the current week (June 17 through June 23, 1990) are estimated at 390,000 cartons on an adjusted allotment of 393,000 cartons. Thus, undershipments of 3,000 cartons could be carried over into the week ending on June 30 1990.

The average f.o.b. shipping point price for the week ending on June 16, 1990, was $14.04 per carton based on a reported sales volume of 415,000 cartons compared with last week's average of $13.58 per carton on a reported sales volume of 383,000 cartons. The season average f.o.b. shipping point price to date is $13.46 per carton. The average f.o.b. shipping point price for the week ending on June 16, 1989, was $14.09 per carton; the season average f.o.b. shipping point price at this time last season was $14.40 per carton.

The National Agricultural Statistics Service indicates a 1989-90 California-Arizona lemon crop of about 36,800,000 cartons, three percent less than the 1988-89 utilized production total of 40,000,000 cartons. However, 1989-90 fresh domestic use may total 16,500,000 cartons, about equal to that in 1988-89, as indicated in the Committee's schedule of weekly shipments.

The Department's Market News Service reported that, as of June 19, demand for first-grade fruit ranging in size from 75 to 140 is very good and demand for all other lemons is fairly good. At the meeting, most Committee members characterized demand as good. One Committee member reported that the demand on large-sized (115's and 140's) fancy grade fruit is excellent and that demand for choice grade fruit of those sizes is good. Some price discounting continues to occur on small-sized lemons (165's and smaller). In addition, two Committee members commented on the high level of storage in District 2 and the need to move that fruit in an orderly fashion. Committee members and observers discussed different levels of regulation as well as open movement. The Committee unanimously recommended volume regulation for the period from June 24 through June 30, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989-90 season average fresh on-tree price is estimated at $8.83, 118 percent of the projected season average fresh on-tree parity equivalent price of $7.50 per carton. The 1988-89 season average fresh equivalent on-tree price for California-Arizona lemons was $7.27 per carton, 105 percent of the 1988-89 parity equivalent price.

Limiting the quantity of lemons that may be shipped during the period from June 24 through June 30, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until June 19, 1990, and this action needs to be effective for the regulatory week which begins on June 23, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 910.723 is added to read as follows:

§ 910.723 Lemon Regulation 723.

The quantity of lemons grown in California and Arizona which may be handled during the period from June 24 through June 30, 1990, is established at 400,000 cartons.

Dated: June 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14686 Filed 6-22-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1910

Credit Reports (Individual)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration revises its regulation regarding credit reports in order to remove from the Code of Federal Regulations (CFR) sections of credit report regulations that only pertain to internal Agency management. The intended effect of this action is to remove unnecessary regulations from the CFR.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Reginald Rountree, Senior Loan Specialist, Single Family Housing Processing Division, FmHA USDA, Room 5346, South Agriculture Building, Washington, DC 20250, Telephone: (202) 475-4209.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This section, however, is not published for proposed rulemaking since it involves only internal Agency management, making publication for comment unnecessary.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not needed.

Programs Affected

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low Income Housing Loans.
10.416 Soil and Water Loans.
10.420 Rural Self-Help Housing Technical Assistance

Intergovernmental Consultation

For reasons set forth in final rule related to Notice 7 CFR 3015 Subpart V [(48 FR 2 9115), June 24, 1983] and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs" the following programs, 10.404 "Emergency Loans", 10.406 "Farm Operating Loans", 10.407 "Farm Ownership Loans", and 10.410 "Low Income Housing Loans", are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

However, the following programs, 10.405 "Farm Labor Housing Loans and Grants", 10.416 "Soil and Water Loans", and 10.420 "Rural Self-Help Housing Technical Assistance" are subject to intergovernmental consultation under EO 12372.

List of Subjects in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting requirements.

Accordingly, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. Authority citation for part 1910 is revised as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart B of part 1910 is amended by revising § 1910.51 and by removing and reserving §§ 1910.52 to 1910.100 to read as follows:

Subpart B—Credit Reports (Individual)

§ 1910.51 Purpose.

This subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for individual and joint type credit reports. Credit reports will be ordered when needed to determine the eligibility of applicants requesting FmHA loans. A non-refundable fee will be charged to the applicant.

§§ 1910.51-1910.100 [Reserved]

Dated: May 29, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-14418 Filed 6-22-90; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1951

Administrative Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration, (FmHA) amends its Administrative Offset regulation. This amendment corrects the names of the FmHA Form Letters used in this procedure. The intended effect is to consistently refer to the correct Form Letters, thus increasing internal management control.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Jeanne Hudec, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, room 5503, South Agriculture Building, Washington, DC 20250, telephone (202) 382-8356.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal agency management, making publication for comment unnecessary.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public

Law 91-190, an Environmental Impact Statement is not required.

The programs to which this regulation may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans (SW Loans)
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit National Corporation Loan and Grant Program
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3015 subpart V, 48 FR 29115, June 24, 1983.)

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—agriculture, Accounting, Credit, Low and moderate income housing loans—servicing.

Therefore, part 1951, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

§ 1951.103 [Amended]

2. Section 1951.103(b) is amended by removing the words, "FmHA Form Letter 1951–1" and adding in their place the words, "FmHA Form Letter 1951–C–1."

§ 1951.104 [Amended]

3. Section 1951.104 paragraph (d) is amended by removing the words, "FmHA Form Letter 1951–1" and adding in their place the words, "FmHA Form Letter 1951–C–1."

§ 1951.105 [Amended]

4. Section 1951.105, paragraphs (a), (b)(1) and (b)(4) are amended by removing the words, "FmHA Form Letter 1951–3" and adding in their place the words, "FmHA Form Letter 1951–C–3."

Dated: May 29, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–14634 Filed 6–22–90; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 771, 774 and 777

[Docket No. 900408–0108]

Removal of General License G–FTZ; Exports of Petroleum Commodities From U.S. Foreign-Trade Zones and From Guam

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule removes from the Export Administration Regulations (EAR) § 771.7, "General License G–FTZ; exports of petroleum commodities from U.S. foreign-trade zones and from Guam." In 1985, the Department of Commerce eliminated the validated license requirement for exports of petroleum products from U.S. foreign-trade zones and Guam. Because petroleum exports from foreign-trade zones and Guam now can be sent from § 771.16, "General License G–NNR; shipments of certain non-naval reserve petroleum commodities", General License G–FTZ is unnecessary. This rule, which removes all references to General License G–FTZ in the EAR, amends parts 771, 774 and 777. Section 771.7, where General License G–FTZ appeared, is reserved.

EFFECTIVE DATE: This rule is effective June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule eliminates a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694–0037.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, parts 771, 774 and 777 of the Export Administration Regulations (15 CFR parts 768–799) are amended as follows:

PART 771 [AMENDED]

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 771.2 [Amended]

2. In § 771.2(c)(10), the phrase "general licenses G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, G–FTZ *or* GUS;" is revised to read "general licenses *G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, or GUS;*".

§ 771.7 [Removed and reserved]

3. Section 771.7 is removed and reserved.

§ 771.16 [Amended]

4. In § 771.16(b), in the last sentence, the phrase "General License G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, G–FTZ *or* GUS," is revised to read "General License *G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, or GUS,*".

PART 774 [AMENDED]

5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 774.2 [Amended]

6. In § 774.2(a)(1), the phrase "General License G–DEST, GTE, G–COM, G–COCOM, GFW, G–CEU, GCG, G–NNR, G–FTZ, GUS or BAGGAGE;" is revised to read "General License *G–DEST, GTE, G–COM, G–COCOM, GFW, G–CEU, GCG, G–NNR, GUS or BAGGAGE;*".

PART 777 [AMENDED]

7. The authority citation for 15 CFR part 777 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1975 (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976) as amended; sec. 201 and 201(11)(e), Pub. L. 94–258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 25189, June 18, 1985); and sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)).

§ 777.6 [Amended]

8. In § 777.6(d)(2), the phrase "General Licenses *G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, G–FTZ or GUS,*" *is revised to read "General Licenses G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, OR GUS;*".

Dated: June 18, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90–14473 Filed 6–22–90; 8:45 am]

BILLING CODE 3510–DT–M

15 CFR Part 773

[Docket No. 90758–0107]

Eligibility for Distribution License; Semiconductors/Semiconductor Manufacturing Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule and request for public comment.

SUMMARY: The Bureau of Export Administration is establishing a new entry for lithography equipment covered by Commodity Control List entry 1355A, in supplement No. 1 to part 773, Commodities Excluded from Certain Special License Procedures. Such lithography equipment is not eligible for export under the Distribution or Project License. However, parts for lithography equipment will still be eligible for export under the Service Supply License. Current restrictions on the export of other equipment covered by 1355A, as listed in supplement No. 1 to part 773, are not affected.

This change has resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. Restrictions on use of special licenses are necessary to prevent diversion of this equipment. With the concurrence of the Department of Defense, the Department of Commerce has determined that this rule is necessary to protect U.S. national security interests.

In addition, this rule removes repetitive footnotes from the Supplement for the sake of clarity.

DATES: *Effective:* This rule is effective June 25, 1990. *Comments:* Comments must be received by July 25, 1990.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0008, 0694–0007, 0694–0010, and 0694–0015.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Export Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of

a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose new controls. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because this rule is being issued in interim form, comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 25, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4068, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, part 773 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Supplement No. 1 to part 773 is amended by adding an additional entry for 1355 immediately after the first entry for 1355; and by adding a new footnote 6, and redesignating the current footnotes 6 through 8 as footnotes 7 through 9 respectively to read as follows:

Note: Amendments to Supplement No. 1 do not appear in the Code of Federal Regulations.

Supplement No. 1—Commodities Excluded from Certain Special License Procedures

Export Control Commodity Number and Commodity Description
• • • • •
1355 [2,3,4,5] • • •
1355 [6] Lithography equipment for mask and reticle production capable of manufacturing integrated circuits with line width geometrics of less than one micron.
1357 • • •
• • • • •

Dated: June 18, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90–14468 Filed 6–22–90; 8:45 am]

BILLING CODE 3510–DT–M

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[2] • • •

[6] Exclusion does not apply to the Service Supply License.

15 CFR Parts 773 and 799

[Docket No. 900647–0147]

Eligibility for the Special License Procedures; Revisions

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by revising the commodity restrictions, in supplement Nos. 1 and 4 to part 773, that apply to exports under certain Special License procedures. This rule expands the scope of products eligible for export under the special license procedures including the distribution license. The changes made by this rule are in accordance with section 5(g) of the Export Administration Act, which requires that the Department of Commerce conduct annual reviews of the performance levels of commodities that are eligible for export under a distribution license.

DATES: *Effective:* This rule is effective June 25, 1990. *Comments:* Comments must be received by July 25, 1990.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael Hoffman, Office of Export Licensing, Bureau of Export Administration, telephone: (202) 377–3287.

SUPPLEMENTARY INFORMATION:

Specifically, this rule:

1. Removes—from the list of commodities excluded from certain Special License Procedures (supplement No. 1 to part 773)—Export Control Commodity Number (ECCN) 1534A, as well as ECCNs 4516B, 1674A, 4707B, and 1801A that were previously removed from the Commodity Control List.

2. Modifies the first reference to Export Control Commodity Number 1355A, as listed in supplement No. 1 to part 773, and transfers it to supplement No. 4 to part 773.

3. Modifies the Special License Procedure restrictions for Export Control Commodity Number 1565A, as specified in supplement No. 1 to part 773 by:

A. Specifying that only "supercomputers" are excluded from shipment under the Distribution License to countries listed in supplement Nos. 2 or 8 to part 773;

B. Raising the "total processing data rate" from from 500 to 2,000 million bits per second for countries listed in supplement No. 3 to part 773; and

C. Raising the "total processing data rate" from 200 to 1,000 million bits per second for countries not listed in Supplement Nos. 2, 3, or 8, except Argentina, Brazil, India, Iraq, Israel, Namibia, Pakistan, and the Republic of South Africa, where the "total processing data rate" will be 250 million bits per second.

4. Modifies the Special Distribution License restriction for Export Control Commodity Number 1355A, as specified in supplement No. 4 to part 773, by raising the test rate level to 60MHz for both U.S. manufacturers and non-manufacturers of semiconductor or semiconductor manufacturing equipment.

5. Excludes those commodities identified in the Commodity Control List (CCL) under ECCNs listed in § 776.18 as controlled for nuclear weapons delivery purposes from the Distribution, Project, and Service Supply License Procedures, as described in part 773; and excludes technical data identified in supplement No. 4, subparagraph (4) to part 779 from the Project License Procedures.

6. Makes various editorial corrections and clarifications to part 773, supplement Nos. 1 and 4 to part 773, and § 799.2 that were erroneouly omitted.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0006, 0694–0007, 0694–00010 and 0694–0015.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2414(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose new controls. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because this rule is being issued in interim form, comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 25, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Parts 773 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 773 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 773 and 799 continue to read as follows:

Authority: Pub. L. 96–72, Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 773—AMENDED

2. In § 773.2, paragraphs (b)(6) through (b)(8) are redesignated as paragraphs (b)(7) through (b)(9) and a new paragraph (b)(6) is added to read as follows:

§ 773.2 Project licenses.

• • • • • •

(b) • • •

(6) The commodities identified in the Commodity Control List (CCL) under Export Control Commodity Numbers (ECCNs) listed in § 776.18 of this subchapter as controlled for nuclear weapons delivery purposes and technical data described in supplement No. 4, paragraph (4), of part 779 of this subchapter;

• • • • • •

3. In § 773.3, paragraphs (b)(1)(iv) through (b)(1)(vi) are redesignated as paragraphs (b)(1)(v) through (b)(1)(vii) and a new paragraph (b)(1)(iv) is added to read as follows:

§ 773.3 Distribution licenses.

• • • • • •

(b) • • •

(1) • • •

(iv) The commodities controlled to limit the proliferation of missiles and described in those Export Control

Commodity Numbers listed in § 776.18 of this subchapter;

* * * * *

4. In § 773.7, paragraphs (b)(5) through (b)(7) are redesignated as paragraphs (b)(6) through (b)(8) and a new paragraph (b)(5) is added to read as follows:

§ 773.7 Service supply procedure.

* * * * *

(b) * * *

(5) The commodities controlled to limit the proliferation of missiles and described in those Export Control Commodity Numbers listed in § 776.18 of this subchapter;

* * * * *

5. Supplement No. 1 to part 773 is amended by removing the first entry for Export Control Commodity Number 1355; by removing the entries for Export Control Commodity Numbers 4516, 1534, 1674, 4707, and 1801; by revising the first entry for Export Control Commodity Number 1565; by revising the entry for Export Control Commodity Number 4585; and by adding Export Control Commodity Numbers 5585, 4721, 4798, and 5798 to read as follows:

Note: Amendments to Supplement No. 1 do not appear in the Code of Federal Regulations.

Supplement No. 1—Commodities Excluded From Certain Special License Procedures

Export Control Commodity Number and Commodity Description

* * * * *

1355 [1] * * *

* * * * *

1565 Any supercomputers; and other electronic computers exceeding the following specified limits for the following destinations. This includes any device, apparatus, or accessory that upgrades an electronic computer to become a supercomputer or to exceed the following limits.

A. Destinations listed in supplement Nos. 3 to part 773. A "total processing data rate" of 2,000 million bits per second.

B. Destinations not listed in supplement No. 2, 3, or 8 to part 773. A "total processing data rate" of 1,000 million bits per second, except Argentina, Brazil, India, Iraq, Israel, Namibia, Pakistan, and the Republic of South Africa, where the "total processing data rate" may not exceed 275 million bits per second.

* * * * *

4585 Streak cameras. (Entire entry.)

5585 Other high-speed continuous writing, rotation drum cameras. (Entire entry.)

* * * * *

4721 Helium-3. (Entire entry.)

* * * * *

4798 Chemicals. (Entire entry.)

5798 Chemicals. (Entire entry.)

* * * * *

6. Supplement No. 4 to part 773 is amended by removing the entries for Export Control Commodity Numbers 4585B and 4755B; by revising the entry for Export Control Commodity Number 1355A; by reserving footnote No. 1; and by adding a new footnote 3 to read as follows:

Supplement No. 4—Special Distribution License Restrictions for Certain Commodities Included in the Commodity Control List

* * * * *

1355A [2] [3] Plasma-enhanced or photo-enhanced chemical reactor equipment as defined in paragraph (b)(1)(iii)(d);

Equipment designed for ion implantation, or for ion-enhanced or photo-enhanced diffusion, as defined in paragraph (b)(11)(vii);

Photo-optical or non-photo-optical step and repeat or partial filed equipment for transfer of the image onto the wafer, as defined in paragraph (b)(2)(viii).

1355A: [2] [3] Crystal pullers: Computerized, or that are rechargeable without opening; Molecular beam epitaxial equipment; Electron beam systems for mask-making or semiconductor wafer or device processing; Electron bean, ion beam, or X-ray equipment for projection image transfer; Digitally controlled equipment specially designed for testing individual microcircuits, capable of performing basic function (truth table) testing at a pattern rate greater than 60 MHz.

* * * * *

PART 799—AMENDED

7. Supplement No. 1 to § 799.2 is amended by revising paragraph 1.(b) of Interpretation 1 to read as follows:

Supplement No. 1 to § 799.2—Interpretations

Interpretation 1: Electronic Computers and Related Equipment (ECCN 1565A)

1. * * *

(a) * * *

(b) Advanced electronic computers *except:*

(1) Electronic computers, other than supercomputers, are not subject to nuclear non-proliferation controls for destinations listed in supplement Nos. 2 and 8 to part 773 of the Export Administration Regulations.

(2) Electronic computers having a "total processing data rate" of 2,000 million bits per second or less are not subject to nuclear non-proliferation controls for destinations listed in supplement No. 3 to part 773 of the Export Administration Regulations unless the activities cited in paragraph (a) of this interpretation are involved.

(3) Electronic computers having a "total processing data rate" of 275 million bits per second or less are not subject to nuclear non-proliferation controls for destinations not listed in supplement Nos. 2, 3, or 8 of part 773 of the Export Administration unless the activities cited in paragraph (a) of this interpretation are involved.

* * * * *

Dated: June 18, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-14469 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-DT-M

[1] [Reserved]

[2] End-user data for OEL review and approval set forth in § 773.3(b)(2) is not required for shipment to countries listed in supplement No. 2 or 8 to part 773.

[3] The exclusion does not apply to spare and replacement parts for this equipment or to software.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 422

RIN 0960-AC72

Federal Old-age, Survivors, and Disability Insurance Benefits; Spouse's Benefits—Certificate of Election To Establish Entitlement for Certain Widow's and Widower's Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final rules incorporate section 8010 of Public Law (Pub. L.) 100-647 (Technical and Miscellaneous Revenue Act of 1988), enacted November 10, 1988, into existing regulations. Section 8010 allows a person who was receiving a spouse's benefit and either a retirement benefit or a disability benefit for the month before the month the insured person dies and who is between the ages of 62 and retirement age in the month of death to become entitled to reduced widow's or widower's benefits by filing a certificate of election of reduced benefits rather than an application. We have amended 20 CFR 404.335(b), 404.336(b), and 422.505 to reflect this change.

EFFECTIVE DATES: These amendments are effective June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION: Section 8010 of Public Law 100-647 amends sections 202(e) and 202(f) of the Social Security Act (the Act). Section 8010 provides an alternative to the application as a requirement for widow's or widower's benefits where the widow, widower, or surviving divorced spouse was entitled to a spouse's benefit and to either a retirement or disability insurance benefit in the month before the month of the insured's death and was not yet retirement age in the month of death. In accordance with section 216(l) of the Act, the retirement age is age 65 for people reaching age 62 before the year 2000. The retirement age will increase to age 67 for people reaching age 62 after the year 2021. The new provision allows such a person entitled to benefits as a widow, widower, or surviving divorced spouse to become entitled to reduced widow's or widower's benefits by filing a certificate of election (SSA-4111, Certificate of Election for Reduced Widow(er)'s Benefits) rather than an application. We have amended 20 CFR 404.335(b), 404.336(b) and 422.505 to reflect this change.

Prior to the enactment of Public Law 100-647, the only situation in which there was an application requirement for a widow, widower, or surviving divorced spouse who was entitled to a spouse's benefit for the month before the month of the insured's death was when the widow, widower, or surviving divorced spouse was also entitled to a retirement or disability benefit in that month and had not reached retirement age in the month of death. An application for reduced widow's or widower's benefits is not effective for months before the month of filing unless it is filed in the month after death. If an application is not filed timely, the widow, widower, or surviving divorced spouse could experience a break in entitlement. Because the certificate of election can be effective for up to 12 months before the month of filing, its use can prevent breaks in entitlement for almost all spouses becoming entitled to widow's or widower's benefits from age 62 to retirement age. The widow, widower, or surviving divorced spouse still retains the option of receiving unreduced widow's or widower's benefits by waiting until age 65. If the widow, widower, or surviving divorced spouse decides not to file a certificate of election or application, the widow's or widower's benefits will not be paid until the month of attainment of retirement age.

These final regulations are effective on the date of publication in the **Federal Register**. However, the statutory change these regulations reflect is effective for benefits payable on the basis of the wages and self-employment income of an insured person who dies after November 30, 1988.

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553(b)(B), in the development of its regulations. The Act provides exceptions to the notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in these regulations because we are only reflecting a statutory change. This change is not discretionary and does not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order No. 12291 because it will result in negligible administrative costs or savings. It has little effect on the amount of benefit payments or existing operating procedures under the old-age, survivors and disability insurance program.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting/recordkeeping requirements requiring clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefit, Old-age, survivors, and disability.

Dated: May 3, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 11, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart D of part 404 and subpart F of part 422 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)-(e), and 1302.

2. Section 404.335 is amended by removing the word "or" following paragraph (b)(1), adding the word "or" following paragraph (b)(2), and adding new paragraph (b)(3) to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(b) * * *

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under age 65 in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits.

* * * * *

3. Section 404.336 is amended by removing the word "or" following paragraph (b)(1), adding the word "or" following paragraph (b)(2), and new paragraph (b)(3) to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(b) * * *

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under age 65 in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for subpart F continues to read as follows:

Authority: Secs. 205, 1102, and 1871, (42 U.S.C. 405, 1302, and 1395hh). Section 422.512 is also issued under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended (30 U.S.C. 901 et seq.).

2. Section 422.505 is amended by adding a reference in numerical order to a new form SSA-4111—Certificate of Election for Reduced Widow(er)'s Benefits to read as follows:

§ 422.505 Applications and related forms for retirement, survivors, and disability insurance programs.

* * * * *

SSA–4111—Certificate of Election for Reduced Widow(er)'s Benefits. (For use by applicants for certain reduced widow's or widower's benefits.)

* * * * *

[FR Doc. 90-14568 Filed 6-22-90; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 645

[FHWA Docket No. 86-13, Notice 4]

RIN 2125-AC 32

Design Standards for Highways; Reference Material; Roadside Design Guide

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts the 1989 AASHTO Roadside Design Guide (Guide) for use as a guide or reference on Federal-aid highway projects. It is the intent of the Federal Highway Administration (FHWA) that this document be used by each State highway agency, in cooperation with the appropriate FHWA field office, to develop a roadside safety design policy for application within its State.

EFFECTIVE DATE: July 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Powers, Office of Engineering, (202) 366–1320, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Roadside Design Guide (Guide) is a publication of the AASHTO and supersedes its 1977 publication, "Guide for Selecting, Locating and Designing Traffic Barriers." It was developed by the Highway Subcommittee on Design's Task Force for Roadside Safety. The initiation of this AASHTO activity was announced on January 12, 1967, at 52 FR 1200 (Docket 86–13, Notice No. 1) and was followed by a status report on February 9, 1968, at 53 FR 3757 (Docket 86–13, Notice No. 2). The Guide was approved by the AASHTO Executive Committee in October 1988 and published in March 1989.

The Roadside Design Guide contains state-of-the-practice information on virtually all aspects of roadside safety design, including clear zones, topographic and drainage features, sign and luminaire supports, roadside and median traffic barriers, bridge railings, crash cushions, and work zone safety hardware. Also included is a section on a cost-effectiveness evaluation procedure developed for use with a personal computer. The Guide was developed to provide guidance, and is not intended to be a policy document or standard. Therefore, it is proposed to be included in 23 CFR 625 in the Guides and References Section.

Formal rulemaking action began with a notice of proposed rulemaking (NPRM), FHWA Docket 86–13, Notice 3 (53 FR 29910, July 17, 1989) which requested comments on the application of the Guide to Federal-aid Highway Projects.

Although the comment period closed on October 25, 1989, all responses dated through December 19, 1989, were considered in FHWA's analysis.

Discussion of Comments

Nineteen commenters responded to FHWA Docket No. 86–13, Notice 3. Included in this total were 7 State highway agencies, 5 utility companies, 3 manufacturers, 2 consultants, a highway safety advocacy group, and one University.

Each comment can be classified into one of three categories: (1) Identification of typographical or grammatical errors, (2) suggestions for inclusion of additional information, and (3) recommendations directly related to the FHWA's acceptance of specific practices/suggestions included in the Guide.

Since the Guide is an AASHTO document, the FHWA has made all category 1 and category 2 comments available to the Task Force for Roadside Safety for consideration in future revisions to the Guide and has recommended inclusion of most of the additional material that was suggested. The FHWA's responses to category 3 comments are summarized herein. To the extent practical these comments correspond to the order in which the subject matter appears in the Guide.

Two State highway agencies and several utility companies suggested that the Guide's status as a guide document be further emphasized and that the FHWA's intended use of the Guide for Federal-aid projects be clearly defined. The FHWA's position has been and will continue to be that the Guide can be used by State highway agencies, in conjunction with any other additional information, to develop roadside design policies acceptable for Federal-aid projects in that State. If a State highway agency chooses not to develop an individual State policy, the FHWA will use the information contained in the Guide and any other pertinent information that is presented as a basis for determining the adequacy of the roadside design on a project-by-project basis.

One State Department of Transportation asked if the FHWA intended to keep horizontal clearance (clear zone) as a controlling element of design. Several utility companies suggested limiting clear zone requirements to new construction and/or extensive reconstruction. A respondent from a university also recommended a distinction between clear zone requirements on existing versus new or rebuilt facilities. The FHWA does not consider the various numbers in the Guide associated with the clear zone as exact but considers them as representative of ranges of values within which judgment should be exercised in making design decisions. The FHWA will re-emphasize the forgiving roadside concept whereby the entire roadside cross-section is to be analyzed for correctable hazards. This will require the design engineer to look beyond minimum clear zone distances and consider the entire right-of-way, and in some cases beyond, for the practical application of roadside safety design priciples. The FHWA believes that a consistent design approach, guided by past accident history and a cost-effectiveness analysis, is the most responsible way to determine the appropriate clear zone and that such an approach will negate any need for a specific distinction between clear zones for new construction and those for reconstruction or rehabilitation projects.

Thus, because the clear zone should not be defined by fixed, nationally applicable values, the FHWA does not intend that it remain a controlling element of design for the purpose of requiring formal design exceptions, nor does it propose separate clear zone ranges for new construction versus reconstruction or rehabilitation projects.

One State DOT questioned the change in designation from operating speed (1977 "Guide for Selecting, Locating and Designing Traffic Barriers") to design speed (1989 "Roadside Design Guide") on the graph which relates speed, traffic volumes, and roadside slopes to recommended clear zone distances. This change was made to be consistent with

the AASHTO Policy on Geometric Design of Highways and Streets (Green Book). Given that a specific clear zone distance is at best an approximation, and that usually the difference between design speed and operating speed is small, the FHWA sees little problem with the change in nomenclature. Although roadside features designed based on the roadway design speed is an acceptable procedure, the FHWA recommends that where the operating speed is significantly higher, that higher speed should be used in the roadside design process. This recommendation is supported by comments in the preface to the Guide.

Another State DOT questioned the recommended safety treatment for transverse drainage structures, and cited the potential for clogging a pipe and flooding the roadway or adjacent property if a "safety grate" were installed. This is a valid concern and must be considered on a case-by-case basis. The Guide identifies possible safety treatment options but does not specifically prescribe any one of them. The FHWA is currently surveying the nationwide use of safety grates to determine their effectiveness and to identify problems associated with their use.

One State DOT recommended clarification of the 60-inch chord length measurement as it relates to breakaway hardware protrusions (i.e., 4-inches or less stub-height remaining after activation of breakaway mechanism). The 60-inch chord represents the width of a car; therefore, the chord should straddle the base of the support and be moved laterally to represent a "worst-case" situation, depending on the ground shape and slope.

In a related area, the FHWA will retain its current recommendation regarding the diameter of trees that are considered large enough to constitute a fixed object hazard, i.e., those with 4-inch diameters versus the 6-inches suggested in the Roadside Design Guide.

One State highway agency expressed concern that the Roadside Design Guide might be interpreted as mandating shielding of railroad warning devices at all signalized crossings. The FHWA's interpretation of this section of the Guide is that not all railroad crossing signals require shielding, but when analysis indicates shielding is warranted, an appropriate crash-tested device should be used.

A highway safety advocate commented that the 1,000 pound weight limitation for luminaire supports was excessive and that it would crush the roof of a small car if it fell on it. Full scale crash testing has demonstrated that, for low speed impacts, the luminaire typically does fall on the impacting vehicle and creases the roof. In one test conducted at 20 miles-per-hour, a relatively short pole weighing approximately 1000 pounds did crush the roof of the impacting vehicle to an extent that approached the limit of acceptability, but did not collapse it completely. Poles this heavy are not commonplace and where they exist they are usually taller than the cited test pole and have less potential for crushing a car roof. This is because less of the total mass of the taller pole will be over the vehicle when the pole top strikes the ground and, because of its greater fragility and flexibility, more of its kinetic energy will be absorbed by the ground than by the vehicle.

Several power companies took exception to the discussion in the Guide on utility poles. In particular, the option of placing power lines underground is deemed too costly and the use of breakaway designs for utility poles is considered to be only experimental. In fact, the Guide clearly lists these countermeasures as options to be considered once a utility line or pole is targeted for corrective action. The FHWA agrees that the first option is often impractical and that the second is still experimental. Nonetheless, each has its applications and should be used where deemed appropriate by the highway agency and the utility company.

One manufacturer and the safety advocacy group stated that the FHWA should accept for use on Federal-aid projects only those barriers which have been crash-tested and considered operational. This has been and will continue to be the FHWA's position. However, experimental hardware remains eligible for installation and evaluation on Federal highway projects when such use is requested by a State highway agency and if the hardware has passed the requisite full-scale crash tests. These commenters also recommended that the FHWA take a more positive role in advocating higher performance level railings where appropriate. Although the Guide does not contain warrants for the use of stronger barriers, it specifically encourages their consideration. For example, high performance railings installed by several State agencies at problem locations are included. It continues to be the FHWA's policy to advocate the use of stronger railings where such use is cost-effective or otherwise warranted. As additional testing of higher performance level barriers is completed the FHWA may recommend the use of such railings at particular locations.

One State DOT questioned the applicability of the barrier warrant for roadside slopes (Figure 5.1), particularly for fill heights greater than 15 feet. This figure simply reflects the assumption that, in general, a 3:1 slope is equal in severity to a traffic barrier. The Roadside Design Guide text suggests that State highway agencies may wish to do cost-effectiveness analyses to develop barrier warrants for various traffic volumes, design speeds, and fill heights.

The safety advocacy group suggested that median barrier terminals be safety-treated, regardless of their distance from the travelled way. In general, the FHWA supports this position but recognizes the fact that a terminal may be situated where it is virtually impossible to hit and may thus remain untreated. Citing poor performance and sensitivity to irregular terrain, the same commenter suggested that the FHWA disallow the use of the "bull-nose" median guardrail treatment on Federal projects. User experience indicates generally satisfactory performance with existing installations. The FHWA agrees that a flat approach to the terminal is critical for proper performance, as explained in the Guide.

The safety advocacy group was concerned over the continued use of curbs in front of traffic barriers. Recent testing has shown that a curb in front of a semi-flexible barrier can cause vaulting of the rail when impact speeds are 60 mph or higher. Consequently, the FHWA intends to discourage further use of any curb over 4-inches high in front of any flexible or semi-flexible traffic barrier on facilities with design or operating speeds of 50 mph and higher. However, curb/barrier combinations which have been successfully crash-tested may be used without restriction.

One State DOT suggested inclusion of guidelines on acceptable strengths for retrofit bridge railings. Although the FHWA agrees this would be desirable, no such guidelines currently exist. Upon completion of on-going research efforts in this area, some general guidelines may become available.

A manufacturer and the safety advocacy group addressed Chapter 9, Safety Appurtenances for Work Zones. Both suggested deletion of Table 9.1 and inclusion of this information in the text itself. Since this is essentially a format change, the decision to modify the text rests with AASHTO. Other issues raised included identification of specific temporary barrier connections approved for use by the FHWA and a prohibition

on the use of the w-beam/barrel barrier. The FHWA concurs in the first recommendation and will consider future supplementary guidance on that issue. The Guide specifically identifies the conditions under which the w-beam/barrel barrier was tested and the FHWA has no basis for prohibiting its use under those conditions.

One State DOT suggested that the cost-effectiveness computer program, ROADSIDE, be emphasized and expanded. The FHWA concurs and will consider issuing future additional guidance on application of the ROADSIDE program. The discrepancy between the AASHTO fatality cost ($500,000) and that currently advocated by the FHWA ($1,500,000) was questioned by the safety advocacy group. Life is priceless and whatever value is used for a fatality in an economic analysis is only an aid to the rational allocation of limited resources. The FHWA has used the higher value, which was developed through application of the willingness-to-pay concept, in some of its program evaluations and recommends its use by the States. The FHWA does not believe it would be appropriate at this time to insist upon a specific value, but each highway agency should be consistent in the value it uses in comparing design alternatives. The ROADSIDE program should not be used to determine absolute costs associated with alternative improvements. Since ROADSIDE is a probability model, its primary use is to assess the relative ranking of proposed countermeasures. Viewed in this manner, the dollar values assigned to accident severities are not critical and will yield generally comparable results if they are within the suggested range ($500,000 to $1,500,000).

The FHWA will continue to evaluate the dollar costs assigned to fatalities and injuries and may, in the future, establish minimum values to be used in cost-effective analysis for Federal-aid highway projects.

The safety advocacy group suggested that the FHWA reject the Guide as written and issue a separate policy for roadside design on Federal-aid projects. By its very nature, the Guide must necessarily allow some leeway in interpretation and application. For areas in which additional guidance may be needed, the FHWA will consider providing more explicit instructions and explanations. Roadside design is a continually evolving discipline and as more information becomes available through continuing research and in-service hardware evaluation efforts, the Guide will be updated. The FHWA believes that the information currently in the Guide accurately reflects the state-of-the-art in roadside design and that it would be highly counterproductive and detrimental to improved roadside safety to reject the Guide outright. It provides an excellent framework within which specific standards and policies can be developed.

Regulatory Evaluation and Impact

The FHWA has determined that this amendment does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination was based on the facts that the Roadside Design Guide is an update and consolidation of earlier publications which reflect state-of-the-practice in roadside safety design, and it is specifically cited for use as a reference document, not a policy document or design standard.

Regulatory Flexibility Act and Federalism Assessment

Based on the discussions above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Parts 625 and 645

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Utilities.

In consideration of the foregoing, the FHWA hereby amends chapter I of title 23, Code of Federal Regulations, parts 625 and 645 as set forth below:

Issued on: June 14, 1990.

T.D. Larson,
Administrator.

The FHWA hereby amends 23 CFR parts 625 and 645 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.5, paragraph (a)(3) is revised to read as follows:

§ 625.5 Guides and References.

* * * * *

(a) * * *

(3) Roadside Design Guide, AASHTO 1989.[3]

PART 645—UTILITIES

Subpart B—Accommodation of Utilities

3. The authority citation of part 645 continues to read as follows:

Authority: 23 U.S.C. 109, 111, 116, 123 and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§ 645.207 Definitions. [Amended]

4. In § 645.207, the definition of "clear recovery area" in paragraph (b) is amended by removing reference to the AASHTO "Guide for Selecting, Locating and Designing Traffic Barriers," 1977 and inserting in its place the reference "Roadside Design Guide," 1989.

5. In § 645.211, the introductory text is amended by removing the parentheses and revising the first three sentences to read as follows:

§ 645.211 State highway agency accommodation policies.

The FHWA shall use the AASHTO publication, "A Guide for Accommodating Utilities Within Highway Right-of-Way," 1961, and should use the AASHTO "Roadside Design Guide," 1989, to assist in the evaluation of adequacy of State highway agency utility accommodation policies. The Guide for Accommodating Utilities is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is

on file at the Office of the Federal Register in Washington, DC. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D.

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[FR Doc. 90-14535 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 165

[COTP Buffalo Reg. 90-002]

Safety Zone Regulations; Sodus Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone inside Sodus Bay off of Thornton Point. The zone is needed to protect the barge anchored in the center of the safety zone and functioning as a platform for launching fireworks, from a safety hazard associated with vessels transiting the area. It is also needed to protect spectator craft and other vessels from falling, burning debris. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 9:30 p.m. on 03 July 1990. It terminates on 03 July 1990 at 11:30 p.m. unless otherwise terminated by Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. Cumming at (716) 846-4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved.

Drafting Information: The drafters of this regulation are LT Cumming, project officer for the Captain of the Port, and LCDR Reeves project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation: The event requiring this regulation will begin at 9:30 p.m., 03 July 1990 and will conclude at 11:30 p.m., 03 July 1990. The event is a fireworks display from an anchored barge. A safety zone is needed to protect spectator craft and other vessels from falling, burning debris. It is also needed to ensure that the safety of the fireworks launching operation is not compromised by wakes and other hazards associated with transiting vessels.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this emergency rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T0915 is added to read as follows:

§ 165.T0915 Safety Zone: Sodus Bay, NY

(a) *Location.* The following area is a safety zone: A 300 yard radius around a barge anchored in position 43 deg 15.35 min N, 076 deg 58.20 min W.

(b) *Effective date.* This regulation becomes effective at 9:30 p.m., 03 July 1990. It terminates at 11:30 p.m., 03 July 1990 unless otherwise terminated by the Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 4, 1990.

J.H. Johnson, III,
Captain of the Port, Buffalo, N.Y.

[FR Doc. 90-14573 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 90-006]

Safety Zone Regulations; Dolan Family Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Oyster Bay Harbor approximately ¼ mile South West of Cove Point. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation becomes effective at 8 p.m. July 4, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 10 p.m., July 4, 1990, unless terminated sooner by the Captain of the Port. No rain date is set for this event.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound (203) 468-4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register Publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are LT David D. Skewes, project officer, Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8 p.m. on July 4, 1990 approximately 15 minutes prior to the fireworks display in Oyster Bay Harbor, NY. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in this channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1223 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 33 CFR 165.T1086 is added to read as follows:

§ 165.T1086 Safety Zone: Dolan Family Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters within a 800 ft radius of the fireworks launching platform approximately 800 ft offshore directly adjacent to the Dolan Family residence, approximately ½ mile South West of Cove Point in Oyster Bay Harbor, NY. The barge used for the launching platform will be moved into and then anchored in position 800 ft off the western shore of Cove Neck in Oyster Bay Harbor. This safety zone will be marked by 8 large orange marker buoys and will be closed to all marine traffic during the specified times.

(b) *Effective date.* This regulation becomes effective on July 4, 1990 at 8 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 10 p.m. July 4, 1990, unless terminated sooner by the Captain of the Port. Rain date for this event is not scheduled.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: June 13, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 90-14698 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 90-095]

Safety Zone Regulations; Greenwich 350th Fireworks Celebration

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Captain Harbor approximately one-half mile South East of Field Point in Greenwich, CT. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation becomes effective at approximately 9:15 p.m., July 21, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 10:00 p.m., July 21, 1990, unless terminated sooner by the Captain of the Port. Rain date will be July 22nd at the same times.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound (203) 468-4404.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are LT David D. Skewes, project officer, Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at approximately 9:30 p.m. on July 21, 1990. This event is a fireworks display celebrating the town of Greenwich's 350th birthday and will take place approximately one-half mile South East of Field Point in Greenwich, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in this channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 33 CFR 165.T1095 is added to read as follows:

§ 165.T1095 Safety zone: Greenwich 350th fireworks celebration.

(a) *Location.* The following area is a safety zone: All waters within a 1000 foot radius of the two fireworks launching platforms approximately one-half mile offshore South East of Field Point in Captian Harbor, Greenwich, CT. The launching platforms will be moved into and then anchored in approximate position (40-59.8'N, 073-37.2'W). The safety zone will be marked by 8 large orange marker buoys/spheres and will be closed to all marine traffic during the specified times.

(b) *Effective date.* This regulation becomes effective on July 21, 1990 at 9:15 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 10:00 p.m. July 21, 1990, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: June 15, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 90-14699 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596-AA39

Prohibitions; Forest Development Trails

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking amends the prohibitions on use of motorized vehicles on National Forest System trails. The current rule prohibits all vehicles wider than 40 inches from using trails. The new rule will control use on Forest development trails based upon type of vehicle, type of traffic, and/or vehicle characteristics, rather than strictly on vehicle width. The intended effects of this new rule are to provide Forest Supervisors sufficient discretion to choose the best method of managing trail use and to eliminate the necessity of periodically revising the rules because of changes in design and manufacture of vehicles suitable for trail use.

EFFECTIVE DATE: July 25, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. (202) 382-9423.

SUPPLEMENTARY INFORMATION:

Proposed Rule

On September 14, 1988 (53 FR 35526-35527) the Forest Service published in the Federal Register proposed amendments to 36 CFR part 261—Prohibitions, which identifies prohibited acts and conduct on National Forest System lands. As proposed, the rule would have removed the general prohibition at 36 CFR 261.12(e) against use of vehicles over 40 inches wide on a forest development trail and instead would have authorized the Forest Supervisor to manage trail use and traffic by issuing specific orders under 36 CFR part 261, subpart B.

The current prohibition against allowing any vehicle wider than 40 inches on a forest trail was originally intended to prohibit four-wheel drive vehicle use on Forest development trails and was not based on trail design standards. As noted in the preamble to the proposed rule, a variety of vehicles suitable for trail use are being manufactured now that exceed the current 40-inch prohibition by 1 to 5 inches. Generally, trails that will accommodate a 40-inch-wide vehicle will also accommodate slightly wider models without adverse effect. The current rule, however, prohibits such vehicles and has led to trail user confusion and law enforcement difficulties. For these reasons, the Forest Service proposed, that rather than continue a general prohibition based on an arbitrary width of vehicles, each Forest Supervisor be given the authority to order site-specific prohibitions of motor vehicles based on type of vehicle, type of traffic and/or vehicle characteristics. This approach would allow the Forest Supervisor to choose the best method of managing trail use, while minimizing resource damage, providing for public safety, and responding to local management needs.

Analysis of Public Comments and Agency Response

Public comment was requested on the proposed rule, and the Forest Service received 5 letters from an Alaskan Citizen's Advisory Commission, the American Motorcyclist Association, the International Snowmobile Industry Association, The Nature Conservancy, and an interested citizen. A summary of the comments received and the Agency's reponse follow.

Two respondents supported the proposed amendments without change. Two reviewers questioned the justification for the removal of the "40-inch rule". They were concerned that vehicle size limits for national forest trails were being determined by the off-road vehicle (ORV) industry rather than by concerns for minimizing damage to forest resources. While it is true that the removal of the general prohibition will allow the use of vehicles wider than 40 inches on some trails, resource protection on trails will not be compromised. The regulations at 36 CFR part 295—Use of Motor Vehicles Off Forest Development Roads require the forest land manager, as part of the forest planning process, to analyze current and potential impacts of vehicles on all forest resources, and to restrict or prohibit their use using part 261—Prohibitions if the analysis indicates considerable adverse effects.

The same reviewers questioned the justification for revising 36 CFR 261.55, which would authorize Forest Supervisors to issue orders locally. These reviewers felt that confusion and inconsistency would result from giving each Forest Supervisor the authority to develop local orders for managing motorized vehicle trail use. The agency disagrees. First, Forest Service policy (FSM 2355, Off-Road Vehicle Management) requires each Regional Forester to achieve consistency in off-road vehicle management between forests and regions. Second, the proposed amendments would further reduce the chance of confusion by making 36 CFR 261.55 consistent with the off-road vehicle management rules at 36 CFR part 295, which speak to control of use by "specific vehicle types off roads" and with Forest Land and Resource Management Plans (36 CFR part 219) which designate roads, trails, and areas for use by types of traffic. Finally, the amendments would also parallel the approach used in the General Prohibitions governing Forest Development Roads (36 CFR 261.54), an important factor, since trail vehicles are frequently used on Forest development roads. Such consistency between trail and road regulations would further reduce user confusion and law enforcement problems.

One respondent requested that language be added to part 261 to clarify that prohibitions established under this part affecting access in Alaska are subject to the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) sections 811 and 1110. The agency does not believe this is necessary. There is nothing in the proposed rule on specific prohibitions that is inconsistent with the provisions of ANILCA. Moreover, all local orders prohibiting activities and uses of specific National Forest areas or resources must be consistent with applicable laws and regulations that govern National Forest System management. Therefore, any prohibitions issued to govern trail use in National Forests in Alaska must comply with the special access provisions of ANILCA.

Having considered the comments received, the Department concludes that the rule as proposed should be adopted without change. The current rule at 36 CFR 261.12 prohibiting use of any vehicle on a forest trail over 40 inches wide establishes an arbitrary standard that is not necessary to protect forest resources or trail users and that does not reflect current manufacturing designs or allow for future vehicle design changes. As a national prohibition, the rule does not take into account size-specific trail conditions and, as noted, is inconsistent with other rules which use vehicle type as a standard for controlling trail use. Laws, agency policy, and other rules governing forest land and resource management including the off-road vehicle rules at 36 CFR part 295 and the forest planning rules at 36 CFR part 219 require resource protection and provide the mechanisms for reasoned and consistent management of vehicular use on forest trails and roads on a local basis.

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. The regulation applies to individual recreation users in a limited situation and will have no effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete in foreign markets. It has also been determined this action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

Based on environmental analysis, this rule will not have a significant effect on the human environment; therefore, an environmental impact statement was not prepared. Copies of the environmental assessment and finding

of no significant impact may be obtained by writing or calling the persons and offices listed under "FOR FURTHER INFORMATION CONTACT."

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and therefore imposes no paperwork burden on the public.

Therefore, the proposed rule amending 36 CFR part 261, subparts A and B, which was published at 53 FR 35527 on September 14, 1988, is adopted as set forth below.

Dated: June 15, 1990.

Clayton Yeutter,

Secretary.

List of Subjects in 36 CFR Part 261

Law enforcement, National Forests.

Therefore, for the reasons set forth in the preamble, Subparts A and B of Chapter II of Title 36 of the Code of Federal Regulations is amended as follows:

PART 261—PROHIBITIONS

1. The authority citation for Part 261 continues to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)–(d)(1).

Subpart A—General Prohibitions

§ 261.12 [Amended]

2. Amend § 261.12 by removing paragraph (e).

Subpart B—Prohibitions in Areas Designated by Order

3. Revise § 261.55 to read as follows:

§ 261.55 Forest development trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a forest development trail:

(a) Being on a trail.

(b) Using any type of vehicle prohibited by the order.

(c) Use by any type of traffic or mode of transport prohibited by the order.

(d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.

(e) Shortcutting a switchback in a trail.

[FR Doc. 90–14572 Filed 6–22–90; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3790–5]

Approval and Promulgation of Implementation Plans; California; South Coast Air Basin, Cement Kilns, Nitrogen Oxides (NO_x)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action responds to a Ninth Circuit, U.S. Court of Appeals decision filed on April 8, 1988. In its decision the Court vacated EPA's approval of the 1984 South Coast Air Quality Management District (SCAQMD) Rule 1112, "Emissions of Oxides of Nitrogen from Cement Kilns", and remanded the rule for proceedings consistent with the Court Opinion. Since rescission of EPA approval is the only action EPA may take consistent with the Opinion, public comments are not being solicited on this action. Disapproval of the 1984 rule is precluded because a more recent (1988) version of SCAQMD Rule 1112 was submitted as a State Implementation Plan (SIP) revision on October 10, 1988 (action proposed by EPA on April 6, 1988).

This action leaves the California SIP for the South Coast Air Basin (SCAB) nitrogen dioxide (NO_x) nonattainment area without an EPA-approved reasonably available control technology (RACT) level rule for the control of NO_x from the two major cement sources in the Air Basin.

DATES: This action will become effective on June 25, 1990.

ADDRESSES: A copy of the Court decision, the subject and revised rules, and the applicable **Federal Register** notices are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Air Management Division, State Implementation Plans Section, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Morris Goldberg at (415) 974–8213.

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1986 (51 FR 600), EPA approved Rule 1112, "Emissions of Oxides of Nitrogen from Cement Kilns", adopted by the SCAQMD on January 6, 1984 and submitted by the California Air Resources Board (ARB) to EPA for approval on April 19, 1984.

In March 1986 Riverside Cement and California Portland Cement Companies filed petitions for review in the Ninth Circuit, U.S. Court of Appeals. In April 1986, the petitioners requested a stay of the effective date of the EPA approval, pending either final EPA consideration of a to-be-revised rule or the Court's final decision on the petitions for review. The case was argued on January 12, 1988 in San Francisco. The Court's final decision in *Riverside Cement Company, et al.* v. *Lee M. Thomas, Administrator, U.S.E.P.A.* (Nos. 86–7126, 86–7132, A–9–FRL–2949–9, FR–86–161), was filed on April 8, 1988. The Court vacated EPA's approval of the 1984 rule and remanded the rule for EPA action consistent with the Court Opinion.

Meanwhile, a revised SCAQMD rule 1112 was adopted on June 6, 1986, and submitted by the ARB to EPA on October 10, 1986. EPA proposed to disapprove the revised rule on April 6, 1988 (53 FR 11314), primarily because the 1986 rule did not satisfy the SCAQMD/ARB commitment to reduce SCAB cement kiln NO_x emissions by 40%, because it had enforcement related difficulties, and because it would require no emission reduction from cement kilns.

It is important to note that the 1979 SCAB NO_x plan is only conditionally approved, and thus still subject to potential sanctions under Clean Air Act (CAA) sections 110(a)(2)(I) and part D. In addition, since the CAA mandates attainment for NO_x by December 31, 1982, EPA found the plan to be substantially inadequate when violations were measured in 1983. A notice of SIP deficiency for NO_x was issued on February 24, 1984, under CAA section 110(a)(2)(H). The added failure of the SCAQMD to adopt a reasonably available control technology (RACT) level rule for the control of NO_x emissions from its two major cement sources located in the last NO_x nonattainment area in the Country, may affect the approval of a 1989 proposed SIP revision with a planned 1996 NO_x attainment date. EPA will address that issue in a future rulemaking notice on the South Coast NO_x plan.

Court Opinion and EPA Options

The April 8, 1988 decision of the U.S. Court of Appeals for the Ninth District stated: "We vacate EPA's approval of Rule 1112 and remand for proceedings consistent with this Opinion." The decision to vacate the EPA approval was based on the existence of a provision in the 1984 rule which required a SCAQMD Executive Officer Hearing to reexamine evidence on the technical feasibility of controls and to revise the rule as appropriate. The Court determined the 1984 rule to be a "demonstration" rule—a goal for demonstration projects. Sources, therefore, were not subject to the usual compliance and enforcement mechanisms, despite the final compliance deadlines applicable to the sources subject to the rule.

Normally the alternative actions that EPA can take on a rule are to approve or disapprove. On occasion a state may withdraw revised SIP rules and/or whole plans from EPA consideration. Given, in this case, that approval has been found inappropriate, EPA evaluated its other SIP action options prior to taking the action to withdraw its approval of the rule.

The disapproval option is precluded because a 1988 version of SCAQMD rule 1112 was submitted to EPA for approval as a California SIP revision by the ARB on October 10, 1988. EPA does not disapprove SIP revisions that have been superseded by more recent submission of the same rule. The intent of the submission of a more recent revision of rule 1112, to supersede the prior SIP revision, was indicated by the following letters.

On May 15, 1987, EPA requested the ARB to withdraw the 1986 rule from EPA consideration as a SIP revision. The ARB responded on June 25, 1987, indicating their desire for formal EPA action. EPA proposed to disapprove the 1986 SCAQMD Rule 1112 on April 6, 1988 (53 FR 11314), for the reasons set forth above.

Since rescission of EPA approval is the only action EPA may take consistent with the Opinion, EPA policy, and the State intent, comments are not solicited in conjunction with this action. Rescission of approval is mandatory. Therefore, there is "good cause", under the Administrative Procedures Act, 5 U.S.C. § 553(b), for foregoing notice and comment on this action.

Final Action

Through this notice EPA withdraws its January 7, 1986 (51 FR 600), approval of rule 1112 "Emissions of Oxides of Nitrogen from Cement Kilns", as adopted by the SCAQMD and submitted to EPA in 1984.

Regulatory Process

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 1990.

This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Air pollution control Nitrogen dioxide, Ozone, Particulate matter.

Dated: June 18, 1990.

William K. Reilly,

Administrator.

40 CFR part 52, subpart F, is amended to read as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by removing and reserving paragraph (c)(154)(vii)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * * * *

(c) * * *

(154) * * *

(vii) * * *

(B) [Reserved]

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[FR Doc. 90–14629 Filed 6–23–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 80

[FRL–3790–7]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This notice promulgates revisions to the gasoline and alcohol blend volatility regulations promulgated on March 22, 1989 (54 FR 11868). The revisions are based on the experience the Agency has gained during its first year of enforcing the volatility regulations and from suggestions from the regulated industry and other interested parties. The revisions consist of changes to the appendix D sampling procedures and the appendix E test procedures for determining the Reid Vapor Pressure (RVP) of gasoline and gasoline-oxygenate blends.

EFFECTIVE DATE: This action will be effective on August 24, 1990, unless adverse or critical comments are received by July 25, 1990.

ADDRESSES: Information related to these revisions may be found in Public Docket No. A–85–21. The docket is located at the Air Docket, room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:30 am and 12 noon and between 1:30 pm and 3:30 pm on weekdays. As provided by 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: John A. Garbak, Environmental Engineer, Field Operations and Support Division (EN–397F), EPA, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382–2478.

SUPPLEMENTARY INFORMATION: This notice revises the volatility regulations for gasoline and alcohol blends, which were promulgated on March 22, 1989 (54 FR 11868).[1] The volatility regulations established summertime commercial gasoline volatility levels. Depending on the area of the country and the month, gasoline Reid Vapor Pressure (RVP) may not exceed 10.5 pounds per square inch (psi), 9.5 psi, or 9.0 psi starting in 1989.

A description of the revisions is set forth below:

(1) *Sample container cleaning procedure:* The present cleaning procedure in 40 CFR part 80, appendix D, section 4.3, of the volatility regulations is quite burdensome and appears to be unnecessary. Since the Agency is using glass bottles and the sampling regulations require a pre-sample rinse with the product to be sampled, the effect of any residual hydrocarbons on the vapor pressure test appears to be negligible. Therefore, the revision to section 4.3 will eliminate the rinse with a Stoddard solvent, the washing of the container with a strong soap solution, and the rinse with tap water and finally with distilled water. Instead the regulations are revised to state that the sample containers must be cleaned "consistent with the residual materials in the container" and the containers must be "clean and free of water, dirt, lint, washing compounds, naphtha or other solvents, soldering fluxes, and acids, corrosion, rust, and oil."

(2) *Use of computer read "bar codes":* In 1990 the Agency would like to link the inspection form data with the sample bottle by using unique computer read "bar codes." Therefore, the revision to appendix D, section 10, "Labeling

[1] A corrections notice concerning these regulations was published on June 27, 1989 (54 FR 27018). A revision of the New Mexico volatility standards was published on August 14, 1989 (54 FR 33218).

sample containers," will allow the use of bar codes or similar means of sample identification.

(3) *Nozzle extension devices:* The Agency has received several comments on the type of nozzle extension device used to take samples from retail stations. Figure 7 in the regulations, representing a nozzle extension device, continues to be acceptable. However, appendix D, section 11.5.1 is being revised to state that the nozzle extension device does not need to be identical to that in the figure in the regulations. Rather, it only needs to be capable of bottom filling the container with no greater loss of vapor than with the current extension device. Additionally, the type of nozzle extension device the Agency will use will have an opening small enough to allow its use with small neck bottles (*e.g.*, Boston Round Bottles) to facilitate sampling at retail stations. Figure 7a is being added to the regulations as another example of a nozzle extension device.

(4) *Nozzle sampling procedure:* In section 11.5.2 the regulations state that the sample container should be rinsed with a small amount of the product to be sampled prior to sampling. The Agency is revising the regulations to require this small amount of product to be delivered to the sample container through the nozzle extension device. The way the regulations currently read this is not required. It is possible that if the nozzle extension device were left in the sun and not rinsed prior to taking a sample the temperature of the product being sampled could be raised slightly.

(5) *Sample integrity:* The regulations state that samples must be "clear and bright, and free of a second phase" to be valid for analyses (appendix E, method 1, § 8.3, note 4). The enforcement samples taken during the 1989 enforcement season were clear and bright at room temperature but many became cloudy upon chilling for the vapor pressure test. We believe that this cloudiness is due to entrained water in the gasoline. The fact that a very small amount of water is present does not affect the validity of the measurement of the volatility of an otherwise properly taken and analyzed sample. Therefore, this revision changes the last sentence of note 4 in § 8.3 of appendix E, method 1 to require the recording of the fact that a sample is cloudy or has a phase separation, but would not require that such a sample be rejected for testing. This revision does not change the Agency's commitment to run "dry" vapor pressure tests. Rather, it allows water-contaminated gasoline to be analyzed for possible volatility violations.

(6) *Use of distilled water in water bath:* The regulations specify that only distilled water may be used in the vapor pressure bath. The manufacturer of the Herzog equipment specifies that such water be used to extend the life of the stainless steel water bath. However, the distilled water is not necessary for correct vapor pressure measurements. Therefore, the Agency is eliminating the word "distilled" from appendix E, method 2, § 7.4.

(7) *Cleaning apparatus for next test:* The wash procedure for cleaning the apparatus currently in the regulations, while effective, is slow and causes laboratory waste problems. The effects of the current cleaning method versus a hydrocarbon solvent (n-pentane) cleaning method on RVP test results are compared in a June 1, 1989, EPA memorandum that has been placed in the rulemaking docket. The differences between these methods are slight and are not statistically significant except in the case of lab duplicates. The hydrocarbon (n-pentane) wash displayed slightly better precision. Therefore, a wash procedure is being added to § 8.5 of both methods 1 and 2 of appendix E which allows the rinsing of the apparatus with n-pentane. With this addition there are two methods which can be used for washing the apparatus, the old § 8.5 (changed to 8.5.1) and the new n-pentane wash (§ 8.5.2).

(8) *Sampling method preference:* There are a number of sampling methods specified in appendix D of the volatility regulations. The method that should be used for a given storage tank depends upon the conditions presented by the tank configuration and sampling equipment. The Agency is not proposing any regulatory changes on this subject, but intends that the guidelines set forth below be used by its inspectors and regulated parties.

An all-levels sample is the preferred method of collecting a sample from a storage tank. If an all-levels sample cannot be obtained due to the storage tank configuration or equipment problems, the following types of samples, listed in order of preference, are also appropriate: running sample, middle sample, or tap sample taken from a height nearest to the middle of the tank contents. Due to difficulty in obtaining an all-levels sample for storage tanks with less than 8 feet of sampling height, including tank trucks and tank cars, a middle sample is preferred over an all-levels sample.

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis has not been prepared. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written OMB comments and any written EPA responses to such comments have been placed in the rulemaking docket.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060-0178.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant impact on a substantial number of small entities. In fact, the changes being made will make the regulations easier to adhere to and thus be less burdensome.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. There is no adverse environmental impact due to these changes and the standard does not change in any way due to these revisions. Therefore, the Agency has determined there is good cause to find the notice and comment procedures unnecessary for this rule. This action will be effective on August 24, 1990, unless adverse or critical comments are received by July 25, 1990.

If such comments are received, this action will be withdrawn before the effective date by publishing a **Federal Register** notice. If withdrawn, this action will be included in a Notice of Proposed Rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective on August 24, 1990.

Authority for the actions promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 18, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Appendix D is amended by revising §§ 4.3, 10.1, 11.5.1, and 11.5.2 to read as follows and to add Figure 7a:

Appendix D—Sampling Procedures for Fuel Volatility

* * * * *

4. * * *

4.3 *Cleaning procedure.* The method of cleaning all sample containers must be consistent with the residual materials in the container and must produce sample containers that are clean and free of water, dirt, lint, washing compounds, naphtha or other solvents, soldering fluxes, and acids, corrosion, rust, and oil. New sample containers should be inspected and cleaned if necessary. Dry either the container by passing a current of clean, warm air through the container or by allowing it to air dry in a clean area at room temperature. When dry, stopper or cap the container immediately.

* * * * *

10. * * *

10.1 Label the container immediately after a sample is obtained. Use waterproof and oilproof ink, or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing and handling. An indelible identification symbol, such as a bar code, may be used in lieu of a manually addressed label. The label shall reference the following information:

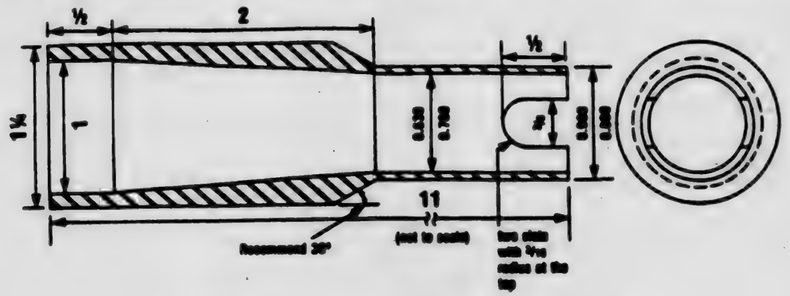
* * * * *

11.5 * * *

11.5.1 *Apparatus.* Sample containers conforming with § 4.1 should be used. A spacer, if appropriate (figure 8), and a nozzle extension device similar to that shown in Figures 7 or 7a shall be used when nozzle sampling. The nozzle extension device does not need to be identical to that shown in Figures 7 or 7a but it should be a device that will bottom fill the container.

11.5.2 *Procedure.* Immediately after gasoline has been delivered from the pump and the pump has been reset, deliver a small amount of product through the nozzle extension into the sample container using a spacer (Figure 8) if needed, on the pump nozzle (vapor recovery type). Rinse the sample container and dump the product into waste container. Insert nozzle extension (Figure 7 or 7a) into sample container and insert pump nozzle into extension with slot over the air bleed hole (when using Figure 7). Fill sample container slowly through nozzle extension to 70–80 percent full (Figure 8). Remove nozzle extension. Cap sample container at once. Check for leaks. Discard sample container and resample if leak occurs. If sample container is leak tight, label the container and deliver it to the laboratory.

* * * * *



All Dimensions in Inches (full scale except as noted)
All decimal dimensions represent minimum and maximum
Tolerance for all other dimensions is ± 1/32"
Made of non-ferrous material, unaffected by gasoline

Figure 7a. Nozzle Extension for Nozzle Sampling
(Compatible with narrow neck sample containers)

3. Appendix E, method 1 is amended by revising note 4 to sections 8.3, 8.5 and note 7, and by adding new sections 8.5.1 and 8.5.2 to read as follows:

Appendix E—Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends

Method 1—Dry RVP Measurement Method

* * * * *

8. * * *

Note 4: After the apparatus has been immersed in the bath, check the remaining sample for phase separation. If the sample is contained in a glass container, this observation can be made prior to sample transfer (8.1). If the sample is contained in a non-transparent container, shake the sample vigorously for 5 seconds and then immediately pour a portion of the remaining sample into a clear glass container. Immediately after shaking this sample again for 5 seconds, observe the sample for phase separation. If this sample is not clear and bright, record the sample as cloudy. If this sample has more than one phase, record the sample as having phase separation.

8.4 * * *

8.5 *Preparation of apparatus for next test.* Either of the cleaning procedures listed in sections 8.5.1 and 8.5.2 may be used to prepare the apparatus for the next test.

8.5.1 Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 degrees F (32 degrees C) and allowing it to drain (Note 7). Repeat this purging at least five times. After disconnecting the pressure gage from its manifold connection with the manometer, remove trapped fluid in the Bourdon tube of the gage by repeated centrifugal thrusts. This may be accomplished in the following manner: hold the gage between the palms of the hands with the right hand on the face side and the threaded connection of the gage forward. Extend the arms forward and upward at an angle of 45 degrees with the coupling of the gage pointing in the same direction. Swing the arms downward through an arc of about 135 degrees so that the centrifugal force aids gravity in removing the trapped liquid. Repeat this operation three times to expel all liquid. Purge the pressure gage by directing a small jet of air into its Bourdon tube for at least 5 minutes. Rinse both chambers and the transfer connection several times with hot water, then several times with acetone, then dry by blowing dried and filtered compressed air or pulling a vacuum. Stopper the fuel chamber and place it in the refrigerator or ice-water bath for the next test.

Note 7: If the purging of the air chamber is done in a bath, be sure to avoid small and unnoticeable films of floating sample by keeping the bottom and top openings of the chamber closed as they pass through the water surface.

8.5.2 Drain residual sample from the air and gasoline chambers. Rinse the chambers and the transfer connections in a manner such that all the inner surfaces are wetted with commercial grade n-pentane and drain into an appropriate container. Dry the interior surfaces with dried and filtered compressed air or by pulling a vacuum through them. After disconnecting the pressure gage from its manifold connection with the manometer, remove trapped fluid in the Bourdon tube of the gage by repeated centrifugal thrusts. This may be accomplished in the following manner: Hold the gage between the palms of the hands with the right hand on the face side and the threaded connection of the gage forward. Extend the arms forward and upward at an angle of 45 degrees with the coupling of the gage pointing in the same direction. Swing the arms downward through an arc of about 135 degrees so that the centrifugal force aids gravity in the removing of the trapped liquid. Repeat this operation three times to expel all liquid. Purge the pressure gage by directing a small jet of air into its Bourdon tube for at least 5 minutes. Stopper the fuel chamber and place it in the refrigerator or ice-water bath for the next test.

• • • • •

4. Appendix E, method 2 is amended by revising sections 7.4 and 8.5 and by adding new sections 8.5.1 and 8.5.2, to read as follows:

Method 2—Herzog Semi-Automatic Method

• • • • •

7. • • •

7.4 Fill the heating bath with water to the upper line on the guide tube for the bath control thermometer at the rear right of the bath.

• • • • •

8. • • •

8.5 *Preparation of apparatus for next test.* Either of the cleaning procedures listed in sections 8.5.1 and 8.5.2 may be used to prepare the apparatus for the next test.

8.5.1 Disconnect the quick action and T handle couplings. Separate the air and gasoline chambers and discard the contained sample. Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 degrees F (32 degrees C) and allowing it to drain (Note 7). Repeat this purging at least five times. Rinse both chambers and sample transfer connection several times with hot water, then several times with acetone, then dry by blowing dried and filtered compressed air or pulling a vacuum. Assure that no liquid is present in the T handle fitting or spiral tubing by pulling a vacuum through the tubing. Stopper the gasoline chamber and place it in the refrigerator or ice-water bath for the next test.

8.5.2 Disconnect the quick action and T handle couplings. Separate the air and gasoline chambers and discard the contained sample. Rinse the chambers and the transfer connections in a manner such that all the inner surfaces are wetted with commercial grade n-pentane and drain into an appropriate container. Dry the interior surfaces with dried and filtered compressed air or by pulling a vacuum through them. Assure that no liquid is present in the T handle fitting or spiral tubing by pulling a vacuum or blowing dried and filtered compressed air through it. Stopper the gasoline chamber and place it in the refrigerator or ice-water bath for the next test.

[FR Doc. 90-14632 Filed 6-22-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 85

[FRL-3790-4]

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: EPA is correcting errors in the regulations for the Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Final Rulemaking which appeared in the Federal Register on August 8, 1989 (54 FR 32566).

FOR FURTHER INFORMATION CONTACT: Michael Sabourin, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4316.

SUPPLEMENTARY INFORMATION: EPA published revisions to the aftermarket part regulations in the Federal Register on August 8, 1989 (54 FR 32566). These revisions contained two wording errors in subpart V of the regulations. These errors are discussed briefly below and are corrected by this notice.

Dated: June 18, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made in FRL-3484-4, the Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Final Rulemaking published in the Federal Register on August 8, 1989 (54 FR 32566).

1. On page 32587, first column, item 2, lines 3 and 4, change "Agency or EPA" to "Administrator".

2. On page 32587, first column, item 2, line 4, change "MOD Director" to "Office Director".

[FR Doc. 90-14627 Filed 6-22-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3790-9]

North Dakota; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the North Dakota application and has made a decision, subject to public review and comment, that the North Dakota hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the North Dakota hazardous waste program revisions. North Dakota's application for program revision is available for public review and comment.

DATES: Final authorization for North Dakota shall be effective August 24, 1990, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on the North Dakota program revision application must be received by the close of business July 25, 1990.

ADDRESSES: Copies of the North Dakota program revision application are available from 8:00 a.m. to 4:30 p.m. Monday through Friday at the following addresses for inspection and copying: North Dakota State Library, Liberty Memorial Building, Capitol Grounds, Bismarck, North Dakota 58501, Phone: 701/224-4622; U.S. EPA Headquarters Library, PM211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; EPA Region VIII Library, Denver Place, Room 215, 999 18th Street, Denver, Colorado 80202-2405, Phone: 303/293-1444, Dolores Eddy. Written comments should be sent to Charles Brinkman, U.S. Environmental Protection Agency, Denver Place, Suite 500 (8HWM-RM), 999 18th Street, Denver, Colorado 80202-2405, Phone: 303/293-1469.

FOR FURTHER INFORMATION CONTACT: J. William Geise, Jr., Chief, RCRA Management Branch, U.S. Environmental Protection Agency, Denver Place, Suite 500 (8HWM-RM), 999 18th Street, Denver, Colorado 80202-2405, Phone: 303/294-7540.

SUPPLEMENTARY INFORMATION:

A. Background

The States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), having a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266 and 124 and 270.

B. North Dakota

North Dakota initially received final authorization on October 19, 1984. No amendment, expansion or modification of the initial authorization of the North Dakota program has been received before this application. On August 30, 1989, North Dakota submitted a program revision application for additional program approvals.

EPA has reviewed the North Dakota application, and has made an immediate final decision that the North Dakota hazardous waste program revision satisfies all requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Dakota. The public may submit written comments on EPA's immediate final decision up until July 25, 1990. Copies of the North Dakota application for program revision are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Approval of the North Dakota program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Dakota submitted on an annual basis several draft applications for the modification and expansion of its authorized program. Each draft application was reviewed and comments submitted to North Dakota by EPA.

On February 28, 1989, North Dakota again submitted a draft application for EPA review. This draft application addressed previous draft comments, but EPA had additional concerns which it expressed to North Dakota. The more significant of these concerns were for the establishment of quality criterion for the administration of the North Dakota permit, inspection and enforcement programs. Additionally, several changes to the proposed draft Memorandum of Agreement were suggested and eventually agreed upon. The changes better define the interrelationship between the North Dakota Division of Solid Waste Management and Special Studies and the EPA Region VIII Office in the execution and oversight of the North Dakota Program.

On August 30, 1989, North Dakota submitted a final application which addressed the concerns of EPA. Further questions on details of the final application remained on the equivalency of the North Dakota availability of information process, the used oil process, the corrective action program for HSWA purposes, the applicability of the quality documents to all aspects of the program, the amount of oversight to be conducted by EPA and the method EPA is to follow to enforce its permit comments on a permittee. Discussions and negotiations were held and further understanding reached. A Letter of Intent which adds further detail to the final application was submitted by North Dakota on March 27, 1990, and made a part of the application. The letter of intent requests an extension of the program modification deadlines for availability of information and used oil.

The North Dakota application has requested authorization of the State hazardous waste program to implement corrective actions for HSWA purposes. EPA has concluded a review of this part of the application and held discussions with North Dakota on the extent of state effort which will be required for HSWA corrective actions. EPA has decided not to authorize the North Dakota hazardous waste program to implement corrective actions for HSWA at this time. EPA will retain the HSWA corrective action authority. This decision will provide additional time for North Dakota and EPA to work jointly on a few HSWA corrective actions and to establish a mutual understanding of the corrective action process and capability requirements. EPA expects this joint work effort will establish the basis for future authorization of the North Dakota program for HSWA corrective actions.

That part of the Dakota hazardous waste program which is receiving immediate final publication today has several provisions which are more stringent than is required by the RCRA program. These more stringent provisions pertain to the deliberate dilution of hazardous waste, the requirements for mixtures of commercial products, a requirement for laboratory certification, the time limit requirements for submission of exception reports and requirements for the keeping of inspection logs. Each of the more stringent requirements are further

explained in the program description submitted in the final application.

North Dakota has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in North Dakota.

North Dakota has rescinded from the application the request for authorization of availability of information and used oil. EPA has decided to retain authority for corrective actions for HSWA. Thus the North Dakota program is only granted final authorization for those provisions specifically enumerated below in Table 1.

Hazardous waste permits which have been issued by EPA under the authority in RCRA or HSWA will be reviewed by North Dakota and reissued under North Dakota authority and regulation. All EPA permits are to be reissued within 6 months from the effective date of the authorization revision which is being noticed as an immediate final rule today.

Today North Dakota is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the North Dakota program authorization revision sought today are listed in table 1 below.

TABLE I—PROVISIONS COVERED BY THIS PROGRAM

[Authorization Revision]

HSWA or FR Reference	State Equivalent *
1. Biennial reports, 48 FR 3977 1/28/83	Section 33-24-03-14; section 33-24-05-42; section 33-24-06-16.
2. Settlement agreement, 48 FR 39622, 9/1/83	Section 33-24-06-05, -04.
3. Interim status standards applicability, 48 FR 52718, 10/9/83	NDCC section 23-20.3-05.
4. Chlorinated aliphatic hydrocarbon listing, 49 FR 5812, 2/10/84	Section 33-24-02-16.
5. National uniform manifest, 49 FR 10560, 3/29/84	Section 33-24-03-04, section 33-24-05-06.
6. Permit rules; settlement agreement, 48 FR 17718, 4/24/84	Section 33-24-06-16.
7. Warfarin and Zinc Phosphide, 49 FR 19923, 5/10/84	Section 33-24-02-16.
8. Lime stabilized pickle liquor sludge, 49 FR 25267, 6/5/84	Section 33-24-02-03.
9. Exclusion of household waste, 49 FR 44080, 11/13/84	Section 33-24-02-04.
10. Interim status standards—applicability, 49 FR 46095, 11/21/84	Section 33-24-06-16.
11. Corrections to test methods manual, 49 FR 46095, 12/4/84	Section 33-24-01-05; section 33-24-01-07.
12. Satellite accumulation, 49 FR 49571, 12/20/84	Section 33-24-05-12.
13. Redefinition of solid waste, 50 FR 614, 1/4/85	Section 33-24-01-04, -09, -10, -11, -12; section 33-24-02-01, -02, -03, -04, -05, -06, -16, -18; section 33-24-05-01, -144; section 33-24-06-16; section 33-24-05-201, -202, -203, -204, -210, -212, -213, -214, -215, -216, -230, and -295.
14. Interim status standards for landfills, 50 FR 18044, 4/23/85	Section 33-24-06-16
15. Closure, post closure and financial responsibility requirements, 51 FR 16422, 5/2/86.	Section 33-24-01-04; section 33-24-05-59, -60, -61, -62, -63, -64, -65, -66, -67, -68, -69; section 33-24-05-75, -76, -77, -79, -81; section 33-24-06-14, -16, and -17.
16. Listing of spent pickle liquor, 51 FR 19320, 5/28/86	Section 33-24-02-17.
17. Radioactive mixed waste, 51 FR 24504, 7/3/86	Section 33-24-02-03 (3)(4).
18. Liability coverage—corporate guarantee, 51 FR 25350, 7/11/86	Section 33-24-05-79, -81; section 33-24-06-16.
19. Hazardous waste tank systems, 51 FR 25422, 7/14/86	Section 33-24-01-04; section 33-24-02-04; section 33-24-03-12; section 33-24-05-06, -40, -58, -74, -103, -104, -105, -106, -107, -108, -109, -110, -111, -112, -113, -114; section 33-24-06-16 and -17.
20. Correction to listing of commercial chemical products and appendix VIII constituents, 51 FR 28296, 8/6/86.	Section 33-24-02-16
21. Hazardous waste tank systems, 51 FR 29430, 8/15/86	(See hazardous waste tank systems above).
22. Spent pickle liquor, 51 FR 33612, 9/22/86	(See lime stabilized pickle liquor above).
23. Revised manual SW-846; amended incorporation by reference, 52 FR 8072, 3/16/87.	Section 33-24-01-05.
24. Closure/Post-closure care for interim status surface impoundments, 52 FR 8704, 3/19/87.	Section 33-24-06-16.
25. Definition of solid waste, 52 FR 21306, 6/5/87	Section 33-24-02-16; section 33-24-06-201.
26. Amendments to Part B—information requirements for land disposal facilities, 52 FR 22447, 6/22/87.	Section 33-24-06-17.
27. List (Phase I) of hazardous constituents for ground-water monitoring, 52 FR 25942, 7/9/87.	Section 33-24-06-05, -58; section 33-24-06-17..
28. Identification and listing of hazardous waste, 52 FR 26012, 7/10/87	Section 33-24-02-16.
29. Spent pickle liquor, 52 FR 26697, 8/3/87	(See lime stabilized pickle liquor above).
30. Corrective action programs after permitting hazardous waste land disposal facilities, 52 FR 33936, 9/9/87.	Section 33-24-02-16; section 32-24-06-17.
31. Liability requirements for hazardous waste facilities; corporate guarantee, 52 FR 44314, 11/18/87.	Section 33-24-05-79; section 33-24-06-16.
32. Direct action against insurers, HSWA section 3004(t) 11/8/84	Section 33-24-05-81.
33. Drain listing and management standards, 50 FR 1978, 1/14/85	Section 33-24-02-05, -07, -15, -16, -18; section 33-24-05, -94, -106, -122, -156, -178, -196, -447; and section 33-24-06-16, -17.
34. Fuel labeling HSWA section 3004(x)(1) 2/7/86	Section 33-24-05-214.
35. Paint filter test, 50 FR 18370, 4/30/85	Section 33-24-05-04, -48, -163; section 33-24-06-16.
36. Prohibition of liquids in land fills, HSWA section 3004(c), 5/8/85	Section 33-24-05-183 -204; section 33-24-06-07, -16, -17.
37. Expansions during interim status—waste piles, HSWA section 3015(a) 5/8/85	Section 33-24-05-01, -16.
38. Expansions during interim status—landfills and surface impoundments, HSWA section 3015(b), 5/8/85.	Section 33-24-06-01, 04, -16, -20.
39. HSWA codification rule, 50 FR 28702, 7/15/85	
—Small quantity generators	Section 33-24-02-05.
—Defining	Section 33-24-01-06.
—Household waste	Section 33-24-02-04.
—Waste minimization	Section 33-24-03-14; section 33-24-05-57, -40; section 33-24-06-04, -16.
—Location standards for salt domes, salt beds, underground mines and caves	Section 33-24-05-09; section 33-24-06-16.
—Liquid in landfills	(See prohibition of liquids in landfills above).
—Dust suppression	Section 33-24-05-204.

TABLE I—PROVISIONS COVERED BY THIS PROGRAM—Continued

[Authorization Revision]

HSWA or FR Reference	State Equivalent *
—Double liners	Section 33-24-05-116, -177; section 33-24-06-16.
—Ground-water monitoring	Section 33-24-05-47, -117, -119, -132, -178, -180.
—Cement kilns	Section 33-24-02-06, -18; section 33-24-05-211.
—Fuel labeling	Section 33-24-05-214.
—Pre-construction ban	Section 33-24-05-01.
—Permit life	Section 33-24-05-06, -12.
—Omnibus provision	Section 33-24-05-05.
—Interim status	Section 33-24-05-01 -04, -16, -20.
—Research, demonstration and development permits	Section 33-24-05-01, -20.
—Hazardous waste exports	Section 33-24-03-17, -14, -17, -18, -19, -20, -21, -22, -23, -24, -25, -36, -40; section 33-24-04-04.
—Exposure information	Section 33-24-05-01.
40. Listing of TDI, TDA, DNT, 50 FR 42936, 10/23/85	Section 33-24-02-07, -18.
41. Spent solvents listing, 50 FR 53315, 12/31/85	Section 33-24-02-02, -16.
42. EDB waste listing, 51 FR 5330, 2/13/86	Section 33-24-03-17.
43. Four spent solvents listing, 51 FR 6541, 2/25/86	Section 33-24-02-16, -18.
44. Small quantity generators, 51 FR 10174 3/24/86	Section 33-24-01-04; section 34-24-02-01, -05, -16; section 33-24-03-04, -12; section 33-24-04-04; section 33-24-05-01.
45. Paint filter test; correction, 51 FR 19178, 5/28/86	(See paint filter test above).
46. Hazardous waste tank system, 51 FR 25422,7/14/86	(See hazardous waste tank systems above).
47. Biennial reports, 51 FR 28556, 8/6/86	(See biennial reports above).
48. Exports of hazardous waste, 51 FR 28664, 8/6/86	(See hazardous waste exports above).
49. Standards for generators—waste minimization certifications, 51 FR 35190, 10/1/86.	Section 33-24-02-14; section 33-24-05-42.
50. Listing of EBDC, 51 FR 37725, 10/24/86	Section 33-24-02-17
51. Land disposal restrictions, 51 FR 40572, 11/7/86	Section 33-24-01-01, -04 -06; section 33-24-02-01, -06, -07, -10, -15; section 33-24-03-02; section 33-24-04-03; section 33-24-05-01, -04, -40, -250, -251, -252, -253, -255, -256, -270, -271, -280, -281, -282, -283, -284, -290; section 33-24-06 -05, -14, -16, -17.
52. Land disposal restrictions, 52 FR 21010, 6/4/87	Section 33-24-05-290; section 33-24-06 -05, -04, -14.
53. California list waste restrictions, 52 FR 25760, 7/8/87	Section 33-24-01-05; section 33-24-03, -40; section 33-24-05-04, -250, -251, -252, -253, -255, -270, -272 -280, -282, -290; section 33-24-06-14, -16 NDCC 23-20.3 -04 and -05.
54. Exception reporting for small quantity generators of hazardous waste, 52 FR 35894, 9/23/87.	Section 33-24-03-15.
55. California list waste restrictions, 52 FR 41295, 10/27/87	Section 33-24-03-40; section 33-24-05-04, -250; section 33-24-05-16.

* All citations are for the North Dakota Administrative Code.

C. Decision

I conclude that the North Dakota's application for program revision meets all of the statutory and established regulatory requirements by RCRA. Accordingly, North Dakota is granted final authorization to operate its hazardous waste program as specified on Table 1. North Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. North Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Secs. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 90-14630 Filed 6-22-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970-AA16

Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes several technical amendments to the Standards for Program Operations final regulations that appeared in the Federal Register on August 4, 1989 (54 FR 32284). These regulations specified standards for processing child support enforcement cases and the time frames for distributing child support collections.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Craig Hathaway (202) 252-5367.

List of Subjects in 45 CFR Part 303

45 CFR Part 303

Child welfare
Grant programs
Social programs

PART 303—(AMENDED)

1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396(e)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. *Section 303.3 [Amended]*

In § 303.3, to become effective October 1, 1990, in paragraph (b)(4), the reference to "paragraphs (b)(1) through (b)(5)" should be revised to read "paragraphs (b)(1) through (b)(3)."

3. *Section 303.6 [Amended]*

In § 303.6, to become effective October 1, 1990, in paragraph (c)(1), delete "or" after "§ 303.100;".

4. *Section 303.7 [Amended]*

The amendment to § 303.7(c)(4), published on August 4, 1989, at 54 FR 32311 is withdrawn, and paragraph (c)(4) is amended by removing the words "60 days" and adding in their place the words "75 calendar days".

5. *Section 303.7 [Amended]*

§ 303.7 is amended by deleting paragraph (b)(6) and, in paragraphs (c)(7)(ii) and (c)(7)(iii), by changing the reference to "306.51" to "303.31".

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: June 1, 1990.

James E. Larson,

Deputy Assistant Secretary for Information and Resource Management.

[FR Doc. 90-14567 Filed 6-22-90; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 22

[General Docket No. 88-96; FCC 90-140]

Allocation of the 849-851/894-896 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Table of Frequency Allocations and part 22 of its Rules to permit the use of four megahertz of reserve spectrum at 849-851/894-896 MHz for a common carrier air-ground telephone service. The action also adopts an open entry licensing policy and establishes minimal technical guidelines for the air-ground telephone service. In a companion Public Notice, the Commission solicits applications to construct and operate the service.

EFFECTIVE DATE: September 4, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653-6116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket No. 88-96, FCC 90-140, Adopted April 12, 1990, and Released June 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Final Rule

1. In October 1984, Airfone, Inc. implemented an experimental air-ground telephone service under Part 5 of the Commission's Rules on a limited number of commercial aircraft. In 1986, GTE, Inc. acquired Airfone, Inc. and by early 1988, the experimental air-ground service had expanded to include several hundred commercial aircraft. Owing to the success of the experimental service, the Commission adopted a Notice of Proposed Rule Making (Notice), 53 FR 17083 (May 13, 1988), to allocate the remaining four megahertz of 800/900 MHz reserve spectrum to an air-ground interconnected service.

2. Specifically, the Notice tentatively proposed to authorize two separate nationwide air-ground systems of two megahertz each and invited comment on the technical and economic viability of two possible systems. The Notice also sought comment on whether the public interest would be better served under a more general mobile service allocation and on the option of permitting air-ground licensees to offer ancillary services on frequencies not usable for air-ground service. In addition, comment was solicited with respect to whether the service should be offered on a common carrier or private carrier basis.

3. The Notice further discussed procedures and criteria for selection of licensees. It proposed that financial qualifications, technical qualifications, and service availability be used as qualifying criteria. It also proposed that comparative hearings be used to select licensees and solicited comments on whether applicants should be given comparative preferences based on various factors, such as experience. Finally, the Notice discussed technical guidelines for the service.

4. Commenting parties generally supported the proposals set forth in the Notice. However, a few parties contended that an allocation was unnecessary as air-ground needs could be adequately served by a mobile satellite service. Other parties, while believing an allocation was warranted, maintained that either only one air-ground system should be authorized or that an open-entry sharing plan be adopted. A few commenters requested that the service be required to be compatible with cellular portable units so as to ensure the spectrum is efficiently utilized.

5. The Commission finds that there is a substantial demand for an air-ground service and that an allocation of four megahertz of spectrum for a terrestrial-based service is warranted. The Commission rejects the contentions that air-ground needs can be entirely served by satellite systems, that less than four megahertz of spectrum would be adequate to satisfy demand, or that an air-ground service should be required to be compatible with cellular portable units. The Commission finds that satellite systems will operate at a competitive disadvantage on U.S. domestic routes and that the large majority of domestic air-ground demand will have to be satisfied by a terrestrial service. The Commission further finds that there will be sufficient demand for the entire four megahertz without mandating that the service be compatible with portable cellular units. Finally, the Commission emphasizes that as the amount of spectrum needed for an air-ground service is necessarily based upon prediction, a rulemaking proceeding to reallocate all or a portion of the spectrum to another service may be initiated should the air-ground spectrum ultimately prove to be underutilized.

6. The Commission also finds that the air-ground service should be regulated on a common carrier basis, because it will be offered indiscriminately to the general public. However, in processing applications, the Commission will permit applicants to make a waiver showing that some portion of the service should be regulated on private carrier basis. Moreover, the Commission further concludes that air-ground service providers should be considered non-dominant. In view of the Commission's decision, discussed below, to provide for multiple entry and as these providers will face some, although limited,

competition from satellite systems and the non-commercial air-ground service at 450 MHz, commercial air-ground licensees do not appear to have the ability to exercise power in setting prices above competitive costs to earn monopoly profits.

7. Finally, with respect to the regulatory status of the service, it appears that air-ground service will largely be an interstate communications service, and therefore, largely not subject to state regulatory jurisdiction. With respect to technical and operational standards, it is clear that the Commission has exclusive jurisdiction, regardless of whether the calls are interstate or intrastate in nature. However, with regard to rates and conditions of entry and exit, it appears that, while identification of the originating point of calls made during interstate flights is not feasible, such identification is feasible on intrastate flights. Accordingly, the Commission sees no reason at this time to preempt state rate or entry/exit regulation with respect to intrastate calls on intrastate flights.

8. Regarding the number of air-ground systems to be authorized, the Commission finds that competing nationwide systems are desirable. Competitive systems should produce the lowest prices and highest quality service to domestic airline passengers. The Commission further finds that regionalizing the service would be arbitrary and lead to inefficiencies, due to problems with frequency and billing coordination and equipment standards. Finally, the Commission finds that an open-entry sharing plan will best promote competition and ensure efficient use of the air-ground spectrum. Under this approach, each licensee will have a unique pilot or control channel and share all communications channels. Such an approach will avoid the arbitrary division of spectrum among service providers and permit competition even on smaller air routes.

9. To qualify to be an air-ground licensee, the Commission is requiring that applicants establish a written agreement with at least one airline or airline organization, authorizing the applicant to provide air-ground service on its aircraft. In addition, applicants will be required to meet financial, technical, and service availability criteria. Specifically, applicants must demonstrate that they have either a firm financial commitment or available internal financial resources necessary to construct and operate an air-ground system for one year, must submit a technical description of the proposed system that demonstrates how it would operate, and must submit a service plan indicating that they will construct 25 ground stations within three years of authorization and construct at least 50 ground stations and commence nationwide service within five years of authorization. An air/ground authorization may not be transferred until a year after the nationwide system has commenced operation.

10. Finally, the Commission finds that permitting ancillary services on a secondary basis to the primary air-ground service may be in the public interest. However, the Commission believes that further public notice and comment regarding how ancillary services may be provided is warranted. The provision of ancillary services will require extensive coordination among the air-ground licensees as well as with the providers of the ancillary services, if they are not the air-ground licensees. Accordingly, the Commission is not authorizing provision of ancillary services at this time. Instead, a rule making will be commenced to consider how the provision of ancillary services may be implemented in the air-ground service.

11. The Commission is today releasing a Public Notice soliciting applications to operate in the air-ground service. Applicants will have until October 15, 1990 to submit their applications. It is anticipated that this will be the only filing window to operate in the service. However, an additional filing window may be opened at some future time if the Commission finds it in the public interest to do so; e.g. if a monopoly develops in the service, the filing window might well be re-opened.

Ordering Clauses

12. Authority for this Rule Making is contained in sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r).

13. Accordingly, *it is ordered*, that parts 2 and 22 of the Commission's Rules and Regulations *are amended* as specified below, effective September 4, 1990. *It is further ordered*, that American Sky Cell Corporation's Request for Further Notice and Comment in General Docket No. 88-96 is dismissed.

List of Subjects

47 CFR Part 2

Communications equipment, Practice and procedure.

47 CFR Part 22

Communications common carriers, Public mobile service.

Rule Changes

14. Parts 2 and 22 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

15. The authority citation in part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

16. Section 2.106, the Table of Frequency Allocations, is amended by revising columns 5 and 6 in the table for the 849-851 AND 894-896 MHz bands as follows:

§ 2.106 Table of Frequency Allocations.

United States Table

Non-Government (NG) (5)	Allocation	Rule Part(s) (6)
849-851		
Aeronautical Mobile NG30 NG63 NG153		Public mobile (22)
894-896		
Aeronautical Mobile US116 US288 NG153		Public mobile (22)

PART 22—PUBLIC MOBILE SERVICE

17. The authority citation in part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

18. Section 22.9 is amended by revising the title and paragraph (c)(2) to read as follows:

§ 22.9 Standard application forms and permissive changes or minor modifications for the public mobile service.

(c) • • •

(2) Airborne Mobile Stations. Applications for a license for airborne mobile stations in the 459.675-459.975 MHz band, submitted by persons who propose to become subscribers to a common carrier service for public correspondence shall be filed on FCC Form 400. This form will also be used for the modification and renewal of such licenses. Such applications shall also be accompanied by the supplemental showing set forth in § 22.15(i)(2).

19. Section 22.15 is amended by adding paragraphs (a)(1) (l) and (n) to read as follows:

§ 22.15 Technical content of applications.

(a) * * *

(1) * * *

(i) Applicants in the 800 MHz Air-Ground Radiotelephone Service shall list the city and state of the proposed ground stations.

* * * * *

(n) In the 800 MHz Air-Ground Radiotelephone Service each application shall contain the information required in Subpart M of this part.

20. Section 22.16 is amended by revising paragraph (d) to read as follows:

§ 22.16 Objective need standards.

* * * * *

(d) Applications which do not satisfy these standards will be dismissed and returned as unacceptable for filing pursuant to § 22.20. However, the requirements of § 22.16 do not apply to applications in the 800 MHz Air-Ground Radiotelephone Service.

* * * * *

21. Section 22.23 is amended by adding new paragraph (h) to read as follows:

§ 22.23 Amendment of applications.

* * * * *

(h) *800 MHz Air-Ground Radiotelephone Service.* In this service major and minor amendments may be filed after the filing of the initial application.

(1) The filing of a major amendment will not render the application to be treated as newly filed.

(2) The proposed addition of base stations will be considered a minor amendment as long as the initial application proposed 50 ground stations.

(3) Amendments proposing to transfer control or assignment of an application or a substantial change in beneficial ownership or control of the applicant are not permitted and will be dismissed.

22. Section 22.29 is amended by adding new paragraph (c) to read as follows:

§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

* * * * *

(c) The provisions of § 22.29 do not apply to the 800 MHz Air-Ground Radiotelephone Service.

23. Section 22.31 is amended by adding new paragraph (h) to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(h) Notwithstanding other provisions in this section, applications for the 800 MHz Air-Ground Radiotelephone Service will not be considered mutually exclusive.

24. Section 22.35 is amended by adding new paragraph (c) to read as follows:

§ 22.35 Comparative evaluation of mutually exclusive applications.

* * * * *

(c) The provisions of § 22.35 do not apply to applications in the 800 MHz Air-Ground Radiotelephone Service.

25. Section 22.40 is amended by adding new paragraph (c) to read as follows:

§ 22.40 Considerations involving transfer or assignment applications.

* * * * *

(c) *800 MHz Air-Ground Radiotelephone Service.* Applications and authorizations for unconstructed facilities in this service cannot be transferred or assigned or be the subject of any substantial changes in ownership.

(1) Authorizations for constructed facilities may be transferred or assigned or subject to substantial changes in ownership only after the station has been operated for one year. Transfer of control or assignment applications filed prior to the expiration of this one year period will be dismissed.

26. Section 22.43 is amended by adding new paragraph (e) to read as follows:

§ 22.43 Period of construction.

* * * * *

(e) *800 MHz Air-Ground Radiotelephone Service.* Subject to the provisions of § 22.43(d) applicants may preconstruct air-ground stations.

(1) Within 3 years after the grant of the initial authorization, the licensee must construct at least 25 ground stations.

(i) Upon completion of construction of at least 25 ground stations, the licensee must notify the Commission of completion of construction using FCC Form 489. Licensees may commence service on the day Form 489 is mailed to the Commission.

(2) Within 5 years after the grant of the initial authorization, the licensee must complete construction of 50 ground stations and begin providing nationwide service to the public.

(3) Failure to comply with any of the requirements of paragraphs (e)(1), (e)(1)(i) or (e)(2) of this section will cause the authorization to automatically expire and the authorization must be submitted to the Commission for cancellation.

27. Section 22.44 is amended by revising paragraph (c) to read as follows:

§ 22.44 Termination of authorization.

* * * * *

(c) *State certification.* Except in the 800 MHz Air-Ground Radiotelephone Service, where the holder of an authorization is denied state certification and the state appeal process is exhausted before the end of the one-year period, the license will be forfeited. If the licensee regains state certification before the end of the one year period, a request for reinstatement may be considered.

28. Section 22.45 is amended by adding new paragraph (c) to read as follows:

§ 22.45 License period.

* * * * *

(c) 800 MHz Air-Ground Radiotelephone Service. The license will terminate 10 years from the date a system with 25 ground stations initially becomes operational upon the filing of FCC Form 489.

29. Section 22.110 is amended by adding new paragraph (f) to read as follows:

§ 22.110 Antenna polarization.

* * * * *

(f) The provisions of § 22.110 do not apply to stations in the 800 MHz Air-Ground Radiotelephone Service.

30. Section 22.115 is amended by adding new paragraph (d) to read as follows:

§ 22.115 Topographic data.

* * * * *

(d) The provisions of § 22.115 do not apply to stations in the 800 MHz Air-Ground Radiotelephone Service.

31. Section 22.117 is amended by adding new paragraph (c) to read as follows:

§ 22.117 Transmitters.

* * * * *

(c) *800 MHz Air-Ground Radiotelephone Service.* Air-ground licensees may construct and operate additional ground stations less than one mile from the stations listed in § 22.1109 or any station authorized at a later date in accordance with the requirements of subsection (b) of this section. In addition, these licensees must comply with the following requirements:

(1) Obtain marking and lighting specifications from the Commission's Antenna Survey Branch before commencing construction.

(2) Serve a copy of FCC Form 489 on other authorized air-ground carriers at the time the licensee files Form 489 with the Commission.

32. Section 22.213 is amended by adding new paragraph (e) to read as follows:

§ 22.213 Station identification.

* * * * *

(e) Stations in the 800 MHz Air-Ground Radiotelephone Service shall not be required to identify the station.

33. Part 22 is amended by adding a new subpart M to read as follows:

Subpart M—800 MHz Air-Ground Radiotelephone Service

22.1100 Scope.
22.1101 Eligibility.
22.1102 Application requirements.
22.1105 Frequency ranges.
22.1107 Initial channel plan.
22.1109 Initial geographical channel block layout.
22.1111 Emission limitations.
22.1113 Transmitter frequency tolerance.
22.1115 Dynamic channel allocation procedures.
22.1117 Limitations on effective radiated power.
22.1119 Assignment of control channels.

Subpart M—800 MHz Air-Ground Radiotelephone Service

§ 22.1100 Scope.

The rules in this subpart govern the licensing and operation of air-ground radiotelephone systems that use the 800 MHz air-ground spectrum. The licensing and operation of these systems is also subject to rules elsewhere in this Part that apply generally to the public mobile services. However, in case of conflict, the rules in this subpart will govern.

§ 22.1101 Eligibility.

Authorizations for air-ground systems to be operated in the 800 MHz Air-Ground Radiotelephone Service will be issued to existing and proposed communication common carriers. Applications will be granted only if it is shown that the applicant is legally, financially, technically and otherwise qualified to render the proposed service and the public interest, convenience and necessity would be served by a grant thereof.

§ 22.1102 Application requirements.

Applications for authorizations in the 800 MHz Air-Ground Radiotelephone Service must be filed using FCC Form 401 and be accompanied by the same application filing fee as is required for new public land mobile systems. In addition to the application filing requirements contained in §§ 22.13 and 22.15 of this Part, the following exhibits must be attached to such applications:

(a) *Written agreement.* A signed agreement between the applicant and at least one airline or airline organization, authorizing the applicant to provide air-ground service on its aircraft.

(b) *Financial qualifications.* At the time of filing its application, an applicant must demonstrate that it has either a firm financial commitment or available financial resources necessary to construct all proposed ground stations and operate them for one year after initiation of nationwide air-ground service.

(1) The demonstration of commitment must include, and be sufficient to cover, the realistic and prudent estimated costs of construction of the 50 required ground stations, as well as any additional ground stations proposed by the applicants, and the cost of their operation, and any other initial expenses for one year after initiation of nationwide air-ground service. The estimated construction costs, operation costs, and other initial expenses must be itemized.

(2) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier, and shall contain a statement that the lender:

(i) Has examined the financial condition of the applicant, including audited financial statements, and has determined that the applicant is creditworthy;

(ii) That the lender is committed to providing a sum certain to the particular applicant;

(iii) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(iv) That the commitment is not in any way guaranteed by any entity other than the applicant.

(3) Applicants intending to rely on personal or internal resources must submit:

(i) Audited financial statements, certified within one year of the date of the application, indicating the availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year.

(A) The auditors must be certified public accountants.

(B) Net liquid assets is considered to be the excess of current assets (readily converted to cash) over current liabilities. In order to demonstrate ready convertibility into cash, the identity, liquidity, and value of listed assets must be demonstrated. Non-liquid assets can be relied on if the marketability of those assets is documented.

(ii) An audited balance sheet current within 60 days of filing, which clearly shows the continued availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year after nationwide service begins.

(c) *Service plan.* A service plan containing:

(1) A map or other description of the planned geographic coverage area, including air space over the continental United States, Alaska, Hawaii and other United States territories.

(2) A schedule for construction of 25 ground stations within three years and of at least 50 ground stations and the commencement of nationwide service to the public within five years from the grant of the initial authorization.

(3) A projection of the system capacity, expressed in terms of the maximum number of calls per hour in each area.

(d) *Technical Exhibit.* A technical description of the proposed system, demonstrating compliance with all applicable technical requirements and describing how the proposed system would operate, if authorized. This exhibit must provide the following information:

(1) The number of ground stations to be used, their locations, and the type and quantity of equipment proposed for the system;

(2) A complete description of the procedures and data protocols to be used on the control channel;

(3) The modulation types to be used and their spectral characteristics;

(4) The effective radiated power and transmitter peak envelope power for all transmitters at each ground station location, and the effective radiated power of the airborne mobile stations;

(5) Antenna information as follows:

(i) For airborne mobile stations, the antenna type(s) to be used;

(ii) For ground stations, vertical and horizontal radiation patterns, antenna heights above ground level, antenna support structure heights above ground level, ground elevation above mean sea level, and any relevant information (e.g. FAA approval) that may be helpful in determining whether ground station antennas require marking and lighting;

(6) Analytical data, including calculations, of potential interference within and without the spectrum proposed to be used for the air-ground system;

(7) An Environmental Assessment, if required. *See* § 1.1301 *et seq.*

§ 22.1105 Frequency ranges.

The 849–851 and 894–896 MHz frequency ranges have been allocated to this service. Ground stations transmit on

frequencies in the 849–851 MHz range. Airborne mobile stations transmit on frequencies in the 894–896 MHz range.

§ 22.1107 Initial channel plan.

Initially, all air-ground licensees are required to use the channel plan described in this section. However, after air-ground service has been established, if all licensees agree that an alternative channel plan would be more efficient or beneficial, such alternative plan may be used. A complete description of the alternative plan must be provided the Commission one month before licensees begin using it.

(a) *Channel blocks.* The spectrum allocated for this service is divided into ten channel blocks, numbered 1 through 10. All ground stations in each geographical area use the same channel block for communication with airborne stations in flight, in accordance with § 22.1109.

(1) Unless the Commission assigns control channels to more than four competing air-ground systems, each channel block is subdivided into four control channels, labeled P–1 through P–4, a guardband, labeled GB, and thirty-one communication channels, labeled C–1 through C–31. When the Commission assigns control channels to five or more systems, the guardband and one or more communications channels, beginning with channel C–1, will be converted to control channels.

(2) The channel bandwidths are as follows:

(i) Each control channel has a bandwidth of 3.2 kHz.

(ii) Each guardband is 1.2 kHz wide.

(iii) Each communication channel has a bandwidth of 6 kHz.

(b) *Frequency pairs.* The control channels, guardbands, and communication channels correspond to frequency pairs as follows:

GROUND TO AIR FREQUENCIES (MHz)

Channel No.	Channel Block				
	10	9	8	7	6
P–1	849.0020	849.2020	849.4020	849.6020	849.8020
P–2	849.0052	849.2052	849.4052	849.6052	849.8052
P–3	849.0084	849.2084	849.4084	849.6084	849.8084
P–4	849.0116	849.2116	849.4116	849.6116	849.8116
GB	849.0148	849.2148	849.4148	849.6148	849.8148
C–1	849.016	849.216	849.416	849.616	849.816
C–2	849.022	849.222	849.422	849.622	849.822
C–3	849.028	849.228	849.428	849.628	849.828
C–4	849.034	849.234	849.434	849.634	849.834
C–5	849.040	849.240	849.440	849.640	849.840
C–6	849.046	849.246	849.446	849.646	849.846
C–7	849.052	849.252	849.452	849.652	849.852
C–8	849.058	849.258	849.458	849.658	849.858
C–9	849.064	849.264	849.464	849.664	849.864
C–10	849.070	849.270	849.470	849.670	849.870
C–11	849.076	849.276	849.476	849.676	849.876
C–12	849.082	849.282	849.482	849.682	849.882
C–13	849.088	849.288	849.488	849.688	849.888
C–14	849.094	849.294	849.494	849.694	849.894
C–15	849.100	849.300	849.500	849.700	849.900
C–16	849.106	849.306	849.506	849.706	849.906
C–17	849.112	849.312	849.512	849.712	849.912
C–18	849.118	849.318	849.518	849.718	849.918
C–19	849.124	849.324	849.524	849.724	849.924
C–20	849.130	849.330	849.530	849.730	849.930
C–21	849.136	849.336	849.536	849.736	849.936
C–22	849.142	849.342	849.542	849.742	849.942
C–23	849.148	849.348	849.548	849.748	849.948
C–24	849.154	849.354	849.554	849.754	849.954
C–25	849.160	849.360	849.560	849.760	849.960
C–26	849.166	849.366	849.566	849.766	849.966
C–27	849.172	849.372	849.572	849.772	849.972
C–28	849.178	849.378	849.578	849.778	849.978
C–29	849.184	849.384	849.584	849.784	849.984
C–30	849.190	849.390	849.590	849.790	849.990
C–31	849.196	849.396	849.596	849.796	849.996

GROUND TO AIR FREQUENCIES (MHz)

Channel No.	Channel block				
	5	4	3	2	1
P–1	850.0020	850.2020	850.4020	850.6020	850.8020
P–2	850.0052	850.2052	850.4052	850.6052	850.8052
P–3	850.0084	850.2084	850.4084	850.6084	850.8084
P–4	850.0116	850.2116	850.4116	850.6116	850.8116
GB	850.0148	850.2148	850.4148	850.6148	850.8148
C–1	850.016	850.216	850.416	850.616	850.816
C–2	850.022	850.222	850.422	850.622	850.822
C–3	850.028	850.228	850.428	850.628	850.828
C–4	850.034	850.234	850.434	850.634	850.834
C–5	850.040	850.240	850.440	850.640	850.840
C–6	850.046	850.246	850.446	850.646	850.846
C–7	850.052	850.252	850.452	850.652	850.852

GROUND TO AIR FREQUENCIES (MHz)—Continued

Channel No.	Channel block				
	5	4	3	2	1
C–8	850.058	850.258	850.458	850.658	850.858
C–9	850.064	850.264	850.464	850.664	850.864
C–10	850.070	850.270	850.470	850.670	850.870
C–11	850.076	850.276	850.476	850.676	850.876
C–12	850.082	850.282	850.482	850.682	850.882
C–13	850.088	850.288	850.488	850.688	850.888
C–14	850.094	850.294	850.494	850.694	850.894
C–15	850.100	850.300	850.500	850.700	850.900
C–16	850.106	850.306	850.506	850.706	850.906
C–17	850.112	850.312	850.512	850.712	850.912
C–18	850.118	850.318	850.518	850.718	850.918
C–19	850.124	850.324	850.524	850.724	850.924
C–20	850.130	850.330	850.530	850.730	850.930
C–21	850.136	850.336	850.536	850.736	850.936
C–22	850.142	850.342	850.542	850.742	850.942
C–23	850.148	850.348	850.548	850.748	850.948
C–24	850.154	850.354	850.554	850.754	850.954
C–25	850.160	850.360	850.560	850.760	850.960
C–26	850.166	850.366	850.566	850.766	850.966
C–27	850.172	850.372	850.572	850.772	850.972
C–28	850.178	850.378	850.578	850.778	850.978
C–29	850.184	850.384	850.584	850.784	850.984
C–30	850.190	850.390	850.590	850.790	850.990
C–31	850.196	850.396	850.596	850.796	850.996

AIR TO GROUND FREQUENCIES (MHz)

Channel No.	Channel Block				
	10	9	8	7	6
P–1	894.0020	894.2020	894.4020	894.6020	894.8020
P–2	894.0052	894.2052	894.4052	894.6052	894.8052
P–3	894.0084	894.2084	894.4084	894.6084	894.8084
P–4	894.0116	894.2116	894.4116	894.6116	894.8116
GB	894.0148	894.2148	894.4148	894.6148	894.8148
C–1	894.016	894.216	894.416	894.616	894.816
C–2	894.022	894.222	894.422	894.622	894.822
C–3	894.028	894.228	894.428	894.628	894.828
C–4	894.034	894.234	894.434	894.634	894.834
C–5	894.040	894.240	894.440	894.640	894.840
C–6	894.046	894.246	894.446	894.646	894.846
C–7	894.052	894.252	894.452	894.652	894.852
C–8	894.058	894.258	894.458	894.658	894.858
C–9	894.064	894.264	894.464	894.664	894.864
C–10	894.070	894.270	894.470	894.670	894.870
C–11	894.076	894.276	894.476	894.676	894.876
C–12	894.082	894.282	894.482	894.682	894.882
C–13	894.088	894.288	894.488	894.688	894.888
C–14	894.094	894.294	894.494	894.694	894.894
C–15	894.100	894.300	894.500	894.700	894.900
C–16	894.106	894.306	894.506	894.706	894.906
C–17	894.112	894.312	894.512	894.712	894.912
C–18	894.118	894.318	894.518	894.718	894.918
C–19	894.124	894.324	894.524	894.724	894.924
C–20	894.130	894.330	894.530	894.730	894.930
C–21	894.136	894.336	894.536	894.736	894.936
C–22	894.142	894.342	894.542	894.742	894.942
C–23	894.148	894.348	894.548	894.748	894.948
C–24	894.154	894.354	894.554	894.754	894.954
C–25	894.160	894.360	894.560	894.760	894.960
C–26	894.166	894.366	894.566	894.766	894.966
C–27	894.172	894.372	894.572	894.772	894.972
C–28	894.178	894.378	894.578	894.778	894.978
C–29	894.184	894.384	894.584	894.784	894.984
C–30	894.190	894.390	894.590	894.790	894.990
C–31	894.196	894.396	894.596	894.796	894.996

AIR TO GROUND FREQUENCIES (MHz)

Channel No.	Channel Block 5	4	3	2	1
P-1	895.0020	895.2020	895.4020	895.6020	895.8020
P-2	895.0052	895.2052	895.4052	895.6052	895.8052
P-3	895.0084	895.2084	895.4084	895.6084	895.8084
P-4	895.0116	895.2116	895.4116	895.6116	895.8116
GB	895.0148	895.2148	895.4148	895.6148	895.8148
C-1	895.018	895.216	895.416	895.616	895.816
C-2	895.022	895.222	895.422	895.622	895.822
C-3	895.028	895.228	895.428	895.628	895.828
C-4	895.034	895.234	895.434	895.634	895.834
C-5	895.040	895.240	895.440	895.640	895.840
C-6	895.046	895.246	895.446	895.646	895.846
C-7	895.052	895.252	895.452	895.652	895.852
C-8	895.058	895.258	895.458	895.658	895.858
C-9	895.064	895.264	895.464	895.664	895.864
C-10	895.070	895.270	895.470	895.670	895.870
C-11	895.076	895.276	895.476	895.676	895.876
C-12	895.082	895.282	895.482	895.682	895.882
C-13	895.088	895.288	895.488	895.688	895.888
C-14	895.094	895.294	895.494	895.694	895.894
C-15	895.100	895.300	895.500	895.700	895.900
C-16	895.106	895.306	895.506	895.706	895.906
C-17	895.112	895.312	895.512	895.712	895.912
C-18	895.118	895.318	895.518	895.718	895.918
C-19	895.124	895.324	895.524	895.724	895.924
C-20	895.130	895.330	895.530	895.730	895.930
C-21	895.136	895.336	895.536	895.736	895.936
C-22	895.142	895.342	895.542	895.742	895.942
C-23	895.148	895.348	895.548	895.748	895.948
C-24	895.154	895.354	895.554	895.754	895.954
C-25	895.160	895.360	895.560	895.760	895.960
C-26	895.166	895.366	895.566	895.766	895.966
C-27	895.172	895.372	895.572	895.772	895.972
C-28	895.178	895.378	895.578	895.778	895.978
C-29	895.184	895.384	895.584	895.784	895.984
C-30	895.190	895.390	895.590	895.790	895.990
C-31	895.196	895.396	895.596	895.796	895.996

§ 22.1109 Initial geographical channel block layout.

Except as provided in paragraph (b) of this section, ground station locations must be within one mile of the locations listed in this paragraph. The indicated channel block for each location must be used to provide service to airborne mobile stations in flight.

Location	N. latitude	W. longitude	Channel block
Alaska:			
Anchorage	61°11'06"	149°54'42"	8
Arizona:			
Phoenix	33 33 39	112 05 12	4
Winslow	35 01 30	110 43 20	6
California:			
Blythe	33 37 15	114 43 08	10
Los Angeles	33 55 50	118 22 30	4
Oakland	37 51 12	122 22 35	1
S. San Francisco	37 41 16	122 28 09	6
Visalia	36 19 01	119 23 05	7
Colorado:			
Colorado Springs	38 44 30	104 51 46	8
Denver	39 46 45	104 50 49	1
Hayden	40 28 54	107 13 07	6
Florida:			
Miami	25 48 30	80 16 10	4
Orlando	28 28 58	81 21 51	2
Tallahassee	30 24 04	84 21 34	7
Georgia:			
Atlanta	33 39 30	84 25 22	8
Hawaii:			
Mauna Kapu	21 24 24	158 06 02	5
Idaho			
Blackfoot	43 11 32	112 40 21	8
Illinois:			
Chicago	41 47 12	87 45 06	3
Kewanee	41 12 24	89 57 36	5
Schiller Park	41 57 18	87 52 57	2
Indiana:			
Fort Wayne	40 58 59	85 11 48	7
Iowa:			
Des Moines	41 32 18	93 38 18	1
Kansas:			
Garden City	37 59 35	100 54 04	3
Wichita	37 37 06	97 27 01	7
Kentucky:			
Fairdale	38 04 48	85 47 33	6
Louisiana:			
Kenner	29 59 38	90 15 22	3
Shreveport	32 27 22	93 49 20	5
Massachusetts:			
Boston	42 23 15	71 01 03	7
Michigan:			
Flint	42 57 58	83 44 37	9
Sault Ste. Marie	46 28 47	84 22 05	6
Minnesota:			
Bloomington	44 51 33	93 13 10	9
Mississippi:			
Meridian	32 19 10	88 41 33	9
Missouri:			
Kansas City	39 17 57	94 43 04	6
St. Louis	38 44 52	90 21 44	4
Springfield	37 14 50	93 22 40	9
Montana:			
Lewistown	47 02 36	109 27 27	5
Miles City	46 26 07	105 53 02	8
Missoula	47 01 05	114 00 41	3
Nebraska:			
Grand Island	40 57 10	98 18 30	2
Ogallala	41 07 06	101 45 57	4
Nevada:			
Las Vegas	36 05 28	115 10 19	1
Reno	39 35 13	119 55 52	3
Tonopah	38 04 06	117 12 30	9
Winnemucca	41 00 38	117 45 40	4
New Mexico:			
Alamogordo	32 54 46	105 56 42	8
Albuquerque	35 03 05	106 37 13	10
Clayton	36 27 29	103 11 16	5
New York:			
E. Elmhurst	40 46 36	73 52 20	1
Henrietta	43 05 39	77 36 40	3
Staten Island	40 36 05	74 06 35	9
North Carolina:			
Greensboro	36 05 09	79 56 07	9
Wilmington	34 15 52	77 53 45	7
North Dakota:			
Dickinson	46 51 06	102 47 19	7
Ohio:			
Pataskala	40 04 38	82 41 57	1
Oklahoma:			
Warner	35 29 31	95 18 25	4
Woodward	36 24 42	99 28 50	8
Oregon:			
Klamath Falls	42 06 30	121 38 00	2
Pendleton	45 35 45	118 31 02	7
Pennsylvania:			
Coraopolis	40 30 18	80 13 25	4
New Cumberland	40 11 30	76 52 02	8
South Carolina:			
Charleston	32 54 15	80 01 08	4
South Dakota:			
Aberdeen	45 27 21	98 25 26	6
Rapid City	44 02 06	103 03 04	5
Tennessee:			
Elizabethton	36 26 04	82 08 06	7
Memphis	35 01 44	89 56 15	10
Nashville	36 09 08	86 41 21	3
Texas:			
Austin	30 16 37	97 49 34	2
Bedford	32 50 23	97 08 02	1
Houston	29 54 37	95 24 39	9
Lubbock	33 37 06	101 52 14	7
Monahans	31 34 55	102 54 05	6
Utah:			
Abejo Peak	37 50 21	109 27 42	7
Delta	39 22 40	112 31 05	2
Escalante	37 45 19	111 52 27	5
Green River	38 57 53	110 14 04	3
Virginia:			
Arlington	38 52 57	77 06 17	6
Washington:			
Seattle	47 26 08	112 17 35	4
West Virginia:			
Charleston	38 19 47	81 30 25	2
Wisconsin:			
Stevens Point	44 33 06	89 25 27	8
Wyoming:			
Riverton	43 03 37	108 27 23	9

(a) Any of the ten channel blocks may be used to provide service to airborne mobile stations on the ground, provided that the vertical antenna pattern (of the antenna used for ground station transmissions on channel blocks other than the one specified in this Section for the particular location involved) shows the following attenuation in all azimuths: 47 decibels above 1° elevation and 67 decibels above 2° elevation.

(b) A ground station location may be more than one mile from all of the locations listed in this Section provided that it is at least 550 miles from all existing locations using the same channel block for communication with 800 MHz airborne mobile stations in flight.

§ 22.1111 Emission limitations.

Any appropriate emission type may be used to provide air-ground radiotelephone service provided that the emission limitations of this Section are met.

(a) The power of any emission on any frequency removed from the center of the authorized bandwidth by more than 3 kHz must be at least 30 decibels below the peak envelope power of the emission.

(b) The power of any emission on any frequency removed from the center of the authorized bandwidth by more than 9 kHz must be at least 60 decibels below the peak envelope power of the emission.

(c) If an emission on any frequency outside of the authorized bandwidth causes harmful interference, the Commission may require greater attenuation of that emission than required in paragraphs (b) and (c) of this Section.

(d) The provisions of § 22.106 of this part do not apply to 800 MHz air-ground systems.

§ 22.1113 Transmitter frequency tolerance.

Ground station transmitter frequencies must be maintained within ±0.1 parts per million (ppm) of the channel reference or center frequencies. Doppler shift correction shall be used to ensure that the frequencies of the signals of airborne mobile stations received at ground stations remain within ±0.2 ppm of the channel reference or center frequencies.

§ 22.1115 Dynamic channel allocation procedures.

Operation of stations in this service must be in accordance with the procedures in this section.

(a) A communications channel is not available for use by a ground station if the received signal power on that channel at the ground station exceeds −115 dBm, which, assuming a 0 dB gain 895 MHz receive antenna, corresponds to a field strength of approximately 19 dBu V/m.

(b) Data indicating which communications channels are available for use are transmitted by ground stations on the assigned control channels.

(c) A call is originated when an airborne mobile station selects a communications channel based on the received data from ground stations and other factors, and transmits an identification code (which identifies the specific ground station from which service is requested) on the selected communications channel. The ground station from which service has been requested may then obtain any necessary billing information and complete the call.

(d) A ground station may not transmit on a communications channel unless it has received the proper identification code. Ground stations other than the one from which service has been requested must consider the communications channel to be unavailable until either a hang-up signal is transmitted by the airborne mobile station, or the received signal power on that channel drops below −115 dBm for a period of at least 15 seconds. The hang-up signal is the on-off keying (50% duty cycle) of an unmodulated carrier over a period of one second with pulse duration of 5 milliseconds. However, if all licensees agree that an alternative hang-up signal would be more efficient or beneficial, such alternative hang-up signal may be used.

§ 22.1117 Limitations on effective radiated power.

The effective radiated power (ERP) of airborne mobile station transmitters shall not exceed 30 Watts. The ERP of ground station transmitters in communication with airborne mobile stations in flight must not exceed 100 Watts. The ERP of ground station transmitters in communication with airborne mobile stations on the ground must not exceed 8 Watts.

§ 22.1119 Assignment of control channels.

The Commission will select and assign exclusively one control channel to each air-ground licensee after receiving written notification that the licensee's system will begin providing service within one month. The Commission may initially assign a communications channel rather than a control channel to be used for control purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14432 Filed 6-22-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 803

RIN 2900-AE32

VA Acquisition Regulation: Procurement Integrity Act Suspension

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Suspension of final rule.

SUMMARY: Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-

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194), the provisions of that portion of the Office of Federal Procurement Policy Act dealing with "Procurement Integrity" have been suspended for a 1-year period beginning December 1, 1989, and ending November 30, 1990. Consequently, VA Acquisition Regulation (VAAR) provisions published at 54 FR 47086, November 9, 1989, are suspended until December 1, 1990.

EFFECTIVE DATE: The effective date of this suspension is December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Director, Acquisition Management Service (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

The amendments of part 803 published in the **Federal Register** on November 9, 1989, 54 FR 47086, implemented section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) with respect to Procurement Integrity. Public Law 101-28 extended the effective date of the Act to July 16, 1989. [See Federal Acquisition Circular 84-47 (FR Doc 89-12391 published in the **Federal Register** on May 23, 1989) (54 FR 22282)].

List of Subjects in 48 CFR Part 803

Government procurement.

Dated: June 6, 1990.

Approved:

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 803—[AMENDED]

§§ 803.104, 803.104-5, 803.104-9, 803.104-11, and 803.104-12 [Temporarily Suspended]

Sections 803.104, 803.104-5, 803.104-9, 803.104-11, and 803.104-12 added at 54 FR 47086, (November 9, 1989), are suspended until December 1, 1990.

[FR Doc. 90-13646 Filed 6-22-90; 8:45 am]

BILLING CODE 8320-01-M

Proposed Rules

Federal Register
Vol. 55, No. 122
Monday, June 25, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0666]

Bank Holding Companies and Change in Bank Control; Investment Adviser Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed revision to an interpretive rule.

SUMMARY: The Board seeks public comment on a proposal to revise the Board's interpretive rule regarding investment advisory activities of bank holding companies to clarify that a bank holding company and its nonbank subsidiaries may act as an agent for customers in the brokerage of shares of an investment company advised by the holding company or any of its subsidiaries.

DATES: Comments must be received on or before August 9, 1990.

ADDRESSES: All comments, which should include a reference to Docket No. R-0666, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to room B-2222, 20th and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), or Brendan T. Gormley, Staff Attorney (202/452-3721), Legal Division; Robert S. Plotkin, Assistant Director (202/452-2782), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

(1) *Proposed revision to an Interpretive Rule.* The Board's interpretive rule regarding investment advisory activities (12 CFR 225.125(h)) states that a bank holding company may not engage in the "sale or distribution" of shares of investment companies advised by the bank holding company or one of its nonbank subsidiaries. The Board proposes to modify this interpretive rule to clarify that a bank holding company and its nonbank subsidiaries may broker shares, solely as agent for the account of customers, of both open and closed-end investment companies that are advised by the bank holding company or any of its bank or nonbank subsidiaries.

The Board has previously determined, and the Supreme Court has agreed, that a nonbank subsidiary engaged in brokerage activities is not engaged in the "issue, flotation, underwriting, public sale, or distribution of securities" for purposes of the Glass-Steagall Act. *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105, 114 (1983), *aff'd, Securities Industry Association* v. *Board of Governors*, 468 U.S. 207 (1984). Accordingly, the Board proposes that language be added to its interpretive rule to clarify that the reference in paragraph (h) of that rule to "sale or distribution" of shares of investment companies advised by the bank holding company or its subsidiaries does not prohibit a bank holding company or its nonbank subsidiaries from acting solely as agent for the account of customers in the purchase or sale of shares of such investment companies. The Board has already determined that bank holding companies may act as agent for the account of customers in the purchase and sale of shares of investment companies advised by bank subsidiaries of the bank holding company. *Northwest Corporation*, 76 Federal Reserve Bulletin 79 (1990) ("*Norwest*"). In that order, the Board indicated that it would seek public comment on a proposal to amend § 225.125(h).

The proposal also would permit bank holding companies and their nonbank subsidiaries to provide investment advice to customers regarding the purchase and sale of shares of investment companies advised by a holding company affiliate. Under the proposal, a holding company that conducts this combination of activities would be required to disclose its dual roles to customers. The proposal would also require officers and employees of the holding company to caution customers to read the prospectus of an investment company before investing in it and advise customers in writing that the investment company's shares are not obligations of any bank, are not insured by the Federal Deposit Insurance Corporation, and are not endorsed or guaranteed in any way by any bank. The Office of the Comptroller of the Currency permits national banks to conduct these activities simultaneously.[1] The proposal would also amend or remove certain other limitations in paragraph (h) in a manner consistent with this proposal.

The Board also seeks public comment on whether it is appropriate to amend any of the restrictions in paragraph (g) of this interpretive rule regarding the purchase of shares of investment companies advised by the bank holding company, extensions of credit by the bank holding company to such an investment company, and certain other transactions. (12 CFR 225.125(g)).

(2) *Submission of Comments.* To aid the Board in its consideration of the proposed rulemaking, interested persons may express their views on any matter raised by this proposal. Any request for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter may not be resolved without a hearing.

Regulatory Flexibility Act Analysis

The Board certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601). This proposal would not place additional burdens on any bank holding company. It would clarify the rules as they currently apply to all bank holding companies.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting

[1] See letter dated December 7, 1987, from J. Michael Shepherd, Senior Deputy Comptroller for Corporate and Economic Programs regarding First Union National Bank of North Carolina.

and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. In § 225.125, paragraph (h) is revised to read as follows:

§ 225.125 Investment activities.

* * * * *

(h) Under section 20 of the Glass-Steagall Act, a member bank is prohibited from being affiliated with a company that directly, or through a subsidiary, engages principally in the issue, flotation, underwriting, public sale, or distribution of securities. The Board has determined that the conduct of securities brokerage activities by a bank holding company or its nonbank subsidiaries is not covered by this provision of the Glass-Steagall Act, and the U.S. Supreme Court has upheld that determination. *See Securities Industry Ass'n* v. *Board of Governors*, 468 U.S. 207 (1984); *see also Securities Industry Ass'n* v. *Board of Governors*, 821 F.2d 810 (D.C. Cir. 1987) *cert. denied*, 484 U.S. 1005 (1988). Accordingly, the Board believes that a bank holding company and any of its nonbank subsidiaries may, with appropriate authorization under the Bank Holding Company Act and Regulation Y, purchase and sell shares, upon the order and for the account of customers of the holding company or the nonbank subsidiary, of an investment company for which the bank holding company or any of its subsidiaries acts as an investment adviser. In addition, the bank holding company and any of its nonbank subsidiaries may provide investment advice to customers with respect to the purchase or sale of shares of an investment company for which the holding company or any of its subsidiaries acts as an investment adviser if the holding company or nonbank subsidiary discloses to the customer the company's role as adviser to the investment company. The bank holding company should also instruct its officers and employees to caution customers to read the prospectus of an investment company before investing and must advise customers in writing that the investment company's shares are not obligations of, or endorsed or guaranteed in any way by, any bank, and are not insured by the Federal Deposit Insurance Corporation.

* * * * *

Board of Governors of the Federal Reserve System, June 18, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-14594 Filed 6-22-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR 658

[FHWA Docket No. 90-9]

RIN 2125-AC57

Truck Size and Weight; Beverage Semitrailers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to designate as specialized equipment van-type, drop-frame beverage semitrailers whose length, when equipped with an upper coupler plate that extends in front of the semitrailer, exceeds 28 feet, as illustrated in the Appendix to the preamble. The resulting configuration would be subject to certain limitations in that the kingpin may not be mounted more than 28 feet from the rear of the semitrailer, exclusive of rear-mounted devices not measured in determining semitrailer length, and the upper coupler plate may not extend beyond the semitrailer's swing radius (measured from the center line of the kingpin to the front corner of the semitrailer). The rule would prevent States from imposing an overall length limit on such vehicles operating in semitrailer or double-trailer combinations and would guarantee tractor-semitrailer combinations of such vehicles the same access to points of loading and unloading as "pup" semitrailers in 23 CFR § 658.19(a).

DATES: Comments on this docket must be received on or before July 25, 1990.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 90-9, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 36 Kb density) in a format that is compatible with either word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 (STAA) [Pub. L. 97-424, 96 Stat. 2097, 2158, as amended, codified at 49 U.S.C. app. 2311 *et seq.* (1982 and Supp. V 1987)] established length and width standards for vehicles using the highways now designated as the National Network (NN) [Appendix A to 23 CFR part 658 (1989)].

The STAA prohibited any State from enforcing a length limit of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer (i.e., double-trailer) combination on the NN [49 U.S.C. App. 2311(a)]. The STAA, under an equipment grandfather provision, also allows the use of 28½-foot semitrailers and trailers in truck tractor-semitrailer-trailer combinations if they were actually and lawfully operating on December 1, 1982, within a 65-foot overall length limit in any State. The statute prohibited any State from denying reasonable access to points of loading and unloading for a tractor pulling a single 28-foot (28½-foot if grandfathered) semitrailer that generally operates as part of a doubles combination (49 U.S.C. App. 2312(a)). In addition, the STAA gave the Secretary of Transportation authority to exclude from measurement of trailer length and width, devices necessary for the safe and efficient operation of commercial motor vehicles, provided length exclusive devices did not have, by design or use, the capability to carry cargo (49 U.S.C. App. 2311(h), 2316(b)).

Questions involving permissible vehicle length and length exclusive devices are critical to a new design for 28-foot beverage semitrailers that allows a significant increase in cargo capacity. As used in this proceeding, "beverage" means a liquid for drinking, including water. The design places the kingpin under the nose of the trailer with a portion of the upper coupler plate extending 10 to 13 inches beyond the front of the vehicle. Since these beverage semitrailers use an enclosed van-type, drop-frame design, mounting the kingpin in this manner allows the drop frame portion of the semitrailer to be expanded forward, which in turn allows it to transport approximately 48 more beverage cases.

FHWA has issued several Notices of Interpretation (NOI) of length and width exclusive devices. The most recent was published in the **Federal Register** on March 13, 1987 [52 FR 7834]. That NOI recognized a number of length-exclusive design features, including (1) The pickup plate lip of the upper coupler, and (2) any non-load carrying device which falls within the swing radius of the semitrailer (measured from the center line of the kingpin to the front corner of the semitrailer).

As applied to the new design described above, these two provisions have proved difficult to administer and have caused confusion and misunderstanding between FHWA and the industry. One manufacturer has begun producing and selling these semitrailers, assuming in good faith that the part of the upper coupler plate which extends beyond the front of the semitrailer is a length exclusive device. That is in fact debatable because the STAA provides that devices excluded from measurements of vehicle length shall not have, by design or use, the capability to carry cargo. The FHWA has interpreted this to mean that they may not be load supporting. Since the weight of the semitrailer and load rest on the upper coupler plate, it does support the load. However, it would be unfair to penalize good faith purchasers by retroactively declaring that the upper coupler plate is not a length-exclusive device, thus making these vehicles more than 28 feet long and outside the scope of the STAA.

In order to remove any doubt about the legality of these semitrailers on the NN, the FHWA is proposing to designate them specialized equipment pursuant to our authority under section 411(d) of the STAA (49 U.S.C. app. 2311(d)). That solution seems particularly appropriate since these vehicles are in fact highly specialized. They are used exclusively for the delivery of bottled or canned beverages (including water) and, because of design features required for that purpose, such as racks and the need for side cargo access, are not suitable for other commodities.

FHWA is therefore proposing to designate as specialized equipment van-type, 28-foot or shorter, drop-frame beverage semitrailers equipped with an upper coupler plate that extends in front of the semitrailer. However, the kingpin may not be mounted more than 28 feet from the rear of the vehicle, exclusive of rear-mounted devices not measured in determining semitrailer length, and the upper coupler plate may not extend beyond the semitrailer's swing radius (measured from the center line of the kingpin to the front corner of the semitrailer). The rule would prevent States from imposing an overall length limit on such vehicles operating in semitrailer or doubles combinations and guarantee tractor beverage semitrailer combinations which are generally operated in truck tractor-semitrailer-trailer combinations the same access to points of loading and unloading as "pup" semitrailers in 23 CFR 658.19. For the purpose of this rule, "beverage" means a liquid for drinking, including water.

Request for Comments

The FHWA solicits comments from all interested persons regarding the following matters:

1. Should "beverage trailer" and "beverage semitrailer" be defined in this proposed regulation?
2. Is the proposed length limit for the upper coupler extension of the semitrailer clear?
3. Will the semitrailer as configured be as safe as one with the upper coupler plate positioned fully under the semitrailer?
4. Will the position of the kingpin, not more than 28 feet from the rear of the semitrailer, produce offtracking characteristics that are significantly greater than those of conventional 28-foot semitrailers?
5. Other comments.

Regulatory Impact

The FHWA has considered the impact of this document and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a major rulemaking under the regulatory policies and procedures of the DOT. These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking only amends the June 5, 1984, final rule (FHWA Docket 83-14, 49 FR 23302), by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking do not differ in substance from those fully considered in the original impact statement accompanying the June 5 final rule. Although beverage semitrailers make up only a small segment of the total semitrailer and trailer population, productivity gains could be considerable for this minor constituency. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the FHWA Public Docket room 4232 in the Headquarters Office, 400 Seventh Street, SW., Washington, DC 20590.

Executive Order 12612 of October 26, 1987, "Federalism," requires that the effect of Federal Regulations on the States must be weighed. Any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objective of the statute under which the regulation is promulgated. In this case, the STAA already provides minimum length limits for 28-foot, 28½-foot, 48-foot and grandfathered length semitrailers. This NPRM would simply prevent the 40 States that limit trailer lengths in twin-trailer combinations to 28 or 28½ feet from barring the operation of beverage trailers in a twin-trailer combination. Under the circumstances described in the preamble, this action is consistent with the intent of the STAA to increase productivity of the industry, without adversely affecting safety.

Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations, part 658 as set forth below.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier size and weight.

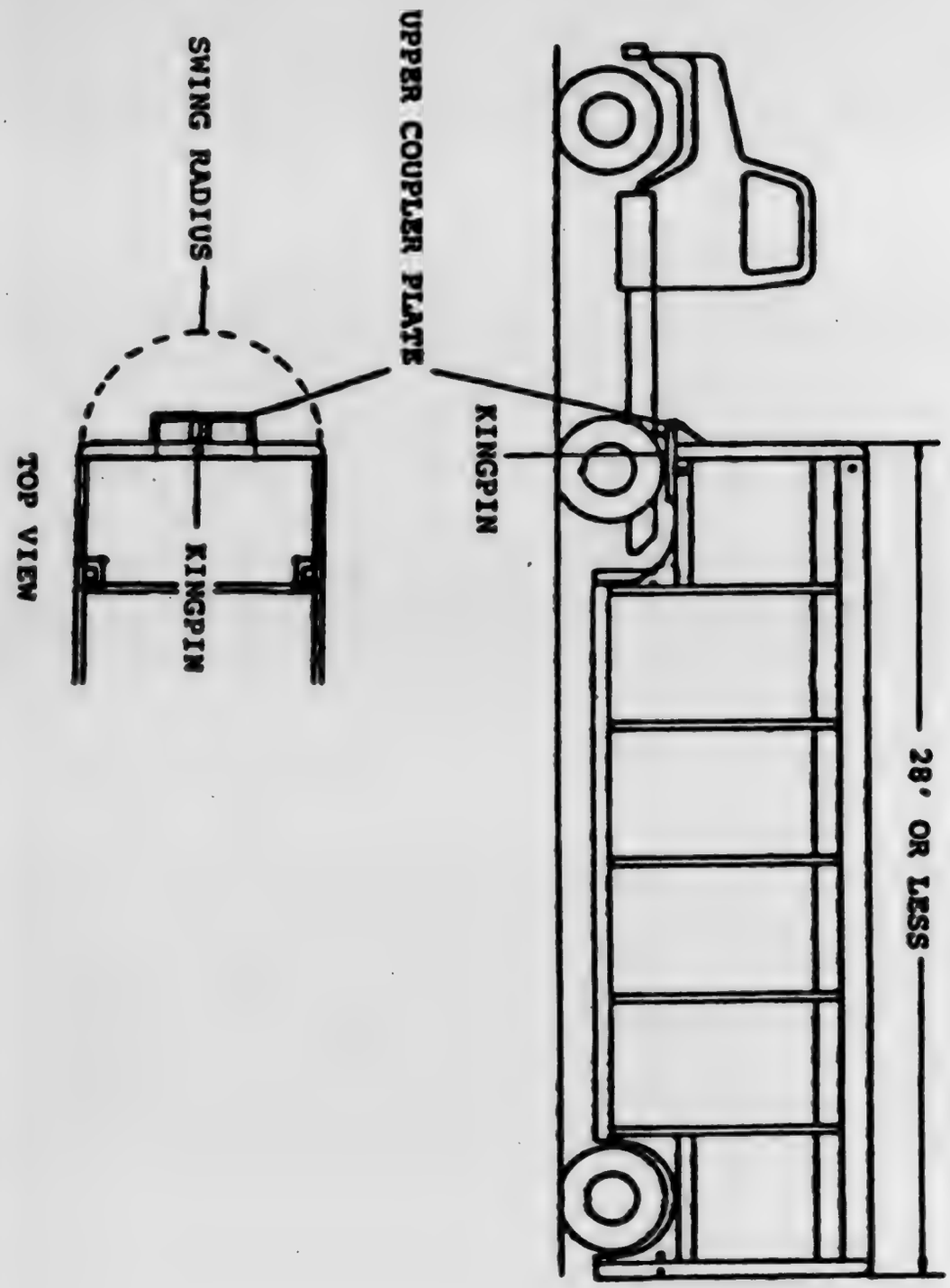
Issued on June 14, 1990.

T. D. Larson,

Administrator.

BILLING CODE 4910-22-M

APPENDIX TO PREAMBLE--ILLUSTRATION OF BEVERAGE SEMITRAILER



BILLING CODE 4910-22-C

The FHWA proposes to amend 23 CFR part 658 as follows:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Public Law 97-424, 96 Stat 2097 (23 U.S.C. 127; 49 U.S.C. App. 2311, 2312, 2313, and 2316), as amended by Public Law 98-17, 97 Stat. 59, and Public Law 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.13 is amended by adding paragraph (d)(4) to read as follows:

§ 658.13 Length.

* * * * *

(d) * * *

(4) *Beverage semitrailers.* Van-type 28-foot or shorter, drop frame beverage semitrailers equipped with an upper coupler plate that extends in front of the semitrailer, but not beyond its swing radius (measured from the center line of the kingpin to the front corner of the semitrailer) with the kingpin mounted not more than 28 feet from the rear of the semitrailer, exclusive of rear-mounted devices not measured in determining semitrailer length, are considered to be specialized equipment. No State shall impose an overall length limit on such vehicles when operating in a truck tractor-beverage semitrailer or truck tractor-beverage semitrailer-beverage trailer combination. Truck tractor-beverage semitrailer combinations which are generally operated in truck tractor-beverage semitrailer-beverage trailer combinations shall have the same access to points of loading and unloading as "pup" semitrailers in 23 CFR 658.19.

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[FR Doc. 90-14537 Filed 6-22-90; 8:45 am]
BILLING CODE 4910-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-306, RM-7189]

Radio Broadcasting Services; Watertown, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Louis D. Bolton, II, seeking to substitute Channel 271C3 for Channel 271A at Watertown, Florida, and modify the construction permit (BPH-871202MF) to specify operation on the higher class channel. Channel 271C3 can be allotted to Watertown in compliance with the Commission's minimum distance separation requirements with a site restriction 8.9 kilometers (5.5 miles) northwest. The coordinates for this allotment are North Latitude 30-13-00 West Longitude 82-41-00. In accordance with section 1.420(g) of the Commission's Rules, competing expressions of interest for use of Channel 271C3 at Watertown will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before August 10, 1990, and reply comments on or before August 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark J. Prak, Tharrington, Smith and Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, North Carolina 27602.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-306 adopted June 5, 1990, and released June 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14648 Filed 6-22-90; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-305; RM-7173]

Radio Broadcasting Services; Statesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Pamela H. Hodges, seeking to substitute Channel 275C3 for Channel 275A at Statesboro, Georgia, and modify the construction permit for Station WUUF(FM) to specify operation on the higher class channel. Channel 275C3 can be allotted to Statesboro in compliance with the Commission's minimum distance separation requirements with a site restriction 13.6 kilometers (8.5 miles) west. The coordinates for this allotment are North Latitude 32-24-00 and West Longitude 81-55-00. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest for use of Channel 275C3 at Statesboro will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before August 10, 1990, and reply comments on or before August 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Alan C. Campbell, Peter H. Doyle, Dow, Lohnes, & Albertson, 1255 23rd Street NW., suite 500, Washington, DC 20037 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-305, adopted June 6, 1990, and released June 19, 1990. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14649 Filed 6–22–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–307, RM–7297]

Radio Broadcasting Services; South Waverly, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Kevin M. Fitzgerald seeking the allotment of Channel 241A to South Waverly, Pennsylvania, as the community's first local broadcast service. Channel 241A can be allotted to South Waverly in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7.0 miles) west to avoid a short-spacing to Stations WFLR–FM, Channel 240A, Dundee, New York, and WPEL–FM, Channel 243B, Montrose, Pennsylvania. The coordinates for this proposed allotment are North Latitude 41–59–46 and West Longitude 76–40–38. Canadian concurrence is required since South Waverly is located within 320 kilometers of the U.S.–Canadian border.

DATES: Comments must be filed on or before August 10, 1990, and reply comments on or before August 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin M. Fitzgerald, P.O. Box 701, Clarks Summit, Pennsylvania 18411 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–307, adopted June 5, 1990, and released June 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–14650 Filed 6–22–90; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 55, No. 122
Monday, June 25, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Working Group on Model Rules; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee will meet to discuss rulemaking in the medicaid program.

DATES: Thursday, September 6, 1990.

TIME: 4:30 p.m.

LOCATION: Administrative Conference of the United States Library, 2120 L Street, NW., suit 500 Washington, DC.

CONTACT: Kevin Jessar, (202) 254–7020.

SUMMARY: Pusuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee will meet to discuss administrative responses to congressional demand for information.

DATES: Friday, September 7, 1990.

TIME: 9 a.m.

LOCATION: Administrative Conference of the United States Library, 2120 L Street, NW., suite 500, Washington, DC.

CONTACT: Kevin Jessar, (202) 254–7020.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States. The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

DATES: Friday, September 7, 1990.

TIME: 12 Noon.

LOCATION: Administrative Conference of the United States Library, 2120 L Street, NW., suite 500, Washington, DC.

CONTACT: Gary J. Edles or Jeffery Lubbers, (202) 254–7020.

PUBLIC PARTICIPATION: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

Dated: June 20, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90–14630 Filed 6–22–90; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—November 1990 Voting and Registration Supplement.

Form Number(s): CPS–1, CPS–260.

Agency Approval Number: 0607–0460.

Type of Request: New collection.

Burden: 950 hours.

Number of Respondents: 57,000.

AVG Hours Per Response: 1 minute.

Needs and Uses: The Bureau of the Census conducts the November Voting and Registration Supplement to the Current Population Survey once every two years. Data is collected on voter and nonvoter behavior and correlated with demographic characteristics. The supplement yields statistics on voter and nonvoter characteristics and current voter trends which are useful for election officials who formulate policies relating to the voting and registration process. Data are also used by colleges, political party committees, research groups, and other private organizations.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 19, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14555 Filed 6–22–90; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 25–90]

Foreign Trade Zone 136—Brevard County, FL; Amendment of Application for Expansion

Notice is hereby given that the application submitted by the Canaveral Port Authority requesting expansion of its general-purpose foreign-trade zone (54 FR 47100, 11/9/89, and amended, 55 FR 4216, 2/7/90) has been further amended to expand the zone site at the Port Authority's terminal complex to include the adjacent storage facility (1.6 acres) of Tech-Vest, Inc., 400 West Central Boulevard, Cape Canaveral.

The comment period is reopened until July 27, 1990.

The application and amendment material are available for public inspection at the following locations:

Port Director's Office, U.S. Customs Service, 120 George King Boulevard, Port Canaveral, FL 32920

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 18, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–14550 Filed 6–22–90; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 29-89]

Proposed Foreign-Trade Zone, Evansville, IN, Port of Entry, Amendment of Application

Notice is hereby given that the application submitted by the Indiana Port Commission, requesting authority to establish a general-purpose foreign-trade zone at sites in Mount Vernon and Evansville, Indiana, adjacent to the Evansville Customs port of entry (54 FR 48008, 11/20/89), has been amended to include an additional site (40,000 sq. ft.) at the Morton Avenue Warehouse, Inc., facility, East Lynch Road, Evansville, one mile south of the regional airport.

Specific manufacturing approval is not being sought at this time. Such requests would be made to the Board on a case-by-case basis. The application remains otherwise unchanged.

The comment period is reopened until July 27, 1990. The application and amendment material are available for public inspection at the following locations:

Port Director's Office, New Federal Building, 101 North West Seventh, Room 236, Evansville, IN 47703

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 18, 1990.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 90-14551 Filed 6-22-90; 8:45 am]
BILLING CODE 3510-DS-M

[Docket No. 29-89]

Foreign-Trade Zone 27—Boston, MA, Application for Subzone Sites Polaroid Corporation, Massachusetts Amendment of Application

Notice is hereby given that the application submitted by the Massachusetts Port Authority requesting special-purpose subzone status for seven Polaroid Corporation production facilities in Massachusetts (54 FR 46793, 11/27/89) has been amended to expand proposed Site 2 (Needham Plant), by including an additional building (6 acres) located at 155 Fourth Avenue. The application remains otherwise unchanged.

The comment period is reopened until July 27, 1990.

The application and amendment material are available for public inspection at the following locations:

U.S. Department of Commerce District Office, World Trade Center, Suite 307, Commonwealth Pier Area, Boston, Massachusetts 02210

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 18, 1990.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 90-14552 Filed 6-22-90; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-549-503]

Rice From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on rice from Thailand. We preliminarily determine the total bounty or grant to be 0.24 percent *ad valorem* during the period January 27, 1986 through December 31, 1986. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 12356) the final affirmative countervailing duty determination and order on rice from Thailand. On April 30, 1987, the Rice Millers' Association requested an administrative review of the order. We published the initiation of the administrative review on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Thai rice including rice in the husk (paddy or rough); husked (brown) rice including basmati and other; semi-milled or wholly-milled rice, whether or not polished or glazed, including parboiled and other; and broken rice. During the period of review, the imports were classifiable under items 1006.5000, 1006.5600, 1006.5800, 1031.3000, and 1031.3300 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classifiable under HTS item numbers 1006.10.00, 1006.20.20, 1006.20.40, 1006.30.10, 1006.30.90 and 1006.40.00. The HTS item numbers are provided for convenience and Customs' purposes. The written description remains dispositive.

The review covers the period January 27, 1986 through December 31, 1986 and 11 programs.

Analysis of Programs

1. Export Packing and Stocking Credits

Export packing and stocking credits are short-term loans used for either pre-shipment, post-shipment, or stocking financing. These loans are provided to exporters in baht through commercial banks. Under the new regulations effective January 2, 1986, the Bank of Thailand purchases the exporters' promissory notes from the commerical banks. On March 27, 1986, the interest rate for these loans changed from 9 percent to 7 percent and the penalty rate for late payment changed from 11 percent to 8 percent. The loans are generally provided for 180 days. However, pre-shipment loans extend from the date the funds are received to either the shipment date of the rice or to the due date of the loan, whichever occurs first.

For all loans, the due date may not fall beyond the expiry date of the letter of credit, ten days after the delivery date indicated in a sales contract or purchase order, ten days after the due date on a usance export bill, or the date the goods

are due to be discharged from the warehouse.

We preliminarily determine that these loans are countervailable because only exporters are eligible to receive these loans, and they are provided at preferential rates. As the benchmark for short-term loans, it is our practice to use the national average commercial interest rate or the most comparable, predominant commercial interest rate for short-term financing. For purposes of this determination, we are using the verified weighted-average interest rate of 12.27 percent charged in Thailand by commercial banks on short-term loans, bills, and overdrafts during 1986 as the benchmark rate for short-term loans. See Certain Steel Wire Nails from Thailand: Final Countervailing Duty Determination, 52 FR 36987 (1987). Comparing this benchmark rate to the rate charged on export packing and stocking credits, we find that the interest rate on these credits is preferential. However, with regard to credits on which a late payment penalty was charged and not refunded, the interest rate is not preferential because the addition of the penalty charge results in a rate that is higher than the benchmark interest rate. Therefore, we included in our calculation all export packing loans for shipments of rice to the United States for which there was no penalty and loans for which the penalty had been refunded. Where the loans covered multi-product shipments, we used only that percentage of the loan equal to the relative invoice value of rice included in the shipment.

To calculate the benefit from this program, we allocated the difference between the interest due at the benchmark rate and the interest paid at the preferential rates over the value of Thailand's rice exports to the United States. Applying the 1986 benchmark rate of 12.27 percent, we calculated a net bounty or grant of 0.2285 percent *ad valorem* during the period of review.

2. Public Warehouse Organization (PWO)

The PWO is a state organization under the Ministry of Commerce. From 1983 through 1985, it intervened in the market by buying rice during peak seasons to create a greater market demand for paddy rice and thereby raise paddy rice prices. This intervention program was terminated in 1985. During our period of review, PWO traded only for its own account. We verified that, during the period of review, PWO exported no rice to the United States nor did they sell domestically to exporters who exported to the United States. Therefore, we preliminarily determine that there was no countervailable benefit from this program during the period of review.

3. Marketing Organization for Farmers (MOF)

The MOF operates under the Ministry of Agriculture and Cooperatives for the general purpose of supporting farmers and farmers' institutions. During the period of review, the MOF traded rice for its own account and was involved in the following three rice purchase programs:

A. Supplementary Program to Purchase Paddy Rice from Farmers—Under this program, the MOF purchased paddy rice at about 10 percent above the prevailing market price.

B. Payment-in-kind Program—Under this program, the MOF accepted paddy rice valued at the prevailing local price as payment for farmer's fertilizer debt.

C. Paddy Rice Purchase Program—Under this program, the MOF purchased additional paddy rice from farmers in an equivalent amount and at the same price as it accepted paddy rice under the payment-in-kind program.

We verified that the MOF exported no rice to the United States. Therefore, we preliminarily determine that there was no countervailable benefit from this program during the period of review.

4. Agricultural Cooperative Federation of Thailand (ACFT)

ACFT is a private organization of farmer cooperatives operated by the Department of Agriculture and Agricultural Cooperatives (DAC). During the period of review, ACFT received one-year, interest-free loans from DAC. The loans could be repaid in cash or in milled rice. We verified that no loans under this program were used for the purchase of rice. Therefore, we preliminarily determine that there was no countervailable benefit from this program during the period of review.

5. Paddy Rice Mortgage Program

This program was administered jointly by the Bank of Agriculture and Agricultural Cooperatives (BAAC) and the PWO. Its purpose was to allow farmers to hold back paddy rice sales at the beginning of the harvest season when the market prices were low until prices were more favorable. It allowed farmers to store their rice in PWO warehouses and receive low interest loans from BAAC by mortgaging their rice. We verified that this program did not operate during the period of review.

6. Paddy Rice Raising Project and Compensatory Interest Payments Program for Millers

On October 22, 1985, the Cabinet approved a program requiring rice millers to purchase paddy rice at a 10 percent premium over the market price. Millers were to be compensated for this requirement by receiving compensatory payments of interest on loans. Because the market price of rice was high, this program was unnecessary and was terminated January 22, 1986, before our period of review. However, millers who bought and stocked rice at the premium price before the program was terminated, were eligible for interest compensation if they applied before March 20, 1986.

We preliminarily determine that this program was limited to a specific industry and the interest rates were inconsistent with commercial considerations. To calculate the benefit, we divided the total amount of interest compensation payments made during the period of review by the total value of domestic milled rice production for a benefit of 0.0092 percent *ad valorem*. We will adjust any deposit rate to reflect the termination of this program.

7. Supplementary Program to Implement the Government's Rice Policy—Preferential Financing to Rice Millers

This program was operated by the Office of Agriculture and Economics (OAE), Ministry of Agriculture and Agricultural Cooperatives in conjunction with commercial banks. The program provided low-interest loans to millers buying paddy rice at or above the prices set by Government decree. The OAE provided 40 percent of the loan interest free and private banks provided 60 percent of the loan at a rate not to exceed 15 percent for an effective interest rate of nine percent. The program was terminated May 31, 1986.

We preliminarily determine that this program is countervailable because it is limited to a specific enterprise or industry and the interest rate is inconsistent with commercial considerations. To calculate the benefit, we multiplied the total amount of loans repaid during the period of review by the average number of days the loans were outstanding by the difference between the effective interest rate, nine percent, and the benchmark interest rate, 12.27 percent. We allocated the benefit over the value of domestic milled rice production during the period of review for a benefit of 0.0009 percent *ad valorem*. We will adjust any deposit

rate to reflect the termination of this program.

8. Incentives for International Trading Firms

The Board of Investment, Office of the Prime Minister, Thailand, (BOI) administers the Investment Promotion Act of 1977. Certified exporters and companies doing business with a certified company are exempt from paying certain import duties and business taxes. They may also deduct income taxes paid in a foreign country and advertising expenses in foreign countries. They may receive financial aids from the BOI and may hold foreign currency accounts. This program was terminated on March 11, 1981. However, companies certified before that date continue to be eligible for tax incentives. Two companies that export rice to the United States are eligible to receive benefits under this program. We verified that, during the review period, one company received an exemption from paying a business tax and subtracted the exemption from his municipal tax.

We preliminarily determine that this program confers a countervailable benefit because it is limited to exporters. We allocated the sum of the one company's business tax exemption and municipal tax exemption over the value of the company's total rice exported and calculated a benefit that was significantly less than 0.01 percent *ad valorem*. The weighted-average country-wide benefit from this program is effectively zero.

9. Tax Certificates for Exporters

Rebates in the form of tax certificates for exporters are provided under section 12 of the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act." However, goods subject to tax and duty or fees when exported are not eligible for tax certificates. Because there was an export tax and export premium on rice, exports of rice were not eligible for rebates. Rice became eligible for these rebates after the export tax on rice was eliminated in October 1985 and the export premiums on rice were lifted in January 1986. However, a decree issued March 6, 1986, retroactive to January 1986, announced that exporters of rice were not eligible to receive these tax certificates. We verified that rice exporters did not receive benefits under this program during the period of review.

10. Other Programs

We also examined the following programs and preliminarily determine that exporters of rice did not use them during the review period:

A. Export Processing Zones.
B. Export Promotion Fund.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.24 percent *ad valorem* during the period January 17, 1986 through December 31, 1986. In accordance with 19 CFR 355.7, any benefit less than 0.50 percent *ad valorem* is *de minimis* and is disregarded for purposes of this review.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise entered or withdrawn from warehouse, for consumption on or after January 17, 1986 and exported on or before December 31, 1986. The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This waiver shall remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 12, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-14553 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to Section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must take available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604, and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 99-659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-referenced final rule, the Western Pacific Fishery Management Council (Western Pacific Council) has prepared its revised SOPP that was originally published in the **Federal Register**, Volume 42, No. 55, March 22, 1977. Interested parties may obtain a copy of the Western Pacific Council's revised SOPP by contacting Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: June 15, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-14580 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Permit Denial; Mr. James Baker Atkinson (P446)

On October 16, 1989, notice was published in the **Federal Register** (54 FR 42320) that an application had been filed by Mr. James Baker Atkinson for a permit to approach, harass, and feed Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on June 15, 1990, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) the National Marine Fisheries Service denied a permit for the above taking. Denial of a permit is based on a finding that the proposed taking is not consistent with the purposes and policy of the Marine Mammal Protection Act.

Comments received on this application suggested that the request for a permit authorizing observation/feeding of marine mammals in the wild was not an appropriate submission for a public display permit under the MMPA. The MMPA provides for the issuance of permits which authorize the taking or importation of any marine mammal for scientific research or public display. As defined in the MMPA, "The term 'take' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." The MMPA and its regulations do not, however, define "harass." Neither the MMPA nor its regulations defines public display.

NMFS has not issued previous formal policy statements that can be referenced in determining the appropriateness of an application for a public display permit authorizing the potential taking during the feeding of animals in the wild. NMFS has, however, previously issued one public display permit for the potential take by harassment of non-endangered marine mammals in the wild (P392-Cousteau). Absent definition or policy, and given agency precedent with the issuance of a previous public display permit authorizing take by harassment in the wild, under current regulations and laws NMFS cannot eliminate feeding/observation cruises from a definition of public display as recommended by some commentors. The permit program review is expected to propose revised MMPA regulations which will provide a definition of public display appropriate to MMPA permits.

Some commentors also suggested that wild dolphin observation and feeding cruises do not require an MMPA permit because such activities do not constitute a take. NMFS defines "take" to include harassment or any other negligent or intentional act which results in the disturbing or molesting of a marine mammal (50 CFR 216.3.). NMFS also has prohibited activities causing a substantial disruption of a whale's behavior in whalewatching regulations regarding Hawaiian waters. In addition, whalewatching guidelines for other regions of the United States are written to avoid any substantial disruption of a whale's behavior. If the proposed dolphin observation cruises are conducted within the confines of the whalewatching guidelines, or subsequent regulations, and no feeding activities occur, no MMPA permit is required as activities conducted outside the minimum distance required by those guidelines probably will not result in a taking under the MMPA. If, however, the proposed cruises are conducted with the intent of approaching marine mammals closer than allowed by the whalewatching guidelines, or with the intent of disturbing, molesting or altering the animals' behavior by luring them toward boats for the purposes of feeding and/or observation (even if initiated outside the minimum distance requirements), then the Service believes harassment of the animals will occur. There has been ample comment, from those supportive of feeding cruises and from those opposed, that groups of wild animals routinely exposed to feeding activities regularly approach people for the purposes of interaction, even if the fish available represents only a small percentage of the animals' daily requirement, and even if no fish is offered (See also "A Report to the Monkey Mia Reserve Management Committee: Recommendations for a Feeding Strategy for the Dolphins of Monkey Mia, Shark Bay").

In determining whether to issue a public display permit, the MMPA regulations require that we consider, among other criteria, whether the proposed taking will be consistent with the purposes and policies of the Act; whether the marine mammal in question is from a species listed as depleted; whether a substantial public benefit will be gained form the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal and the adequacy of his facilities.

The potential adverse impacts on the population stocks of Atlantic bottlenose dolphin and the marine ecosystem outweigh the potential benefit of the proposed activities. The Service concludes, therefore, that the issuance of a permit authorizing activities intended to directly or indirectly alter the natural and feeding behavior of groups of wild animals is not consistent with the purposes and policy of the Marine Mammal Protection Act. Therefore, we have denied the issuance of a public display permit to Mr. Atkinson.

Documents associated with this application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893-3141);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (617/281-3600);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731-7451 (213/514-6196);

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822-2396 (808/955-8831);

Director, Northest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526-6150); or

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Building, Juneau, AK 99802 (907/586-7221).

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-14581 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Products Produced or Manufactured in India

June 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 27 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota reopenings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover and carryforward used during the previous agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53351, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 20, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 21, 1988, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period January 1, 1990 through December 31, 1990.

Effective on June 27, 1990 you are directed to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
218	7,972,534 square meters.
219	41,712,588 square meters.
313	20,160,012 square meters.
314	5,214,074 square meters.
315	9,757,565 square meters.
336/339/340	1,283,824 dozen.
341	2,809,811 dozen of which not more than 1,769,104 dozen shall be in Category 341-Y. [2]
347/348	327,833 dozen.
363	27,195,955 numbers.
Sublevel in Group II:	
641	868,199 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14607 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Appeal, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and Indonesia establishes limits for the period beginning July 1, 1990 and extending through June 30, 1991. The limits for certain categories include an additional 5 percent for traditional folklore products made of handloomed fabrics, as provided for in the agreement. Also, the limits for certain categories have been adjusted to account for carryforward and special carryforward used during the previous agreement period.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 19, 1990

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 28 and October 3, 1985, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period which begins on July 1, 1990 and extends through June 30, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	5,719,296 square meters.
313	10,377,586 square meters.
314	36,235,934 square meters.
315	15,856,517 square meters.
317/617/326	16,103,001 square meters of which not more than 2,349,904 square meters shall be in Category 326.
331	535,290, dozen pairs.
334/335	139,823 dozen.
338/339	613,564 dozen.
340	397,049 dozen.
341	562,055 dozen.
347/348	795,361 dozen.
351/651	248,254 dozen.
369–S [1]	546,317 kilograms.
445/446	52,551 dozen.
604–A [2]	424,911 kilograms.
613/614/615	14,310,561 square meters.
625/626/627/628/629	16,907,000 square meters.
635	100,367 dozen.
638/639	783,996 dozen.
640	415,844 dozen.
641	1,348,016 dozen.
645/646	466,379 dozen.
647	441,855 dozen.
648	1,346,287 dozen.
Group II 200, 201, 218, 220, 222–227, 229, 237, 239, 300, 301, 330, 332, 333, 336/636, 342/642, 345, 349, 350, 352–354, 359, 360–363, 369–D [3], 369–O [4], 400–444, 447–469, 600, 603, 604–O [5], 605, 607, 611, 615, 619/620, 621, 622, 624, 630, 631–634, 643, 644, 649, 650, 652–654, 659, 665, 666, 669, 670, 831–838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	71,518,724 square meters equivalent.
Sublevels within group II	
237	264,489 dozen.
336/636	299,963 dozen.
342/642	172,079 dozen.
345	258,606 dozen.
350	76,985 dozen.
369–D	486,757 kilograms.
611	3,026,199 square meters.
619/620	4,770,000 square meters.
631	825,072 dozen pairs.
634	45,154 dozen.
647	208,152 dozen.
Subgroup of group II 400–444 and 447–469, as a group.	2,836,335 square meters equivalent.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 604–A: only HTS number 5509.32.0000.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); and 6307.10.2005 (Category 369–S).

[5] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

Imports charged to these category limits for the period July 1, 1990 through June 30, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14556 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

June 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year and amending visa requirements.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the new agreement period beginning on July 1, 1990 and extending through June 30, 1991. Also, the current visa arrangement is being amended to include the coverage of Categories 347–T/348–T.

A copy of the current bilateral textile agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 53 FR 34573, published on September 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 19, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period which begins on July 1, 1990 and extends through June 30, 1991, in excess of the following levels of restraint:

Category	12-mo. restraint limit
237	191,012 dozen.
331/631	1,775,288 dozen pairs.
333/633	35,955 dozen.
334	252,810 dozen.
335/635	185,364 dozen.
336	85,394 dozen.
338/339	842,700 dozen of which not more than 702,295 dozen shall be in shirts other than T-shirts and tank tops (Categories 338-S/339-S).[1]
340	662,924 dozen of which not more than 224,720 dozen shall be in shirts made from fabrics of two or more colors in the warp and/or the filling (Category 340-Y).[2]
341	662,924 dozen of which not more than 280,900 dozen shall be in shirts and blouses made from fabric of two or more colors in the warp and/or the filling (Category 341-Y).[3]
342/642/842	438,204 dozen.
345/845	113,484 dozen.
347/348/847	876,408 dozen of which not more than 525,845 dozen shall be in Categories 347-T/348-T.[4]
350/650	78,652 dozen.
351/651	185,434 dozen.
352/652	898,880 dozen.
359-C/659-C[5]	764,485 kilograms.
363	8,146,100 numbers.
369-D[6]	611,588 kilograms.
369-S[7]	509,656 kilograms.
434	3,060 dozen.
435	6,631 dozen.
442	13,953 dozen.
445/446	96,810 dozen.
448	6,121 dozen.
634	168,540 dozen.
635	247,192 dozen.
638/639/838	192,125 dozen.
640	578,654 dozen.
641	140,450 dozen.
644	662,924 dozen.
645/646	357,080 numbers.
647/648	134,832 dozen.
	696,532 dozen.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.9030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0050, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4000, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.82.2010, 6104.82.2025, 6104.89.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.2030, 6204.22.3040, 6204.23.4034, 6204.62.2000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.8010, 6210.50.2030, 6211.20.1550, 6211.20.3020, 6211.42.0030 and 6217.90.0050.

[5] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.22.0050, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[7] Category 369-S: only HTS numbers 6307.10.2005.

Imports charged to these category limits for the period July 1, 1990 through June 30, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

You are directed to charge 156,250 dozen, for goods exported in excess of the previous restraint limit, to the limit established in this directive for Categories 347/348/847.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

For visa purposes, effective on July 2, 1990, you are directed to amend further the directive of September 1, 1988 to include coverage of Categories 347-T/348-T. Merchandise in part categories 347-T/348-T, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after July 1, 1990, must be accompanied by the correct merged part category or the correct part category corresponding to the actual shipment.

Merchandise exported from Sri Lanka prior to July 1, 1990, shall not be subject to these part category visa requirements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14557 Filed 6-22-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Proposal of The Intermarket Clearing Corp. To Amend its Rule 502

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed clearing corporation rule amendments.

SUMMARY: The Commission is requesting comment concerning proposed rule amendments submitted by The Intermarket Clearing Corporation ("ICC") pursuant to section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12), and Commission Regulation 1.41(b), 17 CFR 1.41(b). The proposed amendments would permit clearing members participating in the cross-margining program between ICC and The Options Clearing Corporation ("OCC") to deposit as margin common and preferred stocks and corporate bonds with respect to cross-margined accounts.

DATES: Comments must be received by July 25, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Patterson, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Amendments

By letter dated March 13, 1990, the Intermarket Clearing Corporation ("ICC") submitted for Commission approval pursuant to section 5a(12) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b) proposed amendments to ICC Rule 502, which would permit joint clearing members of ICC and OCC to deposit as margin certain equity and debt issues with respect to accounts cross-margined pursuant to the cross-margining program between ICC and OCC.[1] The proposed ICC amendments follow closely the language of OCC Rule 604(d). The OCC rule, however, is not limited to margin on cross-margined accounts.

The proposed amendments would create a new paragraph (a)(4) of existing ICC Rule 502 that would permit clearing members to deposit common and preferred stocks and corporate bonds as initial margin for cross-margined accounts. To be eligible for deposit under the proposed amendments, stocks would be required to have a market value greater than $10.00 per share and to be either traded on a national securities exchange or traded in the over-the-counter market and designated as National Market System securities. Corporate bonds would be required to be listed on a national securities exchange and not be in default, have a readily determinable market value, and be rated in one of the four highest categories by a nationally recognized rating organization. Proposed paragraph (a)(4) of Rule 502 further would provide that, if a particular equity or debt issue were suspended from trading in its primary market or became subject to special margin requirements under the rules of its primary market because of volatility, lack of liquidity, or a similar characteristic, it would not be accepted by ICC for margin purposes.

Pursuant to proposed paragraph (a)(4), stock and convertible bonds accepted as margin would be valued on a daily basis at either the then maximum loan value of the stocks or bonds according to the provisions of Regulation U of the Federal Reserve System[2] or such lower value as ICC might prescribe. Deposited nonconvertible bonds would be valued on a daily basis at 70% of current market value or at a lower value prescribed by ICC. Pursuant to the proposed amendments, ICC would never value equity and debt issues of any one issuer in excess of ten percent of the margin requirement of a given clearing member.

Proposed Rule 502(a)(4) would permit clearing members to deposit securities as margin in an OCC account with a bank, trust company, or other depository approved by the ICC. Such deposits could be made only under irrevocable arrangements permitting the stocks or bonds to be sold, promptly and without notice, by or on the order of OCC for the account of the clearing member. The clearing member would bear all fees and expenses incident to the ownership or sale of deposited stocks or bonds. Likewise, the clearing member would be entitled to all dividends, interest, or gains received or accrued on such securities. The proposed rule would require that deposited securities be held, for convenience, in OCC's account at an approved depository and that such securities be identified on the records of OCC as being held in respect of specific cross-margined accounts. OCC would hold these securities pursuant to an agreement between OCC and ICC that would permit ICC to order the liquidation of deposited securities and obtain the proceeds thereof to meet the obligations of the clearing member to the ICC.

Proposed ICC Rule 502(a)(4) would prohibit clearing members from holding securities for the account of a customer in any proprietary account. The rule also provides that, in making deposits of securities pursuant to the rule, a clearing member would be representing and warranting that such deposits were not in violation of any law or rule of any regulatory authority.

II. Request for Comments

The Commission requests comments on any aspects of the proposed amendments to ICC Rule 502. Copies of the ICC submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views, or arguments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 19, 1990.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 90-14567 Filed 6-22-90; 8:45 am]

BILLING CODE 6351-01-M

[1] On June 1, 1988, the Commission approved proposed ICC rules implementing a program for cross margining commodity futures and options positions cleared by ICC with related securities options cleared by OCC in the proprietary accounts of joint clearing members of the two clearing corporations. The Securities and Exchange Commission ("SEC") approved corresponding rule changes on October 3, 1988. A pilot program for proprietary cross-margining began on February 3, 1989.

[2] 12 CFR part 221. Section 221.8 of Regulation U provides that the maximum loan value of any margin stock is 50% of its current market value.

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

June 15, 1990.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on 24-26 July 1990, from 8 a.m. to 5 p.m., at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to facilitate the exchange of information amongst Scientific Advisory Board members and SAC staff on technical developments and strategic operations issues. The meeting at HQ Strategic Air Command (SAC) will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-14595 Filed 6-22-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9-10 July 1990.

Time: 0900-1700.

Place: Walter Reed Army Institute of Research, 6825 15th Street NW., Washington, DC 20307-5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on the technical programs conducted in combat casualty care. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14715 Filed 6-22-90; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 10-11 July 1990.

Time: 0900-1700.

Place: Walter Reed Army Institute of Research, 6825-15th Street NW., Washington, DC 20307-5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review

of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on technical programs conducted in infectious diseases at WRAIR. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14716 Filed 6-22-90; 8:45 am]

BILLING CODE 3710-08-M

Availability of Dual-Mode Quartz Resonator Self-Temperature-Sensing Method for Partially Exclusive Licensing

ACTION: Notice of availability of the dual-mode quartz resonator self-temperature-sensing method for partially exclusive licensing.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the dual-mode quartz resonator self-temperature-sensing method for nonexclusive licensing. The inventor at the U.S. Army Electronics Technology and Devices Laboratory (USAETDL) has received notice of allowability under patent application SN 487,560 for a novel quartz dual-mode thermometric sensing device. The rights to the invention belong to the United States Government.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Stern, U.S. Army Electronics Technology and Devices Laboratory, ATTN: SLCET-DT, Fort Monmouth, NJ 07703-5000 (201) 544-4666.

SUPPLEMENTAL INFORMATION: This new thermometry method allows for the quartz resonator to sense its own temperature, thereby overcoming limitations of using external temperature sensors. A pair of harmonically related modes of a temperature-stable resonator (e.g., an SC-cut crystal) are simultaneously excited in a dual-mode oscillator and then combined to produce a thermometric beat frequency having a monatomic and nearly linear dependence on temperature. This beat frequency can be used, for example, in temperature-compensating either one of the c-mode generated frequencies. Research and development on the implementation of this method in the microcomputer compensated crystal oscillator (MCXO) has been completed such that working prototypes have been built and successfully demonstrated.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAETDL wishes to nonexclusively license rights to the invention to parties interested in manufacturing and selling devices based on the dual-mode quartz resonator self-temperature-sensing method.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-14598 Filed 6-22-90; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Meeting

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF COMMITTEE: Inland Waterways Users Board.

DATE OF MEETING: July 24, 1990.

PLACE: Minneapolis-St. Paul Airport, Hilton Hotel, 3800 W. 80th Street, Bloomington, MN 55431.

TIME: 9 a.m. to 5 p.m.

PROPOSED AGENDA:

A.M. Session

9—Business Session
—Call to Order
—Disposition of Prior Meeting Minutes

Presentation of Information to the Board

9:20—Trust Fund Analysis
9:45—Trust Fund Disbursements
10:15—Break
10:30—Update of Investment Needs Assessment
11—Construction Projects Update
11:15—Upper Mississippi River Transportation Economics Study
12—Lunch

P.M. Session

North Central Division Presentations

1—Upper Mississippi River Environmental Management Program
1:30—Upper Mississippi River Study
2—Illinois River Study
2:30—Break
2:45—Recreational Use of Upper Miss Locks
3—Public Comment Period
4:45—Other Business/Instructions to Board Staff
5—Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

For further information, contact: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0146.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 90-14657 Filed 6-22-90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Notice of Intent To Prepare Supplemental Environmental Impact Statement for Element II for the Construction and Operation of Navy Homeport at Everett, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500-1506), the Department of the Navy announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for Element II for the construction and operation of a Navy Homeport at Everett, Washington. As described in the EA for Construction of Element I, Carrier Battle Group Homeporting in the Puget Sound Area, Everett, Washington, Element II is the second of three functionally independent construction phases in support of the Everett homeport.

The Corps has agreed to act as a cooperating agency in the preparation of the SEIS for Element II pursuant to 40 CFR 1501.6. The Corps will review a Navy permit application for the proposed action pursuant to authorization found in section 404 of the Clean Water Act.

The proposed action for Element II consists of dredging and disposal of about 110,000 cubic yards of material; and, slope protection consisting of 3,000 cubic yards of riprap, 1,000 cubic yards of quarry spalls, and 1,200 cubic yards of filter blanket. Element II also would include a breakwater pier about 90 by 1,510 feet and a wharf extension about 140 by 200 feet. Both would be constructed using precast concrete piling, concrete pile caps, and precast deck panels. The structures would incorporate an energy absorbing fender system, mooring hardware, and covered utility trenches. The breakwater would be designed to provide adequate passage for migratory fish. Pier utilities would consist of sanitary sewer, potable water, saltwater, compressed air, electric power, steam/condensate, and telecommunications. The 1,650 feet breakwater structure would provide protection for moored vessels. An additional 12,000 cubic yards of riprap will be added to the base of the breakwater structure to prevent bottom scour.

Element I of the Everett homeport has been addressed in a separate Environmental Assessment, published in June 1989. The Navy issued a Finding Of No Significant Impact on July 27, 1989, and the U.S. Army Corps of Engineers issued a permit for in-water construction on September 5, 1989. Dredging at the Element I site began on October 31, 1989, and is complete with very good results.

The Element II SEIS will address the following known issues of concern: Characterization of sediments to be dredged; characterization of the benthic organisms within the dredged area; analysis of impacts caused by sediment disposal, dredging and pier construction on the marine environment and associated organisms; review and study of alternative in-water and upland dredged material disposal sites; breakwater design and structural alternatives to assess impacts on sediment transport and distribution, and wave refraction impacts on ship traffic; and analysis for oil spills and gray water discharge.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on July 11, 1990, beginning 7 p.m. in the Ginni Stevens Room of the Snohomish County Administration Building, 3000 Rockefeller Avenue, Everett, Washington. This meeting will be advertised in Everett area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the SEIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the SEIS should address. Written statements and or questions regarding the scoping process should be mailed no later than July 27, 1990, to Commanding Officer (Attn: Code 09EP3), Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3503 NW Anderson Hill Road, Silverdale, WA 98383-9130.

Dated: June 19, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-14633 Filed 6-22-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Teleconference Meeting of the Reading Committee

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reading Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: July 11, 1990.

TIME: 11:00 a.m. (e.d.t.) until adjournment.

PLACE: National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Reading Committee of the National Assessment Governing Board will meet via teleconference on July 11, 1990 from 11:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to review material and issues in preparation for the August meeting of the Board.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-14569 Filed 6-22-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Coalition of Northeastern Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States.

The grant renewal will continue the project through 6/30/91. The estimated amount is $600,000.

Procurement Request No.: 05-900R21389.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Northeast Area of the Northern Tier States. The primary purpose is to

implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CONEG has the unique capability to equally represent all of the states in the Northeast subregion and involve the appropriate private and public interest groups in the states. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CONEG.

FOR FURTHER INFORMATION CONTACT: Lynda H. McLaren, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831-6269, (615) 576-1783.

Issued in Oak Ridge, Tennessee, on June 13, 1990.

Peter D. Dayton,

Director, Procurement & Contracts Division, Oak Ridge Operations.

[FR Doc. 90-14646 Filed 6-22-90; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Grant; Financial Assistance Award to University of Arkansas

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(a)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36-month grant to the Board of Trustees, University of Arkansas, 120 Ozark Hall, Fayetteville, AR 72701, in the amount of approximately $495,000.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-90MC27225.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for a research project to develop a novel approach for biological conversion of synthesis gas to produce hydrogen and remove sulfur gas simultaneously through the utilization of unique micro-organisms. This proposal is to conduct experimental studies and provide data on the development and scale-up of this bioconversion process. Research under this proposed effort is anticipated to enhance the knowledge of biorector design which is a key issue in the application of biotechnology. The University of Arkansas has patented immobilized cell reactors for bioconversion studies. The use of these innovative and patented reactors for the bioconversion of synthesis gas has been found to minimize retention time without expensive reactor agitation. Information received under this project will lead to the development of an economically acceptable, efficient process for conversion of synthesis gas to produce hydrogen.

In view of the expertise of the personnel at the University of Arkansas and its exclusive involvement in the development of biological conversion of synthesis gas and design of bioreactors, it has been determined that it is appropriate to award this grant to the University of Arkansas on an unsolicited basis.

Dated: June 14, 1990.

Louis L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-14647 Filed 6-22-90; 8:45 am]

BILLING CODE 6450-01-M

Operational Readiness Review at Department of Energy's Rocky Flats Plant, Colorado; Response to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of the response of the Secretary of Energy (Secretary) to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board, 55 FR 19644-19645 (May 10, 1990), concerning an operational readiness review at the Department of Energy's Rocky Flats Plant, Colorado. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-4.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before July 25, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E Street, NW., suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 20, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

June 20, 1990

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, Suite 675, 600 E Street NW., Washington, DC 20004

Dear Chairman Conway: In response to your letter of May 4, 1990, I accept your recommendations to conduct an Operational Readiness Review at the Rocky Flats Plant prior to resumption of operations.

Purpose

The purpose of the review is to verify the readiness of the Rocky Flats Plant to safety resume plutonium operations.

Scope

The scope of the review will include the following:

(1) the Operational Readiness Review process implemented by the operating contractor [EG&G Rocky Flats, Inc.];

(2) the resolution of recommendations and findings made by official review teams; and

(3) the readiness of the plant, equipment, personnel, and administrative systems for the resumption of plutonium processing and component manufacturing operations.

Emphasis will be placed on evaluating the readiness of Buildings 559 and 707 to operate safely. The Operational Readiness Review will also include the adequacy of operations support services, including training, maintenance, waste management, environmental protection, industrial safety, radiological protection, emergency preparedness and engineering.

The names of those individuals conducting the review are listed in the enclosure. As the review develops, other names may be added. These individuals will be meeting at the Rocky Flats Plant during the week of June 18, 1990, to become acquainted with the facilities, personnel, and operating practices at the Rocky Flats Plant and to develop a detailed scope and plan for conducting the Operational Readiness Review. This scope and plan will include the five issues set forth in your letter of May 4, 1990, namely:

- Independent assessment of the adequacy and correctness of process and utility systems operating procedures. Consistent with the contractor's operating philosophy, these procedures should be in sufficient detail to permit the use of the "procedural compliance" concept.
- Assessment of the level of knowledge achieved during operator requalification as evidenced by review of examination questions and examination results, and by selective oral examinations of operators by members of the review group.
- Examination of records of tests and calibration of safety systems and other instruments monitoring Limiting Conditions of Operation or that satisfy Operating Safety Requirements.

- Verification that all plant changes including modifications of vital safety systems and plutonium processing workstations have been reviewed for potential impact on procedures, training and requalification, and that training and requalification have been done using the revised procedures.
- Examination of each building's Final Safety Analysis Report to ensure that the description of the plant and procedures and the accident analysis are consistent with the plant as affected by safety related modifications made during the outages period.

Other issues that are appropriate in evaluating the readiness of the plant, personnel, and procedures will also be addressed by the readiness review team.

In accordance with 42 U.S.C. 2286(d), DOE's response to the Board's recommendations will be put in the Federal Register, and an implementation plan will be provided within 90 days of the date of that notice.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)

Enclosure

Steering Group

Roger J. Mattson, Chairman
James P. Knight
James P. O'Reilly
Larry J. Ybarrondo
Albert P. Baione, Assistant to the Steering Group
Lance E. Traver, Assistant to the Steering Group

Readiness Review Team

James P. Knight, Team Leader
Joseph F. Tinney, Assistant to the Team Leader
Arthur J. Toy, Radiation Protection and Instrumentation
James A. Shurick, Fire Protection
John W. Robinson, Training
Eugene F. Redden, Training
Charles R. Jones, Training
Les Brown, Criticality Safety
Beth Conrad, Criticality Safety
Marvin P. Norin, Quality Assurance
Rowland E. Felt, Plutonium Processing and Handling
Robert E. Hanvey, Plutonium Processing and Handling
Leonard W. Gray, Plutonium Processing and Handling
Carl R. Forsberg, Engineering
Gary J. Toman, Engineering
Shirley Olinger, OSRs, Procedures, and Administrative Controls
David M. Pinkston, OSRs, Procedures, and Administrative Controls
Gilbert A. Nicholson, OSRs, Procedures, and Administrative Controls
Lawrence Blackwell, Industrial Safety
H. Michael Hawkins, Emergency Preparedness
Monique V. Helfrich, Environment
Matt McCormick, Environment
W. F. Hensley, Safeguards and Security

[FR Doc. 90-14683 Filed 6-22-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-174-000 et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Allegheny Power Service Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation

[Docket No. ER90-174-000]

June 15, 1990.

Take notice that on June 11, 1990, Allegheny Power Service Corporation tendered for filing a letter withdrawing its filing in the above reference docket.

Comment date: July 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER90-441-000]

June 18, 1990.

Take notice that on June 4, 1990, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedules D, J, and X, providing for long-term, negotiated, and extended economy interchange service, respectively, between Tampa Electric and the Sebring Utilities Commission (Sebring). The service schedules are submitted as supplements to the existing agreement for interchange service between Tampa Electric and Sebring designated as Tampa Electric's Rate Schedule FERC No. 15.

Tampa Electric proposes an effective date of June 4, 1990, for the service schedules, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Sebring and the Florida Public Service Commission.

Comment date: July 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. New England Hydro-Transmission Electric Company, Inc. New England Hydro-Transmission Corporation

[Docket No. ER90-450-000]

June 18, 1990.

Take notice that on June 7, 1990, New England Hydro Transmission Electric Company, Inc. (New England Hydro) and New England Hydro-Transmission Corporation (New Hampshire Hydro) submitted for filing to establish the rate of return on common equity pursuant to the DC Facilities Support Agreements among the two companies and the participants in Phase II of the New England Power Pool/Hydro-Quebec interconnection. The rate change is proposed to take effect upon the entry into service of the DC facilities. New England Hydro and New Hampshire Hydro seek a rate of return on common equity of 15 percent, respectively, to be included in the support calculations under these Agreements. According to the companies, the DC transmission facilities are estimated to be in-service in the fourth quarter of 1990 and the companies request a waiver of the 120-day limitation specified in 18 CFR 35.3 to the extent necessary, if the actual in-service date turns out to be more than 120 days after the date of this filing.

Comment date: June 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. AEP Generating Company

[Docket Nos. ER89-470-006 and ER90-35-003]

June 18, 1990.

Take notice that on June 13, 1990, AEP Generating Company tendered for filing its Compliance Refund Report pursuant to the Commission's Letter Order issued on May 1, 1990.

Comment date: July 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Yankee Atomic Electric Company

[Docket No. ER90-47-001]

June 18, 1990.

Take notice that on June 4, 1990, Yankee Atomic Electric Company submitted for filing its Refund Compliance Report pursuant to the Commission's Letter Order dated May 1, 1990.

Comment date: July 2, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 90-14575 Filed 6-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10800-000, Montana]

Hydrodynamics, Inc.; Availability of Environmental Assessment

June 18, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Ross Creek Hydroelectric Project located on Ross Creek in Gallatin County, near Bozeman, Montana, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14576 Filed 6-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1744-000, Utah]

PacifiCorp; Availability of Environmental Assessment

June 18, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for the Weber Project located on the Weber River in Weber, Morgan, and Davis counties near Ogden, Utah and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human enviroment.

Copies of the EA are available for review in the Public Reference Branch, room 1000, of the Commission's offices at 825 North Capital Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14579 Filed 6-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-171-001 et al.]

Niagara Import Point Project; Availability of Final Environmental Impact Statement

June 15, 1990.

Tennessee Gas Pipeline Company.	Docket No. CP88-171-001.
Great Lakes Gas Transmission Company.	CP89-892-000.
Algonquin Gas Transmission Company.	CP88-187-002.
CNG Transmission Corporation and Texas Eastern Transmission Corporation.	CP88-195-002.
CNG Transmission Corporation.	CP89-712-000.
Texas Eastern Transmission Corporation.	CP89-711-000.
Transcontinental Gas Pipe Line Corporation.	CP88-7-001, CP89-710-000, and CP 89-2205-000.
National Fuel Gas Supply Corporation and Penn-York Energy Corporation.	CP88-194-001.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets and related nonjurisdictional facilities.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposals.

Great Lakes Gas Transmission Company (Great Lakes) proposed in its application, Docket No. CP89-892-000, to construct seventeen 36-inch-diameter pipeline loops for a total length of 459.6 miles within Minnesota (76.8 miles), Wisconsin (42.8 miles) and Michigan (340.2 miles). The facilities are designed to transport up to 417,500 thousand cubic feet per day (Mcfd) of natural gas for TransCanada PipeLines Limited (TransCanada) from the United States-Canadian border at Noyes, Minnesota, back to TransCanada at two points along the United States-Canadian border near Sault Ste. Marie and St. Clair, Michigan. TransCanada requires this increase in transportation of export customers in the Northeastern United States.

Tennessee Gas Pipeline Company (Tennessee) proposed in its application, Docket No. CP89-171-001, to deliver 50,000 Mcfd of Canadian natural gas to a power plant in Rhode Island, 20,000 Mcfd to a cogeneration facility in Syracuse, New York, and 13,900 Mcfd to CNG Transmission Corporation (CNG) at Marilla, New York, for transport on behalf of a cogeneration facility in Brookview, New York. To deliver this gas, Tennessee would construct 41.9 miles of 30-inch-diameter pipeline loops in New York and Massachusetts, 7,000 horsepower (hp) of compression at an existing compressor in Niagara County, New York, one new metering station at an existing compressor station site, and modifications to two existing metering stations.[1]

National Fuel/Penn-York proposed in their application, Docket No. CP88-194-001, to construct pipeline facilities to transport and deliver up to 161,500 Mcfd of Canadian natural gas as follows: 125,000 Mcfd to Transcontinental Gas Pipe Line Corporation (Transco) at Leidy, Pennsylvania; 12,000 Mcfd to CNG at Marilla, New York, for transportation on behalf of a cogeneration facility in Oswego, New York; 12,000 Mcfd for delivery by National Fuel to a cogeneration facility in Tonawanda, New York; and 12,500 Mcfd for National Fuel's own system supply. To deliver this gas, National Fuel/Penn-York would construct 2.5 miles of 24-inch-diameter pipeline, 8,640 hp of compression at a new compressor station in Concord, New York, and 2,600 hp of additional compression at the existing Ellisburg Station.

CNG and Texas Eastern Transmission Corporation (Texas Eastern) proposed in their application, Docket No. CP88-195-002, to construct pipeline facilities to transport and deliver 101,000 Mcfd of Canadian natural gas to Texas Eastern and Transcontinental Gas Pipe Line Corporation (Transco) in Leidy, Pennsylvania. To deliver this gas, CNG/Texas Eastern would construct 0.4 mile of 20-inch-diameter replacement pipeline, 2,200 hp of additional compression at the State Line Compressor Station, and three new metering facilities at existing compressor and metering stations.

Transco proposed in its applications, Docket Nos. CP88-7-001, CP89-710-000 and CP89-2205-000, to receive 125,000 Mcfd of Canadian natural gas from National Fuel/Penn-York at Leidy, Pennsylvania, and 72,000 Mcfd from CNG/Texas Eastern at Leidy, Pennsylvania. The 125,000 Mcfd would be used to supply expansion of Transco's existing markets (61,900 Mcfd) and two cogeneration facilities in Oyster Bay, New York (15,000 Mcfd), and in Hopewell, Virginia (48,100 Mcfd). Transco would also transport 31,600 Mcfd of domestic natural gas supplies from existing upstream pipelines to the cogeneration facility in Hopewell, Virginia. The 72,000 Mcfd would be for redelivery as follows: 48,817 Mcfd to Algonquin Gas Transmission Company (Algonquin) at Centerville, New Jersey, and 23,183 Mcfd to North Jersey Energy Associates for a cogeneration facility in Sayreville, New Jersey. To deliver this gas, Transco would construct two 36-inch-diameter pipeline loops totaling 8.4 miles, additional 12,600 hp of compression at an existing compressor station in Luzerne, Pennsylvania, 12,000 hp of compression at a proposed compressor station in Mercer County, New Jersey, 7,600 hp of compression at a proposed compressor station in Mecklenburg County, Virginia, a new meter station in Middlesex County, New Jersey, and modification to an existing meter station in Greensville County, Virginia.

CNG proposed in its application, Docket No. CP89-712-000, to receive at Marilla, New York, 13,900 Mcfd of Canadian natural gas from Tennessee for redelivery to a cogeneration facility in Brookview, New York, and 12,000 Mcfd from National Fuel/Penn-Work for redelivery to a cogeneration facility in Oswego, New York. To deliver this gas, CNG would construct 2.7 miles of new 30-inch pipeline, 3,600 hp of compression at two existing compressor stations, and a modification to a metering facility.

Algonquin proposed in its application, Docket No. CP88-187-2, to receive 48,817 Mcfd of Canadian natural gas from Transco at Centerville, New Jersey, and 14,000 Mcfd of domestic natural gas supplies from Texas Eastern in Lambertville, New Jersey, for redelivery to a cogeneration facility in Bellingham, Massachusetts. To deliver this gas, Algonquin would construct 12.8 miles of 12-, 16-, and 36-inch-diameter pipeline loops, 11.4 miles of 10-, 20-, and 24-inch-diameter replacement pipeline and a new metering station.

Texas Eastern proposed in its application, Docket No. CP89-711-000, to receive from CNG/Texas Eastern at Leidy, Pennsylvania 20,00 Mcfd of Canadian natural gas for its own system supply. To deliver this gas, Texas Eastern would construct 5 miles of a 24-inch-diameter pipeline loop.

The FEIS will be used in the regulatory decision-making process at FERC and may be presented as evidentiary material in formal hearings at FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with FERC should do so in accordance with 18 CFR 385.211.

The FEIS will be placed in the public files of FERC, and is available for public inspection in FERC's Public Reference and File Management Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to Federal, state, and local government agencies, interested individuals, public interest groups, newspapers, libraries, and parties to the proceeding.

A limited number of copies of the FEIS is available from the FERC's Public Reference and File Management Branch, telephone (202) 208-1371, or from Mr. Lonnie Lister, Deputy Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-2191 or FTS 268-2191. When these copies are depleted, the FEIS will be available from the National Technical Information Service (NTIS) Springfield, Virginia. Call the NTIS at (703) 487-4780 to obtain the FEIS identification number and information on how to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14577 Filed 6-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1513-000 et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

June 15, 1990.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission

[Docket No. CP90-1513]

Take notice that on June 11, 1990, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP90-1513-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to provide a firm transportation service for Virginia Electric and Power Company (Virginia Power), a new firm service customer, under Applicant's Rate Schedule FTS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities:

1991 Construction

(1) Approximately 1.0 mile of 24-inch pipeline loop located in Chesterfield County, Virginia.
(2) Approximately 4.8 miles of 24-inch pipeline loop located in Goochland County, Virginia.
(3) Approximately 8.4 miles of 24-inch pipeline loop located in Albemarle and Louisa County, Virginia.
(4) Seneca Compressor Station—reclassify two units from standby to firm service (6,330 horsepower) located in Pendleton County, West Virginia.
(5) Approximately 2.7 miles of 36-inch pipeline loop located in Clay County, West Virginia.

1992 Construction

Approximately 5.2 miles of 36-inch pipeline loop located in Hardy, West Virginia.

1994 Construction

Approximately 2.2 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

Applicant states that it would receive the firm transportation volumes into its system at Leach, Kentucky, during the period April 1 through October 31 and at Waynesburg, Pennsylvania during the period November 1 through March 31 and redeliver the gas to Commonwealth Gas Services, Inc. (Commonwealth) for ultimate delivery to Virginia Power at its Chesterfield Power Station. It is indicated that the volumes received by

[1] Approximately 17.1 miles of the pipeline loop along Tennessee's Niagara Spur in Erie County, New York, would be jointly owned by Tennessee, National Fuel Gas Supply Corporation and Penn-York Energy Corporation (National Fuel-Penn-York), and CNG/Texas Eastern Transmission Corporation.

Applicant at Waynesburg would be delivered by Equitrans, Inc. (Equitrans) at an existing point of interconnection between the facilities of Applicant and Equitrans located in Greene County, Pennsylvania. Applicant states that on March 20, 1990, Equitrans received authorization in Docket No. CP90-378-000, *inter alia*, to add Virginia Power as a storage customer under its Rate Schedule SS-3.

Applicant estimates facility costs of $28,112,000, to be financed by a contribution-in-aid of construction of up to $12,500,000 and the remainder from internally generated funds.

Comment date: July 6, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission

[Docket Nos. CP90-1533-000 and CP90-1534-000]

Take notice that on June 12, 1990, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed requests with the Commission in Docket Nos. CP90-1533-000 and CP90-1534-000 [1] pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of Gulf States Gas Corporation (Gulf States) and Louis Dreyfus Energy Company (Louis Dreyfus), natural gas producers, respectively, under the blanket certificate issued in Docket No. CP88-136-000 pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.

In Docket No. CP90-1533-000 Texas Eastern proposes an interruptible natural gas transportation service of up to 100,000 MMBtu equivalent on peak and average days, and 36,500,000 MMBtu equivalent annually on behalf of Gulf States. Texas Eastern would receive Gulf States' gas at various existing receipt points on its pipeline system in Arkansas, Louisiana, offshore Louisiana, Mississippi, and Texas, then deliver the gas on Gulf States' behalf at two existing delivery points in Louisiana and offshore Louisiana. Texas Eastern states that it commenced transporting natural gas for Gulf States on April 1, 1990, under § 284.223(a) of the Regulations, as reported in Docket No. ST90-2958.

In Docket No. CP90-1534-000, Texas Eastern proposes an interruptible natural gas transportation service of up to 263,000 MMBtu equivalent on peak and average days, and 96,995,000 MMBtu equivalent annually on behalf of Louis Dreyfus. Texas Eastern would receive Louis Dreyfus' gas at two existing receipt points on its pipeline system in Greene County, Pennsylvania, then deliver the gas on Louis Dreyfus' behalf at existing delivery points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, offshore Louisiana, Mississippi, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, and West Virginia. Texas Eastern states that it commenced transporting natural gas for Louis Dreyfus on April 4, 1990, under § 284.223(a) of the Regulations, as reported in Docket No. ST90-3186.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP90-1511-000]

Take notice that on June 8, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP90-1511-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212 and 157.216) for authorization under the blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, pursuant to section 7 of the Natural Gas Act, to construct and operate, and to abandon and in certain instances transfer to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., for use in the retail distribution of natural gas certain facilities in Arkansas, Oklahoma, Kansas and Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes (1) to construct and operate seven sales taps and related facilities at various locations in Arkansas, Oklahoma and Kansas for the delivery of gas to consumers; (2) to establish a new town border station on its Line C in Cass County, Texas, and to abandon and transfer to ALG existing facilities and services downstream of the new town border station for continued use in the retail delivery of gas to consumers in Atlanta, Queen City and environs; (3) to abandon in place AER's Lines HM-37 and HM-36 and related facilities and services, in Union County, Arkansas, near Urbana, and (4) to abandon and transfer to ALG for use in the distribution of gas in Altus, Oklahoma, portions of AER's Lines 8 and 8-A-2 and related facilities, taps and services, and to abandon and reclaim a portion of AER's Line 8-G.

AER states that in the case of new services, the gas would be delivered from its general system supply, which it states is adequate to provide the service. AER states that the proposed abandonments would have no affect on existing services which would continue to be provided by ALG.

Comment date: July 30, 1990, in accordance with standard Paragraph G at the end of this notice.

4. Green Canyon Pipe Line Co. and Equitrans, Inc.

[Docket Nos. CP90-1535-000 and CP90-1536-000]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection. [2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These dockets are not consolidated.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper	Peak day average annual [3]	Points of receipt	Points of delivery	Start up date (rate schedule)	Related dockets [4]
CP90-1535-000 (6-12-90)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, Texas 77251.	Texican Natural Gas Company.	25,000 Dth 2,000 Dth 9,125,000 Dth	LA	LA	5-1-90 (IT)	CP89-515-000. ST90-3038.
CP90-1536-000 (6-13-90)	Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275.	Equitable Gas Company.	37,512 Mcf 23,500 Mcf 3,000,000 Mcf	PA	PA	4-1-90 (ITS)	CP86-553-000. ST90-3208.

[3] Quantities are shown in MMBtu unless otherwise indicated.
[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Tennessee Gas Pipeline Co.

[Docket No. CP90-1542-000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Tennessee), filed in Docket No. CP90-1542-000 a prior notice request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point under a sales service presently being rendered by Tennessee for Elizabeth Natural Gas, Inc. (Elizabeth Natural) under the blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that by Commission order issued November 4, 1989, in Docket No. CP89-333-000, Tennessee was issued a certificate of public convenience and necessity authorizing sales of up to 985 dekatherms (Dth) of natural gas per day to Elizabeth Natural under Tennessee's GS-1 Rate Schedule. Three delivery points (Elizabeth Sales, Detention Sales and Grant Sales) were authorized by the order.

It is stated that by letter dated January 10, 1990, Elizabeth Natural has requested that Tennessee provide an additional delivery point at the Louisiana Department of Correction Medium Security Prison at Tennessee's MLV 823-1+10.98 miles (Allen Parish Prison Tap). It is stated that deliveries at the Allen Parish Prison Tap would not exceed 985 Dth per day. It is further stated that the addition of Allen Parish Prison Tap as a delivery point would not change the existing delivery points or the total daily quantity of 985 Dth.

Tennessee states that it has previously constructed and operated a tap at the Allen Parish Prison Tap location under authorization granted by § 284.3(c) of the Commission's Regulations in order to render a transportation service under section 311 of the Natural Gas Policy Act. Tennessee states that Elizabeth Natural has constructed and operated the meter station at this tap (Meter No. 2-0687-0) and would continue to own and to operate this meter. Tennessee advises that no additional facilities are needed by either Tennessee or Elizabeth Natural to effect such deliveries. Tennessee apprises that there would be no environmental impact as a result of the requested authorization and that Elizabeth Natural has agreed to reimburse Tennessee for Commission filing fees.

It is stated that the total quantities to be delivered to Elizabeth Natural would not exceed presently authorized quantities and the change is not prohibited by Tennessee's existing tariff. Tennessee states that it has sufficient capacity in its system to accomplish delivery of the additional gas to the Allen Parish Prison Tap delivery point without detriment or disadvantage to any other customer. Reference is made to Tennessee's annual flow diagram filed with the Commission to show that there would be no impact on Tennessee's peak day or average day deliveries.

Thus, Tennessee requests authorization to establish Allen Parish Prison Tap as a delivery point to deliver a maximum daily quantity of 985 Dth to Elizabeth Natural consistent with the authorization issued by the Commission order on November 29, 1989, in Docket No. CP89-333-000.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Kentucky West Virginia Gas Co.

[Docket No. CP90-1544-000]

Take notice that on June 4, 1990, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105-1388, requests authorization in Docket No. CP90-1544-000 to suspend temporarily firm sales service to the City Utilities Commission of Prestonsburg, Kentucky (Prestonsburg), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consistent with Article VII of a stipulation and agreement filed June 4, 1990, in Docket Nos. TQ89-1-66-000, *et al.*, Kentucky West proposes to suspend sales service to Prestonsburg under the service agreements dated November 15, 1983, and October 21, 1971, for four years beginning July 1, 1990, and shall continue to be suspended for as long as Prestonsburg receives all or substantially all of its natural gas supplies from third parties. It is indicated that to the extent sufficient surplus supplies are available to it, Kentucky West would agree to waive the temporary suspension and make sales to Prestonsburg at the then-effective Rate Schedule GSS rates if Prestonsburg's third-party suppliers experience an emergency gas failure during the suspension period.

Comment date: June 25, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Co.

[Docket No. CP90-1541-000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Tennessee), filed in Docket No. CP90-1541-000 a prior notice request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign volumes of gas from one delivery point of Essex County Gas Company (Essex) to another existing delivery point to Essex under the blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has been authorized by Commission order issued May 10, 1989, in Docket No. CP87-358 (47 FERC ¶ 61,228) to provide a firm sales service to Essex. Tennessee states that such existing authorization provides for the delivery of a maximum of 20,900 Dth per day at delivery points as follows:

Delivery point	Daily quantity limit
Wortham	3,069 Dth.
Essex	1,231 Dth.

Delivery point	Daily quantity limit
Haverhill	16,600 Dth.

It is stated that delivery of the specified volumes at each delivery point is provided by the terms of a gas sales contract dated October 23, 1989. It is stated that such volumes, pursuant to paragraph 2(a) of Article I of the contract, are designated as "Full Service" volumes. Further, it is stated, according to the contract, such "Full Service" volumes are to be effective upon completion by Tennessee of the construction of the facilities authorized by the Commission order of May 18, 1989, and 30 days notice by Tennessee that it is ready to commence such "Full Service."

Tennessee states that Essex has requested that Tennessee reassign the maximum daily volumes of gas to be delivered to the three delivery points. The requested deliveries are as follows:

Delivery point	Daily quantity limit
Wenham	4,100 Dth.
Essex	900 Dth.
Haverhill	17,300 Dth.

Tennessee states that the total daily maximum would remain at 20,900 Dth, and, further, that the sum of deliveries at Wenham and Essex shall not on any one day exceed 4,100 Dth.

It is stated that completion of construction by Tennessee of presently authorized facilities at each of the three delivery points would allow Tennessee to deliver the proposed volumes. It is stated that no change in either Tennessee's authorized facilities or Essex's present facilities would be required to allow delivery of the proposed volumes.

Tennessee advises that the requested changes in delivery volumes would better enable Essex to physically receive the total daily contract volume.

Comment date: July 30, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14571 Filed 6-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-28-006, et al.]

Nora Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Nora Transmission Co.

[Docket No. CP88-28-006]

June 18, 1990.

Take notice that on June 12, 1990, Nora Transmission Company (Nora), Post Office Box 1388, Ashland, Kentucky 41105-1388, filed in Docket No. CP88-28-006 a request pursuant to section 7(c) of the Natural Gas Act to amend the order issued October 20, 1989, in Docket No. CP88-28-003 to extend the authorized term of an interruptible transportation service for an additional year, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Nora states that it is currently authorized to transport up to 10,000 Mcf of natural gas per day on an interruptible basis, for Equitable Resources Exploration, a division of Equitable Resources Energy Company (EREX) for a term expiring on October 20, 1990. Nora proposes to extend the authorization for an additional year. No other changes are proposed.

Comment date: July 9, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Shenandoah Gas Co.

[Docket No. CP90-1496-000]

Take notice that on May 30, 1990, Shenandoah Gas Company (Shenandoah), 1100 H Street NW., Washington, DC 20080, filed in Docket No. CP90-1496-000 a petition for waiver of the filing requirements of §§ 260.1, 260.2 and 260.7, Annual Report for Major Natural Gas Companies (Form No. 2), Annual Report for Non-Major Natural Gas Companies (Form No. 2-A) and Interstate Pipelines Annual Report of Gas Supply (Form No. 15), respectively, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Shenandoah states that it is a natural gas distributor providing retail and transportation services to customers in portions of Virginia and West Virginia and that such service is regulated by the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Shenandoah further states that it owns and operates one interestate pipeline which extends from Warren County, Virginia to Martinsburg, West Virginia. Shenandoah states that it has been granted a section 7(f) service area determination by the Commission and that the Commission, in granting Shenandoah a blanket certificate pursuant to § 284.224 of the Commission's Regulations, found Shenandoah to be, for all practical purposes, a local distribution company for purposes of section 311 of the Natural Gas Policy Act.

Shenandoah asserts that for these reasons it is a local distribution company and requests waiver of the filing requirements for Form 2, Form 2-A and Form 15.

Comment date: July 9, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. ANR Pipeline Co.

[Docket Nos. CP90-1538-000, CP90-1539-000, CP90-1540-000]

Take notice that on June 13, 1990, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation

[1] These prior notice requests are not consolidated.

service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicant state that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP90-1538-000, 6-13-90	Shell Gas Trading Company.	30,000 30,000 10,950,000	Off. LA.	Off. LA, On LA	4-13-90, ITS	ST90-2971-000.
CP90-1539-000, 6-13-901	Entrade Corporation	100,000 100,000 36,500,000	On TX, Off. TX, On LA, OFF. LA, KS, OK.	WI	4-21-90, ITS	ST90-2995-000.
CP90-1540-000, 6-13-90	Fina Oil and Chemical Co.	25,000 25,000 9,125,000	West Cameron, 167-A, Off. LA.	West Cameron, 167 Off. LA.	4-14-90, ITS	ST-90-2998-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14576 Filed 7-22-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3781-8]

Environmental Tobacco Smoke; A Guide to Workplace Smoking Policies

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of external review draft and request for public comments.

SUMMARY: This notice announces the availability of the external review draft of Environmental Tobacco Smoke: A Guide to Workplace Smoking Policies, EPA/400/6–90/004.

This document will be the subject of a Science Advisory Board (SAB) meeting. The SAB is being asked to review the manner in which EPA characterizes in this document the scientific information available on environmental tobacco smoke. Notice of the date and place of the SAB meeting will be published in a subsequent **Federal Register** notice.

DATES: The Agency will make the draft document available for public review and comment on or about Monday, June 25, 1990. Comments must be postmarked by Friday, August 31, 1990.

ADDRESSES: To obtain a single copy of the draft document, interested parties should contact the ORD Publications Office, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562 or FTS/684–7562. Please provide your name and mailing address and request the external review draft by title and EPA number.

The draft document also will be available for public inspection and copying in the Public Information Reference Unit of the EPA Library, U.S. Environmental Protection Agency Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Commenters are requested to submit their comments in writing to: Project Officer for ETS Policy Guide, Indoor Air Division (ANR–445), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. FAX# (202) 382–7991.

FOR FURTHER INFORMATION CONTACT: Bob Axelrad, (202) 475–8470 or FTS/475–8470.

SUPPLEMENTARY INFORMATION: The Guide to Workplace Smoking Policies is intended to provide government and private sector decisionmakers with information on the technical basis for controlling involuntary nonsmoker exposure to environmental tobacco smoke and to describe the range of technical and policy options for instituting effective smoking policies.

Dated: June 19, 1990.

Michael Shapiro,

Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 90–14635 Filed 6–22–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3791–1]

Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children; External Review Draft

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of external review draft and request for public comments.

SUMMARY: This notice annouces the availability of the external review draft of the Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children, EPA/600/6–90/006A. This document will be the subject of a Science Advisory Board (SAB) meeting. Notice of the date and place of the SAB meeting will be published in a subsequent **Federal Register** notice.

DATES: The Agency will make the draft document available for public review and comment on or about Monday, June 25, 1990. Comments must be postmarked by Friday, August 31, 1990.

ADDRESSES: To obtain a single copy of the draft document, interested parties should contact the ORD Publications Office, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562 or FTS/684–7562. Please provide your name and mailing address and request the external review draft by title and EPA number.

The draft document also will be available for public inspection and copying in the Public Information Reference Unit of EPA Library, U.S. Environmental Protection Agency Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Commenters are requested to submit their comments in writing to: Project Officer for Environmental Tobacco Smoke, Technical Information Staff, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Bayard, (202) 382–5722 or FTS/382–5722.

SUPPLEMENTARY INFORMATION: Because Environmental Tobacco Smoke (ETS) is a widespread pollutant of indoor air and because it has been previously found to be associated with several respiratory tract diseases and disorders, EPA's Office of Indoor Air and Atmospheric Programs requested that the Human Health Assessment Group, Office of Health and Environmental Assessment, prepare a health assessment document for ETS. This project is carried out under the authority of title IV of Superfund (The Radon Gas and Indoor Air Quality Research Act of 1986).

The health assessment document addresses the scientific, mostly epidemiologic, evidence on the possible respiratory effects, including lung cancer, of passive smoking or ETS. This issue was examined previously in two 1986 reports, one by the U.S. Surgeon General, titled The Health Consequences of Involuntary Smoking; the other by the National Research Council, titled Environmental Tobacco Smoke, Measuring Exposures and Assessing Health Effects. The EPA draft report extends the analyses of those reports to include subsequent epidemiologic evidence on the potential association between ETS and (1) lung cancer in nonsmoking adults, and (2) respiratory disorders in children. With respect to lung cancer in adults the draft report concudes that (1) ETS is causally associated with lung cancer in nonsmoking adults and that, according to EPA guidelines for carcinogen risk assessment, ETS is a Group A (known human) carcinogen; and (2) that approximatley 3800 lung cancer deaths per year among nonsmokers (never-smoker and former smokers) of both sexes in the United States are attributable to ETS. This figure is for total ETS exposure, with no separate breakdown for domestic versus occupational or social exposures.

With respect to respiratory effects in children, the draft report concludes that ETS from parental smoking, especially during infancy, is associated with increased prevalence of acute lower-respiratory tract infections (bronchitis and penumonia), respiratory symptoms of irritation (cough, sputum, wheeze), and middle ear effusions (a sign of chronic middle ear disease). It also concludes that ETS is associated with reduced lung function and with a small reduction in the rate of pulmonary growth and development in children of mothers who smoke during their early childhood. No conclusions are drawn regarding a potential association of parental smoking with increased acute upper-respiratory tract illnesses (colds and sore throats), an increased prevalence of asthma, or exacerbation of symptoms in asthmatic children.

Dated: June 19, 1990.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90–14636 Filed 6–22–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3790–6]

Notice of Renewal and Request for Suggestions of Candidates for Membership on the National Advisory Council for Environmental Policy and Technology

RENEWAL: The National Advisory Council for Environmental Policy and Technology (NACEPT) (formerly the National Advisory Council for Environmental Technology Transfer) has been renewed for an additional two-year period. The Agency has determined that the renewal of the Council is in the public interest in connection with the performance of duties imposed on EPA by law. The Council will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

NEW MEMBERS: The Environmental Protection Agency (EPA) hereby requests suggestions of candidates for membership on the National Advisory Council for Environmental Policy and Technology (NACEPT), an Advisory Committee to EPA's Administrator established under the Federal Advisory Committee Act, U.S.C. (App. 19(c)). The Advisory Council assists the Agency in performing its duties prescribed in legislation, executive orders and regulations. The Council has a special focus on environmental technology transfer issues, implementing the Federal Technology Transfer Act of 1986 and Executive Order 12591.

The membership of the Advisory Council currently includes a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the Advisory Council drawn from business and industry; the academic, educational and training community; governmental organizations; environmental organizations and professional associations. New members will serve three-year terms.

DATES: Submit suggestions for candidates no later than July 10, 1990. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, organization, position, address, and telephone. Candidates must submit a resume of their background, experience, and other relevant information as a part of the consideration process.

ADDRESSES: Submit suggestions for the list of candidates to: Office of Cooperative Environmental Management (A–101F6), U.S. Environmental Protection Agency, Fairchild Building, Suite 115, 499 S. Capitol Street SW., Washington, DC 20460, Attention: Robert L. Hardaker.

FOR FURTHER INFORMATION CONTACT: R. Thomas Parker or Robert L. Hardaker at the above address or at 202–475–0741. The Agency will not formally acknowledge or respond to suggestions.

Dated: June 18, 1990.

Robert Hardaker,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 90–14628 Filed 6–22–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3791–5]

Science Advisory Board; Executive Committee; Open Meeting, July 9–10, 1990

Under Public Law 92–463, notice is hereby given that the Executive Committee of the Science Advisory Board will hold a public meeting on July 9 from 8:30 a.m. to 5 p.m. and July 10 from 8:30 a.m. to 1 p.m. The meeting will be held at the Holiday Inn, 550 C Street SW., Washington, DC.

One purpose of the meeting is to request approval of the Relative Risk Reduction Strategies Committee overview report entitled: *Reducing Risk*, and reports by the three Subcommittees: Ecology & Welfare Risk; Strategic Options; and Human Health Risk. The Committee will also discuss the appropriate stage and intent of early interaction with the Agency on development of technical positions.

The Executive Committee will also review reports from the Standing Committees of the Science Advisory Board. The Drinking Water Committee will submit two reports: Pentachlorophenol and Biomarkers. The Ecological Processes and Effects Committee will submit one report for approval: Sediment Methods Classification Compendium. The Radiation Advisory Committee will submit three reports: Radon Estimates for smokers, non-smokers and children; Residual Radioactivity at Waste Disposal sites and Correlations of short and long term tests for radon.

There will be a discussion with Hank Habicht, Deputy Administrator, U.S. Environmental Protection Agency on SAB activities. Dr. William Lowrance, Chairman, SAB Membership Committee, will brief the Executive Committee on its progress to date.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202–382–6126, one week prior to the meeting date.

Dated: June 18, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–14637 Filed 6–22–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3791–4]

Science Advisory Board; Metals Subcommittee of the Environmental Health Committee, Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on July 23–24, 1990 at the Holiday Inn, 8120 Wisconsin Ave., Bethesda MD 20814. The hotel telephone number is (301) 652–2000.

The meeting will start at 9 a.m. on July 23, and will adjourn no later than 5 p.m. July 24, and is open to the public. The main purpose of this meeting is to review a draft issue paper developed by the Agency's Office of Research and Development on the health effects of nickel in drinking water, and to discuss the concept of essentiality versus toxicity as a factor in performing risk assessments for certain mineral constituents in drinking water. Copies of background materials may be obtained from Dr. Edward Ohanian, Office of Drinking Water (WH 550D), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. He may be reached at (202) 382–7871.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202–382–2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. July 18, 1990. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 15, 1990.
Donald Barnes,
Director, Science Advisory Board.
[FR Doc. 90-14638 Filed 6-22-90; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-400048; FRL-3740-6]

Phosphoric Acid; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing the results of its technical review and evaluation of a petition to delete phosphoric acid (PA). The review of this chemical was initiated by a petition to delete PA from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Since the petition itself was withdrawn on June 1, 1990, there is no need for final action by the Agency. However, the Agency has determined to issue its findings in order to make publicly available the technical review and subsequent recommendations. In addition to presenting the conclusions reached during the review process, EPA is also requesting public comment on the potential development of a phosphate category under section 313 which would include not only PA but other sources of phosphate as well. Phosphates may cause algae blooms which result in deoxygenation of the water and other effects which may ultimately lead to fish kills. Although EPA is not formally proposing the formation of a phosphate category, the Agency is requesting any information which would aid EPA in determining the need for forming such a category.

DATES: Written comments should be submitted on or before August 24, 1990.

ADDRESSES: Written comments should be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS-793), Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS-400048.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC, and Alaska: 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

II. Description of Petition

On December 14, 1989, Ecolab petitioned the Agency to delist PA from the list of toxic chemicals subject to reporting under section 313 of EPCRA. Day 180, the Agency's deadline for response, was established as June 12, 1990. Ecolab's petition was based on Ecolab's contention that PA is not toxic and does not meet the section 313 criteria for listing. EPA staff reviewed the petition based on information which Ecolab submitted as well as additional information and data that the Agency retrieved from its own review of the literature. On June 1, 1990, Ecolab withdrew their petition and requested the Agency to consider new information which was subsequently provided by The Fertilizer Institute. EPA has reviewed and evaluated this additional information in light of the section 313 criteria and has factored it into EPA's review and evaluation of the petition.

EPA's review of Ecolab's petition was complete prior to their request for withdrawal and the Agency has determined that it is in the public's best interest and clearly in keeping with The Community Right-to-Know ethic to provide a summary of The Office of Toxic Substances' (OTS) review and proposed recommendations. The additional information provided by The Fertilizer Institute has also been reflected in OTS' review. Ecolab or any other party may determine to repetition the Agency on PA at any time. The Agency remains open to receiving and reviewing new information and reevaluating its position on this chemical as it relates to section 313 of EPCRA.

III. EPA Technical Review of EPA

A. Chemistry Profile

PA is a white crystalline solid with a melting point of 42.35 °C, which can also exist as a syrupy, colorless, clear liquid. It is a non-flammable, tribasic mineral acid which upon dissociation results in the generation of three anionic phosphate species. The first hydrogen ion of PA is strongly ionizing ($pKa1 = 2.15$). The second two hydrogen ions are much less acidic ($pKa2 = 7.1$, $pKa3 = 12.3$). It is completely miscible with water, and is often stored and used in aqueous solution.

PA is a weak oxidizing agent. At elevated temperatures, PA reacts with most metals and their oxides. PA undergoes reactions typical of strong inorganic acids and is mainly used in the synthesis of fertilizers. The most widely produced phosphate fertilizer is diammonium phosphate.

The major production pathway of PA is by reaction of phosphate rock, tricalcium phosphate, with sulfuric acid.

B. Toxicity Evaluation

1. *Human health.* Phosphate is readily absorbed from the gastrointestinal tract. Phosphate levels in the blood of higher animals are regulated by the parathyroid gland and are strongly tied to calcium ion regulation in the body.

No information was found in the available literature regarding the absorption of PA from the lungs or skin. PA may cause irritation and corrosive effects as do many other acids. PA is weaker than the other strong mineral acids. The Poison Index (Poisindex, 1974) states that "PA causes irritation of eyes, skin, and the respiratory tract. When ingested it can produce nausea, vomiting, abdominal pain, bloody diarrhea, acidosis, shock and irritation or burns of the oropharyngeal mucosa, esophagus and stomach." As with other corrosive or caustic materials, the extent of damage is generally determined by acid concentration and duration of contact. PA has been shown to cause nephrocalcinosis when administered to rats at greater than one percent in the diet. However, PA is not expected to cause nephrocalcinosis or other chronic effects in humans at levels that are reasonably anticipated to occur in the environment. PA cannot be reasonably anticipated to cause heritable genetic effects in humans. No information was found in the available literature with which to evaluate the potential of PA to cause carcinogenic effects. PA cannot be reasonably anticipated to cause developmental or reproductive toxicity in humans. No information was found in the available literature with which to evaluate the potential of PA to cause neurotoxic effects.

2. *Aquatic toxicity.* PA exhibits low direct toxicity to freshwater organisms where typical toxicity values are greater than 100 mg/L. Due to the existing pH restrictions under the Clean Water Act (CWA) (i.e. the legally permitted pH range for releases to surface waters is pH 6.5 to 9), releases of PA to surface waters are not anticipated to lead to problematic pH excursions. PA, which is a source of phosphates, can reasonably be anticipated to cause environmental toxicity. PA, as well as other phosphates have the potential to cause increased algal growth leading to eutrophication in the aquatic environment.

Eutrophication may result when nutrients, especially phosphates, enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient where it can be a major limiting factor for plant growth in freshwater environments. In excess, PA can cause algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae.

Laboratory studies indicate that eutrophication may occur at phosphate concentrations as low as 50 ppb in lakes. Eutrophication from algal blooms in Lake Washington, Seattle resulted from phosphate concentrations of 10 to 60 ug/L (ppb). The resulting oxygen depletion and toxic decay products (e.g. hydrogen sulfide) killed many invertebrates and fish.

Although green algae are more sensitive to growth stimulation by phosphates in fresh water, blue-green algal blooms may cause greater damage. At least three species of blue-green algae are known to excrete toxins. Secretion by cyanobacteria of dyalyzable metabolites have inhibited the growth of other species of algae and may result in algal monoculture. When algal blooms of these toxic species occur in a reservoir, lake, slough, or pond, the cells and toxins can become sufficiently concentrated to cause illness or death in invertebrates and vertebrates. Major losses have been reported for cattle, sheep, hogs, birds (domestic or wild) and fishes, minor losses for dogs, horses, small wild animals, amphibians and invertebrates.

Eutrophication may occur in slow moving rivers, but is less likely in swift rivers where rapid mixing occurs. Light is the most important limiting factor because rivers are murkier than lakes thus, the chances of eutrophication are slight. However, lakes and reservoirs collect phosphates from influent streams and store a fraction of them within consolidated sediments, thus serving as a phosphate sink.

C. Production, Use, Release, and Exposure

1. *Production.* PA is produced by two processes, wet and furnace. The wet process produces a lower grade acid which is generally used in agricultural and technical applications. The furnace process produces a higher grade acid which is mainly used in industrial and food grade applications. Total 1989 production capacity was 12.5 million short tons. The U.S. exports about 5 percent of production or 625,000 short tons in 1989. Imports are negligible.

2. *Distribution and use.* PA is used in a variety of applications. The largest use of PA, accounting for about 50 percent of production, is to produce diammonium phosphate. Diammonium phosphate (DAP) is used primarily in fertilizers but other uses include animal feeds, fire retardants, forest fire control, flux for solder, and sugar purification. PA is also used to manufacture superphosphoric acid which is used to make fluid ammonium phosphate fertilizers. PA is also added to animal feeds as a phosphorous supplement for livestock and poultry. Miscellaneous uses include acidulants in foods and beverages and sequesterants in water treatment.

3. *Release and exposure.* As indicated, PA will dissociate in water to hydrogen and phosphate ions. Further reaction by abiotic processes are not expected to reduce the amount of PA released to the environment. PA can be expected to enter the phosphorus cycle and become available as a nutrient in both aquatic and terrestrial settings. In aquatic settings, algae are able to concentrate low levels of phosphorus in water many-fold. The phosphorus cycle tends to lose phosphorus to soil and bottom sediments. Phosphorus binds to soil so its movement through soil is very slow. Ultimately, phosphorus moves from land to the sea and is deposited in bottom sediments.

The TRI data base lists 1,173 facilities that discharge some amount of PA. EPA has identified 150 facilities where PA is released to the environment in significant quantities. Of these, 46 facilities reported releases to surface waters and 52 facilities reported releases to the atmosphere. The exposure assessment concentrated on releases to water to address environmental toxicity concerns.

Aquatic exposure to PA was calculated by determining the stream flow at each facility. Surface water concentrations, under low flow conditions, from discharges during manufacture of PA ranged from 6.76 to 3,861,486 ppb. Surface water concentrations from discharges during processing and use ranged, under low flow conditions from 0.62 to 337,282 ppb. Of the 46 facilities with reported surface water dischargers analyzed, 30 facilities discharged enough PA to exceed the 50 ppb concentration (in laboratory experiments, the concentration of phosphates which caused eutrophication) of PA during low flow conditions.

D. Summary of the Technical Review

After reviewing all available data, EPA concluded that because of its corrosive properties, PA can cause moderate acute toxicity in humans. However, anticipated human exposures to PA are below the levels expected to cause acute effects.

Based on available information PA is not anticipated to cause chronic toxicity in humans.

PA can reasonably be anticipated to cause environmental toxicity. There is significant concern that PA contributes to phosphate loading in the environment and may reasonably be expected to lead to eutrophication. Eutrophication, which takes place in oceans, rivers, lakes, and estuaries, results when nutrients, especially phosphates, enter into an aquatic ecosystem, well supplied with sunlight and nitrogen, and stimulate excessive algal growth. Toxic effects results from depletion of oxygen as the algae die and decay, release of hydrogen sulfide, or direct excretion of toxic substances. Such toxins have been associated with livestock kills by contamination of drinking water. These effects are more pronounced in lakes and wildlife estuaries.

IV. Explanation

Since the petition to delete PA has been withdrawn by Ecolab, EPA has no statutory responsibility to deny or grant the initial request. However, because the technical review and evaluation of the petition is complete, EPA has determined that it is in the public's best interest and clearly in keeping with The Community Right-to-Know ethic to provide a summary of OTS' review and proposed recommendation. OTS would have recommended that this petition be denied because releases of PA contribute to phosphate loading in the environment. OTS is concerned not only with PA, but also with the family of phosphates, of which PA is a member. Although PA does not directly induce ecotoxicity, OTS believes that the type

of deleterious changes which phosphates effect in aquatic ecosystems meet the criteria under EPCRA section 313(d)(2). As stated in the Conference Report 99-962, Oct. 3, 1986, Joint Explanatory Statement of the Committee of Conference (p. 295):

In determining what constitutes a significant adverse effect on the environment" * "the Administrator should consider the extent to which the toxic chemical causes or can reasonably be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.

(2) Abnormal number of deaths of organisms (e.g. fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of groundwater, and surface water and soil resources that have limited self-cleansing capability.

The effect of phosphates on the environment induces a number of changes to the environment specified above, particularly fish kills and changes in the composition of animal and plant life in an area. Because of EPA's concerns for the effects of phosphates in the environment, the Agency is considering forming a phosphate category which would be subject to reporting under EPCRA section 313.

V. Request for Public Comment

Because EPA is ultimately concerned with all phosphates, EPA requests comment on the formation of a phosphates category which would include PA. Additionally EPA requests comment on how this category should be defined. EPA also requests that any pertinent data on phosphates including PA be submitted to the address listed under the ADDRESSES unit of this document. All comments must be submitted on or before August 24, 1990.

VI. Administative Record

The record for this document is contained in docket control number OPTS-400048. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 15, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-14842 Filed 6-22-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59990; FRL 3771-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13,1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 48666) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 12 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-209, May 28, 1990.
Y 90-210, May 30, 1990.
Y 90-211, 90-212, June 5, 1990.
Y 90-216, June 13, 1990.
Y 90-217, 90-218, 90-219, 90-220, 90-221, 90-222, June 14, 1990.
Y 90-223, June 19, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90-209

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 90-210

Manufacturer. Sicpa Securink Corporation.
Chemical. (G) Alkyd resin.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

Y 90-211

Manufacturer. General Electric.
Chemical. (G) Poly(aryl alkyl ether ester) resin.
Use/Production. (S) Appliances, building and construction, and automotive. Prod. range: Confidential.

Y 90-212

Manufacturer. General Electric.
Chemical. (G) Poly(aryl alkyl ether imide ester) resin.
Use/Production. (S) Appliances, building and construction, and automotive. Prod. range: Confidential.

Y 90-216

Importer. Confidential.
Chemical. (G) Carboxylated styrene acrylate copolymer.
Use/Import. (G) Sizing. Import range: Confidential.

Y 90-217

Importer. Confidential.
Chemical. (G) Silicone polyester.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Acute dermal toxicity > 2.0 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

Y 90-218

Importer. Confidential.
Chemical. (G) Silicone polyester.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Acute dermal toxicity > 2.0 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

Y 90-219

Importer. Confidential.
Chemical. (G) Silicone polyester.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Acute dermal toxicity > 2.0 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

Y 90-220

Importer. Confidential.
Chemical. (G) Hydroxyalkylsiloxane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 90-221

Importer. Confidential.
Chemical. (G) Hydroxyalkylsiloxane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 90-222

Importer. Confidential.
Chemical. (G) Hydroxyalkylsiloxane.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Y 90-223

Manufacturer. Owens-Corning Fiberglass Corporation.
Chemical. (G) Unsaturated polyester resins.
Use/Production. (S) Molding resin. Prod. range: Confidential.

Dated: June 19, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-14844 Filed 6-22-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59275A; FRL 3772-1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-90-24. The test marketing conditions are described below.

EFFECTIVE DATES: June 19,1990.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street. SW., Washington, DC 20460, (202) 475-8994.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-24. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-90-24. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-90-24

Date of Receipt: August 14, 1989.
Notice of Receipt: September 22, 1989 (54 FR 39043).
Applicant: Confidential.
Chemical: (G) Lignin, alkali, reaction product with triethylenetetramine and formaldehyde.
Use: (G) Coagulant for Waste Treatment.
Production Volume: (Confidential).
Number of Customers: (Confidential).
Test Marketing Period: (Confidential).

Test Results: The TME applicant conducted the following acute aquatic toxicity tests:

Test	Results
algal toxicity	96-hour EC50 = 2.8 mg/L
daphnid acute toxicity	48-hour LC50 = 120.0 mg/L
fish acute toxicity	96-hour LC50 = 72.0 mg/L
daphnid acute toxicity mitigated by 10 mg/L dissolved organic carbon (as TOC)	48-hour LC50 = 1700.0 mg/L
fish acute toxicity mitigated by 10 mg/L dissolved organic carbon (as TOC)	96-hour LC50 = 1000.0 mg/L

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment. The lack of concern for environmental effects is based on data submitted by the TME applicant.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: June 19, 1990.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-14843; Filed 6-22-90 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 89-86]

Information Required To Be Submitted in an Application To Construct and Operate an Air-Ground Telephone Service

June 15, 1990.

This public notice is being issued as a supplement to the *Report and Order* in General Docket No. 89-86. Information contained herein and in the *Report and Order* is to be used to prepare applications to construct and operate an air-ground radiotelephone service in the 849-851/894-896 MHz bands. These applications should be filed on FCC Form 401, be accompanied by FCC Form 155, and be submitted on or before

October 15, 1990, to: Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, Pennsylvania 15251-5130. Applications must also be accompanied by a filing fee of $230, the amount required for Code CMD public land mobile service applications.

Applications will be required to meet all pertinent standards of part 22 of the Commission's Rules and of the international Radio Regulations. In addition, each applicant must supply the following information:

A. Written Agreement

A signed agreement between the applicant and at least one airline or airline organization, authorizing the applicant to provide air-ground service on its aircraft. By airline organization, we mean an organization (firm, association, or other group) that operates aircraft used by businesses, such as private corporate jets. Any applicant proposing to serve only airline organizations must indicate how many aircraft will be served and demonstrate their need for nationwide service. We will look closely at any application that proposes to serve only a relatively small number of aircraft, generally less than 50, or to serve one or more corporations that require service only in a limited region of the country.

B. Financial Qualifications

A demonstration of either a firm financial commitment or available internal financial resources necessary to construct all proposed ground stations, and operate for one year after initiation of nationwide air-ground service.

The demonstration of commitment must include, and be sufficient to cover, the realistic and prudent estimated costs of construction of the 50 required ground stations as well as any additional ground stations proposed by the applicant, and the cost of their operation and any other initial expenses for one year after initiation of nationwide air-ground service. The estimated construction costs, operation costs, and other initial expenses must be itemized.

The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier, and shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant, including audited financial statements, and has determined that the applicant is creditworthy;

(2) That the lender is committed to providing a sum certain to the particular applicant;

(3) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(4) That the commitment is not in any way guaranteed by any entity other than the applicant.

Applicants intending to rely on personal or internal resources must submit:

(i) Audited financial statements, certified within one year of the date of the application, indicating the availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year.

(A) The auditors must be certified public accountants.

(B) Net liquid assets is considered to be the excess of current assets (readily converted to cash) over current liabilities. In order to demonstrate ready convertibility into cash, the identity, liquidity, and value of listed assets must be demonstrated. Non-liquid assets can be relied on if the marketability of those assets is documented.

(ii) An audited balance sheet current within 60 days of filing, which clearly shows the continued availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year after nationwide service begins.

Note: To ensure the confidentiality of financial information to the maximum extent possible, all such information submitted that is not essential to our public interest determinations shall be available only to selected staff of the Commission.

C. Service Plan

A service plan containing:

(1) A map or other description of the planned geographic coverage area, including air space over the continental United States, Alaska, Hawaii, and other United States territories.

(2) A schedule for construction of 25 ground stations within three years and of at least 50 ground stations and the commencement of nationwide service to the public within five years from the grant of the initial authorization.

Note: 25 ground stations must be constructed before an air-ground system will be permitted to become operational. Failure to construct 25 sites within three years or failure to provide nationwide service through 50 sites within five years would lead to automatic forefeiture of the authorization.

(3) A projection of the system capacity, expressed in terms of the maximum number of calls per hour in each area.

D. Technical Exhibit

A technical description of the proposed system, demonstrating compliance with all applicable technical requirements and describing how the proposed system would operate, if authorized. This exhibit must provide the following information:

(1) The number of ground stations to be used, their locations, and the type and quantity of equipment proposed for the system;

(2) A complete description of the procedures and data protocols to be used on the control channel;

(3) The modulation types to be used and their spectral characteristics;

(4) The effective radiated power and transmitter peak envelope power for all transmitters at each ground location, and the effective radiated power of the airborne mobile stations;

(5) Antenna information as follows:

(i) For airborne mobile stations, the antenna type(s) to be used;

(ii) For ground stations, vertical and horizontal radiation patterns, antenna heights above ground level, antenna support structure heights above ground level, ground elevation above mean sea level, and any relevant information (*e.g.* FAA approval) that may be helpful in determining whether ground station antennas require marking and lighting;

(6) Analytical data, including calculations, of potential interference within and without the spectrum proposed to be used for the air-ground system;

(7) An Environmental Assessment, if required. *See* § 1.1301 *et seq.* of the Commission's Rules.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14433 Filed 6-22-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1990-7]

Filing Dates for the Hawaii Congressional Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Hawaii has scheduled a special general election on September 22, 1990, to fill the 2nd Congressional District seat of Daniel K. Akaka.

Committees required to file reports in connection with this Special General Election must file a 12-day pre-election report by September 10, 1990, and a Post-Special General Election Report by October 22, 1990. Committees, however, that are also involved in the November 6, 1990 regularly scheduled General Election must file the Post-Special General Election report by October 25, 1990, instead of October 22, 1990. Monthly filers are not required to file special election reports for the September 22 election.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Hawaii special Congressional election must file reports according to the schedules given in charts I and II. The committee treasurer should consult the chart that corresponds to the candidate's situation.

Party committees and PACs that make contributions or expenditures in connection with the special Congressional election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file special pre- and post-election reports for the September 22 election.

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTION, 2ND CONGRESSIONAL DISTRICT

Report	Period covered [1]	Reg./Cert. mailing date [2]	Filing date
Situation I:			
Committees Involved in Both the Special General (9/22) and Regular General (11/6) Must File:			
Pre-Special	07/01/90-08/02/90	08/07/90	08/10/90
October Quarterly	Waived		
Post-Special [3]	08/03/90-10/17/90	10/22/90	10/25/90
Pre-General	Waived		
Post-General [4]	10/18/90-11/26/90	12/06/90	12/06/90
Situation II:			
Committees Involved in the Special General (9/22) Only Must File:			
Pre-Special	07/01/90-08/02/90	08/07/90	08/10/90
October Quarterly	Waived		
Post-Special [3]	08/03/90-10/12/90	10/22/90	10/22/90

NOTE: Principal campaign committees that are reporting activity for both the regularly scheduled primary election and the special election should indicate this on the summary page of Form 3 and supporting schedules, as appropriate. If the candidate has authorized a separate principal campaign committee for the special election, this committee must file separate reports to disclose the financial activity.

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[3] Because the October 15 quarterly and the pre-general election reports have been waived, the post-general report coverage dates have been extended to include activity normally disclosed in those reports.

[4] All PACs and party committees must file a post-election report for the regularly scheduled general election, regardless of pre-election activity.

Dated: June 19, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-14614 Filed 6-22-90; 8:45 am]

BILLING CODE 6715-01-M

[Notice 1990-8]

Filing Dates for the Hawaii Special Senate Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Hawaii has scheduled special elections on September 22, 1990, and November 6, 1990, to fill the Senate seat of the late Spark M. Matsunaga.

Committees required to file a report in connection with the Special Primary Senate Election should file a 12-day pre-election report by September 10, 1990. Committees required to file a report in connection with the Special General Senate Election to be held on November 6, 1990, must file a 12-day pre-election report by October 25, 1990, and a post-election report by December 6, 1990. Monthly filers are required to file a special election report before and after the November 6 election.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Hawaii special Senate elections must file reports according to the schedules given in charts I and II. The committee treasurer should consult the chart that corresponds to the candidate's situation.

Party committees and PACs that make contributions or expenditures in connection with the special Senate elections during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not have to file the special primary election report, but must file the pre and post-election reports for the regularly scheduled general election.

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTIONS, SENATE

Report	Period covered [1]	Reg./Cert. mailing date [2]	Filing date
Situation I:			
Committees Involved in the Special Senate Primary (9/22) Only Must File:			
Pre-Primary	07/01/90-08/02/90	08/07/90	08/10/90
October Quarterly	08/03/90-09/30/90	10/15/90	10/15/90

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTIONS, SENATE—Continued

Report	Period covered [1]	Reg./Cert. mailing date [2]	Filing date
Situation II:			
Committees Involved in Both the Special Senate Primary (9/22) and Special Senate General (11/6) Must File:			
Pre-Primary	07/01/90–09/02/90	09/07/90	09/10/90
October Quarterly [3]		Waived	
Pre-General	0/03/90–10/17/90	10/22/90	10/25/90
Post-General [4]	10/18/90–11/26/90	12/06/90	12/06/90

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.
[3] This report is waived for committees who are involved in the special general election and who file the pre-general report timely.
[4] All PACs and party committees must file a post-election report for the regularly scheduled general election, regardless of pre-election activity.

Dated: June 19, 1990.
Lee Ann Elliott,
Chairman, Federal Election Commission.
[FR Doc. 90-14615 Filed 6-23-90; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

ABN/AMRO Holding N.V. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23 for Regulation Y (12 CFR 225.23) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y or that the Board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse affects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applicaltons must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ABN/AMRO Holding N.V., Amsterdam, The Netherlands; Preferred Stichting, Amsterdam, The Netherlands; and Priority Stichting, Amsterdam, The Netherlands; to become bank holding companies by acquiring 100 percent of the voting shares of Algemene Bank Nederland N.V., Amsterdam, The Netherlands; Amsterdam Rotterdam Bank, N.V., Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; and LaSalle National Corporation, Chicago, Illinois, and thereby indirectly acquire LaSalle Bank Lake View, Chicago, Illinois; LaSalle Bank of Lisle, Lisle, Illinois; LaSalle National Bank, Chicago, Illinois; LaSalle Bank Northbrook, Northbrook, Illinois; LaSalle Northwest National Bank, Chicago, Illinois; LaSalle Bank Westmont, Westmont, Illinois; and Exchange Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Exchange National Bank of Chicago, Chicago, Illinois; Exchange Bank of DuPage, Oak Brook, Illinois; Exchange Bank of River Oaks, Calumet City, Illinois; Exchange Bank of Lake County, Vernon Hills, Illinois; and European American Bancorp, New York, New York, and thereby indirectly acquire European American Bank, New York, New York.

In connection with these applications, Applicants also propose to acquire Pierson Capital Management, Inc., Philadelphia, Pennsylvania, and thereby engage in investment advisory and discretionary portfolio management activities for high net worth individuals, pension funds, trusts and other institutional clients pursuant to Board Order, *Amsterdam-Rotterdam Bank*, 70 Federal Reserve Bulletin 855 (1984); Pierson Heldring & Pierson, Inc., (USA), New York, New York, and thereby engage in representational and administrative services for Pierson Heldring & Pierson N.V., the Dutch holding company for Pierson Capital Management Inc.; The Private Bank & Trust, N.A., Miami, Florida, and thereby engage in trust and investment advisory services and discretionary management of financial assets, primarily for wealthy individuals living outside the United States pursuant to Board Order, *Amsterdam-Rotterdam Bank*, 72 Federal Reserve Bulletin 406 (1986); Amsterdam Pacific Corporation, San Francisco, California, and thereby engage in portfolio investment advisory services for investment partnerships; feasibility studies for corporations; evaluation services pursuant to Board Order, *Amsterdam-Rotterdam Bank*, 73 Federal Reserve Bulletin 726 (1987); Amro Securities, Inc., New York, New York, and thereby engage in underwriting and dealing in certain bank-ineligible debt securities, private placement activities, and various advisory related activities; Board Order dated June 4, 1990; Pierson Heldring & Pierson Investment Finance (U.S.) Inc., New York, New York, and thereby engage in securities related activities; International Clearing Services (U.S.) Inc., Chicago, Illinois, and thereby engage in the execution and clearance of securities, futures contracts and contracts on futures contracts on a nationwide basis; DBI Holding, Inc., New York, New York, and thereby engage in investment advisory, securities brokerage activities and riskless principal activities; general partner of Henry Krieger/DBI, L.P., pursuant to Board Order *Stitchting Amro*, 76 Federal Reserve Bulletin 29 (1989); Henry Krieger DBI, New York, New York, and thereby engage in investment advisory, securities brokerage and riskless principal activities pursuant to section Board Order, *Id.*; Exchange Securities Corporation, Hallandale, Florida, and thereby engage in providing a secondary market for certificates of deposits issued by Exchange's subsidiary banks, and underwrites and deals in government obligations and money market instruments, and engages in brokerage activities of stocks, bonds, and other activities pursuant to § 225.25(b)(15) and (b)(16); LaSalle Services, Chicago, Illinois, and thereby engage in providing data processing and courier services pursuant to §§ 225.25 (b)(7) and (b)(10) of the Board's Regulation Y; LaSalle Mortgage, Chicago, Illinois, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1); ABN Capital Markets Corp., New York, New York, and thereby engage in providing investment advisory, brokerage services and underwriting and dealing in government obligations pursuant to §§ 225.25 (b)(4) and (b)(15); Lease Plan USA, Atlanta, Georgia, and thereby engage in providing lease financing pursuant to § 225.25(b)(5); ABN Credit Corporation, Chicago, Illinois, and thereby engage in providing financing pursuant to § 225.25(b)(1); LaSalle National Trust, N.A., Chicago, Illinois, and thereby engage in fiduciary services pursuant to § 225.25(b)(3); ABN Bank, International USA, Inc., and thereby engage in international banking and finance activities pursuant to § 211.4 of Regulation K; and Union Realty Mortgage Co., Chicago, Illinois, and thereby engage in furnishing services to or performing services for Exchange and ENB pursuant to Board Order, 76 Federal Reserve Bulletin 101 (1990).

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14586 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

Ronald F. Darga, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 9, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ronald F. Darga; Richard A. & Mardelle Behnke; Gilbert J. & Evelyn C. Lee; William M. & Anita Neuman & Warren H. & Charice Winn; to acquire 10.8 percent of the voting shares of Royal Bancshares, Inc., Elroy, Wisconsin, and thereby indirectly acquire Bank of Elroy, Elroy, Wisconsin.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Vincent John Viola, Chatham, New Jersey; to acquire 15.3 percent of the voting shares of Farmersville Bancshares, Inc., Farmersville, Texas, and thereby indirectly acquire First Bank of Farmersville, Farmersville, Texas.

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14589 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

Edville Bankcorp, Inc., et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Edville Bankcorp, Inc., Villa Park, Illinois; to engage *de novo* in making and servicing loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

2. Lanark Bancshares, Inc., Lanark, Illinois; to engage *de novo* through its subsidiary, Lanark Bancshares Insurance Agency, Inc., Lanark, Illinois, in insurance agency activities and will serve as agent for the following types of insurance: life insurance, health insurance (including nursing home long-term care insurance) and annuities pursuant to § 225.25(b)(8)(iii); Company may also engage in the sale of credit life insurance related to extensions of credit by Applicant's subsidiary bank pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Carroll County, Illinois.

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14590 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

First Financial Corp. et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Financial Corporation, Terre Haute, Indiana; to acquire 100 percent of the voting shares of Ridge Farm State Bank, Ridge Farm, Illinois.

2. Royal Bancshares, Inc., Elroy, Wisconsin; to acquire 100 percent of the voting shares of Lone Rock Investments, Lone Rock, Wisconsin, and thereby indirectly acquire State Bank of Lone Rock, Lone Rock, Wisconsin.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Howard Bankshares, Inc., Topeka, Kansas; to acquire 87 percent of the voting shares of First Security Bankshares, Inc., Topeka, Kansas, and thereby indirectly acquire I & B, Inc., Cherryvale, Kansas, the parent of Peoples State Bank, Cherryvale, Kansas. In connection with this application, First Security Bankshares, Inc., has applied to become a bank holding company by acquiring I & B, Inc., Cherryvale, Kansas.

2. Weatherford Bancorporation, Inc., Weatherford, Oklahoma; to become a bank holding company by acquiring United Community Bank, Weatherford, Oklahoma.

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14591 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

Lincoln County Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Lincoln County Bancrop, Inc., Troy, Missouri; to acquire Louisiana Title Company, Inc., Louisiana, Missouri, and thereby engage in operating an agency for the sale of title insurance in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Pike County, Missouri.

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14592 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

Nico Moric; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 9, 1990.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Nico Moric, Scottsdale, Arizona; to acquire an additional 2.06 percent of the voting shares of Rio Salado Bancorp, Inc., Tempe, Arizona, for a total of 10.07 percent, and thereby indirectly acquire Rio Salado Bank, Tempe, Arizona.

Board of Governors of the Federal Reserve System, June 19, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14593 Filed 6-22-90; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9206]

R.J. Reynolds Tobacco Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Winston-Salem, N.C. tobacco corporation from misrepresenting the results, design, purpose or content of any scientific test or study concerning any association between cigarette smoking and health effects.

DATES: Complaint issued June 16, 1988. Order issued May 8, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/S-4002, Washington, DC 20580. (202) 326-3150.

SUPPLEMENTARY INFORMATION: On Friday, October 6, 1989, there was published in the **Federal Register**, 54 FR 41342, a proposed consent agreement with analysis In the Matter of R.J. Reynolds Tobacco Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,
Acting Secretary.
[FR Doc. 90-14645 Filed 6-22-90; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 036]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Agricultural Health Promotion Systems

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of Fiscal Year 1990 funds for cooperative agreements to establish an agricultural health promotion system.

Authority

This program is authorized under section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670). Program regulations applicable to this cooperative agreement program are set forth in title 42, part 86, of the U.S. Code of Federal Regulations entitled "Grants for Education Programs in Occupational Safety and Health."

Eligible Applicants

Eligible applicants are the colleges of agriculture located in the primary land grant university of the state. This restriction to colleges of agriculture in the land grant universities is due to the Fiscal Year 1990 appropriations language providing funds for the Agricultural Health Promotion System to establish agricultural injury and disease prevention programs at land grant universities.

Availability of Funds

It is expected that approximately $1,720,000 will be available in Fiscal Year 1990 to fund 15 land grant universities with an expected amount of $114,500. The awards will be made on or about September 28, 1990, with 12-month budget periods within a project period of up to three years. It is anticipated that $200,000 per awardee will be available in the second and third years. These funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

Purpose

The Agricultural Health Promotion System (AHPS) is intended to utilize the existing network between the land grant university Cooperative Extension Service (CES) and the agricultural worker. This AHPS cooperative agreement program is directed toward expanding existing CES occupational safety and health programs to better serve the agricultural worker by providing information dissemination, education, and referral services to these workers through the CES network.

The objectives for the AHPS are as follows:

1. Identify and disseminate prevention information to agricultural workers on occupational hazards associated with injuries and illness.

2. Promote the consideration of safety and health issues into the management of agricultural operations for the purpose of reducing agricultural work-related injuries and illnesses.

3. Introduce and improve hazard control components into continuing education and agricultural college curricula by drawing injury prevention and health promotion topics into new or existing courses.

Program Requirements

The cooperative agreement recipient shall be responsible for conducting the activities under A. below and CDC/NIOSH will be responsible for conducting the activities under B. below.

A. Recipient Activities

1. Increase, through dissemination of information, training, and education, cooperative extension activities in the area of occupational safety for agricultural workers. Program areas may include, but are not limited to, machine operator safety and machine guarding; increasing rollover protective structures (ROPS) used on tractors' awareness of electrical hazards, confined space, grain handling, and falls-from-elevation hazards; work station design; manual materials handling; and livestock handling and confinement safety. Safe work guidelines should be addressed in these areas, and, when possible, on-site assistance programs initiated.

2. Through diussemination of information, training, and education, increase cooperative extension activities in the area of occupational health promotion and pesticide application safety. Program areas may include, but are not limited to, hearing conservation; respiratory disease hazard awareness; environmental control technology promotion; respirator and personal protective clothing promotion for agricultural hazards (e.g., chemicals, dusts, noise); repetitive motion hazard awareness; infectious disease awareness; and Environmental Protection Agency pesticide regulation

education. On-site assistance programs should be initiated.

3. Increase cooperative extension activities in the area of safety and health referral services through state and county health department promotion and working with voluntary health groups (e.g., American Red Cross, American Cancer Society or other sponsored safety and health programs within the State).

4. Collaborate with NIOSH in the collection and evaluation of surveillance data of: Agricultural injuries; certain occupational illnesses; on-site investigation of work-related injuries, fatalities, and illnesses; and occpuational hazards associated with injuries and illnesses.

5. Collaborate with the NIOSH Centers for Agricultural Research, Education, and Disease and Injury Prevention grantees (also to be awarded in Fiscal Year 1990) in the areas of extension program development, technology transfer, and research priority setting and evaluation.

6. Initiate the incorporation of safety and health topics into college level courses within the university's college of agriculture and agricultural engineering programs, and incorporate safety and health topics into the continuing education and cooperative services program for courses directed at agricultural workers.

B. CDC/NIOSH Activities

1. Provide technical assistance in the areas of program development and priority setting for the extension safety and health program.

2. Provide technical assistance in development work practice guidelines, training programs, and methods of technology transfer to reduce risks of injuries and illnesses from known hazards.

3. Provide assistance in establishing relationships with state and county health departments and defining roles in providing safety and health referral services.

4. Provide assistance in the collection and evaluation of injury and illness surveillance data, and provide technical assistance in the areas of occupational safety and health on-site investigations.

5. Provide liaison services between the land grant universities and the NIOSH Centers for Agricultural Research, Education, and Disease and Injury Prevention grantees and assist in setting research, education and training programs, and referral system priorities for the two groups.

6. Provide assistance in developing college-level safety and health educational materials for use in agriculture courses and assist in the evaluation of dissemination, training, and educational materials used by the university and CES programs.

7. Provide technical assistance and support in the dissemination of project activities to state and local health officials, voluntary health groups, workers, management, unions, and employers.

Evaluation Criteria

A CDC-convened ad hoc committee will review the applications. The reveiw will be based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Overall quality of the cooperative extension and agricultural education program for occupational safety and health within an applicant's region. (50%)

a. Extension activities in agricultural safety and health. (30%)

(1) Extension programs in safety and injury control. (15%)

(2) Extension programs in health promotion. (8%)

(3) Extension programs in pesticide application safety. (7%)

b. Agricultural education program at the college level and for continuing education programs. (20%)

(1) Agricultural education, including safety and health promotion. (10%)

(2) Agricultural engineering or engineering ergonomics (machinery, work stations, facilities layout, etc.) including design consideration of safety and health hazards. (5%)

(3) Agricultural general studies. (5%)

2. Quality and completeness of the project plan and methodology, including a proposed schedule for accomplishing the activities and objectives. (20%)

3. Relevance of the proposal to the scope and objectives described in the program announcement. (20%)

4. The qualifications and time allocations of the applicant staff, type and quality of facilities, equipment, and administrative support for the Agricultural Health Promotion System. (10%)

Funding Priorities

Applications will be considered for funding based on a geographical distribution of the agricultural work force. The distribution will be determined on a regional basis by using the U.S. Bureau of Census regional designations (New England, Mid-Atlantic, East North Central, West North Central, South Atlantic, East South Central, West South Central, Mountain, and Pacific). If an insufficient number of applications is received and approved to grant the total number of available awards designated for a specific region, awards will be granted to other approved applications from outside that region having the next highest score.

Other Requirements

The projects that will be funded through the cooperative agreement mechanism of this progrom that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations in 45 CFR 100, are applicable to this program. Through this process, states are provided the opportunity to review and comment on applications for federal financial assistance. Applicants should contact the state's single point of contact (SPOC) as early as possible to determine the applicable procedure. A current listing of all SPOC's will be included with the application kit. Applicants should note that comments received from the state will be considered as a factor in the review of their applications.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) for this program is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 300, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, on or before July 20, 1990.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks will not be accepted as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. immediately above are considered late applications, will not be considered in the current competition, and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from: Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305, (404) 842–6630 or FTS 238–6630.

Please refer to Announcement Number 030, "Agricultural Health Promotion Systems," when requesting information and submitting an application.

Technical assistance may be obtained from the following contacts at the sponsoring NIOSH division in Morgantown, West Virginia:

Thomas R. Bender, M.D., M.P.H., Director, Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, (304) 291–4595 or FTS 923–4595.

John R Myers, M.S.F., Statistician, Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, (304) 291–4710 or FTS 923–4710.

Dated: June 19, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-14813 Filed 6-22-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 90F-0175]

Food Techniques, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Food Techniques, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing.

FOR FURTHER INFORMATION CONTACT: Laureen V. Peters, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act [section 409(b)(5) (21 U.S.C. 348(b)(5))], notice is given that Food Techniques, Inc., 267–A Hayes Mills Rd., Atco, NJ 08004, has filed a petition (FAP 0A4287) proposing that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 15, 1990.

Bradley Rosenthal,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-14602 Filed 6-22-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0211]

Drug Export; Cyandcobalamin Injection, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ben Venue Laboratories, Inc., has filed an application requesting approval for the export of the human drug Cyanocobalamin Injection, USP to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ben Venue Laboratories, Inc., 270 Northfield Rd., P.O. Box 46558, Bedford, OH 44146, has filed an application requesting approval for the export of the drug Cyanocobalamin Injection, USP, to Canada. Vitamin B–12 is essential for growth, cell reproduction, hematopoiesis, nucleoprotein and myelin synthesis. This drug is indicated for use in patients with a vitamin B–12 deficiency. The application was received and filed in the Center for Drug Evaluation and Research on June 5, 1990, which shall be considered the filing date for the purpose of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 5, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 18, 1990.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-14686 Filed 6-22-90; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 46, No. 223, pp. 56914 and 56915, dated Thursday, November 19, 1981, and Vol. 52, No. 108, pp. 21375 to 21377, dated June 5, 1987) is amended to reflect a realignment within the Office of Budget and Administration. The realignment will move the Division of Procurement Services out of the Office of Financial Management and Procurement and establish a new Office of Acquisitions and Grants reporting to the Director, Office of Budget and Administration.

The specific amendments to Part F. are described below:

- Section FH.20.A.2., Office of Financial Management and Procurement is amended by changing the organizational title and replacing the functional statement with a revised statement. The new section FH.20.A.2. reads as follows:

2. Office of Financial Management (FHA1)

Provides financial and accounting services, leadership, and policy direction for HCFA's financial management program including the preparation, justification, and execution of the HCFA budget and financial and manpower management policies and activities. Provides services, policy direction, and coordination with respect to HCFA's paperwork reduction activities.

- Section FH.20.A.2.C., the Division of Procurement Services (FHA16) is deleted in its entirety.
- Section FH.20.A., the Office of Budget and Administration (FHA) is amended by adding a new organizational component. The new component will be section FH.20.A.4., the Office of Acquisitions and Grants (FHA7). The new section FH.20.A.4. reads as follows:

4. Office of Acquisitions and Grants (FHA7)

Provides procurement services for other HCFA components including project grant, contract, and small purchase solicitation, award, and administration; cost and advisory function; and procurement-related training. Monitors the annual HCFA contract plan and prepares and submits required reports. Submits, negotiates, analyzes, and coordinates proposal evaluation and prepares and awards contracts. Provides HCFA cost advisory and audit services on pre-award and post-award grant and procurement actions to ensure conformance to legal and regulatory requirements. Performs all HCFA cost/price analysis and evaluation required for the review, negotiation, award administration, and close-out of grants and contracts. Provides field audit capability during the pre-award and close-out phases of contract and grant activities. Coordinates and acts as liaison with the Defense Contract Audit Agency, Department of Health and Human Services (HHS) Audit Agency, Office of the General Counsel, and other HHS offices and agencies to obtain required audit support and resolution. Coordinates and/or conducts training for contracts and grant personnel and project officers in HCFA components. Provides services, policy direction, and coordination with respect to HCFA's advisory and assistance services contracting.

a. Division of Peer Review Contracts (FHA71)

Provides contracting services, guidance, and assistance to HCFA's Peer Review Organization (PRO) program. Monitors PRO contract plans. Solicits, negotiates, analyzes, and coordinates proposal evaluations and prepares and awards contracts. Directs post-award coordination, administration, modification, and participates in close-out of contracts. Serves as HCFA liaison with Office of Procurement and Assistance Policy, Office of the Secretary, other Department of Health and Human Services components, Congress, other Government agencies, and private parties in PRO contract related matters. Develops PRO contract policy and procedural guidance for PRO contract staff. Provides policy and procedural guidance to PRO program staff.

b. Division of Contracts and Grants (FHA72)

Provides contracting support, guidance, and assistance to all HCFA components. Provides guidance to prospective contractors. Assists in the direction of related small, disadvantaged, 8(a), (minority contracts), labor surplus area, and women-owned business contracting efforts. Solicits, analyzes, and coordinates proposal evaluation and negotiates, prepares, and awards contracts. Directs the post-award coordination, administration and modification, and participates in the close-out of contracts. Serves as the HCFA liaison with the Department's Office of Procurement, Assistance and Logistics, the Office of the General Counsel, other Department of Health and Human Services' components, Congress, other Government agencies, and private parties in contract, grant, and cooperative agreement matters. Issues policy and procedural guidance for program staff in these areas. Monitors the annual contract plans and assists in the preparation and submittal of required reports. Provides HCFA project (discretionary) grants and cooperative agreements services. Receives applications, operates the application referral system, reviews the system for compliance with law, policies, and cost principles, performs site visits, obtains clearances, negotiates and issues grant awards, maintains funds control records and master grant files. Monitors the annual HCFA project grant plan. Provides HCFA small purchasing services, guidance, and assistance to all HCFA components.

Dated: May 13, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-14570 Filed 6-22-90; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records, "Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Reviews," HHS/HCFA/BQC No. 09-70-2066. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 21, 1990. The new system of records, including routine uses will become effective August 20, 1990, unless HCFA receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 110, Security Office Park, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Linda M. Fuller or Susan Williams, Medicaid Bureau, Health Care Financing Administration, Room 233, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966-5933.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of and to implement section 1903(u) of the Social Security Act (the Act), (42 U.S.C. 1396 b(u)). MEQC utilizes a statistically valid sample of cases certified Medicaid eligible to make judgments about the accuracy of case eligibility determinations and to gather payment information. States are required to review a sample of certified Medicaid individuals to verify the accuracy of the eligibility determinations, to detect errors and incorrect payments. Error rate information is used to disallow misspent funds and to assist States in developing corrective actions to prevent future errors.

Section 1903(u)(1)(A) of the Act requires the Secretary to measure the amount of expenditure due to erroneous Medicaid eligibility determinations and to disallow Federal financial participation for erroneous expenditures greater than 3 percent for each fiscal year. Regulations at 42 CFR 431.803 and 804 implemented this statute by adding the 3-percent tolerance to the existing Medicaid Eligibility Quality Control (MEQC) program designed to measure the amount of erroneous expenditures by States.

The purpose of this system of records is to permit HCFA to match data from the MEQC subsample against data maintained by other Federal and State agencies as necessary to identify and/or verify sources of income and resources of Medicaid recipients. Information received from other Federal agencies (e.g., Internal Revenue Service (IRS)), will enable HCFA to establish more accurately the amount of erroneous excess payments. This will decrease erroneous Federal expenditures by disallowing misspent Federal funds, and reduce erroneous expenditures by providing information for States to use in developing corrective actions.

In order to complete these objectives, HCFA regional offices will provide to the HCFA Central Office the appropriate identifying information on Medicaid recipients included in the Federal MEQC subsample. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for oversight of the Medicaid program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: June 19, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-2066

SYSTEM NAME:

"Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Reviews," HHS/HCFA/MB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA Central Office, Medicaid Bureau, Room 278, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Approximately 27,000 Medicaid recipients in the MEQC subsample per year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Recipient name, Social Security Number, name of State, and Federal MEQC review number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1903(u) of the Social Security Act (42 USC 1396b(u)). Regulations 42 CFR 431.800, and 431.804.

PURPOSE OF THE SYSTEM:

To use other Federal and State agencies as necessary (e.g., Internal Revenue Service (IRS)) to identify sources of income and resources of Medicaid recipients to establish the accuracy of eligibility determinations and the proper amount of beneficiary liability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made:

1. To other Federal agencies (e.g., Internal Revenue Service) to obtain income/resource data for the purpose of determining correct Medicaid eligibility.

2. To a State Medicaid agency which will use the information in its eligibility decisions.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating Automatic Data Processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

5. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components;

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. To an agency of a State Government, or established by State law, for purposes of determining,

evaluating and assessing cost, effectiveness, and the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in an individually identifiable form;

(2) Is of sufficient importance to warrant the effect and risk to the privacy interests of the individual that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the receiver to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use of disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the receiver's understanding of and willingness to abide by these provisions. The receiver must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality and effectiveness of care;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level at which no data cells have ten or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage will be on paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary social security number which is the unique identifier used by HCFA for this system of records, beneficiary name, and the Federal MEQC review number.

SAFEGUARDS:

HCFA will maintain all return information in accordance with Federal requirements as necessary (e.g., the provisions of the Internal Revenue Code section 6103(p)(4)). The records will be accessible only to authorized employees. HCFA will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. All authorized staff will have computer system security clearance by use of an identification code and a password to access data. Access to the return data will be restricted (via the Resource Access Control Facility on the HCFA mainframe), to only those Medicaid Bureau employees associated with the matching program on a "need to know" basis. All computer records will be safeguarded in accordance with the provisions of the HHS *Information Resource Management Manual*, Part 6, ADP Systems Security, including use of passwords, and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hard copy records will be maintained indefinitely. Magnetic tapes will be disposed of after the MEQC error rates are produced for the appropriate MEQC review period involved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Medicaid Bureau, Health Care Financing Administration, Room 200, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists concerning you, write to the System Manager at the address indicated above. Specify your name, social security number, address, and State.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current).

RECORD SOURCE CATEGORIES:

Income/resource data requested from other Federal agencies (e.g., IRS), and/or State agencies as necessary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 90-14606 Filed 6-22-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Availability of Funds for Nurse Training Educational Loan Repayment for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Service Administration (HRSA) announces that approximately $970,000 will be available in Fiscal Year (FY) 1990 for awards for nurse training educational loan repayment under section 836(h) of the Public Health Service Act (PHS Act) to nurses who agree to serve in certain health facilities having a critical shortage of nurses.

The HRSA, through this notice, invites nurses to apply for participation in this loan repayment program. With these funds, the HRSA estimates that approximately 150 Loan Repayment awards may be made to nurses under this program.

DATES: To receive consideration for funding, individuals must submit their applications by July 30, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Postmarked on or before the deadline date and received in time for submission to the reviewing program officials. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late application will not be considered for funding.

ADDRESSES: Application material may be obtained by calling or writing, and completed applications should be returned to, Dr. Norris S. Lewis, Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7-34, 5600 Fishers Lane, Rockville, MD. 20857, (301-443-6354). The application form has been submitted to the Office of Management and Budget for approval.

FOR FURTHER INFORMATION CONTACT: Dr. Norris S. Lewis, Director, Division of Health Services Scholarships, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Section 836(h) of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nurse training costs if that individual enters into an agreement with the Secretary to serve as a nurse for not less than two years in an eligible health facility determined to have a critical shortage of nurses. For an individual who is selected to participate in this program, the following will occur:

(1) Upon completion of the first year of agreed upon service, the Secretary will pay 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service;

(2) Upon completion of the second year of agreed upon service, the Secretary will pay another 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service; and

(3) Upon completion of a third year of agreed upon service, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service. *Provided*, that

(4) No more than 85 percent of the principal of any loan which was unpaid as of the beginning date of service will be paid under this program.

Notwithstanding the requirement of completion of practice each year, the Secretary will, on or before the due date, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this program, if the borrower is providing service as agreed to and will continue to do so for the period required.

Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require that satisfactory evidence be provided of the existence and reasonableness of the education loans.

These loan repayment amounts are unrelated to any salary paid to the nurse loan repayment recipient by the health facility by which he or she has been employed.

The Secretary will make available with the application package a list of eligible health facilities in geographic areas determined to have a critical shortage of nurses.

Eligible Applicants

To be eligible to participate in this program, an individual must:

(1) Have received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing prior to initiation of service;

(2) Have one or more outstanding educational loans for nurse training costs which incur no obligation of service as a nurse;

(3) Enter into an agreement with the Secretary to serve full-time for not less than two years in an Indian Health Service health center; a Native Hawaiian health center; a public hospital operated by a State, county, or local government; a community or migrant health center; a nursing facility as defined in section 1905 or 1919(a) of the Social Security Act; a rural health clinic; or a health facility determined by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1990.

In entering into agreements, as required under section 836(h) of the PHS Act, the Secretary will give priority to applicants:

(1) With the greatest financial need; and

(2) Who agree to serve in health facilities described in paragraph (3) above that are located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.

After applying the priorities listed above, the Secretary will give preference to applicants who (1) seek repayment of loans from loan funds established under subpart II of part B of title VIII of the PHS Act or made by education or financial institutions; (2) agree to serve for three years; and (3) are not already employed in eligible facilities.

Breach of Agreement

Participants in this program who fail to fulfill an agreement with the Secretary under this statute shall be liable to reimburse the Secretary of any payments made during the service period pursuant to such agreement.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 13.908.

Dated: April 9, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-14604 Filed 6-22-90; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Nursing Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for the nursing recruitment program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Nursing Recruitment Program for Indians authorized by section 112 of the Indian Health Care Amendments of 1988, Public Law 100-713. There will be only one funding cycle during fiscal year 1990. This program is described at § 13.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with OMB Circulars A-21, A-87, and A-122 (cost principles for different types of applicant organizations); and subpart Q of 45 CFR part 74 or 45 CFR 92.22 (as applicable).

DATES: An original and two copies of the completed grant application must be submitted, with all required documents, to the Grants Management Branch, Division of Acquisition and Grants Operations, room 6A-33, 5600 Fishers Lane, Rockville, Maryland 20857, by c.o.b. August 10, 1990.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by c.o.b. 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned

to the applicant and will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: For program information, contact Audrey Koertuleyessy, Division of Nursing, Office of Health Programs, Indian Health Service, Twinbrook Metro Parkway, suite 300, Rockville, Maryland 20852, (301) 443-1840. For grants information, contact Ms. M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisitions and Grants Operations, Indian Health Service, Maxima Bldg., suite 603, 2101 East Jefferson, Rockville, Maryland 20852, (301) 443-5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose and objectives, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Nursing Program for fiscal year 1990.

A. General Program Purpose

To increase the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians.

B. Eligibility and Preference

The following organizations are eligible: (1) Public or private schools of nursing,

(2) tribally controlled community colleges, and

(3) nurse midwife programs, and nurse practitioner programs, that are provided by any public or private institution.

Preference will be given to programs which: (1) Provide a preference to Indians,

(2) train nurse midwives or nurse practitioners,

(3) are interdisciplinary, and

(4) are conducted in cooperation with a center for gifted and talented Indian students established under section 5324(a) of the Indian Education Act of 1988.

If an eligible organization claims preference in order to be given priority, the organization must submit verifying documentation.

C. Programmatic Priorities

1. To carry out the provisions of section 112 of Public Law 100-713, priority will be given to the following programs:

a. At least one project to a public or private school of nursing, which provide BSN or MSN degrees, not to exceed $450,000 per year, up to a project period not to exceed three years;

b. At least one project to a tribally controlled community college, not to exceed $150,000 per year, up to a project period not to exceed three years;

c. At least one project to an organization which trains nurse midwives, not to exceed $150,000 per year, up to a project period not to exceed three years.

D. Program Objectives

1. To recruit individuals for programs which train individuals to be nurses, nurse midwives, or nurse practitioners.

2. To provide a program that encourages nurses, nurse midwives, and nurse practitioners to provide, or continue to provide, health care services to Indians.

3. To provide a program that increases the skills of, and provides continuing education to, nurses, nurse midwives, and nurse practitioners.

4. To provide any program that is designed to achieve the purpose of increasing the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians.

Each proposal must respond to at least one of the above four objectives.

Although section 112 of the Indian Health Care Amendments of 1988, Pub. L. 100-713 provides that scholarships for individuals may be funded, such support will not be considered for this funding cycle.

E. Type of Program Activities Considered for Support

Programs developed to locate and recruit students with potential for nursing; and to provide support services to students who are recruited. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which will help to retain students in school.

F. Required Affiliation

The applicant must submit documentation showing that it is an accredited school of nursing, or a tribally controlled community college or nurse midwife program which has an affiliation with an accredited school of nursing, as defined at 42 CFR 36.302(o). The term "accredited" when applied to any program of nurse education means a program accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a school, college or university (or a unit thereof) which is accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education.

The applicant must submit written documentation showing affiliation with a health care facility that primarily serves Indians.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

G. Fund Availability

Approximately $750,000 is available in fiscal year 1990 during this cycle for award of nursing grants under section 112. The anticipated start date for selected projects will be September 28, 1990. Projects will be awarded for a term of up to three years, with funding for succeeding years based on the fiscal year 1990 level, satisfactory level of performance, and the availability of appropriation in future years.

H. Application Process

1. An HS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Maxima Bldg., suite 603, 2101 East Jefferson, Rockville, Maryland 20852. This kit contains program information, guidance for completing an application, OMB approved application form (PHS-5161-1) and required certification forms.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed at the Grants Management Branch for completeness and eligibility. All acceptable applications will be subject to a competitive review and evaluation. This program is not subject to Executive Order 12372.

4. If an application is disapproved or if funds are not available to support all approved applications, the affected applicants will be so notified by September 18, 1990.

5. The project period may not exceed three years. Applications must include information for the entire anticipated project period.

I. Criteria for Review and Evaluation

Conforming applications will be evaluated against the following criteria:

- The potential effectiveness of the proposed project in carrying out the purposes of section 112, with special emphasis on the objectives and methodology portion of the application. Includes relevance of project objectives to grant program objectives; appropriateness and soundness of the procedures for identifying, recruiting, and retaining target population(s); feasibility of project within proposed resources and time frames.
- The demonstrated capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of students.
- The accessibility of the applicant to target Indian communities or tribes, including evidence of past or potential cooperation between the applicant and such communities or tribes. Evidence must be an official document in such form as is prescribed by the tribal governing body to which recruitment efforts will be directed, i.e., tribal resolution and letters of support.
- The relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.
- The soundness of the fiscal plan for assuring effective utilization of grant funds.
- Clarity, feasibility and appropriateness of evaluation plan for effecting the proposed project.

Dated: April 12, 1990.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 90-14605 Filed 6-22-90; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3108]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comment should refer to the proposals by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 18, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Indian Housing Mutual Help—Mutual Help and Occupancy Agreement IHA Inspection, FR-2208.
Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: The information collected will be used for executing a standard contract in the Mutual Help Program and conducting annual inspections for occupied Indian housing units.
Form Number: None.
Respondents: Non-profit institutions.
Frequency of Submission: Occasionally and annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Agreement	1,250		1		.3		375
Inspections	40,000		1		1		40,000

Total Estimated Burden Hours: 40,375.
Status: Reinstatement.
Contact: Dominic Nessi, HUD, (202) 708-1015, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 18, 1990.

Proposal: Survey of Tenants in Certain Properties With HUD-Held and Foreclosed Mortgages.
Office: Housing.
Description of the Need for the Information and its Proposed Use: The Department is required to preserve the number of units which are occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must also inquire as to the income levels of unassisted tenants for whom information is not available.
Form Number: None.
Respondents: Individuals or households, businesses or other for-profit, and Federal agencies or employees.
Frequency of Submission: Other.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey of Currently HUD-Held Inventory	84,035		1		.05		4,705
Units Owners	809		1		.5		405

Total Estimated Burden Hours: 5,108.
Status: Reinstatement.
Contact: Michelle McLaurin, HUD, (202) 708–3944, Scott Jacobs, OMB, (202) 395–6880.

Date: June 18, 1990.

Proposal: Issuer's Monthly Accounting Report.

Office: Government National Mortgage Association.
Description of the Need for the Information and its Proposed Use: Issuers will use these forms to report monthly on their securities accounting. The information is necessary to assure issuers are performing pursuant to the guaranty agreement and investors are receiving all funds due them.
Form Number: HUD–11710A, 1710B, 1710C, 11710D, 11710E.
Respondents: Businesses or other for-profit.
Frequency of Submission: On Occasion and Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11710A	1,250		2,208		.012036		33,219
HUD–1710B	13		12		.12		39
HUD–1710C	90		1		.16		2
HUD–11710D	1,250		12		.25		3,750
HUD–11710E	1,250		11		.16		2,200

Total Estimated Burden Hours: 39,210.
Status: Reinstatement.
Contact: John Field, HUD, (202) 708–0751, Scott Jacobs, OMB, (202) 395–6880.

Date: June 18, 1990.

Proposal: Rental Schedule.

Office: Housing.
Description of the Need for the Information and its Proposed Use: Section 207(a) of the National Housing Act requires all project owners to submit a "Rental Schedule" when requesting an adjustment to project rents. Form HUD–92458 is used by the Department to establish and approve rental charges and utility allowances.
Form Number: HUD–92458.
Respondents: Businesses or other for-profit, Federal agencies or employees, and non-profit institutions.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–92458	16,000		1		.33		5,280

Total Estimated Burden Hours: 5,280.
Status: Extension.
Contact: Michelle McLaurin, HUD, (202) 708–3944, Scott Jacobs, OMB, (202) 395–6880.

Date: June 18, 1990.

[FR Doc. 90–14616 Filed 6–22–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–90–2096; FR–2722–N–02]

Commission on Regulatory Barriers to Affordable Housing; Meeting

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of public hearing.

SUMMARY: The Commission was established on March 14, 1990, in accordance with the provisions of the Commission's charter and the Federal Advisory Committee Act (FACA). The Commission was created to advise the Secretary on the nature and impact upon costs of Federal, State, and local regulations governing the construction and rehabilitation of housing and to present its findings as well as advisory recommendations as to possible remedial Federal, State, and local actions that can be taken to eliminate excessive, duplicative or unnecessary regulations that increase the cost of housing.

The first meeting of the Commission was held in Washington on May 31, 1990. At that meeting a decision was made to hold public hearings for the purpose of soliciting testimony on the nature and extent of regulatory barriers to affordable housing and on possible approaches for implementing regulatory reform.

TIME AND PLACE: The initial public hearing will be held in Trenton, New Jersey on Wednesday, July 11, 1990 from 9:30 a.m. to approximately 4:30 p.m. The meeting will take place at the Joint Appropriations Committee Hearing Room, Room 424, State House Annex, 125 W. State Street, Trenton, NJ 08625.

AGENDA: The Commission desires to hear a range of testimony and views on the nature of regulatory barriers to affordable housing and on possible legislative, administrative, judicial and other approaches that have been or can be taken to address the problem. The Commission is interested in issues and possible solutions and, for this hearing, is particularly interested in issues and solutions that are most relevant to the Northeast and Mid-Atlantic areas.

PUBLIC PARTICIPATION: The hearing will consist of testimony from invited witnesses as well as testimony from the general public. A minimum of one hour has been set aside, after scheduled testimony and questions, for testimony from other interested parties. Members of the general public wishing to testify will be asked to register on a first come, first served basis. Those who do not have the opportunity to testify can, at the hearing or subsequently, submit written remarks for the record.

FOR FURTHER INFORMATION CONTACT: David Engel, Office of Policy Development and Research, Room 8140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–4370. (This is not a toll-free number.)

Dated: June 18, 1990.

John C. Weicher,
Assistant Secretary for Policy Development and Research.

[FR Doc. 90–14566 Filed 6–22–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–660–00–4120–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Projects (1004–0073), Washington, DC 20503, telephone (202) 395–7340.

Title: Coal Management (43 CFR Group 3400).
OMB approval number: 1004–0073.
Abstract: The Federal Coal Management Program regulations are located at 43 CFR Group 3400 and require applicants, lessees, licensees, and/or operators involved in operations for the discovery, testing, development, mining, or processing of Federal coal to submit information to the Bureau of Land Management. The information required is needed to allow the authorized officer, on behalf of the Federal Government, to gather data relevant to the extent and qualities of the public coal resource and to the environmental impacts of coal leasing and development; to manage the leasing and development of coal in the public interest; to determine the qualifications of prospective lessees; to properly administer the statutes applicable to coal mining, production, resource recovery and protection, operations, and exploration on Federal leases or licenses; to ensure that lessees comply with applicable statutes, regulations, and policies; and to ensure that accurate records are kept of all Federal coal produced.

Revisions to the regulations are being proposed, some of which clarify the amount and type of information being sought from applicants and coal lessees, but none of which increase the information required to be submitted by applicants in order to receive benefits. Information requirements are located in several sections of the proposed regulations. All requirements are consistent with the Secretary of the Interior's authority to manage federally owned coal through leasing or exchange; to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, and certain abandonment operations on Federal coal lands; and to require that coal mining operations are conducted in an environmentally sound manner. In many cases, a specific form will not be required to collect information as information is already generated as part of routine industry practice. Information requirements in the regulations are acceptable in any form which meets the specifications in the rulemaking. The obligation to respond is generally required to obtain a benefit, although it is mandatory for some requirements of Federal licensees/lessees.

Failure to collect the information would result in violations of statute and in lack of knowledge about Federal coal resources and would reduce the effectiveness of the program in meeting policy and statutory objectives.
Frequency: On occasion, quarterly, semiannually, and annually.
Description of Respondents: Coal lessees, licensees, operators, and applicants.
Estimated completion time: On average, 22 hours.
Annual Responses: 1,382.
Annual Burden Hours: 30,836.
Bureau Clearance Officer: Gerri Jenkins (202) 653–2209.

Dated: May 10, 1990.

Adam A. Sokoloski,
Assistant Director, Energy and Mineral Resources.

[FR Doc. 90–14597 Filed 6–22–90; 8:45 am]
BILLING CODE 4310–84–M

[NV–930–00–4212–16; N–21754]

Termination of Desert Land Classification; NV

June 14, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Desert Land classification N–21754.

EFFECTIVE DATE: Termination is effective with the publication of this document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, BLM, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 785–6530.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Desert Land classification N–21754 is hereby terminated as to the following described lands:

Mount Diablo Meridian, Nevada

T. 32 N., R. 60 E.,
Sec. 22, E½SE¼.

The area described contains 80 acres in Elko County, Nevada.

The classification was made pursuant to the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321 *et seq.*). Entry to the land was allowed on August 2, 1963, and on that date the lands became segregated from all other forms of appropriation under the public land laws, including location under the mining laws.

The inability to develop sufficient water resulted in a partial relinquishment of the entry. The entry, as it related to the relinquished lands described herein, was subsequently canceled and the classification of said lands is no longer considered appropriate. The partial relinquishment/cancellation of the entry was noted to the official records on April 20, 1990, and on that date the lands became open to the operation of the public land laws and location under the mining laws.

Fred Wolf,
Acting State Director, Nevada.

[FR Doc. 90–14585 Filed 6–22–90; 8:45 am]
BILLING CODE 4310–HC–M

[CA-068-00-7123 52 DO98]

Closure for Public Land Surrounding the El Mirage Cooperative Management Area, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order for public land contained within 49 sections of land in the Barstow Resource Area of San Bernardino County.

SUMMARY: This closure order affects the public land contained within all or part of 49 sections of land surrounding the El Mirage Cooperative Management Area, San Bernardino County, California under the administrative responsibility of the Barstow Resource Area, California Desert District. The following is a description of the land affected by this closure order: T.6N., R.5W., Section 6; T.7N., R.5W., Sections 6, 8, 19, 20, 30 and 31; T.8N., R.5W., Sections 30, 31 and 32; T.7N., R.6W., Sections 6, 7, 8 and those parts of Sections 18 and 20 that are north of the ridgeline in the Shadow Mountains; T.8N., R.6W., Sections 27, 28, 30, 31, 32, 34 and 35; T.6N., R. 7W., Sections 6, 8, 13, 18, 19 and 20; T.7N., R.7W., Sections 2, 4, 12, 15, 18, 19, 20, 29 and 31; T.8N., R.7W., Sections 26, 27, 28, 32, 34 and 35; T.6N., R.8W., Section 1; T.7N., R.8W., Sections 11, 12, 14, 24 and 25, San Bernardino Meridian.

The public land contained within the previously described 49 sections of land are closed to all motor vehicles under the authority of 43 CFR 8364.1 in order to protect soil, vegetation, wildlife, wildlife habitat and adjacent private land, property and landowners. This closure does not apply to the operation of vehicles, licensed pursuant to California Vehicle Code Section 4000(a), upon "open routes" that are marked with a sign on the ground that reads "open route". A flyer showing the open routes is available upon request.

This closure order shall remain in effect for one year. This action is being taken as an interim measure until the aforementioned problems are resolved and/or the routes of travel on the public land within the 48 sections of land are designated through the Desert District's route designation process.

The closed area will be posted with "closed area" signs and the open access routes will be posted with "open route" and "street licensed vehicles only" signs. Specifically authorized persons will be allowed access into the closed area only with written authorization.

Any person who fails to comply with this closure order may be subject to a fine of up to $1000.00 or imprisonment of up to 12 months, or both, under 43 CFR 8360.0-7.

FOR FURTHER INFORMATION CONTACT: Mark H. Davis, El Mirage Project Manager or Steve Martin, BLM Ranger, 150 Coolwater Lane, Barstow, California 92311 or phone (619) 256-3591.

EFFECTIVE DATE: June 25, 1990.

Dated: June 19, 1990.

Daryl Albiston,

Acting Area Manager.

[FR Doc. 90-14641 Filed 6-22-90; 8:45 am]

BILLING CODE 4310-40-M

[OR120-4310-02; GPO-0282]

Advisory Council Meeting; Coos Bay District

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Thursday, July 26, 1990, beginning at 9 a.m. The meeting will be held in the BLM Coos Bay District Office conference room.

AGENDA: The agenda for the meeting will include:

1. Election of officers.
2. A discussion of changes in BLM's timber sales and other operations related to the status of the Northern spotted owl.
3. A discussion of the status of BLM's Western Oregon Resource Management Planning process.
4. Updates on certain local issues including: The New River Area of Critical Environmental Concern, Coos Bay's North Spit, The Dean Creek Elk Viewing Area and the current state of BLM's Resource Management Plan.
5. Plans for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council between 10 a.m. and 10:30 a.m. on Thursday, July 26, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Thursday, July 12, 1990 (Telephone 503-756-0100).

ADDRESSES: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: June 14, 1990.

Melvin E. Chase,

District Manager.

[FR Doc. 90-14563 Filed 6-22-90; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-00-4212-14; N-53169]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the town of Cal-Nev-Ari, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures under section 203 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713).

T. 30 S., R. 63 E., M.D.M., Nevada,
Sec. 25: E½SE¼SE¼;
Sec. 36: N½N½NE¼NE¼NE¼.
T. 30 S., R. 64 E., M.D.M., Nevada,
Sec. 31: Lots 5 through 13, 20 and 21.
Comprising 37.08 acres of public land.

These lands are being offered as a direct sale to Nancy L. Kidwell as a result of occupancy trespass that has occurred on public lands. The lands will be sold at not less than fair market value as determined by an appraisal. The subject land is not needed for any federal purpose which is compatible with the applicable land use plan. The sale of this parcel would be in the public interest. All minerals will be retained by the United States.

Lands to be transferred from the United States will be subject to the following easements, reservations and exceptions.

1. Excepting and reserving the United States of America a right-of-way for ditches and canals constructed pursuant to the Act of August 30, 1960 (43 U.S.C. 945).
2. All locatable, leasable and saleable mineral deposits, which include oil and gas and sand and gravels, is reserved to the United States, together with the right to prospect for, mine and extract the minerals.

Publication of this notice in the **Federal Register** will segregate the public lands described above from all forms of appropriation under the public land laws, including the general mining laws for a period of 270 days from the date of publication.

Further information concerning this exchange can be obtained by contacting the District Manager, Las Vegas District, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

For a period of 45 days from date of first publication, interested parties may submit comments to the District Manager, Las Vegas District, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Dated: June 13, 1990.

Ben Collins,

District Manager.

[FR Doc. 90-14564 Filed 6-22-90; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Mines

Environmental Document Preparation for the In Situ Copper Mining Research Project; Public Meeting

AGENCY: Bureau of Mines, Interior.

ACTION: Notice of public meeting to solicit input on issues to be included in a draft environmental assessment being prepared for the In Situ Copper Mining Research Project.

SUMMARY: In accordance with section 102(3)(C) of the National Environmental Policy Act (NEPA), this notice advises that the Bureau of Mines will hold a public meeting to assist with identifying relevant issues to be included in a draft environmental assessment (EA) being prepared for the In Situ Copper Mining Research Project. The selected location for the research project is the Santa Cruz site, located approximately seven miles west of the city of Casa Grande, Arizona. The proposed action to be evaluated by this document is the in situ leach mining of copper from an undisturbed copper oxide ore zone using a pattern of solution injection and recovery wells completed from the surface, and construction and operation of a pilot-scale solvent extraction-electrowinning facility to remove copper from recovered solutions. The proposed action is a mining research activity which is intended to evaluate the technical, economic, and environmental feasibility on copper in situ leach mining technology. The EA will briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI). An EIS is prepared if the action is determined to have a significant effect on the human environment. A FONSI presents reasons why an action will not have a significant effect on the human environment and that preparation of an EIS will not be necessary.

DATES: The public meeting will be conducted on July 25, 1990, beginning at 7 p.m. and continuing until about 9:30 p.m. at the Holiday Inn, 777 North Pinal Avenue, Casa Grande, Arizona. The meeting room will be open at 6:30 p.m. for review of displays and informal discussions with project personnel.

ADDRESSES: Written comments regarding environmental issues to be included in the draft EA should be sent to Mr. William C. Larson, Research Supervisor, Advanced Mining Division, Bureau of Mines, Twin Cities Research Center, 5629 Minnehaha Avenue South, Minneapolis, Minnesota 55417-3309. To be most useful to the Bureau in preparing this document, comments are requested by August 8, 1990.

FOR FURTHER INFORMATION CONTACT: William C. Larson at the above address or telephone (612) 725-4690, or (FTS) 789-4690.

SUPPLEMENTARY INFORMATION: In situ leach mining of copper involves the injection of a dilute sulfuric acid solution through a well or wells completed into an otherwise undisturbed ore zone; dissolution of copper mineralization as the solution moves through fractures and pore spaces; collection of copper-bearing solution by recovery wells; removal of the dissolved copper using a conventional solvent extraction-electrowinning plant located on the surface; rejuvenation of solution to its original strength; and solution reinjection back into the ore zone to repeat the cycle.

The In Situ Copper Mining Research Project is a cooperative research effort of the Bureau of Mines and the Santa Cruz Joint Venture (a joint venture formed between ASARCO Santa Cruz, Inc., and Freeport Copper Co.). The surface and subsurface owner of the project site is the Santa Cruz Joint Venture. Wells to be utilized during the term of the project include one injection well together with four recovery wells. These wells are presently in place and were originally installed for use during a site hydrogeologic investigation. The four recovery wells are arranged in a square pattern on the ground surface with side dimensions of 127 ft. The single injection well is located in the center of the square. This arrangement is referred to as a "five-spot" well pattern. During the research project, the well pattern may be expanded by installing an additional injection well and two additional recovery wells to form a "double five-spot" with side dimensions of approximately 127 ft by 254 ft. The expanded well pattern, if completed, will bring the total number of injection/recovery wells to eight. Injection of the solution will occur at a rate of 10 to 50 gal/min. The total area of the research project site is about 27 acres. In addition to NEPA criteria, this research project is subject to Federal, State, and local environmental permitting requirements.

Dated: June 20, 1990.

T.S. Ary,

Director.

[FR Doc. 90-14661 Filed 6-22-90; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

Availability of Draft Environmental Impact Statement; Blue Ridge and Roanoke River

AGENCY: National Park Service, Interior.

ACTION: Availability of draft environmental impact statement and notice of public meeting.

SUMMARY: Congress authorized funding for a 10-mile extension of the Blue Ridge Parkway as a demonstration project under the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17). The action was further defined in a memorandum of agreement among the National Park Service, the Federal Highway Administration, and the Virginia Department of Transportation. In that memorandum, the extension was referred to as the Roanoke River Parkway, extending from the Roanoke/Vinton city limits near Tinker Creek to the Hardy Ford area of Bedford and Franklin Counties.

This Draft Environmental Impact Statement describes the potential impacts of three alternatives for a Roanoke River Parkway. The park road would be a limited-access road, with connections at the two termini, the Blue Ridge Parkway and the Explore Park (a 1,700-acre project proposed to be developed east of the Blue Ridge Parkway). Three alternative alignment corridors are analyzed with alignment 2 as the proposed action. Five alternative sites are also analyzed for a visitor center to orient visitors on the Blue Ridge and Roanoke River Parkways to the Roanoke Valley. Three of the sites are on the north side of the Roanoke River and are most suitable for alignment 2; and the other two sites are on the south side of the river and would work best with alignment 1 or 3. Site 3 is the proposed action.

A public meeting will be held at the following location and time to discuss this project. Comments will be received at the meeting and until August 27, 1990, by the Superintendent, Blue Ridge Parkway, c/o Roanoke River Parkway

Project Office, P.O. Box 949, Vinton, Virginia 24179, telephone (703) 234–3959.

DATES: Public Meeting, 4 to 8 p.m., July 26, 1990, Vinton War Memorial, 814 Washington Avenue, Vinton, Virginia 24179. Comment period on the Draft EIS ends August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Mary McMenimen, National Park Service, Denver Service Center, P.O. Box 25287, Denver, Colorado 80225, Telephone (303) 969–2410.

Dated: June 15, 1990.

Robert L. Deskins,

Acting Regional Director, Southeast Region.

[FR Doc. 90–14600 Filed 6–22–90; 8:45 am]

BILLING CODE 4310–70–M

Great Egg Harbor River, NJ; Wild and Scenic River Study; Report Availability

AGENCY: National Park Service; Mid-Atlantic Regional Office.

ACTION: Availability of draft study report; Great Egg Harbor River, New Jersey.

SUMMARY: This notice advises the public that the Draft Study Report on the Great Egg Harbor River, New Jersey, Congressional Wild and Scenic River Study is available for public review. The Draft Study Report summarizes the three-year study to determine the eligibility and suitability of the Great Egg Harbor River for inclusion into the National Wild and Scenic River System. The Draft Study Report outlines existing protection, threats to the resource, alternative actions, and recommendations for management plans.

COMMENT DEADLINE: July 15, 1990.

FOR COPIES AND FURTHER INFORMATION CONTACT: Patricia Weber, National Park Service, U.S. Custom House, room 260, 2nd and Chestnut Streets, Philadelphia, PA 19106; (215) 597–6477.

Gerald L. Kirwan,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 90–14612 Filed 6–22–90; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: July 25, 1990.

INCLEMENT WEATHER RESCHEDULED DATE: None.

ADDRESSES: Bethlehem City Library, 10 East Church St., Bethlehem, PA.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Division of Park and Resource Planning, Mid-Atlantic Regional Office, National Park Service, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, 215–597–6468.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting involves discussion of the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 90–14601 Filed 6–22–90; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–307 (Sub-No. 1X)]

Wyoming and Colorado Railroad Co., Inc.; Abandonment Exemption in Jackson County, CO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 13.5-mile line of railroad between milepost 94.5, near Walden, and milepost 108.0, near Hebron, in Jackson County, CO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State of local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employes affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 25, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 5, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 16, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Douglas M. Durbano, Durbano and Associates, United Savings Plaza, 4185 Harrison Blvd., #320, Ogden, UT 84403.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 29, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 20, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–14743 Filed 6–22–90; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Philip G. Broeckel, M.D.; Revocation of Registration

On November 17, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Philip G. Brockel, M.D. of the Reed Mock Clinic, 109 E. 7th Street, San Juan, Texas 78589, proposing to revoke his DEA Certificate of Registration AB0066339, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Broeckel's lack of authorization to handle controlled substances in the State of Texas. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Broeckel by registered mail and was returned to DEA unclaimed with a notation that Dr. Broeckel had moved and left no forwarding address. DEA Investigators learned that Dr. Broeckel may be at another location, Route 1, Box 141, Edinburg, Texas 78539. The Order to Show Cause was forwarded by registered mail to that new location and was returned to DEA unclaimed with a notation that Dr. Broeckel moved and left no forwarding address. DEA Investigators made numerous attempts to locate Dr. Broeckel, and have determined that his whereabouts are unknown. It is quite evident that Dr. Broeckel is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Acting Administrator concludes that considerable effort has been made to serve Dr. Broeckel with the Order to Show Cause without success. Consequently, the Acting Administrator now enters his final order in this matter based on the investigative file.

The Acting Administrator finds that on December 15, 1987, Dr. Broeckel was convicted in the 332d District Court of Hildalgo County, Texas, of sexual indecency with a child by sexual contact, sexual assault, and aggravated sexual assault. Dr. Broeckel was sentenced to serve a total of 98 years imprisonment and fined twenty thousand dollars. He has fled, is now considered to be a fugitive and has not started to serve his sentence.

As a result of the foregoing, the Texas Board of Medical Examiners held a hearing on May 9, 1988. Dr. Broeckel did not appear and was unrepresented otherwise. On June 15, 1988, the Board revoked Dr. Broeckel's license to practice medicine in the State of Texas, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in that state.

The Acting Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f); *Myong S. Yi, M.D.*, 54 FR 30618 (1989); *Clifford E. Bigott, D.M.D.* Docket No. 88–24 53 FR 22711 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Acting Administrator concludes that Dr. Broeckel's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Texas. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AB0066339, previously issued to Philip G. Broeckel, M.D., be, and it hereby is, revoked. The Acting Administrator further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 25, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90–14580 Filed 6–23–90; 8:45 am]

BILLING CODE 4410–09–M

Drug Mart, Inc.; Revocation of Registration

On May 23, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Drug Mart, Inc., 1512 North Business 9, Morrilton, Arkansas 72110, proposing to revoke the pharmacy's DEA Certificate of Registration AD0030495, and to deny any pending applications for renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f). The proposed action was predicated upon the conviction of Stephen Isely, owner and President of Drug Mart, Inc., in the United States District Court for the Eastern District of Arkansas on August 31, 1988, of two counts of distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances.

By letter dated March 19, 1990, Stephen P. Isely, through counsel, waived his opportunity for a hearing on the issues raised in the Order to Show Cause. Accordingly, the Acting Administrator of the Drug Enforcement Administration enters this final order based upon the investigation file. 21 CFR 1301.54(e).

The Acting Administrator finds that on April 3, 1987, Stephen Isely submitted a theft report on DEA Form 106 to DEA in New Orleans which alleged that the pharmacy had been burglarized on March 30, 1987, and that controlled substances in Schedules III, IV and V had been stolen. Upon receipt of the theft report, DEA and Arkansas State Police Department Investigators conducted a joint investigation which revealed that Stephen Isely had falsified the report and further that he unlawfully distributed Schedule III and IV controlled substances in 1986 and 1987. On October 19, 1987, Stephen Isely was charged with one count of making a false statement to the DEA in the theft report and fifty-nine counts of unlawful distribution of controlled substances. On August 31, 1988, in the United States District Court for the Eastern District of Arkansas, Stephen Isely was convicted of making a false statement to DEA in violation of 18 U.S.C. 1001 and two counts of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances. He was sentenced to two years imprisonment and two years probation.

Pursuant to 21 U.S.C. 824(a), a registration issued under 21 U.S.C. 823(f) may be revoked upon a finding that the registrant has been convicted of a felony

relating to controlled substances. The Drug Enforcement Administration has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. See *Yazid M. Mahadi, d/b/a Gresham Road Pharmacy*, Docket No. 88-31, 51 FR 27287 (1986); *Ozie T. Faison, d/b/a Smith Discount Drugs*, Docket No. 85-37, 51 FR 16403 (1986); and, *K&B Successors, Inc.*, Docket No. 82-15, 49 FR 34508 (1984). Based on Stephen Isely's felony conviction relating to controlled substances, the Acting Administrator finds that a lawful basis exists for the revocation of Drug Mart, Inc.'s registration, and for the denial of any pending applications for renewal of that registration. 21 U.S.C. 824(a)(2) and 823(f)(3).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AD6930485, previously issued to Drug Mart, Inc., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration, be, and they hereby are, denied.

This order is effective July 24, 1990.

Terrence M. Burke,
Acting Administrator.

[FR Doc. 90-14624 Filed 6-22-90; 8:45 am]
BILLING CODE 4410-09-M

Kasparian Pharmacy; Denial of Application for Registration

On February 15, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kasparian Pharmacy, located at 198 South Yonge Street, Ormond Beach, Florida 32074. The Order to Show Cause proposed to deny the pharmacy's pending application for registration, executed on March 24, 1989, on the ground that the issuance of a DEA registration to the pharmacy would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 823(a)(4).

Nazar Kasparian, the owner of Kasparian Pharmacy, through counsel, waived his opportunity for a hearing on the issues raised in the Order to Show Cause and submitted a written statement on his behalf. Consequently, under 21 CFR 1301.54(c) and 1301.54(e), the Acting Administration concludes that Mr. Kasparian has waived his opportunity for a hearing and enters this final order based upon the information contained in the DEA investigative and administrative files and Mr. Kasparian's written statement.

The Acting Administrator finds that Kasparian Pharmacy has not been registered by DEA to handle controlled substances since 1984, when the Florida Board of Pharmacy suspended the pharmacy's state pharmacy permit as well as Mr. Kasparian's pharmacist's permit for two years. This action was taken based upon findings that Nazar Kasparian filled 224 controlled substance prescriptions without receiving the physicians' authorization to dispense the drugs. Mr. Kasparian dispensed more than 22,000 dosage units of Schedule III and IV controlled substances and more than 200 ounces of Schedule V cough syrups containing codeine pursuant to those "prescriptions."

Following the return of his state licenses, Mr. Kasparian submitted an application for a new registration on March 1, 1988. DEA held an administrative hearing to determine whether the pharmacy's registration would be inconsistent with the public interest. Information presented during the hearing revealed that in 1983, the pharmacy ordered excessively large quantities of several controlled substances. Investigators with the Florida Department of Professional Regulation (DPR) conducted an audit of the pharmacy's controlled substance records and stock. They found excessive, unexplained shortages of eight different drugs and overages for ten drugs. In addition, the Investigators found that the Kasparian Pharmacy did not conduct a biennial inventory, as required by State and Federal law. Based upon this information, the Administrator concluded that the issuance of a DEA registration to the pharmacy would be inconsistent with the public interest. He denied the application for registration in his final order, dated October 7, 1987. *See Kasparian Pharmacy*, 52 FR 37530 (1987).

Following the denial of the pharmacy's previous application for registration, the Acting Administrator finds that on April 18, 1988, the Florida Department of Professional Regulation filed a complaint against Kasparian Pharmacy alleging violations of Florida Statute 465.016(1)(d)(2), misusing or abusing any drug appearing in Chapter 893 of the Florida Statutes, violating a requirement of the Federal Food, Drug and Cosmetic Act, and violation of 21 CFR 1301.21. The underlying facts show that, between June 1988 and May 1989, Mr. Kasparian had controlled substance prescriptions filled at three area pharmacies and provided the controlled substances to his customer.

On April 13, 1989, a DPR investigator presented two prescriptions to Mr. Kasparian; one for 24 dosage units of Pen-VK 500 mg., a legend drug, the other for Tylenol #3 with codeine, a Schedule III controlled substance. Mr. Kasparian filled the prescription for Pen-VK and brought the Tylenol #3 prescription to Walgreens Pharmacy. When he returned from Walgreens with the Tylenol #3 tablets, he sold both drugs to the Investigator.

On May 17, 1989, DPR Investigators interviewed area pharmacists about Mr. Kasparian's practice of bringing customers' controlled substance prescriptions to their pharmacies for filling and later selling the drugs to the customers. One pharmacist stated that, between August 1987 and October 1988, Mr. Kasparian occasionally brought controlled substance prescriptions to his pharmacy for filling. He further stated that Mr. Kasparian requested that he also fill his "call-in" controlled substance prescriptions. He explained that Mr. Kasparian would pick up the drugs from his pharmacy and sell them to his customers at Kasparian Pharmacy. Another pharmacist told Investigators that he filled controlled substance prescriptions brought by Mr. Kasparian during the first half of 1989. A third pharmacist claimed that he filled controlled substance prescriptions brought to him by Mr. Kasparian at least once a week.

On June 1, 1989, DPR Investigators interviewed another area pharmacist. He also claimed that he filled three or four controlled substance prescriptions brought to him by Mr. Kasparian in June 1988. On that same date, Investigators interviewed Mr. Kasparian. He admitted to taking customers' controlled substance prescriptions to other pharmacies for filling and then selling the drugs to his customers. He claimed that he did so to accommodate his long-time customers. He further stated that he did not know that his activities were illegal.

In March 27, 1990, the Florida Department of Professional Regulation, Board of Pharmacy, and Mr. Kasparian entered into a stipulation. Under the terms of the stipulation, the Board reprimanded Mr. Kasparian, fined him $750.00, required him to attend a continuing education course, and placed him on probation for one year.

The Administrator may deny an application for registration if he concludes that the issuance of a DEA registration to the applicant would be inconsistent with the public interest. He may consider the following factors, enumerated in 21 U.S.C. 823(f), when determining whether an applicant's registration would be in the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

All except the third factor are relevant in evaluating whether the issuance of a DEA registration to Kasparian Pharmacy would be in the public interest. Although the Florida Department of Professional Regulation, Board of Pharmacy, did not specifically make any recommendation about the pending DEA application for registration, it previously suspended Mr. Kasparian's state pharmacy and pharmacist's licenses based upon his controlled substance violations. In addition, the Board recently entered into a stipulation with Mr. Kasparian based upon the additional violations of state controlled substance laws and regulations.

In this case, the Administrator considers the second, fourth and fifth factors most relevant. The evidence shows that Mr. Kasparian unlawfully dispensed large quantities of controlled substances without the authorization of registered physicians. He prepared "refills" or "call-in" prescriptions to conceal the illegal activities. He did not maintain controlled substance records in compliance with requirements of Federal and State laws and regulations, and could not explain excessive shortages and overages of much of his controlled substance stock. Even after the Board of Pharmacy disciplined him and he lost his DEA registration, Mr. Kasparian continued to violate controlled substance laws and regulations by handling controlled substances without having a valid DEA Certificate of Registration.

In the written statement he submitted rather than requesting a hearing, Mr. Kasparian stated that he was unaware he could not handle controlled substances by filling customers' prescriptions at other pharmacies and swore that he would never do it again. With respect to dispensing large quantities of controlled substances without receiving physicians' authorizations, Mr. Kasparian explained that:

> Before March, 1984 old customers would come into the pharmacy. These elderly * * * didn't have a lot of money. I had been filling their prescriptions for years. Only on a few occasions I continued to fill a prescription after the refills had run out. I know now I should have never done this, but I swear to you I never filled 224 prescriptions never, and I never filled any prescriptions where there had not at one time been a prescription for that drug by their Doctor.

In addition, Mr. Kasparian claimed that he wanted to "clear" his name with DEA. He asked:

> What is our country coming to when a poor old man who admits his mistakes and atones for them isn't given another chance to clear his name before he passes on?

The Acting Administrator has considered Mr. Kasparian's statement, but is not convinced that the public interest would be served by granting a DEA registration to Kasparian Pharmacy. Mr. Kasparian still refuses to acknowledge the extent of his wrongdoing in unlawfully dispensing large quantities of controlled substances. He has shown either ignorance or disregard for controlled substance laws and regulations. He has not shown that he possesses the requisite knowledge to handle controlled substances properly at this time. He also appears more interested in "clearing his name" than handling controlled substances appropriately. If Mr. Kasparian's letter is to be believed, it shows that his "compassion" for his customers is far greater than his respect for the law. Such persons pose as great a threat of improperly handling controlled substances as do persons who intentionally violate the law. The DEA will not tolerate either. Consequently, the Acting Administrator finds that the issuance of a DEA registration to Kasparian Pharmacy would be inconsistent with the public interest, and that his application must be denied.

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Acting Administrator of the Drug Enforcement Administration orders that the application for registration, executed on March 24, 1989, by Nazar Kasparian, R.Ph. for Kasparian Pharmacy, be, and it hereby is, denied.

This order is effective June 25, 1990.

Dated: June 18, 1990.

Terrence M. Burke,
Acting Administrator.

[FR Doc. 90-14582 Filed 6-22-90; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 90-6]

Arthur C. Rosenblatt, M.D.; Revocation of Registration

On February 9, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Arthur C. Rosenblatt, M.D., Respondent, of 520 W. Carlton Street, Wauchula, Florida. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AR2269903, and to deny any pending application for renewal of his practitioner's registration on the grounds that he recently was convicted of a felony offense relating to controlled substances and that his continued registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. On February 27, 1990, the administrative law judge issued an Order for Prehearing Statements requiring the Government to file its prehearing statement on or before March 21, 1990, and for Respondent's counsel to file his prehearing statement on or before April 13, 1990. The Order for Prehearing Statements contained the following cautionary warning:

> * * * Respondent is cautioned that failure timely to file a prehearing statement as directed above may be considered a waiver of hearing and an implied revocation of a request for hearing * * *.

Government counsel timely filed the Government's prehearing statement. Respondent's counsel did not file a prehearing statement, nor did he file a request for extension of time or any other written statement explaining his failure to file a prehearing statement. On April 17, 1990, Judge Young issued a Memorandum to Counsel in which he requested that Government counsel advise him as to whether the Government objected to him terminating the proceedings before him. Government counsel filed a response indicating that the Government had no objection to the termination of the proceedings before the administrative law judge. On April 26, 1990, Judge Young issued an Order Terminating Proceedings based upon

Respondent's failure to file a prehearing statement. See, e.g. *Odie Pharmacy*, Docket No. 82–21, 48 FR 356 (1983); *Homestead Pharmacy of Boston, Inc.*, Docket No. 83–33, 49 FR 7304 (1984); and *Jefferson Pharmacy, Inc.*, Docket No. 86–95, 53 FR 13200 (1988).

The Acting Administrator finds, based upon Respondent's failure to comply with prehearing procedures, that he has waived his opportunity for a hearing on the issues raised in the Order to Show Cause. Consequently, in accordance with 21 CFR 1301.54 (d) and (e), the Acting Administrator enters this final order based upon the information contained in the DEA investigative file.

The Acting Administrator finds that on November 4, 1988, in the Circuit Court of the Tenth Judicial Circuit, in and for Hardee County, Florida, Respondent was convicted, after entering a plea of *nolo contendere*, on one count of possession of a controlled substance, a class three felony offense in violation of Section 893.13 of the Florida Statutes. The court withheld adjudication, and placed Respondent on probation for a period of five years. The court also ordered him to undergo substance abuse evaluation and treatment, to undergo drug testing and searches, to perform 400 hours of community service, and to pay court costs of $1,500.00. For purposes of this Federal proceeding, Respondent is considered convicted of a felony offense relating to controlled substances, despite Respondent's entry of a *nolo contendere* plea and the court's withholding adjudication of guilt. See, *Victor M. Groves, M.D.*, 50 FR 50088 (1985); *United States v. Hartsfield*, 387 F.Supp. 16 (M.D. Fla. 1975); *Steven Granet Rosen, D.D.S.*, Docket No. 84–44, 50 FR 46844 (1985); and *Thomas Parker Elliott, D.O.*, Docket No. 86–49, 52 FR 36312 (1987).

Respondent's conviction resulted from an investigation conducted by the Hardee County Sheriff's Office. In February 1988, the Sheriff's Office received a citizen's complaint that Respondent was growing marijuana on the balcony of his residence. The complaint was verified after Sheriff's Officers also observed the plants from public property across the river from Respondent's residence. On February 5, 1989, Sheriff's Officers arrived at Respondent's home to execute a search warrant. During the search, they confiscated two live marijuana plants, cut marijuana found in various locations within the home, as well as paraphernalia for cultivating and using marijuana, including rolling papers and plastic planters. Following the search, Respondent and his wife were arrested and charged with unlawful possession of a controlled substance, in violation of F.S. 893.13, a third degree felony offense, and unlawful possession of drug paraphernalia, in violation of F.S. 893.147. The court entered a *nolle prosequi* on the paraphernalia possession charge.

The Administrator also finds that on April 19, 1989, the Florida Department of Professional Regulation, Board of Medicine, issued a final order placing Respondent's medical license on probation for a period of five years. He was fined $2,000.00, and was ordered to comply with various requirements of probation. On October 7, 1989, the Board issued another final order adopting an agreed stipulation between Respondent and the Board. In that stipulation, Respondent admitted that he failed to practice medicine with an acceptable level of care, skill and treatment with respect to one patient. He also admitted that he failed to keep written medical records justifying his course of treatment of one patient. The stipulation placed Respondent's medical license on probation for a period of three years, to run concurrently with the five-year probation imposed in April 1989. Respondent also was reprimanded by the Board and was ordered, among other things, to comply with State and Federal laws and regulations relating to the practice of medicine, to appear before the Board periodically for review, to submit quarterly reports of his progress and activities, and to perform 30 hours of community service.

Under 21 U.S.C. 824(a)(2), the Administrator may revoke the DEA registration of a registrant based solely upon his conviction of a felony offense relating to controlled substances. The Drug Enforcement Administration has long held the position that revocation is appropriate in situations where a registrant has been convicted of a drug-related felony offense. See, *Vincent A. Sundry, D.O.*, Docket No. 87–64, 53 FR 17257 (1988); and *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 FR 23465 (1988). In addition, a revocation of registration is appropriate even in situations in which the conviction did not involve violations of the registrant's professional practice. See, *Raymond H. Wood, Jr., D.D.S.*, Docket No. 82–32, 48 FR 48727 (1983); *Michael A. Rush, D.P.M.*, Docket No. 82–19, 49 FR 37863 (1984); and *Walker Whaley, M.D.*, Docket No. 83–12, 51 FR 15555 (1986). Therefore, Respondent's felony conviction relating to controlled substances, although the offense did not arise out of his medical practice, is sufficient to warrant the revocation of his DEA registration.

In determining whether a practitioner's DEA Certificate of Registration should be revoked on public interest grounds, the Administrator also considers the following factors, enumerated in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's [or registrant's] conviction record under Federal, or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The Administrator need not consider all five factors in each case. Instead, he can decide which factors are relevant and give each factor the weight he determines is necessary, depending upon the facts and circumstances presented in the case.

In this case, the first and fourth factors are relevant to this proceeding. Although the Florida Board of Medicine did not make a specific recommendation concerning the future of Respondent's DEA Certificate of Registration, its recent actions indicate that the Board has determined that Respondent's medical practice must be restricted and scrutinized as a result of his conviction and treatment of patients. In addition, based upon his conviction, the record clearly reflects that Respondent has failed to comply with State and Federal laws relating to controlled substances. Respondent provided no valid explanation for illegally growing and cultivating marijuana at his residence. The Drug Enforcement Administration cannot condone illegal actions by its registrants which involve controlled substances. DEA registrants are expected to abide by all controlled substance laws and regulations, regardless of whether they pertain to the registrants' medical practice.

In this case, Respondent has not provided any evidence to mitigate, justify or explain his actions. He also has not presented any evidence that he will not commit the same offense in the future. Respondent's silence does nothing to promote the position that he should be permitted to retain his DEA Certificate of Registration.

In consideration of the facts in this case, the Acting Administrator finds that Respondent has committed a felony offense relating to controlled substances, that he has not justified or explained his actions or provided any reasons as to why he can be trusted with a registration at this time. Consequently, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Acting Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AR2889003, previously issued to Arthur C. Rosenblatt, M.D., be, and it hereby is, revoked. The Acting Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective July 25, 1990.

Dated: June 18, 1990.

Terrence M. Burke,
Acting Administrator.

[FR Doc. 90-14691 Filed 6-23-90; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-38; Exemption Application No. D-6275 et al.]

Grant of Individual Exemptions; Retirement Savings Plan for Employees of Bob Corp., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Retirement Savings Plan for Employees of Bob Corporation and Participating Subsidiaries and Affiliates (the Plan) Located in New Orleans, LA

[Prohibited Transaction Exemption 90-35; Exemption Application No. D-6275]

EXEMPTION

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, shall not apply to the proposed cash sale by the Plan of a first mortgage note (the Note) to Bob Corporation, a party in interest with respect to the Plan, provided the Plan receives an amount representing the greater of the outstanding principal balance of the Note plus all accrued interest as of the date of the sale or the fair market value of the Note at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 6, 1990 at 55 FR 12985.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.).

Palm/Webber Incorporated (Palm/Webber) Located in New York, New York

[Prohibited Transaction Exemption 90-36; Exemption Application No. D-6288]

Exemption

I. Transactions

A. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective January 1, 1987, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B. (1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective January 1, 1987, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, INc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which PaineWebber or any of its affiliates is either (i) the sole underwriter or the manager or co-manger of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) PaineWebber;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with PaineWebber; or

(3) Any member of an underwriting syndicate or selling group of which PaineWebber or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption is effective for transactions beginning on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 19th day of June 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-14623 Filed 6-23-90; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-8004 et al.]

Proposed Exemptions; American Information Technologies Corp. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

American Information Technologies Corporation, Located in Chicago, Illinois,

[(Application No. D–8004)].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) which involves the assets of the Ameritech Pension Plan (the Pension Plan) and the Ameritech Management Pension Plan (the Management Plan; collectively, the Plans) which are invested in the Ameritech Pension Trust (the Trust).

(a) General Exemption. Effective January 1, 1984, the date when the Plans were established, the restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, or sale of real property or personal property appurtenant thereto (including the acquisition, ownership, or sale of any interest in a joint venture or partnership which invests primarily in real property) or the borrowing or lending of money in connection therewith, between a party in interest and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by American Information Technologies Corporation (Ameritech), the Asset Management Committee, or certain designated members of the Asset Management Committee, as fiduciaries of the Trust, as described herein;

(2) Any such party in interest is not—

(i) Ameritech, the Asset Management Committee, or any member of the Asset Management Committee, as described herein;

(ii) Any person directly or indirectly controlling, controlled by, or under common control with Ameritech (a Controlled Person);

(iii) Any officer, director, or highly-compensated employee (as defined in section 4975(e)(2)(H) of the Code) of Ameritech or of any Controlled Person;

(iv) Any corporation, partnership, trust, or unincorporated enterprise in which Ameritech, any Controlled Person, or any officer, director, or highly compensated employee (as defined above) of Ameritech or of any Controlled Person owns a 5% or more (directly or indirectly in capital or profits) interest;

(v) Any corporation partnership, trust, or unincorporated enterprise which owns a 5% or more interest in Ameritech, or in a Controlled Person;

(vi) Any person who exercises discretionary authority, responsibility, or control, or who provides investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of Trust assets involved in the particular transaction;

(vii) The term "interest," means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(viii) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose of or to direct the disposition of such interest.

(3) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Ameritech, the Asset Management Committee, or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties.

(4) Ameritech or the Asset Management Committee shall maintain for a period of six (6) years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Ameritech and the Asset Management Committee, the records are lost or destroyed prior to the end of the six (6) year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below; and

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at the headquarters of Ameritech for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plans which are funded, in whole or part, by the Trust with respect to which Ameritech is a named fiduciary or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans which are funded, in whole or in part, by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (C) of this subparagraph (5) shall be authorized to examine the trade secrets or commercial or financial information which is privileged, confidential, or of a proprietary nature of either Ameritech or the Asset Management Committee.

(b) Specific Exemption Involving Places of Public Accommodation. The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason by section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed furnishing of services, facilities, and/or any goods incidental thereto by a place of public

accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if:

(1) The services, facilities, or incidental goods are furnished on a comparable basis to the general public; and

(2) The requirements of subparagraphs (a) (4) and (5) of this exemption are met.

(c) Specific Exemption Involving Telephone or Other Telecommunication Services. The restrictions of section 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the code, shall not apply to the furnishing of telephone or other telecommunications services, facilities, equipment, and/or any goods incidental thereto to any real property which is or may be considered an asset of the Trust by Ameritech or any Controlled Person, provided that the following conditions are satisfied:

(1) The services, facilities, equipment, or incidental goods are furnished to common or public areas, including but not limited to lobby or garage telephones, pay telephones, and telephones for the on-site manager's offices of such real property;

(2) The amount involved in the furnishing of services, facilities, equipment, or incidental goods in any calendar year does not exceed .01 percent (.01%) of the fair market value of the assets of the Trust;

(3) The services, facilities, equipment, incidental goods are furnished on a comparable basis with terms provided in the ordinary course of business by Ameritech to the general public; and

(4) The requirements of subparagraphs (a)(4) and (a)(5) are met.

Summary of Facts and Representations

1. Ameritech, one of seven regional holding companies (RHC) created in connection with the court-ordered divestiture of American Telephone and Telegraph Company (AT&T), maintains its principal offices at 30 South Wacker Drive, Chicago, Illinois. Ameritech established the Plans on January 1, 1984, to provide retirement and other benefits for its own employees, eligible employees of qualified affiliated entities, and certain former participants of the AT&T sponsored Bell System Management Pension Plan and the Bell System Pension Plan (the Predecessor Plans). Ameritech is the named fiduciary of the Plans and therefore is a party in interest and disqualified person with respect to the Plans pursuant to 3(14)(A) of the Act and section 4975(e)(2)(A) of the Code.[1]

2. The Plans are defined benefit plans that meet the requirements of 401(a) of the Code. The total number of participants in the Plans, both active employees and retirees, as of December 31, 1987, was 123,923. The Plans had assets on December 31, 1988, totaling $10.5 billion. Of this amount, approximately $962 million or 9.13% is committed to investments in real estate. It is anticipated that no more than approximately fifteen percent (15%) of the total assets of the Plans will be invested in real estate holdings at any time. It is represented that for all of the Trust's real estate assets, other than those held in the Telephone Real Estate Equity Trust (TREET), Ameritech or the Asset Management Committee retains discretion over acquisitions and dispositions, and in most cases, over major decisions with respect to management of such assets.[2]

3. In accordance with the terms of the reorganization plan filed by AT&T with the court in the divestiture proceedings, Ameritech also established an interim trust (the Interim Trust) in which to transfer certain assets attributable to liabilities for benefits accrued under the Predecessor Plans. Pursuant to a trust agreement, dated December 24, 1984, Ameritech replaced the Interim Trust with the Trust, which is a master trust qualified under section 401(a) of the Code and which holds assets of the Plans and is authorized to hold assets of certain retirement plans of electing subsidiaries of Ameritech. It is represented that though the Trust is authorized to hold the assets of certain retirement plans of electing subsidiaries of Ameritech, such authority has not been exercised to date. Thus, the Trust only holds assets of the Pension Plan and the Management Plan. The proportionate interest of the Pension Plan and the Management Plan in the Trust were 46% and 54%, respectively, on December 31, 1988 and 1987.

4. The Trust proposes to invest in real property which will typically include office buildings or shopping centers, but may also include hotels and other commercial, or multi-family residential real estate. It is represented that such investments will be effected through various types of transactions. Such transactions will be structured to involve direct equity investments (through title holding entities or otherwise), general or limited partnerships, joint ventures, leases, mortgages, and sale-leasebacks. As a result of these complex investment arrangements, it is represented that the Trust may enter into related transactions with parties in interest with respect to the Plans, including transactions with mortgage lenders, lessees, joint venturers, and partners of partnerships of which the Trust holds an interest.

For example, it is represented that properties owned by the Trust may be leased to other businesses that provide goods or services to the Trust. Similarly, places of public accommodation owned by the Trust may be used in the normal course of business by individuals who are parties in interest with respect to the Trust. It is represented that it would not be feasible for Ameritech or its affiliates to identify all such transactions.

It is represented that additional transactions may occur to the extent that the Trust acquires real property within the service area of Ameritech or its affiliates. Under such circumstances, the Trust may purchase telephone or other telecommunication services, facilities, equipment (including but not limited to Centrex service), and/or any goods incidental thereto, for real property which is or may be considered an asset of the Trust. It is represented that such services, facilities, equipment, or incidental goods would be intended for use in the common or public areas of such properties, including but not limited to the lobby, on-site manager's office, and garage.

It is anticipated that the value of such services, facilities, equipment, or incidental goods will be de minimis both in terms of Ameritech's revenues and the Trust's assets. As a condition of the proposed exemption, Ameritech represents that no more than .01 percent (.01%) of the assets of the Trust will be involved in such transactions.

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The applicant represents that an exemption (PTE 84-142; granted 49 FR 36391, (September 28, 1984); proposed 49 FR 20080 (May 11, 1984)] was obtained by the Bell System Pension Plan Trust which covered Predecessor Plans and certain of the successor trusts for which AT&T serves as the named fiduciary. It is represented that PTE 84-142 did not cover the Trust nor any other RHC trusts created in connection with the court-ordered divestiture of AT&T.

One of the successor trusts which the applicant represents is covered by PTE 84-142 is TREET, a group trust which holds real property investments that were previously held by the Bell System Pension Plan Trust. The assets of TREET are allocable in indivisible form to its participating plans and trusts, including the Trust. It is represented that the Trust's proportionate share of TREET comprises approximately one percent (1%) of the assets of the Trust. The applicant has not requested nor in the Department proposing herein any relief for the Trust's proportionate share of TREET.

As a condition of this exemption, Ameritech proposes to furnish, services, facilities, equipment, and incidental goods on a comparable basis with terms provided in the ordinary course of business by Ameritech to the general public.

5. Pursuant to the terms of the Trust, Ameritech has reserved authority to direct the investments of the Plans. It is represented that Ameritech has delegated primary responsibility for the direction of the investment policy of the Trust to the Investment Policy Committee (the IPC) of the Board of Directors of Ameritech. The IPC members include five outside directors of the Board of Directors, the Vice Chairman and Chief Financial and Administrative Officer of Ameritech, the president of Ameritech's Enterprise Group, and the president of the Bell Group.

It is represented that responsibility for the actual management, administration, investment of Trust assets, and operation of the Trust has been delegated by the Board of Directors to the Asset Management Committee. The members of the Asset Management Committee are employees of Ameritech who are appointed to serve by the Board of Directors or by the IPC. The members of the Asset Management Committee currently include the Chief Investment Officer of Ameritech and the following officers of Ameritech: (1) Vice President and Treasurer, (2) Vice Chairman and Chief Financial and Administrative Officer, (3) Senior Vice President—Corporate Strategy, and (4) Senior Vice President—Government Affairs. It is represented that the individual who is the Vice President and Treasurer also serves as the Chairman of the Asset Management Committee.

The Asset Management Committee frequently has delegated investment responsibility to outside investment managers who are registered under the Investment Advisers Act of 1940 for a large portion of the assets of the Trust. With respect to such delegation of discretionary authority or control, outside investment managers function in accord with section 3(21)(A)(i) of the Act. However, it is represented that such outside managers serve solely as investment advisers, as described in section 3(21)(A)(ii) of the Act, with respect to acquisitions and dispositions of real estate. With respect to such acquisitions and dispositions of real estate and with respect to the management of specific investments or types of investments, including a portion of the real estate portfolio of the Trust, the Asset Management Committee has retained discretionary responsibility.

The Asset Management Committee discharges its duties with the assistance of the staff of Ameritech's Investment Management Department and, under certain circumstances, a number of independent consulting firms and professional advisers. It is represented that: (1) Real estate transactions involving investment of up to $50 million can be approved jointly by the Chairman of the Asset Management Committee and the Chief Investment Officer; (2) Transactions involving investment of $50 million to $100 million may be jointly approved by the Chairman of the Asset Management Committee, the Chief Investment Officer, and the Vice Chairman and Chief Financial and Administrative Officer; and (3) Transactions involving investments over $100 million require the approval of a majority of the members of the Asset Management Committee.

It is represented that, before a transaction is consummated and funded, it is reviewed by the in-house legal staff, or outside counsel as to both the substance or the suitability of the transaction under the Act. The exact nature of this review depends upon the nature of the investment. However, under appropriate circumstances it includes, but is not limited to, a review of the legal structure by which the investment is made (e.g., the nature of and the proper formation of investment vehicles such as partnerships or corporations); review of title, zoning, environmental, and other legal aspects of the underlying real estate, review of legal documents; consideration of federal and local tax implications of a transaction; consideraiton of potential prohibited transaction issues; determination that the proper plan procedures have been followed; and review of other relevant requirements under the Act (e.g., the prudence of the transaction and the maintenance of indicia of ownership within the jurisdiction of the United States courts).

The Asset Management Committee or the above-designated members of the Asset Management Committee will have the discretionary authority over any transactions which are the subject of this proposed exemption.

6. Ameritech represents that all transactions which are the subject of this proosed exemption will be on terms not less favorable to the Trust than those available between the Trust and unrelated parties. Ameritech states that it has established rigorous financial standards and procedures to ensure sound real estate investments with appropriate rates of return. Such standards include generally, and without limitation, investment objectives with respect to diversification by property type, size, and location; asset allocation; cash flow; and overall rates of return and yield. More specifically, standards and procedures have been established requiring review and consideration of, among other things, physical inspections and appraisals of the property under consideration; analysis of major existing and potential tenants and applicable real estate market conditions; and evaluations of such factors as size, location, actual and potential use, cash flow (historical and projected), financing, taxes, insurance, title requirements, and compliance with zoning, environmental, and other applicable laws.

7. In view of the size and scope of the Trust and its investments and relationships with numerous financial institutions, Ameritech believes that denial of this exemption would affect the diversity of the Trust's portfolio by inhibiting investment in many prime quality real estate projects of substantial size. Ameritech maintains that the procedure outlined above by which investments are selected would assure that the transactions would be in the interest of the Plans and protective of the participants and beneficiaries of such Plans. It is also represented that the transactions would be administratively feasible, because no ongoing supervision of the Department would be required to ensure that the terms of the proposed exemption were satisfied. Further, compliance with the terms and conditions could be verified at any time by examination of the records and documents to be maintained by Ameritech or the Asset Management Committee.

8. In summary, Ameritech represents that the subject transactions meet the criteria of section 408(a) of the Act because:

(a) The terms of the transactions would be no less favorable to the Trust than those negotiated at arm's length in similar circumstances with unrelated parties;

(b) All investments would be subject to the discretion and control of Ameritech through the Asset Management Committee (or certain designated members of the Asset Management Committee) in conjunction with the staff of AMeritech's Investment Management Department and its independent real estate consultants and advisers;

(c) All potential investments would be subject to detailed analyses and multiple layers of review in accordance with guidelines established by the IPC;

(d) All transactions covered by the general exemption, as set forth in section (a), would involve parties that are independent of Ameritech and would not involve Ameritech; the Asset Management Committee; any member of the Asset Management Committee; any Controlled Person; any officer, director, or highly-compensated employee of Ameritech or of any Controlled Person; any person who exercises discretionary authority, responsibility, or control, or who provides investment advice with respect to Trust assets; any corporation, partnership, trust, or unincorporated enterprise in which Ameritech, any Controlled person, or any officer, director, or highly compensated employee of Ameritech or of a Controlled Person owns a 5% or more interest, or in any corporation, partnership, trust, or unincorporated enterprise which owns a 5% or more interest in Ameritech or in a Controlled Person;

(e) The transactions involving the furnishing or services, facilities, and/or goods incidental thereto by places of public accommodation which is or may be considered an asset of the Trust to a party in interest would be furnished on terms comparable to those offered to the general public;

(f) The amount involved in furnishing telephone or other telecommunication services, facilities, equipment, and/or goods incidental thereto by Ameritech or any Controlled Person would not exceed .01 percent (.01%) the Trust's assets;

(g) Such services, facilities, equipment, incidental goods would occur on a comparable basis with terms provided in the ordinary course of business by Ameritech to the general public, and;

(h) Ameritech or the Assets Management Committee would maintain records and documents for six (6) years from the date of any transaction and would make such documents unconditionally available at the headquarters of AMeritech for inspection by the Department, the Plans, and their participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 523-8883. (This is not a toll-free number.)

Minyard-Big Tex Employees Profit Sharing Plan and Trust (the Plan), Located in Dallas, Texas

[Exemption Application No. D-8210]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a parcel of improved commercial real estate (the Property) to Minyard Properties, Inc. (Minyard Properties), a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is the greater of $145,000 or the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by three participating employers (collectively, the Employers). As of December 5, 1989, 2,500 employees of the Employers were participants in the Plan. As of the same date, the assets of the Plan totaled $10,440,000. The Trust Company of Texas serves as the trustees for the Plan. Trinity Advisors Corporation (Trinity), located in Dallas, Texas, serves as managing agent and real estate investment advisor to the Plan and is represented as having the final decision-making authority with respect to the proposed sale.

2. The Employers, Big-Tex Wholesale Grocery Inc. (Big-Tex), Minyard Food Stores, Inc. (Minyard Food), and Minyard Properties, are Texas corporations. Big-Tex operates a wholesale grocery business. Minyard Food is engaged in the operation of retail grocery stores. Minyard Properties, a wholly owned subsidiary of Minyard Food, invests in and manages real estate. Both Minyard Food and Minyard Properties have their principal offices in Dallas, Texas.

3. On March 5, 1974, the Plan acquired the land underlying the Property (the Land) from James F. Widener and Edwin G. Duncan, unrelated sellers, for the price of $30,000. Immediately thereafter, the Plan constructed a building (the Building) on the Land at a cost of approximately $55,511. It is represented that after completion of the Building, the Plan expended no funds for further improvement or development of the Property and that the total expense to the Plan for the Land and the Building was $85,511. In 1974, when the Plan's assets totaled $1,089,591, the combined cost of the Land and the Building constituted 7.9% of the assets of the Plan.

4. The Property is described as a commercial rental property located at 2316 West Shady Grove Road, in Irving, Texas. The Building consists of a 2,171 square foot sit down fast food restaurant situated on approximately 11,364 square feet of Land.

Since March 8, 1974, the Property has been the subject of a triple net lease (the Lease) between the Plan, the Irving Management Company Inc., and its predecessors, Pizza Inn, Inc. #1, and Pizza Inn, Inc. #2 (collectively, the Tenants). It is represented that the original guarantor of the Lease, F. J. Spillman, the Tenants, and all other parties associated with the Tenants are unrelated third parties with respect to the Plan and the Employers. Under the provisions of the Lease, the Plan has expended no funds for licenses, services, utilities, insurance, taxes, or maintenance.

The terms of the Lease provide for rental of $908 per month plus 6% of gross sales over $200,000 for twenty years with two options to renew for five (5) years each. As of October 25, 1989, there were five (5) years and four (4) months remaining on the original term of the Lease. It is represented that since 1974, the Plan has received fixed rentals amounting to $168,857 in addition to an average annual percentage rental in each of the last seven (7) years of $11,863. However, it is represented that early in 1989, the Tenants went into default on the rent, did not provide proof of insurance, and did not pay the taxes on the Property, as required under the provisions of the Lease. On June 10, 1989, Trinity, acting on behalf of the Plan, brought suit against the Tenants for acceleration of the Lease, full payment of all rent due to the expiration date of the Lease, payment of all other delinquent items, and for attorney's fees.

5. This exemption is requested to permit the Plan to sell the Property to Minyard Properties for the greater of $145,000 or the appraised fair market value of the Property on the date of the sale. Trinity represents that the $145,000 offer from Minyard Properties is a highly advantageous one for the Plan at a sales price that the Plan could not obtain otherwise. It is represented that the proposed transaction is feasible in that it involves a one time sale of the Property for cash. It will be in the interest of the Plan to sell the Property without incurring the expense of searching for a buyer and without paying brokerage commissions, fees, taxes, or other transfer costs. The applicant argues that the exemption would enable the Plan to dispose of the Property which is currently the subject matter of a lawsuit and which the Plan might not otherwise be able to sell to a third party. Once the Property is sold, it is represented that the Plan will be able to invest the proceeds in more easily managed and more profitable assets.

6. An appraisal was prepared by Linda McKee Blanchard (Ms. Blanchard), M.A.I. and president of McKee-Blanchard & Associates, Inc. (McKee-Blanchard), in Dallas, Texas, on October 26, 1989, which updated a prior appraisal dated May 24, 1989, prepared by Samuel D. Schulte, an associate of McKee-Blanchard. The value of the Property was determined in both instances to be $145,000. The value determinations in these two appraisals were based either upon an analysis of the "leased fee value" or the "market value of the fee simple estate subject to the existing leases."

Subsequently, Ms. Blanchard, by letters dated January 10, and January 18, 1990, supplemented the October 26, 1989 appraisal and adjusted the value of the Property, based on information made available to her after October 26, 1989. The information included the following:

(a) The Property owned by the Plan and the adjacent strip shopping center owned by Minyard Properties were considered as one tract by the City of Irving (the City) in determining whether parking ordinances, site easement, and setback requirements were met, pursuant to City codes, and in issuing the original certificate of occupancy (the Certificate of Occupancy) on the Property.[8] Any change in the tenants would require a new Certificate of Occupancy, which would mean that the Property could not meet the City requirements for its current use as a sit down fast food restaurant;

(b) Minyard Properties has considered buying the Property, and if purchased, tearing the Building down in order to obtain more parking space and to permit more expansion capability for the strip shopping center. Such additional parking would also be a requirement of City codes for any expansion of the adjacent strip shopping center by Minyard Properties;

(c) The Tenants filed for bankruptcy, as of December 5, 1989, but have been ordered by the bankruptcy court to pay all back rent, and have indicated a desire to continue the Lease for the approximately five years remaining in the original term. In this regard, as long as the Tenants continue to occupy the Property, no new Certificate of Occupancy will be required;

(d) A parking easement granted by Minyard Properties to new lessees, other than the current Tenants, in order to meet the City's parking code requirements would not be acceptable to Minyard Properties, the owner of the adjacent land, because Minyard Properties needs all excess parking space in the lot for use by customers of its strip shopping center; and

(e) Land for off-site parking is not available within 300 feet of the Property.

In Ms. Blanchard's opinion, this information had a direct impact on her estimate of the value of the Property and on the assumptions regarding the allowable use of the Property. Considering the information above, Ms. Blanchard represents that the highest and best use of the Property to a third party would be for a drive through facility or an office. Under these circumstances, Ms. Blanchard represents that the value of the Property would be $68,000 for a fee simple unencumbered by the Lease, or $27,000 for a leased fee.

In addition to revaluing the Property, Ms. Blanchard in her supplementary letters represents that the Property has no special or unique value to Minyard Properties, the proposed purchaser. In Ms. Blanchard's opinion, even though Minyard Properties owns the parcels of land bordering the Property, it would not pay a premium price for the Property. In support of this conclusion, Ms. Blanchard submitted calculations in her January 18, 1990 letter which indicate that the greatest return to Minyard Properties would result from its purchasing the Property, and immediately demolishing the Building. Such demolition would permit Minyard Properties to expand the parking lot, enlarge the existing strip shopping center, and clean up the visibility of the surrounding area.

However, because the Property is subject to the provisions of the Lease, demolition of the Building would have to be delayed at least five (5) years until the end of the initial term of the Lease or until the end of the two renewal options. Trinity represents that the Tenants are not now in default on the Lease, and Trinity has no reason to believe the Tenants will default in the future. If the Tenants continue to pay rent and do not default under the terms of the Lease, the Landlord cannot legally evict the Tenants or prevent the Tenants from exercising the two renewal options under the Lease. The lost income associated with Minyard Properties' waiting until the expiration of the original term of the Lease or any renewal options would reduce, rather than increase, the projected return expected by Minyard Properties on its investment in the Property.

In a letter dated February 28, 1990, Ms. Blanchard restated the conclusions she reached in her October 26, 1989, appraisal report and subsequent letters. According to Ms. Blanchard, the fair market value of the Property to a unrelated third party is $97,000, if the Property is subject to the current Lease, and $68,000 without the Lease in place. In addition, Ms. Blanchard represented that the Property has no unique or special value to Minyard Properties, the proposed purchaser, and that Minyard Properties would not pay a premium price for the Property whether valued with or without a lease.

Ms. Blanchard represents that she is a member of the American Institute of Real Estate Appraisers (AIRE), is currently certified under the AIRE voluntary continuing education program, and has wide experience in appraising many types of real estate. Mr. Schulte's qualifications include employment since 1987 as a staff appraiser. He has also successfully completed three courses offered by AIRE. Both Ms. Blanchard and Mr. Schulte represent that they are independent in that neither has a present or prospective interest in the Property nor has a personal interest or bias with respect to the parties involved.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Property will be a one time transaction for cash;

(b) The Plan will incur no commissions, fees, taxes, or other transfer costs in connection with the proposed sale;

(c) Minyard Properties will relieve that Plan of the Property which is the subject of a law suit and which the Plan

[8] Trinity represents that legal ownership of the Property is separately recorded by deed in the name of the Plan, and such deed is properly recorded in volume 74060, page 080 of the deed records of Dallas County, Texas. The Department, herein, is not proposing relief for any violation of the prohibited transaction provisions of the Act which may have arisen as a result of the use by Minyard Properties of the Property for parking, or any other purpose, during the Plan's ownership of the Property. In addition, the Department notes that ERISA's general standards of fiduciary conduct also apply with respect to the plan fiduciary's decisions regarding the Plan's holding of the Property, as well as its ultimate disposition.

might otherwise not be able to dispose of on the open market;

(d) The sales price is the greater of $145,000 or the fair market value of the Property as determined by appraisals prepared by qualified independent appraisers; and

(e) The Plan will use the proceeds from the sale to invest in more profitble assets.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.[4]

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883 (This is not a toll-free number.)

Richardson Electronics, Ltd. and Subsidiaries Employee Stock Ownership Plan and Trust Agreement (the Plan) Located in LaFox, Illinois

[Application No. D-8223]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the exchange of stock of Richardson Electronics, Ltd. (Richardson) and cash between the individual accounts of participants in the Plan, provided the amount of cash received by an account for such exchange is the fair market value of the stock transferred on the date of the exchange.

Summary of Facts and Representations

1. The Plan is a stock bonus plan and an employee stock ownership plan. The Plan covers a total of approximately 430 participants. The Plan currently has assets of approximately $1,950,000, of which $1,911,000 consists of Richardson stock.

2. The Plan permits its participants to borrow from the vested portion of their accounts. Because the Plan is a stock bonus plan, the Plan's assets are held primarily in the form of stock of Richardson. Therefore, when a participant wants to borrow from the Plan, a portion of the participant's account in the Plan and of the Plan's assets equal to the principal amount of the loan must be converted from stock to cash. Richardson's stock is traded over the counter on NASDAQ. To defray the costs incurred in funding these loans, the Plan charges the account of a participant who borrows funds with the costs so incurred. The single largest such cost is brokerage commissions.

3. When a participant makes a payment on his loan, his account is credited with an amount equal to that payment. The payment is invested in an interest-bearing account pending reinvestment in Richardson stock. The two initial sources of cash in the Plan are payments made by participants on the Plan loans, and the cash dividends paid by Richardson on Richardson stock held by the Plan. Richardson does not currently expect to make any cash contributions to the Plan.

4. Some participants have already borrowed from the Plan. The applicant represents that all participant loans made by the Plan have been and will be in compliance with section 408(b)(1) of the Act and the applicable regulations thereunder, 29 CFR section 2550.408b-1.[5] Because the Plan did not have sufficient cash when these participant loans were made, they were funded by the open market sale of Richardson stock. All of the amounts which have been repaid are still being held in interest-bearing accounts pending reinvestment in Richardson stock. In the future, so as to assure that the Plan assets remain invested primarily in Richardson stock, the Plan's administration committee (the Committee) plans to periodically use the cash held in the participants' accounts to purchase Richardson stock.

5. To minimize the brokerage fees which the Plan participants would otherwise have to pay, the Committee proposes transferring cash and stock between participants' accounts using bookkeeping entries whenever possible.[6] As actual sales would not occur, no commissions will be incurred. To the extent necessary, stock will still be purchased and sold in the public market to fund these loans and to convert the cash in the participants' accounts into Richardson stock. Members of the Committee will not use the program described in this notice of proposed exemption to fund their own loans from the Plan. If a member of the Committee wishes to borrow from his account, the necessary shares to fund the loan will be sold on the open market.

6. The Committee proposes to adopt the following policy regarding these loans:

(a) The Committee will fund the participants' loans on a periodic basis (e.g., weekly or monthly). The dates selected for funding the loans will be chosen primarily for administrative convenience.

(b) To the extent that participants have cash in their accounts, that cash will be exchanged for stock having an equal value which is in the accounts of those plan participants who are then borrowing funds from the Plan. The Committee will direct that stock and cash be appropriately reallocated among the accounts of the affected Plan participants. For purposes of making these allocations, the value of the Richardson stock will be equal to the last sales price as reported by NASDAQ immediately preceding the funding of the loan.

(c) The Committee proposes selecting the account(s) from which the cash will be transferred in the following order: (1) First, from the accounts with cash balances derived from loan repayments, the amount to be transferred from each such account to be in proportion and to the extent of such cash balances; and (2) thereafter, from the accounts having cash balances derived from cash dividends paid on Richardson stock. The Committee thus hopes to achieve a relative equality with respect to diversification among the accounts of all Plan participants.

(d) To the extent that there is insufficient cash in the Plan to fund a loan in a timely manner, the stock allocated to a borrower's account will be sold on the open market (and commissions will be paid to an independent third party broker). Similarly, to the extent that the Committee determines that the Plan has cash in excess of its projected needs, the Committee will convert the cash received as repayments of participant loans into Richardson stock by purchasing that stock on the open market (and will charge the accounts for the commissions incurred).

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) the transactions would be executed pursuant to a clearly defined procedure; (2) the proposed transactions will enable the Plan's participants to minimize brokerage commissions, and thus maximize the yield from the assets in their accounts; and (3) the price per share exchanged will be equal to the last sales price as reported by NASDAQ immediately preceding the funding of the loan.

FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Alexandria-Madison Employees' Profit Sharing Plan (the Plan) Located in Alexandria, Virginia

[Application No. D-8306]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of two parcels of unimproved real property (the Properties) to Stanley J. Asrael (Mr. Asrael), a party in interest with respect to the Plan, provided that the sales price is not less than the greater of either the fair market value of the Properties, as currently appraised (i.e. $650,000 and $345,000), or the fair market value of the Properties on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which, as of August 31, 1989, had approximately 80 participants and total assets of approximately $2,500,000. The trustees of the Plan (the Trustees) are Mr. Asrael, Evelyn Asrael (Ms Asrael), and Sidney Shore (Mr. Shore). Mr. Asrael is an officer, director, and the majority shareholder of the Alexandria Scrap Corporation (the Employer), the sponsor of the Plan. Ms. Asrael and Mr. Shore are also officers of the Employer.

2. The Plan was established by the Employer on August 31, 1984. The Employer is a Virginia corporation located at 2324 Mill Road in Alexandria, Virginia, engaged in the business of buying and selling scrap metal. However, on October 31, 1989, the Employer released all of its employees and terminated the conduct of its business. The Employer anticipates filing with the Internal Revenue Service for approval of the termination of the Plan. Upon approval of the termination, the Trustees will arrange for liquidation of the Plan's assets.

3. The Properties are: (i) A parcel of approximately 45 acres located at 12445 Purcell Road, Prince William County, Virginia (the Purcell Parcel); and (ii) a parcel of approximately 133 acres located at 11801 Parkgate Drive, Prince William County, Virginia (the Parkgate Parcel). The Plan acquired the Purcell Parcel in 1971 from unrelated parties for approximately $42,750 and the Parkgate Parcel in 1972 from unrelated parties for approximately $124,875. The applicant states that the Properties are undeveloped, rolling farm land, which have never been leased to, or used by, a party in interest with respect to the Plan. The applicant states further that neither Mr. Asrael nor any related party own any property which is adjacent to the Properties.

4. The Properties were appraised on September 27, 1989 by Michael E. Winiarski and Marisa M. Smith, M.A.I. of Appraisal Associates (the Appraiser), an independent, qualified real estate appraiser in Alexandria, Virginia. The Appraiser states that the Purcell Parcel and the Parkgate Parcel had a fair market value of $650,000 and $345,000, respectively, as of September 27, 1989. The appraiser's valuation of the Properties was based on recent sales of comparable properties in the immediate area. The Appraiser states that the highest and best use for the Properties would be low density single-family residential dwellings.

5. In connection with the Plan's termination, the Trustees have made a determination to sell the Properties in order to avoid a distribution-in-kind of partial interests in the Properties to the Plan's participants and beneficiaries. The Trustees have attempted to sell the Properties on the open market, but have obtained only one offer for the Purcell Parcel and no offers for the Parkgate Parcel. The Plan received an offer of $500,000 for the Purcell Parcel, payable with $100,000 in cash and the balance with a two-year note at 12% interest per annum.

Mr. Asrael is willing to purchase both of the Properties for cash at their fair market value, as established by the Appraiser. Thus, Mr. Asrael would pay $650,000 for the Purcell Parcel, based on the Appraiser's valuation, which is $150,000 more that the Plan's best offer to date from an unrelated party (i.e. $500,000).

The applicant states that the Appraiser will update the appraisal, prior to a sale of the Properties to Mr. Asrael, to ensure that the Plan receives the current fair market value for the Properties. In addition, the applicant states that the Plan will not pay any commissions or other expenses in connection with the proposed transaction.

6. The Trustees represent that a sale of the Properties to Mr. Asrael would be in the best interest of the Plan and its participants and beneficiaries and that the proposed transaction will facilitate a timely liquidation of the Plan's assets. The Trustees state further that the proposed transaction will allow the Plan to avoid paying brokerage commissions and other expenses which would otherwise decrease the Plan's net return on the Properties.

7. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act and section 4957(c)(2) of the Code because: (a) The sale of the Properties will be a one-time transaction for cash; (b) the Plan will receive the greater of either the fair market value of the Properties, as currently appraised (i.e. $650,000 and $345,000), or the fair market value of the Properties on the date of sale; (c) the Plan will not be required to pay any commissions or other expenses in connection with the sale; and (d) the Trustees have determined that the proposed sale would be in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

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[4] The applicant represents that if any gain on the sale of the Property at the greater of $145,000 or the fair market value on the day of the sale is deemed to be an employer contribution, such would not violate section 415 of the Code. It is also represented that any such gain on the sale will be allocated in proportion to the compensation of all participants so as not to violate section 401(a)(4) of the Code.

[5] The Department expresses no opinion as to whether the participant loans have been and will be in compliance with Act section 408(b)(1) and the regulations thereunder.

[6] In this regard, the Department notes that the Act's general standards of fiduciary conduct would apply to the proposed arrangement, including the decision to make a participant loan as well as the decision to transfer stock and cash between accounts to fund such loan.

prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of June, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-14621 Filed 6-22-90; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-6340, D-6341 and D-6342]

Proposed Amendments to Prohibited Transaction Exemptions (PTEs) 89-88, 89-89 and 89-90 Involving Goldman, Sachs & Co. (Goldman Sachs), Salomon Brothers Inc. (Salomon) and First Boston Corporation (First Boston)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendments to PTEs 88-88, 89-89 and 89-90.

SUMMARY: This document contains a notice of pendency before the Department of Labor of proposed amendments to PTEs 88-88, 89-89 and 89-90. These individual exemptions permit certain transactions relating to the origination and operation of asset pool investment trusts and to the acquisition and holding by employee benefit plans of asset backed pass-through certificates representing interests in those investment trusts. The proposed amendments, if adopted, would affect, among others, participants and beneficiaries of plans investing in such certificates, the sponsors, servicers, insurers of the trusts and underwriters of the certificates.

DATES: Written comments and requests for a hearing should be received by the Department on or before August 6, 1990.

EFFECTIVE DATES: If adopted, the proposed amendments would be effective as of January 1, 1987, for the Goldman Sachs exemption and November 1, 1985, for the Salomon and First Boston exemptions.

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5671, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Asset Backed Securities. The applications pertaining to the amendments proposed herein (Applications D-6340, D-6341 and D-6342) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8194 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to PTEs 88-88, 89-89 and 89-90 (54 FR 42582, 54 FR 42589 and 54 FR 42597, respectively, October 17, 1988). These exemptions provide relief from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of certain provisions of section 4975(c)(1) of the Code.

The amendments proposed herein were requested by letters dated January 5, 1990, on behalf of First Boston, January 8, 1990, on behalf of Salomon, and January 12, 1990, on behalf of Goldman Sachs.

The Department is proposing the amendments to the individual exemptions pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The individual exemptions cited above involve the origination and operation of certain asset pool investment trusts and the acquisition and holding by employee benefit plans of asset backed pass-through certificates representing interests in those investment trusts. In the instant cases, Goldman Sachs, Salomon or First Boston acts as underwriter or placement agent in regard to the sale of the certificates. Additionally, affiliates of these firms may at times originate or service receivables included in a trust or may sponsor a trust. In the absence of an exemption, various transactions relating to such activities might be prohibited under sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Code. The transactions covered by PTEs 88-88, 89-89 and 89-90 are specified in section I of the exemptions.

Section II sets forth the general conditions which must be met in order for an investing plan to avail itself of the relief provided by one of the exemptions. Subsection II.A.(3) requires that any certificate acquired by a plan in reliance on the exemption has received a rating at the time of acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation, Moody's Investors Service, Inc. or Duff & Phelps.

Representatives of Goldman Sachs, Salomon and First Boston have requested that PTEs 88-88, 89-89 and 89-90 be amended to add Fitch Investors Service, Inc. (Fitch) to the rating agencies described in subsection II.A.(3) of the exemptions.[2]

Fitch has submitted letters to the Department dated October 12, October 26 and November 1, 1989, in which it discusses its rating programs in general and its experience in rating asset backed securities in particular. Fitch stated that since April 1989 the firm has increased its staff from 43 to over 100 employees and that a primary focus of Fitch has been in the area of asset backed securities. Fitch has employed persons with extensive experience in regard to asset backed securities and has hired experienced bank and insurance company specialists who have the ability to analyze the credit enhancements associated with asset backed securities.

Fitch has rated more than $30 billion of collateralized mortgage obligations and mortgage backed pass-through certificates and has rated over $8 billion of other kinds of asset backed securities. The criteria examined by Fitch in rating asset backed securities include: the legal structure of the financing arrangement; the ability of the cash flow of a pool to meet the contractual payment requirements of the asset backed securities; the financial condition of the originators and servicer; and the collection procedures of the servicer.

Based on the information provided by Fitch, the requests submitted on behalf of Goldman Sachs, Salomon and First Boston, and the Department's previous consideration of Fitch in conjunction with several other similar exemptions, the Department has determined to propose amending the above-referenced exemptions to add Fitch as an acceptable rating agency for the rating of certificates described in the exemptions.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed amendments, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendments to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendments. Comments received will be available for public inspection with the referenced applications at the above address.

Proposed Amendments

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1, the Department proposes to amend PTEs 88-88, 89-89 and 89-90 as set forth below.

1. Subsection II.A.(3) of the exemptions is amended to read:

"The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

2. The final paragraph of section III.B. of the exemptions is amended to read:

"Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption."

Signed at Washington, DC, this 19th day of June, 1990.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-14622 Filed 6-22-90; 8:45 am]

BILLING CODE 4510-29-M

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] Since the granting of these three exemptions on October 17, 1988, the Department has granted several other similar individual exemptions that include Fitch as an acceptable rating agency. These exemptions include Bear Stearns & Co., Inc. (PTE 90-30, 55 FR 21461) and Merrill Lynch, Pierce, Fenner & Smith, Inc. (PTE 90-32, 55 FR 21469), both published on May 24, 1990.

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to twenty (20) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 55, No. 44, pages 7956, 7957, and 7958 of the Federal Register of March 6, 1990, a total of $1,051,524 will be awarded to the following schools:

Name of school	State	Amount
1. City University of New York (CUNY).	NY	$71,955
2. Seton Hall University	NJ	63,842
3. Villanova University	PA	71,570
4. University of Pittsburgh	PA	35,000
5. DC Law Students in Court Program.	DC	56,250
6. Tulane University	LA	73,078
7. Loyola University of New Orleans.	LA	27,000
8. Nova University	FL	36,000
9. University of Chicago	IL	74,956
10. Northwestern University	IL	61,170
11. Southern Illinois University.	IL	84,000
12. University of Indiana/Indianapolis.	IN	66,546
13. Notre Dame Law School	IN	27,000
14. St. Mary's University	TX	60,000
15. University of Denver	CO	75,000
16. St. Louis University	MO	19,500
17. University of Iowa	IA	53,313
18. Gonzaga University	WA	33,750
19. University of Nebraska/Lincoln.	NE	28,836
20. McGeorge School of Law (Univ. of the Pacific).	CA	49,890
Total		1,051,524

These one-year grants are awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on July 25, 1990, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Associate Director, Office of Field Services, (202) 883-1837.

Dated Issued: June 20, 1990.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 90-14681 Filed 6-22-90; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL COMMISSION ON CHILDREN

Notice of Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 2987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.
2. Twelve members appointed by the Speaker of the House of Representatives.
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Roundtable Discussion of the National Commission on Children to be held in Washington, DC:

Time: 9:30 a.m.-12:30 p.m., Monday, July 2, 1990.

Place: Hart Senate Office Building, room 216, 2nd & C Street, NE., Washington, DC.

Status: 9:30 a.m.-12:30 p.m., open to the public.

Agenda: Roundtable Discussion on "How Children Develop Values".

Contact: Jeannine Atalay, (202) 254-3600.

Dated: June 18, 1990.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90-14640 Filed 6-22-90; 8:45 am]

BILLING CODE 6820-87-M

NUCLEAR REGULATORY COMMISSION

Installation and Operation of Hardened Vent From Suppression Pool Airspace of Boiling Water Reactors (BWRs) With Mark I Containments

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Generic Environmental Assessment and finding of no significant impact.

SUMMARY: The installation of the hard pipe vent in Mark I plants will reduce the environmental consequences of a severe accident involving loss of long-term decay heat removal capability and provide a significant improvement in safety

Installation or use of the hard pipe vent will not have any significant environmental impact.

The incremental occupational radiation dose for the proposed operation of the hard pipe vent path is insignificant (unmeasurable) because the vent path would be operated from the control room. The licensees should be able to keep the small radiation doses associated with the installation of the hard pipe vent path within the limits of 10 CFR part 20, and as low as is reasonably achievable.

Furthermore, the non-radiological impacts of the hard pipe vent path will be insignificant. None of the alternatives is practical or reasonable, and three of the alternatives would produce greater environmental impact than the proposed action. Addition of the external filter would have the same environmental impact as the proposed action, but at an unreasonable cost for minimal increase in benefit.

Alternative Use of Resources

This action does not involve the use of significant resources beyond the existing resources used for piping and replacement parts at all nuclear plants.

Agencies and Persons Consulted

The NRC Staff is initiating this action based on research performed by the Office of Nuclear Regulatory Research. No other agencies or persons were consulted.

DATES: The comment period expires August 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Send comments to the Regulatory Publication Branch, Division of Freedom of Information and Publication Services, Office of Administrator, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments may be inspected and copied for a fee at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mohan C. Thadani, Division of Reactor Projects I/II, Telephone (301) 492-1419, or John A. Kudrick, Division of Systems Technology, Telephone (301) 492-0871, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

In SECY-87-297 (Reference 1), the NRC staff presented to the Commission its plan to evaluate generic severe accident vulnerabilities of containments. The staff's plan included a program for Containment Performance Improvement (CPI). This program was initiated to determine whether there may be generic severe accident challenges to light water reactor (LWR) containments that should be assessed to ascertain whether additional regulatory guidance or requirements concerning containment features are warranted. The staff concluded that such assessments are needed because of the relatively large uncertainty in the ability of some LWR containments (that is, Mark I) to successfully survive some possible severe accident challenges (as indicated by draft NUREG-1150 (Reference 2)). The CPI program is intended to resolve hardware and procedural issues related to generic containment challenges. The staff presented its findings related to the Mark I CPI program to the Commission in SECY-89-017 (Reference 3), dated January 23, 989. In one of the findings, the staff concluded that properly implemented venting can significantly mitigate potential accident risks.

The capability to vent has long been recognized as important in reducing risk at boiling water reactor (BWR) Mark I facilities for accidents involving loss of ability to remove long-term decay heat (TW). Controlled venting at pressures close to the containment's pressure limits can prevent the long-term overpressurization and failure of containment, the failure of emergency core cooling system (ECCS) pumps from inadequate net-positive suction head, and the failure of the automatic depressurization system (ADS) caused by the failure of ADS valves to operate. Venting of the containment is permitted in the BWR emergency operating procedures. A vent path from wetwells of the containments exists for some Mark I facilities. However, this vent path includes a ductwork system that has a low design pressure of only a few psi. Venting under high-pressure conditions (as would be required for accidents involving high-pressure challenges, either before or after core melt) could fail this ductwork, releasing the containment atmosphere into the reactor building (with eventual release to the environment), and potentially contaminating or damaging equipment needed for accident recovery.

In addition, with the existing hardware and procedures at some plants, it may not be possible to open or to close the vent valves during certain accident sequences. The inability to operate the vent path valves could result in uncontrolled release of containment atmosphere to the reactor building through the failed sheetmetal ductwork. Therefore, venting through a sheet metal ductwork path, as implemented at some Mark I plants, is likely to greatly hamper or complicate post-accident recovery activities, and is viewed by the NRC staff as inadequate for minimizing the risk to the public health and safety. For high-pressure venting to be effective, the entire vent system must be strengthened to withstand the expected venting pressure. On July 11, 1989 (Reference 4), the Commission endorsed the staff's view that the Mark I design should include a hardened vent from the airspace of the containment wetwell, and directed the staff to require a hardened vent capability for all Mark I plants for which the requisite modifications could be shown to be cost-effective.

Description of the Proposed Action: Installation of a Hardened Vent

The NRC staff's safety evaluation report (Reference 5) approved Revision 4 of the Emergency Procedure Guidelines (EPGs) that included the staff's approval for venting BWR Mark I containments. This approval indicated that venting with the existing systems could reduce the likelihood of core melt and, in extremely rare cases, could help avoid uncontrolled releases of radioactive materials during severe core damage accidents. Since the issuance of Revision 4 of the EPGs, additional insights indicate that a venting strategy that has a potential to breach the vent path inside the reactor building could have significant detrimental effects on (1) radiation exposure impact on personnel, (2) potential plant recovery actions, and (3) public risk. A hard pipe vent capable of withstanding the anticipated severe accident pressure loadings would eliminate these disadvantages of using a vent path containing sheetmetal ductwork.

The use of the containment vent to prevent a core melt accident, by reducing containment pressure, would result in the release of very low levels of radioactivity associated with the reactor coolant. The reactor coolant steam would be released to the suppression pool that would retain most of the fission products. In the unlikely event of a core melt accident, venting of the wetwell airspace would provide a scrubbed venting path to significantly reduce the release of particulate and volatile fission products (radioactive materials) to the environment. Only the noble gases would escape to the environment without any attenuation. Venting would reduce the likelihood of a late overpressure failure of the containment and would reduce offsite consequences for severe accidents provided that the containment shell does not fail.

If the shell fails because of a core debris attack (shell melt through by core melt released to the containment floor), venting will provide little benefit because fission products would be released directly into the reactor building. However, if shell failure was delayed for a period of a few hours (for example, by the addition of containment spray water over the molten core debris released to the containment floor), significant scrubbing of radioactive material would still take place. A recent analysis has been performed on the effects of water on core debris in the drywell (Draft NUREG/CR-5423, "The Probability of Liner Failure in a Mark I Containment" currently released for peer review). Preliminary results indicate that the presence of substantial quantities of water in the containment floor area on top of any molten core debris that would result from injection of water from available sources, will very likely prevent containment shell melt through and failure as a result of a core debris attack. The overlying pool of water will also provide scrubbing of fission products released in the aerosols generated by core melt and concrete interactions.

As proposed in SECY-87-297 (Reference 1), the installation of a hard pipe to bypass the ductwork from the wetwell airspace to the plant stack could include (1) additional isolation valves to isolate the ductwork path from the hard pipe vent path, and (2) radiation monitor(s) to monitor any offsite releases of radioactive materials, in case of venting. The proposed action would prevent failure of the vent path inside the reactor building and, in the unlikely event of core melt, would result in release only of residual fission products (not scrubbed by the suppression pool) through the stack. Because the vent path is not expected to fail inside the reactor building, personnel would be able to repair equipment and perform other plant-recovery activities, provided the levels of radiation in the containment are not excessive. Furthermore, because the environmental conditions in the reactor building would not be harsh, important equipment would not be expected to degrade or fail.

In the proposed action, all potential releases through the hard pipe vent will be scrubbed by the suppression pool water that will reduce the radioactive material released to the environment, but will not decrease the release of the noble gases. The effectiveness of the scrubbing is affected by the temperature of the suppression pool water. Depending upon the temperature, the decontamination factors could vary from three orders of magnitude to one order of magnitude, but over the course of the accident, the effective decontamination factor would be about two orders of magnitude (100). However, as long as water is present, all releases to the vent will first pass through the water that will retain substantial fractions of radioactive material. Additionally, the use of the hard pipe vent could prevent or delay core degradation for those accidents where containment failure results in core degradation, as previously explained.

The estimated reductions in the values of the total core damage frequency per reactor-year are shown in Table 1 for each Mark I plant. The risk reduction in man-rems per reactor year is also shown in Table 1 (the bases and assumptions for the staff analyses are presented in Reference 6). The hard vent path would also provide additional risk reduction for those accidents where core melt has occurred, because the suppression pool would scrub the radioactive material released by molten core.

The NRC staff estimated the costs for installation of the hard pipe vent path to be about $750,000 (Reference 7). Costs were also provided by the licensees for the Dresden, FitzPatrick, Millstone, and Oyster Creek facilities.

The costs are minimal when compared to the operating expenses of the plants and are not excessive when compared to the significant enhancement of safety achieved by the proposed action. The NRC and the licensees' costs are summarized in Table 1.

Environmental Impacts of Installation and Operation of a Hard Vent

Radiological Impacts

The radiological impacts of installation of a hard pipe vent system should not be significantly different from other operational modifications that occur at facilities such as reactors

with Mark I containments. For example, a conceptual analysis of radiation exposures for installation of a filtered vent at the Limerick Generating Station indicates that annual radiation exposures (assuming 20 years of remaining plant life) would not exceed 2 man-rems per reactor-year. The small radiation dose associated with this proposed plant modification will not affect the licensee's ability to maintain individual occupational doses within the limits of 10 CFR part 20, and is expected to meet the criteria for the requirements of as low as is reasonably achievable (ALARA).

Each plant contains radioactive waste treatment systems that are designed to collect and process the gaseous, liquid, and solid waste that might contain radioactive material. The proposed installation of a hard pipe vent will not affect any waste treatment systems or their effluents under normal plant conditions or under design basis accident conditions.

Installation of the hard pipe vent path should not significantly increase the radiation dose to operating personnel or the public. Any increased doses associated with the testing of the additional isolation valves should be minimal and, in most cases, insignificant.

Thus, we have concluded that the proposed installation of the hard pipe vent will not result in any significant increase in radiological impacts to workers or the public.

Because the operation of the wetwell vent system is postulated for extremely rare severe accidents, the impacts of the use of the wetwell vent system are discussed in terms of environmental risks. As stated previously, the venting from the wetwell airspace is intended to (1) reduce the risk of over-pressure failure of the containment and subsequent damage to the reactor core, and (2) provide a scrubbed pathway (to decontaminate effluents) for containment pressure relief for rare situations involving core damage. Table 1 shows a listing of reduction of potential risks for all Mark I facilities caused by venting prior to core damage. The reductions in potential risk are calculated to range from 15.3 to 261.9 man-rems per reactor year. For rare situations where core damage could occur, venting could prevent containment failure and unmitigated release of fission products to the environment. Venting through the suppression pool will ensure that most of the radioactive materials, excluding noble gases, would be trapped in the suppression pool and would not be released to the environment. Therefore, the use of the vent system would reduce the radiological risks posed by severe accidents involving core damage. These additional benefits of venting have not been included in Table 1 results.

Based on the preceding discussion, we conclude that there will be no incremental environmental risks posed by operation of the wetwell vent system.

Non-Radiological Impacts

The non-radiological impacts of installation of hard pipe vent system are not expected to be different from other operational modifications that occur at facilities such as reactors with Mark I containments during routine plant outages.

No non-radiological effluents are expected to be affected by the installation or use of the hard pipe vent. The proposed plant modification and use of hard pipe vent will not require any change to the national pollution discharge elimination system (NPDES) permit.

Therefore, the staff concludes that the non-radiological environmental impacts of installing a hard pipe vent will be insignificant.

Alternatives considered

To prevent or delay containment failure caused by overpressurization, the NRC staff considered the following alternatives to the proposed action:

1. The containment pressure could be relieved using the existing ductwork vent path (the "No Action" option).
2. A hard pipe path to an external filter could be installed.
3. An alternate means of removing the decay heat either from the reactor or from the containment could be installed.
4. Venting of containment could be prohibited.

Each of these alternatives to the proposed action is discussed in the following paragraphs.

Existing Ductwork Vent Path (No Action Option)

This alternative consists of no action and continued venting of the containment through the existing ductwork. However, the existing ductworks are designed to withstand a pressure of a few paid (Reference 8). The venting pressures expected during some accidents will be substantially higher than the ductwork design pressure. Consequently, venting could result in failure of the ductwork and a direct release of reactor coolant steam into the reactor building. The discharge of this high-temperature steam and other gases over an extended period of time could pose a threat to the availability or performance of safety-related equipment. In the event of core melt, the threat would be even greater, because substantially large amounts of radioactive materials will be released with the steam to the reactor building. Electrical cables, motor operators on valves, and relays could fail under these environmental conditions.

Adverse environmental conditions would also complicate personnel entry into the reactor building. Calculations from a study that examined venting during an anticipated transient without scram (ATWS) sequence indicated that a severe environment (high temperature and radiation) would be present in the reactor building during venting (Reference 9). The discharge of hydrogen under core melt conditions could result in hydrogen burns or detonations inside the reactor building. This environment could hamper recovery efforts by preventing personnel access to the reactor building and preventing repair of systems needed to terminate the accident. For these reasons, the existing Mark I designs do not ensure an adequate reactor building environment after a severe accident to permit personnel entry to regain control of the facility and do not maximize the potential reduction in environmental risk. Thus, the staff has concluded that the no-action alternative is unacceptable.

Installation of Hard Pipe Vent to External Filter System

This alternative is the same as the proposed action with addition of an external filter. However, the external filter would not significantly increase removal of radioactive material because the suppression pool would remove nearly all material that could be removed by filtration. Consequently, the additional reduction in risk caused by an external filter system is expected to be small. Moreover, an external filter would not yield an incremental reduction in the core damage frequency beyond the reduction obtained with the hard pipe vent alone. In both cases, there would be no retention of noble gases. External filters have been estimated to cost $20 million (1982 dollars) (Reference 10) to $65 million (1987 dollars) (Reference 11) for the Filtra design. Because the incremental benefit is very small compared to the proposed action and the incremental cost is very high, this alternative is not considered practical or reasonable.

Installation of Other Means of Decay Heat Removal

In lieu of venting containment, an additional decay heat removal system could be provided to remove the heat from either the reactor or the containment, or a system that has not been previously accounted for could be used on an ad hoc basis, such as the reactor water cleanup system. Installation of a new system was considered in NUREG–1289 (Reference 12), which is associated with Unresolved Safety Issue A–45, "Shutdown Decay Heat Removal Requirements." The installation of a new decay heat removal system was not found to be cost beneficial in NUREG–1289. The use of another, previously unaccounted-for system was estimated to require unusual or unplanned system piping line-ups, which if performed incorrectly or inappropriately, could reduce the likelihood of accident recovery with normal systems or create a new and unanalyzed accident sequence (Reference 13). Therefore, this alternative is not considered practical or reasonable.

No Venting of Containment

This alternative would remove the guidance in Revision 4 of the Emergency Procedure Guidelines (EPGs) that instructs the operator to vent the containment under certain conditions. In the event of the loss of long-term decay heat removal capability without drywell failure, the containment drywell will probably fail because of overpressurization. The drywell failure could have a significant effect on the ability to return the plant to a safe and controlled condition and would result in an increase in risk to plant personnel and to the public (Reference 14). Therefore, this alternative is not considered practical or reasonable.

Finding of No Significant Impact

The staff reviewed the plant-specific features in conjunction with the proposed hard pipe vent path modification relative to the requirements set forth in 10 CFR part 51. From the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed modification will not have significant adverse effects on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed plant modifications.

TABLE 1

Plant name	TW [1] frequency (per reactor-year) [2]	Potential risk reduction (man-rems/ry [1])	Installation costs (million) [3]
Browns Ferry 1	2.3 E-05	52.7	0.75
Browns Ferry 2	2.3 E-05	52.7	.75
Browns Ferry 3	2.3 E-05	52.7	.75
Brunswick 1	4.5 E-05	44.0	.75
Brunswick 2	4.5 E-05	44.0	.75
Cooper	4.5 E-05	46.6	.75
Dresden 2	1.4 E-05	50.2	1.00
Dresden 3	1.4 E-05	50.2	1.00
Duane Arnold	4.5 E-05	55.0	.75
Fermi 2	4.5 E-05	102.4	.75
Fitzpatrick	4.5 E-05	65.5	.88
Hatch 1	4.5 E-05	39.2	.75
Hatch 2	4.5 E-05	39.2	.75
Hope Creek	6.3 E-05	261.9	.75
Millstone 1	1.4 E-05	35.1	1.10
Monticello	4.5 E-05	33.9	.75
Nine Mile Point 1	1.4 E-05	15.3	.75
Oyster Creek	1.4 E-05	55.4	1.50
Peach Bottom 2	3.6 E-05	15.5	.75
Peach Bottom 3	3.6 E-05	15.5	.75
Pilgrim	2.3 E-05	31.2	.75
Quad Cities 1	4.5 E-05	54.1	.75
Quad Cities 2	4.5 E-05	54.1	.75
Vermont Yankee	2.3 E-05	26.9	.75

[1] Reactor year.
[2] Reference 15.
[3] Accident sequences involving the loss of long-term decay heat removal capability.

References

1. SECY–87–297, U.S. NRC, "Mark I Containment Performance Program Plan," V. Stello to NRC Commissioners, December 8 1987.
2. NUREG–1150, U.S. NRC, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," June 1988.
3. SECY–89–017, U.S. NRC, "Mark I Containment Performance Improvement Program," V. Stello to NRC Commissioners, January 23, 1989.
4. Memorandum from S.J. Chilk to V. Stello, "SECY–89–017-Mark I Containment Performance Improvement Program," July 11, 1989.
5. Letter from A.C. Thadani to D. Cross, Chairman, BWROG, "Safety Evaluation of BWR Owner's Group-Emergency Procedure Guidelines, Revision 4, NEDO–31331, March 1987," September 12, 1988.
6. Memorandum from M. Cunningham to W.D. Beckner, "Reduction in Risk from the Addition of Hardened Vents in BWR Mark I Reactors," October 18, 1988.
7. Memorandum J.G. Partlow to T.E. Murley, "Licensees' Responses to Generic Letter 89–16 Related to Installation of Hardened Vent," November 3, 1989.
8. NUREG/CR–5235, U.S. NRC, "An Overview of BWR Mark I Containment Venting Risk Implications, November 1988.
9. Harring, R.M., "Containment Venting as a Mitigation Technique for BWR Mark I Plant ATWS," 1988 Water Reactor Safety Meeting, Gaithersburg Maryland, October 1988.
10. K. Johansson, L. Nilsson, and A. Persson, "Design Considerations for Implementing a Vent-Filter System at the BARSEBACK Nuclear Power Plant," International Meeting on the Thermal Nuclear Safety, Chicago, August 29-September 2, 1982.
11. Long Island Lighting Company Presentation, "Shoreham Supplemental Containment System," April 1987.
12. NUREG–1289, U.S. NRC, "Regulatory and Backfit Analysis: Unresolved Safety Issue A–45, Shutdown Decay Heat Removal Requirements," November 1988.
13. Letter from J. Dallman to J. Ridgely, "A Preliminary Assessment of BWR Mark II Containment Challenges, Failure Modes, and Potential Improvements in Performance," May 10, 1988.
14. NUREG/CR–5235, Addendum 1, "An Overview of BWR Mark I Containment Venting Risk Implications, an Evaluation of Potential Mark I Containment Improvements," June 1988.
15. Memorandum from Warren Minners to Ashok C. Thadani, January 8, 1990.

Dated at Rockville, Maryland this 15th day of June 1990.

For the U.S. Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Note: All referenced documents are available for public inspection and copying for a fee in the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

[FR Doc. 90–14819 Filed 6–22–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

[Docket 46780]

Discovery Airways, Inc., and Mr. Philip Ho; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on Tuesday, June 26, 1990, at 10:00 a.m. (local time), in Room 8332, Nassif Building, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, June 20, 1990.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 90–14736 Filed 6–21–90; 12:13 pm]

BILLING CODE 4910–62–M

Maritime Administration

[Docket S-865—Amended]

Aquarius Marine Co., Atlas Marine Co., Application for a waiver of Section 804 of the Merchant Marine Act, 1936, as Amended, To Permit the Acquisition of an Interest in, Operation, or Charter of Foreign-Flag Vessels

Aquarius Marine Company and Atlas Marine Company (Applicants), have pending an application for a waiver of section 804(a) of the Merchant Marine Act, 1936 (Act). Notice of the application was published in the Federal Register on March 22, 1990 (55 FR 10750, Docket S-865).

The Applicants, by letter of June 7, 1990, request that their application be revised so as to permit operation of dry or liquid bulk foreign-flag vessels without restriction as to number or size.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5: p.m. on July 13, 1990.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: June 20, 1990.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 90-14626 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-81-M

[Docket S-863—Amended]

Brookville Shipping, Inc., Liberty Maritime Corp., Philip J. Shapiro; Application for a Section 804 Waiver To Operate Foreign-Flag Vessels

Brookville Shipping, Inc. (Brookville), Liberty Maritime Corporation (Liberty) and Philip J. Shapiro (Applicants), have pending an application for a waiver of section 804(a) of the Merchant Marine Act, 1936 (Act). Notice of the application was published in the Federal Register on March 15, 1990 (55 FR 9618, Docket S-863).

The Applicants, by letter of June 7, 1990, request that their application be revised so as to permit operation of dry, liquid, or combination bulk foreign-flag vessels without restriction as to number or size.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on July 13, 1990.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: June 20, 1990.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 90-14625 Filed 6-22-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Meeting To Respond to Questions Regarding Agency Rulemaking, Research and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on July 18, 1990, beginning at 10:15 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by July 10, 1990. If sufficient time is available, questions received after the July 10 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by July 10, 1990, and the issues to be discussed will be mailed to interested persons by July 13, 1990, and will also be available at the meeting.

ADDRESSES: Questions for the July 18 meeting relating to the agency's rulemaking, research and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 7th Street SW., Washington DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on July 18, 1990. The meeting will begin at 10:15 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative, or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: June 19, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-14584 Filed 6-23-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 19, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: 1990 ACS Customer Opinion Survey

Description: The data collection will be used to evaluate the level of satisfaction of taxpayers who had contact with the Automated Collection System (ACS), to identify possible areas of program improvement, and thereby improve the effectiveness of telephone collection activities. (OMB Circular A-132)

Respondents: Individuals or households

Estimated Number of Respondents: 2,200

Estimated Burden Hours Per Response: 9 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 250 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-14608 Filed 6-23-90; 8:45 am]

BILLING CODE 4830-01-M

OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: Focus Group Interviews for the Automated Processing of Extensions (APEX) Project.

Description: These focus groups are being conducted to help the Service fulfill its responsibilities under OMB Circular A-132. The data collected will be used to evaluate taxpayer knowledge of correct regulations regarding extensions to file as well as their reactions to program changes being considered by the Service.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: One-time focus groups.

Estimated Total Reporting Burden: 222 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-14609 Filed 6-23-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 25, 1990.

Dated: June 13, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. National Cemetery Systems.
2. Verification of Eligibility for Burial in a National Cemetery.
3. VA Form 40-4962.
4. The form is used to process requests for burial in national cemeteries. Data collection also provides a means whereby other required forms can be completed which initiates headstone orders, schedules interments, etc.
5. One-time.
6. Individuals or households.
7. 58,500 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90-14563 Filed 6-22-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the

information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 728 Jackson Place NW., Washington DC, 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 25, 1990.

Dated: June 18, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Information From Remarried Widow/er.
3. VA Form 21–4103.
4. The form is used to gather information necessary to determine if a child meets the requirements for pension benefits.
5. On occasion.
6. Individuals or households.
7. 200 responses.
8. ⅓ hour.
9. Not applicable.

[FR Doc. 90–14584 Filed 6–22–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This discount lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 728 Jackson Place NW., Washington DC 20503, (202) 395–7316. Please do not send applications for benefits to the above **ADDRESSES.**

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 25, 1990.

Dated: June 18, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Employment Questionnaire.
3. VA Forms 21–4140 and 21–4140–1.
4. The forms are used to gather continuing unemployability information to determine continued eligibility for 100 percent compensation based on individual unemployability.
5. On occasion.
6. Individuals or households.
7. 45,480 responses.
8. ⅓ hour.
9. Not applicable.

[FR Doc. 90–14585 Filed 6–22–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermount Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on this list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 25, 1990.

Dated: June 18, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Application for Accrued Benefit by Veteran's Surviving Spouse, Child or Dependent Parent.
3. VA Form 21–551.
4. The form is used to gather the necessary information to determine a claimant's entitlement to accrued benefits withheld during a veteran's hospitalization or domiciliary care.
5. On occasion.
6. Individuals or households.
7. 1,000 responses.
8. 1/3 hour.
9. Non applicable.

FR Doc. 90–14586 Filed 6–22–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 122
Monday, June 25, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, June 20, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 5347

The staff and the Commission will discuss issues related to enforcement matter OS# 5347.

The Commission decided by unanimous vote that agency business required scheduling this meeting without the normal seven days notice.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–14731 Filed 6–21–90; 1:47 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 28, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Crib Toy Petition, HP 89–1

The Commission will consider petition HP 89–1 from the Consumer Federation of America and the Attorney General of New York which requests the Commission to issue a rule banning certain crib gyms, crib mobiles, and crib toys.

2. Sauna Petition, CP 89–1

The Commission will consider petition CP 89–1 from Dr. Edward Press which requests the Commission to develop a safety standard for saunas.

3. Hair Dryer Electrocution Hazard Options

The staff will brief the Commission various options for further Commission action to reduce or eliminate electrocutions caused by the immersion of hair dryers. The examination of these options was directed by the Commission when it voted to deny petition CP 89–3 from the Michele Snow Foundation to require immersion protection devices for hard-held hair dryers that would operate in both the on and off positions of the hair dryer's switch.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–14732 Filed 6–21–90; 8:45 am]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 20, 1990.

TIME AND DATE: 10:00 a.m., Thursday, June 28, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Harry Ramsey v. Industrial Constructors Corp.*, Docket No. WEST 89–246–DM. (Issues include whether Industrial Constructors Corp. violated section 105(c) of the Mine Act, 30 U.S.C. § 815(c), by constructively discharging and refusing to rehire Harry Ramsey and, if so, whether he is entitled to back pay.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay, 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–14612 Filed 6–21–90; 3:43 am]

BILLING CODE 6735–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 25, 1990.

A closed meeting will be held on Thursday, June 28, 1990, at 1:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, June 28, 1990, at 1:00 p.m., will be:

Regulatory matter regarding financial institution.
Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith (202) 272–2100.

Dated: June 21, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14824 Filed 6–21–90; 4:07 pm]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 7, 1990
9:00 a.m. to 5:00 p.m., July 8, 1990

PLACE: Tyee Hotel, 800 Tyee Drive, Tumwater, Washington.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

Consideration of applications submitted for funding: FY 1991 guideline development; and

a public forum for invited participants to speak to the Board about the appropriate use of SJI funds.

Portions Closed to the Public

None.

CONTACT PERSON FOR MORE INFORMATION: David L. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314, (703) 684-6100.

David L. Tevelin,

Executive Director.

[FR Doc. 90-14813 Filed 6-21-90; 3:42 pm]

BILLING CODE 6820-SC-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1430)

TIME AND DATE: 10 a.m. (EDT), June 27, 1990

PLACE: Haralson Memorial Civic Center, Wellborn Street, Blairsville, Georgia.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 16, 1990.

Action Items

New Business

B—Purchase Awards

B1. Indefinite Quantity Term Agreement with Scientific Ecology Group for Offsite Radwaste Volume Reduction Processing—Browns Ferry, Sequoyah, and Watts Bar Nuclear Plants (Invitation to Bid MA-45329B).

B2. Indefinite Quantity Term Agreement with Lehigh Structural Steel Company for Galvanized Structural Steel for Transmission Line Towers, Laced and Low Profile Substation Steel, and Components—Any TVA Project or Warehouse (Invitation to Bid BA-46332B).

B3. Negotiated Purchase Contract with Babcock & Wilcox Company for Replacement Reheater and Superheater Elements—Allen Fossil Plant (Negotiation GA-77862A).

B4. Letter of Agreement with Prime Computer, Inc., for Hardware, Software, and Maintenance (Letter of Agreement YA-93744C).

B5. Indefinite Quantity Term Contract through the U.S. Small Business Administration for Office Supplies (Request for Proposal FJ-00029B).

B6. Negotiated Purchase Contract with Stone & Webster Engineering Corporation for Draft Conversion and Facilities Upgrade for Unit 6 FGD Scrubber—Widows Creek Fossil Plant (Negotiation 2S-79004B).

E—Real Property Transaction

E1. Lease Affecting Approximately 3.82 Acres of Land on Pickwick Reservior.

F—Unclassified

F1. Supplement No. 2 to Personal Services Contract No. TV-79584T with Fish and Wildlife Associates, Inc.

F2. Supplement No. 2 to Personal Services Contract No. TV-80394T with MPR Associates.

F3. Personal Services Contracts with The Systems Group, Inc., and Computer Business Methods, Inc.

F4. Personal Services Contracts with Computer Horizons Corp.; American Computer Professionals, Inc.; SMC Information Systems; Seltmann, Cobb & Bryant, Inc.; and Eagle Systems Technology, Inc.

Information Items

1. Grant of Permit and right-of-way for Pipeline to Tennessee River Intrastate Gas Company, Inc., Affecting Approximately 2.1 Acres of Pickwick Reservior Land in Colbert County, Alabama.

2. Supplement No. 3 to Personal Services Contract No. TV-76617T with Chattanooga Business Services, Inc., DBA Manpower Temporary Services.

3. TVA Payment of Increased Monthly Medical/Dental Plan Cost for Annual Trades and Labor Retirees for the period from January through May 1990.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: June 20, 1990.

Edward S. Christenbury.

General Counsel and Secretary.

[FR Doc. 90-14748 Filed 6-21-90; 1:48 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 55, No. 122
Monday, June 25, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 900646-0146]

Establishment of General License GCT; COCOM Trade

Correction

In rule document 90-14180 beginning on page 25083 in the issue of Wednesday, June 20, 1990, make the following corrections:

On page 25089, in the third column, the second amendatory instruction numbered "29" should read "30", and in the fifth line, "ECCN 1746A" should read "ECCN 1763A".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

Correction

In rule document 90-13599 beginning on page 23902 in the issue of Wednesday, June 13, 1990, make the following corrections:

1. On page 23903, in the second column, in paragraph 1.(f)(2) of article 1, at the end of the sixth line "the" should read "this".

2. On the same page, in the third column, in paragraph 1.(k)(1) of article 1, in the first line "Authorizes" should read "Authorized".

3. On page 23904, in the third column, in paragraph 6.(b) of article II, at the end of the seventh line "or" should read "of".

4. On page 23905, in the first column, in paragraph 5.(c) of article III, in the third line "thereof, in" should read "thereof. In".

5. On the same page, in the third column, in paragraph 1.(a) of article IV, in the first line "purpose" should read "purposes".

6. On page 23906, in the second column, in paragraph 4. of article V, in the second line "Recognizing" should read "Recognized".

7. On the same page, in the same column, in paragraph 5. of article V, in the second line "person" should read "Person".

8. On the same page, in the third column, in paragraph 1. of article VI, in the third line, "laws" should read "Laws".

9. On page 23907, in the first column, in paragraph 11. of article VI, in the fourth line, "Recognizing" should read "Recognized".

10. On page 23908, in the third column, in the second complete paragraph, in the third line, "Person" should read "Persons".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-416-000, et al.]

Alabama Power Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-14191 beginning on page 25154 in the issue of Wednesday, June 20, 1990, make the following correction:

On page 25154, in the third column, under **S. Gulf Power Co.**, the Docket No. should read "ER90-409-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-1487-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certification Filings

Correction

In notice document 90-14193 beginning on page 25157 in the issue of Wednesday, June 20, 1990, in the first column, the fourth line should read "June 12, 1990."

BILLING CODE 1505-01-D

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federal register

Monday
June 25, 1990

Part II

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 103 and 274a
Powers and Duties of Service Officers; Availability of Service Records, Control Employment of Aliens; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF JUSTICE

8 CFR Parts 103 and 274a

[INS Number: 1259-90]

Powers and Duties of Service Officers; Availability of Service Records, Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides technical as well as substantive amendments to parts 103 and 274a of title 8 of the Code of Federal Regulations. These provisions regulate the process which renders it unlawful for a person or entity to knowingly hire, recruit or refer for a fee, for employment in the United States, aliens that are not authorized to work in the United States. The rule is necessitated by the development of the law in the employer sanctions area since implementation. This rule does not have a significant adverse impact. It will simplify, clarify, and conform the regulations to comport with recent decisions rendered by the courts, thereby enhancing the Service's ability to enforce the law, as well as enabling persons or entities to better comply with these provisions.

DATES: This interim rule is effective June 25, 1990. Written comments must be received on or before July 25, 1990.

ADDRESSES: Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, room 2011, 425 I St., NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Michael J. Creppy, Associate General Counsel, Immigration and Naturalization Service, 425 I St., NW., room 7048, Washington, DC 20536, Telephone (202) 633-3201.

SUPPLEMENTARY INFORMATION: Since implementation on June 1, 1987 of part 274a of title 8 of the Code of Federal Regulations, INS has received numerous comments and proposals on the regulations recommending certain amendments and revisions to clarify the language in that final rule and in a related section of title 8 Code of Federal Regulations. The proposed changes are based on cases that have been litigated in this area and the experience gained by the agency in implementing the employer sanctions provisions. What follows is a section-by-section analysis of the proposed amendments to the final regulations and a related section with a discussion of comments concerning the sections to which they apply.

1. Section 103.5 paragraph (a) is revised and amended by adding in the first sentence of this section the language ", other than a proceeding under Part 274a," after the phrase "authorized under this chapter." This amendment is necessary since section 274A(e)(3)(B) of the Act mandates that an Order issued in the absence of a request for a hearing within thirty-days of the service of a Notice of Intent to Fine is final and unappealable. Thus, the motion to reopen process is inapplicable to employer sanctions cases, since the thirty day period in which to request a hearing is prescribed by statute and the Service lacks authority and jurisdiction to extend this period through a motion to reopen or reconsider.

2. Section 274a.1 paragraph (c) is revised to include the language of section 274A(a)(4) of the Act and 8 CFR 274a.5, in the definition of "hire." It is necessary to amend the definition of "hire" under the regulations, since the wording of section 274A(a)(4) of the Act can be *misinterpreted* to mean that a "knowing hire" violation under section 274A(a)(4) of the Act will occur only if knowledge that an alien is unauthorized is acquired by the contractor at the time the contract is entered into. This revision makes it absolutely clear that the definition of "hire" under the regulations includes the "fictitious hire" created by section 274A(a)(4) of the Act and is to be read consistent with language in the statutory exception, rather than the definition of hire as it would normally apply in an employment situation. Moreover, it is noted that the act which is prohibited under section 274A(a)(4) of the Act is the *use* of the contract with knowledge. Since the use of a contract with knowledge that an individual is an unauthorized alien constitutes a "hire", for purposes of this statutory exception, it is important to clearly state this in defining the term.

3. Section 274a.1 paragraph (h) is revised by removing the language "including service or labor performed on a U.S. vessel or U.S. aircraft which touches at a port in the United States" and replacing it with "including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, but not including duties performed by nonimmigrant crewmen defined in sections 101(a)(10) & 101(a)(15)(D) of the Act. This change is necessitated because it is well settled that a vessel coming into the United States territorial waters from any place outside the United States constitutes an "arrival" for purposes of section 235 and 251 of the Act. *See* 8 CFR 235.1 (1989). However, an entry is not effectuated until inspection of the vessel is completed. *See In re Dubbiosi*, 191 F. Supp. 65 (E.D. Va. 1961). In addition this paragraph is revised to include reference to the Anti-Reflagging Act codified at 46 U.S.C. 8704.

4. Section 274a.1 paragraph (j) is revised to include the language "has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work" as additional factors that are to be considered in determining whether a contractual relationship can be considered an employment relationship.

5. Section 274a.1 paragraph (k) is revised to clarify that a pattern or practice can be established by either regular, repeated *or* intentional activities.

6. Section 274a.1 is revised by adding paragraph (l) which contains the definition of "knowing." Knowing is defined as including not only actual knowledge, but also constructive knowledge—knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. This definition of knowledge is consistent with that enunciated by the Ninth Circuit in *Mester Manufacturing Co.* v. *INS*, 879 F.2d 561, 567 (9th Cir. 1989). *See also United States* v. *New El Rey Sausage Company, Inc.*, OCAHO Case No. 88100080 (J. Schneider, July 7, 1989), *modified in part*, by OCAHO (R. Vincoli, August 4, 1989); *United States* v. *Sophie Valdez, d.b.a. La Parrilla Restaurant*, OCAHO Case No. 89100014 (J. Frosburg, Sept. 27, 1989).

7. Section 274a.2 paragraph (a) adds clarifying language regarding when an individual must comply with the verification requirements, by deleting language referencing "continuing to employ aliens * * *" and replacing it with the more accurate language of "when continuing to employ individuals." The purpose of this amendment is to emphasize that the employment verification system is applicable to all individuals, including *United States citizens*, who are hired, recruited or referred for a fee. In addition, this paragraph is revised to clarify that if an Employment Eligibility Verification Form, Form I-9, is copied or printed, such copy or printing must be done in accordance with the restrictions set forth in 8 CFR 299.4, with the exception of the black ink or dye requirements. Further, this amendment makes it clear that both sides of the Form I-9 must be copied or printed.

8. Section 274a.2 paragraph (b)(1)(i) is revised by adding clarifying language to emphasize that it is the employer, recruiter or referrer for a fee's responsibility to ensure that section 1—"Employee Information and Verification" on the Form I-9 is completed. *See United States* v. *Mester Manufacturing, Co.*, OCAHO Case No. 87100001 (J. Morse, July 12, 1988), *aff'd* 879 F.2d 561 (9th Cir. 1989); *United States* v. *Big Bear Market*, OCAHO Case No. 88100038 (J. Morse, April 12, 1989). IRCA explicitly mandates that a person or entity that hires, recruits or refers for a fee must comply with all of the verification requirements of 8 U.S.C. 1324a(b).

9. Section 274a.2 paragraph (b)(1)(i)(A) is revised by making a stylistic change by adding an "s" to the word "Complete" at the beginning of the first sentence of this paragraph; in addition paragraph (b)(1)(i)(B) is revised by making a stylistic change by adding an "s" to the word "Present" at the beginning of the first sentence of this paragraph.

10. Section 274a.2 paragraph (b)(1)(ii) is revised by correcting an omission in citing "(b)(viii)" to reflect "(b)(1)(viii)."

11. Section 274a.2 paragraph (b)(1)(iii) is revised and amended by deleting the language, at the end of this paragraph, that states "before the end of the first working day" and substituting in its place "at the time of the hire." This amendment would require an employer who hires an individual for a duration of less than three business days to complete section 1 and 2 of the Form I-9 at the time of the hire. This amendment simply conforms the regulation to what is in effect the practice, but more importantly it closes a potential major loophole in the law. In addition this paragraph is amended by adding clarifying language to state that where an individual is being hired for a duration of less than three business days and is authorized to work but does not have an acceptable identity and/or employment eligibility document(s) to present to the employer by the end of the first working day, the employer cannot accept a receipt in lieu thereof and, therefore, does not have 21 business days to review acceptable identity and/or employment eligibility document(s). Instead, the employer must review acceptable documents at the time of the hire.

12. Section 274a.2 paragraph (b)(1)(iv) is revised by making a stylistic change in removing, in the first sentence after the words "referred individual", the word "was" and substituting in its place "is."

13. Section 274a.2 paragraph (b)(1)(v) is revised by adding clarifying language indicating that a person or entity hiring, recruiting or referring for a fee *must* note in the appropriate space on the Form I-9 the document identification number and expiration date.

14. Section 274a.2 paragraph (b)(1)(v)(A) is revised to add clarifying language to indicate that acceptable documents, for purposes of complying with the verification requirements, must appear to relate to the individual presenting the document.

15. Section 274a.2 paragraph (b)(1)(v)(A)(*1*) is revised to add clarifying language that both expired and unexpired United States passports are acceptable List A documents establishing both identity and employment eligibility.

16. Section 274a.2 paragraph (b)(1)(v)(A)(*6*), (*7*), (*8*), (*9*), (*10*) are revised to add clarifying language to indicate that only *unexpired* temporary resident cards (Form I-688) and employment authorization cards (Form I-688A) are acceptable to evidence both identity and employment eligibility. In addition this amendment adds reentry permits (Form I-327), and a new standardized INS employment authorization document (Form I-688B), as acceptable identity and employment eligibility documents for purposes of complying with the employment verification requirements.

17. Section 274a.2 paragraph (b)(1)(v)(B) is reorganized and revised by removing (paragraph (b)(1)(v)(B)(*iii*)) voter registration cards as acceptable identity documents.

18. Section 274a.2 paragraph (b)(1)(v)(C) is reorganized and revised by removing (paragraphs (b)(1)(v)(C)(*2*), (*3*) and (*7*)) unexpired reentry permits (Form I-327), unexpired refugee travel documents (Form I-571) and paragraph (b)(1)(v)(C)(*7*) stating "employment authorization documents issued by the INS", as acceptable employment authorization documents.

19. Section 274a.2 paragraph (b)(1)(vi) is revised by adding clarifying language that this provision relates to the submission of an application for a replacement document and not to an application for an initial document evidencing INS granted work authorization.

20. Section 274a.2 paragraph (b)(1)(vii) is revised by adding a requirement that the employer complete and maintain a new Form I-9 when the employment authorization document expires or the employer is advised in writing by the Service that a document presented is insufficient to establish employment eligibility. The Form I-9 must be completed within three business days of the expiration of the employment authorization document or the written notice to the employer that the employment authorization document is insufficient. It should be noted that the expiration date on a I-551 does not necessarily mean that an individual employment authorization has expired.

21. Section 274a.2 paragraph (b)(1)(viii) is reorganized and revised by adding nine (9) factors which are to be considered in determining whether an individual is continuing his or her employment and has a reasonable expectation of continued employment.

22. Section 274a.2 paragraph (b)(2)(ii) is revised by adding clarifying language regarding the established practice that a recruiter or referrer for a fee may present a photocopy of the Form I-9, when a designated employer has completed it on behalf of the recruiter or referrer for a fee. Further, this paragraph is revised by correcting the numeral "242.1" from the last sentence and substituting "287.4." This revision relates to the regulatory provision designating which Service officers may compel production of Forms I-9, business records, etc., by issuing a subpoena.

23. Section 274a.2 paragraph (b)(3) is revised by adding clarifying language to make it absolutely clear that the copying of documents by an employer, recruiter or referrer for a fee does not relieve them from the requirement to fully complete section 2 of the Form I-9; nor is it an acceptable substitute for proper completion of the Form I-9 in general.

24. Section 274a.2 paragraph (c)(1) is clarified by removing "he or she" in the first sentence and substituting "that person or entity."

25. Section 274a.2 paragraph (c)(1)(i) is revised by clarifying how a person or entity should reverify and update the Form I-9. It provides that in circumstances where an individual remains eligible to work, an employer need only complete the "Reverification section" of the Form I-9.

26. Section 274a.2 paragraph (c)(1)(ii) is revised by removing the language in the first sentence that states the "individual is no longer eligible to work in the United States, the employer shall not rehire the individual unless he or she follows the updating procedures in paragraphs (b)(1)(vii) of this section" and substituting in its place language to the effect that if the individual's employment authorization has expired or the Service has informed the employer that the employment eligibility document is insufficient to establish

continued employment authorization, the employer must not continue to employ the individual, unless the employer reviews a document that reflects a continuing grant or new grant of employment authorization. The employer must ensure that a new Form I–9 has been completed properly and reflects the new period of employment authorization.

27. Section 274a.2 paragraphs (d)(1) (i) & (ii) relating to recruiters and referrers for a fee have been revised in the same manner as paragraphs (c)(1) (i) & (ii).

28. Section 274a.2 paragraph (d)(2) has been revised by including the word "recruited," which was omitted from the regulations.

29. Section 274a.5 is revised by deleting in the first sentence after the word "who" the word "knowingly" and substituting the exact language of section 274A(a)(4) of the Act in order to clearly state that the prohibited conduct under this provision is the *use of a contract to obtain the labor or services of an alien knowing that the alien is unauthorized to work in the United States.*

30. Section 274a.7 paragraph (b) is revised by adding an additional ground upon which an individual will lose pre-enactment status. This revision sets forth that pre-enactment status will be lost where an employee is no longer continuing in his or her employment, in order to avoid any confusion or misunderstanding of the applicability of this exemption.

31. Section 274a.9 paragraph (a) is revised by deleting superfluous language in the second to the last sentence of this section. No substantive change is intended by this amendment.

32. Section 274a.9 paragraph (c) is revised by making a stylistic change in the title of this section.

33. Section 274a.9 paragraph (c)(1) is revised by removing language in the first sentence stating that "a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law" and substituting in its place language to the effect that "fact pleading" is not necessary and that "notice pleading" is all that INS is required to provide in order to comply with applicable law and procedure in issuing a Notice of Intent to Fine. In other words, a short and plain statement of the claim is all that is required since pleadings only serve the function of "giving notice of the nature of a claim or defense." *See* Fed R. Civ. P. 8. In addition, this paragraph is amended by making a stylistic change in the caption by capitalizing the first letters of the word "notice of intent to fine."

34. Section 274a.9 paragraph (d) is revised and reorganized by removing from this section the procedure for a respondent's failure to request a hearing and by making a stylistic change in deleting, in the first sentence, the reference to "he or she" and substituting its place "the respondent." This section is also amended to require a request for a hearing in a foreign language to be accompanied by an English translation.

35. Section 274a.9 paragraph (e) is added to the regulations in order to set forth the time limitation by which a respondent must file a response before it will be deemed that the person or entity has failed to file a timely request for a hearing.

36. Section 274a.10 paragraph (a) is revised by removing the language that states "An employer or recruiter or referrer for a fee who engages in a pattern and practice of violating section 274A (a)(1)(A) or (a)(2) of the Act, may" and substituting in its place language that mirrors the statute in order to avoid any confusion of the applicability of this provision.

37. Section 274a.10 paragraph (b) is revised by adding clarifying language in the third sentence by changing the words "single violation" to "single offense" and adding the word "alien" after the word "unauthorized" in the last sentence of this section.

38. Section 274a.10 paragraphs (b)(1)(ii) (A), (B), & (C) are revised by substituting "offense" for the word "violation."

39. Section 274a.10 paragraph (b)(3) is revised by having this provision mirror the statutory language in section 274A(e)(4) of the Act by removing the word "or" in the last sentence after the words "practices of" and substituting in its place the word "and."

40. Section 274a.11 is removed, since the purpose for enactment of this provision no longer exists. This section was promulgated as a result of the provisions of the Immigration Reform and Control Act of 1986 that allowed certain qualified aliens who had resided illegally in the United States to legalize their status. These aliens could have applied under the Legalization, Special Agricultural Worker (SAW) or Cuban/Haitian entrant programs. This regulation allowed employers to hire applicants or prospective applicants for legalization, SAW, or Cuban/Haitian entrant status. *Until September 1, 1987,* without reviewing an employment authorization document, if they stated they were applying for one of these programs. All other verification requirements had to be met. However, as of September 1, 1987, the employers of these aliens were required to have the aliens produce an employment authorization document, complete section 2 of the Form I–9 and certify that the aliens were authorized to work in the United States after that date if their employment was to continue.

Since the period for the special rule has elapsed and no person or entity after September 1, 1987 can rely on this regulation as a basis for not fully complying with the verification requirements, this provision is removed as being obsolete.

41. Section 274a.12 paragraph (a) is amended to specify that for certain aliens in this paragraph ((a)(3)–(11)) although employment authorization is inherent in their status, they must specifically apply for evidence of their inherent employment authorization by completing an application for employment authorization (Form I–765) in order to be issued an employment authorization document. The filing of the Form I–765 for this purpose will not result in an adjudication of whether employment authorization should be granted for those aliens in (a)(3)–(11) because employment authorization is inherent in their status. The application, will, however, be used to acquire a document evidencing employment eligibility.

42. Section 274a.12 paragraph (a)(9) is amended to clarify that a person who has received a final determination as to his or her entitlement to suspension of deportation, immediately obtains permanent residence status. Section 244 of the Act was amended, by the Immigration Reform and Control Act of 1986, as amended by section 2(q)(1)(B) of the Immigration Technical Corrections Amendments of 1988 (Pub. L. 100–525, 102 Stat. 2614) to eliminate the requirement that grants of suspension be submitted to the Congress for two sessions prior to a final grant of suspension.

43. Section 274a.12 paragraph (b)(4) is amended to eliminate the ambiguity between § 214.2(d) and this paragraph, so as to clearly reflect that crewmen are not authorized to work in the United States incident to their status. Their employment required for normal operation and service on board a vessel or aircraft is not considered employment in the United States for purposes of section 274A of the Act. *See* section 101(a)(15)(D) of the Act.

44. Section 274a.12 paragraph (b)(15) is amended to include, as paragraph (b)(16), those nonimmigrants admitted to the United States as a result of the United States-Canada Free-Trade Agreement (FTA). Pursuant to the FTA, the regulations were amended on January 3, 1989 to include the new nonimmigrant classification at 8 CFR 274a.12(b)(16) (1989). In addition, this section adds directors of Regional Service Centers as INS officials to whom aliens may submit requests for extension of nonimmigrant status.

45. Section 274a.12 paragraph (c)(1) is amended by removing the designation "dependent son or daughter" so that this subsection will be in conformity with the interim regulations published on November 21, 1988. This paragraph also reflects the systemic change that now requires a foreign government official to present an executed Form I–566, including the proper endorsement, in an application for employment authorization.

46. Section 274a.12 paragraph (c)(4) is amended by removing the designation "son or daughter" so that this section will be in conformity with the interim regulations published on November 21, 1988. This section is also amended to reflect the use of Form I–566.

47. Section 274a.12 paragraphs (c)(8), (c)(9), (c)(10), and (c)(11) are amended by making stylistic changes in removing, in the first sentence, the word (at the beginning of each sentence) "Any" and substituting in its place "An."

48. Section 274a.12 paragraph (c)(12) is amended to add clarifying language to state that the factors enumerated in this paragraph are not the only factors that can be considered in adjudicating an employment authorization application under this paragraph.

49. Section 274a.12 paragraph (c)(13) is amended to add clarifying language that only aliens who are not detained can apply for employment authorization under this paragraph.

50. Section 274a.12 is amended by removing and reserving paragraph (c)(15). The proposed amendment removes the contents of this paragraph because nonimmigrants whose employment is inherent in their status with a particular employer will not be issued an employment authorization document.

51. Section 274a.12 paragraph (c) is amended by adding a new paragraph (c)(16), to afford aliens who have filed an application for registry under section 249 of the Act with the ability to request employment authorization while their application is pending.

52. Section 274a.12 paragraph (c) is amended by adding a new paragraph (c)(17), to reflect the current practice of allowing nonimmigrant visitors for business (B–1) to request permission to work in the United States under certain limited circumstances. The proposed amendment incorporates in the regulations the requirements and limitations currently set forth in the State Department Foreign Affairs Manual (FAM 41.31) and the Service Operation Instructions (O.I. 214.2(b)).

53. Section 274a.13 paragraphs (a), (b) and (d) are amended to add clarifying language to conform this section to the systemic changes made with respect to employment authorization, to wit: Form I–765.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5.

This rulemaking, however, welcomes public comment on problems encountered with the process of employment eligibility verification, with respect particularly to the use of Form I–9.

It has been the intent of the Service to revise and simplify the Form I–9 as well as revise, as appropriate, its format and content. Following a review of public comment received in this rulemaking, the Service intends to develop proposed revisions by November, 1990 and following the opportunity for further public comment on a revised Form I–9, would submit a final revised Form I–9 to OMB for approval by July, 1991.

List of subjects

8 CFR Part 103

Administrative Practice and Procedure, Service Officers, Powers and Duties.

8 CFR Part 274a

Administrative Practice and Procedure, Aliens, Employment.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1302; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR 1982 Comp., p. 166; 8 CFR 2.

2. Section 103.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 103.5 Reopening or reconsideration.

(a) Except as otherwise provided in part 242 of this chapter, a proceeding authorized under this chapter, other than a proceeding described in § 274a.9 of this chapter, may be reopened or the decision made therein reconsidered for proper cause upon motion made by the party affected and granted by the officer who has jurisdiction over the proceeding or who made the decision. * * *

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

4. Section 274a.1 is amended by revising paragraphs (c), (h), (j) and (k) and adding paragraph (l) to read as follows:

§ 274a.1 Definitions.

* * * * *

(c) The term "hire" means the actual commencement of employment of an employee for wages or other remuneration. For the purpose of section 274A(a)(4) of the Act and 274a.5 of this part, a hire occurs when a person or entity uses a contract, subcontract or exchange entered into, renegotiated or extended after November 6, 1986 to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien;

* * * * *

(h) The term "employment" means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections 101 (a)(10) and (a)(15)(D) of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

* * * * *

(j) The term "independent contractor" includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results.

Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: Supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section 274A(a)(4) of the Act and § 274a.5;

(k) The term "pattern or practice" means regular, repeated, or intentional activities, but does not include isolated, sporadic, or accidental acts;

(l) The term "knowing" includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.

5. Section 274a.2 is amended by revising paragraph (a) to read as follows:

§ 274a.2 Verification of employment eligibility.

(a) *General.* This section states the requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States. The Form I–9, Employment Eligibility Verification Form, has been designated by the Service as the form to be used in complying with the requirements of this section. The Form I–9 may be obtained in limited quantities at INS District Offices, or ordered from the Superintendent of Documents, Washington, DC 20402. A blank Form I–9 must be photocopied or printed in accordance with the restrictions set forth in § 299.4 of this chapter, with the exception of the black ink or dye requirements contained therein. When photocopying or printing the Form I–9, both sides must be photocopied or printed. Employers need only complete the Form I–9 for individuals who are hired after November 6, 1986 and continue to be employed after May 31, 1987. Employers shall have until September 1, 1987 to complete the Form I–9 for individuals hired from November 7, 1986 through May 31, 1987. Recruiters and referrers for a fee need complete the Form I–9 only for those individuals who are recruited or referred after May 31, 1987. In conjunction with completing the Form I–9, an employer or recruiter or referrer for a fee must examine documents that evidence the identity and employment eligibility of the individual. The employer or recruiter or referrer for a fee and the individual must each complete an attestation on the Form I–9 under penalty of perjury.

* * * * *

6. Section 274a.2 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) *Examination of documents and completion of Form I–9.*

(i) A person or entity that hires or recruits or refers for a fee an individual for employment must ensure that the individual properly:

(A) Complete section 1—"Employee Information and Verification"—on the Form I–9 at the time of hiring; or if an individual is unable to complete the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form to the individual, assist him or her in completing Section 1—"Employee Information and Verification," and have the individual sign or mark the Form in the appropriate place. The preparer or translator must then complete the "Preparer/Translator Certification" portion of the Form I–9; and

(B) Present to the employer or the recruiter or referrer for a fee documentation as set forth in paragraph (b)(1)(v) of this section establishing his or her identity and employment eligibility within the time limits set forth in paragraphs (b)(1)(ii) through (b)(1)(v) of this section.

(ii) Except as provided in paragraph (b)(1)(viii) of this section, an employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, must within three business days of the hire:

(A) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in paragraph (b)(1)(v) of this section and ensure that the documents presented appear to be genuine and to relate to the individual; and

(B) Complete section 2—"Employer Review and Verification"—of the Form I–9.

(iii) An employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, who hires an individual for employment for duration of less than three business days must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section at the time of the hire. A receipt for the application of such documentation, as described in paragraph (b)(1)(vi) of this section, may not be accepted by the employer.

(iv) A recruiter or referrer for a fee for employment must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section within three business days of the date the referred individual is hired by the employer. Recruiters and referrers may designate agents to complete the employment verification procedures on their behalf including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy of the Form I–9.

* * * * *

7. Section 274a.2 is amended by revising paragraphs (b)(1)(v) introductory text, (b)(1)(v)(A) introductory text, (b)(1)(v)(A)(*1*), (b)(1)(v)(A)(*6*)–(b)(1)(v)(A)(*7*), and (b)(1)(v)(B)(*1*), and adding paragraphs (b)(1)(v)(A)(*8*)–(b)(1)(v)(A)(*10*) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity. The document identification number and expiration date (if any) must be noted in the appropriate space provided on the Form I–9. An employer or a recruiter or referrer for a fee may not specify which document or documents an individual is to present.

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment eligibility:

(*1*) United States passport (Unexpired or expired);

* * * * *

(*6*) An unexpired Temporary Resident Card, INS Form 688;

(*7*) An unexpired Employment Authorization Card, INS Form I–688A;

(*8*) An unexpired reentry permit, INS Form I–327;

(*9*) An unexpired Refugee Travel document, INS Form I–571;

(*10*) An unexpired employment authorization document issued by the Immigration and Naturalization Service which contains a photograph, INS Form I–688B.

(B) * * *

(*1*) For individuals 16 years of age or older:

(*i*) A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act). If the drivers's license or identification card does not contain a photograph, identifying information should be included such as: name, date of birth, sex, height, color of eyes, and address;

(*ii*) School identification card with a photograph;

(*iii*) U.S. military card or draft record;

(*iv*) Identification card issued by federal, state, or local government agencies or entities;

(*v*) Military dependent's identification card;

(*vi*) Native American tribal documents;

(*vii*) United States Coast Guard Merchant Mariner Card;

(*viii*) Driver's license issued by a Canadian government authority;

* * * * *

8. Section 274a.2 is amended by revising paragraphs (b)(1)(v)(C), (b)(1)(vi), (b)(1)(vii), and (b)(1)(viii) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(C) The following are acceptable documents to establish employment authorization only:

(*1*) A social security number card other than one which has printed on its face "not valid for employment purposes";

(*2*) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(*3*) A certification of Birth Abroad issued by the Department of State, Form DS–1350;

(*4*) An original or certified copy of a birth certificate issued by a State, county, or municipal authority bearing a seal;

(*5*) Native American tribal document;

(*6*) United States Citizen Identification Card, INS Form I–197;

(*7*) Identification card for use of resident citizen in the United States, INS Form I–179;

(*8*) An employment authorization document issued by the Immigration and Naturalization Service;

(vi) If an individual is unable to provide the required document or documents within the time periods specified in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section, the individual must present a receipt for the application of the document or documents within three business days of the hire and present the required document or documents within 21 business days of the hire. This section is not applicable to an alien who does not have work authorization at the time of hire.

(vii) If an individual's employment authorization expires, or the Service informs the employer, recruiter, or referrer for a fee, in writing, that the employment authorization document presented is insufficient to establish employment authorization, the employer, recruiter or referrer for a fee must complete a new Form I–9 pursuant to the requirements of paragraph 274a.2(b) of this section. In completing the new Form I–9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document and, if it appears to be genuine and to relate to the individual, note the document's identification number and expiration date on the new Form I–9. The new Form I–9 must be maintained along with the previous completed Form I–9 in accordance with paragraph 274a.2(b)(2) of this section.

(viii) An employer is not required to reverify an employee's employment eligibility as set forth in paragraphs (b)(1)(i) through (b)(1)(v) of this section if the employee is continuing his or her employment.

(A) An individual is continuing his or her employment if the employee at all times has reasonable expectation of employment. The person or entity (hereafter the claimant) who is claiming that an employee is a continuing employee must prove at all times that the employee expected to resume employment and that the employee's expectation is reasonable. Whether an employee's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual is a continuing employee include, but are not limited to:

(*1*) The employee in question was employed by claimant on a regular and substantial basis rather than on a sporadic, irregular or intermittent basis. A determination of a regular and substantial basis is based on a comparison of other workers who are similarly employed by the claimant;

(*2*) The employee in question complied with the claimant's established and published policy regarding his or her absence;

(*3*) The claimant's past history of recalling absent employees for employment indicates a likelihood that the employee in question will resume employment with claimant within a reasonable time in the future;

(*4*) The former position held by the employee in question has not been taken by a replacement worker;

(*5*) The employee in question has not sought or obtained regular and substantial employment with another new employer during his or her absence from employment with claimant (prior employer). A determination of regular and substantial employment is based on a comparison of other workers who are similarly employed by the new employer;

(*6*) The employee in question has not sought or obtained benefits during his or her absence from employment with claimant that are inconsistent with an expectation of resuming employment with claimant within a reasonable time in the future;

(*7*) The financial condition of the claimant indicates a likelihood that the employee in question will resume employment with claimant within a reasonable time in the future;

(*8*) The oral and/or written communication between claimant, claimant's supervisory employees and the employee in question indicates a likelihood that the employee in question will resume employment with claimant within a reasonable time in the future;

(*9*) The employment is not seasonal in nature.

(B) "Continuing employment" includes but is not limited to situations where:

(*1*) An employee takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave vacation, union business, or other temporary leave approved by the employer;

(*2*) An employee is promoted, demoted, or gets a pay raise;

(*3*) An employee is temporarily laid off for lack of work;

(*4*) An employee is on strike or in a labor dispute;

(5) An employee is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(6) An employee transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the employee's Form I-9 to the receiving unit; or

(7) An employee continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I-9 where applicable. For this purpose, a related, successor, or reorganized employer includes:

(i) The same employer at another location;

(ii) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets.

* * * * *

9. Section 274a.2 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(2) * * *

(ii) Any person or entity required to retain Form I-9 in accordance with this section shall be provided with at least three days notice prior to an inspection of the Forms I-9 by an authorized Department of Labor or Service officer. At the time of inspection, Forms I-9 must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If Forms I-9 are kept at another location, the person or entity must inform the Department of Labor or Service officer of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at an INS office. A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I-9 in lieu of presenting the Form I-9 in its original form or on microfilm, as set forth in paragraph (b)(1)(iv) of this section. No subpoena or warrant shall be required for such inspection. Any refusal or delay in presentation of the Forms I-9 for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act. In addition, if the person or entity has not complied with a request to present the Forms I-9, any Service officer listed in § 287.4 of this chapter may compel production of the Forms I-9 by issuing a subpoena.

* * * * *

10. Section 274a.2 is amended by revising paragraph (b)(3) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(3) *Copying of documentation.* An employer, or a recruiter or referrer for a fee may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements of this section. If such copy is made, it must be retained with the Form I-9. The retention requirements in paragraph (b)(2) of this section do not apply to the photocopies. The copying and retention of any such document does not relieve the employer from the requirement to fully complete section 2 of the Form I-9.

* * * * *

11. Section 274a.2 is amended by revising paragraph (c)(1) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(c) * * *

(1) When an employer hires an individual whom that person or entity has previously employed, if the employer has previously completed the Form I-9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the employer may (in lieu of completing a new Form I-9) inspect the previously completed Form I-9 and:

(i) If upon inspection of the Form I-9 relating to the individual, the employer determines that the Form I-9 relates to such individual and that the individual is eligible to work, no additional verification or new Form I-9 need be completed if the employer reverifies the individual's employment eligibility on the Form I-9 and the individual is hired within three years of the date of the initial execution of the Form I-9, or

(ii) If upon inspection of the Form I-9, the employer determines that the individual's employment authorization has expired, or the Service informs the employer that the employment eligibility document presented is insufficient to establish employment authorization, the employer shall not rehire the individual unless the employer completes a new Form I-9 pursuant to the requirements of 274a.2(b) of this section.

* * * * *

12. Section 274a.2 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(d) * * *

(1) When a recruiter or referrer for a fee refers an individual for whom that recruiter or referrer for a fee has previously completed a Form I-9, and the recruiter or referrer has completed the Form I-9 and complied with the verification requirements set forth in paragraph (b) of this section with regard to the individual, the recruiter or referrer may (in lieu of completing a new Form I-9) inspect the previously completed Form I-9 and:

(i) If upon inspection of the Form I-9 relating to the individual, the recruiter or referrer determines that the Form I-9 relates to the individual and that the individual is authorized to work, no additional verification or new Form I-9 need be completed if the recruiter or referrer for a fee reverifies the individual's employment eligibility on the Form I-9 and the individual is referred within three years of the date of the initial execution of the Form I-9; or

(ii) If upon inspection of the Form I-9, the recruiter or referrer determines that the individual's employment authorization has expired, or the Service informs the employer that the employment eligibility document presented is insufficient to establish employment authorization, the recruiter or referrer shall not refer the individual unless the recruiter or referrer for a fee completes a new Form I-9 pursuant to the requirements of paragraph (b) of this section.

(2) For purposes of retention of the Form I-9 by a recruiter or referrer for a previously recruited or referred individual pursuant to paragraph (d)(1) of this section, the recruiter or referrer shall retain the Form I-9 for a period of three years commencing from the date of the initial execution of the Form I-9.

13. Section 274a.5 is revised to read as follows:

§ 274a.5 Use of labor through contract.

Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

14. Section 274a.7 is amended by revising paragraph (a), replacing the "." with a "; or" at the end of paragraph (b)(3) and by adding a new paragraph (b)(4) to read as follows:

§ 274a.7 Pre-enactment provisions for employees hired prior to November 7, 1986.

(a) The penalties provisions as set forth in section 274A(e) and (f) of the Act for violations of section 274A(a)(2) and (b) of the Act shall not apply to an employee who was hired prior to November 7, 1986.

(b) * * *

(4) is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.2(b)(1)(viii).

15. Section 274a.9 is amended by revising paragraph (a), the heading of paragraph (c), the heading of paragraph (c)(1), the paragraph (c)(1)(i), and paragraph (d); and by adding a new paragraph (e) to read as follows:

§ 274a.9 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

* * * * *

(c) *Citation and Notice of Intent to Fine.* * * *

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the Notice of Intent to Fine, a designation of the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

* * * * *

(d) *Request for Hearing Before an Administrative Law Judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the INS, within thirty days of the service of the Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. Any written request for a hearing in a foreign language must be accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the thirty day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by mail, five days shall be added to the prescribed thirty day period. The respondent may, but is not required to, file with the INS an answer responding to each allegation listed in the Notice of Intent to Fine.

(e) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within thirty days of the day of service of the Notice of Intent to Fine (thirty-five days if served by mail), the INS shall issue a final order from which there is no appeal.

16. Section 274a.10 is amended by revising paragraphs (a), paragraph (b) introductory text, paragraph (b)(1) introductory text, paragraph (b)(1)(ii)(A)–(b)(1)(ii)(C), and paragraph (b)(3) to read as follows:

§ 274a.10 Penalties.

(a) *Criminal penalties.* Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) of the Act shall be fined not more than $3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* An employer or a recruiter or referrer for a fee may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an Administrative Law Judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single violation will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an Administrative Law Judge to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien, shall be subject to the following order:

* * * * *

(ii) * * *

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien, or

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien; and

* * * * *

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which does its own hiring, or its own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

* * * * *

17. Section 274a.11 is removed and reserved.

18. Section 274a.12 is amended by revising paragraphs (a) introductory text, and by removing and reserving paragraph (a)(9) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien within a class of aliens described in paragraphs (a)(3) through (a)(8) and (a)(11) of this section, who seeks to be employed in the United States must apply for evidence of such employment authorization document by the Service.

* * * * *

(9) [Reserved]

* * * * *

19. Section 274a.12 is amended by removing and reserving paragraph (b)(4) and by revising paragraph (b)(15) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(4) [Reserved]

* * * * *

(15) A nonimmigrant alien within the class of aliens described in paragraphs (b)(2), (b)(5), (b)(6), (b)(9), (b)(10), (b)(11),

(b)(12), and (b)(16) of this section whose status has expired but who has filed a timely application for an extension of such status pursuant to § 214.2 of this chapter. These aliens are authorized to continue employment with the same employer for a period not to exceed 120 days beginning on the date of the expiration of the authorized period of stay. Such authorization shall be subject to any conditions and limitations noted on the initial authorization. However, if the district director or regional service center director adjudicates the application prior to the expiration of this 120 day period and denies the application for extension of status, the employment authorization under this paragraph shall automatically terminate upon notification of the denial decision.

* * * * *

20. Section 274a.12 is amended by removing and reserving paragraph (c)(15) and by revising paragraph (c) introductory text, and revising paragraphs (c)(1), (c)(4), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), and (c)(13), and by adding paragraphs (c)(16) and (c)(17) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) *Aliens who must apply for employment authorization.*

An alien within a class of aliens described in this section must apply for work authorization. If authorized, such an alien may accept employment subject to any restrictions indicated in the regulations or cited on the employment authorization document:

(1) An alien spouse or unmarried dependent child of a foreign government official (A–1 or A–2) pursuant to § 214.2(a)(2) of this chapter and who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

* * * * *

(4) An alien spouse or unmarried dependent child of an officer of, representative to, or employee of an international organization (G–1, G–3 or G–4) pursuant to § 214.2(g) of this chapter who presents a fully executed Form I–566 bearing the endorsement of an authorized representative of the Department of State;

* * * * *

(8) An alien who has filed a non-frivolous application for asylum pursuant to part 208 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(9) An alien who has filed an application for adjustment of status to lawful permanent resident pursuant to part 245 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(10) An alien who has filed an application for suspension of deportation pursuant to part 244 of this chapter, if the alien establishes an economic need to work. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

(11) An alien paroled into the United States temporarily for emergent reasons or reasons deemed strictly in the public interest pursuant to § 212.5 of this chapter;

(12) A deportable alien granted voluntary departure, either prior to or after hearing, for reasons set forth in § 242.5(a)(2)(v), (a)(2)(vi), or (a)(2)(viii) of this chapter may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in adjudicating the application for [granting] employment authorization of such an alien granted voluntary departure include, but are not limited to, the following:

(i) The length of voluntary departure granted;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief.

(13) Any non-detained alien against whom exclusion or deportation proceedings have been instituted and who does not have a final order of deportation or exclusion, may be granted temporary employment authorization if the district director determines that employment authorization is appropriate. Factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Whether there is a reasonable chance that legal status may ensue in the near future; and

(iv) Whether there is a reasonable basis for consideration of discretionary relief;

* * * * *

(15) [Reserved]

(16) Any alien who has filed an application for creation of record of lawful admission for permanent residence pursuant to part 249 of this chapter. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specific date;

(17) A nonimmigrant visitor for business (B–1) who:

(i) Is a personal or domestic servant who is accompanying or following to join an employer who seeks admission into, or is already in, the United States as a nonimmigrant defined under sections 101(a)(15) (B), (E), (F), (H), (I), (J), (L) or section 214(e) of the Immigration and Nationality Act. The personal or domestic servant shall have a residence abroad which he or she has no intention of abandoning and shall demonstrate at least one year's experience as a personal or domestic servant. The nonimmigrant's employer shall demonstrate that the employer/employee relationship has existed for at least one year prior to the employer's admission to the United States; or, if the employer/employee relationship existed for less than one year, that the employer has regularly employed (either year-round or seasonally) personal or domestic servants over a period of several years preceding the employer's admission to the United States;

(ii) Is a domestic servant of a United States citizen accompanying or following to join his or her United States citizen employer who has a permanent home or is stationed in a foreign country, and who is visiting temporarily in the United States. The employer/employee relationship shall have existed prior to the commencement of the employer's visit to the United States; or

(iii) Is an employee of a foreign airline engaged in international transportation of passengers freight, whose position with the foreign airline would otherwise entitle the employee to classification under section 101(a)(15)(E)(i) of the Immigration and Nationality Act, and who is precluded from such classification solely because the employee is not a national of the country of the airline's nationality or because there is no treaty of commerce and navigation in effect between the United States and the country of the airline's nationality.

* * * * *

21. Section 274a.13 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* An application on Form I–765 for employment authorization by an alien under § 274a.12 (a)(3) through (a)(8) and (a)(10) and (a)(11) and under § 274a.12(c) of this part shall be filed in accordance with the instructions on Form I–765 with the district director having jurisdiction over the applicant's residence or the district director having jurisdiction over the port of entry at which the alien applies. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on the Form I–765.

(b) *Approval of application.* If the application is granted, the alien shall be notified of the decision and issued an INS employment authorization document valid for a specific period and subject to any terms and conditions as noted.

* * * * *

(d) *Interim employment authorization.* The district director shall adjudicate the application within 60 days from the date of receipt of the application by the Service. Failure to complete the adjudication within 60 days will result in the grant of an employment authorization document for a period not to exceed 120 days. Such authorization shall be subject to any conditions noted on the employment authorization document. However, if the district director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section shall automatically terminate as of the date of the district director's adjudication and denial.

Dated: March 16, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90–14159 Filed 6–22–90; 8:45 am]

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federal register

Monday
June 25, 1990

Part III

Harry S. Truman Scholarship Foundation

45 CFR Part 1801
Harry S. Truman Scholarship Regulations; Final Rule

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

45 CFR Part 1801

Harry S. Truman Scholarship Regulations

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Final rule.

SUMMARY: The following are the regulations governing the annual competition for Harry S. Truman Scholarships. The regulations reflect modifications in the program adopted by the Board of Trustees on April 4, 1990, to increase the effectiveness of program funding in supporting young persons who will seek careers in the public service.

Amendments provide for the selection of scholars in the junior year of college and extend the award through three years of graduate school (§ 1801.3). In prior years scholars were selected in their sophomore year of college, and the scholarship supported only two years of graduate study. The amendments also reflect an increase to $30,000 of the maximum Scholarship stipend (§ 1801.41). To facilitate transition to junior year selection, community and junior colleges and other two year institutions will be allowed to nominate sophomore level students for the 1991 competition. In addition a number of clarifying changes are being made to the last complete edition of these regulations published in the **Federal Register** on June 21, 1988 (53 FR 23239).

EFFECTIVE DATE: June 25, 1990.

ADDRESSES: Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, (202) 395–4831.

Dated: June 19, 1990.

Louis H. Blair,

Executive Secretary.

Approved: June 19, 1990.

Elmer B. Staats,

Chairman, Board of Trustees.

Title 45 of the Code of Federal Regulations is amended by revising part 1801 to read as follows:

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

1801.1 Annual Truman Scholarship competition.
1801.2 Selection of Truman Scholars by State.
1801.3 Students eligible for nomination.
1801.4 Definitions.

Subpart B—Nominations

1801.10 Nomination by institution of higher education.
1801.11 Annual nomination.
1801.12 Institutions with more than one campus.
1801.13 Two-year institutions.
1801.14 Submission of application to the Foundation.
1801.15 Faculty representative.
1801.16 Closing date for receipt of nominations.
1801.17 Contents of application.

Subpart C—The Competition

1801.20 Selection of finalists.
1801.21 Evaluation criteria.
1801.22 Interview with Regional Review Panel.
1801.23 Recommendation by Panel.
1801.24 Further recommendations or nominations.
1801.25 Selection of Truman Scholars by the Foundation.

Subpart D—Graduate Study and the Work Experience Program

1801.30 Continuation into graduate study.
1801.31 Approval of graduate programs by the Foundation.
1801.32 Eligible colleges and degree programs.
1801.33 The work experience program.

Subpart E—Amount of Payments to Students

1801.40 Travel expenses of finalists.
1801.41 Scholarship awards.
1801.42 Definition of "fee".
1801.43 Allowance for books.
1801.44 Allowance for room and board.
1801.45 Deduction for benefits from other sources.

Subpart F—Payment Conditions and Procedures

1801.50 Acceptance of the scholarship.
1801.51 Report at the beginning of each term.
1801.52 Definition of "term".
1801.53 Payment schedule.
1801.54 Postponement of payment.
1801.55 Annual report.

Subpart G—Duration of Scholarship

1801.60 Renewal of scholarship.
1801.61 Termination of scholarship.
1801.62 Recovery of scholarship funds.

Authority: Pub. L. 93-642,88 Stat. 2276 (20 U.S.C. 2001–2012).

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Selection of Truman Scholars by State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets eligibility criteria in § 1801.3. In addition, the Board of Trustees may select additional Scholars-at-Large.

(b) As used in this part, "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated as a Truman Scholar if he or she:

(a) Is a matriculated student pursuing a degree at an institution of higher education during the year in which nominated;

(b) Is a junior pursuing a bachelor's degree as a full-time student at an institution of higher education and will receive a baccalaureate degree the following academic year; or, for the 1990–91 academic year, is a sophomore at an accredited two year institution or two year branch of a State college or university and will be a junior pursuing a bachelor's degree as a full-time student at an accredited institution of higher education the following year;

(c) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(d) Ranks in the upper third of his or her class; and

(e) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

Academic year means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

Foundation means the Harry S. Truman Scholarship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at the institution of higher education.

Graduate study means the courses of study beyond the baccalaureate level which lead to an advanced degree.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior means a student who following completion of the current academic year has one more year of full-time course work to receive a baccalaureate degree.

President means the principal official responsible for the overall direction of the operations of an institution of higher education.

Public service means employment in: governments at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, and public service-oriented non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

Resident means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, parent's place of residence, and eligibility for "in-State" tuition rates at public institutions of higher education.

Senior means the academic level recognized by the institution of higher education as being in the last year of study before receiving a baccalaureate degree.

Sophomore means the academic level recognized by the institution of higher education as having second year standing.

Work-experience program means employment approved by the Foundation that involves an intensive period of practical work in Federal, State, or local government office.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.12, 1801.13 and in paragraph (b) of this section, each institution of higher education may nominate up to three students annually. If an institution chooses to nominate three students, the three may have legal residence in the same State, or in different States.

(b) The Foundation may announce each year in its Bulletin of Information special circumstances under which each institution of higher education may nominate one or more additional students.

(c) All nominations must be made by the President of the institution or the designated Faculty Representative.

§ 1801.12 Institutions with more than one campus.

If an institution of higher education had more than one component separately listed in the current edition of the publication Educational Directory: Colleges and Universities (Published by the U.S. Department of Education), each may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who will be juniors the following year at other institutions of higher education.

§ 1801.14 Submission of application to the Foundation.

To nominate a student for the competition, the institution of higher education must send the student's application to the Foundation.

§ 1801.15 Faculty representative.

(a) Each institution which nominates a student or which has a Truman Scholar in attendance must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship on campus, solicit recommendations of potential nominees from members of the faculty, and insure that the institution's nomination with all required supporting documents, is forwarded to the Foundation by the required deadline.

§ 1801.16 Closing date for receipt of nominations.

The Foundation publishes an annual notice in the **Federal Register** of the date, usually December 1, by which institutions of higher education must submit their nominations and all supporting documents in order to be guaranteed consideration by the Foundation.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following: (1) A certification of nomination and eligibility signed by the Faculty Representative;

(2) A completed Nomination and Supporting Information Form signed by the nominee;

(3) An analysis of a public policy issue written by the nominee;

(4) A current official college transcript;

(5) Three letters of recommendation;

(6) Statement that the student is willing to participate in a Truman Scholars Leadership seminar sponsored by the Foundation.

Subpart C—The Competition

§ 1801.20 Selection of finalists.

The Foundation selects finalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation selects finalists from the students nominated on the basis of the following criteria:

(1) Demonstrated leadership abilities;

(2) Appropriateness of the nominee's intended program of graduate study as preparation for a leadership career in public service;

(3) Writing and analytic skills;

(4) Academic performance;

(5) Quality and extent of public and community service and government involvement.

(b) The Foundation evaluates each student solely on the basis of the information required under 1801.17.

§ 1801.22 Interview with Regional Review Panel.

The Foundation invites each finalist to an interview with a Regional Review Panel.

Regional Review Panels evaluate Truman Finalists primarily on:

(a) Leadership abilities and potential;

(b) Commitment to careers in public service;

(c) Intellectual depth and analytic abilities;

(d) Vision, sensitivity, and communications skills;

(e) Quality of the completed Nomination and Supporting Information Form.

§ 1801.23 Recommendation by panel.

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar and an alternate from each state in the event the scholar declines appointment. The Board of Trustees may authorize each Regional Review Panel to recommend additional "Scholars-at-Large from the States in its region.

(b) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the Panel's assessment of each finalist in terms of criteria presented in § 1801.22.

§ 1801.24 Further recommendations or nominations.

(a) The Foundation may ask a Regional Review Panel to submit names of additional finalists for consideration, or may ask institutions of higher education to submit additional nominations.

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of subpart B of this part, and are considered under the procedures of this subpart.

§ 1801.25 Selection of Truman Scholars by the Foundation.

(a) The Foundation names Truman Scholars after receiving recommendations from the Regional Review Panels.

(b) The Foundation may name an alternate for each Truman Scholar. The alternate receives the scholarship if: (1) The person named as Truman Scholar declines the scholarship or is not able to begin studies at the start of the following academic year.

(2) Payments are not postponed under § 1801.54.

Subpart D—Graduate Study and the Work Experience Program

§ 1801.30 Continuation into graduate study.

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Truman Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) By November 1 of their senior year, Truman Scholars desiring support for graduate study must submit a proposed program of graduate study to the Foundation for approval. The proposed program may subsequently be changed with the approval of the Foundation.

(b) Foundation approval of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in some detail how their graduate program and their overall educational plans will realistically prepare them for their chosen career goal in the public service. The Foundation issues guidelines to help Scholars prepare their proposals.

(d) Scholars may offer relevant and appropriate fields of study that will help prepare them for a career in public service.

(e) Scholars may request annual deferrals of Foundation support for their graduate studies for up to four years after completion of their undergraduate studies. Scholars who wish to use the deferred portion of their Truman Scholarships should submit their proposed plans for graduate school at least four months prior to matriculation to graduate study.

§ 1801.32 Eligible colleges and degree programs.

(a) Truman Scholars at the graduate level may study at any accredited college or university that offers graduate study.

(b) They may enroll in any relevant graduate program for a career in public service. A wide variety of fields of study can lead to careers in public service including—*but not limited to*—agriculture, biology and environmental sciences, engineering, mathematics, physical and social sciences as well as traditional fields such as economics, education, government, history, international relations, law, medicine and public health, political science, and public administration and public policy.

(c) Foundation support for graduate study is restricted to three years of full-time study for junior-level Scholars selected in 1991 and subsequent years: Foundation support for graduate study is restricted to two years for sophomores selected in 1991 and to all Scholars selected prior to 1991.

§ 1801.33 The work experience program.

(a) The Foundation encourages all Truman Scholars without substantial previous government experience to participate in paid internships or in voluntary programs of work experience in the public service. This would typically occur after the completion of the baccalaureate degree.

(b) These apprenticeships are intensive periods of practical work ranging up to a year in length in a Federal, State or local government office arranged with the approval of the Foundation.

(c) Although the Foundation is not authorized to provide financial support during this period, it will attempt to assist Scholars to make appropriate work experience arrangements.

Subpart E—Amount of Payments to Students

§ 1801.40 Travel expenses of finalists.

The Foundation will provide tickets for round-trip air or train transportation from the student's nominating institution to the interview site if the institution is not in the vicinity of the site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. Finalists wishing to drive to the interview will be reimbursed for mileage according to Federal Travel Regulations. Mileage reimbursement may not exceed the costs of airline transportation.

§ 1801.41 Scholarship awards.

(a) Subject to the maximums of paragraphs (b), (c) and (d) of this section, and to the deduction of § 1801.45, the Foundation will pay to a Truman Scholar his or her actual costs for tuition, fees, books, room and board.

(b) Each Truman Scholar selected in 1990 or earlier years may receive from the foundation a maximum of $7,000 for each of four academic years.

(c) Each Truman Scholar selected in 1991 or later may receive from the Foundation a maximum of $30,000, as follows: (1) $3,000 for the senior undergraduate year.

(2) $27,000 for a graduate program, with an annual academic year maximum of $13,500 for a program leading to a graduate degree in one or two years, or an annual academic year maximum of $9,000 for a program leading to a graduate degree in three or more years.

(d) The maximum annual academic year scholarship for a Truman Scholar selected in 1991 who then is a sophomore at an accredited two year institution is allocated as follows: (1) $3,000 maximum of each of the junior and senior undergraduate years.

(2) $12,000 for each of two years of graduate study.

§ 1801.42 Definition of "fee".

As used in this part, "fee" means a typical and usual non-refundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for a Scholars' enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowance for a student's books is $400 per year.

§ 1801.44 Allowance for room and board.

The cost allowed for a student's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the student's institution, given the type of housing the student occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a student's tuition, fees, books, room and board must be reduced to the extent that the cost is paid for by another organization. Thus payments from the Foundation may be received to supplement, but not to duplicate, educational benefits received by a Truman Scholar from governmental or institutional sources.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Truman Scholar must sign an acceptance of the scholarship and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

The Truman Scholar must submit the following material to the Foundation at the beginning of each term for which he or she seeks financial support from the Foundation:

(a) A statement of the student's costs for tuition, fees, books, room and board.

(b) A certification by an authorized official of the institution that the statement of those costs is accurate.

(c) A certification of the amounts of those costs that are paid for by another organization.

(d) A certification by an authorized official of the institution that the Truman Scholar: (1) Is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and

(2) Is not engaged in gainful employment that interferes with the Scholar's studies.

(e) A certification by an authorized official of the institution of whether the Truman Scholar is in academic good standing.

§ 1801.52 Definition of "term".

As used in this part, "term" means the period which the institution of higher education uses to divide its academic year: Semester, trimester, or quarter.

§ 1801.53 Payment schedule.

The Foundation will pay the Truman Scholar a portion of the award after each report submitted under § 1801.51.

§ 1801.54 Postponement of payment.

(a) A Truman Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as necessary.

§ 1801.55 Annual report.

Truman Scholars are required to submit an annual report by July 15 following each academic year for which they have received support from the Foundation. Newly selected Truman Scholars are required to submit an annual report updating the Foundation on their activities and accomplishments between the time they submitted their applications for the Truman Award and the start of their Foundation support. The annual report should cover: courses taken and grades earned; courses planned for the coming year if Foundation support is requested; public service and school activities; part-time employment and summer employment or internships; and achievements, awards and recognition, publications or significant developments.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may suspend or terminate a scholarship:

(1) If the Truman Scholar does not meet the criteria in § 1801.51(e), or

(2) If the Truman Scholar does not meet the criteria in § 1801.3(e) or § 1801.31, or § 1801.51 (d) or (e).

(b) Before it terminates a scholarship under these conditions the Foundation gives the student notice and an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

If a scholarship is terminated or if the student resigns a scholarship, all scholarship funds which have not been spent or which the student may recover must be returned to the Foundation.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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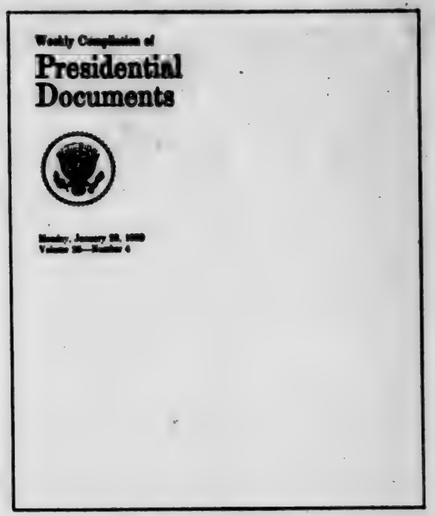
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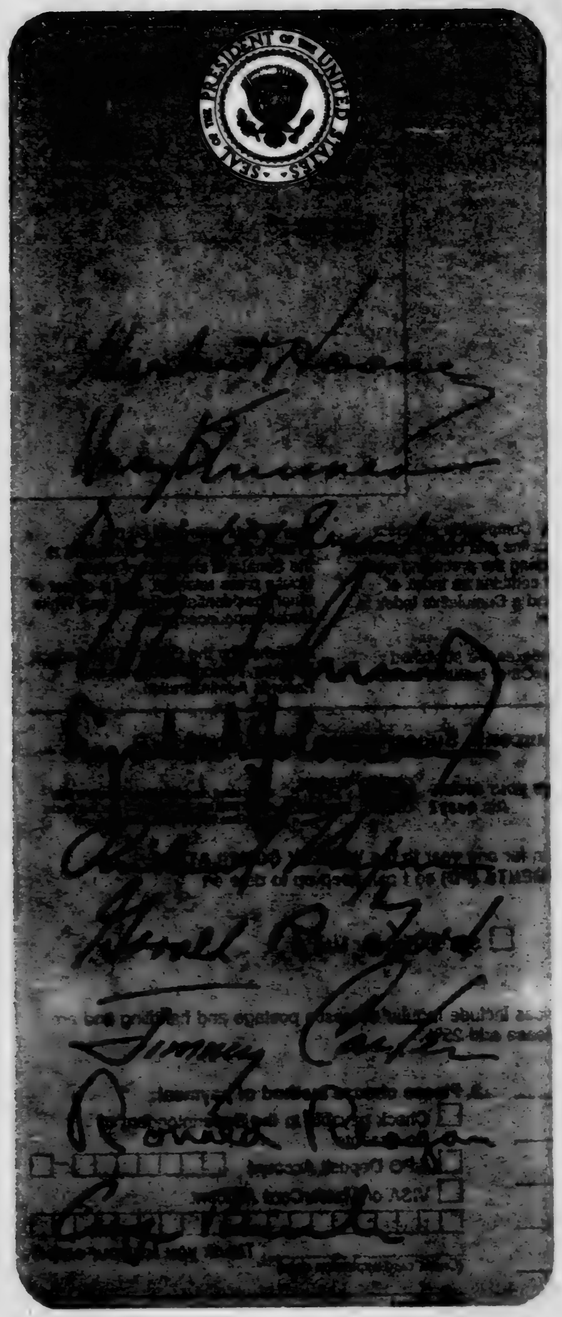
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Presidential Documents

Title 3—

The President

Presidential Determination No. 90-27 of June 22, 1990

Renewal of Trade Agreement With the Republic of Hungary

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in U.S. tariffs and non-tariff trade barriers resulting from multilateral negotiations are satisfactorily reciprocated by the Republic of Hungary. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the Republic of Hungary.

These determinations and findings shall be published in the Federal Register.

George Bush

THE WHITE HOUSE,
Washington, June 22, 1990.

Editorial note: For the statement by Press Secretary Fitzwater on the renewal of the agreement, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 25).

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, and 540

Performance Management and Recognition System

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing the Performance Management and Recognition System (PMRS) to reflect comments on interim regulations published November 29, 1989. The Performance Management and Recognition System Reauthorization Act of 1989 extended the PMRS from October 1, 1989, to March 31, 1991. These regulations modify the formula used to determine merit increases and establish new procedures for dealing with employees who are performing below the fully successful level, as authorized by the Act.

DATES: Effective Date: July 26, 1990.

Due Date: PMRS Performance Management Plans must be revised and submitted to the Office of Personnel Management for review and approval within 90 days from the date of publication of these regulations.

ADDRESSES: Send or deliver agency Performance Management Plans to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street NW., room 7H30, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas T. Campagna (202) 606–2720, concerning questions about the changes in parts 430 and 540; Sharon C. Snellings, (202) 606–2020, concerning changes in part 432.

SUPPLEMENTARY INFORMATION: On November 29, 1989, OPM published (at 54 FR 48075) interim regulations on implementation of the Performance Management and Recognition System Reauthorization Act of 1989. These regulations modified the formula used to determine merit increases and established new procedures for dealing with employees who are performing below the fully successful level, as authorized by the Act. OPM received comments from 7 agencies. Following is a discussion of the comments received and OPM's response to these comments. The final regulations follow the comment and response material.

1. Section 430.204 Agency Performance Appraisal Systems

Comments: A number of agencies have questioned OPM concerning the different requirements in § 430.204(j)(3) (non-PMRS) and § 430.405(j)(2) (PMRS) regarding whether an agency "must" or "may" take a performance based action when an employee's performance remains unacceptable or below fully successful following an opportunity to improve or a Performance Improvement Plan (PIP).

Response: OPM does not intend that agency discretion in taking a performance based action be different for PMRS and non-PMRS employees. Therefore, OPM has made a conforming change to § 430.204(j)(3) which allows agency discretion in determining whether to take a performance based action if a non-PMRS employee's performance is unacceptable at the conclusion of an opportunity period.

2. Section 430.405 Agency Performance Appraisal Systems

Comments on paragraph (i): Two agencies believed that the use of the word "rated" in this paragraph was confusing and was not consistent with the use of the word "determined" in § 432.105. Both agencies recommended that the word "rated" be changed to "determined". In addition, one of these agencies suggested that OPM put a short parenthetical statement in both of the above citations (as well as in 5 CFR 432.104 for PMS employees) to the effect that neither a summary rating nor a rating of record is required to put an employee on a PIP (or an opportunity period for PMS employees).

Response: OPM agrees with the agencies' comments that using the word "rated" in one citation and "determined" in another citation could be confusing and that the wording should be consistent in both sections of the regulations. Therefore, OPM has changed the word "rated" in § 430.405(i) to "determined". With this change, OPM believes it is clear that the requirement to provide the employee with a PIP arises whenever the agency makes a determination (not necessarily a rating) that the employee is performing below fully successful on one or more critical elements. Therefore, OPM has not adopted the suggestion to add a parenthetical statement to the regulations.

Comment on §§ 430.405(i)(2) and 432.105: One agency suggested that OPM edit the language in these two citations to read "inform the employee of the performance requirement(s) or standard(s) that must be met, including a description of the types of improvements that the employee must demonstrate, in order to attain fully successful performance in his or her position." The agency indicated that it understood that the language in the interim regulations was repeating the language in the new legislation but found that language, standing alone, vague and insufficient. In addition, the agency pointed out that this language is not consistent with the requirements in 5 CFR 432.104 for PMS employees.

Response: OPM's interim regulations are consistent with the clear language of the Performance Management and Recognition System Reauthorization Act of 1989 which requires that the employee be provided with a description of the types of improvements that the employee must demonstrate to attain the fully successful level of performance. With respect to the agency's concerns that employees know specifically of the performance requirements or standards that must be met, OPM notes that agencies are required under the Performance Management and Recognition System (PMRS) regulations to provide an employee with written standards for the fully successful level on each of the elements in the employee's performance plan. Therefore, under the new regulations, employees will be fully informed of the standards and requirements they must meet to achieve

a fully successful level of performance. For this reason, OPM has not adopted the agency's suggestion.

Comment on paragraph 430.405(i)(3): One agency suggested that this paragraph be modified to include examples of assistance to help employees performing below the fully successful level, similar to the examples provided in § 430.406(i) of the old regulations. It found these examples, e.g., formal training, coneeling, etc., to be helpful in the operation of its Performance Management System.

Response: OPM recognizes that these examples of assistance can be of value to supervisors and managers, and, therefore, has incorporated some examples of assistance into the final regulations.

Comment on paragraph 430.405(i)(3): One agency suggested that the word "Offer" in this paragraph be changed to "Provide". The agency believed that the word "Offer" may be construed to mean that the employee would have to approach the supervisor if assistance is desired in improving below fully successful performance.

Response: The Civil Service Retirement Spouse Equity Act of 1984, which enacted the PMRS, required that employees performing below fully successful be provided with assistance. However, the Performance Management and Recognition System Reauthorization Act of 1989 makes no reference to assisting employees who are performing below fully successful. Since the current legislation does not provide OPM with the authority to require agencies to assist employees who are performing below fully successful, OPM does not believe it can use the word "Provide" in this paragraph. However, even though the current law is silent in this respect, OPM believes it is necessary, as a part of a bona fide PIP, for agencies to offer assistance to PMRS employees performing below the fully successful level. For that reason, OPM is requiring that agencies offer to assist the PMRS employee in improving his or her performance to the fully successful level, recognizing the type and degree of assistance offered to the employee will depend on the circumstances of each particular situation.

Comment on the requirement for a performance improvement plan: One agency recommended that a performance improvement plan only be required when management determines that the performance deficiencies are such that, if they are not corrected, it must take the employee out of the job. The agency argues that a "blanket" requirement for a performance improvement plan whenever a PMRS employee is determined to be below fully successful will discourage managers from making that determination and thus defeat the purpose of the new law.

Response: The new law is clear that agencies must provide a performance improvement plan whenever a PMRS employee is determined to be performing below fully successful, whether or not management anticipates taking a reduction in grade or removal action if the employee's performance does not improve. OPM's regulations are consistent with the law and, therefore, have not been changed to adopt the agency's recommendation.

3. *Comment on critical element rating and summary rating:* One agency stated the belief that the OPM regulations allow agencies to give an employee a fully successful summary rating when one critical element is rated at minimally successful. The agency recognizes that the new PMRS legislation requires that any employee performing below fully successful on one critical element must be put on a PIP, and if his/her performance does not improve to fully successful, the agency may initiate a performance-based action. However, the agency does not believe that an employee who receives an overall rating of fully successful should be given a PIP or potentially be subject to a performance-based action because of minimally successful performance on one critical element.

Response: The new law specifically states that performance-based actions taken pursuant to its provisions will be carried out consistent with section 4303. Section 4303 of title 5, U.S.C., refers only to the use of critical elements in determining when a performance based action will be initiated against an employee who is performing at an unacceptable level. There is no reference in law or regulation for taking a performance-based action based on a summary rating. Moreover, section 4301(3) of title 5, U.S.C., links performance to ratings on critical elements. Therefore, OPM is without authority to propose regulations which would allow agencies to take part 432 actions based on summary ratings. For this reason, OPM believes no change is necessary to the PMRS rating provisions. If the new PIP requirements in the PMRS regulations create problems for an agency in relation to its current summary rating procedures, the agency has the flexibility to change the summary rating derivation scheme and submit it to OPM for approval.

4. *Comments on submission of changes to agencies' PMRS Performance Management Plans:* A number of agencies telephoned OPM and wanted to know if they had to submit the changes to their PMRS Performance Management Plan, due to the new requirements in the interim PMRS regulations, to OPM for review and approval.

Response: As indicated in the "DATES" section above, agencies must submit their PMRS Performance Management Plans to OPM for review and approval within 90 days from the date of publication of these regulations. The Plans must contain the new formula used to determine merit increases and the new procedures for dealing with employees who are performing below the fully successful level.

5. *Comment on Implementing New PIP Procedures Prior to Plan Approval:* One agency commented that OPM should issue guidance on whether or not an agency can proceed with performance improvement plans and possible part 432 actions for PMRS employees, when changes to the agency's performance appraisal system (reflecting the new requirements created by Pub.L. 101–103) have not been officially approved by OPM.

Response: The PMRS Reauthorization Act of 1989, Public Law 101–103, went into effect on October 1, 1989, and mandated that agencies implement its requirements immediately. Thus, agencies have the authority and responsibility to proceed with appropriate actions under Public Law 101–103 (even if an agency has not yet received official OPM approval of changes to its performance appraisal system) as long as its actions are in conformance with the provisions of law and OPM regulation. This includes the requirement to provide performance improvement plans for PMRS employees who are determined to be performing below fully successful on or after the effective date of the law. OPM notes that agencies acted in a similar fashion in adjusting their merit increase determination procedures when issuing merit increases on or after October 1, 1989, despite the fact that agencies did not have those changes to their system reviewed and approved by OPM at the time. Further, before OPM can fulfill its responsibility for reviewing agency performance appraisal systems to ensure compliance with statutory and regulatory provisions (5 U.S.C. 4304), final regulations must be in effect. In this regard, agencies should follow the requirements specified in the "DATES" section and section 4 above for submission of their revised Performance Management Plans to OPM.

6. Section 432.103 Definitions

Comment on definitions in § 432.103(a) "Acceptable performance" and (b) "Unacceptable performance": One agency suggested that the language in these two definitions be revised to reflect that performance at either the "minimally successful" or "unacceptable" levels be considered "unacceptable" for purposes of a part 432 reduction in grade or removal of a PMRS employee. The agency feels this is necessary to avoid possible confusion during third party litigation of part 432 actions where the agency performance appraisal system provides for two rating levels below fully successful for each critical element.

Response: OPM is unable to adopt this suggestion because the new law no longer speaks in terms of "unacceptable" performance as the standard for taking a part 432 action in connection with a PMRS employee. The language of the new law is clear in describing "below fully successful" as performance which requires agencies to initiate a PIP and allows action to be taken to remove or reduce in grade a PMRS employee under part 432.

7. Section 432.105 Addressing Below Fully Successful Performance by PMRS Employees

Comment on the last sentence: One agency suggests that the wording of the sentence be revised to read: "The agency *will* also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed." The substitution of the word "will" in place of the current "may" would require agencies to inform employees, at the time they are provided a performance improvement plan, that unless their performance improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

Response: The new law governing performance based actions for PMRS employees does not require such a notice and OPM does not wish to deny agencies the flexibility to choose alternative means (such as providing additional PIP's, training, etc.) of addressing performance problems which arise after an initial PIP has been provided. However, notifying an employee of the possibility that he or she may be reduced in grade or removed if performance is not improved to, and sustained at least at, an acceptable level, constitutes a sound performance management practice which enhances communication and puts employees on notice regarding the possible consequences of continued poor performance. Therefore, the sentence in 5 CFR 432.105 will be amended to read: "The agency should also inform the employee that, * * *." An identical change will be made to a similar sentence in 5 CFR 432.104, "Addressing unacceptable performance by non-PMRS employees" so that OPM's regulations reflect a consistent policy.

8. Section 432.109 Agency Records

Technical changes were made to this section to clarify that agency recordkeeping procedures also apply to actions taken for below fully successful performance by PMRS employees as well as non-PMRS employees.

9. *Comment on Reassignments:* One agency suggested that the part 432 regulations addressing below fully successful performance by PMRS employees, and related FPM chapter material, should include the option of reassignment in addition to removal and reduction in grade.

Response: OPM notes that the last paragraph of 5 U.S.C. 4302a(b), states that "The provisions of section 4303 relating to the reduction in grade or removal of an employee for unacceptable performance, shall apply with respect to any reduction in grade or removal under paragraph (8)." Because OPM's part 432 regulations (and associated FPM chapter 432 material) are based on 5 U.S.C. 4303, reduction in grade and removal actions for PMRS employees, just as for non-PMRS employees, are the only personnel actions which may be taken under part 432. Thus, OPM is not able to adopt the agency's suggestion. However, even though reassignment actions do not involve part 432 procedures, agencies may reassign PMRS employees following completion of a PIP. (See also answer to comment #10 below).

10. *Comment on PIP Requirement and Reassignments:* One agency questioned if the regulations needed to be clarified as to whether or not an agency is required to provide a PIP to a PMRS employee who has been determined to be below fully successful before it could reassign him or her.

Response: The law clearly provides that a performance improvement plan shall be given to any PMRS employee determined to be performing below fully successful. Thus, if an employee has been determined to be performing below fully successful in one or more critical elements of his or her position, a PIP must be provided in that position under the provisions of 5 U.S.C. 4302a(b)(6). The regulations, as written, reflect this requirement. However, this requirement does not preclude a reassignment action before a determination is made.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects

5 CFR Parts 430 and 432

Administrative practice and procedure; Government employees.

5 CFR Part 540

Government employees; Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the interim regulations under 5 CFR parts 430, 432 and 540 published on November 29, 1989, at 54 FR 49075 are adopted as final with the following revisions:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53 and 54.

2. In § 430.204, paragraph (j)(3) is revised to read as follows:

§ 430.204 Agency performance appraisal systems.

• • • • • •

(j) • • •

(3) If, at the conclusion of the opportunity to demonstrate acceptable performance, referred to in paragraph (j)(1) of this section, the employee's performance is "Unacceptable," the agency may reassign, reduce-in-grade, or remove the employee, as provided by 5 U.S.C. 4320(b)(6) and 4303(a).

• • • • • •

3. In § 430.405, paragraph (i) introductory text and paragraph (i)(3) are revised to read as follows:

§ 430.405 Agency performance appraisal systems.

• • • • • •

(i) Each appraisal system shall provide for a performance improvement plan (PIP) for each employee whose performance has been determined to be

below fully successful on one or more critical elements. The PIP must:

* * * * *

(3) Offer assistance to the employee in improving to the fully successful level (which may include: Formal training, on-the-job training, counseling, and closer supervision); and

* * * * *

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

4. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, 4305.

5. In § 432.103, paragraph (e) is revised to read as follows:

§ 432.103 Definitions.

* * * * *

(e) *Performance improvement plan* means the plan agencies are required to provide to a PMRS employee whose performance in one or more critical elements has been determined to be below the fully successful level. As part of the plan, agencies shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate.

* * * * *

6. § 432.104 is revised to read as follows:

§ 432.104 Addressing unacceptable performance by non-PMRS employees.

At any time during the performance appraisal cycle that a non-PMRS employee's performance is determined to be unacceptable in one or more critical elements, the agency shall notify the employee of the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. The agency should also inform the employee that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level, the employee may be reduced in grade or removed. For each critical element in which the employee's performance is unacceptable, the agency shall afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position. As part of the employee's opportunity to demonstrate acceptable performance, the agency shall offer assistance to the employee in improving unacceptable performance.

7. § 432.105 is revised to read as follows:

§ 432.105 Addressing below fully successful performance by PMRS employees.

At any time during the performance appraisal cycle that a PMRS employee's performance is determined to be below fully successful in one or more critical elements, the agency shall afford the employee an opportunity to improve through a performance improvement plan. As part of the plan, the agency shall notify the employee of the critical element(s) in which he or she is performing below the fully successful level; describe the types of improvements that the employee must demonstrate to attain fully successful performance; offer assistance to the employee in attaining fully successful performance; and provide the employee with a reasonable period of time, commensurate with the duties and responsibilities of the employee's position, to demonstrate fully successful performance. The agency may include, as part of the performance improvement plan, other information and matters that the agency considers appropriate. The agency should also inform the employee that, unless his or her performance in the critical element(s) improves to and is sustained at a fully successful level, the employee may be reduced in grade or removed.

8. Section 432.109 is revised to read as follows:

§ 432.109 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or removal which is based on unacceptable performance for non-PMRS employees, or below fully successful performance for PMRS employees, and make it available for review by the affected employee or his or her representative. At a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the written notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* As provided at 5 U.S.C. 4303(d), if, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided in accordance with §§ 432.106(a)(4)(i) and 432.107(a)(4)(i), any entry or other notation of the unacceptable, or below fully successful, performance for which the action was proposed shall be removed from any agency record relating to the employee.

[FR Doc. 90-14747 Filed 6-25-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-039]

Importation of Grapes from Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Protection and Quarantine regulations by adding provisions to allow the importation of grapes from Australia into the United States, and by giving notice that we are adding a fumigation and cold treatment for grapes from Australia to the Plant Protection and Quarantine Treatment Manual. These actions allow the shipment of grapes from Australia into the United States without significant risk of introducing insect pests into the United States. The Plant Protection and Quarantine Treatment Manual is incorporated by reference in the regulations at 7 CFR 300.1.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8367.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service (APHIS). The regulations in 7 CFR 319.56 prohibit or restrict the importation of certain fruits and vegetables, as well as plants and portions of plants used as packing materials, into the United States because of the risk that they could introduce insect pests.

Prior to the publication of this document, grapes from Australia were prohibited entry into the United States because they may carry two species of fruit flies, the Mediterranean fruit fly (*Ceratitis capitata*) and the Queensland fruit fly (*Dacus tryoni*), as well as the light brown apple moth (*Epiphyas postvittana*). Until recently, there was no effective treatment for grapes from Australia. However, recent research indicates that a methyl bromide fumigation and cold treatment for these grapes will destroy the exotic pests of concern.

On February 6, 1990, we published a document in the **Federal Register** (55 FR 3965–3968, Docket No. 89–164) proposing the following changes to the regulations:

(1) That grapes from Australia be allowed importation into the United States if they are inspected—in Australia—by an APHIS inspector, and if they receive an authorized treatment—under the supervision of an APHIS inspector in Australia—for the Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Dacus tryoni*), and the light brown apple moth (*Epiphyas postvittana*); and that in the event a pre-treatment inspection by an APHIS inspector reveals evidence of any other insect pests, and a treatment is specified in the Plant Protection and Quarantine Treatment Manual for these pests, the grapes be allowed to be shipped to the United States only if they are also treated for the insect pests in Australia under the supervision of an APHIS inspector;

(2) That the regulations be amended to show that the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference and on file at the Office of the Federal Register, is revised to include a methyl bromide fumigation and cold treatment for grapes from Australia; and

(3) That the importation of grapes from Australia be contingent upon the national plant protection service of Australia entering into a trust fund agreement with APHIS.

We solicited comments concerning the proposed rule for a 30-day period ending March 8, 1990, and received nine comments. The commenters included the Australian Quarantine and Inspection Service, a customs broker/freight forwarding company, a grocery store chain, a port authority, a quarantine fumigation service, two fruit industry groups, a transportation company, and a State department of food and agriculture. Two commenters supported the proposed rule unconditionally, while three commenters opposed it. The remaining commenters supported the proposed rule in general, but recommended that certain provisions be omitted or changed.

Several commenters stated that the requirement for grapes to be fumigated exclusively in Australia should be changed to allow the option of fumigation upon arrival in the United States. It was argued that fumigation can sometimes affect the quality of a product, and that waiting to fumigate the product after it arrives in the United States may allow it to reach the consumer in better condition than if it had been fumigated days earlier in its country of origin.

We are implementing this recommendation. Upon further consideration, we have determined that fumigation upon arrival, in combination with refrigeration as specified in the Plant Protection and Quarantine Treatment Manual, will destroy the pests of concern and allow Australian grapes to be imported without presenting a significant risk of introducing insect pests into the United States. Under the fumigation upon arrival option, the grapes will undergo the refrigeration phase of their treatment en route to the United States, and then undergo inspection and fumigation upon reaching their first port of arrival in the United States. Refrigeration will inactivate or destroy the insect pests of concern—should these insects be present—and fumigation at the first port of arrival will complete the treatment. It should be emphasized that fumigation will always follow inspection, regardless of whether insect pests are discovered during inspection. Should inspection reveal the presence of other insect pests, then an effective treatment for such pests can be employed in addition to the refrigeration and fumigation treatment, thereby allowing the grapes to be imported into the United States. If an effective treatment is not available, the grapes are refused entry into the United States.

Three commenters recommended that we omit from our final rule the requirement that an APHIS inspector be present in Australia to inspect and supervise treatment of the grapes. It was argued that an APHIS inspector is not needed in Australia because that country's inspection procedures are extensive and thorough, and because the treatment specified in the proposed rule is severe enough to destroy the pests of concern. One commenter recommended that a protocol and certification procedure be substituted for the APHIS treatment supervision and inspection described in the proposed rule.

We are making no changes based on these comments. We have determined that no matter where fumigation occurs—whether in Australia or the United States—APHIS inspection and treatment supervision are necessary lines of defense against the introduction of insect pests into the United States.

It should be noted that, due to the inspection and treatment site option we are implementing as a result of commenter recommendations, the presence of an APHIS inspector in Australia will be required only if the fumigation phase of the treatment occurs in Australia.

One commenter requested that we remove the provision requiring that Australian grapes undergo an additional treatment should an inspection reveal evidence that the grapes are infested with insects other than those specifically mentioned in the proposed rule. The commenter asserted that the treatment specified in the proposed rule is severe, and will therefore serve as a "catch all" for any incidental infestations. The commenter also suggested that an additional treatment may not be an option, since the proposed rule stipulates that a treatment cannot be used if it is not authorized in the Plant Protection and Quarantine Treatment Manual. The absence of an authorized treatment in such a situation, argued the commenter, could lead to the rejection of the grapes presented for inspection.

We are making no changes based on this comment. The fumigation and refrigeration treatment described in the proposed rule has been determined to be effective against the insect pests that are known to infest grapes from Australia. However, other insect pests not known to infest Australian grapes may nonetheless be present in certain grape shipments, having found their way into the shipment by chance. The treatment described above may not be effective against such "hitchhiker" pests. Therefore, the option of taking action against insect pests not specifically mentioned in the proposed rule is indispensable to our ability to protect the United States against the introduction of harmful exotic pests. If an inspection reveals the presence of such pests, and if no treatment is

authorized for these pests in the Plant Protection and Quarantine Treatment Manual, then the grapes must be refused entry into the United States.

One commenter asserted that our proposed treatment provides for a shorter fumigation time and a longer refrigeration time than the standard combination fumigation/refrigeration treatment listed in the Plant Protection and Quarantine Treatment Manual, and asked if efficacy data has been developed to demonstrate the effectiveness of this treatment against the insect pests of concern.

The Plant Protection and Quarantine Treatment Manual contains combination fumigation/refrigeration treatments with varying fumigation and refrigeration times. Our research indicates that the treatment schedules appearing in the proposed rule and in this document will destroy the exotic pests of concern.

The commenter also expressed concern that ambient residues in the containers holding the fumigated grapes may exceed the 5 parts-per-million maximum tolerance that is mandated by California law. The commenter asked whether research has been done to determine what ambient residue levels will be encountered in this situation.

Our review of relevant literature revealed no information concerning ambient residue levels that may be produced when fumigated grapes are containerized for an extended period of time. When handling this product, importers are advised to adhere to the safety procedures described in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1.

One commenter stated that the agency-to-agency trust fund arrangements described in the proposed rule are contrary to the usual arrangements that Australia's national plant protection service makes with plant protection authorities such as APHIS. The commenter stated that such arrangements should be between APHIS and the industry involved, not between APHIS and Australia's national plant protection service.

Recently developed policy changes within APHIS dictate that such trust fund agreements must be intergovernmental in nature. Section 607(a) of the Foreign Assistance Act (21 U.S.C. 2357) (Act) provides that agencies of the United States Government must enter into reimbursement agreements with the governments of friendly countries. The United States Department of State has authorized APHIS to participate in a preclearance program under the Act to enable fruits, vegetables, and nursery products to be inspected before shipment to the United States. This authorization requires the exporting country's national plant protection service to enter into a trust fund agreement to establish a preclearance program.

Three commenters argued that Australian grapes should not be allowed importation into the United States because California's grape producers do not have access to the Australian market. Two commenters argued further that the California grape-producing industry will be harmed by Australian grape importations if domestic growers are not given corresponding access to the Australian market. The commenters stated that the proposed rule should not be adopted until this situation is resolved. One commenter also asserted that APHIS failed to consult with the domestic grape industry concerning these matters and failed to work with other government agencies during the course of this rulemaking process.

We are making no changes based on these comments. These reasons are inadequate for refusing to allow the importation of Australian grapes into the United States. The regulations in 7 CFR part 319 are established pursuant to the Federal plant quarantine and related laws that generally provide authority to take action to prevent the introduction or dissemination of insects and other plant pests. These statutory provisions do not provide authority to establish regulations based merely on factors relating to economic competition. Although we consider the economic impact of our regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act, we do not have authority to prohibit the importation of Australian grapes to protect domestic grape producers from competition, or to employ a prohibition on Australian grape imports as a means of obtaining access to the Australian grape market.

Miscellaneous

We are making several nonsubstantive changes for the purpose of clarity. In addition, we are correcting a typographical error that occurred in the treatment schedules incorporated in the proposed rule. We have reproduced the treatment schedules below to show this correction. The error occurred in the first treatment schedule, entitled "Fumigation Plus Refrigeration for Australian Grapes," and appears in the sentence, "Followed by Refrigeration for 21 days at 0.56°C (35°F), or below." The correct temperature is 33°F.

Fumigation Plus Refrigeration for Australian Grapes.

Methyl Bromide at Normal Atmospheric Pressure—Chamber or tarpaulin.

32 g/m³ (2 lb/1000 ft³) for 2 hrs at 4.5°–9.5°C (40°–49°F)
(30 g (oz) minimum concentration at ½ hr)
(25 g (oz) minimum concentration at 2 hrs)

24 g/m³ (1 ½ lb/1000 ft³) for 2 hrs at 10°–15°C (50°–59°F)
(23 g (oz) minimum concentration at ½ hr)
(20 g (oz) minimum concentration at 2 hrs)

Load not to exceed 80% of chamber.
Followed by Refrigeration for 21 days at 0.55°C (33°F), or below.
Time lapse between fumigation and start of cooling not to exceed 24 hours.

Refrigeration Plus Fumigation for Australian Grapes.

Refrigeration for 21 days at 0.55°C (33°F) or below, followed by:

Methyl Bromide at Normal Atmospheric Pressure—Chamber or tarpaulin.

48 g/m³ (3 lb/1000 ft³) for 2 hrs at 4.5°C–15°C (40°–59°F)
(44 g (oz) minimum concentration at ½ hr)
(36 g (oz) minimum concentration at 2 hrs)

40 g/m³ (2 ½ lb/1000 ft³) for 2 hrs at 15.5°–20.5°C (60°–59°F)
(38 g (oz) minimum concentration at ½ hr)
(28 g (oz) minimum concentration at 2 hrs)

32 g/m³ (2 lb/1000 ft ³) for 2 hrs at 21°–26°C (70°–79°F)
(30 g (oz) minimum concentration at ½ hr)
(25 g (oz) minimum concentration at 2 hrs)

Load not to exceed 80%.

These treatment schedules also reflect corrections published in the Federal Register on April 25, 1990 (55 FR 17530).

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule, with the changes noted.

Effective Date: This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Australian grapes is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not anticipate that grape production, importation, or distribution activities in the United States will be significantly affected by the introduction of Australian grapes into the U.S. market. Australia exported 17,318 tons of fresh grapes in 1987. We anticipate that considerably fewer tons will reach the United States, largely because Australia currently has established markets for grapes in approximately 45 other countries. By comparison, in 1987 the United States produced 5,283,950 tons of grapes, and imported 340,695 tons of grapes from other countries, primarily Chile and Mexico. Although the exact quantity of grapes that Australia will export to the United States is unknown, we project that Australian grapes will comprise less than one-half of one percent of the total amount of grapes available to U.S. consumers.

Further, we anticipate that Australian grapes will be marketed at the off season for marketing most domestically produced grapes, since the growing season for Australian grapes differs from the United States growing season by 6 months.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Parts 300 and 319

Incorporation by reference, Plant diseases, Plant pests, Imports, Fruits, Quarantine.

Accordingly, title 7, chapter III of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. Section 300.1, paragraph (a), is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1965, and includes all revisions through June 21, 1990, has been approved for incorporation by reference in 7 CFR Chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In Subpart—Fruits and Vegetables, a new § 319.56–2h is added to read as follows:

§ 319.56–2h Regulations governing the entry of grapes from Australia.

(a) *Importations allowed.* (1) Grapes from Australia may be imported into the United States only if they are inspected by an inspector of the Animal and Plant Health Inspection Service (APHIS), either in Australia or the United States, and treated with an authorized treatment under the supervision of an APHIS inspector for the following pests: the Mediterranean fruit fly (*Ceratitis capitata*), the Queensland fruit fly (*Dacus tryoni*), and the light brown apple moth (*Epiphyas postvittana*).

(2) If an APHIS inspector finds evidence of any other insect pests for which a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the grapes will remain eligible for importation into the United States only if they are treated for the pests in Australia, or at their first port of arrival in the United States, under the supervision of an APHIS inspector.

(b) *Authorized treatments.* Authorized treatments are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(c) *Trust Fund Agreement.* Grapes that undergo the fumigation phase of their treatment in Australia may be imported into the United States only if the national plant protection service of Australia has entered into a trust fund agreement with APHIS. This agreement requires the national plant protection service of Australia to pay in advance all costs that APHIS estimates it will incur in providing services in Australia. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses, and other incidental expenses incurred by APHIS inspectors in performing these services. The agreement requires the national plant protection service of Australia to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the national plant protection service of Australia to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the grapes may be imported. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the national plant protection service of Australia, or held on account until needed.

(d) *Department not responsible for damage.* The treatment for grapes from Australia prescribed in the Plant Protection and Quarantine Treatment Manual is judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 15th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14705 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 25; Doc. No. 7728S]

General Crop Insurance Regulations; Sugarcane Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.133, the Sugarcane Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC hereby adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.133, the Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring sugarcane.

Upon publication of 7 CFR 401.133 as a final rule, the provisions for insuring sugarcane contained therein will supersede those provisions contained in 7 CFR part 417, the Sugarcane Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 417 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 417 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sugarcane Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring sugarcane as follows:

1. Section 4—Change the language to indicate that insurance will attach on stubble cane in Florida and Texas the day following harvest if there is no damage before harvest. This change was made because ratoon cane in these two States is not as susceptible to freeze damage as in other States where this endorsement is offered. Language was also added to clarify that if the stubble cane is damaged before harvest, insurance will not attach for the following crop year until the later of April 15 or 30 days after harvest. This will allow us to conduct a stand reduction appraisal.

2. Section 5—Add language to provide for unit division guidelines under the endorsement.

3. Section 6—Add the words "per acre" in the second sentence to clarify that, if we do not appraise the acreage, the per acre production guarantee for the unit will be considered production to count. This assures that sugarcane that will be cut for seed is now insurable. This change was made to relieve insureds of paying premium on uninsurable acreage since most growers do not know by the acreage reporting date what acreage will be cut for seed cane.

4. Section 7—Add language to establish that on irrigated acreage, appraised production to be counted will include production lost due to inadequate irrigation. This change was made due to continued problems associated with determination of production to count when there is inadequate irrigation.

An appraisal for inadequate stand will no longer be made on all stubble acreage over 3 years old in Florida and Texas. It will continue to be made on any acreage in which insurance does not attach the first day following harvest.

FCIC's Board of Directors recently adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sugarcane, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

On Tuesday, October 24, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 43295, to add a new section, 7 CFR 401.133, the Sugarcane Endorsement, to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 54 FR 43295 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop Insurance; Sugarcane.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.133, Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.133 Sugarcane Endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation
Sugarcane Endorsement

1. Insured Crop and Acreage

a. The crop insured will be sugarcane grown for processing for sugar or for seed.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

4. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply.

a. Insurance attaches on plant cane at the time of planting unless otherwise provided for in writing by us and on stubble cane on the first day following harvest unless the cane was damaged by conditions occurring before harvest. If the stubble cane was damaged before harvest, insurance will attach on the later of April 15 or 30 days following harvest. Notwithstanding the first sentence of this paragraph, insurance will attach on stubble cane in Louisiana, after the second crop year, only on the later of April 15 or 30 days after harvest.

b. The calendar dates for the end of insurance period are:

(1) Louisiana.....January 31;
(2) All other states.....April 30.

5. Unit Division

Sugarcane acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee;

b. The acreage planted to insured sugarcane is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identifiable and the insured acreage can be determined; and

(2) The sugarcane is planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; and

c. The acreage planted to the insured sugarcane is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Sugarcane planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with applicable recognized good dry-land and irrigated farming practices for the area.

If you have a loss of any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your sugarcane acreage is not divided into optional units as provided in this section, your premium will be reduced as provided by the actuarial table.

6. Notices

a. You must give us notice at least 15 days before you begin cutting any sugarcane for seed. During this time we may make an appraisal for the sugar potential. If we do not appraise the acreage, the production to count will be the per acre production guarantee for the unit. Your notice must include the unit number and the number of acres you intend to harvest as seed.

b. For the purposes of section 8 of the general crop insurance policy, in case of damage or probable loss and you intend to harvest, the required representative samples of unharvested sugarcane must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

If an indemnity is to be claimed on any unit, you must leave the stalks on unharvested acreage and the stubble on harvested acreage intact until inspected by us.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

(b) The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period, which cannot be processed for sugar by the boiling house operation, will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar (The applicable price for raw sugar will be the local market price on the earlier of the day the loss is adjusted or the day such sugar is sold);

(2) Appraised production to be counted will include:

(a) Any appraisal under subsections 6.(e), 7.b.(3) and 7.b.(4);

(b) Unharvested production on harvested acreage, potential production lost due to uninsured causes, and failure to follow recognized good sugarcane farming practices;

(c) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We will make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) An appraisal for inadequate stand will be made at the time of inspection on sugarcane acreage where insurance did not attach the first day following harvest. If the product of the number of stalks per acre multiplied by 2, multiplied by the factor (percentage of sugar) contained in the actuarial table for that purpose does not equal the per-acre guarantee, the per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Report of Production

There is a one-year lag period for reporting your sugarcane production. You must report production for the previous crop year before the cancellation date for the subsequent crop year.

11. Meaning of Terms

a. "*Crop year*" means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

b. "*Harvest*" means the cutting and removing of sugarcane from the field.

c. "*Plant cane*" (see definition of sugarcane).

d. "*Stubble cane*" (see definition of sugarcane).

e. "*Sugarcane*" means either:

(1) Plant cane growing from seed planted that crop year; or

(2) Stubble cane growing from the stubble left to produce another crop from previously harvested sugarcane.

Done in Washington, DC on June 20, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-14788 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-90-129FR]

Fresh Pears, Plums and Peaches Grown in California; Modification of Grade, Container and Container Marking Requirements for Pears for the 1990 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule: (1) Modifies existing and specifies new container-marking requirements for Bartlett or Max-Red (Max Red Bartlett and Red Bartlett) pears grown in California, and (2) relaxes grade requirements for organically grown pears of those varieties for the 1990 season. The changes in container requirements clarify requirements applicable to volume-filled containers and authorize shipments of consumer packages (15 pounds net weight or less) either packed in master containers or shipped separately. The container-marking requirements assure that the labeling of such packages clearly identifies the contents. Organically grown pears are produced without application of synthetically compounded fertilizers, pesticides and growth regulators. Under this action, shipments of organically grown pears are required to grade at least U.S. Combination grade, with at least 50 percent, by count, grading U.S. No. 1 and the balance of each lot grading at least U.S. No. 2, except that russeting is not scored as a defect. These changes will facilitate the marketing of pears grown in California.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919, or Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., Suite 102-B, Fresno, California 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under amended Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with the criteria contained in Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulation under the pear, plum and peach marketing order (7 CFR part 917), and there are approximately 300 producers of pears in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those whose gross annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California pears may be classified as small entities.

Shipments of California Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) pears (hereinafter referred to as pears) are regulated by grade, size and pack under Pear Regulation 12 (7 CFR 917.461). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis, subject to amendment, modification or suspension as may be recommended by the Pear Commodity Committee (committee) and approved by the Secretary.

Notice of this action was published as a proposed rule in the Federal Register [55 FR 12663] on April 5, 1990. Comments were invited to be submitted by May 7, 1990. No comments were received.

Fresh California pears shipped during the 1989 season totalled approximately 3,378,786 containers. The packinghouse door value of the pears in 1989 was approximately $19.2 million.

This final rule is based upon unanimous recommendations of the committee and other available information.

Container and Container-Marking Requirements

The committee recommended that two changes be authorized in container requirements for pears and that corresponding changes be made in container-marking requirements. This rule authorizes shipments of pears in consumer packages, weighing 15 pounds net weight or less, packed in master containers. This rule also authorizes shipment of pears in consumer packages, 15 pounds net weight or less, which are shipped individually (i.e., not packed in master containers). These two relaxations will enable the pear industry to market individual consumer packages similar to those successfully marketed by the California nectarine, peach and plum industries. Consumer packages for those fruits are small mesh and plastic bags (usually packed in master containers) and four to 14-pound hard-sided, family-sized boxes. Such packages have become popular in certain retail markets and have been sought by food service outlets, particularly hotels and restaurants, and in some European countries. The committee believes that the use of different sized packages will help meet the needs of the marketplace. The committee authorized for the 1989 season, with the Department's approval, the test marketing of consumer-sized packages. This action authorizes such shipments on a permanent basis to provide handlers additional marketing opportunities.

These changes in container and container-marking requirements are implemented by revising the following provisions in § 917.461, Pear Regulation 12.

Paragraph (a)(2) of § 917.461 provides a minimum size requirement of size 165 for all pears. In paragraph (a)(2), the words ", including consumer packages in master containers and consumer packages not in master containers," is inserted after the word "container." This requires that pears packed in consumer packages meet the same minimum size requirements currently in effect for pears packed in boxes or containers. Such boxes or containers include: 44-pound standard pear boxes, 36, 22 and 18-pound volume-filled containers, 22-pound volume-filled L.A. lugs, and bulk bins containing 300 pounds or more of pears.

Paragraph (a)(3) of § 917.461 specifies marking requirements for containers of pears. In paragraph (a)(3), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "Any box or container" to exempt consumer packages from the marking requirements of paragraph (a)(3). New marking requirements for consumer packages are specified in new paragraphs (a)(7) and (a)(8), discussed later in this document.

Paragraph (a)(4) of § 917.461 specifies pack requirements for containers of pears. In paragraph (a)(4), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "closed containers,." This change exempts consumer packages from the requirements of standard pack as found in the U.S. Standards for Summer and Fall Pears (7 CFR 51.1280 to 51.1280). Standard pack requirements specify that pears shall be of similar size and number, and shall be tightly packed and arranged lengthwise in well filled containers. However, the consumer packages contemplated by the committee include plastic and net mesh bags. It is impractical to apply to bag containers the standard pack requirements on tightness of pack and arrangement of the fruit. Therefore, the committee recommended that all consumer packages, whether bags or small boxes, be exempt from the requirements of standard pack.

The requirements of paragraph (a)(6) § 917.461 are intended to apply only to volume-filled boxes or containers of pears not packed in rows and not wrap packed. For clarification, this action revises the wording at the beginning of existing paragraph (a)(6) by inserting the words "volume-filled" before the words "box or container" and removing the words "in volume-filled cartons" later in the first sentence to remove the reference to boxes or containers packed inside such cartons. Also, for consistency and clarity, the words "carton" and "cartons" appearing in (i), (iii), (iv), and in the proviso, is replaced with the words "box or container" or "boxes or containers" as appropriate.

Additionally in paragraph (a)(6), the words ", other than consumer packages in master containers and consumer packages not in master containers," are inserted following the words "* * * not wrap packed)." This action exempts consumer packages from the volume-fill requirements specified in paragraph (a)(6) (listed below) because it is impractical to pack consumer bags to the same standards as hard-sided boxes. The committee expects that smaller, hard-sided consumer boxes, authorized under this final rule, will be shipped to specialty markets which usually require fruit to be packed in rows and wrap packed. Fruit so packed is currently exempt from the requirements of paragraph (a)(6) and the committee recommended that smaller consumer packages also be exempt.

Thus, under this final rule, paragraph (a)(6) is revised to read as follows:

> Any volume-filled box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears (not packed in rows and not wrap packed), other than consumer packages in master containers and consumer packages not in master containers, unless (i) such boxes or containers are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each box or container that will cover the fruit with no more than ¼ inch between the pad and any side or end of the box or container; and (iv) the top of the box or container shall be securely fastened to the bottom: Provided, That 10 percent of the boxes or containers in any lot may fail to meet the requirements of this paragraph.

This final rule also adds provisions defining consumer packages and specifying marking requirements for master containers of consumer packages and individual consumer packages. The committee indicated that a new definition is necessary to differentiate consumer packages from other packages or containers currently authorized. Therefore, a new paragraph (b)(6) is added to § 917.461, Pear Regulation 12, defining consumer packages to mean packages or boxes holding 15 pounds or less net weight of pears. According to the committee, such consumer packages, for example, could be one or two pound mesh and plastic bags (usually packed in master containers) or four to 14 pound hard-sided, family-sized boxes. As discussed above, such consumer packages have become popular in certain retail and specialty markets, and have been sought by food service outlets, hotels and restaurants.

Revised marking requirements will assure that labels on master containers of consumer packages and labels on individually shipped consumer packages clearly describe the contents of such containers and packages. This information will facilitate the marketing of such packages. A new paragraph (a)(7) is added to § 917.461, Pear Regulation 12, establishing marking requirements for master containers when filled with consumer packages of pears. Such master containers shall be marked with the following information: (1) The varietal name and size description of the contents; (2) the number of consumer packages in the master container; (3) the net weight of each consumer package; and (4) the name and complete address of the handler. This information shall be printed, in plain sight and in plain letters, on one outside end of each master container.

Also, a new paragraph (a)(8) is added to § 917.461, Pear Regulation 12, establishing marking requirements for individual consumer packages of pears. All consumer packages (including those packed in master containers) shall be marked with the name and complete address of the handler and the net weight of the consumer package. In addition, consumer packages shipped individually (not packed in master containers) must also be marked with the varietal name, number and size description of the pears contained in the package. This additional information on consumer packages shipped individually will provide more information on the contents of the consumer packages and thus, will facilitate marketing of the pears in such packages.

It is the Department's view that these changes allowing the shipment of different sized consumer packages will provide handlers with more marketing flexibility and permit them to meet the needs of the marketplace more effectively. These changes will be beneficial to the California pear industry and will not result in additional marketing costs.

Organically Grown Grade Requirements

This final rule relaxes grade requirements for organically grown pears for the 1990 season to allow handlers to better meet the market needs for such pears. This rule permits the shipment of organically grown pears with an increase in appearance defects

and enables handlers of organically grown pears to better meet the needs of their buyers.

At the committee's recommendation, the Department issued an interim final rule (54 FR 32794, August 10, 1989) and a final rule (54 FR 46714, November 7, 1989) that relaxed grade requirements for organically grown pears for the 1989 marketing season only. That relaxation required organically grown pears to be at least U.S. Combination grade, and lowered from 80 percent to 50 percent, by count in any lot, pears grading at least U.S. No. 1, with the balance of the lot grading at least U.S. No. 2 quality.

"Organically grown" pears are defined as pears produced, harvested, distributed, stored, processed and packaged without the application of synthetically compounded fertilizers, pesticides or growth regulators. Additionally, no synthetically compounded fertilizers, pesticides or growth regulators shall be applied by the grower to the orchard in which the pears are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for pears (54 FR 32796). This definition is consistent with applicable provisions of the term "organically grown" as defined in § 26569.11(a) (1) and (2) of the California Health and Safety Code, as enacted by the California Organic Food Act of 1979, as amended. Also, the California Department of Food and Agriculture (CDFA) currently requires that all agricultural producers register their chemical use. Most California producers of organic fruit are members of associations which certify that produce is grown without the aid of synthetically compounded fertilizers, pesticides or growth regulators.

Handlers who shipped organic pears had to provide, upon request, proof that the pears were grown in accordance with organic provisions cited above. The relaxation permitted the shipment of organically grown pears with an increase in appearance defects and enabled handlers of organically grown pears to better meet the needs of their buyers.

After review of organic pear production and marketing during the 1989 season, the committee recommended to continue, for the 1990 pear marketing season, the 1989 requirements (54 FR 46714, November 7, 1989) for organically grown pears. The committee also recommended that russeting should not be scored as a defect against organically grown pears. While 1989 crop quality was high, the committee found that russeting continued to be a problem for organically grown pears. There is no organically acceptable way to control russeting. Because russeting is a cosmetic defect that does not affect flavor or eating quality, and does not have a significant effect on the marketing of organic pears, the committee recommended that regulations should not restrict the marketing of such pears with russeting defects during the 1990 season.

The Department believes that the increase in appearance defects, i.e., russeting, in organically grown pears, does not adversely affect marketing conditions for non-organically grown pears, particularly since organic fruit is normally sold in specialty markets. This action allows organic pear producers to market a larger portion of their production and provides them with the flexibility to meet the needs of their market.

The committee believes that the organic pear market continues to be a viable market with growth potential for the industry. It is a market that the committee believes handlers should be allowed to meet. This action provides additional opportunities for producers to utilize organic cultural practices to meet consumer demand in this market.

Field officers of the committee will closely monitor the packing of organically grown pears during the 1990 season. Handlers who intend to ship organically grown pears in accordance with this rule will be required to provide upon request to the committee, with the approval of the Secretary, information to indicate that the pears were produced in accordance with the provisions of paragraph (b)(5) of § 917.461. This will help assure that the relaxed requirements will be applied only to organically grown pears. The committee, with the approval of the Secretary, has the authority to require handlers to furnish information as may be necessary to perform its duties under the marketing order.

Size, container and pack requirements specified in § 917.461, including changes authorized in this rulemaking, shall apply to organically grown pears. For the 1990 marketing season, the grade requirement for non-organically grown pears is at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1, with the balance of the fruit grading at least U.S. No. 2.

The information obtained in the marketing of organically grown pears in the 1990 shipping season will be used to evaluate continuation of such shipments in future seasons.

In addition, a change is made to § 917.461(b)(3) for clarity.

Based on available information, the Administrator of the AMS has determined that this rulemaking will not have a significant impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the committee's recommendations, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The requirements set forth below are identical to those published as a proposed rule on April 5, 1990, which has been presented to the industry with no negative response, (2) the shipping season is expected to begin shortly and the rules issued herein should be applied to the industry for as much of the season as possible, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

2. Section 917.461 is amended by republishing the introductory text of paragraph (a), by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(6) and (b)(3), and by adding new paragraphs (a)(7), (a)(8), and (b)(6) to read as follows:

Note: The following sections will appear in the annual publication of the Code of Federal Regulations.

§ 917.461 Pear Regulation 12.

(a) No handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided*, That for the 1990 crop year, no handler shall ship organic pears of these varieties unless they grade at least U.S. Combination with not less than 50 percent, by count, grading at least U.S. No. 1 and the remainder grading at least U.S. No. 2, except that russeting shall not be scored as a defect for such organically grown pears. Handlers who intend to ship organic pears in accordance with this paragraph shall provide, upon request of the committee, with the approval of the Secretary, information to indicate that the pears were grown in accordance with the provisions of paragraph (b)(5) of this section.

(2) Any box or container, including consumer packages in master containers and consumer packages not in master containers, of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container, other than consumer packages in master containers and consumer packages not in master containers, of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, other than consumer packages in master containers and consumer packages not in master containers, unless such box or container conforms to the requirement of standard pack, except that such pears may be fairly tightly packed;

* * * * *

(6) Any volume-filled box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears (not packed in rows and not wrap packed), other than consumer packages in master containers and consumer packages not in master containers, unless (i) such boxes or containers are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each box or container that will cover the fruit with no more than ¼ inch between the pad and any side or end of the box or container; and (iv) the top of the box or container shall be securely fastened to the bottom: Provided, That 10 percent of the boxes or containers in any lot may fail to meet the requirements of this paragraph.

(7) Each master container, when filled with pears packed in consumer packages, shall bear on one outside end in plain sight and plain letters the varietal name and size description of the contents; the number of consumer packages packed in the master container; the net weight of each consumer package; and the name and address, including zip code, of the handler.

(8) Each individual consumer package shall bear the name and address, including the zip code, of the handler and the net weight of the contents. When a consumer package is not shipped in a master container, it must also bear the varietal name, number and size description of pears contained in the package.

(b) * * *

(3) "U.S. No. 1", "U.S. No. 2", "U.S. Combination", and "Standard Pack" mean the same as defined in the United States Standards for Summer and Fall Pears (7 CFR 51.1280 to 51.1280).

* * * * *

(6) "Consumer package" means a package holding 15 pounds or less net weight of pears.

Dated: June 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14665 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 926

[Docket No. FV-90-168]

Tokay Grapes Grown in San Joaquin County, CA; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenses and establishes an assessment rate under Marketing Order 926 for the 1990–91 fiscal period. Authorization of this budget will allow the Tokay Grape Industry Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1990 through March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR part 926), both as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 handlers of California Tokay grapes currently subject to regulation under this marketing order each season and approximately 280 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal year was prepared by the Tokay Grape Industry Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of Tokay grapes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the

committee before the new fiscal year starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The committee met on May 8, 1990, and unanimously recommended a 1990–91 budget of $13,535 and an assessment rate of $0.07 per 23-pound lug. This year's assessment rate is the same as last year's. This year's budget is less than last year's due to a reduction in the expenditures for office supplies. The assessment rate, when applied to anticipated fresh market Tokay grape shipments of 200,000 lugs, will yield $14,000 in assessment revenue which will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on May 29, 1990 (55 FR 21754). That document contained a proposal to add § 926.229 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through June 8, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period began on April 1, and the marketing order requires that the rate of assessment apply to all assessable Tokay grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 926

Grapes, marketing agreements, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 926.229 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 926.229 Expenses and assessment rate.

Expenses of $13,535 by the Tokay Grape Industry Committee are authorized and an assessment rate of $0.07 per 23-pound container of grapes is established for the fiscal period ending March 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: June 20, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14663 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 959

[Docket No. FV-90-120]

South Texas Onions; Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reestablishes the districts that comprise the production area for South Texas onions and reapportion committee membership among the new districts. These changes are intended to provide more equitable industry representation on the South Texas Onion Committee in view of changes that have occurred in the distribution of onion acreage and production among the current districts.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090-6456, telephone 202–447–3431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions under this marketing order, and approximately 80 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of South Texas onions may be classified as small entities.

Notice of this action was given by a proposed rule published in the May 22, 1990, issue of the Federal Register (55 FR 21041). Interested persons had until June 6, 1990, to file written comments. None were filed.

The South Texas Onion Committee (committee) is established under the terms of the marketing order to work with the Department in administering the program. The committee consists of 17 members, of which 10 are producers and 7 are handlers. Committee membership is currently allocated geographically among four districts.

The committee met on October 31, 1989, and unanimously recommended reestablishing the districts and reapportioning committee membership among the reestablished districts. This recommendation was made pursuant to § 959.25 of the marketing order.

The marketing order covers onions grown in 35 counties in South Texas. To provide a basis for selecting committee

membership, the production area is currently divided into four districts. District 1, known as the Coastal Bend area, consists of 15 counties in the eastern portion of the production area. District 1 is represented on the committee by two producer members and one handler member. District 2, commonly referred to as Laredo, is comprised of three counties in the western portion of the production area, and is allocated one producer and one handler member position on the committee. District 3, known as the Lower Valley, consists of the four southernmost counties of the production area. Four producer and three handler members represent District 3 on the committee. Finally, District 4, known as the Winter Garden district, consists of the 13 northern counties of the production area. This district is represented on the committee by three producer and two handler members.

Since the districts were last reestablished in 1975, changes have occurred in the distribution of onion acreage and production among the four districts. In recent seasons, both acreage and production have become increasingly concentrated in District 3 (the Lower Valley). In the 1988–89 season, the Lower Valley accounted for about 85 percent of the total planted acreage and about 90 percent of South Texas onion production.

The remaining acreage (about 15 percent of the total) was planted in District 2 (Laredo) and District 4 (Winter Garden). During the 1988–89 season, about 4 percent of the South Texas onions produced were grown in Laredo and about 6 percent in the Winter Garden district. No commercial onion production has been reported in the Coastal Bend area (District 1) for the past 5 years.

This action reestablishes the current districts by combining Districts 1 and 3 (Coastal Bend/Lower Valley) and Districts 2 and 4 (Laredo/Winter Garden). The Coastal Bend/Lower Valley district will be allocated six producer and four handler member positions on the committee. This action, therefore, increases representation of the Lower Valley area by three committee members in recognition of the large share of total onion acreage and production in that area. The Coastal Bend region will no longer be provided separately with three positions on the committee. Since commercial onion production has ceased in the Coastal Bend area, the committee does not believe it is justified to have 3 of the 17 members allocated to that area as is currently the case. In addition, the three Coastal Bend positions currently are vacant.

The committee also recommended that the newly established Laredo/Winter Garden district be allocated four producer members and three handler members. The combined representation of these two regions therefore remains the same. Although the Laredo/Winter Garden district accounts for only about 10 percent of total South Texas onion production, that district will be allocated about 40 percent of total committee membership. While the committee considered reducing the number of positions allocated to the Laredo/Winter Garden district, it concluded that it is not in the best interest of the industry to do so at the present time.

The marketing order requires nine concurring votes, or two-thirds of the votes cast (whichever is greater), to approve any committee action. Providing the Laredo/Winter Garden district with more than one-third of the committee members should ensure that the interests of this district's producers and handlers are taken into consideration during committee deliberations. The committee believes this to be particularly important because of the large, 16-county area this district encompasses.

Additionally, growing and marketing conditions in the Laredo/Winter Garden district differ from those in the Lower Valley. The growing season is several weeks earlier in the Lower Valley, for example, and the Laredo/Winter Garden district's later shipping season results in a different marketing situation in terms of pricing and competitive supplies.

After consideration of all relevant factors, the committee recommended these actions as a means of improving the operation of the marketing order by providing more equitable industry representation on the committee.

Committee members serve 2-year terms of office beginning August 1 with about one-half of the membership selected each year. Of the current members, six are serving terms of office that expire in 1990 and eight are serving terms that expire in 1991. Three positions (those allocated to the Coastal Bend district) are vacant. The present committee members will continue to serve for the remainder of the term to which they were appointed and this change in districting and apportionment of membership will be effective for nominations for members to serve the term beginning August 1, 1990. At that time, nominations will be solicited for three growers and two handlers to represent the Coastal Bend/Lower Valley district, and two growers and two handlers to represent the Laredo/Winter Garden district.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because (1) the term of office begins August 1 and the order requires that any changes in committee composition be effective not less than 30 days prior to August 1, and (2) this action was recommended in a public meeting, notice was given in the Federal Register, and an opportunity for public comment was provided. No comments were received.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 959.110 is revised to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25, the following districts are reestablished:

(a) *District 1 (Coastal Bend-Lower Valley):* The counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy.

(b) *District 2 (Laredo-Winter Garden):* The counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

3. Section 959.111 is revised to read as follows:

§ 959.111 Reapportionment of committee membership.

Pursuant to § 959.25, committee membership is reapportioned among districts as follows:

(a) *District 1 (Coastal Bend-Lower Valley):* Six producer members and four handler members.

(b) *District 2 (Laredo-Winter Garden):* Four producer members and three handler members.

Dated: June 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-14664 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket Nos. AO-356-A27, etc.; DA-89-028]

Milk in Certain Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule

7 CFR part	Marketing area	AO nos.
1006	Upper Florida	AO-356-A27
1007	Georgia	AO-366-A30
1011	Tennessee Valley	AO-251-A33
1012	Tampa Bay	AO-347-A30
1013	Southeastern Florida	AO-356-A37
1030	Chicago Regional	AO-361-A26
1032	Southern Illinois—Eastern Missouri	AO-313-A37
1033	Ohio Valley	AO-166-A58
1036	Eastern Ohio-Western Pennsylvania	AO-179-A53
1040	Southern Michigan	AO-225-A40
1046	Louisville-Lexington-Evansville	AO-123-A59
1049	Indiana	AO-319-A36
1050	Central Illinois	AO-355-A25
1064	Greater Kansas City	AO-23-A56
1065	Nebraska-Western Iowa	AO-86-A45
1068	Upper Midwest	AO-178-A42
1076	Eastern South Dakota	AO-260-A28
1079	Iowa	AO-295-A39
1093	Alabama-West Florida	AO-366-A8
1094	New Orleans-Mississippi	AO-103-A50
1096	Greater Louisiana	AO-257-A37
1097	Memphis, Tennessee	AO-218-A44
1098	Nashville Tennessee	AO-184-A53
1099	Paducah, Kentucky	AO-183-A43
1106	Southwest Plains	AO-210-A49
1108	Central Arkansas	AO-243-A40
1120	Lubbock-Plainview, Texas	AO-328-A27
1124	Pacific Northwest	AO-368-A17
1126	Texas	AO-231-A57

7 CFR part	Marketing area	AO nos.
1131	Central Arizona	AO-271-A27
1132	Texas Panhandle	AO-382-A37
1134	Western Colorado	AO-301-A20
1135	Southwestern Idaho—Eastern Oregon	AO-380-A7
1137	Eastern Colorado	AO-326-A24
1138	Rio Grande Valley	AO-335-A33
1139	Great Basin	AO-309-A28

SUMMARY: This action makes permanent the previously adopted interim changes to the Class II milk pricing provisions in those orders that have three classes of milk utilization. These amendments make permanent the arrangement whereby the Class II milk price announced by the 15th of each month will be the final or effective Class II milk price for the following month. However, to the extent that the announced Class II price for a given month is less than the Class III price for that same month, the difference will be included in computing the second succeeding month's Class II milk price. These changes are based on evidence presented at a public hearing held in Alexandria, Virginia, on August 22, 1989. More than the required number of producers in each of the marketing areas affected have approved these amendments on a permanent basis to the order for their market.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued October 31, 1989; published November 8, 1989 (54 FR 46904).

Tentative Decision: Issued November 8, 1989; published November 15, 1989 (54 FR 47527).

Interim Amendment to Orders: Issued November 28, 1989; published December 4, 1989 (54 FR 49955).

Final Decision: Issued March 23, 1990; published March 29, 1990 (55 FR 11599).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these amendments to each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of these amendments to each of the specified orders is approved by more than the required number of producers who during the determined representative period were

engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1094, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. In Section 1006.50(b), the introductory text is revised to read as follows:

§ 1006.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

3. Section 1006.53 is revised to read as follows:

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1006.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

4. In § 1007.50(b), the introductory text is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

5. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the 25th day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

6. In § 1011.50(b), the introductory text is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraphs (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

7. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

8. In § 1012.50(b), the introductory text is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

9. Section 1012.53 is revised to read as follows:

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the 25th day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1012.50(b).

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

10. In § 1013.50(b), the introductory text is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the

Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the Class II price for the second preceding month was less than the Class III price for the second preceding month.

* * * * *

11. Section 1013.53 is revised to read as follows:

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1013.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

12. In § 1030.50(b), the introductory text is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

13. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

14. In § 1032.50(b), the introductory text is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

15. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1032.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

16. In§ 1033.27, paragraphs (k)(1) and (k)(3) are revised to read as follows:

§ 1033.27 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class III price for the preceding month;

(iii) The butterfat differential for the preceding month;

(2) * * *

(3) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.51(b).

* * * * *

17. In § 1033.51(b), the introductory text is revised to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

18. In § 1036.50(b), the introductory text is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

19. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

20. In § 1040.50(b), the introductory text is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (F)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

21. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class II price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

22. In § 1046.50(b), the introductory text is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

23. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

24. In § 1049.50(b), the introductory text is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

25. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

26. In § 1050.50(b), the introductory text is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

27. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1050.50(b).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

28. In § 1064.50(b), the introductory text is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

29. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1064.50(b).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

30. In § 1065.50(b), the introductory text is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed

pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

31. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

32. In § 1068.50(b), the introductory text is revised to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

33. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

34. In § 1076.50(b), the introductory text is revised to read as follows:

§ 1076.50[a] Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price of the second preceding month.

* * * * *

35. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1076.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

36. In § 1079.50(b), the introductory text is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price of the second preceding month.

* * * * *

37. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

38. In § 1093.50(b), the introductory text is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1093.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

39. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

40. In § 1094.50(b), the introductory text is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

41. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

42. In Section 1096.50(b), the introductory text is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* The class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

43. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

44. In § 1097.50(b), the introductory text is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

45. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

46. In § 1098.50(b), the introductory text is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

47. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1098.50(b)

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

48. In § 1099.50(b), the introductory text is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

49. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

50. In § 1106.50(b), the introductory text is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

51. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

52. In § 1108.50(b), the introductory text is revised to read as follows:

§ 1108.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

53. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

54. In § 1120.50(b), the introductory text is revised to read as follows:

§ 1120.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

55. Section 1120.53 is revised to read as follows:

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1120.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

56. In § 1124.50(b), the introductory text is revised to read as follows:

§ 1124.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

57. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

58. In § 1126.50(b), the introductory text is revised to read as follows:

§ 1126.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1126.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

59. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

60. In § 1131.50(b), the introductory text is revised to read as follows:

§ 1131.50 Class prices

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

61. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1133—MILK IN THE TEXAS PANHANDLE MARKETING AREA

62. In § 1132.50(b), the introductory text is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

63. Section 1132.53 is revised to read as follows:

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1132.50(b).

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

64. In § 1134.50(b), the introductory text is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

65. Section 1134.53 is revised to read as follows:

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1134.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

66. In § 1135.50(b), the introductory text is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

67. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

68. In § 1137.50(b), the introductory text is revised to read as follows:

§ 1137.50 Class prices.

* * * * *

l(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

69. Section 1137.53 is revised to read as follows:

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1137.50(b).

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

70. In § 1138.50(b), the introductory text is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

71. Section 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

72. In § 1139.50(b), the introductory text is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

73. Section 1139.53 is revised to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th of each month, the Class II price for the following month computed pursuant to § 1139.50(b); and

(c) The 5th day after the end of each month, the Class III price and the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f) for each month.

* * * * *

Effective date: August 1, 1990.

Signed at Washington, DC, on June 20, 1990.

John E. Frydenlund,

Deputy Assistant Secretary.

[FR Doc. 90-14682 Filed 6-25-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AEA-04]

Alteration of Transition Area; Marion, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the 700-foot Transition Area at Marion, VA to that amount of controlled airspace which is deemed necessary by the FAA to segregate aircraft operating under instrument flight rules from those aircraft operating under visual flight rules in controlled airspace. This action is necessary due to the reorganization of air traffic control procedures in the area.

EFFECTIVE DATE: 0901 u.t.c. August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On March 14 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700-foot Transition Area at Marion, VA due to the reorganization of air traffic control procedures in the area (55 FR 13286). The proposed action would reduce the amount of controlled airspace to that which is required for the Mount Empire Airport, Marion/Wytheville, VA. This action is necessary because of the proposed cancellation of the NDB-A Standard Instrument Approach Procedure (SIAP) and the development of a new NDB Runway 26 SIAP, as well as the installation of a new Localizer (LOC) at the airport to support a new LOC Runway 26 SIAP. This action will return that amount of controlled airspace not needed by the FAA, back to the general public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700-foot Transition Area at Marion, VA, due to the reorganization of air traffic control procedures in the area. This action reduces that amount of controlled airspace deemed necessary by the FAA to that which is required for current and planned SIAPs at the Mountain Empire Airport, Marion/Wytheville, VA. This action also returns that amount of controlled airspace not needed by the FAA for such operations, back to the general public.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Marion, VA [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the center of Mountain Empire Airport, Marion/Wytheville, VA (lat. 36°53'41"N. long. 81°21'00"W.).

Issued in Jamaica, New York, on May 25, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-14703 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-55]

Revision of Transition Area: Carthage, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; delay of effective date.

SUMMARY: This corrective action makes a minor editorial change to the latitude of the Carthage Nondirectional Radio Beacon (NDB) and changes the effective date of the revision to the Carthage, TX, Transition Area from June 28, 1990, to August 23, 1990. The intended effect of this action is to make a minor editorial change to the legal description of the transition area and to delay the revision of the transition area by 56 days.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 89-ASW-55, revising the transition area located at Carthage, TX, was published in the **Federal Register** (55 FR 14237) on April 17, 1990. An unforeseen delay in the commissioning of the Carthage NDB has necessitated the delay of the effective date of the revision to the Carthage, TX, Transition Area. Additionally, a minor error was discovered in the latitude coordinate of the Carthage NDB. This action corrects that error and also delays the effective date of the final rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transitions areas.

Correction to Final Rule and Delay of Effective Date

PART 71—[AMENDED]

§ 71.181 [Amended]

The coordinates of the Carthage NDB (page 14236, column 3) published on April 17, 1990 (55 FR 14236) are corrected to read as follows:

Latitude—32°10'46" N.
Longitude—94°17'46" W.

Additionally, the effective date of this final rule is delayed from June 28, 1990, to August 23, 1990.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Fort Worth, TX, on May 30, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-14704 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin-Sulfamethazine, Hygromycin B

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of three new animal drug applications (NADA's) held by Old Monroe Elevator & Supply Co., Inc. One NADA provides for the use of a tylosin Type A article to make a Type C swine, beef cattle, and chicken feed; the second for the use of a tylosin-sulfamethazine Type A article to make a Type C swine feed; and the third for the use of a hygromycin B Type A article to make a Type C swine and chicken feed. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA's 119-281, 128-634, and 128-635 sponsored by Old Monroe Elevator & Supply Co., Inc. NADA 119-281 provides for the use of a tylosin Type A medicated article for making a Type C medicated swine, beef cattle, and chicken feed. NADA 128-634 provides for the use of a hygromycin B Type A medicated article to make a Type C medicated swine and chicken feed. NADA 128-635 provides for the use of a tylosin-sulfamethazine Type A medicated article to make a Type C medicated swine feed. This document amends 21 CFR 510.600(c)(1) and (c)(2), 558.274(a)(4) and (c)(1), 558.625(b)(69), and 558.630(b)(10) to reflect withdrawal of the approval of these NADA's.

In addition, since Old Monroe Elevator & Supply Co., Inc., is no longer the sponsor of any approved NADA's, § 510.600 is amended by removing the company from the list of sponsors.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) by removing the entry "Old Monroe Elevator & Supply Co., Inc.," and in the table in paragraph (c)(2) by removing the entry "028048".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

4. Section 558.274 Hygromycin B is amended in paragraph (a)(4) and in the table in paragraph (c)(1) in entries (i) and (ii) under the "Sponsor" column by removing "028048,".

§ 558.625 [Amended]

5. Section 558.625 Tylosin is amended by removing and reserving paragraph (b)(69).

§ 558.630 [Amended]

6. Section 558.630 Tylosin and sulfamethazine is amended in paragraph (b)(10) by removing "028048,".

Dated: June 19, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14701 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 514

Medicated Feed Applications; Interpretation of Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Interpretation of regulations.

SUMMARY: The Food and Drug Administration (FDA) has been reviewing its regulations regarding requirements for supplemental medicated feed applications (MFA's) and, for multimill MFA's, original and supplemental MFA's. FDA is announcing that, effective June 26, 1990, it is revising its interpretation of certain requirements for the filing of supplemental applications and, for multimill firms, of certain requirements for the filing of supplemental and original MFA's.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: The American Feed Industry Association has informed FDA of several administrative problems encountered by feed firms in preparing MFA's (Form FDA 1900's), particularly, the interpretation and implementation of § 514.9 Supplemental applications for animal feeds bearing or containing new animal drugs (21 CFR 514.9). Section 514.9(c) requires a fully completed Form FDA 1900 for any change which deviates from the conditions of the original approval. FDA now interprets § 514.9(c) to require filling out only certain items, namely, items: 1. Name of Applicant, 2. Address, 3. Establishment Registration Number, 4. Date Last Registered, 6. Type of Application, 20. Certification, and each item which requires a change. For those items not requiring a change, the applicant may state "See previous MFA approval."

FDA has also revised its interpretation of the requirements for filing MFA's for multimill firms. The agency suggests establishing a list (mill list or facilities) master file (LMF) to simplify approvals and supplemental approvals for a firm's revised mill list (item 5). A multimill firm may request by letter that FDA's, Center for Veterinary Medicine (CVM) establish an LMF. The request is to be accompanied by a signed Form FDA 1900 (in triplicate), with items 1 through 6 and item 20 filled out. For item 5, the applicant is to provide an up-to-date mill list for each approved MFA. For item 6, the applicant is to check the "original" box. For all other items, the applicant may insert "See previous MFA approvals." All information in the LMF is incorporated into the respective MFA's by reference. Hence, approval of future changes in the mill list for any of the referenced MFA's can be obtained by submitting to the LMF a Form FDA 1900 (in triplicate) filled out as above, except that item 6 would be filled out with the previously established LMF number and a check in the "supplemental" box. For mill list changes, there is no need to further supplement each approved MFA.

On its own initiative, CVM may establish LMF's for multimill firms when it appears that LMF's would be beneficial.

If a multimill firm with an LMF is submitting a new MFA for a newly approved new animal drug (or combination), the firm is to submit a fully completed Form FDA 1900 (in triplicate). For item 5, however, the firm should put "See LMF (*LMF number*) submission of (*date*)." In addition, the firm is to simultaneously file an LMF supplement (as above) for the mill list for the newly approved product, giving the date of submission of the MFA (Form FDA 1900) for that product.

If the only proposed change is the deletion of a mill from a mill list, a letter signed by the responsible person is to be submitted to the appropriate MFA or LMF, in triplicate, stating the establishment registration number, and name and address including zip code. A mill that is deleted from the mill list may no longer manufacture any medicated feed that requires an approved MFA.

FDA is publishing this notice in order to inform the public of this interpretation of § 514.9. Applications should conform to these procedures.

Dated: June 19, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14697 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Penicillin Antibiotic Drug for Animal Use; Sterile Benzathine Penicillin G Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove the regulation reflecting approval of a new animal drug application (NADA) held by Wyeth Laboratories. The NADA provides for the use of a benzathine penicillin G injection in horses and dogs for the treatment of bacterial infections. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Wyeth Laboratories' NADA 55-009. The NADA provides for the intramuscular use in horses and dogs of a benzathine penicillin G suspension for the treatment of bacterial infections. By letter of September 8, 1989, the sponsor requested withdrawal of the approval because the product is no longer manufactured or marketed. This document removes 21 CFR 540.255a, which reflects approval of the NADA.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

§ 540.255a [Removed]

2. Section 540.255a *Sterile benzathine penicillin G suspension* is removed.

Dated: June 18, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14700 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8302]

RIN 1545 AL05

Low-Income Housing Credit for Federally-assisted Buildings; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations concerning the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986.

FOR FURTHER INFORMATION CONTACT: Susan Reaman at 202-377-6349 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations concern the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by section 252 of the Tax Reform Act of 1986 and, as amended by sections 1002(1) and 4003 of the Technical and Miscellaneous Revenue Act of 1988. The changes to section 42 under section 7108 of the Omnibus Reconciliation Act of 1989 were not reflected in the final regulations but will be the subject of a separate notice of proposed rulemaking.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

PART 1—[AMENDED]

Accordingly, the final regulations published May 23, 1990 (55 FR 21187) FR Doc. 90-1752, are corrected as follows:

§ 1.42-2 [Corrected]

Par. 1. On page 21189, column 3, the eighth line of § 1.42-2(c)(1) should be corrected to read "operated under section 8 of the United".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-14658 Filed 6-25-90; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is making an editorial revision to its authority citations in 29 CFR part 2700. This revision is made at the request of the Office of the Federal Register. This action does not represent a change in agency policy.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara at 202-653-5610, (202-708-9300 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This editorial revision in the Commission's 29 CFR part 2700—Procedural Rules is made at the request of the Office of the Federal Register to conform to Federal Register style requirements.

Accordingly, the authority citation following 29 CFR 2700.42 is removed and the authority citation for 29 CFR part 2700 is revised to read as follows:

Authority: 30 U.S.C. 815, 820, and 823.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 90-14662 Filed 6-25-90; 8:45 am]

BILLING CODE 6735-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AD69

Basic Eligibility Determinations; Education

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: Department of Veterans Affairs (VA) is amending the regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for educational assistance under the Vietnam Era GI Bill and the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). The amended regulation adds a second rule for determining eligibility for VEAP, rules for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill—Active Duty, and a rule for deciding when such a determination of service connection for a disability must be made for a reservist who otherwise would be eligible for benefits under the Montgomery GI Bill—Selected Reserve.

EFFECTIVE DATES: This amendment is effective on July 26, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 40684 through 40686 of the Federal Register of October 3, 1989, there was published a notice of intent to amend 38 CFR part 3 in order to show when a service-connected discharge determination is needed in determining eligibility for educational assistance under the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the proposal final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in

costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.124.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 1, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR part 3, Adjudication is amended as follows:

PART 3—[AMENDED]

1. In § 3.315, paragraph (c) is revised to read as follows:

§ 3.315 Basic eligibility determinations—dependents, loans, education.

* * * * *

(c) *Veterans' educational assistance.* (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 34 and is eligible for such benefits except for the 181 days active duty requirement;

(ii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 3103A do not apply to him or her, and the veteran is eligible for such benefits except for the 181 days active duty requirement;

(iii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 3103A apply to him or her, and the veteran would be eligible for such benefits only if—

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 11; or

(iv) The veteran applies for benefits under 38 U.S.C. chapter 30 and—

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.

(2) A determination is required as to whether a veteran was discharged or released from service in the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and—

(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected disability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or

(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in § 21.7136(a) or § 21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.

(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when—

(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. chapter 106, and

(ii) He or she applies for an extension of his or her eligibility period.

(4) The determinations required by paragraphs (c)(1) through (c)(3) of this section are subject to the presumptions of incurrence under § 3.304(b) and aggravation under § 3.306 (a) and (c) of this part, based on service rendered after January 31, 1955, and before August 5, 1964, or after May 7, 1975, and § 3.306(b) based on service rendered during the Vietnam era.

(Authority: 38 U.S.C. 1411(a)(1)(A)(ii), 1412(b)(1), 1602(1)(A), 1652(a), 10 U.S.C. 2133(b))

[FR Doc. 90-14768 Filed 6-25-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AE67

Accountability for Authorization and Payment of Training and Rehabilitation Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending current rules governing the approval of program costs for training and rehabilitation services. These rules establish a simpler and more flexible system under which the expenditure of funds for training and rehabilitation services is subject to review as the amount needed to pay for tuition, fees and other costs increases. Under the revised procedures most of the specific monetary limits used for determining the necessary level of administrative review are no longer specified in the regulation. These regulatory amendments will enable VA to move more rapidly to change review limits administratively as increases in the cost of living forces changes in program costs.

EFFECTIVE DATE: June 26, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration (226), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has a regulatory system under which expenditures of funds for training and rehabilitation services are subject to review by higher level management as the amount needed to pay for tuition, fees and other costs increases. These provisions are contained in §§ 21.258 and 21.430. Experience has shown that appropriate review can be effectuated at lower administrative levels than currently provided, except in certain limited situations. Furthermore, changes in the cost of living have resulted in significant and frequent increases in the cost of providing vocational rehabilitation services. Therefore, it has been determined that the existing procedures need to be amended to allow for more flexible administration. This increased flexibility may best be achieved by permitting the limits to be determined administratively within a broader range set by rule. The new rule increases from $15,000 to $25,000 the program costs incurred during a calendar year which may be approved by the field station Director and limits the types of cases in which the approval of the Director, Vocational Rehabilitation and Education Service (VR&E) or designee is required. The Director, VR&E, or designee will continue to review certain types of cases in which program costs are estimated to exceed $25,000 per year such as purchasing supplies to help establish a small business.

VA finds that good cause exists for making these amendments final without prior publication for public notice and comment, and for making these amendments effective on the date of publication. The changes contained in these amendments concern the internal VA management rules by which the agency reviews charges for those training and rehabilitation services which are a part of the veteran's rehabilitation plan. These benefits and the type or level of services are not affected by these changes. Prior publication of these changes for public participation is therefore considered unnecessary and not in the interest of either the veteran or the government.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

Since a notice of proposed rulemaking is unnecessary and will not be published the Regulatory Flexibility Act (RFA) does not apply to this change. In any case the Secretary of Veterans Affairs hereby certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the changes simply concern the method by which VA reviews the costs of training and rehabilitation services which are a part of the veteran's rehabilitation program. Thus, no regulatory burdens are imposed on small entities by these changes.

(The Catalog of Federal Domestic Assistance Number is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved June 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

§ 21.258 Special assistance for veterans in self-employment.

* * * * *

(c) * * *

(1) Self-employment is clearly shown to be the soundest method of achieving rehabilitation; or

* * * * *

2. In § 21.430, paragraph (c) is revised in its entirety to read as follows:

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

* * * * *

(c) *Review of program costs by the Director, Vocational Rehabilitation and Education (VR&E) Service.* The Director, VR&E Service or designee will review the program costs for the types of training and rehabilitation services listed in paragraphs (c)(1) through (c)(3) of this section when the case manager's estimate of program costs for a calendar year exceeds $25,000. The rehabilitation plan may not be signed nor any expenditures made or authorized until the review is completed and the station receives written approval of program costs. The types of services subject to review by the Director, VR&E Service or designee are:

(1) Providing supplies to help establish a small business;

(2) A period of extended evaluation; or

(3) A program of independent living services.

Authority: 38 U.S.C. 1515(a)(4)]

[FR Doc. 90-14770 Filed 6-25-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 36

RIN 2900-AE21

Loan Guaranty: Discrimination on the Basis of Handicap or Family Status

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to conform to the Fair Housing Amendments Act of 1988 which prohibits discrimination on the basis of handicap or family status.

EFFECTIVE DATE: These amendments are effective on July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: Under chapter 37 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

VA regulations at 38 CFR 36.4253 and 36.4350 prescribe the estate which the veteran is required to obtain in the property which serves as security for the loan, generally a fee simple estate, with exceptions for certain easements and other restrictions. These regulations presently permit restrictions on title which limit the sale, lease or occupancy of a dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children.

On November 24, 1989, VA published in the **Federal Register** (54 FR 48648) proposed amendments to these sections to conform to the requirements of Public Law 100-430, the Fair Housing Amendments Act of 1988. Under the new law, it is unlawful to discriminate in residential real estate transactions

against any person because of handicap or familial status. However, the law provides an exception for certain age restricted communities which meet the definition provided in the law for "housing for older persons." Since no public comments were received on the proposed regulatory amendments, they are being adopted as originally proposed. This is accomplished by amending §§ 36.4253(b)(7) and 36.4358(b)(5)(iv)(B) to provide that age restrictions will be considered acceptable only if they are acceptable under the provisions of the Fair Housing Act.

The Secretary hereby certifies that these regulatory amendments will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply conform VA regulations to the requirements of the Fair Housing Act. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of §§ 603 and 604.

The Secretary hereby determines that these regulations do not contain a major rule as defined by Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.118.)

List of Subjects in 38 CFR Part 36

Condominium, Handicapped, Housing loan program-housing and community development, Manufactured homes, Veterans.

Approved: June 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is amended as set forth below:

PART 36—[AMENDED]

1. In § 36.4253, paragraph (b)(7) is revised to read as follows:

§ 36.4253 Title and lien requirements.

* * * * *

(b) * * *

(7) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 *et seq.* The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis;

Authority: 38 U.S.C. 210(c), 1803(c)(1), 1813(g))

* * * * *

§ 36.4350 [Amended]

2. In § 36.4350, the following paragraphs are redesignated as shown in the table:

Paragraph	Redesignated as
(b)(5)(i)(A)	(b)(5)(i)(A).
(b)(5)(i)(B)	(b)(5)(i)(B).
(b)(5)(i)(C)	(b)(5)(i)(C).
(b)(5)(ii)(A)	(b)(5)(ii)(A).
(b)(5)(ii)(B)	(b)(5)(ii)(B).
(b)(5)(iv)(A)	(b)(5)(iv)(A).
(b)(5)(iv)(B)	(b)(5)(iv)(B).
(b)(5)(iv)(C)	(b)(5)(iv)(C).

3. In § 36.4350, the undesignated flush paragraph following paragraph (b)(5)(iv)(A)(*3*) and newly-redesignated paragraph (b)(5)(iv)(B) are revised, and newly-redesignated paragraph (b)(5)(iv)(C) is removed, to read as follows:

§ 36.4350 Estate of veteran in real property.

* * * * *

(b) * * *

(5) * * *

(iv) * * *

(A) * * *

(*3*) * * *

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or

Authority: 38 U.S.C. 1803(c))

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 *et seq.* The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis;

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

* * * * *

[FR Doc. 90-14771 Filed 6-25-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL—3791-3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice recharacterizes as more stringent certain amendments to the Resource Conservation and Recovery Act (RCRA) closure requirements. This recharacterization is intended to correct a previous Federal Register notice, which indicated that the provisions were less stringent. Today's notice makes it clear that authorized States must adopt these more stringent amendments in order to maintain an equivalent hazardous waste regulatory program. In addition, today's notice explains that the States must adopt certain provisions prior to or simultaneous with receiving authorization for the recently promulgated "Delay of Closure" rule.

DATES: The dates by which States must adopt the amendments to 40 CFR 264.113 and 265.113 as promulgated on May 2, 1986 (51 FR 16422) and reclassified as more stringent in today's notice are July 1, 1991, or, if a statutory change is needed to effect necessary changes, July 1, 1992.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800)–424–9346 (toll free) or (202) 382–3000 in Washington, DC, or James Bachmaier, Office of Solid Waste (OS–342), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–2222.

SUPPLEMENTARY INFORMATION: In a final rule published on May 2, 1986 (51 FR 16422), EPA promulgated amendments to portions of the closure and post-closure care requirements at 40 CFR subpart G, and the financial responsibility requirements at 40 CFR subpart H, which are applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities under RCRA. The May, 1986 preamble erroneously characterized as less stringent certain amended sections which were, in fact, more stringent than the Federal program provisions in effect at the time of that rulemaking. On March 10, 1988 (53 FR 7740), the Agency published a Federal Register notice that reclassified as more stringent most of the erroneously characterized sections. The notice did not, however, recharacterize the amendments to §§ 264.113 and 265.113, which were classified as less stringent in the May, 1986 preamble.

In the May, 1986 rule, the Agency made several changes to §§ 264.113 and 265.113. Conforming changes were made to §§ 264.113(e) and (b) and 265.113(e) and (b) to clarify that closure must be completed within 180 days after the final receipt of hazardous wastes rather than after the final receipt of wastes. In addition, time limits were imposed by a new paragraph (c) under §§ 264.113 and 265.113 within which the owner or operator must make the required demonstrations to qualify for the extensions of §§ 264.113(e) and (b) and 265.113(e) and (b). Because of these changes, amended §§ 264.113 and 265.113 are more stringent than the analogous sections that were in effect prior to the May, 1986 amendments. Thus, States must modify their programs to include the amended §§ 264.113 and 265.113 in order to maintain an equivalent program.

It should be noted, however, that the May, 1986 rule also expanded the extension allowed under §§ 264.113(e)(1)(ii)(B), 265.113(e)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to apply to the owner or operator of the facility as well as to another person. This expansion is a less stringent change, and the States need not modify their programs to include it.

As discussed above, authorized States must receive final authorization for the more stringent May, 1986 amendments to §§ 264.113 and 265.113 to maintain an equivalent program. In addition, such final authorization is necessary to receive final authorization for the Delay of Closure rule (54 FR 33376, August 14, 1989) since development of the Delay of Closure rule was premised upon the May, 1986 amendments and is, in effect, a variance from the May, 1986 amendments. Final authorization for the May, 1986 amendments can be granted prior to or simultaneous with final authorization for Delay of Closure. The Delay of Closure rule allows certain units to postpone closure and continue to receive non-hazardous wastes after receipt of the final volume of hazardous wastes. These Delay of Closure provisions are less stringent than the Federal closure requirements as amended in May, 1986, which required that closure be completed 180 days after receipt of the final volume of hazardous waste. Therefore, authorized States are not required to adopt the Delay of Closure rule, and States that choose not to adopt Delay of Closure are still required to adopt the May, 1986 amendments.

A State that has not amended its regulatory program to include the more stringent provisions of the May, 1986 amendments discussed in this notice must modify its program accordingly and submit a program revision application to EPA. In accordance with § 271.21(e)(2), the deadline for States to modify their programs to reflect the May, 1986 changes was July 1, 1987. However, because of the confusion related to the stringency characterization of §§ 264.113 and 265.113, the Agency is, for authorization purposes, treating these May 1986 amendments to §§ 264.113 and 265.113 that are reclassified as more stringent by today's notice as if they were promulgated today. Therefore, States have until July 1, 1991 to adopt the May 1986 changes (or until July 1, 1992 if a statutory change is needed to effect changes). A State whose program revision application is currently under review by EPA may submit a revised application, provided that the appropriate regulation changes have been adopted by the State.

Dated: June 18, 1990.

Mary A. Gade,

Acting Assistant Administrator.

[FR Doc. 90–14699 Filed 6–25–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 91180-0003]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions.

SUMMARY: NOAA issues this notice modifying restrictions on fishing in 1990 for sablefish taken with nontrawl gear off the coasts of Washington, Oregon, and California. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and is necessary to avoid exceeding the nontrawl quota and to accommodate the incidental catch of sablefish caught later in the year. This action is intended to prevent or reduce biological stress by virtually eliminating the directed fishery for sablefish while allowing small or unavoidable incidental catches to be landed through the end of the year. This action modifies fishing restrictions imposed on March 21, 1990, for sablefish caught with nontrawl gear.

DATES: *Effective:* 0001 hours (Pacific Daylight Time) June 24, 1990, until modified, superseded, or rescinded. *Comments:* Comments will be accepted through July 11, 1990.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR 663.22(a) authorize the Secretary of Commerce (Secretary) to reduce fishing levels, consistent with the objectives and priorities of the FMP, to prevent or reduce biological stress in any species or species complex.

At its April meeting, the Pacific Fishery Management Council (Council) recommended that the Secretary prevent or reduce biological stress on sablefish

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by imposing a trip limit of 500 pounds on nontrawl landings when 300 metric tons (mt) of the nontrawl allocation remains, while at the same time removing the size and trip limits on sablefish smaller than 22 inches. At subsequent meetings, the Council will review the best data available and may recommend additional changes to the management measures for sablefish.

The purpose of the 500 pound trip limit is to prevent or reduce biological stress by eliminating target fishing for sablefish with most nontrawl gear, while enabling small nontrawl fisheries that operate in the year to continue landing small and often unavoidable catches of sablefish. By this means, the potential for exceeding the annual optimum yield (OY) quota, resulting in biological stress on sablefish, will be reduced. The 500 pound trip limit will apply to sablefish of any size. Therefore, it replaces the current trip limit of 1,500 pounds, or three percent of all sablefish on board, whichever is greater, for sablefish smaller than 22 inches (total length). The 500 pound trip limit, in conjunction with the management measures imposed earlier in the year, is part of a management regime designed to prevent biological stress, avoid exceeding gear quotas, minimize discards, and provide for equitable use of the sablefish resource by the trawl and nontrawl fleets.

The Council's Groundfish Management Team (GMT), using the best available scientific information based on observed and expected rates of landings available on June 11, 1990, has projected that 3,312 mt of the 3,612 mt quota for nontrawl gear will be taken by June 24, 2990. Accordingly, the 500 pound trip limit will become effective on that date.

If the nontrawl quota is reached before the end of the year, all further nontrawl landings of sablefish will be prohibited for the rest of the year. If the 8,900 mt OY quota for sablefish is reached before the end of the year, all further landings of sablefish by all gear types will be prohibited for the remainder of 1990.

Only the size and trip limit provisions for sablefish caught with nontrawl gear are changed. Therefore, this action modifies only the fishing restrictions imposed on March 21, 1990, (55 FR 11021, March 26, 1990), for sablefish caught with nontrawl gear off the coasts of Washington, Oregon, and California. All other provisions for sablefish caught with trawl or nontrawl gear announced at 55 FR 3747 (February 5, 1990), remain in effect. As in the past, all weights and percentages are based on round weight or round weight equivalents.

Secretarial Action

Pursuant to § 663.22(a)(3), the Secretary herein adjusts the management measures for sablefish at 50 CFR 663.27(b)(3) and at 55 FR 11021 by replacing paragraph 4(b) with the following:

(b) Nontrawl. No more than 500 pounds of sablefish caught with nontrawl gear may be taken and retained, possessed, or landed per vessel per fishing trip. This limit applies to sablefish of any size; the 22-inch size limit is removed as long as the 500-pound limit remains in effect.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The environmental impacts of this Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10 because the alternatives considered and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice, and the actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 states that any notice issued under this section will be published in proposed form and will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If unrestricted, nontrawl catches unquestionably will exceed the nontrawl allocation and total catches probably will exceed the OY for sablefish in 1990. As a result, nontrawl and possibly trawl fishermen operating later in the year will be forced to discard their unavoidable catches of sablefish in excess of the OY. If the OY is exceeded, incidental catches in excess of OY during the remainder of the year could result in biological stress. Prompt action to limit these fishing rates is necessary to protect the sablefish resource and alleviate the necessity for fishery closures before the end of 1990. Consequently, further delay of these actions is impracticable and contrary to the public interest, and for good cause these actions are taken in final form effective June 24, 1990.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in April 1990 that generated the management actions endorsed by the Council and the Secretary.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 20, 1990.

David S. Crestin,

Deputy Director of Office of Fisheries Conservation and Management.

[FR Doc. 90-14749 Filed 6-21-90; 12:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-15]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 27, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26233, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 19, 1990.

Debbie Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26233.

Petitioner: Certain faculty and students of Embry-Riddle Aeronautical University-Western Campus at Prescott, Arizona.

Regulations Affected: 14 CFR 91.11(a)(1).

Description of Petition: The petitioner proposes to lengthen the 8-hour time prohibition to 12 hours between any consumption of alcohol and acting as a crewmember on any commercial flight.

[FR Doc. 90-14702 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-10]

Proposed Amendment to Control Zone, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Key West, FL, control zone. This proposed action would eliminate an arrival area extension predicated on the Key West Naval Air Station Ultrahigh Frequency Radio Beacon (NAS UHF RBN). The RBN is being decommissioned and the associated airspace is no longer required for protection of instrument flight rules (IFR) aircraft. The remainder of the control zone would remain unchanged.

DATES: Comments must be received on or before: August 3, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 90-ASO-10, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636,

Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Key West, FL, control zone. This action would eliminate an arrival area extension based on the Key West NAS UHF RBN which is being decommissioned. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Key West, FL [Amended]

By removing the words: "Within 3.5 miles each side of the 251° bearing from Key West NAS UHF RBN, extending from the 5-mile radius zone to 10.5 miles west of the RBN."

Issued in East Point, Georgia, on June 6, 1990.

James G. Walters,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90–14075 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AEA–16]

Proposed Establishment of Transition Area; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) proposes to establish a new 700 foot Transition Area at Laurel, DE to support a new VOR/DME Runway 32 Standard Instrument Approach Procedure (SIAP) to the Laurel Airport, Laurel, DE. The FAA finds it necessary to establish a 700 foot Transition Area to segregate aircraft operating under instrument meteorological conditions from those operating under visual weather conditions in controlled airspace. Additionally, the status of the airport would be changed from VFR to IFR.

DATES: Comments must be received on or before July 9, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA–530, Docket No. 89–AEA–16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–16". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new 700 foot Transition Area at Laurel, DE, to support the development of a new SIAP to the airport. § 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Laurel, DE [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, lat. 38°32'30" N., long. 75°35'30" W., of the Laurel Airport within 4.5 miles either side of the Salisbury, MD VORTAC 342°(T) 350°(M) radial extending from the 5-mile radius area to 8.5 miles south of the airport.

Issued in Jamaica, New York, on May 25, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90–14707 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 126

[Public Notice 1222]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend and clarify the regulations implementing section 38 of the Arms Export Control Act, which governs the import and export of defense articles and defense services, by creating additional exemptions from licensing requirements for certain temporary imports of U.S.-origin defense articles and for exports and temporary imports of defense articles under the U.S. Foreign Military Sales program, and by clarifying when exemptions may be used. This proposed rule would reduce the burden on importers and exporters by eliminating the need for prior U.S. Government approval for certain transactions.

DATES: Comments must be submitted on or before July 26, 1990.

ADDRESSES: Written comments should be sent to: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State, Washington, DC 20520. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: This proposed rule amends the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), which implement section 38 of the Arms Export Control Act (22 U.S.C. 2778).

The proposed amendment primarily would create an exemption from licensing requirements for certain temporary imports of U.S.-origin defense articles. First, it exempts temporary imports of unclassified defense articles for servicing and repair exchanges (on a one-to-one basis). Second, it exempts temporary imports of unclassified defense articles for exhibition, demonstration and marketing in the United States. Third, it eliminates the need for export licenses for unclassified defense articles which are rejected for permanent import and are being returned to the country from which they were shipped to the United States. Fourth, the proposed exemption eliminates the license requirement for temporary imports of defense articles originally furnished under the U.S. Foreign Military Sales program. In addition, the proposed amendment sets forth certain requirements that must be met, and explains the procedures to be followed, in order to use the exemptions. It also clarifies the language in the ITAR regarding temporary imports in general.

The proposed amendment would also broaden the exemption from licensing requirements for exports and temporary imports of defense articles under the U.S. Foreign Military Sales program to cover classified defense articles.

Finally, this amendment clarifies the eligibility requirements for exports made pursuant to any exemption in the ITAR.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, it is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions regarding the proposal. The period for submission of comments will close July 26, 1990. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Parts 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulation, be amended as set forth below:

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 120.1, the current text in paragraph (b) is designated as new paragraph (b)(1) and paragraph (b)(2) is added to read as follows:

§ 120.1 General.

* * * * *

(b) *Eligibility.* (1) * * *

(2) The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in § 126.7(e) of this subchapter) has been convicted of violating the U.S. criminal statutes enumerated in § 120.24 or debarred pursuant to part 127 of this subchapter, unless an exception has been granted pursuant to § 127.6(c) of this subchapter.

3. Section 120.12 is revised to read as follows:

§ 120.12 Imports—temporary.

"Temporary import" means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is intransit to another foreign destination. "Temporary import" includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. (Permanent imports are generally regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179)).

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

4. The authority citation for part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

5. In § 123.1, the heading is revised and paragraphs (a) and (d) are revised to read as follows:

§ 123.1 Requirement for export or temporary import license.

(a) Any person who intends to export or to import temporarily a defense article must obtain a license from the Office of Defense Trade Controls prior to the export or temporary import unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

* * * * *

(d) Provisions for furnishing the type of "defense services" described in § 120.8(a) of this subchapter are contained in Part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

6. Section 123.2 is revised to read as follows:

§ 123.2 Import licensing jurisdiction.

Imports of defense articles into the United States are generally regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179). However, the Department of State regulates imports of defense articles if: the article is being returned to the United States under the authority of a temporary export license issued pursuant to § 123.27 of this subchapter, or if the article is brought in as a temporary import as defined in § 120.12 of this subchapter.

7. Section 123.2 is revised to read as follows:

§ 123.3 Temporary import licenses.

A license (DSP-61) issued by the Office of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles unless exempted from this requirement pursuant to § 123.4. Unless so exempted, this requirement applies to:

(a) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(b) Temporary imports of unclassified defense articles intransit to a third country; and

(c) Temporary imports of unclassified defense articles that are to be incorporated into another article prior to return to the country from which they were shipped to the United States or prior to shipment to a third country.

A bond may be required as appropriate. (See part 125 of this subchapter for license requirements for technical data and classified defense articles).

§ 123.4 [Redesignated as § 123.5]

8. Section 123.4 is redesignated as § 123.5 and a new § 123.4 is added to read as follows:

§ 123.4 Temporary import license exemptions.

(a) *General.* District directors of customs may permit the temporary import (and subsequent export), for a period of up to 3 years, of unclassified U.S.-origin defense articles (including any article manufactured abroad pursuant to U.S. Government approval) if the article:

(1) Is imported—

(i) For servicing (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective articles, parts or components, but excluding any modification enhancement, upgrade or other form of alteration or improvement that changes the basic performance or productivity of the article), and

(ii) Is subsequently returned to the country from which it was imported; or

(2) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(3) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(4) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513).

(b) *Requirements.* (1) The temporary import must meet the eligibility requirements set forth in § 120.1(b)(2) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration must be the same as the foreign consignee of record named at the time of import; and

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section.

(c) *Procedures.* To the satisfaction of the district director of customs, the importer and exporter must comply with the following procedures:

(1) At the time of import, file and annotate the applicable U.S. Customs document (e.g. Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4"; and

(2) At the time of import, include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s), including quantity and, where possible, the serial, model, unique part and National Stock number, as well as the number of any licenses, FMS cases or other written approvals under which the defense article was authorized for initial export; and

(3) At the time of import, post any bond required by the Department of State or the Department of the Treasury with the district director of customs; and

(4) At the time of export, file with the district director of customs at the port of exit a copy of the U.S. Customs documentation under which the article was imported and a Shipper's Export Declaration (Department of Commerce Form 7525–V) which indicates the nature of any one-to-one replacements of defective articles, parts or components and includes the following statement:

This shipment is being made in accordance with and under the authority of 22 CFR 123.4. The exporter hereby certifies that this export meets the eligibility requirements set forth in 22 CFR 120.1(b)(2).

PART 126—GENERAL POLICIES AND PROVISIONS

9. The authority citation for part 126 continues to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

10. In § 126.6, paragraphs (a) and (c)(1) are revised to read as follows:

§ 126.6 Foreign military aircraft and naval vessels, and the Foreign Military Sales program.

(a) *General.* A license is not required if:

(1)(i) An article to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended; and

(ii) That article was delivered to representatives of such a country or organization in the United States; and

(iii) That article is to be exported from the United States on a military aircraft or naval vessel of that government or organization; or

(2) An article is being temporarily imported under the Foreign Military Sales (FMS) program of the Arms Export Control Act.

* * * * *

(c) *Procedures for the Foreign Military Sales program—(1) General.* District directors of customs are authorized to permit the export and temporary import of defense articles, defense services and technical data without a license if the articles were sold by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

(i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and

(ii) Accompanied by a properly executed DSP–94; and

(iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter, and, if classified defense articles of technical data are involved, has the appropriate U.S. Government clearance.

* * * * *

Dated: June 8, 1990.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 90-14786 Filed 6-25-90; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 780, 785, and 816

Surface Coal Mining and Reclamation Operations, Surface Mining Permit Applications, Special Categories of Mining, Permanent Program Performance Standards, Backfilling and Grading, and Multiple Seam and Mountaintop Removal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of the public comment period.

SUMMARY: OSM published a Notice of Inquiry identified in the Federal Register of April 17, 1990. (55 FR 14319) The topics discussed concern adding regulations to ensure contemporaneous reclamation of multiple seam and mountaintop removal mining operations, and adding technical standards to the backfilling and grading regulations to prevent settlement of backfill material.

At the request of several interested parties, the public comment period on these issues will be extended. The original comment period announced in the Federal Register on April 17, 1990 (55 FR 14319), closed on May 30, 1990. The new comment period will extend until close of business on July 31, 1990.

DATES: The public comment period will close July 31, 1990.

ADDRESSES: Written comments on the issues addressed at 55 FR 14319 may be submitted to the Administrative Record, Office of Surface Mining, room 5215A–1, 1951 Constitution Ave., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For information regarding the public meeting, contact Raymond E. Aufmuth, PG, at (202) 343–7952 or Robert Wiles, PE, at (202) 343–1502.

Dated: June 20, 1990.

Harry N. Snyder,

Director.

[FR Doc. 90-14738 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 53

[OST Docket No. 40987; Notice 90-23]

RIN 2105-AB66

Coast Guard Whistleblower Protection

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM proposes to implement the whistleblower protection provisions contained in Public Law 100–456. The rule would apply to the United States Coast Guard, the Board for Correction of Military Records, and the Department of Transportation's Inspector General. It would establish procedures to ensure that members of the United States Coast Guard are protected from reprisals for making, or preparing to make, lawful communications to a Member of Congress or an Inspector General. In addition, the rule would specifically require the reporting and investigation of reprisal allegations, and provide for remedies when reprisal is found, including disciplinary action against any person taking reprisal and the correction of military records when appropriate.

DATES: Comments on the proposal must be received on or before August 27, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Documentary Services Division, Docket 40987, C–55, Department of Transportation, Room 4107, 400 Seventh Street, SW, Washington, DC 20590. In order to facilitate the Department's review, we request that four additional copies of the comments be submitted, and that the commenters include a reference to the docket number, which is listed above. Comments will be available for review by the public at this address from 9 a.m. through 5 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), U.S. Department of Transportation, room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Public Law 100–456 amended section 1034 of title 10 of the United States Code to

include military whistleblower protections. The provision sets forth specific protections to be afforded to members of the Armed Forces who make lawful communications to a Member of Congress or to an Inspector General. Public Law 101–225, a technical correction, amended section 1034 of title 10 of the United States Code to clarify that, when the Coast Guard is not operating as a service in the Navy, Coast Guard members must submit complaints under this part to the Inspector General of the Department of Transportation, and that the Secretary of Transportation may, if necessary, provide final review of the action.

The legislative history indicates that Members of Congress were concerned that members of the Armed Forces who become aware of information evidencing wrongdoing or waste of funds should be able to communicate this information to Members of Congress or the Inspector General. Members of the Armed Forces generally have a duty to report such information through the chain of command. Public Law 100–456 establishes that those individuals also have the right to communicate directly with a Member of Congress or an Inspector General, unless the communication is unlawful under applicable law or regulation. When these individuals make lawful disclosures, the statute mandates that they should be protected from adverse personnel consequences, or the threat of such consequences. These individuals should have the right to a prompt investigation and administrative review of claims of reprisals. If any claim of reprisal is found meritorious, the Secretary of Transportation should initiate appropriate corrective action, and the Board for Correction of Military Records should entertain any application for correction of records submitted by an aggrieved member.

The statute, as enacted in 1988, applied to all members of the armed forces, including members of the Coast Guard. However, the statutory language was not consistent in its application to the Coast Guard. The statute was amended in 1989 (Pub. L. 101–225) to provide the proper relationships between the Secretary of Transportation, the DOT Inspector General, and the Coast Guard members. Therefore, the statute applies to the Department of Transportation insofar as it has responsibility for the Coast Guard when the Coast Guard is not operating as a service in the Navy. The Department of Transportation's proposed procedures applicable to whistleblower protection are simpler than those set out in the Department of Defense rule because the organizational structure of the Department of Defense has more levels within the chain of command than those found within the Department of Transportation.

Current Regulations

On February 13, 1990 (55 FR 4999), the Department of Defense published a final rule to implement the statute. See 32 CFR Part 98a. This NPRM closely follows the structure set out in the Department of Defense's rule. A member of the Armed Forces, other than the Coast Guard when not operating as a service in the Navy, has a right to appeal to the Assistant Secretary of Defense (Force Management and Personnel) for a review of the final action by the Secretary of the particular branch. This NPRM would provide for final review by the Secretary of Transportation in accordance with the Board for Correction of Military Records' regulations.

For the purposes of this NPRM, lawful communications that may not be restricted are those in which a member of the Coast Guard makes a complaint or discloses information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Any adverse personnel action arising out of such communication is deemed a prohibited action under the statute.

The statute requires that the Inspector General of the Department of Transportation expeditiously investigate any allegation of a prohibited action submitted by a member of the Coast Guard. The Inspector General is also required to investigate the information that was the subject of the lawful communication.

In resolving an application from a member of the Coast Guard for a correction of the member's military records, the Board for Correction of Military Records shall review the Inspector General's report, and if the Board needs additional information, it may request additional investigation of the matter. The Board, when appropriate, may conduct an evidentiary hearing. If the Board elects to hold an evidentiary hearing, the Coast Guard may provide the Coast Guard member with legal representation if certain conditions are met.

If the Board determines that a prohibited action has occurred, the Board may recommend that the Secretary of Transportation take appropriate disciplinary action against the individual or individuals responsible for such action. The Board may further direct that the Coast Guard member's records be changed. If the Board does not find that a prohibited action has occurred, the Coast Guard member may petition for reconsideration in accordance with the Board's regulations. If the Coast Guard member is not satisfied with the relief granted through the administrative process, the Coast Guard member may seek further relief through the judicial system.

Regulatory Impact

I certify under the criteria of the Regulatory Flexibility Act that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because of its highly localized impact. Furthermore, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, for the same reason. The economic impact is so minimal that it does not warrant preparation of a full regulatory evaluation. The proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and I have determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Finally, I have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and that an environmental impact statement is not required.

List of Subjects in 33 CFR Part 53

Coast Guard, Department of Transportation, Fraud, Investigations, Whistleblowers.

Accordingly, title 33 of the Code of Federal Regulations is amended to add part 53 as follows:

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

Sec.
53.1 Purpose.
53.3 Applicability.
53.5 Definitions.
53.7 Requirements.
53.9 Responsibilities.
53.11 Procedures.

Authority: 10 U.S.C. 1034, Pub. L. 100–456, Pub. L. 101–225.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United States Code to provide protection against reprisal to members of the Coast Guard for making a lawful communication to a Member of Congress or an Inspector General.

(b) Assigns responsibilities and delegates authority for such protection and prescribes operating procedures.

§ 53.3 Applicability.

This part applies to members of the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Transportation Office of the Inspector General.

§ 53.5 Definitions.

As used in this part, the following terms set forth in italics shall have the meaning stated in the paragraph that follows the italicized term, except as otherwise provided:

(a) *Board for Correction of Military Records of the Coast Guard (Board).* The Board empowered under 10 U.S.C. 1552 to make corrections of Coast Guard military records. In the Department, the Board is part of the Office of the General Counsel in the Office of the Secretary.

(b) *Corrective action.* Any action deemed necessary to make the complainant whole, changes in agency regulations or practices, and/or administrative or disciplinary action against offending personnel, or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.

(c) *Inspector General.* The Inspector General in the Office of Inspector General of the Department of Transportation, as appointed under the Inspector General Act of 1978.

(d) *Law Specialist.* A commissioned officer of the Coast Guard designated for special duty (law).

(e) *Lawful communications.* Any communication to a Member of Congress or an Inspector General, in which a member of the Coast Guard makes a complaint or discloses information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(f) *Member of the Coast Guard.* Any past or present Coast Guard uniformed personnel, officer or enlisted, regular or reserve. This definition includes cadets of the Coast Guard Academy.

(g) *Member of Congress.* In addition to a Representative or a Senator, the term includes any Delegate or Resident Commissioner to Congress.

(h) *Adverse Personnel Action.* Any action taken regarding a member of the Coast Guard that affects or has the potential to affect the member's position or his or her career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision concerning pay, benefits, awards, or training; and any other significant change in duties or responsibilities inconsistent with the member's assigned rank.

(i) *Reprisal.* Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a member of the Coast Guard for making or preparing to make a communication to a Member of Congress or an Inspector General.

(j) *Secretary.* The Secretary of Transportation or his or her delegate.

§ 53.7 Requirements.

(a) No person within the Department of Transportation may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) Members of the Coast Guard shall be free from reprisal for making or preparing to make lawful communications to Members of Congress or an Inspector General.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General.

§ 53.9 Responsibilities.

(a) The Inspector General, Department of Transportation, shall:

(1) Expeditiously investigate any allegation submitted to the Inspector General under this part by a member of the Coast Guard, that a personnel action has been taken (or threatened) in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the information the Coast Guard member believes evidences wrongdoing if such investigation has not already been initiated. The inspector General is not required to make such an investigation if the information that the Coast Guard member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete the investigation of the allegation of reprisal and issue a report within 90 days of receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of Transportation and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. The copy of the report issued to the Coast Guard member may exclude any information not otherwise available to the Coast Guard member under the Freedom of Information Act (5 U.S.C. 552).

(5) If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(7) After the final action in any allegation filed under this part, whenever possible, interview the person who made the allegation to determine the views of that person concerning the disposition of the matter.

(b) The Board for Correction of Military Records of the Coast Guard (Board) shall, in accordance with its regulations:

(1) Consider an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General, alleging that a personnel action was taken in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General in accordance with 10 U.S.C. 1552. This may include the receipt of oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part no later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Coast Guard law specialist if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General;

(2) The Chief Counsel of the Coast Guard determines that the case is unusually complex or otherwise requires the assistance of a law specialist to ensure proper presentation of the legal issues in the case; and

(3) The Coast Guard member is not represented by outside counsel chosen by the member.

(d) If the Board elects to hold an administrative hearing, the Board must ensure that the Coast Guard member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in the Inspector General investigatory record but not included in the report released to the member.

(e) If the Board determines that a personnel action was taken in reprisal for a Coast Guard member making or preparing to make a lawful communication to a Member of Congress or an Inspector General, the Board may forward its recommendation to the Secretary for the institution of appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal, and direct any appropriate correction of the member's records.

(f) The Board shall notify the Inspector General of the Board's decision concerning an application for the correction of military records of a Coast Guard member who alleged reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, and of any recommendation to the Secretary for appropriate administrative or disciplinary action against the individual or individuals found to have taken reprisal.

(g) When reprisal is found, the Secretary shall ensure that appropriate corrective action is taken.

§ 53.11 Procedures.

(a) Any member of the Coast Guard, who reasonably believes a personnel action (including the withholding of an action) was taken or threatened in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may file a complaint with the DOT Inspector General Hotline under this part. Such a complaint may be filed by telephone, or by letter addressed to the Department of Transportation, Office of Inspector General, Hotline Center, P.O. Box 23178, Washington, DC 20026-0178. Telephone Numbers: 1-800-424-9071, FTS 8-366-1461. The commercial number is (202) 366-1461.

(b) The complaint should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, or threatened, that is alleged to be motivated by reprisal; the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; and any information that suggests or evidences a connection between the communication and reprisal. The complaint should also include a description of the communication to a Member of Congress or an Inspector General including a copy of any written communication and a brief summary of any oral communication showing date of communication, subject matter, and the name of the person or officer to whom the communication was made.

(c) A member of the Coast Guard who is alleging reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General, may submit an application for the correction of military records to the Board for Correction of Military Records of the Coast Guard, in accordance with regulations governing the Board. See 33 CFR Part 52.

(d) An application submitted under paragraph (c) of this section shall be considered in accordance with regulations governing the Board. See 33 CFR part 52.

Issued in Washington, DC on May 31, 1990.

Samuel K. Skinner,

Secretary.

[FR Doc. 90-14662 Filed 6-25-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 900658-0158]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). Except as specifically noted below, changes would be effective for the Atlantic migratory groups of king and Spanish mackerel for the fishing year that commenced on April 1, 1990, and for the Gulf migratory groups of king and Spanish mackerel for the fishing year that commences on July 1, 1990. This notice proposes (1) For Atlantic migratory groups of king and Spanish mackerel, decreases in TAC and allocations; (2) for the Gulf migratory group of Spanish mackerel, a decrease in the bag limit in the exclusive economic zone (EEZ) off Texas; and (3) effective January 1, 1991, for Gulf and Atlantic migratory groups of Spanish mackerel, increases in bag limits in the EEZ off Florida. The intended effects are to protect the mackerels from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these species.

DATES: Written comments must be received on or before July 6, 1990.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Group's 1990 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to TACs, allocations, and bag limits.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1990, annual TACs remain at the 1989/90 levels of 4.25 million pounds (m. lbs.) for the Gulf migratory group of king mackerel and 5.25 m. lbs. for the Gulf migratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1990, annual TACs be lowered to 8.30 m. lbs. for the Atlantic migratory group of king mackerel and 5.00 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of the acceptable biological catch (ABC) and equal to, or closely approximating, the modal ABC values determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC, except for the Atlantic group Spanish mackerel which is apportioned by a method established under Amendment 4 to the FMP to attain a 50 percent recreational and 50 percent commercial allocation of TAC by the 1994/95 fishing year. Also, the Gulf king mackerel commercial allocation is divided by fixed percentages into quotas for eastern and western zones. Under these percentages and the proposed TACs, 1990/91 allocations and quotas would be as follows:

Species	Million pounds
Gulf King Mackerel—TAC	4.25
Recreational allocation (68%)	2.89
Commercial allocation (32%)	1.36
Eastern zone (69%)	(0.94)
Western zone (31%)	(0.42)
Gulf Spanish Mackerel—TAC	5.25
Recreational allocation (43%)	2.26
Commercial allocation (57%)	2.99
Atlantic King Mackerel—TAC	8.30
Recreational allocation (62.9%)	5.22
Commercial allocation (37.1%)	3.08
Atlantic Spanish Mackerel—TAC	5.00
Recreational allocation (37.2%)	1.86
Commercial allocation (62.8%)	3.14

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended increasing the bag limits from 4 to 5 fish per person per trip applicable to the Gulf and Atlantic groups of Spanish mackerel in the EEZ off Florida. The increase would not become effective until January 1991, when Florida is expected to implement a five fish bag limit in state waters. For Gulf group Spanish mackerel, the Councils recommended that the bag limit in the EEZ off Texas be reduced from 10 to 3 fish per person per trip, which is the existing bag limit in the waters of Texas. By recommending these bag limit changes, the Councils intend to ensure that the bag limits for Spanish mackerel in the EEZ off Florida and Texas would be compatible with the bag limits in state waters. The establishment of a separate bag limit in the EEZ off Texas requires the creation of a third area in the Gulf of Mexico. The areas are appropriately named western, central, and eastern.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 20, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(2), first sentence	3.24	3.08
(b)(2)	5.66	5.22
(c)(2)	3.24	3.14
(d)(2)	2.76	1.86

3. In § 642.28, paragraphs (a)(3)(ii) and (a)(5)(ii) are revised and a new paragraph (a)(3)(iii) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(3) * * *

(ii) Possessing ten Spanish mackerel per person per trip from the central area.

(iii) Possessing three Spanish mackerel per person per trip from the western area.

* * * * * *

(5) * * *

(ii) For the purposes of paragraph (a)(3) of this section:

(A) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ (identical to the boundary between the eastern and western zones in the commercial fishery); and

(B) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas waters) at 29°32.1'N. latitude, 93°47.7'W. longitude to point B (on the outer limit of the EEZ) at 28°11.4'N. latitude, 92°53'W. longitude.

* * * * * *

4. Effective January 1, 1991, in § 642.28, paragraphs (a)(3)(i) and (a)(4)(i) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(3) * * * (i) Possessing five Spanish mackerel per person per trip from the eastern area.

* * * * * *

(4) * * * (i) Possessing five Spanish mackerel per person per trip from the southern area.

* * * * * *

[FR Doc. 90-14717 Filed 6-25-90; 12:54 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 90-084]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Kentucky to allow the field testing in Fayette County, Kentucky, of tobacco plants genetically engineered to express one of three genes derived from the tobacco vein mottling virus: the coat protein gene; the cytoplasmic inclusion protein gene; and the helper component protein gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Catherine Joyce, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-065-06.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The University of Kentucky, of Lexington, Kentucky, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to express one of three genes derived from the tobacco vein mottling virus: The coat protein gene, the cytoplasmic inclusion protein gene, and the helper component protein gene. The field trial will take place in Fayette County, Kentucky.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the University of Kentucky application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Kentucky, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Three different viral genes, derived from tobacco vein mottling virus (TVMV), have been modified and inserted into the tobacco genome. In this field trial none of the introduced genes can spread to another plant, because the test plants will not be allowed to flower. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. The TVMV genes do not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

3. The vector system used to transfer the TVMV genes to tobacco has been evaluated for its use in this specific experiment and does not pose a plant pest risk. Although the vectors were derived from DNA sequence with known plant pathogenic potential, the vectors have been disarmed by the removal of the genes that are necessary for pathogenicity.

4. The vector agent, the phytopathogenic bacterium that was used to deliver vector DNA carrying the TVMV genes into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

5. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

6. The field test plot will be small, approximately 7500 square feet.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 21st day of June 1990.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14790 Filed 6-25-90; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 90-104]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Progarm Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90-135-01	University of Wisconsin	05-15-90	*Pseudomonas syringae pv. syringae* genetically engineered to be avirulent through the use of Tn5.	Wisconsin.
90-135-02	Amoco Technology Co.	05-15-90	Tobacco plants genetically engineered to contain a eukaryotic gene important for primary metabolism, and to contain an antibiotic resistant marker gene.	Kentucky.

Done in Washington, DC, this 21st day of June 1990.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14791 Filed 6-25-90; 8:45 am]
BILLING CODE 3410-34-M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776) the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 6-8, 1990.

Time: 8 a.m.-5 p.m., August 6, 1990; 8 a.m.-5 p.m., August 7, 1990; 8 a.m.-12 noon, August 8, 1990.

Place: Southwest State University, Marshall, Minnesota 56258.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review Minnesota research and outreach programs for rural development.

Contact person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 447-3684.

Done in Washington, DC, this 14th day of June 1990.

John Patrick Jordan,
Administrator.

[FR Doc. 90-14655 Filed 6-25-90; 8:45 am]
BILLING CODE 3410-22-M

Economic Research Service

National Agricultural Cost of Production Standards Review Board: Meeting

The National Agricultural Cost of Production Standards Review Board will meet at the Economic Research Service, U.S. Department of Agriculture, Washington, DC on July 12-13, 1990.

The purpose of this meeting is to discuss general issues related to USDA's estimation of enterprise costs of production. All meetings will be held in room 332, 1301 New York Avenue, NW. The morning sessions on July 12-13 will convene at 9 a.m. and the afternoon sessions will convene at 1:30 p.m. Meetings will end at approximately 4 p.m. both days.

All sessions will be open to members of the public who wish to observe. Written comments may be submitted before or after the meeting to Kenneth Deavers, Director, ARED-ERS-USDA, room 314, 1301 New York Avenue, NW., Washington, DC 20005.

For further information, contact Robert Dismukes at (202) 786–1801.

John E. Lee, Jr.,
Administrator.

[FR Doc. 90-14799 Filed 6-25-90; 8:45 am]
BILLING CODE 3410-10-M

Forest Service

Solid Waste Disposal Policy

RIN 0596-AA92

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Chief of the Forest Service is proposing a revision of the policy governing solid waste disposal on National Forest System lands. The proposal would prohibit the authorization of new solid waste disposal sites (sanitary landfills), except at isolated locations in Alaska, would phase out existing sites by December 31, 1999, and would establish criteria for determining termination dates for existing authorizations. To protect the Government from potential liability in event of hazardous substance releases on National Forest System lands, the policy would prohibit sale or exchange of existing solid waste disposal sites. The proposal would allow sufficient time for operators of solid waste disposal facilities to acquire or develop alternative sites and also would provide direction for the safe operation of existing sites to ensure compliance with Federal and State law and regulations and the terms of the special use authorization. The intended effect of the proposed policy is to eliminate the potential sources and risk of pollution associated with operation of solid waste disposal sites on National Forest System lands.

DATES: Comments must be received in writing by August 27, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this proposed policy in the Office of the Director, Lands Staff, Room 4 South, Auditors Building, 201 14th Street, SW., Washington, DC between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Scheibel, Lands Staff, (202) 453–9358.

SUPPLEMENTARY INFORMATION:

Background

In the past, many open-pit garbage dumps and solid waste disposal sites were permitted on National Forest System lands. For example, 536 sites were under special use permit in 1985. As a result of increased awareness and concern over environmental pollution and the risks of hazardous waste, the Forest Service, working in coordination with local governments over the past two decades, has eliminated open pit dumps and significantly reduced the number of solid waste disposal sites. Currently, most communities located within or near National Forests and National Grasslands operate sanitary landfills on private lands.

However, there remain 110 solid waste disposal sites authorized on National Forest System lands. All of the sites are operated by county and municipal governments and are used for the disposal of residential and non-hazardous commercial waste. Terms of the authorizations prohibit the dumping of hazardous wastes and require measures to protect Forest resources.

A recent review of the agency's current solid waste management policy indicated that the policy and practices currently authorized are inconsistent with the principles of multiple-use and sustained-yield management of National Forest System lands which are mandated by statute. The concerns which surfaced during this review included: The inability of most permit holders to meet the terms and conditions of the authorization, including the Environmental Protection Agency regulations for solid waste disposal; the high potential for contamination of soil, ground water, and other resources; and the possibility that the Forest Service would have to provide the funding for site cleanup.

As a result of the review, the Forest Service has concluded that it cannot effectively administer authorizations for solid waste disposal sites and meet the statutory resource management goals for the National Forest System. Accordingly, the agency is proposing that no new solid waste disposal sites be authorized, that no expansion of existing sites be authorized, and that existing sites be eliminated by December 31, 1999. The proposed policy will not result in the immediate closure of any site except for breach of the terms and conditions of a permit that cannot be corrected. The proposal would give affected communities up to December 31, 1999, to find alternative sites and specifically provides for reissuance of permits during the phase out period to allow communities reasonable opportunity to find alternative sites or disposal methods.

The result of this policy will be the eventual closure of all solid waste disposal sites on National Forest System lands. The agency anticipates that most sites will remain in operation, reach capcity, and be reclaimed prior to the required closure date of December 31, 1999. Upon closure of these sites, communities which have historically used sites on the National Forests for community landfills will be required, for community landfill purposes, to obtain sites on private lands or find alternative methods of disposal. This may change the current methods of collection and disposal or could be more expensive than their current method of disposal.

In addition to phasing out all solid waste disposal sites, the Forest Service has discovered an administrative error in many existing solid waste disposal authorizations that needs to be corrected in the interim. Special use authorizations should be issued for these sites pursuant to regulations at 36 CFR part 251, subpart B, under the authority of the Act of September 3, 1954 (43 U.S.C. 931c and 931d).

However, through administrative error, many local Forest Service officers have authorized solid waste disposal sites under the Act of June 4, 1897, an authority that is limited to short term, temporary facilities which are removed upon expiration of the special use permit. The Forest Service intends to correct this problem by replacing those authorizations issued under the Act of June 4, 1897 with term special use permits issued under the Act of September 3, 1954.

Solid waste transfer stations (containers used for temporary storage) which comply with the Forest Plan and applicable regulations may continue to be authorized on National Forest System lands. Transfer stations are limited to the temporary storage of nonhazardous waste. The transfer station facilities must be constructed and operated to avoid the contamination of soil, ground water, and other resources.

An Environmental Assessment (EA) has been prepared on the proposed policy. Copies of the EA may be obtained by writing or calling the office or person listed under **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** located at the beginning of this document.

The proposed policy for solid waste disposal would be issued as direction to Forest Service personnel by amendment to section 2723.41 of the Forest Service Manual. The text of the proposal, as it would appear in the manual, is set out at the end of this notice. Public comment is invited and will be considered in development of the final notice of policy which will be published in the **Federal Register**.

Dated: June 19, 1990.

George M. Leonard,
Associate Chief.

Forest Service Manual

Chapter 2720—Special Uses Management

2723.41—Solid Waste Disposal Sites. This category of special use includes disposal sites for garbage, trash, and other nonhazardous solid waste. See FSM 2725.2 for guidance concerning storage of scrap, junk, and other reusable materials.

2723.41a—Administration. Authorized officers shall issue and administer special use authorizations for solid waste disposal sites on all National Forest System land in accordance with the requirements of this section, except for Alaska, where this section applies to community solid waste disposal sites only. See § 2723.41d of this chapter for direction on issuing and administering solid waste disposal sites for remote and isolated facilities in Alaska.

1. Do not authorize new solid waste disposal sites or expansion of existing sites.

2. Terminate the use of existing disposal sites when the site is filled, when the special use authorization expires, when the holder fails to correct a breach of the special use authorization, or upon mutual agreement with the holder. Do not allow any use of existing sites beyond December 31, 1999.

3. For the interim period, revise or reissue existing special use authorizations as needed. Authorizations shall require the holder to meet current Federal and State standards and requirements for solid waste disposal sites, shall contain an expiration clause, and, if needed, shall include provisions for monitoring, maintenance, and restoration of the site after closure of the site (In many cases, a separate authorization may be necessary for post-closure activities).

4. Reissue authorizations of existing sites only as necessary to provide holders the opportunity to locate alternative solid waste disposal sites or to develop alternative methods of disposal.

a. Use the Act of September 3, 1954 (U.S.C. 931c and 931d) as the authority for authorizing all solid waste disposal site reissuances or amendments to such authorizations. The term of the authorization should not exceed the anticipated life of the existing facility or December 31, 1999, whichever occurs first.

b. Amend or reissue those special use authorizations for solid waste disposal sites that were improperly authorized under the Act of June 4, 1897.

c. Establish a rental fee for authorization holders which reflects fair market value of the rights and privileges authorized (36 CFR 251.57). Fair market value may be determined through appraisal or other sound business management principles. Fees cannot be waived or reduced for term permits issued under the Act of September 3, 1954.

d. As a condition of reissuance of an authorization for a solid waste disposal site, require a bond, insurance, or some other reliable means, if necessary, to assure indemnification of the Forest Service from costs associated with environmental damage and restoration of the site.

e. Development or modification of operating plans, closure plans, or site monitoring plans requires site specific analysis in accordance with NEPA.

f. Consult the Office of the General Counsel in unusual or potentially controversial situations.

5. When a solid waste disposal site is in noncompliance with terms and conditions of the authorization, determine the magnitude or extent of noncompliance, the feasibility of continued operation, and the presence of any hazardous material on the site. In a noncompliance situation, it is the holder's responsibility to complete a plan of action and take corrective measures which brings the site into compliance. Sites which cannot be brought into compliance shall be closed and cleaned up by the holder.

2723.41b Termination. The authorization officer shall determine the timing of termination of existing authorizations. Base termination dates on the following factors:

1. The remaining useful life of the site.

2. The holder's current and past compliance with the terms and conditions of the authorization.

3. The impacts of use of the site for solid waste disposal on other forest resources.

4. Availability of alternative sites off National Forest System lands.

5. Management guidelines and prescriptions for the area as established in the Forest Plan.

6. Expiration date of current authorization.

If the authorized officer determines that an authorization should be terminated prior to its expiration date, that officer shall give timely notice to the affected holder that the termination date must be adjusted, shall openly consult with the holder, and shall seek to reach an agreement on the termination date.

2723.41c—Exchange or Sale of Existing Solid Waste Disposal Sites. Where solid waste disposal has occurred on National Forest System land, the United States may be liable after a conveyance of the land for releases of hazardous substances disposed of at the time the United States owned the land. Therefore, the exchange or sale of National Forest System lands with solid waste disposal sites is prohibited.

2723.41d—Special Situations—Alaska Region. Issue and administer authorizations for community solid waste disposal sites on National Forests in Alaska in accordance with the requirements of section 2723.41 a and b.

The Alaska Region shall work with and encourage the State of Alaska to select suitable areas for solid waste disposal near existing and proposed communities under the authority of the Statehood Act, Section 6(a), PL 85–508, July 7, 1958.

If no non-Federal land is available, non-community solid waste disposal sites may be authorized for the following types of uses of National Forest System lands in Alaska:

1. Remote lodges permitted under special use authorizations.

2. Mining activities in remote forest locations.

4. Remote Forest Service administrative sites.

5. Forest Service contractors working in remote locations.

6. Aquaculture sites in remote locations.

7. Use by other Federal Agencies located in remote National Forest locations.

8. Remote area is defined as an island and/or mainland location with access only by aircraft or boat.

The Alaska Region shall develop a supplemental policy which minimizes the environmental risk and and possibility that the Forest Service would have to provide the funding for site cleanup for any of these sites.

* * * * *

2723.45—Solid Waste Transfer Stations. Solid waste transfer stations are small areas where the holder places covered or closed containers used for the temporary storage of nonhazardous solid waste. Solid waste transfer stations may be authorized on National Forest System land when other suitable sites are not available and the use is not in conflict with the approved Forest Plan. Issue special use permits for transfer stations under the Act of September 3, 1954 (U.S.C. 931c and 931d) and, as part of the permit, require measures which will ensure resource protection and protect visual quality of the area. Do not allow waste to be stored at the site for more than seven days. Management and design of solid waste transfer stations shall comply with FSM 7462, and current State and local regulations.

[FR Doc. 90-14800 Filed 6-25-90; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on Tuesday, July 17, 1990, at the Hilton Inn West, 401 S. Meridian, Oklahoma City, Oklahoma 73108. The Committee will discuss civil rights issues and plan future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Dr. Earl Mitchell or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 20, 1990.
Wilfredo J. Gonzalez,
Staff Director.
[FR Doc. 90-14750 Filed 6-25-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF COMMERCE

Request for Comments on Publication of Legal Texts of Central and Eastern European Countries

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to the Support for Eastern European Democracy Act, the Eastern Europe Business Information Center (EEBIC) has been established within the Department of Commerce to serve as the central clearinghouse for information relating to business and commercial opportunities in central and eastern European countries. EEBIC makes available to the public through the National Technical Information Service (NTIS) a variety of information related to commercial and investment opportunities in these countries. EEBIC has received numerous requests for information regarding new laws and regulations being adopted by these governments to support the ongoing economic and political reform.

The purpose of this notice is to inform the public of the Department's plans to announce, archive, and make available to the public legal text from central and eastern Europe on a subscription basis through NTIS. Further, we seek comment on the value of such materials, on alternative sources, on useful types of related information and means of dissemination, and on ways for the private sector to inform the Department of its needs.

DATES: Comments from the public should be received no later than July 26, 1990.

ADDRESS: Written comments should be addressed to: Lynn S. West, Office of the General Counsel, Room 5877, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lynn S. West, telephone (202) 377-0490.

SUPPLEMENTARY INFORMATION: In order to support the substantial political and economic reform occurring in central and eastern European countries, legal reforms are being undertaken at an unusually accelerated pace. As much of the reform affects commerical and business opportunities in these countries, the American business and legal communities have expressed considerable interest in obtaining copies of official legal texts transmitted to the United States government by the governments of these countries.

For the past several months, EEBIC has distributed information regarding commercial opportunities in central and eastern Europe to the public on request through NTIS, a branch agency of the Department of Commerce. A list of the EEBIC publications available through NTIS may be obtained by writing to: Eastern Europe Business Information Center, Room 6043, Department of Commerce, Washington, DC 20230, or by calling (202) 377-2645.

While some of the EEBIC information packages distributed by NTIS include legal texts, the primary content is economic and commercial in nature. In order to respond to the increasing number of private sector requests for official legal texts, both in the original language and in English, the Department proposes to offer such texts on a systematic basis through NTIS.

Form and Content

The basic subscription package to be offered by NTIS would include typewritten English versions of official texts of current and newly issued commercial laws and regulations of general interest to the American business community as such texts are transmitted to the U.S. government by central and eastern European governments. The package would include laws and regulations of Poland, Hungary, German Democratic Republic, Czechoslovakia, Yugoslavia, Romania, and Bulgaria. Where available, NTIS may offer the original language version of such texts for an additional charge upon request. Separate subscriptions may be available on a country-specific basis where justified by the volume of relevant material and public interest.

Along with the subscription package, a single page bulletin would be forwarded providing information about significant new legislation or regulations introduced or adopted in these countries for which official texts are not yet available. As there is often a consideration lag between the introduction or passage of new legislation and its release in official form and availability in English, the purpose of the bulletin is to alert the subscriber to new developments in commercial law known to the Department. Other than the bulletin, the material included in the package would consist solely of texts as provided by the foreign governments and would not contain any analysis or commentary.

The subscriptions and any new information products will be announced in the NTIS bibliographic database searchable online through several contracted vendors. NTIS will permanently archive these products for future retrieval by the private sector.

Frequency and Price of Service

Upon receipt of a subscription order, NTIS would forward an initial package of commercial laws current as of the date of the order. Monthly supplements consisting of newly passed or translated laws would then be provided. The price of the service would reflect the cost of printing and dissemination, based on a per page expense of distribution.

Resources, Collection and Dissemination

In its collection effort, the Department will utilize the collective resources of the interagency task force on legal reform in central and eastern Europe, which Commerce co-chairs along with the Department of State. The task force includes representatives from government agencies that have a substantial interest in developments in central and eastern Europe, all of which contribute to the collection effort. Because the U.S. government receives copies of official legal texts in the course of its dealings with the governments of such countries and can make formal requests for texts not received, the Department believes the U.S. government is uniquely positioned to provide such texts to the public.

The service contemplated is not intended to preclude any efforts by the private sector to provide legal materials regarding central and eastern Europe in whatever form or content.

Request for Comments

The Department invites the public to comment on the proposed preliminary implementation plan within 30 days of this notice. In particular, the Department solicits views by the public on:

1. The desirability, usefulness and level of general interest in dissemination of the described legal texts, both in English and in the original language.
2. The availability of alternative sources of such materials and the relative reliability and comprehensiveness of such alternative sources.
3. Other forms or types of related material that would be useful to interested parties, as well as other means of enhancing the dissemination process.
4. Suggestions as to how the private sector might make known to the Department its priorities and needs for materials of the type described.

Recommendations received may be incorporated into planning for the content and organization of the relevant materials. Additional Federal Register notices may be issued as plans for the proposed service develop and change.

Dated: June 20, 1990.
Wendell L. Willkie, II,
General Counsel.
[FR Doc. 90-14708 Filed 6-25-90; 8:45 am]
BILLING CODE 3510-DT-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held July 19, 1990, 9:30 a.m., in the Herbert C. Hoover Building, Room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of revised telecommunication controls.
4. Preliminary discussion of telecommunication controls for the Core List.
5. New business.
6. Future meeting dates.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/EXA, Room 1600, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: June 20, 1990.
Betty Anne Ferrell,
Director, Technical Advisory Committee Unit.
[FR Doc. 90-14710 Filed 6-25-90; 8:45 am]
BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held July 17 & 18, 1990, 9 a.m., in the Herbert C. Hoover Building, Room 1617F, 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: June 20, 1990.
Betty Anne Ferrell,
Director, Technical Advisory Unit.
[FR Doc. 90-14709 Filed 6-25-90; 8:45 am]
BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determination

By the authority vested in the Assistant Secretary of Defense (Production and Logistics) by section 3(c)(4) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b(c)(4), as delegated by Executive Order 12626 of February 25, 1988, and subsequently redelegated by the Secretary of Defense and the Under Secretary of Defense (Acquisition), the Assistant Secretary of Defense (Production and Logistics), Colin McMillan, has determined that, pursuant to section 3301 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189, November 29, 1989), the following new strategic and critical materials requirements are established for the National Defense Stockpile:

Materials	Requirements
Aluminum Oxide, abrasive grain group.	347,000 short tons.
Antimony	66,500 short tons.
Asbestos, amosite	0 short tons.
Bauxite, refractory	1,240,000 long calcined tons.
Bismuth	1,080,000 pounds.
Chromite, refractory grade ore.	666,600 short dry tons.
Columbium group	12,520,000 pounds (contained).
Diamond, industrial group.	7,730,000 carats
Fluorspar, acid grade	808,000 short dry tons
Fluorspar, metallurgical grade.	310,000 short dry tons
Graphite, natural, malagasy, crystalline.	14,205 short tons
Graphite, natural, other than Ceylon and Malagasy.	1,920 short tons
Manganese, battery grade group.	50,800 short dry tons
Mica, muscovite block, stained and better.	2,500,000 pounds

Materials	Requirements
Natural insulation fibers	0 pounds
Platinum group metals, iridium.	85,000 troy ounces
Platinum group metals, palladium.	2,150,000 troy ounces
Quartz crystals	240,000 pounds
Talc, steatite block and lump.	0 short tons
Tungsten group	70,900,000 pounds (contained).

Dated: June 20, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-14780 Filed 6-25-90; 8:45 am]

BILLING CODE 3810-01-M

Environmental: Chlorofluorocarbons (CFCs) Advisory Committee.

ACTION: Notice of Meeting.

SUMMARY: This is the first in a series of meetings to be held by the CFC Advisory Committee to study the feasibility and cost within DoD of substituting chemicals or technologies to replace ozone depleting chemicals whose production is restricted in the Montreal Protocol.

DATES: July 13, 1990.

ADDRESSES: Two Crystal Park, Advanced Technology Conference Room, 2121 Crystal Drive, Suite 200, Arlington, VA 22207.

FOR FURTHER INFORMATION CONTACT: Mr. William D. Goins, (703) 325-2215.

SUPPLEMENTARY INFORMATION: Due to limited space and security considerations please contact Charles W. Purcell (703) 934-3017 for attendance information and admission number.

Dated: June 19, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-14781 Filed 6-25-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Acquisition Streamlining; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Acquisition Streamlining scheduled for June 27 and 28, 1990, at SAIC, McLean, Virginia, as published in the **Federal Register** (Vol. 55, No. 111, page 23467, Friday, June 8, 1990, FR Doc. 90-13292) will be held at SAIC, McLean, Virginia, on June 27, and at Andrews Air Force Base, Maryland, on June 28.

Dated: June 20, 1990.

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-14782 Filed 6-25-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 20-21 August 1990.

Time: 0900-1700.

Place: Walter Reed Army Institute of Research, 6825-15th Street NW., Washington, DC 20307-5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on the technical programs conducted in stress, performance and other aspects of neurosciences. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14725 Filed 6-25-90; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board, Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Date of Meeting: 19 July 1990.

Time: 0800-1700.

Place: University of Texas.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet at the University of Texas. Kaman Science and University of Texas proprietary information will be shown and work performed by both under ARDEC contracts. The recently established FFRDC at the University of Texas will also be presented. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14727 Filed 6-25-90; 8:45 am]

BILLING CODE 3710-08-M

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11-12 July 1990.

Time: 0800-1630.

Place: US Coast Guard C3I Center East, Tyndall AFB, Florida, Miami, Florida 33177.

Agenda: The Army Science Board (ASB) 1990 Summer Study on The Use of Army Systems and Technologies in the National War on Drugs will meet for discussions focused on Command and Control, Communications, and Intelligence data fusion and distribution in CN operations. The briefings will be classified and therefore will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically paragraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14728 Filed 6-25-90; 8:45 am]

BILLING CODE 3710-08-M

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 7-8 August 1990.

Time: 0900-1500.

Place: Walter Reed Army Institute of Research, 6825-15th Street NW., Washington, DC 20307-5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on technical programs conducted in infectious diseases at WRAIR. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14729 Filed 6-25-90; 8:45 am]

BILLING CODE 3710-08-M

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11-12 July 1990.

Time: 0900-1700.

Place: Walter Reed Army Institute of Research, 6825-15th Street NW., Washington, DC 20307-5100.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the Review of the Walter Reed Army Institute of Research (WRAIR) will meet for presentations on technical programs conducted in stress, performance and other aspects of neurosciences. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-14730 Filed 6-25-90; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA), Performance Review Board (PRB)

AGENCY: DLA, Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notices announces the appointment of the members of the PRBs of DLA. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, DLA.

EFFECTIVE DATE: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, DLA, Department of Defense, Cameron Station, Alexandria, VA. (202) 274-6049 or 274-6059.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB

Mr. William V. Gordon, Executive Director, Contract Management; Mr. Gary P. Quigley, Deputy General Counsel, Office of General Counsel; Mr. Thomas J. Knapp, Assistant Director, Office of Information Systems and Technology.

2nd Level Review

Mr. James J. Grady, Jr., Deputy Executive Director, Supply Operations; Mr. Raymond P. Chiesa, Executive Director, Contracting; RADM James F. Davidson, SC, USN, Executive Director, Supply Operations.

Dated: June 20, 1990.

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 90-14682 Filed 6-25-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education.

ACTION: Amendment to notice of partially closed meeting.

SUMMARY: This amended the notice of a partially closed meeting of the Executive Committee of the National Assessment Governing Board published on June 11, 1990, in Vol. 55, No. 112, page 23684. Notice of this meeting was required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 22, 1990.

TIME: 11 (E.D.T.) to 11:30 a.m., open, 11:30 a.m. until adjournment, closed.

LOCATION: U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC 20005-4013.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC 20005-4013. Telephone: (202) 357-6938.

In addition to the published agenda the closed portion of the National Assessment Governing Board's Executive Committee meeting, the members discussed the qualifications of specific individuals nominated for Board membership. Discussion touched upon matters that disclosed information of a personal nature where disclosure constituted a clearly unwarranted invasion of personal privacy if conducted in open session and related solely to the internal personnel rules and practices of the agency. Such matters are protected under exemptions (2) and (6) of U.S.C. 552b(c). A summary of the activities at the closed session and related matters, which are informative to the public consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept

of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-14811 Filed 6-25-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Contract Award; Booz, Allen & Hamilton, Inc.

AGENCY: Department of Energy.

ACTION: Notice of potential organizational conflict of interest after contract award.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that a contract had been awarded and subsequent information by the contractor to DOE has revealed the existence of a potential organizational conflict of interest. Upon careful analysis of the subsequent information, DOE will continue to retain the contractor for performance of the full statement of work because this is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Larry S. James, Office of Energy Research, Room F-330, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353-5848.

Findings, Mitigation and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Public Law 93-577, and section 33 of the Federal Energy Act of 1974, Public Law 93-275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulations, 48 CFR 909.570-3. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI. If, after award, a possible OCI is subsequently identified, the Secretary or his designee must determine whether or not it would be in the best interests of the Government to terminate the contract.

Based on the following findings and determination, the existing contract described below will continue to remain in full force, after taking into account the existence of an OCI, because the contract is determined to be in the best interests of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Office of Energy Research is established as a component of the Department of Energy (DOE) by section 209 of Public Law 95-91 (Department of Energy Organization Act). The statutory functions stated in that Act which define the role of the Office, and of the Director of Energy Research, include, among other responsibilities, the following items:

(1) Monitoring the Departmtent's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs; and

(2) Carrying out such additional duties assigned to the Office by the Secretary relating to basic and applied research activities including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 202 of this Act, as the Secretary considers.

The Director, Office of Energy Research, functions in essence as a science and technology advisor to the Office of the Secretary with additional responsibilities consistent with the intent of the statute and is the principal advisor to the Secretary on matters relating to physical research programs of the Department, utilization of multipurpose laboratories, cross-discipline research and development projects, and is assigned management responsibilities for major outlay programs in Basic Energy Sciences, High Energy and Nuclear Physics, Fusion Energy, and Health and Environmental Research.

2. Therefore, a competitive procurement (DE-AC01-89ER30148, Research Needs Assessment of Heavy Duty Transport Technology) was initiated in March 1989 to solicit support services to accomplish a specific Statement of Work.

The Department's Heavy Duty Transport (HDT) Technology Program focuses on establishing an advanced heavy-duty diesel engine technology base to serve as a catalyst for the development of industry of more fuel-efficient, fuel-flexible, and cost-effective propulsion systems for production beginning in the 1990's. Although several research projects are underway that are expected to have positive impact on regulation emissions, their primary research objectives have been to improve fuel efficiency. Despite recent progress in advanced diesel engine technology, major questions regarding its suitability as the long-term heavy duty propulsion system of choice still exist.

An independent research needs assessment was therefore undertaken in the area of heavy duty transport propulsion systems. The assessment will include a review of current research by DOE and others and will provide recommendations regarding short-term research paths to meeting the stringent emissions regulations and a long-term path for meeting future fuel efficiency and clean air requirements. The assessment will include the major industrial concerns, research laboratories and academicians.

3. Based on a comprehensive evaluation of its technical and cost proposals, Booz, Allen & Hamilton, Inc., had been recognized as possessing the required staffing and background experience for performing the Statement of Work.

4. Booz, Allen & Hamilton, Inc., submitted the necessary OCI information as part of the required proposal package. The Booz, Allen & Hamilton, Inc., statement certified that no OCI existed regarding the proposed work.

5. Based on the technical, cost evaluations and the disclosure statement, the Department of Energy awarded a cost-plus fixed-fee contract, DE-AC01-89ER30148, dated September 28, 1989 to Booz, Allen & Hamilton, Inc., to perform a Research Needs Assessment of Heavy Duty Transport Technology.

6. To adequately and competently address the full scope of the assessment's subject area of heavy duty transport technology, at sufficient technical depth in all major topical areas, the contractor will need to convene a group of experts on the subject of heavy duty transport technology. Booz, Allen & Hamilton, Inc., proposed to use a number of expert panelists in its efforts to perform the needs assessment and engaged in individual consulting agreements with each of them. Each of these consultants submitted OCI information as required.

7. Based on an evaluation of the facts contained in the OCI information submitted by some of these consulting experts, the Department of Energy believes that there is a minor conflict of interest under 48 CFR 909.570. As most of the consultants are experts in their respective fields of the technology being researched, each would potentially stand to benefit if their particular field were ultimately recommended by the prime contractor as an appropriate area for continued research. The potential benefit would manifest in such a situation in terms of future opportunities for the consultant to be awarded research contracts because he or she is a leading expert in that area. Therefore, the recommendations of such experts have the potential to be biased in favor of their own particular area of expertise.

Mitigation

The Department of Energy believes that the actual potential for conflict of interest is minor. Booz, Allen & Hamilton, Inc., as the prime contractor, has selected a panel of experts to include representatives from each of the relevant areas of research in the field of heavy duty transport technology. This balance in the panel should effectively level out potential bias toward any particular area. Further, the contract has been drafted to include numerous precautions that will detect bias and further mitigate the likelihood of bias and its potential impact. The contract requires:

(a) Attendance by the DOE Contracting Officer's Technical Representative at all meetings of the contractor and his experts;

(b) Cross review of all findings both within the group of experts and by a final group of peer reviewers;

(c) Submission of monthly progress reports which all include notification by the contractor of any efforts he has made to mitigate conflict or potential conflict of interest; and

(d) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest."

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, continuation of the existing contract award is considered to be in the best interest of the United States.

Dated: June 14, 1990.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 90-14772 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. No. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Silas B. Fisher has been appointed to the position of Director of Procurement and Assistance Management in the Department of Energy. Mr. Fisher has a vested pension interest in the Martin Marietta Pension Plan as a result of his previous employment with the Martin Marietta Corporation. The Martin Marietta Corporation is an "energy concern" within the meaning of section 601(b) of the Act. Therefore, Mr. Fisher's pension interest is subject to the divestiture requirement of section 602(a) of the Act.

It has been established to my satisfaction that requiring Mr. Fisher to divest his interest in the Martin Marietta Pension Plan would impose an exceptional hardship on him and that such interest is a vested pension interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Fisher a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment with the Department, with respect to his interest in the Martin Marietta Pension Plan.

In accordance with section 208, title 18, United States Code, Mr. Fisher will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Martin Marietta Energy Systems, Inc., or its parent, Martin Marietta Corporation, unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: June 14, 1990.

Admiral James D. Watkins,

U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90-14685 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award a Grant to Dr. William Buckman

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(e)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE15462 to Dr. William G. Buckman for an improved fluid pumping device and liquid sensor which will have a total estimated cost of $80,000 to be provided by DOE.

SCOPE: The grant will provide funding for Dr. William G. Buckman to produce, demonstrate, and test a fieldworthy system consisting of an improved fluid pumping device and liquid sensor for oil wells. A number of large oil companies have expressed an interest and are willing to test the system in their wells. A financial group has indicated interest in supporting the marketing aspect of the pumping system.

The purpose of the project is to develop an advanced prototype of the improved devices which will allow cost effective oil production from shallow stripper wells and have low installation and maintenance cost. A market for the technology appears assured by virtue of the arrangement with oil companies for demonstrating the device under actual field conditions.

ELIGIBILITY: Based on the receipt of an unsolicited proposal eligibility for this award is being limited to Dr. William G. Buckman, an individual with high qualifications in this specialized field of technology. The inventor will be the licensor of this invention. When the invention is available for demonstration he will lease or sell the pump to well

producers. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the the Nation's energy consumption.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR-542, 1000 Independence Ave., SW., Washington, DC. 20585

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-14694 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

[Form EIA-858]

Uranium Industry Annual Survey

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of the Form EIA-858, "Uranium Industry Annual Survey," and solicitation of comments.

SUMMARY: Under its continuing effort to reduce paperwork and survey burden for respondents (as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 et seq.), the Energy Information Administration (EIA) conducts a consultation program to provide the general public and other Federal agencies an opportunity to comment on proposed and continuing reporting forms for its surveys. This program helps to ensure that data requested can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and that the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning proposed revisions to the Form EIA-858, "Uranium Industry Annual Survey."

DATES: Written comments must be submitted by July 26, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Luther Smith; U.S. Department of Energy; EI-531, Washington, DC 20585. Phone (202) 254-5585.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Luther Smith at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Current Actions

III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information related to the adequacy of energy resources to meet the near- and longer-term future for the Nation's economic and social needs.

The Form EIA-858 collects data on uranium raw materials activities, uranium marketing, and the financial status of the domestic uranium industry. These data provide a comprehensive statistical characterization of the industry's annual activities and limited information about industry plans and commitments for the near term. The published data are used by the Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. Published data appear in the EIA publications, Uranium Industry Annual, Domestic Uranium Mining and Milling Industry—Viability Assessment, and the Annual Energy Review.

II. Current Actions

Schedules A (Uranium Raw Materials Activities) and B (Uranium Marketing Activities) of the Form EIA-858 are revised: (1) To simplify the data collections; (2) to request data representative of current industry operations and practices; (3) to support the EIA's effort, through internal-EIA reserves estimations, in assuring reliability of industry-reported reserves data; and (4) to collect data that are needed in analyses of the industry as performed by the EIA. Schedule C (Industry Financial Status) is not being revised at this time.

Modifications made to Schedule A data collection are:

a. Solution-mining development drilling is no longer requested;

b. Fewer property identification and location data are requested;

c. The level of property exploration and development is requested through a simplified check-off list which contains several new elements for work status and studies completed;

d. Reserves by property are requested at specified, forward-operating cost levels of $15, $30, $50, and $100 per pound U308, if available, and also at cost levels chosen by the reporting company;

e. The categories of economic and subeconomic reserves are dropped;

f. Operating cost data are requested on a simplified table; capital-cost data are requested by chosen mining method for a mine or *in situ* leach field and a mill or plant;

g. Average ore grade (percent U308) and average cost per pound U308 recoverable are requested under reserve estimation parameters;

h. Data of mine production from a conventional and/or a nonconventional mine are combined on a single table for each uranium property;

i. Data required on mine name and status are requested in a simplified table format;

j. Data on milling and processing are requested together so that separate sections need not be completed for conventional and nonconventional concentrate production;

k. Data on employment in milling and processing are requested under the combined category "Processing" to simplify the reporting of these data.

Modifications made to Schedule B data collection are:

a. Type of material sent or received under a contract is standardized to prompt uniform reporting;

b. Country of origin (mining and component services) and country of destination of material covered under a contract are grouped into a new table format to simplify reporting and to better define data desired;

c. Importation and exportation of uranium are grouped under a single question to clarify the data desired;

d. The question on contract options is expanded to request, in addition to information on optional quantities, information on additional quantities, cancellation of deliveries, and substitution of material other than that produced by the seller;

e. Item 4 is renamed "Utility Uranium Inventory Policy."

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed Form EIA-858 revisions.

The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response period specified in the instructions?

D. Public reporting burden for the collection is estimated to average 32.0 hours per form per year. Including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, how much time do you estimate it will require for you to complete and submit this revised Form EIA-858?

E. What is the estimated cost of completing the revised form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing the requested information.

F. How can the revised Form EIA-858 be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Please be specific.

C. How could the form be improved to better meet your specific needs.

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA also is interested in receiving comments from persons regarding their views on the need for the information contained in the Uranium Industry Annual Survey.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93-275, Federal Energy Administraiton Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 722(b), 790a, and Section 205, Public Law 95-91, Department of Energy Organization Act, 42 U.S.C. 7135.

Issued in Washington, DC, June 21, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-14774 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-444-000, et al.]

Duke Power Co., et al., Electric Rate Small Power Production, and Interlocking Directorate Filings

June 19, 1990.

Take notice that the following filings have been made with the Commission:

1. Duke Power Co.

[Docket No. ER90-444-000]

Take notice that on June 5, 1990, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 3 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 3 reduces Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1537 per KW per month to $1.1154 per KW per month. Duke has proposed an effective date of July 1, 1990 for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Co.

[Docket No. ER84-604-014]

Take notice that on June 4, 1990, Southwestern Public Service Company tendered for filing its compliance report in this docket pursuant to the Commission's order issued May 3, 1990.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER90-449-000]

Take notiace that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (PacifiCorp), on June 7, 1990, tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Revision No. 16 to Exhibits A and B, to the Contract for Interconnections and Transmission Service, Contract No. 14-06-400-3437 (Transmission Agreement), dated May 16, 1962 (PacifiCorp/Pacific Power & Light Company's Rate Schedule FPC No. 45) between PacifiCorp and Western Area Power Administration (WAPA).

Exhibit A specifies the projected maximum integrated demand in kilowatts which PacifiCorp desires to have transmitted to its respective points of delivery. Exhibit B specifies the projected maximum demand in kilowatts which WAPA desires to have transmitted to its respective points of delivery.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of January 1, 1990 be assigned, this date being consistent with the effective date of Exhibits A and B.

Copies of this filing were supplied to WAPA and the Wyoming Public Service Commission.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Co.

[Docket No. ER90-453-000]

Take notice that on June 11, 1990, Iowa Public Service Company tendered for filing an executed Fir Power Interchange Service Peaking Capacity Sales Agreement dated April 6, 1990, whereby Iowa Public Service Company (IPS) will sell to United Power Association (UPA) 20 megawatts (MW) electric capacity and associated energy for a period commencing May 1, 1990 and ending October 31, 1990 and ending October 31, 1990. IPS requests that the negotiated Agreement be made effective as of May 1, 1990.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power Co.

[Docket No. ER90-445-000]

Take notice that on June 5, 1990, Pennsylvania Power Company (Penn Power) tendered for filing a petition pursuant to section 207 of the Commission's Rules of Practice and Procedure for permission to charge its five municipal resale customers a decrease in electric rates pending Commission action on a contemporaneous rate filing for approval of such rates under Section 205 of the Federal Power Act. PP&L states that the rate changes relate to Penn Power Tariff Nos. 30, 31, 32, 33 and 34.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Co.

[Docket No. ER90-373-000]

Take notice that on June 4, 1990, Northeast Utilities Service Company (NU) tendered for filing page 13 of the Non-Firm Transmission Service Agreement that was inadvertently omitted from its May 17, 1990 filing in this docket.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of New Mexico

[Docket No. ER90-454-000]

Take notice that on June 15, 1990, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 5 (Amendment No. 5) to an agreement for Electric Service between PNM and Plains Electric Generation and Transmission Cooperative, Inc. (Plains). Plains had previously provided notice to PNM of a reduction of the minimum billing demand under the Agreement for Electric Service from 35,000 kW to 10,000 kW effective August 1, 1991. Amendment No. 5 recognizes a change in the minimum billing demand from 10,000 kW to 13,000 kW beginning August 1, 1991, and provides for additional firm transmission service to Plains in the amount of 7,000 kW beginning August 1, 1991. Amendment No. 5 also waives the notice requirements for termination under the Agreement for Electric Service and establishes a new termination date as the later of October 31, 1992, or the in-service date of the Static Var Compensator facilities at El Paso Electric Company's Newman Generating Station, but not later than May 31, 1993.

PNM has requested that the applicable notice requirements be waived, and that the Commission accept for filing Amendment No. 5 to be effective November 1, 1989.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Central Hudson Gas & Electric Corp.

[Docket No. ER90-442-000]

Take notice that on June 4, 1990, Central Hudson Gas & Electric Company (CG&E) tendered for filing a Notice of Cancellation of CG&E's Rate Schedule in Docket No. ER90-124-000.

Comment date: July 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket Nos. ER89-562-002 and ER89-566-002]

Take notice that on June 7, 1990, New England Power Company (NEP) filed a Compliance Refund Report and supporting documentation that effectuates the terms of an uncontested settlement agreement in the W-11(a) proceeding in the referenced dockets.

NEP states that appropriate refunds, including interest, were made on May 25, 1990.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Co.

[Docket No. ER90-334-000]

Take notice that on June 18, 1990, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of Commission Staff, clarification of the costs referenced in the filing.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14661 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-98-014, RP89-133-008, RP89-178-004, TM90-4-32-001, TM90-5-32-001 and TM90-6-32-002]

Colorado Interstate Gas Co.; Compliance Filing

June 19, 1990.

Take notice that Colorado Interstate Gas Company ("CIG"), on June 15, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 61G11
Second Revised Sheet No. 61G11.1
Sixth Revised Sheet No. 61G12-B
First Revised Sheet No. 61G12-C
First Revised Sheet No. 61G12-D
First Revised Sheet No. 61G13-E

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Orders issued in these dockets and that the filing constitutes a semiannual adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects adjustments to the take-or-pay Buyout-Buydown Surcharges, interest on unamortized costs, and work papers detailing refunds by CIG as well as the current payment status of CIG's affected customers.

CIG states that copies of the filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14673 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-6-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

June 19, 1990.

Take notice that Equitrans, Inc. (Equitrans) on June 14, 1990 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1990:

1 Revised Sub. 5 Revised Sub. 14 Revised Sheet No. 10
1 Revised Sub. 6 Revised 6 Revised Sheet No. 34

Equitrans is exercising its option to file an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to recover standby cost under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1. Equitrans received authorization to track these costs from the Commission's Order in *Equitrans, Inc.*, 48 FERC ¶ 61,278 (1989).

This filing reflects a decrease of $0.6057 per dekatherm (dth) in Equitrans' PLS commodity rate and $0.0120 per dth in its Demand 1 rate. The Demand 2 rate for Rate Schedule PLS remains the same as filed in Equitrans' quarterly PGA in Docket No. TQ90-6-24-002.

The reasons for the decrease in gas cost are the inclusion of spot market purchases for the period of June through August 1990 and the election of standby service.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on June 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14669 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-11-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 19, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 15, 1990, tendered for filing Twenty-Eighth Revised Sheet Nos. 57(i) and 57(ii) and Fourteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the months of June and July, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective June 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14670 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-25-000 and TA90-1-25-001]

Natural Gas Pipeline Co. of America; Motion to Cancel or Indefinitely Defer Technical Conference

June 19, 1990.

Take notice that on June 7, 1990, Natural Gas Pipeline Company of America (Natural) filed a motion to cancel or indefinitely defer the technical conference originally scheduled to be held April 10, 1990, pursuant to the Commission's order issued February 28, 1990 (50 FERC 61,253). The conference was previously postponed by notice issued April 9, 1990, as a result of a motion by Natural. On June 4, 1990, Natural filed a stipulation and agreement on gas inventory demand charge in Docket Nos. CP89-1261 and TA90-1-25-000.

Any parties still desiring a technical conference should either respond to Natural's motion or file a request for a technical conference with the Commission within 15 days of issuance of this notice.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14680 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-125-000]

Northern Natural Gas Co.; Proposed Temporary and Limited Waiver of FERC Gas Tariff

June 19, 1990.

Take notice that Northern Natural Gas Company, a Division of Enron Corp. ("Northern") tendered for filing on June 14, 1990, a request for a temporary waiver of section 15 of Rate Schedule IT-1, Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1, for the sole purpose of allowing interruptible shippers on Northern's system to pool supplies in Northern's Field Area and transfer title to another shipper at the boundary line between its Field Area and Market Area, referred to as the Field/Market Demarcation Point. Such point will be a new delivery point on Northern's system and shall be made available to all parties desiring transportation service in the Field Area. Northern proposes to begin accepting requests on July 15 through August 15, 1990, from shippers desiring to add the Field/market Demarcation Point as a new delivery point to their existing interruptible agreements. The waiver would allow Northern to amend such agreements without requiring a new service agreement or change in priority queue. The proposed effective date for initial deliveries through the Field/Market Demarcation Point is August 1, 1990.

Northern states that a copy of this filing has been mailed to all of Northern's existing and potential shippers under Third Revised Volume No. 1, F.E.R.C. Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14677 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-131-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in F.E.R.C. Gas Tariff

June 19, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on June 18, 1990, tendered for filing proposed changes to its F.E.R.C. Gas Tariff. Northern has requested a waiver of the Commission's regulations so that the proposed filing becomes effective July 1, 1990.

Northern states that this filing is being submitted to recover 100% of take-or-pay buyout and buydown costs and contract reformation (Transition Costs) that Northern has paid, or incurred an obligation for pay as of June 1, 1990 plus interest on a five year levelized basis. The TCR volumetric surcharge is based on total annual Market Area and Argus System throughput.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14674 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9423-001]

Summit Energy Storage, Inc.; Intent To Hold Public Hearing for the Summit Pumped Storage Hydroelectric Project

June 19, 1990.

In May 1990, the Federal Energy Regulatory (Commission) prepared and distributed to interested parties a draft environmental impact statement (DEIS) for the proposed Summit Pumped Storage Hydroelectric Prject in Summit County, Ohio. A public hearing for the Summit Project will be held 7 p.m. to approximately 10 p.m. on Wednesday, July 11, 1990, at the Norton High School, 4128 Cleveland-Massillon Road, in the City of Norton, Ohio. The purpose of the public hearing is to gather information to aid the Commission in evaluating the environmental, social, and economic impacts of the proposed project pursuant to the National Environmental Policy Act of 1969 (NEPA). The commission is particularly interested in determining if any pertinent issues have been inadvertently omitted from the Summit Project DEIS. Interested persons and agencies are invited to provide oral or written comments on the DEIS.

The hearing will be recorded by a stenographer, and all statements (oral and written) will become part of the Commission's public record for Project No. 9423-001. Interested persons who are unable to attend the hearing may still provide written comments and recommendations for the public record. All correspondence regarding the subject DEIS should be filled with the Commission on or before July 10, 1990, and should be addressed to Lois D Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Summit Pumped Storage Hydroelectric Project, Ohio, Docket No. 9423-001.

For further information, please contact the Commission EIS Coordinator, Lee Emery at (202) 357-0779.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14679 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-102-002]

Tarpon Transmission Co.; Compliance Filing

June 19, 1990.

Take notice that on June 15, 1990, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 2D, proposed to be effective on June 15, 1990. Tarpon states that this tariff sheet, which sets forth the amount of money due from each of Tarpon's shippers pursuant to Tarpon's proposed recoupment plan for the period April 1, 1990, through April 18, 1990, is submitted in accordance with Ordering ¶(A) of the Commission's "Order Accepting Tariff Sheet," issued May 31, 1990, in the above-referenced docket.

Tarpon has requested that the Commission waive all applicable regulations to permit Original Sheet No. 2D to become effective on June 15, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1989)). All such protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14678 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-113-001]

Texas Gas Pipe Line Corp.; Tariff Filing

June 19, 1990.

Take notice that on June 15, 1990, Texas Gas Pipe Line Corporation (TGPL) filed tariff sheets to comply with the Commission's May 31, 1990 order in this docket, to make other conforming changes necessitated by the referenced order and to correct nonsubstantive typographical errors.

Specifically, TGPL tendered the following pages to Third Revised Volume No. 1 of its FERC Gas Tariff to be effective June 1, 1990:

Original Title Page
Original Sheet Nos. 1 and 4
Substitute Original Sheet Nos. 3, 5, 7, 9-20, 25, 29 and 32

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14671 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-104-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 19, 1990.

Take notice that on June 15, 1990 Texas Gas Transmission Corporation (Texas Gas) tendered for filing those tariff sheets listed in Appendix A and contained as a part of its FERC Gas Tariff, Original Volume Nos. 1 and 2-A, and FPC Gas Tariff, Original Volume No. 2. This filing is being made to comply with Ordering Paragraphs B and G of the "Order Accepting and Suspending Tariff Sheets Subject to Refund, and Establishing Hearing Procedures" (Suspension Order) issued May 31, 1990, at 51 FERC Para. 61,251 in the subject proceeding.

The revised tariff sheets are being issued to implement revised Seasonal D-2 nominations for Indiana Gas Company pursuant to ordering paragraph G of the Suspension Order. Ordering Paragraph B of the Suspension Order directed Texas Gas to either file a fully developed lead-lag study to support its inclusion of the FERC ACA Charge in its Working Capital or to file a statement that it would not pursue this cost item in this rate case. Texas Gas stated in its letter of transmittal that it will not pursue this item in this rate case.

Texas Gas requests an effective date of November 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214, 385.211 (1989). All such protests should be filed on or before June 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14675 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-132-000]

United Gas Pipe Line Co., Tariff Filing

June 19, 1990

Take notice that on June 15, 1990, United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet No. 4-S
Original Sheet No. 4-T
Original Sheet No. 4-U
Original Sheet No. 4-V
Original Sheet No. 4-W
Original Sheet No. 4-W1
Original Sheet No. 4-X

United states that this filing is made consistent with the Commission's Order No. 500 *et. seq.*

United states that the purpose of this filing is to establish the procedures pursuant to which United will recover the take-or-pay charges to be billed by Sea Robin Pipeline Company (Sea Robin) and paid by United under Sea Robin's Docket No. RP90-129. The tariff sheets tendered set forth the principal amount plus interest that each jurisdictional sales customer of United will be required to pay in order to recover Sea Robin's take-or-pay charges billed to United by Sea Robin.

If at any time Sea Robin is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, United will adopt the same change in its take-or-pay procedures and/or amounts to be recovered pursuant thereto.

United is requesting an effective date of July 1, 1990, for the above referenced tariff sheets.

United states that copies of this filing are being served upon United's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such protests should be filed on or before June 26, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14676 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-43-002]

Williams Natural Gas Co.; Compliance Filing

June 18, 1990.

Take notice that Williams Natural Gas Company (WNG) on June 14, 1990, made a filing in compliance with the Commission letter order issued April 30, 1990 in Docket No. TA90-1-43.

WNG states that the April 30, 1990 order directed WNG to file within 45 days of the date of the order a revised annual PGA filing to correct errors in its electronically filed format, as indicated in the attachment to the order, and to make certain revisions to its Account No. 191 format. In compliance with the order, WNG is filing revised Schedules A1, C1, C2, and G1.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-14672 Filed 6-25-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Solicitation Number DE-PS01-90CE26596]

Announcement of Competitive Grant Program: Existing Building Efficiency Research

Purpose: The United States Department of Energy, (DOE) Office of Conservation and Renewable Energy, Office of Buildings and Community Systems announces the availability of funds for competitive financial assistance awards for the District Cooling Engineering and Design Program.

Background: DOE is interested in promoting the use of technically advanced and innovative district cooling systems where they could substantially increase the efficiency of building air conditioning supply, substitute renewable energy resources for the use of premium fuels, or both. Locations in which such opportunities exist will generally be characterized by high levels of demand, high costs for building air conditioning due to climate and building density, or both. District cooling system development is a multi-step process requiring feasibility assessment, system engineering and design, detailed development, and construction. For the purpose of the forthcoming solicitation, the DOE's primary focus will be directed at the engineering and design stage of the process. Realizing the energy conservation and fuel substitution benefits inherent in district cooling, the DOE is currently supporting ten communities under cost-shared arrangements in their efforts to assess the technical and economic feasibility of applying district cooling concepts to specific needs and energy resource availability.

The purpose of this solicitation will be to solicit applications for the following research efforts: (1) Engineering and design stage of the district cooling systems process; (2) promoting the use of technically advanced and innovative district cooling systems where they could substantially increase the efficiency of buildings and air conditioning supply; (3) assessing the potential for using district cooling systems in communities where they could substantially increase the efficiency of energy delivery or substitute abundant and renewable energy resources for scarce premium fuel; and (4) providing follow-on support to communities where technical and economic feasibility for district cooling has been established, and a commitment to proceed with detailed engineering and design, leading to construction is evidenced.

Up to 10 cooperative agreement awards are expected to be made in late 1990 pursuant to this solicitation in a balanced program that meet DOE's identified interests. Up to $800,000 will be allotted for this program by DOE. DOE will also provide technical support of the existing buildings researchers at the DOE National Laboratories. It is anticipated that a form solicitation will be issued on or about July 1, 1990. It is important that all proposed projects be for site-specific locations with high space cooling demands and costs, and have identified potential customers to interconnect with the proposed district cooling systems when implemented. Proposed projects should provide, or have established a basis for assessing the technical and economic feasibility of the specific site application. The DOE share of costs for each agreement shall not exceed 25% of the total estimated cost of the project. Funding may be utilized over a period of up to 12 months from the date of award, by which time the proposed work must be completed.

Eligibility: Any public or private entity may respond to this solicitation. Applications for Phase I feasibility studies will not be considered under this solicitation. Also, applications addressing generic engineering and design tool development for district heating and/or cooling systems, or engineering and design for district heating systems, will not be considered. Written requests for copies of this solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J–005, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: Document Control Specialist, PR–521.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-14773 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed

During the Week of May 25 through June 1, 1990, the applications for relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 25 through June 1, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
May 3, 1990	Texaco/Dick Valley Texaco, Hardin, Kentucky	RR321–6	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 4, 1990 Decision and Order (Case Nos. RF321–1610 & RF321–2784) issued to Dick Valley Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/LaRose Texaco, Hardin, Kentucky	RR321–7	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 4, 1990 Decision and Order (Case Nos. RF321–1650 and RF321–2528) issued to LaRose Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 25 through June 1, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
Do	Engineered Operating Co./J.W. Akin, Washington, DC	LRX–0004	Supplemental. If granted: The February 23, 1990 Remedial Order issued to Engineered Operating Company and J.W. Akin (Case No. HRO–0069) would be modified to reflect corrected calculations of the overcharges.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
5/25/90	Farmers Cooperative Assn.	RF272–78632
5/29/90	Glenn's Arco	RF304–11044
5/29/90	Bay Street	RF272–78633
5/29/90	Barrett Industries	RF272–78634
5/29/90	John H. Pigman, Inc.	RF265–3885
5/29/90	West Buncombe Gulf.	RF300–11140
5/29/90	Mercedes Public School.	RF300–11141
5/29/90	Winnabow Grocery.	RF300–11142
5/29/90	Eastover Oil Co., Inc.	RF307–10125
5/29/90	John Rotondi, Inc.	RF300–11139
4/07/90	Mitchell & Sons	RF307–10126
5/29/90	Phillips Oil Co., Inc.	RF310–950
5/30/90	H. Goldman Inc.	RF300–11143
5/30/90	Humboldt Storage & Moving.	RF272–78635
5/30/90	Mercedes Public School.	RF272–78636
5/31/90	Riverbank Gulf	RF300–11144
5/31/90	Escalon Gulf	RF300–11145
6/01/90	McKeon Exxon	RF307–10127
5/25/90 thru 6/1/90	Texaco Oil Refund Applications Received.	RF321–5742 thru RF321–6181
5/25/90 thru 6/1/90	Shell Oil Refund Applications Received.	RF315–9976 thru RF315–9986

[FR Doc. 90-14775 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $35,410.56 in principal, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under a Proof of Claim made to the U.S. Bankruptcy Court for the Northern District of Oklahoma on the basis of a detailed audit of Petrol Products, Inc. (Case No. LEAF–0004). The OHA has determined that the funds will be distributed in accordance with the the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by March 31, 1991, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Petrol Products, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by March 31, 1991, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Name of Firm: Petrol Products, Inc.

Date of Filing: November 9, 1989.

Case Number: LEF–0004.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Petrol Products, Inc. (Petrol). On October 27, 1989, the ERA received a total of $35,410.56 as the result of the approval of its unsecured Proof of Claim by the United States Bankruptcy Court for the Northern District of Oklahoma. *In re: Petrol Prods., Inc.*, Bankruptcy #81–01048–W (Bankr. N.D. Okla. Oct. 13, 1989) (order for payment of dividends). The ERA's claim was based on allegations that Petrol violated the Mandatory Petroleum Price and Allocation Regulations in connection with its resales of crude oil during the period January 1976 through June 1979. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used

in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Petrol and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, *see, e.g., New York Petroleum, Inc.* 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1316 (D. Kan. 1987). The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On May 3, 1989, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Petrol. The OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. The OHA has received no comments concerning the PD&O.

III. The Refund Procedures

A. Refund Claims

We have concluded that the alleged crude oil violation amount of $35,410.56 in principal, plus accrued interest, covered by this Decision should be distributed in accordance with the crude oil refund procedures previously discussed. As noted above, we will reserve initially the full twenty percent of the alleged crude oil violation amounts or $7,082.11 in principal, plus accrued interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE ¶ 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($35,410.56) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.0000000175 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988, was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1988, was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). A March 31, 1991 deadline for filing an application for refund from the third pool of funds was set in *Cibro Sales Corp., Inc.*, 20 DOE ¶ 85,306 (1990). The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number; an indication whether the applicant is a corporation; the name and telephone number of a person to contact for any additional information; and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Stripper Well Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision or $28,328.45 in principal, plus accrued interest, should be disbursed in equal shares to the states

and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount or $14,164.22 in principal, plus accrued interest, into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Petrol Products, Inc., may now be filed.

(2) All applications submitted pursuant to paragraph (1) must be filed no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursue to Paragraphs (4), (5), and (6) below, all of the funds from the subaccount denominated "Petrol Products, Inc.," Account Number 6C0X00255Z.

(4) The Director of Special Accounts and Payroll shall transfer $14,164.22 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking–States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above, into the subaccount denominated "Crude Tracking–Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $7,082.11 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking–Claimants 3," Number 999DOE009Z.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-14778 Filed 6-25-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3791-7]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between October 1, 1989 and March 31, 1990, the United States Environmental Protection Agency (EPA), Region II Office, issued two final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued four final determinations, and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	date
Yabucoa Sun Oil	Yabucoa, Puerto Rico	Revisions to conditions of the January 27, 1989 PSD non-applicability determination.	EPA	Non-Applicability	Jan. 4, 1990.
Fulton Cogeneration Associates.	Fulton, New York	Construction of one General Electric LM6000 gas turbine followed by a supplementary fired heat recovery generator and two 90 MM BTU/hr auxiliary steam boilers on standby.	NYSDEC	PSD Permit	Jan. 8, 1990.
Ronetex Generating Station (RGS).	Newburg, New York	Converting RGS from the exclusive use of #6 fuel oil to a combination of oil and natural gas.	NYSDEC	Non-Applicability	Jan. 10, 1990.
Alcan Rolled Products Company.	Oswego, New York	Replacing two existing aluminum melting and holding furnaces with one new aluminum melting and holding furnace and replacing the emissions control equipment on two aluminum cold rolling mills.	NYSDEC	Non-Applicability	Jan. 10, 1990.
IBM	Endicott, New York	Permit amendment deleting Tucson, Arizona site from a January 3, 1989, PSD Permit.	EPA	PSD Permit Amendment.	Jan. 24, 1990.
Pedricktown Cogeneration Limited Partnership.	Pedricktown, New Jersey.	Construction of a 220 MW gas/oil turbine cogeneration facility.	NJDEP	PSD Permit	Feb. 23, 1990.
Lyonsdale Energy Limited Partnership Cogeneration Project.	Lyonsdale, New York	Construction of a 19MW cogeneration plant adjacent to the Burrows Paper Company.	NYSDEC	Non-Applicability	Mar. 14, 1990.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office Permits Administration Branch—room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources Source Review and Regional Support Section, 50 Wolf Road Albany, New York 12233–0001.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register** under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 90-14783 Filed 6-25-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-83129; FRL 3771-3]

Premanufacture Notices, Monthly Status Report for March 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPTS–83129)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previous and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1990 PMN Status Report is being published.

Date: June 20, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for March 1990

I. 367 Premanufacture notices and exemption requests received during the month:

PMN No.

P 90-0521 P 90-0522 P 90-0523 P 90-0524
P 90-0525 P 90-0526 P 90-0527 P 90-0528
P 90-0529 P 90-0530 P 90-0531 P 90-0532
P 90-0533 P 90-0534 P 90-0535 P 90-0536
P 90-0537 P 90-0538 P 90-0539 P 90-0540
P 90-0541 P 90-0542 P 90-0543 P 90-0544
P 90-0545 P 90-0546 P 90-0547 P 90-0548
P 90-0549 P 90-0550 P 90-0551 P 90-0552
P 90-0553 P 90-0554 P 90-0555 P 90-0556
P 90-0557 P 90-0558 P 90-0559 P 90-0560
P 90-0561 P 90-0562 P 90-0563 P 90-0564
P 90-0565 P 90-0566 P 90-0567 P 90-0568
P 90-0569 P 90-0570 P 90-0571 P 90-0572
P 90-0573 P 90-0574 P 90-0575 P 90-0576
P 90-0577 P 90-0578 P 90-0579 P 90-0580
P 90-0581 P 90-0582 P 90-0583 P 90-0584
P 90-0585 P 90-0586 P 90-0587 P 90-0588
P 90-0589 P 90-0590 P 90-0591 P 90-0592
P 90-0593 P 90-0594 P 90-0595 P 90-0596
P 90-0597 P 90-0598 P 90-0599 P 90-0600
P 90-0601 P 90-0602 P 90-0603 P 90-0604
P 90-0605 P 90-0606 P 90-0607 P 90-0608
P 90-0609 P 90-0610 P 90-0611 P 90-0612
P 90-0613 P 90-0615 P 90-0616 P 90-0617
P 90-0618 P 90-0619 P 90-0620 P 90-0621
P 90-0622 P 90-0623 P 90-0626 P 90-0718
P 90-0719 P 90-0720 P 90-0721 P 90-0722
P 90-0723 P 90-0724 P 90-0725 P 90-0726
P 90-0727 P 90-0728 P 90-0729 P 90-0730
P 90-0731 P 90-0732 P 90-0733 P 90-0734
P 90-0735 P 90-0736 P 90-0737 P 90-0738
P 90-0739 P 90-0740 P 90-0741 P 90-0742
P 90-0743 P 90-0744 P 90-0745 P 90-0746
P 90-0747 P 90-0748 P 90-0749 P 90-0750
P 90-0751 P 90-0752 P 90-0753 P 90-0754
P 90-0755 P 90-0756 P 90-0757 P 90-0758
P 90-0759 P 90-0760 P 90-0761 P 90-0762
P 90-0763 P 90-0764 P 90-0765 P 90-0766
P 90-0767 P 90-0768 P 90-0769 P 90-0770
P 90-0771 P 90-0772 P 90-0773 P 90-0774
P 90-0775 P 90-0776 P 90-0777 P 90-0778
P 90-0779 P 90-0780 P 90-0781 P 90-0782
P 90-0783 P 90-0784 P 90-0785 P 90-0786
P 90-0787 P 90-0788 P 90-0789 P 90-0791
P 90-0792 P 90-0793 P 90-0794 P 90-0795
P 90-0796 P 90-0797 P 90-0798 P 90-0799
P 90-0801 P 90-0802 P 90-0805 P 90-0806
P 90-0807 P 90-0808 P 90-0809 P 90-0810
P 90-0811 P 90-0812 P 90-0813 P 90-0814
P 90-0815 P 90-0816 P 90-0817 P 90-0818
P 90-0819 P 90-0820 P 90-0821 P 90-0822
P 90-0823 P 90-0824 P 90-0825 P 90-0829
P 90-0827 P 90-0828 P 90-0829 P 90-0830
P 90-0831 P 90-0832 P 90-0833 P 90-0834
P 90-0835 P 90-0836 P 90-0837 P 90-0838
P 90-0839 P 90-0840 P 90-0841 P 90-0842
P 90-0843 P 90-0844 P 90-0845 P 90-0846
P 90-0847 P 90-0848 P 90-0850 P 90-0851
P 90-0852 P 90-0853 P 90-0854 P 90-0855
P 90-0856 P 90-0857 P 90-0858 P 90-0860
P 90-0862 P 90-0863 P 90-0864 P 90-0866
P 90-0866 P 90-0867 P 90-0869 P 90-0870
P 90-0871 P 90-0872 P 90-0873 P 90-0874
P 90-0875 P 90-0876 P 90-0877 P 90-0878
P 90-0879 P 90-0880 P 90-0881 P 90-0882
P 90-0883 P 90-0884 P 90-0885 P 90-0886
P 90-0887 P 90-0889 P 90-0890 P 90-0891
P 90-0892 P 90-0893 P 90-0894 P 90-0895
P 90-0896 P 90-0897 P 90-0898 P 90-0899
P 90-0900 P 90-0901 P 90-0902 P 90-0903
P 90-0904 P 90-0905 P 90-0906 P 90-0907
P 90-0908 P 90-0909 P 90-0910 P 90-0911
P 90-0912 P 90-0913 P 90-0915 P 90-0917
P 90-0919 P 90-0920 P 90-0921 P 90-0922
P 90-0923 P 90-0924 P 90-0925 P 90-0926
P 90-0931 P 90-0932 P 90-0933 P 90-0934
P 90-0935 P 90-0936 P 90-0937 P 90-0938
P 90-0939 P 90-0940 P 90-0941 P 90-0942
P 90-0943 P 90-0944 P 90-0945 P 90-0946
P 90-0947 P 90-0948 P 90-0957 Y 90-0136
Y 90-0137 Y 90-0138 Y 90-0139 Y 90-0140
Y 90-0141 Y 90-0142 Y 90-0143 Y 90-0144
Y 90-0145 Y 90-0146 Y 90-0147 Y 90-0148
Y 90-0149 Y 90-0150 Y 90-0151 Y 90-0152
Y 90-0153 Y 90-0154 Y 90-0155 Y 90-0158
Y 90-0157 Y 90-0158 Y 90-0159 Y 90-0160
Y 90-0161 Y 90-0162 Y 90-0163 Y 90-0164
Y 90-0165 Y 90-0166 Y 90-0167 Y 90-0168
Y 90-0169 Y 90-0170 Y 90-0171 Y 90-0172
Y 90-0173 Y 90-0174 Y 90-0175 Y 90-0176
Y 90-0177 Y 90-0178 Y 90-0179 Y 90-0180
Y 90-0181 Y 90-0182 Y 90-0183

II. 227 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 85-0216 P 85-0433 P 85-0535 P 85-0536
P 85-0619 P 85-0716 P 85-0720 P 85-1602
P 85-1603 P 85-1604 P 85-1607 P 87-0105
P 87-0197 P 87-0198 P 87-0199 P 87-0200
P 87-0201 P 87-0323 P 87-0502 P 87-0720
P 87-1192 P 87-1554 P 87-1790 P 87-1872
P 87-1881 P 87-1882 P 88-0083 P 88-0217
P 88-0319 P 88-0330 P 88-0353 P 88-0508
P 88-0515 P 88-0522 P 88-0576 P 88-0871

P 88-0831 P 88-0836 P 88-0837 P 88-0894
P 88-0918 P 88-1020 P 88-1021 P 88-1035
P 88-1211 P 88-1212 P 88-1271 P 88-1272
P 88-1273 P 88-1274 P 88-1305 P 88-1460
P 88-1473 P 88-1540 P 88-1567 P 88-1568
P 88-1618 P 88-1619 P 88-1620 P 88-1621
P 88-1622 P 88-1630 P 88-1631 P 88-1632
P 88-1690 P 88-1691 P 88-1761 P 88-1763
P 88-1783 P 88-1807 P 88-1809 P 88-1811
P 88-1844 P 88-1856 P 88-1937 P 88-1938
P 88-1980 P 88-1982 P 88-1984 P 88-1985
P 88-1995 P 88-1999 P 88-2000 P 88-2001
P 88-2100 P 88-2169 P 88-2177 P 88-2179
P 88-2180 P 88-2181 P 88-2188 P 88-2196
P 88-2210 P 88-2212 P 88-2213 P 88-2228
P 88-2229 P 88-2230 P 88-2231 P 88-2236
P 88-2237 P 88-2271 P 88-2275 P 88-2389
P 88-2469 P 88-2473 P 88-2484 P 88-2518
P 88-2529 P 88-2530 P 88-2566 P 89-0030
P 89-0031 P 89-0073 P 89-0080 P 89-0090
P 89-0091 P 89-0225 P 89-0254 P 89-0321
P 89-0326 P 89-0336 P 89-0383 P 89-0386
P 89-0387 P 89-0388 P 89-0446 P 89-0538
P 89-0539 P 89-0589 P 89-0701 P 89-0711
P 89-0721 P 89-0750 P 89-0760 P 89-0764
P 89-0775 P 89-0776 P 89-0810 P 89-0887
P 89-0870 P 89-0906 P 89-0918 P 89-0924
P 89-0942 P 89-0957 P 89-0958 P 89-0959
P 89-0963 P 89-0977 P 89-0978 P 89-0979
P 89-0980 P 89-0998 P 89-1010 P 89-1038
P 89-1058 P 89-1072 P 89-1082 P 89-1093
P 89-1104 P 89-1125 P 89-1148 P 90-0002
P 90-0009 P 90-0013 P 90-0113 P 90-0143
P 90-0145 P 90-0158 P 90-0159 P 90-0169
P 90-0187 P 90-0211 P 90-0212 P 90-0220
P 90-0226 P 90-0231 P 90-0237 P 90-0244
P 90-0245 P 90-0248 P 90-0249 P 90-0260
P 90-0261 P 90-0262 P 90-0283 P 90-0274
P 90-0299 P 90-0313 P 90-0314 P 90-0315
P 90-0316 P 90-0317 P 90-0318 P 90-0319
P 90-0321 P 90-0331 P 90-0333 P 90-0335
P 90-0347 P 90-0349 P 90-0350 P 90-0359
P 90-0360 P 90-0361 P 90-0364 P 90-0372
P 90-0383 P 90-0385 P 90-0404 P 90-0405
P 90-0408 P 90-0440 P 90-0441 P 90-0456
P 90-0473 P 90-0474 P 90-0475 P 90-0476
P 90-0477 P 90-0480 P 90-0481 P 90-0489
P 90-0498 P 90-0499 P 90-0512
P 90-0072 P 90-0103 P 90-0105 P 90-0184
P 90-0229 P 90-0230 P 90-0232 P 90-0233
P 90-0234 P 90-0235 P 90-0238 P 90-0239
P 90-0240 P 90-0241 P 90-0242 P 90-0243
P 90-0246 P 90-0247 P 90-0250 P 90-0251
P 90-0252 P 90-0253 P 90-0254 P 90-0255
P 90-0256 P 90-0257 P 90-0258 P 90-0259
P 90-0264 P 90-0265 P 90-0266 P 90-0267
P 90-0268 P 90-0269 P 90-0270 P 90-0271
P 90-0272 P 90-0273 P 90-0275 P 90-0276
P 90-0277 P 90-0278 P 90-0279 P 90-0280
P 90-0281 P 90-0282 P 90-0283 P 90-0285
P 90-0286 P 90-0287 P 90-0288 P 90-0289
P 90-0290 P 90-0291 P 90-0292 P 90-0293
P 90-0294 P 90-0295 P 90-0296 P 90-0297
P 90-0298 P 90-0300 P 90-0301 P 90-0302
P 90-0303 P 90-0305 P 90-0306 P 90-0307
P 90-0308 P 90-0309 P 90-0310 P 90-0311
P 90-0312 P 90-0320 P 90-0322 P 90-0323
P 90-0324 P 90-0325 P 90-0326 P 90-0327
P 90-0328 P 90-0329 P 90-0330 Y 90-0115
Y 90-0116 Y 90-0117 Y 90-0118 Y 90-0119
Y 90-0120 Y 90-0121 Y 90-0122 Y 90-0123
Y 90-0124 Y 90-0125 Y 90-0126 Y 90-0127
Y 90-0128 Y 90-0129 Y 90-0130 Y 90-0131
Y 90-0132 Y 90-0133 Y 90-0134 Y 90-0135
Y 90-0136 Y 90-0138 Y 90-0139 Y 90-0140
Y 90-0141 Y 90-0142 Y 90-0143 Y 90-0144
Y 90-0145 Y 90-0146 Y 90-0147 Y 90-0148
Y 90-0149 Y 90-0150 Y 90-0151 Y 90-0152

III. 140 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration or the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88-0701 P 88-0884 P 88-0884 P 88-1808
P 88-2380 P 89-0073 P 89-0077 P 89-0184
P 89-0423 P 89-0424 P 89-0651 P 89-0657
P 89-0658 P 89-0859 P 89-0860 P 89-0844
P 89-0991 P 89-1041 P 89-1140 P 90-0015

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P88-0077	G Alkyd resin X4-779; alkyl polymer x4-779; polyester resin	September 8, 1990.
P83-0422	G Aromatic polyamic acid	January 18, 1990.
P83-1157	G Substituted oxirane	January 31, 1990.
P83-1222	G Substituted alkyl halide	January 17, 1990.
P83-1227	G Perhalo alkoxy ether	February 5, 1990.
P84-0365	G Vinyl ether monomer	February 26, 1990.
P85-0107	G Polyurethane resin	March 1, 1990.
P85-0433	1-Propanol,3-mercapto-	April 20, 1987.
P85-1200	1,3-Bis-(dimethyl stearyl ammonium chloride)-2-propanol	November 9, 1983.
P85-1220	G Chlorinated fatty acids, polyoxy alkylene esters	August 20, 1987.
P85-1518	G Isocyanate terminated polyester urethane	March 8, 1990.
P86-0173	G Azo-substituted aminonaphthol salt	October 15, 1990.
P86-0255	G Phenolic modified rosin ester	February 13, 1990.
P86-1029	G Aromatic terpene phenol resin	October 19, 1989.
P86-1161	G Substituted sulfophenyl azo-substituted naphthalene sulfonic acid salt	February 13, 1990.
P86-1271	G Epoxy resin	October 19, 1988.
P87-0243	G Substituted polyacrylates	April 23, 1987.
P87-0244	G Substituted polyacrylate	January 15, 1988.
P87-0843	G Polyurethane prepolymer	May 6, 1987.
P87-1256	G glycol bis (cycloaliphatic acid ester)	September 8, 1987.
P87-1296	G Melamine-cured acrylated resin	December 21, 1987.
P87-1299	G Alkoxysilane	December 4, 1987.
P87-1331	G Polymer from reactants including tert-butylphenol and isophorone diamine	September 30, 1987.
P87-1349	G Poly(methyl)acrylate	February 8, 1990.
P87-1361	G Styrene acrylate copolymer	February 8, 1990.
P87-1412	G Octamethyl cyclotetrasiloxane	November 14, 1987.
P87-1431	G Acrylate methacrylic acid polymer	October 21, 1987.
P87-1458	Polyamine urea-formalde-hyde condensate	August 12, 1987.
P87-1592	G Substituted thiadiazole	January 29, 1990.
P87-1669	G Substituted terpene resin	November 11, 1987.
P88-0073	Polyethylene terphthalate; diethylene glycol; tetrabutyl titanate	January 9, 1988.
P88-0078	G Isocyanate terminated urethane prepolymer	January 18, 1988.
P88-0086	G Modified acrylate terpolymer	February 6, 1990.
P88-0202	G Epoxidized polybutadiene	February 20, 1990.
P88-0236	G Organic/inorganic copolymer	August 23, 1989

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P88-0238	G Modified polyether carbodiamide	April 18, 1988.
P88-0250	P-menthadiene mixture plus camphene	March 7, 1988.
P88-025	4N-butyldimethylchloro-silane	February 28, 1988
P88-0280	G Aromatic, acrylic ester polymers with mono-carbonylic acids	November 9, 1988.
P88-0467	Substituted-p-phenylenediamine	February 16, 1988.
P88-0831	Phenol, 4,4'-(9H-fluoren-9-ylidene)bis-	August 27, 1988.
P88-0887	G Epoxy resin	September 25, 1988.
P88-1376	Dimethyl cotenes mixture and 2-methyl-6-methyleneoctane	November 11, 1988.
P88-1783	G Modified polyester amino alkyl silane, hydrohalide salt	February 4, 1990.
P88-1705	G Polyester amino alkyl silane	February 4, 1989.
P88-1706	G Polyester amino alkyl silane	February 4, 1989.
P88-1716	G Ammonium salt of carboxy functional acrylic polymer	October 20, 1988.
P88-1753	G Bis(substituted)carbo monocyclic (azo)-carbo-monocyclic	February 14, 1990.
P88-1882	G Amine salt of sulfonated heterocyclic compound	March 27, 1988.
P88-2021	G Substituted-substituted-substituted-benzene aminomethylated, dimethylated, partially chloromethane quaternized, partial chloride salt	June 24, 1988.
P88-2050	G Fluorinated acrylic ester copolymer	February 16, 1990.
P88-2104	G Fluorinated acrylic ester copolymer	February 16, 1990.
P88-2335	G Aliphatic alicyclic polyester	February 14, 1990.
P88-2366	G Methoxy polyethylene oxide dicl	February 13, 1990.
P88-2461	G Fatty acid, rare earth salt	February 28, 1990.
P88-2470	G Azo compound	February 16, 1989.
P88-2540	G Nitrate esters	February 21, 1990.
P88-0088	G Acrylourethane	January 28, 1988.
P89-0121	G Acrylic modified alkyd	January 29, 1988.
P89-0135	G Urethane resin	February 20, 1990.
P89-0192	Aluminum Chloride Hydroxide Sulfate	March 20, 1988.
P89-0268	G Alkyl amine	August 21, 1988.
P89-0461	G Brominated alkylated aniline	January 31, 1990.
P89-0498	G Acrylic polyelectrolyte	February 16, 1989.
P89-0501	G Alkylaryl cellulose ether	February 10, 1990.
P89-0517	G Alkoxy alkyl titanate	February 9, 1990.
P89-0584	G Styrene-acrylic-copolymer	February 2, 1990.
P89-0770	G Oils, glycerides, palm kernel (or coconut oil), reaction products with tetra-hydroxy branched alkane esters of tri-substituted benzene-propanoic acid	February 1, 1988.
P89-0808	G Substituted nitrogenheterocyclic halide	February 27, 1990.
P89-0815	G Trimethylammonium salt	November 11, 1988.
P89-0837	G Phosphorylated polyester	March 8, 1990.
P89-0852	G ETFE copolymer	September 25, 1988.
P89-0862	G Acrylic terpolymer	February 11, 1990.
P89-0871	G Polyurethane	February 15, 1988.
P89-0891	G Polyurethane dispersion	February 9, 1990.
P89-0898	Polymeric alpha, omega dicarboxylic acid	February 12, 1990.
P89-0913	G Carboxylic acid, quaternary ammonium salt	February 6, 1990.
P89-0937	G Substituted naphthalene disulfonic acid	March 1, 1988.
P89-0956	G Ester with copolymer of methacrylic acid and acrylonitrile	January 17, 1990.
P89-0967	G Polysiloxane	January 28, 1988.
P89-0980	G 9,10-Anthracenedione, disubstituted amino derivative	February 27, 1990.
P89-0996	G Urethane modified polyester	February 14, 1990.
P89-1014	G Siloxanyl alkanoic acid, alkoxy alkyl alkyl ester	March 9, 1990.
P89-1037	G Alkylated phenolic resin	February 23, 1990.
P89-1042	G Macrocyclic cobalt compound	February 19, 1990.
P89-1060	G Monocarbonylic acids, reation products with a polyethyleneopolyamine	February 5, 1990.
P89-1097	Pentaerythritol, partial esters with lauric/myristic acid blend, oligopolymerized	February 28, 1990.
P89-1098	G Modified cresol/formaldehyde resin	February 28, 1990.
P89-1105	G Partially crosslinked polymer of styrene-butadiene rubber and a block polymer of poly-butadiene and substituted acrylates	February 28, 1990.
P89-1131	G Modified styrene/divinylbenzene copolymer	February 9, 1990.
P89-1139	G Polymeric-alpha, omega-bis-oxirane	February 13, 1990.
P90-0040	G Mixed sodium/potassium salt of substituted naphthalene disulphonic acid	February 5, 1990.
P90-0041	G Polyoxypropylene-polyoxyethylene block copolymer ester acyl caprolactum	February 9, 1990.
P90-0070	G Modified alkyl acrylate polymer	February 11, 1990.
P90-0073	G Aromatic isocyanate-based urethane prepolymer	March 2, 1990.
P90-0075	G Cyanoacetic acid ester	March 2, 1990.
P90-0076	G Substituted polyoxyethylene aniline diacetyl ester	February 28, 1990.
P90-0079	Cyclohexanemethanol, 2-methyl-4-(1-methyl)-1-(4-isopropylcyclohexyl)ethane	February 5, 1990.
P90-0087	G Modified olefin/carboxylic acid copolymer	February 19, 1990.
P90-0108	G Heterocyclic dispersive dyestuff	February 9, 1990.
P90-0120	Thixotropically modified tall oil fatty acid alkyd resin	February 13, 1990.
P90-0143	G Cresol-aldehyde-aromatic reaction mixture	March 9, 1990.
P90-0147	G Alkenyl phosphate ester	February 15, 1990.
P90-0166	G Polyether MDI prepolymer	February 28, 1990.
P90-0175	G Polyestercarbonate resin	March 8, 1990.
P90-0219	Dimer fatty acids; lauric acid; ethylenediamine; hexamethylenediamine; isocyanate	March 8, 1990.
P90-0249	G Poly (oxyethanediyl)-, substituted naphthalenoxyl-hydroxy	

IV. 122 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
Y87-0246	G Alkyd resin	October 5, 1987.
Y87-0247	G Alkyd resin	October 1, 1987.
Y88-0079	G Water-dispersible polymeric emulsion	February 5, 1988.
Y88-0096	G Acid-terminated long oil alkyd resin	February 2, 1988.
Y88-0267	G Castor oil alkyd resin	February 20, 1990.
Y89-0078	G Medium oil alkyd	February 9, 1990.
Y88-0149	1-Methyl-2-pyrrolidone	February 10, 1990.
Y88-0216	G Polyester polyol	February 8, 1990.
Y90-0007	G Acrylic polymer	December 15, 1989.
Y90-0022	G Modified acrylic polymer	January 20, 1990.
Y90-0035	G Polyester	February 2, 1990.
Y90-0053	G Copolymer of styrene, ethylene oxide, and an acrylate ester	February 5, 1990.
Y90-0088	G Maleic anhydride styrene copolymer, half ester, morpholine salt	February 1, 1990.
Y90-0098	G Polyalkylamine of chloromethylated, cross-linked polystyrene	February 13, 1990.
Y90-0104	Rosin; maleic anhydride; pentaerythritol; nonyl phenol; p-tert-butylphenol; paraformaldehyde; bisphenol A	February 21, 1990.

V. 21 Premanufacture notices for which the period has been suspended.

PMN No.

P 89-0711 P 89-1148 P 90-0212 P 90-0237
P 90-0244 P 90-0245 P 90-0248 P 90-0249
P 90-0255 P 90-0274 P 90-0284 P 90-0299
P 90-0313 P 90-0314 P 90-0315 P 90-0316
P 90-0317 P 90-0318 P 90-0319 P 90-0321
P 90-0339

[FR Doc. 90-14797 Filed 6-25-90; 8:45]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 20, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None.

Title: Section 22.1101, Air-To-Ground Telephone Service (Report and Order, Docket No. 88-90).

Action: New collection.

Respondents: Businesses or other for profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 10 Responses; 3,000 Hours.

Needs and Uses: The Commission has determined that an air-to-ground telephone service is technically feasible, attractive to consumers, and a highly-valued use of the available 849-851/894-896 MHz bands. Therefore, we are allocating these bands for an air-to-ground service, and are requiring applicants who wish to operate in the service to demonstrate that they will offer the service in a timely fashing and that they are technically and financially qualified. Information submitted by applicants will be used by the Commission to select licensees for the air-to-ground service. The Commission will require that applicants contain complete information on the following areas that will be used for qualifying criteria: 1) Financial qualifications, i.e., resources necessary to construct and operate the system; and 2) technical qualification, in particular spectrum efficiency. The availability of resources is directly related to the ability of the applicant to establish the service promptly and to maintain it. Use of spectrum-efficient techniques will enhance the availability of this service so that long-term demand, especially during peak periods, can be accomodated within the four megahertz of spectrum that is available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14698 Filed 6-25-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration Clark Maryland Terminals, Inco et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200078-006

Title: Maryland Port Administration/ Clark Maryland Terminals, Inc. Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Clark Maryland Terminals, Inc. (CMTI).

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-200078) to reflect that 3.45 areas of the area leased by the MPA to CMTI, in Lot 400 at Dundalk Marine Terminal, shall be eliminated.

Agreement No.: 224-200373

Title: The City of San Francisco/ Sploasa Plovba Terminal Agreement.

Parties:

The City of San Francisco (City)

Sploasa Plovba (SP).

Synopsis: The Agreement provides for SP to make San Francisco its published regularly scheduled Northern California port of call and have a non-exclusive right to use the City's South Container Terminal (Terminal). In consideration to SP for making the Terminal its regularly scheduled Northern California port of call, SP will pay to the City 80% of the applicable tariff on dockage and pay less than 100% of the wharfage rates based on a designated annual throughput volume of twenty-foot equivalent units. The term of the agreement is for five years.

Agreement No.: 224-200375

Title: San Francisco Port Commission/Naviera Interamericana Navicana S.A. Marine Terminal Agreement.

Parties:

San Francisco Port Commission (Port)
Naviera Interamericana Navicana S.A. (Navicana).

Synopsis: The Agreement provides for Navicana to have a non-exclusive right to use the Port's North Container Terminal Facilities as its regularly scheduled Northern California port of call for its liner vessel service. As consideration for the use of the facilities Navicana shall pay dockage and wharfage rates at less than 100% of those named in the Port's tariff No. 3-C. The term of the Agreement is five years.

Agreement No.: 224-200376

Title: Maryland Port Administration/ Jugolinija Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Jugolinija.

Synopsis: The Agreement provides for MPA to grant Jugolinija a cargo incentive at the Port of Baltimore. MPA will pay to Jugolinija $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's terminals by direct vessel call.

Agreement No: 224-200377

Title: Maryland Port Administration/ Ivaran Lines Marine Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Ivaran Lines.

Synopsis: The Agreement provides for MPA to pay Ivaran Lines an incentive of $3.00 per container and $0.40 per ton for Ro/Ro Cargo. This incentive is restricted to containers and Ro/Ro cargo coming into or going out of the MPA marine terminals by a waterborne movement. The Agreement's term expires December 31, 1990.

Agreement No: 224-200378

Title: Maryland Port Administration/ Wallenius Transroll Terminal Agreement.

Parties:

Maryland Port Administration (MPA)
Wallenius Transroll (Wallenius).

Synopsis: The Agreement provides for MPA to grant Wallenius a cargo incentive at the Port of Baltimore. MPA will pay to Wallenius $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's terminals by direct vessel call.

Agreement No: 224-200374

Title: The City of San Francisco/ Evergreen Marine Corp. (Taiwan) Ltd. Terminal Agreement.

Parties:

The San Francisco Port Commission (Port)
Evergreen Marine Corp. (Taiwan) Ltd. (Evergreen).

Synopsis: The Agreement provides for Evergreen to guarantee the Port a minimum of 49 vessel calls at the Port's South Container Terminal and a minimum thruput of 23,000 loaded twenty-foot equivalent units (TEU) per contract year, loaded to or discharged from its vessels. In consideration for the foregoing minimum calls and thruput guarantees, Evergreen will pay to the Port dockage and wharfage rates at less than 100% of those named in The Port's Tariff No. 3-C. In the event the total contract guaranteed volume (115,000 TEUs) is not handled during the five-year term of this Agreement, Evergreen will pay the difference between the 115,000 TEUs and the amount of TEUs actually handled at the prevailing rate in effect at the end of the contract term for TEUs 1 through 30,000.

By Order of the Federal Marine Commission.

Dated: June 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-14696 Filed 6-25-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; United States/ Dominican Republic Freight Association

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-011287

Title: United States/Dominican Republic Freight Association.

Parties:

Kirk Line Ltd.
Seaboard Marine, Ltd.

Synopsis: The proposed Agreement would authorize the parties to discuss, establish and maintain rates, charges, rules and regulations and to discuss other conditions and related matters in the trade between United States Atlantic and Gulf ports and all inland continental points via such ports, and ports and points in the Dominican Republic. The parties have requested a shortened review.

By Order of the Federal Maritime Commission.

Dated: June 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-14697 Filed 6-25-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended.

Salen Lindblad Cruising Inc., and Frontier Cruises Limited, 133 E. 55th Street, New York, NY 10022.

Vessel: Frontier Spirit.

Dated: June 21, 1990.
Joseph C. Polking,
Secretary.
[FR Doc. 90-14777 Filed 6-25-90; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First of America Bank Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register Notice (FR Doc. 90-8905) pubished at page 14472 of the issue for Wednesday, April 18, 1990.

Under the Federal Reserve Bank of Chicago, the entry for First of America Bank Corporation is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire Shelby Federal Savings Bank, Indianapolis, Indiana, and also to indirectly acquire its wholly-owned subsidiary, Shelby Service Corporation, Indianapolis, Indiana, and thereby engage in owning and operating a savings association pursuant to § 225.25(b)(9) and the sale of credit related life, accident, and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Comments on this application must be received by July 13, 1990.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14695 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

Lewis Katz; Change in Bank Control Notice; Acquisition of Shares of Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or a bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 10, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Lewis Katz*, Cherry Hill, New Jersey; to acquire 4.72 percent of the voting shares of First Peoples Financial Corporation, Westmont, Haddon Township, New Jersey, for a total of 13.66 percent, and thereby indirectly acquire First Peoples Bank of New Jersey, Westmont, Haddon Township, New Jersey.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14693 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

NCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 16, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of NCNB America Bank, Newark, Delaware.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank Corporation of Georgia*, Macon, Georgia; to acquire 43 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, and thereby indirectly acquire AmeriBank, N.A., Savannah, Georgia.

2. *CNB Financial Corporation*, Clewiston, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Clewiston National Bank, Clewiston, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blackhawk Bancorporation*, Milan, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Blackhawk State Bank, Milan, Illinois.

2. *Carwin Bancorporation*, Carwin, Iowa; to become a bank holding company by acquiring 98.50 percent of the voting shares of Farmers Savings Bank, Carwin, Iowa.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alpine Banks of Colorado*, Glenwood Springs, Colorado; to acquire 100 percent of the voting shares of Alpine Bank, Clifton, Colorado, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 20, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-14694 Filed 6-25-90; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 15⅝% for the quarter ended June 30, 1990. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: June 20, 1990.
Larry J. Eisenhart,
Acting Deputy Assistant Secretary, Finance.
[FR Doc. 90-14650 Filed 6-25-90; 8:45 am]
BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of July 1990.

The initial review committees will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-463

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDAS
Date and Time: July 17-18: 9 a.m.
Place: Holiday Inn Crowne Plaza, Twinbrook Room, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—July 17: 9-9:30 a.m. Closed—Otherwise
Contact: Iris W. O'Brien, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA
Date and Time: July 17-19: 9 a.m.
Place: Holiday Inn Crowne Plaza, Montrose Room, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open—July 17: 9-9:30 a.m. Closed—Otherwise
Contact: H. Noble Jones, room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-9042
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2755.

Dated: June 15, 1990.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 90-14653 Filed 6-25-90; 8:45 am]
BILLING CODE 4160-20-M

Food and Drug Administration

Old Monroe Elevator & Supply Co., Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Old Monroe Elevator & Supply Co., Inc. One NADA provides for the use of a tylosin Type A article for making a Type C swine, beef cattle, and chicken feed; the second for the use of a tylosin-sulfamethazine Type A article for making a type C swine feed; and the third for the use of a hygromycin B Type A article for making a Type C swine and chicken feed. The firm requested withdrawal of approval of the NADA's.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Old Monroe Elevator & Supply Co., Inc., Old Monroe, MO 63369, is the sponsor of the following NADA's:

NADA 119-261, originally approved June 3, 1960 (45 FR 37424), for the use of a tylosin Type A medicated article to make a Type C medicated swine feed. Later, the NADA was supplemented to provide for the manufacture of a Type A medicated article to make Type C medicated beef cattle and chicken feeds, in additon to swine feed and approved November 13, 1961 (46 FR 55956).

NADA 128-834, originally approved May 21, 1962 (47 FR 22092), for the use of a hygromycin B Type A medicated article to make a Type C medicated swine and chicken feed.

NADA 128-835, originally approved May 25, 1962 (47 FR 22517), for the use of a tylosin-sulfamethazine Type A medicated article to make a Type C medicated swine feed.

Elanco Products Co., on behalf of the sponsor, requested withdrawal of approval of the NADA's by letters of November 15, 1989, for NADA 119-261 and NADA 128-835, and March 1, 1990, for NADA 128-834, because the firm no longer manufactures the products.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 119-261, 128-834, 128-835 and all supplements and amendments thereto is hereby withdrawn, effective July 6, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 558.274 (a)(4) and (c)(1), 558.625(b)(69), and 558.630(b)(10) to reflect withdrawal of approval of these NADA's.

Dated: June 19, 1990.
Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 90-14699 Filed 6-25-90; 8:45 am]
BILLING CODE 4160-01-M

Wyeth Laboratories; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Wyeth Laboratories. The NADA provides for the use of a benzathine penicillin G injection in horses and dogs for the treatment of bacterial infections. The firm requested withdrawal of the

approval. In a final rule published elsewhere in this issue of the Federal Register FDA is amending the animal drug regulations by removing the regulation reflecting the approval.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Wyeth Laboratories, Division American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101, is the sponsor of NADA 55-009, which provides for the intramuscular use in horses and dogs of Bicillin LA (benzathine penicillin G), Injection, Veterinary for the treatment of bacterial infections. The NADA was approved on July 18, 1952. By letter of September 8, 1989, the sponsor requested withdrawal of the approval because the product is no longer manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 55-009 and all supplements thereto is hereby withdrawn, effective July 6, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing 21 CFR 540.255a to reflect the withdrawal of approval.

Dated: June 18, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-14688 Filed 6-25-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of d-Limonene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of d-limonene, a naturally occurring monoterpene found in many volatile oils, especially citrus oils which are used as a flavor and fragrance additive for food and household cleaning products, and as an industrial solvent.

Two-year toxicology and carcinogenesis studies of d-limonene were conducted by administering 0, 75, or 150 mg/kg in corn oil by gavage to groups of 50 F344/N male rats, 5 days per week for 103 weeks; groups of 50 female F344/N rats were administered 0, 300, or 600 mg/kg. Groups of 50 male B6C3F1 mice were administered, 0, 250, or 500 mg/kg according to the same schedule; groups of 50 female B6C3F1 mice were administered 0, 500, or 1,000 mg/kg.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity * of d-limonene for male F344/N rats, as shown by increased incidences of tubular cell hyperplasia, adenomas, and adenocarcinomas of the kidney. There was no evidence of carcinogenic activity of d-limonene for female F344/N rats that received 300 or 600 mg/kg. There was no evidence of carcinogenic activity of d-limonene for male B6C3F1 mice that received 250 or 500 mg/kg. There was no evidence of carcinogenic activity of d-limonene for female B6C3F1 mice that received 500 or 1,000 mg/kg.

The study scientist for these studies is Dr. C.W. Jameson. Questions or comments about this Technical Report should be directed to Dr. Jameson at P.O. Box 12233, Research Triangle Park, NC 27709 or telepone (919) 541-4096.

Copies of Toxicology and Carcinogenesis Studies of d-Limonene in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 347) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90-14711 Filed 6-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of N,N-Dimethylaniline

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of N,N-dimethylaniline, a chemical intermediate in the synthesis of dyestuffs. It is also used as a solvent and an aid in methylation.

Toxicology and carcinogenesis studies of N,N-dimethylaniline were conducted by administering to groups of 50 rats of each sex doses of 0, 3, or 30 mg/kg N,N/dimethylaniline in corn oil by gavage, 5 days per week for 103 weeks. Groups of 50 mice of each sex were administered 0, 15, or 30 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity * of N,N-dimethylaniline for male F344/N rats, as indicated by the increased incidences of sarcomas or osteosarcomas (combined) of the spleen. There was no evidence of carcinogenic activity of N,N-dimethylaniline for female F344/N rats given 3 or 30 mg/kg body weight by gavage for 2 years. There was no evidence of carcinogenic activity of N,N-dimethylaniline for male B6C3F1 mice given 15 or 30 mg/kg by gavage for 2 years. There was equivocal evidence of carcinogenic activity of N,N-dimethylaniline for female B6C3F1 mice, as indicated by an increased incidence of squamous cell papillomas of the forestomach. Both rats and mice could have tolerated doses higher than those used in these studies.

The study scientist for these studies is Dr. K. Abdo. Questions or comments about this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819.

Copies of Toxicology and Carcinogenesis Studies of N,N-Dimethylaniline in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 360) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90-14712 Filed 6-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Succinic Anhydride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on Toxicology and carcinogenesis studies of succinic anhydride. Succinic anhydride is a food additive which is also used in the manufacture of polymeric materials, pharmaceuticals, agricultural chemicals, and as a chemical intermediate in the manufacture of dye stuffs, photographic chemicals, surface-active agents, lubricant additives, and fire retardants for paper.

Toxicology and carcinogenesis studies of succinic anhydride were conducted by administering 0, 50, or 100 mg/kg succinic anhydride in corn oil by gavage to groups of 50 rats of each sex, 5 days per week for 103 weeks. Groups of 50 male mice were administered 0, 38, or 75 mg/kg and groups of 50 female mice were administered 0, 75, or 150 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity* of succinic anhydride for male or female F344/N rats given 50 or 100 mg/kg succinic anhydride. There was no evidence of carcinogenic activity for male B6C3F1 mice given 38 or 75 mg/kg succinic anhydride or for female B6C3F1 mice given 75 or 150 mg/kg.

The study scientist for these studies is Dr. Ronald Melnick. Questions or comments about this Technical Report should be directed to Dr. Melnick at P.O. Box 12233, Research Triangle Park, NC or telephone (919) 541-4142.

Copies of Toxicology and Carcinogenesis Studies of Succinic Anhydride in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 373) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 20, 1990.

David P. Rall,

Director.

[FR Doc. 90-14713 Filed 6-25-90; 8:45 am]

BILLING CODE 4140-01-M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-90-3109]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the discription of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44, U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1990.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner, H.

[FR Doc. 90-14719 Filed 6-25-90; 8:45 am]

BILLING CODE 4210-27-M

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance Termination and the Application for Premium Refund or Distributive Share Payment

Office: Housing.

Description of the Need for the Information and its Proposed Use: The revised forms HUD-27050-A, Single Family Mortgage Insurance Termination, is used by servicing mortgagees to comply with HUD requirements for reporting terminations of the FHA mortgage insurance contract, 24 CFR 203.316 and form HUD-27050-B, Application for Premium Refund or Distributive Share Payment, used by former FHA mortgagors who HUD has determined are potentially eligible for subsequent payment of a distributive share or refund of the unused mortgage insurance premium, 24 CFR 203.283 and 203.423.

Form Number: HUD-27050-A/B.

Respondents: Lenders and homeowners participating in the Section 203 Mutual Mortgage Insurance Program.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-27050-A	8,550		48		5 minutes		32,063
HUD-27050-B	250,000		One time		15 minutes		62,522

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

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Total Estimated Burden: 94,585 hours.
Status: Revision.
Contact: Steven Hans, HUD, (202) 426-7113; Scott Jacob, OMB, (202) 395-6966.

Supporting Statement Technical Adjustment to Lenders Request for Termination of Home Mortgage Insurance Combined Form HUD-27050

Section A—Justification

1. This form is used by servicing mortgagees to comply with HUD requirements for reporting termination of Federal Housing Administration (FHA) mortgage insurance on single family mortgages, 24 CFR 203.318 and former FHA mortgagors to apply for refunds of the unused mortgage insurance premium or payment of distributive shares, 24 CFR 203.283 and 24 CFR 203.423.

The "combined form" HUD-27050 was approved April 11, 1989, under OMB Number 2535-0055. As approved, this form would have required the servicing mortgagee to submit to HUD the form HUD-27050-A, Single Family Mortgage Insurance Termination (which replaces form HUD-2344), and at the same time to submit to the former FHA mortgagor the form HUD-27050-B, Application for Premium Refund or Distributive Share Payment (which replaces form HUD-2042). This has historically been a two step process which relied on two separate forms for completion. Reverting to our previous process of HUD initiating the HUD-27050-B, Application for Premium Refund or Distributive Share Payment, neither affects the amount and type of information approved for collection in the original approval, nor increases the public reporting burden.

During the late 1980's, the Department of Housing and Urban Development (HUD) was charged with improving the rate of locating and paying the former FHA mortgagors due distributive shares or premium refunds. During that time, the concept of using a combined form to ensure that servicing mortgagees notified mortgagors of their entitlement was considered to be the most expeditious way of accomplishing this; thus, the orginally approved for HUD-27060, Termination of Home Mortgage Insurance, was created.

Since the original initiative of the "combined" form was proposed, the operating environment has changed and both locating and processing efforts by HUD have measurably improved. Any timeliness issuance of HUD-27050-B's will now be more than offset by the inefficiencies and delays created by inability to restrict issuance of HUD-27050-B's to only eligible cases. Changes to system processes related to these forms have necessitated some technical changes only.

There is a one-time requirement for lenders now using magnetic tape for input of these data to modify their existing program. However, by virtue of the fact that more data will automatically be passed from the lender to HUD under the new form requirements, there will be a countering of staff savings in lender research and clarification time from that point on. The net effect is that the public burden hours and other estimates upon which the current OMB approval is based will remain unchanged.

This revision accomplishes the following: (1) It separates the previously approved "combined" form into two free-standing forms; (2) it permits mortgagees to be responsible only for the timely and accurate submission to HUD of the form HUD-27050-A, Single Family Mortgage Insurance Termination, instead of having to also issue to mortgagors the form HUD-27050-B, Appliation for Premium Refund or Distrinctive Share Payment, as originally proposed for the "combined form; and (3) It limits distribution of form HUD-27050-B, Application for Premium Refund or Distributive Share Payment, to only those former FHA mortgagors who HUD has determined are potentially eligible to receive a payment, instead of requiring all former Mutual Mortgage Insurance mortgagors, irrespective of eligibility, to send in a form HUD-27050-B and related documents for a determination to be made.

2. The information required is used to update HUD's single family insurance-in-force and terminated data. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information, the premium collection/monitoring function would be severely impeded and program data would be unreliable.

Title II of the National Housing Act of 1934 established the Mutual Mortgage Insurance (MMI) Fund. Collection requirements concerning the payment of the mortgage insurance premiums for case insured under the MMI Fund changed September 1983. All of the mortgage insurance premiums that would become due over the life of the mortgage is now collected at closing. The termination generates a payable transaction for all unearned portions of the prepaid mortgage insurance premium.

The mutual aspect of the MMI Fund requires HUD to pay a dividend to eligible mortgagors when their mortgages are paid-in-full or voluntarily terminated. The dividends, referred to as distributive shares, represent program income not needed to pay operating costs or insurance losses. This termination information is used to establish the payable information in the distributive share database.

The mortgagor's current mailing address and social security number is furnished by the mortgagee on this form. This information is necessary to locate the mortgagors that are due a divided or refund.

3. A magnetic tape interface exists for high volume mortgagees. The reduction in burden hours for the participating mortgagees has been estimated at 33%

4. No other duplicate data exists.

5. The data is not available from other sources.

6. Small businesses or entities are not respondents.

7. Delays in providing the data at the time of termination would erode the reliability and effectiveness of the program functions which depend on timely reporting of the termination of the mortgage insurance contract. Less frequent responses would delay HUD's ability to refund to the mortgagor all excess mortgage insurance premiums.

8. The collection is consistent with the guidelines in 5 CFR 1320.6.

9. No consultation on the data collection has been completed for this period. As indicated in item 3, industry is participating in endeavors to use new technology and, if nationwide implementation is feasible, the Mortgage Bankers Association will participate.

10. Confidentiality is not an issue for the data involved.

11. The social security number of the mortgagor is required on the form to aid HUD in locating refund recipients. The major problem is that HUD approved lenders do not always provide a current address by which HUD can contact the mortgagor. Frequently the address provided is either the address of the property that has been sold or a temporary address, and the postal service returns our correspondence as undeliverable.

GAO recommended, in GAO Report No. CED-81-44 dated 2/9/81 and titled "HUD's Payment of Distributive Shares from the Mutual Mortgage Insuarnce Fund," that HUD request mortgagors social security numbers on termination requests so that we may use the IRS Mail Forwarding Service as an alternate means of locating mortgagors when HUD's routine procedures fail. The Internal Revenue Services will not forward any letters without the mortgagor's social security number.

12. Annual Cost to the Federal Government:

HUD Printing	$10,200.00
Processing of data (9 staff-years)	180,000.00
Total (Contact Costs)	$208,200.00

Annual Cost to the Respondents:

HUD-27050-A:	
Overhead	$14,725.00
Support Staff (hourly rate of 8.25)	200,368.00
Postage (first class @0.25)	62,522.00
Total	$277,636.00
HUD-27050-B:	
Completion of form (hourly rate of $8.60)	$312,610.00
Postage (first class @0.25)	62,522.00
Total	375,132.00
HUD-27050-A and HUD-27050-B:	
Total	$652,770.00

13. Estimate of Burden.

HUD-27050-A:	
Number of respondents	8,550
Frequency of responses	As required.
HUD-27050-B:	
Number of respondents	250,088
Frequency of responses	One time.
Volume of Responses Per Respondent:	
HUD-27050-A:	1-37,000
HUD-27050-B:	1
Total annual burden hours.	94,585

HUD-27050-A:
384,750 responses @6 minutes. 32,038 hours.
HUD-27050-B:
250,088 responses @15 minutes. 62,522 hours.
Burden hours in current OMB inventory. 235,495

14. The decrease of 140,910 in burden hours (over the 1989 figure of 235,495) is a combination of the stability in mortgage interest rates resulting in the return to normal program activity. The number of responses decreases by 477,120 responses.

15. The information is not published specifically for statistical use. The data is routinely used in HUD mortgagee/mortgage activity analysis and compilation of related data.

Section B—Collection of Information Employing Statistical Methods.

The data collection does not employ statistical methods.

[FR Doc. 90-14719 Filed 6-25-90; 8:45 am]

BILLING CODE 4210-27-M

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Mortgage Insurance Termination

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2535-0055 (exp. 01/31/92)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0055), Washington, D.C. 20503.

Servicing Mortgagee:

Use this form whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. Within 15 calendar days of the date of termination, the servicing mortgagee must send the form to HUD, Insurance Termination, HPMOI,,Washington, DC 20410-8000. Do not use this form if the termination is due to a borrower default and an "Application for Single Family Insurance Benefits," form HUD-27011, is being submitted to HUD. Your insurance claim application will terminate the insurance.

1. Type of Termination (select the proper condition and enter the corresponding number in the box):

☐
- 11 Prepayment: a loan paid in full prior to the mortgage note maturity date.
- 13 Non-Conveyance: property was acquired by lender or by a third party at a foreclosure sale, or was redeemed after foreclosure and no insurance claim will be made to HUD.
- 18 Maturity: a loan paid in full on or after the mortgage note maturity date.
- 21 Voluntary Termination: both lender and borrower have agreed to voluntarily terminate FHA insurance.
- 23 FHA Refinance

2. FHA Case No. (2 or 3 digit state code, a hyphen, & 7 digit serial no.) :	3. Servicing Mortgagee's ID (10 digits) :	4. (Optional) Institution Loan Reference No. (15 digits) :

5. Original Mortgage Amount :	6. Interest Rate (include the decimal point) :	7. Date of Mortgage Note Maturity (mm/01/yy) :	8. Date of 1st Mortgage Payment (mm/01/yy) :	9. Date of Foreclosure or Deed in Lieu (mm/dd/yy) :	10. Date Paid-in-Full, Refinance or Voluntary Termination (mm/dd/yy):

Property Address of terminated FHA insured mortgage :

11a. Street Address (30 characters, max.) :

11b. City (20 letters, max.) :	11c. State (2 letters)	11d. Zip Code (all 9 digits, if known):

12. Names & social security numbers of all who held title to the above property on the date of non-claim termination. If the mortgage was paid off by sale of the property, enter the seller's name here.

Property Owner No. 1

12a. Last Name (22 letters, max.)	12b. First Name (15 letters, max.):	12c. M.I:

12d. Social Security Number or EIN (include hyphens) :

Property Owner No. 2

12e. Last Name (22 letters, max.)	12f. First Name (15 letters, max.):	12g. M.I.:

12h. Social Security Number or EIN (include hyphens) :

Current mailing address of Property Owner No. 1 (item 12z)

13a. "Attention of . . ." or "Care of (c/o) . . ." name (optional) (30 letters, max.):
C/O

13b. Street (30 characters, max.) :

13c. City (20 letters, max.) :	13d. State (2 letters):

13e. Zip Code (give all 9 digits if known) :	13f. If owner No.1 resides in a foreign country, give name of country (15 letters, max.) :

☐ Mark this box if there are more than two mortgagors.

14. Name & Address of Servicing Mortgagee :

14a. Contact Person (name & phone, including area code) :

HUD construes submission of the data on this form as the servicing mortgagee's certification that the information provided above is true and accurate.

Warning! Section 1001 of Title 18 to the U.S. Code states a person is guilty of a felony for knowingly and willing making a false or fraudulent statement to any Department or Agency of the United States. Penalties upon conviction can include a fine of not more than $10,000 or imprisonment for not more than five years, or both.

DRAFT

form HUD-27050-A (5/17/90)

Application for Premium Refund or Distributive Share Payment

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2535-0055 (exp. 01/31/92)

Please print all information

Before completing this application, please read the guidelines for payment on the reverse side. If you decide you are not entitled to the premium refund or distributive share payment, please forward the application to the proper homeowner, if known, or return it to HUD.

1a. FHA Case Number	1c. Your Mailing Address
1b. Address of the FHA Insured Property	

1d. Notice Number :	1e. Termination Date:	1f. One-Time Premium Refund: $
1g. Source	1h. Original Mortgage: ..$	1i. Distributive Share: ..... $
1j. Address Key	1k. OTMIP Paid: ..... $	1l. Total Refund: ..... $

Please Print

2. Date You Purchased the Property (mm/dd/yy) :

Date Paid in Full (mm/dd/yy) :

Property Owner No. 1

3a. Last Name (22 letters, max.)	3b. First Name (15 letters, max.):	3c. M.I.:

3d. Percentage of the Property You Owned :	3e. Social Security Number or EIN (include hyphens) :	3f. Daytime Telephone (include area code) :

4. Current Mailing Address Complete only if your current mailing address is different from item 1c.

4a. (optional) "Attention of . . ." or "Care of (c/o) . . ." name (30 letters, max.):
C/O

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4b. Street (30 characters, max.) :

4c. City (25 letters, max.) :	4d. State (2 letters):

4e. Zip Code (give all 9 digits if known) :	4f. If owner No.1 resides in a foreign country, give name of country (15 letters, max.) :

Property Owner No. 2

5a. Last Name (22 letters, max.) :	5b. First Name (15 letters, max.) :	5c. M.I.:

5d. Percentage of the Property You Owned :	5e. Social Security Number or EIN (include hyphens) :	5f. Daytime Telephone (include area code) :

6. Current Mailing Address Complete only if your current mailing address is different from items 1c & 4.

6a. (optional) "Attention of . . ." or "Care of (c/o) . . ." name (30 letters, max.):
C/O

6b. Street (30 characters, max.) :

6c. City (25 letters, max.) :	6d. State (2 letters):

6e. Zip Code (give all 9 digits if known) :	6f. If owner No.2 resides in a foreign country, give name of country (15 letters, max.) :

7. ☐ Yes ☐ No The FHA mortgage was paid off by refinancing and I (we) requested that the refund be credited to the new FHA insurance premium.

Note: All owners must complete the certification, even if they were not named on this form. If all person(s) named on this form do not complete the certification, an explanation must be given in the Remarks section below. One signature must be notarized.

8. **Claim Certification:** I, the undersigned, certify that I was the legal owner of record at the time of mortgage insurance termination of the FHA insured property described in item 1b above and the information provided above is correct to the best of my knowledge and belief.

8a. Owner 1 Signature & Date:	8b. Owner 2 Signature & Date:
X	X

Warning! Section 1001 of Title 18 to the U.S. Code states that a person is guilty of a felony for knowingly and willingly making a false or fraudulent statement to any Department or Agency of the United States. Penalties upon conviction can include a fine of not more than $10,000 or imprisonment for not more than five years, or both.

9. Remarks: (attach a separate sheet if more space is required)	10. As to	11. Notary Seal :
	(type or print name) : _____ Signed and sworn to before me this _____ day of _____, 19___ Notary Public (signature) : _____ My Commission expires _____, 19___.	

Upon completion, send this form and attachment(s) to: HUD - Shares, PO Box 44372, Washington DC 20026-4372

form HUD-27050-B (4/9/90)

U.S. Dept. of Housing & Urban Development
Attn: Distributive Shares Branch
Post Office Box 44372
Washington DC 20026-4372

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0055), Washington, D.C. 20503.

Privacy Act Notice: Section 203 of the National Housing Act and Section 7(d) of the Department of Housing and Urban Development (HUD) Act, Public Law 89-174, authorize collection of this information, which will be used by HUD to determine your eligibility for a refund. You must provide your Social Security Number. The Debt Collection Act of 1982, Public Law 97-365, requires any person participating in a Federally-insured loan program to provide his/her Social Security Number. You should provide all of the requested information; failure to do so may delay the processing, or result in the rejection, of your application. HUD uses the Social Security Number to identify the applicant. This information may be used in computer matching programs with other Federal agencies to obtain current addresses and for debt collection/offset purposes. This information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Possible Income tax liability: Generally, premium refunds or distributive share payments are not taxable income as they represent a return of mortgage insurance premiums. Exceptions occur, however, if: (1) the premiums were previously deducted as a business expense, or (2) the refund exceeds the amount actually paid by the payee (usually due to an assumption of the mortgage involved). Further information may be obtained from your local IRS office and IRS ruling 56-302 and 58-380.

Dear Homeowner:

HUD May Owe You Money! As the owner of an FHA-insured property at the time of mortgage insurance termination, you may be entitled to a refund payment of a One-Time Mortgage Insurance Premium (OTMIP) and/or a Distributive Share. Please carefully read the following guidelines for payment and explanation of entitlement before completing the Application for Premium Refund/Distributive Share Payment on the back of this letter.

Guidelines For Payment. As a first step, verify that the property address (item 1b) is correct and applies to you. To obtain any money to which you may be entitled, complete the form on the back of this letter, attach proof of ownership or entitlement, have one signature notarized, and mail the documents to the address noted in the top left corner above. If more than two people shared ownership of the property, photocopy the form on the back to use as a continuation sheet. If you are the sole owner, enter 100% as the ownership percentage (item 3d); if you are a co-owner, enter 50%; or if there are multiple owners, enter your ownership percentage. Each individual who owned a share in the property must complete the application, include proof of ownership/entitlement and certify by signing (item 8) on the back of this letter. Only one signature must be notarized (items 10 and 11). If all persons identified on the form have not signed the certification, an explanation should be provided in the remarks section (item 9) or on a separate sheet of paper. Documentation supporting the exclusion must be provided. It will take about 6 weeks to process your form after HUD receives it.

If there is an error, or if you need additional information or help in completing this form, please call the Service Center Section at (202) 708-0616 between 9 a.m. and 4:45 p.m. (EST) Monday through Friday (except holidays). Please have your FHA case number (item 1a on the back of this letter) available.

Proof of Ownership/Entitlement. The following documents may be used to show proof of ownership/entitlement (send only photocopies of original documents):

Deeds: A copy of the recorded deed (General Warranty Deed, Special Warranty Deed, Reconveyance Deed, or Quit Claim Deed) showing ownership prior to termination.

Death Certificate / Will: In the event of the death of a co-homeowner who is a joint tenant or tenant by entireties, a copy of the death certificate establishes that the surviving co-homeowner(s) is/are entitled to payment. In the event more than one of the homeowners is deceased and the estate is closed, a copy of an executed will identifies the heirs entitled to the refund. If the estate is open, the refund is payable to the appointed official of the estate.

Divorce Decree: In the event of a divorce of co-homeowners, it is necessary to show the divorce decree or other document such as a recorded quit claim deed which gives title to the claimant. Otherwise, both will be treated as co-homeowners for payment purposes.

Name Change: In the event of a name change, a copy of the marriage certificate or name change document is required.

A Premium Refund is the balance remaining of a prepaid mortgage insurance premium when the mortgage is paid off prior to the end of the mortgage term. A premium refund applies only to homeowners whose mortgages were insured after September 1, 1983. When you refinance your existing FHA-insured mortgage and if a premium refund is due, your lender may offer to credit the amount of the refund against the OTMIP for the new FHA mortgage (item 7). However, if the amount of the premium refund is less than the OTMIP on the new FHA mortgage, you will not receive a cash refund.

A Distributive Share is a distribution of any excess earnings of the Mutual Mortgage Insurance (MMI) Fund which is funded by the mortgage insurance premiums you and other homeowners pay. Part of the MMI Fund is used to cover expenses associated with insuring the mortgages. The remainder is invested. When the earnings of the MMI Fund exceed the amount needed for expenses and insurance reserves, the excess is paid as "distributive shares" to homeowners when their mortgage insurance is terminated. The amount of a "distributive share" depends on the mortgage insurance premiums that were paid and other factors. .

form HUD-27050-B

[FR Doc. 90-14719 Filed 6-25-90; 8:45 am]
BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-820-00-4111-12-2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project Washington, DC 20503, telephone 202-395-7340.

Title: Oil and Gas Geophysical Exploration Operations 43 CFR 3151.
OMB Approval Number: Not yet assigned.
Abstract: Respondents supply information which will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans and environmental assessment in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.
Form Numbers: 3150-4, 3150-5.
Frequency: On occasion.
Description of Respondents: Oil and gas exploration and drilling companies.
Estimated Completion Time: Form 3150-4—1 hour, Form 3150-5—½ hour.
Annual Responses: 1200.
Annual Burden Hours: 800.
Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653-8853.

Dated: May 21, 1990.
Adam A. Sokoloski,
Assistant Director, Energy & Mineral Resources.
[FR Doc. 90-14669 Filed 6-25-90; 8:45 am]
BILLING CODE 4310-84-M

[AA-320-00-4212-02]

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and may be obtained by contacting the Bureau of Land Management's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to OMB, Paperwork Reduction Project (1004-0004), Washington, DC 20503, telephone 202-395-7340.

Title: Desert Land Entry, 43 CFR 2520.
OMB Approval Number: 1004-0004.
Abstract: Respondents supply identifying information to be used by the agency to determine eligibility for farming on bureau-administered desert land.
Bureau form number: 2520-1.
Frequency: Once.
Description of respondents: Individuals applying for entry on to Public Land under the Desert Land Act.
Estimated completion time: 90 minutes.
Annual responses: 20.
Annual burden hours: 30.
Bureau Clearance Officer: (Alternate) Gerri Jenkins 202-653-8853.

Dated: April 24, 1990.
Henry Noldan,
Assistant Director for Land and Renewable Resources.
[FR Doc. 90-14668 Filed 6-25-90; 8:45 am]
BILLING CODE 4310-84-M

[ID-942-00-4730-12]

Idaho; Filing of Plats of Survey; Idaho

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 18, 1990.

The plat representing the dependent resurvey of portions of the south, east, west, and north boundaries, and the subdivision of certain sections, T. 15 S., R. 25 E., Boise Meridian, Idaho, Group No. 740, was accepted June 12, 1990.

The supplemental plat representing the revised lottings in sections 29, 30, and 31, T. 11 N., R. 14 E., Boise Meridian, Idaho, was accepted June 11, 1990.

This survey was executed and the supplemental plat prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 18, 1990.
Gary T. Oviatt,
Acting Chief Cadastral Surveyor for Idaho.
[FR Doc. 90-14690 Filed 6-25-90; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749712

Applicant: Walter O. Salmon, Cool, CA.

The applicant requests a permit to purchase in interstate commerce one pair of captive-hatched Hawaiian (=nene) geese [*Nesochen* (=*Branta*) *sandvicensis*] from Jean Van Holzen, Grants Pass, Oregon for the purpose of captive-propagation.

PRT 749055

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one female Diana monkey (*Cercopithecus diana*) that was captive born at the San Diego Zoo, San Diego, California. The applicant proposes to export the animal to Parque Metropolitano de Santiago, Santiago, Chile, for breeding and educational display purposes.

PRT 749054

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one pair of captive born ring-tailed lemurs (*Lemur catta*) to the Parque Metropolitano de Santiago, Santiago, Chile, for breeding and educational display purposes. The lemurs were born at the Oregon Regional Primate Research Center and sold to the applicant.

PRT 749051

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to export and sell in foreign commerce one pair of captive born cheetahs (*Acinonyx jubatus*) to the Zoo Zacango, De Parques Natureles y de la Fauna, Paliqo de

Gobierno Zoo Pies, Mexico, for breeding purposes. The cheetahs were born at the Columbus Zoo, Columbus, Ohio, and traded to the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-14753 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749316

Applicant: Denver Zoological Gardens, Denver, CO.

The applicant requests a permit to import one captive-bred male black lemur (**Lemur macaco**) from the Metro Toronto Zoo, Ontario, Canada, for purposes of captive breeding and zoological display.

PRT 749878.

Applicant: Cheyenne Mountain Zoological Park, Colorado Springs, CO.

The applicant requests a permit to import one captive-bred male Siberian tiger (*Panthera tigris altaica*) from the Metro Toronto Zoo, Ontario, Canada, for purposes of captive breeding and zoological display.

PRT 749872.

Applicant: David Germano Bakersfield, CA.

The applicant requests a permit to live-trap and release Tipton Kangaroo rates (*Dipodomys nitratoides nitratoides*) on land adjacent to Southern Pacific railroad right-of-way, northeast corner of Section 1, NE 1/4, NE 1/4 T3OS R25E, about 10 miles west of Bakersfield for biological survey purpose.

PRT 750336.

Applicant: ERC Environmental & Energy Service Company, San Diego, CA

The applicant requests a permit to collect seeds of slender-horned spine flower [*Dodecahema* (=*Centrostegia*) leptoceras] from Cleveland National Forest, Arroyo Seco Creek Drainage, Riverside County, CA, for germination and propagation studies to determine the feasibility of seed increase in a controlled setting as a potential mitigation and/or management technique for the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-14755 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Draft Recovery Plan for James Spinymussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the James spinymussel. This species occurs in a few small rivers and creeks of the upper James River drainage in Albemarle, Amherst, Botetourt, and Craig Counties, Virginia, and Monroe County, West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before July 26, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Annapolis Field Office or the Gloucester Field Office. Written comments and materials regarding the plan should be addressed to G. Andrew Moser at the Annapolis Field Office. Copies of the recovery plan, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the Annapolis Office or the Gloucester Field Office.

Annapolis Field Office: U.S. Fish and Wildlife Service, 1825, Virginia St., Annapolis, MD 21401, (301) 269-5448

Gloucester Field Office: U.S. Fish and Wildlife Service, Mid-County Center, U.S. Route 17, P.O. Box 480, White Marsh, VA 23183, (804) 693-6694

FOR FURTHER INFORMATION CONTACT: G. Andrew Moser, at the above Annapolis Field Office address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and provide initial estimates of times and costs for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved Recovery Plans.

The James spinymussel, which once occurred throughout much of the James River drainage, has declined dramatically in the last 20 years, disappearing from approximately 90% of its historic range. It is now known to survive in the following streams of the upper James River basin: Craig Creek drainage, Catawba Creek, Pedlar River, Mechums River, and Rocky Run (Moormans River) in Virginia, and South Fork Potts Creek in West Virginia.

Major recovery plan takes include: (1) Conducting additional surveys for the species; (2) identifying and mitigating specific threats; (3) conducting life history studies and identifying ecological requirements; (4) preserving existing populations and occupied habitats through education, water quality regulations, easements, and acquisition; and (5) if feasible, restoring populations within the species' historic range.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1990.

James F. Gillett,

Acting Regional Director.

[FR Doc. 90-14691 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for renewal and amendment of a permit to conduct certain activities with marine mammals. This amends a previous notice that was published June 18, 1990, concerning the following application. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR parts 17 and 18).

Applicant Name: Mote Marine Laboratory

PRT-685009

Address: 1600 City Island Park, Sarasota, FL 33577.

Type of Permit: Scientific Research.

Name and Number of Animals: 200 Bottlenosed dolphins, (*Tursiops truncatus*), 10 harassments per animal, and up to 200 harassments of an undetermined number of West Indian manatees (*Trichechus manatus*).

Summary of Activity to be Authorized: The applicant proposes to take (harass) these animals during population surveys of wild dolphins and wild manatees using a color video display echo sounder, battery operated fathometers and scanning sonar. The applicant has previously received Endangered Species/Marine Mammal permits PRT-2-9757, PRT-685009 and PRT-690353 for authorizations to survey wild dolphins and manatees from 1983 to 1989. Annual reports have indicated that there was no taking (harassment) under these permits. The applicant also requests authorization to take (harass) captive manatees by sending sounds through water that they may hear and training them through positive reinforcement to respond, by pushing a paddle, when a sound is heard.

Period of Activity: Indefinite.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, room 432, Arlington, VA 22203, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 a.m. to 4:15 p.m.) at 4401 N. Fairfax Drive, room 430, Arlington, VA 22203.

Dated: June 21, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-14754 Filed 6-25-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 16, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 11, 1990.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Denver County

Bancroft, Caroline, House, 1079-81 Downing St., Denver, 90001086

Weld County

Jurgens Site (Prehistoric Paleo-Indian Cultures of the Colorado Plains MPS), Address Restricted, Kersey vicinity, 90001084

DELAWARE

Kent County

Coursey, Thomas B., House, Co. Rd. 388 N. of Coursey Pond, Felton vicinity, 90001069

Saxton United Methodist Church, Jct. of Main and Church Sts., Bowers, 90001070

New Castle County

White Hall, 130 Michael Ln., Bear vicinity, 90001072

Sussex County

Bridgeville Public Library, 210 Market St., Bridgeville, 90001085

St. John's Methodist Church, Springfield Crossroads, jct. of SR 30 and Co. Rd. 47, Georgetown vicinity, 90001071

FLORIDA

Polk County

Chalet Suzanne, 3800 Chalet Suzanne Dr., Lake Wales vicinity, 90001088

KENTUCKY

Breathitt County

Jackson Post Office (Jackson MPS), Jct. of Hawk and Broadway, Jackson, 90001087

MASSACHUSETTS

Bristol County

Woodcock—Hatch—Macy House Historic District, 382 N. Washington St., North Attleborough, 90001081

Norfolk County

Kingsbury—Whitaker House, 53 Glendoch St., Medham, 90001080

MINNESOTA

Rice County

Allen, W. Roby, Oral Home School, 535 5th St. NE., Faribault, 90001091

Batchelder's Block, 120 Central Ave. N., Faribault, 90001089

Blind Department Building and Bow Hall, State School for the Blind, 400 6th Ave. SE., Faribault, 90001082

Dobbin, Reverend James, House, 1600 14th St. NE., Faribault, 90001090

Lieb, Vincent and Elisabeth, House, 201 4th Ave. SW., Faribault, 90001083

Weyer, Adam, Wagon Shop, 32 2nd St. NE., Faribault, 90001088

MISSISSIPPI

Jackson County

Cudobac—Gantt House, 4636 Main St., Moss Point, 90001062

Montgomery County

Purnell, James C., House, 504 Summit St., Winona, 90001077

Newton County

Alabama and Vicksburg Railroad Depot, S. Main St., Newton, 90001078

Oktibbeha County

Odd Fellows Cemetery, Jct. of US 82 and Henderson St., Starkville, 90001064

NEBRASKA

Dodge County

Barnard Park Historic District, Bounded by 4th, 8th, and Union Sts. and Platte Ave., Fremont, 90001053

NEW MEXICO

McKinley County

Ashcroft—Merrill Historic District, Jct. of Bloomfield and McNeil Sts., Ramah, 90001079

Mora County

Cassidy, Daniel, House (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001062
Garcia House (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001063
Gordon—Sanchez Mill (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001061
Ledoux Rural Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Ledoux, 90001057
Mora Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Mora, 90001056
North Carmen Historic District (Upland Valleys of Western Mora County MPS), Address Restricted, Ledoux vicinity, 90001058
Olquin, Jose, Barn/Corral Complex (Upland Valleys of Western Mora County MPS), Address Restricted, Mora vicinity, 90001060
Valdez, Desiderio, House (Upland Valleys of Western Mora County MPS), Address Restricted, Cleveland vicinity, 90001059

OHIO

Delaware County

Delaware County Jail and Sheriff's Residence, 20 W. Central Ave., Delaware, 90001083

TEXAS

Bexar County

Morrison, William J., Jr., House, 710 N. Olive St., San Antonio, 90001078

VERMONT

Chittenden County

Shelburne Village Historic District, Area M and S of jct. of US 7, Harbor Rd. and Falls Rd., including area S and E of La Platte R. and US 7, Shelburne, 90001055

WASHINGTON

Grays Harbor County

Lytle, Joseph, Home, 509 Chenault, Hoquiam, 90001073

Thurston County

Delphi School (Rural Public School Buildings in Washington State MPS), 7601 SW. Delphi Rd., Olympia vicinity, 90001075

Yakima County

Rosedell, 1611 W. Yakima Ave., Yakima, 90001074

West Virginia

Hancock County

Murray, James F., House, 530 Louisiana Ave., Chester, 90001066

Kanawha County

Garnet High School, 422 Dickinson St., Charleston, 90001068

Monongalia County

South Park Historic District, Roughly bounded by Elgin St., Kingwood St., Cobun Ave., Prairie Ave., Jefferson St., Lincoln Ave., and Grand St., Morgantown, 90001054

Ohio County

Ogden, H. C., House, 12 Park Rd., Wheeling, 90001067

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-no. 231X)]

Chicago and North Western Transportation Co.—Abandonment Exemption—In Hennepin County, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Chicago and North Western Transportation Company (CNW) of 1.15 miles of rail line between milepost 19.85 and milepost 21.0, near Hopkins, in Hennepin County, MN, subject to: Standard labor protective conditions; the condition that CNW may discontinue service but may not abandon the line until after Soo Line Railroad Company (Soo) obtains approval or an exemption to discontinue its trackage rights; and the condition that CNW must inform any party that has requested a trails use or public use condition, in response to our action here, when Soo's trackage rights are discontinued.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 6, 1990, petitions to stay must be filed by July 11, 1990, and petitions for reconsideration must be filed by July 23, 1990. Requests for a public use condition must be filed by July 6, 1990.

ADDRESSES: Send pleadings, referring to Docket No. AB–1 (Sub-No. 231X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and
(2) Petitioner's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.)]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: June 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14740 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub No. 5) (90-3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the third quarter 1990 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.098. The third quarter RCAF (Adjusted) is 1.043, a decrease of 1.0 percent from the second quarter RCAF (Adjusted) of 1.054. Maximum third quarter 1990 RCAF rate levels may not exceed 99.0 percent of maximum second quarter 1990 RCAF rate levels.

EFFECTIVE DATE: July 1, 1990.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275–7354 Robert C. Hasek, (202) 275–0938 (TDD for hearing impaired, (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Emmett dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14744 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290 (Sub-No.4)]

Railroad Cost Recovery Procedures; Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of adoption of productivity factor.

SUMMARY: The Commission has adopted a 1988 value for the measure of railroad productivity growth and has incorporated that value, along with previously calculated data, into a seven-year (1982-1988) averaging period. Productivity growth for 1988 is 1.050. The seven-year (1982-1988) average productivity growth is 1.044. The productivity adjustment was adopted in Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures-Productivity Adjustment* (5 I.C.C. 2d 434) (1989). That decision stated that productivity data for additional years would be added as those data became available. The seven-year average will be used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275–7354 Robert C. Hasek, (202) 275–0938 (TDD for hearing impaired, (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275–1721.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Emmett dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14745 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31678]

Southeast Kansas Railroad Co.; Lease and Trackage Rights; Missouri Pacific Company Lines in Kansas and Oklahoma

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed May 23, 1990, by the Southeast Kansas Railroad Company (Southeast Kansas) and Missouri Pacific Railroad Company (MP) for Southeast Kansas to lease 31.7 miles of MP line between South Coffeyville, OK, and Bartlesville, OK, and to acquire overhead trackage rights over a 3.4 mile MP line between Coffeyville, KS and South Coffeyville, OK. The Commission finds this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 23, 1990. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 13, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Applicants' reply is due by September 3, 1990.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31678, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives:

Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590
Attorney General of the United States, 555 4th Street, NW., Room 9104, Washington, DC 20530
A.J. Wachter (Southeast Kansas), Wilbert and Towner, P.A., 506 North Pine, P.O. Box V, Pittsburg, KS 66762, Joseph D. Anthofer (MP), Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: The Southeast Kansas Railroad Company (Southeast Kansas) and Missouri Pacific Railroad Company (MP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Southeast Kansas to lease and acquire overhead trackage rights over certain properties of the MP. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR Part 1180.[1]

The properties subject to statutory prior approval requirements consist of 31.7 miles of MP line in noncontiguous segments: (1) From MP 166 to MP 166.7 in Coffeyville, KS; and (2) from MP 171 at South Coffeyville, OK, to MP 200 near Bartlesville, OK. The connecting line over which Southeast Kansas seeks to acquire overhead trackage rights extends from MP 423.35 in Coffeyville, KS, to MP 860.6 in South Coffeyville, OK, approximately 3.4 miles.

Southeast Kansas is a Class III rail carrier operating a 104-mile rail line between MP 423.35 in Coffeyville, KS, and MP 319.48 in Nassau Jct., MO. The proposed trackge rights will enable

[1] Applicants failed to provide the financial consideration involved in the transaction, as required by our regulations at 49 CFR 1180.6(a)(2)(ii); a description of the consideration at 49 CFR 1180.6(a)(2)(iii); a description of the consideration to be paid (49 CFR 1180.6(a)(7)(i)) was also omitted. Applicants indicate that this was done, and some of the exhibits to the lease agreement were omitted, because some of the information is confidential and proprietary. Because this proposal will be evaluated under 49 U.S.C. 11344(d), the financial details of the transaction are less significant than they might otherwise be, and applicants' omission is not crucial and does not justify rejecting the application. The parties are admonished, however, that in the future all requirements of the regulations should be met, or waiver should be sought in advance. 49 CFR 1180.4(f).

Southeast Kansas to connect its existing operations with those to be performed over the leased lines, as well as allowing Southeast Kansas to connect operations over the two line segments to be leased. Southeast Kansas is wholly owned by Charles R. Webb. MP, a Class I common carrier, operates in the states of Arkansas, Louisiana, Texas, Oklahoma, Missouri, Illinois, Tennessee, Kansas, Nebraska, Colorado and Iowa.

The lines to be leased have seven active patrons. Freight consists principally of petroleum coke, metal products and chemicals. In 1989, MP handled a total of 3,136 originating or terminating carloads on the lines to be leased, and provides no passenger service over the lines.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, the shippers on the line enjoy substantial intermodal competition which will not be reduced by the transaction. The transaction, it is argued, will provide the shippers with more responsive rail service, provding more effective competition for the many motor carriers in the region. Nor, it is argued, will intramodal competiton be adversely affected, but may be enhanced. Some shippers on the lines are presently served only by MP, and others are served by MP and the Atchison, Topeka and Santa Fe Railway. MP and Southeastern Kansas do not compete for originating and terminating freight traffic on the lines, so competitive rail service will not be lost as a consequence of this transaction.

Applicants submit that Southeast Kansas' locally based operations will result in better, more efficient service to existing shippers. This service, it is argued, will allow them to capture motor carrier traffic, improving their financial viability.

Southeast Kansas plans to operate the line with its own employees under its own work rules, rates of pay and benefits. It is expected that the transaction will result in the abolition of nine MP positions, and MP intends to honor its obligations to its adversely affected employees under 49 U.S.C. 11347 and existing collective bargaining agreements. It has not negotiated any employee protective arrangements. Southeast Kansas does not believe it is obligated to enter into an implementing agreement with its employees because they will not be adversely affected, and does not believe it will be responsible for MP employees.

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class II railroad, has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on June 2, 1990.

Decided: June 19, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14748 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-83 (Sub-No. 10X)]

Maine Central Railroad Co. and Springfield Terminal Railway Co.—Abandonment and Discontinuance Exemption—Piscataquis and Penobscot Counties, ME

Maine Central Railroad Company (MC) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances* for MC to abandon and ST to discontinue service over MC's 29.32-mile line of railroad between milepost 139.66, at Dover-Foxcroft, and milepost 109.34, at Newport, in Piscataquis and Penobscot Counties, ME.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 26, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 6, 1990. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 16, 1990, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: David H. Anderson, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment and discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 29, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 18, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14742 Filed 6-25-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision of environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-107]

Ekamberam Parameswaran, M.D. Revocation of Registration

On October 17, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Ekamberam Parameswaran, M.D. (Respondent) of Martin County Medical Clinic, Route 40, P.O. Box 784, Inez, Kentucky, proposing to revoke his DEA Certificates of Registration AP2551667 and AP136369, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Parameswaran's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Louisville, Kentucky on June 27 and 28, 1989.

On February 16, 1990, Judge Bittner entered her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator revoke Respondent's registration and that any pending applications for renewal of that registration be denied. On March 12, 1990, Respondent filed exceptions to the administrative law judge's opinion. On April 12, 1990, Judge Bittner transmitted the record of these proceedings, including the Respondent's exceptions, to the Administrator. The Acting Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter.

Respondent is a physician licensed to practice in West Virginia and Kentucky. In 1980, he opened the Martin County Medical Clinic in Inez, Kentucky. At some point, Respondent opened a second clinic in Warfield, Kentucky.

The administrative law judge found that in 1985, the West Virginia State Police conducted an investigation of Respondent's prescribing practices as a result of information they received while investigating allegations of illicit drug sales by members of a family in Kermit, West Virginia. Specifically, the police were advised that members of one family obtained Percodan, a Schedule II narcotic analgesic controlled substance, from welfare recipients who had been prescribed the drug by Respondent and another physician. As a result, a West Virginia State Trooper, while acting in an undercover capacity, went to Respondent's office on November 22, 1985. The office visit was recorded and a copy of the transcript was admitted as evidence at the hearing. The trooper told Respondent that he had headaches for about two years, off and on, and that he took Percodan a few times. The officer did not indicate that he suffered severe pain, nor did Respondent conduct any kind of physical examination. Respondent asked a few questions and then issued two prescriptions, one for thirty dosage units of Tylenol No. 4; a Schedule III controlled substance, and one for twenty dosage units of Percodan.

The administrative law judge further found that an Investigator with the Kentucky Cabinet for Human Resources, Drug Control Branch, conducted an investigation of Respondent in 1984. On November 29, 1984, an audit of selected controlled substances was conducted at Respondent's office located in Inez, Kentucky. The controlled substances selected were probably the most highly abused drugs in that area of the Commonwealth of Kentucky. The audit period extended from January 1, 1983 through November 29, 1984. The audit revealed unexplained shortages of 7,623 dosage units of Phentermine 30 mg.; 1,365 dosage units of Duradyne DHC; 55 ounces of Tussionex Suspension; and 20.5 times 20 ml. of meperidine injectable (generic form of Demerol injectable) 100 mg. per milliliter. The audit also showed overages of 977 dosage units of chloral hydrate 500 mg.; 6,010 dosage units of acetaminophen with codeine No. 3; 1,650 dosage units of Ativan 1 mg.; 3,171 dosage units of acetaminophen with codeine No. 4; 3,318 dosage units of Valium 5 mg.; 551 dosage units of Phendimetrazine 35 mg.; and 341 dosage units of Valium 10 mg. Since Respondent failed to take an opening inventory, as required by 21 CFR 1304.12, an initial inventory figure of zero was used. A "zero balance" initial inventory assumes that none of the audited substances were in stock at the beginning of the audit period. Therefore, the controlled substance shortages could actually have been greater and the overages could have been less. Another audit was conducted at Respondent's Inez office for the period between November 29, 1984 and May 6, 1988, which revealed minor shortages and overages.

A third audit was conducted at Respondent's Inez office for the period

between May 7, 1986 through September 16, 1987. The audit revealed the following unexplained shortages of controlled substances: 2,138 dosage units of Tylenol No. 4; 1,257 dosage units of Tylenol No. 3; 1,562 dosage units of Phentermine; and 251 dosage units of Talwin Nx. The audit also revealed unexplained overages of 910 dosage units of Didrex 50 mg.; 2,602 dosage units of Valium 5 mg.; and 1,749 dosage units of Valium 10 mg. Revised audit figures were prepared following verification with Respondent's suppliers which revealed additional purchases. The revised audit figures for the five products were as follows: Didrex, shortage of 4,084; Tylenol No. 4, shortage of 7,138; Valium 10 mg. shortage of 1,251; and phentermine, shortage of 2,562. Verification by Respondent's suppliers also disclosed overages of 149 Talwin Nx and 902 Valium 5 mg.

The investigator also conducted an audit of controlled substances at Respondent's office located in Warfield, Kentucky. The audit period extended from May 8, 1986 through September 16, 1987. Using only Respondent's records, the audit results revealed unexplained shortages of controlled substances, including Didrex, Valium 5 mg. and 10 mg., and Phentermine. The audit also showed overages for Tylenol No. 3 and No. 4. However, revised audit figures were prepared following verification with Respondent's suppliers of controlled substances which revealed additional purchases. The revised audit figures revealed the following shortages: 9,072 dosage units of Didrex 50 mg.; 1,675 dosage units of Tylenol No. 3; 3,781 dosage units of Tylenol No. 4; 6,599 dosage units of Valium 5 mg.; 6,753 dosage units of Valium 10 mg.; 3,660 dosage units of Phentermine; and 336 dosage units of Talwin Nx. The unexplained shortages and overages from each audit show, at the very least, that Respondent failed to adequately maintain the records required by law to be kept completely and accurately.

The administrative law judge further noted that during the audits, the investigators found numerous drugs, both controlled and noncontrolled substances, which did not bear expiration dates or were not properly labelled. One bottle that had a manufacturer's label for one drug would contain another drug, with only the name of the drug, and no other information such as strength or expiration date, written on the bottle.

Additionally, at the request of the Kentucky Medical Board, a physician reviewed Respondent's medical charts for approximately 88 patients. The physician concluded that Respondent's prescribing practices were "excessive and inappropriate" in that Respondent prescribed inappropriate combinations of drugs, and prescribed controlled substances for an excessive period of time to certain patients. A review of Respondent's patient charts revealed that Respondent often prescribed Percodan, Tylenol No. 4, and Valium simultaneously. The physician testified that prescribing Percodan with Tylenol No. 4 is "inappropriate and excessive, and coupled with Valium certainly raise[s] the specter of abuse." Concerning specific patients, the physician noted that Respondent inappropriately prescribed Fastin, a brand name for Phentermine, which is used for weight control, for a patient diagnosed as suffering from both anxiety and angina, and for that same patient Respondent inappropriately prescribed combinations of Percodan with Tylenol No. 4 and Valium with Soma. In addition to the physician's testimony regarding specific patients and inappropriate treatment, he also provided a written analysis of the 88 charts that he reviewed. The charts revealed that almost 70 of the 88 patients reviewed were diagnosed as having "arthritis," and that for approximately 49 of these patients Respondent prescribed both Percodan and Tylenol No. 4. Most of these patients also received at least one other controlled substance from Respondent regularly. Further, at least 11 other patients also received Percodan and Tylenol No. 4 simultaneously. In his review of these patients' records, the physician characterized Respondent's prescribing practices as "excessive," and in some instances as "prolonged" and/or "inappropriate." The physician testified that he was aware of no medical condition which would justify the quantities of the controlled substances prescribed or the frequency with which Respondent issued the prescriptions.

As a result of the foregoing, the Kentucky Medical Board filed a complaint against Respondent on October 15, 1987, charging that while acting alone or in complicity with Dr. Channugram, Respondent inappropriately prescribed, dispensed or administered controlled substances to 85 patients; that he prescribed, dispensed, or administered controlled substances to another patient without a physical examination and with the knowledge that the drugs were likely to be used for other than a medical purpose; provided controlled substances to the undercover trooper for other than a medical purpose; and that controlled substances were maintained in improper containers, mislabelled, and outdated. On October 22, 1987, the Medical Board issued an Order of Temporary Restriction suspending Respondent's controlled substance handling authority. A hearing was scheduled for April 11, 1988. Prior to that date, Respondent and the Medical Board entered into a proposed agreement. However, the Medical Board on April 20, 1988, voted to defer action pending the hearing in the instant proceeding. On May 15, 1990, the Jefferson Circuit Court ordered that the Complaint and Order of Temporary Restriction be dismissed unless the Medical Board either accepted the proposed agreement or held an immediate evidentiary hearing. As a result, the Medical Board lifted the restriction.

On February 28, 1988, in Martin County, Kentucky, Respondent was indicted for trafficking in a controlled substance by dispensing and/or prescribing Percodan, Didrex, Tylenol No. 3 and No. 4, Valium and Phentermine without good medical reason. On November 9, 1988, Respondent entered into a plea agreement in which he pled guilty to one count of possession of Elexer Phenergan with Codeine, a prescribed drug not in its proper container, a misdemeanor. The Court sentenced Respondent to ninety days in the county jail, said sentence probated for the period of one year, subject to Respondent's complete performance of the conditions contained in the plea agreement. As part of the plea agreement, Respondent agreed that he will not practice medicine, nor reside, within a one hundred mile radius of Inez, Kentucky for a specified period.

At the DEA administrative hearing, Respondent testified on his own behalf and claimed that he never prescribed or dispensed any medication for other than legitimate medical purposes and that he did not think he had been negligent in his handling of controlled substances. Several patients also testified on Respondent's behalf. However, none of these witnesses were in a position to make an adequate assessment of Respondent's ability to properly handle controlled substances.

With respect to the shortages and overages of controlled substances, Respondent proffered no credible evidence to refute the audits results. He merely asserted that an employee was responsible for ordering and maintaining controlled substances and further that there was a burglary at the Warfield office on September 9, 1987. However, for the reasons stated in the administrative law judge's opinion, the Acting Administrator finds Respondent's assertions to be without merit. The administrative law judge concluded that Respondent's experience in dispensing, prescribing and administering controlled substances and his failure to account for substantial shortages of controlled substances indicate that Respondent's registration is inconsistent with the public interest. The Judge recommended that Respondent's DEA registration be revoked. The Acting Administrator adopts the opinion and recommended ruling of the administrative law judge.

In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The Acting Administrator is not required to make findings with respect to all of the factors enumerated above. The Acting Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances in each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); *Paul Stepak, M.D.*, 51 FR 17556 (1986); *Henry J. Schwartz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989).

In this case, the second, fourth and fifth factors are applicable in considering whether Respondent's registration is inconsistent with the public interest. With respect to these factors, the administrative record is replete with examples of Respondent's violations relating to controlled substances. Respondent failed to take an opening inventory of controlled substances in violation of 21 CFR 1304.12. Respondent failed to maintain complete and accurate records of all controlled substances received, distributed or otherwise disposed of, as required by 21 U.S.C. 827(a)(3) and 21 CFR 1304.21(a). Further, the results of three separate audits show that Respondent could not account for significant quantities of controlled substances. The combined results from the two audits conducted in September 1987, revealed shortages of approximately 48,000 dosage units of various controlled substances, including Didrex, Tylenol No. 3, Tylenol No. 4, Valium and Phentermine. Additionally, the evidence shows that Respondent failed to prescribe controlled substances in a careful and prudent manner. At best, his prescribing practices could be characterized as excessive and inappropriate. At worst, he was responsible for diverting thousands of dosage units of controlled substances from legitimate medical use into the hands of scores of drug abusers. His terrible prescribing practices, coupled with the huge shortages and recordkeeping violations, demonstrate a total lack of regard both for the Federal controlled substance laws and regulations and for the health and welfare of Respondent's patients. The Acting Administrator finds that Respondent's continued registration would be contrary to the public interest and would pose a continuing threat to the health and safety of his community. Thus, his DEA registration must be revoked.

In his exceptions to the administrative law judge's opinion and recommended ruling, Respondent admits that he has had a serious accountability problem with controlled substances as reflected in the 1987 audit results, but argues that this should not serve as a basis for complete revocation of his DEA registration. Respondent also argues that a determination should be made that the medication he prescribed "was as a result of poor prescription practices not in keeping with good medical practices but nevertheless in accordance with good intentions." Therefore, his DEA registration should be restricted, not revoked. The Acting Administrator is not persuaded by any of Respondent's arguments. His exceptions are totally without merit and do not provide justification for the retention of Respondent's DEA registration in any schedule or under any conditions.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates and Registration AP7136360 and AP2551667, previously issued to Ekambaram Parameswaran, M.D. be, and hereby are, revoked. The Acting Administrator further orders that any pending applications for renewal of said registrations be, and they hereby are, denied.

This order is effective July 26, 1990.

Dated: June 19, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90-14737 Filed 6-25-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Material Safety Data Sheet Comprehension, Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR 1320 (53 FR 16618, May 10, 1988)), is submitting a request for approval to the Office of Management and Budget for a survey to support the assessment of worker's comprehensibility of Material Safety Data Sheets (MSDSs), under a Senate request that OSHA evaluate its Hazard Communication rule. This will be a one time only survey.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by July 26, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N-1301, Washington, DC 20210 ((202) 523-6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on the informaton collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 0.30 hours.

Frequency of Response: (one time only).

Number of Respondents: 327.

Annual Burden Hours: (one time only).

Affected Public: 327.

Respondents Obligation to Reply: Voluntary.

Signed at Washington, DC, this 21st day of June 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-14783 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-28-M

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics.

Consumer Expenditure Data Users Survey.

One-time survey.

Individuals or households.

2606 responses; 198 hours; 17 minutes per respondent.

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS-8600	Individuals	700	One-time	11 minutes.
BLS-8601	Individuals	600	One-time	1 minute.
BLS-8602	Individuals	575	One-time	2 minutes.
BLS-8603	Individuals	350	One-time	7 minutes.

198 total hours.

The purpose of the Consumer Expenditure Data Users Survey is to evaluate the Consumer Expenditure Survey (CE) publications, public use tapes and diskettes. The survey results will provide systematic knowledge of analysts' needs and experiences with the CE data. This information is expected to help BLS meet the needs of CE users when preparing CE products.

Signed at Washington, DC, this 21st day of June 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-14784 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-24,012]

Dismissal of Application for Reconsideration; Ampex Corp.; Colorado Springs, CO

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Ampex Corporation, Colorado Springs, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,012; Ampex Corporation, Colorado Springs, Colorado (June 19, 1990).

Signed at Washington, DC, this 20th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-14785 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Clarksburg, WV (Workers)	Clarsburg, WV	6/18/90	5/05/90	24,517	Switching Systems.
AT&T Watertown Ser. Center (CWA)	Watertown,MA	6/18/90	6/07/90	24,518	Telecommunication Equip.
Atlantic Pajama Co. (Workers)	New York, NY	6/18/90	6/05/90	24,519	Coats.
Boston Gear (USAU)	N. Quincy, MA	6/18/90	5/30/90	24,520	Gears.
Cone Mills Corp. (Workers)	Greenville, SC	6/18/90	5/05/90	24,521	Fabric.
Conifer Pacific Plywood (Workers)	Willmina, OR	6/18/90	6/01/90	24,522	Plywood.
Extel Corp. (Workers)	Northbrook, IL	6/18/90	6/05/90	24,523	Telecommunication Equip.
General Electric (Workers)	Morristown, TN	6/18/90	6/06/90	24,524	Fuse Boxes.
Hilltop Clothing, Inc. (ACTWU)	Brownsville, PA	6/18/90	5/22/90	24,525	Mens' Sportswear.
Jos. Markwitz & Son (IUE)	Totowa, NJ	6/18/90	6/05/90	24,526	Artificial Flowers.
Loren Cook, Co. (SMWIA)	Berea, OH	6/18/90	6/05/90	24,527	Exhaust Fans.
Louisiana Operators, Inc. (Workers)	Lafayette, LA	6/18/90	5/18/90	24,528	Oil & Gas.
Magnetek Universal Electric (Company)	Owosso, MI	6/18/90	5/29/90	24,529	Electric Motors.
Michele Bags, Inc. (Workers)	New York, NY	6/18/90	6/06/90	24,530	Ladies' Handbags.
OMC-Milwaukee (USW)	Milwaukee, WI	6/18/90	6/06/90	24,531	Lawn Care Equip.
Pat Fashions, Inc. (ILGWU)	New York City, NY	6/18/90	6/06/90	24,532	Ladies' Sportswear.
Pennsylvania Optical (POWA)	Reading, PA	6/18/90	6/05/90	24,533	Reading Glasses.
Prophecy Corp. (Company)	Carrollton, TX	6/18/90	6/05/90	24,534	Ladies' Sportswear.
Superwear Mfg. Co., Inc. (IBT)	Newark, NJ	6/18/90	6/08/90	24,535	Bedding Items.
Syroco, Inc. (Workers)	Syracuse, NY	6/18/90	5/18/90	24,536	Furniture & Accessories.
Tipperary Corp. (Company)	Denver, CO	6/18/90	6/05/90	24,537	Oil & Gas.
Todd Shipyard Corp. (Workers)	Galveston, TX	6/18/90	6/06/90	24,538	Shipbuilding.
Yale Material Handling Corp. (USWA)	Flemington, NJ	6/18/90	5/31/90	24,539	Fork Lifts & Parts.

[FR Doc. 90-14786 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20-703 et al.]

Revised Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Health Tex Inc.

In the matter of

TA-W-20,703 Diamond Hill Plant, Cumberland, RI
TA-W-21, 519 Warehouse & Distribution Ctr., Cranston, RI
TA-W-23, 646 88 Martin Street, Cumberland, RI
TA-W-24, 094 Warehouse & Distribution Ctr., Cumberland, RI

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued Certifications Regarding Eligibility to Apply for Worker Adjustment Assistance on June 29, 1988 for workers at the Diamond Hill plant in Cumberland, Rhode Island (TA-W-20, 703); January 24, 1989 for workers at the Warehouse & Distribution Center in Cranston, Rhode Island (TA-W-21, 519); February 16, 1990 for workers at 88 Martin Street, Cumberland, Rhode Island (23, 646); and on May 4, 1990 for workers of Cumberland Warehouse and Distribution Center, 147 Martin Street, Cumberland, Rhode Island (TA-W-24).

Certifications for workers at the Diamond Hill Plant in Cumberland, Rhode Island, (TA-W-20, 703); the Warehouse and Distribution Center in Cranston, Rhode Island, (TA-W-21, 519); the 88 Martin Street facility in Cumberland, Rhode Island (TA-W-23, 646) and the Warehouse and Distribution Center in Cumberland, Rhode Island (TA-W-24, 094) were published in the Federal Register on July 12, 1988 (53 FR 26329); March 28, 1989 (54 FR 12871) March 8, 1990 (55 FR 8616) and May 30, 1990 (55 FR 21955), respectively.

On the basis of additional information that some workers were employed by more than one of the certified plants in the 52 weeks prior to their layoff, the Office of Trade Adjustment Assistance, on its own motion, revised the certifications to put the following plants under a single certification. This permits workers to use their combined time in adversely affected employment for establishing eligibility for trade readjustment allowance (TRA) payments.

The separate certifications applicable to Health-Tex workers at the Diamond Hill Plant in Cumberland, Rhode Island; the Cranston Warehouse and Distribution Center, Cranston, Rhode Island; the 88 Martin Street Facility, Cumberland, Rhode Island; and the Cumberland Warehouse and Distribution Center, 147 Martin Street, Cumberland, Rhode Island are hereby revised as follows:

All workers at the following facilities of Health-Tex, Inc., who became totally or partially separated from employment on or after the indicated impact dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA-W-	Plant	Impact date
20,703	Diamond Hill Plant, Cumberland, R.I.	May 16, 1987.
21,519	Wholesale & Distr Ctr. Cranston, R.I.	Oct. 17, 1987.

TA-W-	Plant	Impact date
23,648	86 Martin St. Facility, Cumberland, R.I.	Nov. 14, 1988.
24, 094	147 Martin St. Facility, Cumberland R.I.	Feb. 15, 1989.

The expiration and termination dates in the original certifications remain unchanged.

Signed at Washington, DC, this 15th day of June 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-14787 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,262; M.V.D. T/A Olympic Jr., Newark, NJ

TA-W-24,280; Baytech, Inc., Midland, TX

TA-W-24,263; Mercury Stainless, Inc., Massillon, OH

TA-W-24,249; Firestone Industrial Products Co., Noblesville, IN

TA-W-24,261; Ligia Fashions, Inc., Newark NJ

TA-W-24,231; Aloha Shake, Pacific Beach, WA

TA-W-24,184; James River-Mass Mill #3, 701 Westminster St., Fitchburg, MA

TA-W-24,282; Bralco Foundry, Inc., Seattle, WA

TA-W-24,276; The Young American Clothing Co., Newark, NJ

TA-W-24,110; Unitrode Corp., Westbrook, ME

TA-W-24,328; B & V Coats, Inc., Newark, NJ

TA-W-24,223; Trangle Circuits of Connecticut, Danbury, CT

TA-W-24,178; Diebold, Inc., Canton, OH

TA-W-24,169; W.S. Libbey Co., Lewiston, ME

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,272; TRW, Inc., Knoxville, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,303; Union Drilling (A Div of Equitable Resources Exploration Co.) Centerville, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,311; Caltex Petroleum Corp., Irving, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,308; Burlington Industries, Inc., Dublin Terminal, Dublin, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,279; Arrow Elastic Corp., Springfield, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,281; Bourns, Inc., Ames, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,298; Oster-Sunbeam Co., McMinnville, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,147; Electro-Wire Products of Texas, Owosso, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,287; Demco, Oklahoma City, OK

U.S. imports of machinery negligible.

TA-W-24,321; PBI Machine & Welding, Inc., Sweetwater, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,370; Dave Holcomb Logging, McCleary, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,275; Unisys Corp., Electronic & Information System Group of The Defense Systems Operations, St. Paul, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,248; Fairfield Textiles, Inc., Fairfield, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,270; Spectrum Polytronics, Inc., Tucson, AZ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,314; Greenville Manufacturing, Greenville, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,268; Racal Data Communications, Inc., Racal-Milgo Div., Sunrise, FL

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally to partially separated as required for certification.

TA-W-24,242; Compuscan, Inc., Bloomfield, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,158; Murata Weidemann, King of Prussia, PA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24,294; Chevron, Inc., Grants, NM

U.S. imports of uranium declined absolutely in the first half of 1989 compared to the same period of 1988.

TA-W-24,304; Westinghouse Electric Corp., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,276; Applied Resource Management, Hoquiam, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,339; Fashionland, Inc., Jersey City, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,340; Fashionland Production, LTD, Jersey City, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,296; L.C.I Industries, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 29, 1989.

TA-W-24,218; The Proctor & Gamble Co., (The Proctor & Gamble Paper Products Co), Cheboygan, MI

A certification was issued covering all workers engaged in employment related to the production of Always product line separated on or after January 1, 1990.

TA-W-24,283; Garland Corp., Bristol Knitting Div., Fall River, MA

A certification was issued covering all workers separated on or after April 4, 1989.

TA-W-24,290; Garland Corp., Brockton MA

A certification was issued covering all workers separated on or after April 4, 1989.

TA-W-24,291; Garland Corp., Garland Distribution Center, Fall River, MA

A certification was issued covering all worker separation on or after April 4, 1989.

TA-W-24,301; TDC Supply, Inc., San Angelo, TX

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,302; Tucker Drilling Co., Inc., San Angelo, TX

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,272; Teal Cedar Products, Burlington, WA

A certification was issued covering all workers separated on or after March 23, 1989.

TA-W-24,215; North Hoquiam Cedar Products, Hoquiam, WA

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-24,260; The Lee Apparel Co., Inc., Jasper, GA

A certification was issued covering all workers separated on or after March 20, 1989.

TA-W-24,253; Goodall Rubber Co., Trenton, NJ

A certification was issued covering all workers separated on or after March 28, 1989.

TA-W-24,341; Ferro Corp., Huron, OH

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,257; John Roberts, Bidderford, ME

A certification was issued covering all workers separated on or after March 30, 1989

TA-W-24,228; Westend Cedar, Clallam Bay, WA

A certification was issued covering all workers separated on or after March 9, 1989.

TA-W-24,232; Amity Casuals/ Embroidery Management, Inc./ S.M.C. Corp., Belleville, NJ

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,227; WI Forest Products, Peshastin, WA

A certification was issued covering all workers separated on or after March 14, 1989.

TA-W-24,289; Lee Apparel Corp., Guntersville, AL

A certification was issued covering all workers separated on or after March 29, 1989.

TA-W-24,258; Kellwood Co., Altus, OK

A certification was issued covering all workers separated on or after April 9, 1989.

TA-W-24,280; Garrett Automobile, Los Angeles, CA

A certification was issued covering all workers separated on or after March 19, 1989.

TA-W-24,277; AVX Tantalum Corp., Biddeford, ME

A certification was issued covering all workers separated on or after April 2, 1989.

TA-W-24,111; Winters Industries, Canton, OH

A certification was issued covering all workers separated on or after February 21, 1989.

TA-W-24,112; Winters Industries, Alliance, OH

A certification was issued covering all workers separated on or after February 21, 1989.

TA-W-24,240; City Design, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 28, 1989.

TA-W-24,140; Any-Sew, Inc., Hialeah, FL

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,299; Franetta Manufacturing Co., Inc., West New York, NJ

A certification was issued covering all workers separated on or after March 29, 1989 and before December 31, 1989.

TA-W-24,154; Harve Benard, Secaucus, NJ

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-24,319; Northern Geophysical of America, Englewood, CO

A certification was issued covering all workers separated on or after March 22, 1989.

TA-W-24,316; Hercules, Inc., Radford Army, Ammunition Plant, Radford, VA

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-24,310; Calmor, Inc., Adairsville, GA

A certification was issued covering all workers separated on or after April 12, 1989.

TA-W-24,312; Chicopee Undergarment Co., Chicopee, MA

A certification was issued covering all workers separated on or after April 10, 1989.

TA-W-24,307; Arrow Cedar Co., Concrete, WA

A certification was issued covering all workers separated on or after April 9, 1989.

TA-W-24,318; North Star Directional Drilling Co., Lafayette, LA

A certification was issued covering all workers separated on or after June 1, 1989.

TA-W-24,265; Climax Molybdenum Co., Tungsten Plant, Fort Madison, IA

A certification was issued covering all workers separated on or after April 3, 1989.

TA-W-24,320; O & K Trojan, Inc., Batavia, NY

A certification was issued covering all workers separated on or after April 12, 1989.

TA-W-24,293; High Q Manufacturing Co., Atlanta, MI

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-24,298; Lennon Wallpaper, Shorewood, IL

A certification was issued covering all workers separated on or after March 31, 1989 and before January 1, 1990.

TA-W-24,246; Dunn & McCarthy, Inc., Auburn, NY

A certification was issued covering all workers separated on or after March 30, 1989.

TA-W-24,247; Eltsac Apparel, Inc., Long Branch, NJ

A certification was issued covering all workers separated on or after March 27, 1989.

I hereby certify that the aforementioned determinations were issued during the month of June 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 19, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-14788 Filed 6-25-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the National Commission On AIDS.

DATE AND TIME:

July 17, 1990; 9 a.m.–5 p.m.
July 18, 1990; 9 a.m.–5 p.m.
July 19, 1990; 9 a.m.–5 p.m.

PLACE:

July 17, 1990; Potowmack Landing, George Washington Memorial Parkway at Washington Sailing Marina, Alexandria, VA 22314.
July 18–19, 1990; Interstate Commerce Commission, Hearing room B, 12th and Constitution Avenue, NW., Washington, DC 20423.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On July 17th the Commission will meet to discuss the plans for fiscal year 1991. On July 18th and 19th the Commission will hold a hearing on the issues of personnel and the workforce in the HIV epidemic. A variety of public witnesses will address recruitment, retention, education, and training of health care providers and volunteers.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-14666 Filed 6-25-90; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1990, from 9 a.m.–5:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: June 19, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-14687 Filed 6-25-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp.; and Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 140 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment is effective as of the date of issuance.

The amendment revises Technical Specification 3.3.F.2. Specifically, the change would include limitations on operation with an idle recirculation loop which is isolated. A revision to section 3.3 and 3.10 bases would also be needed to reflect this change.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on April 10, 1990 (55 FR 13341). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 19, 1990, (2) Amendment No. 140 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 18th day of June 1990.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14734 Filed 6-25-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28131; File No. SR-AMEX-90-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Deutscher Aktienindex (DAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing, under section 106 of the Amex Company Guide, to list index warranties based on the Deutscher Aktienindex ("DAX"), a capitalization-weighted index of 30 German stocks trading on the Frankfurt Stock Exchange ("FSE").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In October 1988, the Commission approved amendments to section 106 (Currency and Index Warrants) of the Amex Company Guide and other Amex rules to permit the listing of index warrants based on established market indices, both foreign and domestic.[1]

In approving the aforementioned amendments, the Commission expressed concern over the impact of additional index products on U.S. markets, and stated that the Amex would be required to submit for Commission approval any specific index warrants that it proposed to trade. Consistent with the Index Approval Order, the Amex is now proposing to list index warrants based on the DAX Index, an internationally recognized, capitalization-weighted index consisting of 30 leading stocks listed and traded on the FSE. The DAX Index is calculated by the FSE and is updated on a continuous basis. The stocks included on the DAX are among the largest German corporations, whose shares are among the most actively traded German issues.

The Amex represents that such warrant issues will conform to the listing guidelines under section 106 of the Amex Company Guide, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

DAX index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the DAX Index has declined below a pre-stated cash settlement value. Conversely, the holder of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the DAX Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule 411, Commentary .02 renders the options suitability standard in Exchange Rule 923 applicable to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. Exchange Rule 421, Commentary .02 required a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the DAX Index.

[1] See Securities Exchange Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) ("Index Warrant Approval Order").

In the Index Warrant Approval Order, the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the Amex is actively engaged in discussions with representatives of the FSE to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Recieved from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14757 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28132; File No. SR-CBOE-90-13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading in Certain Unit Investment Trusts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain Exchange rules to permit the trading of unit investment trusts and interests in or relating to any such trust. The text of the proposed rule change is available at the Office of the Chairman of CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE previously has filed rules with the Commission that would authorize the trading on the Exchange of stocks, warrants (including currency and index warrants), and other securities instruments and contracts, on either a listed or an unlisted basis.[1] Those rules, which are presently pending before the Commission, would add a new chapter XXX to the rules of the Exchange and generally would supplement the CBOE's existing rules in chapters I through XIX with respect to stock, warrants and other securities. This rule filing amends the proposed rules set forth in File No. SR-CBOE-90-06 in certain minor respects, as described below.

The current proposal also expands the scope of proposed Chapter XXX specifically by authorizing the trading on the CBOE of "UIT interests," to be defined in proposed paragraph (pp) of Exchange Rule 1.1 to mean any share, unit, or other interest in or relating to a unit investment trust, including any component resulting from the subdivision or separation of such an interest. The current proposal adds Interpretation and Policies .01 to Exchange Rule 1.1 to make it clear that interests in unit investment trusts sponsored by SuperShare Services Corporation, known as SuperShares and SuperUnits are "UIT interests" within the meaning of the Rules of the Exchange.[2]

The current proposal is essentially a refinement of the proposed rules set forth in File No. SR-CBOE-90-06. Specifically, the current proposal would amend Exchange Rule 6.3 to authorize Floor Officials, determining whether to halt trading in an index UIT interest, to consider whether trading in index options has been halted pursuant to the provisions of Exchange Rule 24.7, which is the same standard that, under SR-CBOE-90-06 would apply to index warrants. Similarly, the current proposal amends proposed Interpretation and Policies .01 to Exchange Rule 6.3A[3] to specify that, in the event of a halt in the trading of all stock on the New York Stock Exchange, trading is to be halted in index UIT interests in a manner similar to any halt in the trading of index options.

Exchange Rule 8.5, relating to the Letters of Guarantee that must be obtained by each Market-Maker trading on the floor of the Exchange, is amended by the current proposal to permit a Market-Maker to obtain separate Letters of Guarantee for the securities traded subject to the rules in proposed Chapter XXX.

Exchange Rule 8.8 generally prohibits a member from acting in both a principal and agency capacity on the same business day with respect to any of the securities traded at a given station on the floor of the Exchange. Under SR-CBOE-90-06, the CBOE has proposed to amend Exchange Rule 8.8 to make that restriction applicable to any of the securities traded subject to the rules in proposed chapter XXX, as well as any security that is related to such a security. The current proposal amends proposed Interpretation and Policies .02 to Exchange Rule 8.8 to add index UIT interests to the previously proposed list of index-based securities (index options, market baskets, index participations, and index warrants) that are deemed to be related to each other where those securities are based on either the Standard & Poor's ("S&P") 100 Stock Price Index or S&P 500 Stock Price Index, so that a member could not act as a Market-Maker and as a Floor Broker in any of the foregoing securities on the same business day.

The Introduction to proposed Chapter XXX would be amended to make it clear that the proposed rules in that Chapter are applicable to the trading of UIT interests in the same manner as those rules would apply with respect to stocks and warrants (*i.e.*, the proposed rules in proposed chapter XXX are in some instances supplemented or replaced by rules in chapters I through XIX).

The current proposal amends proposed rule 30.4 [4] to specify that the hours of trading for UIT interests shall be the same as the hours of trading for index options. The current proposal also adds Interpretation and Policies .01 to proposed rule 30.10 to state that the CBOE Board of Directors has determined that the unit of trading in SuperShares shall be 100 SuperShares. Further, the current proposal amends proposed rule 30.12 to provide that the types of orders defined therein (*e.g.*, "day orders," and "at the close" orders) may be applicable to trading in UIT interests.

The current proposal amends proposed Rule 30.41, relating to Market-Maker margin requirements, to describe with greater specificity the positions in members' accounts which may be carried on a margin basis that is satisfactory to the member and the carrying broker. Among other things, the proposed amendments to proposed rule 30.41 will provide "good faith" margin treatment for positions in SuperShares and SuperUnits where a CBOE member makes a market in SuperShares.

The current proposal amends proposed Rule 30.50, relating to doing business with the public, by amending paragraph (h) relating to the supervision of customer accounts. As proposed in SR-CBOE-90-06, rule 30.50(h) would have made the supervision standards of Exchange rule 9.8 applicable to the trading of stocks and other securities. Among other things Exchange Rule 9.8 requires member organizations to appoint Senior Registered Options Principals and Compliance Registered Options Principals to perform certain of the supervisory functions contemplated by that Rule. The Exchange believes that if the provisions of Exchange Rule 9.8 were to apply to securities other than options, CBOE member organizations that currently assign responsibility for the supervision of stock and other non-options transactions to employees that are not "options-qualified" would be required to reassign personnel and realign their internal procedures before accepting customer orders for the trading on the CBOE of stock and any other securities other than options. Accordingly, the current proposal amends proposed rule 30.50(h) to specify appropriate supervisory standards for the securities traded subject to the rules in proposed chapter XXX, but which will not require the appointment of an Options Principal.

The current proposal also adds an Interpretation and Policies .03 to proposed rule 30.50 which provides that customers should be provided with an explanation of any special characteristics and risks attendant to trading UIT interests. The Exchange will circulate to its membership information describing any such characteristics and risks before trading commences in a UIT interest.

Proposed Interpretation and Policies .03 also provides that before a member organization, or an officer, partner or employee of that member organization recommends a transaction in the component securities resulting from the subdivision or separation of any UIT interest or in units that may be divided into such component securities, such member organization, officer, partner or employee should make a determination that such component securities or units are not unsuitable for the customer, and should have a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, or the recommended transaction. This differs somewhat from the standard for option transactions set forth in existing Exchange Rule 9.9. The Exchange believes, however, that recommendations relating to UIT interests can reasonably be subject to a different standard because of the differing characteristics of UIT interests and options. Thus, Interpretation and Policies .03 is intended to provide the person making the recommendation with some flexibility in the application of these requirements in view of the nature of the recommendation, the characteristics of the particular UIT interest that has been recommended, and the investment objectives, financial situation, and needs of each customer.

The current proposal adds a new rule 30.51 which establishes minimum margin requirements for customers trading in SuperShares. Under this proposed Rule, the minimum initial margin for a long customer position in SuperShares would be 50% of the current market value of any long SuperShares in a customer margin account; the minimum initial margin for any short position in SuperShares would be 50% of the current market value of the short position plus 100% of the sale proceeds. (For purposes of the proposed Rule, "current market value" is to be defined as the total cost or net proceeds of the SuperShare transaction on the day the SuperShare position was purchased or sold. At any other time, current market value will be equal to the closing price of that SuperShare position on the CBOE.) The minimum customer maintenance margin requirements would be set at (i) 25% of the current market value of all long SuperShare or 100% of current market value, whichever is greater, for each SuperShare short in

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[1] File No. SR-CBOE-90-06.

[2] The proposed Interpretation and Policy .01 further elaborates upon the definition of UIT interest by providing that there are four types of SuperShares (Appreciation SuperShares, Priority SuperShares, Protection SuperShares, and Income and Residual SuperShares) and two types of SuperUnits (Index Trust SuperUnits and Money Market Trust SuperUnits). The CBOE intends to trade SuperShares. The American Stock Exchange, Inc. has filed a proposed rule change to trade SuperUnits (See, SR-Amex-89-08).

[3] Interpretation and Policies .01 is proposed under SR-CBOE-90-13.

[4] Rules 30.4, 30.10, 30.12, 30.41, and 30.50 are proposed under SR-CBOE-90-06.

the account which has a current market value of less than $5.00, plus (iii) $5.00 per SuperShare or 30% of the current market value of $5.00 or more.

The CBOE, in SR-CBOE-90-08, has submitted for Commission approval rules which establish listing standards and procedures. The current proposal amends those proposed Rules to add provisions specifically relating to UIT interests. In particular, the current proposal amends proposed rule 31.5 to establish standards for the original listing of UIT interests. Similarly, the current proposal amends proposed rule 31.9A to establish standards for the suspension of trading in and delisting of any listed UIT.

The proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14760 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28125; File No. SR-PHILADEP-90-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Depository Trust Co., Inc. Relating to an Amendment to its Schedule of Charges for Withdrawals of Certificates by Participants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1990, the Philadelphia Depository Trust Co., Inc. ("PHILADEP" or "Depository") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends PHILADEP's schedule of charges for withdrawals of certificates by participants. PHILADEP proposes to increase its service charge for withdrawals of certificates in nominee name from $8 per withdrawal to $12.75 for such service. All other fees and charges on the schedule will remain the same.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed service change increase is to amend the Depository's Schedule of Charges respecting withdrawals of certificates in PHILADEP's nominee name. This service is the physical withdrawal of a certificate of a specific CUSIP for a specific number of shares. The withdrawal is classified as a "street withdrawal" because the securities being sent to the Depository's participant are generally registered in the Depository's nominee name, PHILADEP and Co.

The increased service charge will better cover PHILADEP's costs in providing this service. It should be noted that PHILADEP and others in the securities industry attempt to maintain to the extent possible all securities in book-entry form. Full book-entry processing allows for less expensive automated book-entry delivery and settlement services. Physical withdrawals of certificates in the Depository's nominee name require manual processing and at times cause additional work if the certificates remain in nominee name after a record date because of the need to track and process dividend claims. The manual processing and relatively small volume of transactions collectively contribute to the cost of the service.

The proposed increase of a particular charge is consistent with section 17A(b)(3)(D) of the Act in that it provides for equitable allocation of reasonable dues, fees and other charges amongst the Depository's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed increase of a particular service charge will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this particular service charge increase have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder because the proposed rule change is a change in the clearing agency's fees. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PHILADEP-90-02 and be submitted by July 17, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 15, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14761 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28130; File No. SR-PHLX-90-08]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits a proposed rule change to provide listing requirements and procedures for the trading of index warrants on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] On May 17, 1990, the PHLX amended its proposal to provide that the Exchange's options suitability and discretionary account rules would be applicable to trading in index warrants. *See* letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Options Regulation, Commission, dated May 17, 1990.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX is proposing to list index warrants, which will be direct, unsecured obligations of their issuer, registered with the Commission and subject to cash settlement in U.S. dollars during terms ranging from one to five years. The PHLX believes index warrants will provide a hedge on the composite marketplace as reflected in the index, and, accordingly, will serve as another strategic investment opportunity for investors.

Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value. Conversely, the holder of a warrant resembling a call option, would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

The PHLX intends to list both American style warrants, which can be exercised throughout their term, as well as European style warrants, which can only be exercised on their expiration date. Only established market indexes will be used as a basis for index warrants. When an index is based on securities traded primarily on a foreign exchange, the PHLX shall effect a surveillance agreement with that foreign exchange respecting information sharing concerning the trading in the underlying securities of the index prior to permitting the trading of any warrant based on that index.

Due to the unique characteristics of such index warrants, the PHLX will recommend to its members and member organizations that the special characteristics and risks attendant to trading index warrants, including any limitations on exercise, be fully explained to investors. Specifically, the PHLX recommends that the warrants be sold only to investors whose accounts have been approved for options trading. If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, such member or member organization must make a careful determination that such warrants are suitable for such customer in conformance with the PHLX's suitability

rule, Rule 1026. In addition, prior to trading in each particular index warrant, the PHLX proposes to distribute to its membership a circular describing the risks associated with trading in such index warrant.

The Exchange also proposes to amend PHLX Rule 1027 entitled "Discretionary Accounts" so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP will also be required to review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transactions, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

The PHLX believes the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commisison, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14758 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28129; File No. SR-NYSE-90-27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to New Member Application Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 30, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to establish a fee category for processing certain new member applications. The new fee would represent a reduction of costs for existing members who are seeking to become non-public floor professionals. The text of the Exchange's amended fee scheduled is as follows:

Clearing organizations	$20,000
Introducing organizations	7,500
Non-public floor professionals	2,500
Option trading right holders	2,500
Existing Members becoming Non-public floor professionals *	1,000

[Additions are italicized.]

* *Applies to individual members who are associated with a member organization and who leave that member organization to become a non-public floor professional or to become associated with a new non-public floor professional entity comprised of existing members. Also applies to new non-public floor professional entities comprised solely of existing members.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee category for processing certain new members applications, as authorized by Exchange Rule 311.[1] The imposition of fees under Rule 311 serves to offset, in part, the cost to the Exchange of processing new member applications.

The current fee for processing all applications for non-public floor professionals is $2,500. The Exchange is proposing that a $1,000 fee category be established for individual members who are currently associated with a member organization and who are leaving that member organization to become a non-public floor professional or to become associated with a new non-public floor professional entity comprised of existing members. The $1,000 fee would also apply to new non-public floor professinal entities comprised solely of existing members.

The time required of Exchange staff and the amount of paperwork entailed in reviewing and processing such applications is far less than for other new applications and, accordingly, the fee should be less. The fee would be payable upon submission of an application.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of dues, fees, and other charges among Exchange members and issuers and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-27 and should be submitted by July 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14759 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[1] NYSE Rule 311 allows the Exchange to charge "any applicable fee" to any person who proposes to form a member organization or who proposes to become a member or allied member in an organization for which application is made for approval as a member organization and any member organization which proposes to admit therein any member, allied member, or approved person.

[Rel. No. IC-17537; 811-5519]

CMC Real Estate Corp.; Application

June 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: CMC Real Estate Corporation.

RELEVANT 1940 ACT SECTIONS: Deregistration under section 8(f) and rule 8f-1.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application was filed on April 2, 1990, and an amendment thereto was filed on May 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Chicago Milwaukee Corporation, 547 West Jackson Boulevard, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a corporation under the laws of the State of Wisconsin on March 31, 1927, and its principal business was that of a common carrier by rail. In 1971, at the direction of Applicant's board of directors, Chicago Milwaukee Corporation ("CMC") was formed in connection with a diversification program in which CMC would become the parent holding company parent of Applicant. Under an exchange offer consummated in January 1972, CMC became Applicant's parent by owning approximately 98% of Applicant's outstanding equity securities. In December 1986, by virtue of a merger in which the public shareholders of Applicant were paid cash and a deferred cash consideration right, Applicant became a wholly-owned subsidiary of CMC.

2. Applicant registered on March 23, 1988, as a closed-end, non-diversified management investment company under the 1940 Act. Pursuant to an order of the SEC issued on April 9, 1990, *see* Investment Company Act Release No. 17414, however, Applicant is exempt from the requirement in section 8(b) of the 1940 Act that it file a registration statement on Form N-2 with the SEC.

3. In Feburary 1988, Applicant's board of directors adopted a plan of complete liquidation. At a meeting of the boards of directors of Applicant and CMC held on August 2, 1988, each board authorized the appropriate officers of Applicant and CMC to take such action and deliver such documents and instruments as would be necessary or appropriate for the liquidation and dissolution of Applicant under the plan of complete liquidation. Approval and authorization of the plan was obtained from CMC, Applicant's sole shareholder, pursuant to written consent.

4. On November 30, 1988, the liquidation of Applicant was completed. As of such date, all of Applicant's assets

and properties were transferred to CMC and CMC assumed all of Applicant's obligations and liabilities arising on or after November 30, 1989, to the extent of the value of the property and assets transferred. No debts or liabilities of Applicant remain outstanding. On December 11, 1989, Applicant's Articles of Dissolution were filed by the Wisconsin Secretary of State and on that date Applicant ceased to exist as a legal entity.

5. The following liabilities were assumed by CMC in connection with Applicant's liquidation:

a. Iowa Interstate Railroad ("Iowa Interstate") filed a claim on September 12, 1985 in the Reorganization Court against Applicant in the amount of approximately $8.6 million. Applicant has been disputing the claim on its merits. On September 10, 1986, the Reorganization Court dismissed Iowa Interstate's claim against Applicant relating to malicious prosecution, antitrust and RICO and a portion of the maintenance claim, reducing the remaining damages claimed by Iowa Interstate to approximately $3.2 million. The total amount of the remaining damages claimed by Iowa Interstate is not more than $2.5 million. CMC anticipates that a trial date will be set.

b. The State of Minnesota filed a claim on November 30, 1979 in the Reorganization Court against Applicant, which claim was subsequently amended, demanding approximately $6.0 million, plus interest and penalties of over $7.0 million, relating to various state taxes allegedly due Minnesota for periods from 1974 through 1980. CMC is disputing Minnesota's claims on their merits. A trial date has been set for July, 1990. In 1976, Applicant filed an action which is pending in the Minnesota state courts demanding a refund of $16.2 million, plus interest, in gross earnings taxes on the grounds that the gross earnings tax statute was constitutionally infirm. CMC anticipates that a trial date will be set.

c. In 1985, the Idaho State Tax Commission assessed an income tax deficiency against Applicant's wholly owned subsidiary, Milwaukee Land Corporation, as a result of a dispute of the Idaho income tax allocation formula. The amount assessed was $3.0 million, plus interest, for the years 1980 and 1981. The parties have reached an agreement settling these claims in the amount of approximately $660,000.

d. The Railway Labor Executives' Association ("RLEA"), which represents most of Applicant's labor organizations, and certain employees of Applicant, filed claims with the Reorganization Court for interest on payments arising out of the wage reduction agreement entered into between the court appointed trustee of Applicant and various employees. On September 7, 1988, the Reorganization Court ordered payment of interest at the rates specified in the Reorganization Plan on reduced wage amounts from February 19, 1985 to the date of payment. CMC filed an appeal of this decision and the Seventh Circuit Court reversed it. The RLEA filed a request for rehearing with the Seventh Circuit Court but was denied.

6. The following is a summary of known environmental problems in which government agency notice has been received or given:

a. Wheeler Pit, located near Janesville, Wisconsin, was used by Applicant as a source of gravel in the early part of the century. Applicant and General Motors Corporation have entered into a consent decree with the United States Environmental Protection Agency to perform an investigation of the site. CMC's contribution to the cost of investigation is limited to $87,500. It is not clear at this time what, if any, remedial action will be undertaken at the site. Nor is it clear what portion of responsibility for any remedial action will be borne by CMC as opposed to other parties.

b. Applicant has been notified that it is a potentially responsible party for a cleanup under superfund legislation of a land fill in Muskego, Wisconsin. Applicant has no record that it disposed of any hazardous or toxic substances at this land fill and has so informed the United States Environmental Protection Agency. Applicant has been named as one of over fifty third-party defendants in an action by the federal government to recover cleanup costs of a polluted scrap yard in Minneapolis, Minnesota. According to the complaint, the costs of cleanup have been $1.3 million to date. CMC has not been served in this matter. CMC believes that another party may be responsible for part or all of this liability under that party's agreement with CMC relating to that party's 1985 purchase of Applicant's railroad operating properties and that the orders of the Reorganization Court may bar any action against CMC in this matter.

7. On November 30, 1989, Applicant had 2,092,727 shares of common stock, par value $1.00 per share outstanding. Of the outstanding shares, 2,092,720 were owned by CMC and one share was owned by each of Applicant's seven directors. There are presently no outstanding shares of Applicant' stock. Prior to the liquidation and dissolution of Applicant, except for directors' qualifying shares, CMC was Applicant's sole shareholder.

8. Applicant incurred legal expenses with respect to the liquidation and incurred tax and accounting expenses with respect to Applicant's business withdrawal from various states. These expenses were allocated to Applicant. The Applicant also incurred tax expenses with respect to federal income tax returns and ralted matters and these expenses were shared by the Applicant and CMC.

9. As Applicant has ceased doing business, its corporate existence has terminated and all debts, liabilities and obligations have been provided for, Applicant submits that it would be appropriate for an order to be issued declaring that Applicant has ceased to be an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14762 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17536; 811-4689]

Hidden Strength Funds; Application for Deregistration

June 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hidden Strength Funds ("Fund").

RELEVANT 1940 ACT SECTION: Section 8(f) and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The Application was filed on October 10, 1989 and amended on April 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may rquest a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, One Harmon Meadow Boulevard, Secaucus, New Jersey 07094.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511 or Max Berueffy, Branch Chief, (202) 272-3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a business trust under Massachusetts law on June 6, 1986. On June 9, 1986, Applicant filed a Notification of Registration on Form N-8A and a registration statement under the Securities Act of 1933 on Form N-1A. On August 18, 1989, the date of the asset sale described below, Applicant had issued and outstanding shares of six portfolios: the Growth Portfolio, the Money Market Portfolio, the U.S. Government High Yield Portfolio, the Conservative Asset Allocation Portfolio, the Moderate Asset Allocation Portfolio and the Aggressive Asset Allocation Portfolio (the "Portfolios").

2. On February 8, 1989, the Board of Trustees of the Applicant approved an Agreement and Plan of Reorganization (the "Asset Sale"), pursuant to which the Fund would sell substantially all of its assets to North American Security Trust ("NAST") in exchange for shares of NAST and distribute the NAST shares to Applicant's shareholders. NAST is a Massachusetts business trust registered with the Commission as an open-end diversified management investment company (File No. 811-5797) consisting of six Portfolios whose investment objectives were substantially similar to the corresponding Portfolios of the Applicant.

3. Proxy materials relating to the Asset Sale were filed with the SEC on July 14, 1989. On August 18, 1989, a majority of the shareholders of each of the Portfolios voted to approve the Asset Sale. On August 17, 1989, Applicant paid to its shareholders a special dividend and capital gains distribution in connection with the Asset Sale. These distributions were paid in order to comply with the provisions of the Internal Revenue Code that govern Regulated Investment Companies.

4. Substantially all of the assets of the Fund were transferred for shares of NAST on August 28, 1989 (the "Closing Date"). On the Closing Date, the net asset value of each of Applicant's Portfolios was computed as of the close of business on August 25, 1989 (the "Valuation Date"). On the Valuation Date, each of the NAST portfolios (other than the Money Market Portfolio) consisted of only nominal assets. On the Closing Date, the net asset value of a share of each portfolio of NAST was set at the net asset value of a share of the corresponding Portfolio of the Applicant. Applicant transferred substantially all of the assets of each of its Portfolios (except for the cash reserve described below) to NAST in exchange for shares of the corresponding NAST portfolio having an aggregate net asset value equal to the aggregate value of the transferred assets as of the close of business on the Closing Date. Applicant had discharged or made provision for the discharge of all of its liabilities prior to the Closing Date. The NAST shares were distributed to the Fund's shareholders in complete liquidation of the Fund.

5. Applicant retained a "Cash Reserve" in the amount of $475,000 to pay any accrued liabilities not paid as of the Closing Date. The principal uses of the Cash Reserve were: $200,641.07 paid to Global Capital Investors Corporation for distribution expenses related to the Funds' Distribution Plan adopted pursuant to Rule 12b-1; $77,931.46 paid to Sass Southmark Investment Corporation for investment advisory services and management fees for July and August 1989; and $100,000 for federal income taxes. Subsequent to August 28, 1989, Applicant exhausted the Cash Reserve. Any additional expenses incurred in connection with the winding up of the Applicant have been assumed by an affiliate of Global Capital.

6. Southmark Corporation ("Southmark"), the investment adviser of the Applicant, agreed to assume all of Applicant's expenses associated with the Asset Sale. Such expenses included severance pay for employees, amounts owed for computer services, the cost of preparing and mailing the proxy materials, legal fees incurred in connection with the Asset Sale and the assumption of a leasehold obligation for office space.

7. A lawsuit filed in New York Supreme Court named Applicant as a defendant. Plaintiff seeks compensation for computer services allegedly performed for one or more of the named defendants. Subsequent to the Closing Date, a default judgment was entered against the Applicant. However, because Applicant has no assets, Applicant believes that the judgment will have to be enforced against the other defendants.

8. Applicant had no shareholders at the time of filing of this application. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14763 Filed 6-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17539; 812-7069]

Mutual Fund Group et al.; Application

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Mutual Fund Group (the "Trust"), Chase First Lincoln Bank, N.A. ("Chase Lincoln"), The Chase Manhattan Bank, N.A. ("Chase"), and Vista Broker-Dealer Services, Inc. ("VBDS" or the "Distributor").

RELEVANT ACT SECTIONS. Order requested under section 6(c) which would grant a conditional exemption from the provisions of sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Trust to issue two classes of shares representing interests in the same investment portfolio, which classes would be identical in all respects except for differences related to Rule 12b-1 distribution expenses, shareholder service expenses, voting rights, and dividend payments.

FILING DATE: The application was filed on July 15, 1988 and amended on March 6, 1990, April 26, 1990, and June 13, 1990.

HEARING OR NOTIFICATION OF HEARING: A conditional order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 16, 1990, and should be accompanied by

proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Attention: James Bernaiche, 156 West 56th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Sheryl Siman Maliken, Staff Attorney, at (202) 272–2190, or Jeremy N. Rebenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Trust is a non-diversified, open-end management investment company registered under the Act that is currently composed of nine series, each of which issues a single class of shares (the "Existing Shares"). The Trust proposes to issue and sell a new class of shares ("New Shares") that would represent a proportionate interest in the same investment portfolio as the Existing Shares of four of the nine current series of the Trust: Vista U.S. Government Money Market Fund ("USGMMF"), Vista New York Tax Free Money Market Fund ("NYTFMMF"), Vista Tax Free Money Market Fund ("TFMMF"), and Vista Premier Global Money Market Fund ("PGMMF") (collectively, the "Money Market Funds").

2. Applicants request that any relief extend to any future series of the Trust and any other registered open-end investment company (i) Whose investment adviser is Chase Lincoln or Chase or an investment adviser that is under common control with Chase Lincoln or Chase, (ii) whose principal underwriter is the Distributor, or a principal underwriter that is under common control with the Distributor, (iii) which hold themselves out to investors as being related for purposes of investment and investor services, and (iv) whose shares are divided into two classes of securities which are similar in all material respects to those of the Money Market Funds' Existing Shares and New Shares. Any such series or investment company will be subject to each of the conditions in the application. All series of the Trust, whether or not yet existing, are referred to as the "Funds." Future investment companies, series or classes thereof are referred to as "Future Funds."

3. Chase manages the assets of all of the existing Funds except USGMMF, for which it receives a specified percentage (.15% for NYTFMMF, TFMMF and PGMMF) of each Fund's average daily net assets. Chase Lincoln serves as administrator to the Trust, and in return for its administrative services receives .10% of each Fund's average daily net assets. In addition, Chase Lincoln acts as investment adviser to USGMMF, for which it receives .15% of USGMMF's average daily net assets.

4. VBDS acts as the principal underwriter and distributor of the Funds, and provides certain sub-administration services to the Trust, including providing officers, clerical staff and office space. VBDS may receive .05% of each Fund's average daily net assets for sub-administration services.

5. Shares of the Funds are sold at net asset value without a sales load to customers of financial institutions such as federal or state-chartered banks, trust companies or savings and loan associations (collectively, the "Shareholder Service Agents") that have entered into shareholder servicing agreements (the "Servicing Agreements") with the Trust that are not adopted under rule 12b–1. The Trust's Shareholder Servicing Agents, Chase and Chase Lincoln, are affiliated persons of the Trust as defined in the Act.

6. Each Shareholder Servicing Agency receives a fee in an amount determined by the Board of Trustees. For USGMMF, NYTFMMF AND TFMMF, each shareholder servicing fee may not exceed .40% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF Existing Shares owned by customers for whom such Shareholder Servicing Agency maintains a servicing relationship. For PGMMF, each shareholder servicing fee may not exceed .15% of the average daily net assets of the PGMMF Existing Shares owned by customers for whom such Shareholder Servicing Agency maintains a servicing relationship. PGMMF intends, subject to trustee approval, to increase this limit to .20%.

7. Shares of the Funds also may be sold without a sales load: (i) Through broker-dealers that enter into selected dealer agreements with the Distributor, or (ii) through other persons or organizations, who have not entered into Shareholder Servicing Agreements with the Trust, ("12b–1 Servicing Agents") that have entered into shareholder processing and servicing agreements with the Trust or the Distributor.

8. Under the distribution plan for USGMMF, NYTFMMF, and TFMMF (The "Existing Shares Plan"), broker-dealers and 12b–1 Servicing Agents may be paid an amount (the "Basic Distribution Fee") not to exceed, in the aggregate, .20% of the average daily net assets of USGMMF, NYTFMMF and TFMMF. Payments also may be made for advertising to promote the sale of Existing Shares in an amount not to exceed .05% of the average daily net assets of such Existing Shares. Therefore, the total payments under the Existing Shares Plan may not exceed .25% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF Existing Shares.

9. PGMMF Existing Shares are sold pursuant to a distribution plan (the "PGMMF Existing Shares Plan") similar in all material respects to the Existing Shares Plan, except that the aggregate distribution fees are limited to .10% of PGMMF's average daily net assets. In addition, no payments may presently be made for advertising. PGMMF intends, subject to shareholder approval, to adopt a distribution plan permitting aggregate Basic Distribution Fee payments of up to .15% of the PGMMF Existing Shares average daily net assets, plus up to .05% for advertising, for a total limit of .20% of the average daily net assets of the PGMMF Existing Shares.

10. No Shareholder Servicing Agent will be entitled to receive any Basic Distribution Fees under a Fund's Rule 12b–1 distribution plan. The Trust has determined that the creation of mutually exclusive (non-rule 12b–1) Shareholder Servicing Agents and 12b–1 Servicing Agents will permit the Trust to increase the number of financial institutions that sell shares of the Trust. The Trust has determined that the creation of two separate categories of servicing agents, each of which may receive compensation for services rendered to their clients, is important to the growth of the Trust. The Trustees shall consider, among other things, the nature of the Trust's relationship with each prospective financial institution, as well as a financial institution's overall ability to service the needs of its clients, when determining which type of shareholder servicing arrangement should be offered to a prospective financial institution. In addition, The Trustees may consider a financial institution's self-imposed constraints or other restrictions under the Glass Steagall Act and other applicable federal or state laws with respect to their determination as to which type of shareholder servicing arrangement is entered into with a particular financial institution.

11. The Trust intends to create New Shares representing a proportionate interest in the same investment portfolio as Existing Shares within the same Fund. Except for the designation and the allocation of certain expenses and voting rights as described below, the New Shares would be identical in all respects to the Existing Shares that represent interests in the same Fund.

12. USGMMF, NYTFMMF and TFMMF Existing Shares are made available to "retail investors" with a minimum investment of $2,500. USGMMF, NYTFMMF and TFMMF New Shares will be made available, with a $100,000 minimum investment requirement, only to "institutional investors" including, but not limited to, various international divisions of the Shareholder Servicing Agents such as: (i) Direct Interbanking; (ii) Corporate Cash Management Accounts; (iii) Pensions; (iv) Custody; (v) Escrow; (vi) Master Trusts; (vii) Private and Personal Banking; and (viii) other internal banking divisions of a Shareholder Servicing Agent.

13. Shareholder servicing fees for the USGMMF, NYTFMMF and TFMMF New Shares may not exceed .20% of the average daily net assets of the USGMMF, NYTFMMF and TFMMF New Shares, respectively, in contrast to the .40% maximum for Existing Shares. The Shareholder Servicing Agents will receive a reduced shareholder servicing fee for the USGMMF, NYTFMMF and TFMMF New Shares because such New Shares only will be made available to the institutional clients enumerated above, the accounts of which, in applicants' opinion, are easier and less expensive to maintain. Each Shareholder Servicing Agent will create one or more accounts for each of its institutional clients with the particular institutional client primarily responsible for the sub-accounting and shareholder servicing of its clients, thereby resulting in greater economies of scale and decreased operating expenses for the Shareholder Servicing Agents.

14. PGMMF Existing Shares are made available only to institutional investors, as described above. PGMMF New Shares will be made available to retail investors with a minimum investment of $2,500. This retail clientele is, in applicants' opinion, more expensive to maintain than the institutional clientele of PGMMF Existing Shares. Therefore, PGMMF New Shares will be sold subject to a shareholder servicing fee not to exceed .40% of the PGMMF New Shares average daily net assets as compared to the .15% (or, if approved, .20%) of average daily net assets for PGMMF Existing Shares.

15. New Shares and Existing Shares of each Fund would also bear different 12b–1 distribution fees. USGMMF, NYTFMMF and TFMMF New Shares would be sold pursuant to a rule 12b–1 distribution plan similar in all material respects to such Funds' Existing Shares Plan, except that the aggregate amount of the Basic Distribution Fees payable under the USGMMF, NYTFMMF and TFMMF New Shares Plan will not exceed .15% of the average daily net assets of the applicable Fund's New Shares, as compared to .20% under the Existing Shares Plan. In addition, payments may be made for advertising in an amount not to exceed .05% of the average daily net assets of the applicable Fund's New Shares, as is the case under the Existing Shares Plan. Therefore, the total aggregate amount of all payments under the USGMMF, NYTFMMF and TFMMF New Shares Plan shall not exceed .20% of the average daily net assets of the applicable Fund's New Shares, as compared to .25% under the Existing Shares Plan.

16. PGMMF New Shares would be sold pursuant to a Rule 12b–1 distribution plan similar in all material respects to the USGMMF, NYTFMMF and TFMMF Existing Shares Plan, under which the aggregate amount of the Basic Distribution Fees will not exceed .20% of the average daily net assets of the PGMMF New Shares. In addition, payments may be made for advertising in an amount not to exceed .05% of the average daily net assets of the applicable Fund's New Shares. Thus, the total aggregate amount of all payments under the PGMMF New Shares Plan shall not exceed .25% of the average daily net assets of the PGMMF New Shares, as compared to .10% (or, if approved, .20%) under the Existing Shares Plan.

17. The net asset value of all outstanding shares in the same Fund would be computed on the same day and at the same time by adding the value of all portfolio securities and other assets, subtracting the liabilities, allocating the resulting net assets between the two classes and dividing the results by the number of outstanding shares for the respective class. Further, the gross income of a Fund would be allocated on a pro rata basis to each outstanding share in the Fund and, except for the payments made under the rule 12b–1 distribution plans and the disproportionate shareholder servicing fees, the expenses incurred by the Trust on behalf of each Fund would be borne on a pro rata basis by such outstanding shares of each Fund.

18. Application of the charges called for under the alternate shareholder servicing arrangements and the distribution plans would cause the net income of (and dividends payable to) the Existing Shares to be higher or lower than the net income of the New Shares, depending upon the circumstances, e.g., PGMMF New Shares with increased 12b–1 payments and shareholder servicing fees would have lower net income dividends payable than PGMMF Existing Shares with lower 12b–1 payment and shareholder servicing fees. Dividends paid to the Existing Shares and the New Shares of each of the Money Market Funds would, however, be determined in the same manner and declared and paid on the same days and at the same times.

Applicants' Legal Conclusions

1. The proposed issuance of New Shares does not create the potential for the abuses relating to complex capital structures and mutuality of risk which section 18 of the Act was designed to correct, since both the Existing Shares and the New Shares in a particular Money Market Fund would bear, pro rata, all of the operating expenses of the Fund except that each of the Existing Shares and the New Shares of a Fund would bear expenses specifically related to those shares, such as 12b–1 payments and the disproportionate shareholder servicing fees.

2. Both the New Shares and the Existing Shares of a Money Market Fund will be redeemable at all times, and neither will have any preference or priority over the other in the usual sense. In addition, the similarities and dissimilarities of the New Shares and Existing Shares will be fully disclosed in each prospectus. Therefore, investors will not be given misleading impressions as to the safety or the risk of the New Shares and Existing Shares and the nature of the New Shares and Existing Shares will not be rendered speculative.

3. The Trust's capital structure under the proposed arrangement will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

4. The concern that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the Trust's securities are not present

under the proposed arrangement. With respect to this latter concern, it may be noted that the Trust represents herein that it will take appropriate steps to ensure that the respective yields on both the New Shares and the Existing Shares are fairly disclosed in the applicable prospectuses and shareholder reports.

5. The Trust believes that it is appropriate for clients of brokers, 12b–1 Servicing Agents, and Shareholder Servicing Agents to be included in the groups of shareholders comprising each class of shares, to bear the costs associated with such class, and to benefit from the economies of scale created by combining such groups, since the services provided and the expenses associated with such services are substantially similar. For example, services offered by brokers, 12b–1 Servicing Agents and Shareholder Servicing Agents to their respective clients may include specialized services provided in connection with the purchase and redemption of Fund shares, such as pre-authorized or automatic purchase and redemption programs and "sweep" checking programs. Any such services, to the extent they are offered to any shareholder in a class, will be offered to all shareholders in such class whether they purchase their shares through a broker, 12b–1 Servicing Agent or Shareholder Servicing Agent.

6. By allowing the creation of New Shares in each of the Money Market Funds, the Trust will save the organizational and other continuing costs that would be incurred if the Trust were required to establish a new separate investment fund for the New Shares of each Money Market Fund. Moreover, to the extent that the Trust is able, through the proposed arrangement, to maintain and expand its current shareholder base and more effectively manage the portfolio of assets owned by the Money Market Funds, its beneficial owners will benefit to the extent that each Money Market Fund's pro rata operating expenses per share are lower than they would be otherwise.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The New Shares and Existing Shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between New Shares and Existing Shares of the same Fund will relate solely to the impact of: (a) Disproportionate payments made under the Rule 12b–1 distribution plans adopted for each of the New Shares and the Existing Shares; (b) disproportionate shareholder servicing fees for the New Shares and the Existing Shares; (c) any other incremental expenses subsequently identified that should be properly allocated to either the Existing Shares or the New Shares which expenses shall be approved by the SEC pursuant to an amended order; (d) the fact that classes will have separate voting rights on matters which pertain to the Rule 12b–1 distribution plans; and (e) the designation of the shares of a Fund as Existing Shares or New Shares.

2. The Trustees of the Trust, including a majority of the independent Trustees, have approved and will continue to approve annually the Dual Distribution System by an affirmative vote. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Dual Distribution System is in the best interests of each Fund and its shareholders and such minutes will be available for inspection by the SEC staff and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the New Shares and the Existing Shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Chase, Chase Lincoln and VBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Chase, Chase Lincoln and VBDS, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The Rule 12b–1 distribution plans relating to the sale of the Existing Shares and the New Shares of the Funds will be approved and reviewed by the Trustees in accordance with the requirements and procedures set forth in Rule 12b–1, both currently and as that rule may be amended in the future. The Rule 12b–1 distribution plans to permit the assessment of a Rule 12b–1 fee on USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares will be submitted to the public shareholders of USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares for approval at the next meeting of such shareholders after the initial issuance of the USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares. Such meeting is to be held within one year from the date that USGMMF, NYTFMMF and TFMMF New Shares, PGMMF Existing Shares and PGMMF New Shares are initially issued. Any other series or investment company in relying in the future on the order granted on the application will hold a meeting of shareholders within one year of the first date that more than one class of shares is issued and outstanding and will submit its Rule 12b–1 distribution plan for the separate approval of the public holders of each class of shares at such meeting; provided that the approval of a particular class of shareholders shall not be necessary if the existing Rule 12b–1 plan has already been submitted for the approval of the public shareholders of such class.

5. The shareholder servicing arrangements will be adopted and operated in accordance with the procedures set forth in Rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the shareholder servicing arrangements, the Trustees will specifically consider whether (a) The shareholder servicing arrangements are in the best interest of the applicable classes and their respective shareholders, (b) the services to be performed pursuant to the shareholder servicing arrangements are required for the operation of the applicable classes, (c) the Shareholder Servicing Agents can provide services at least equal, in nature and quality, to those provided by others, including the Trust, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each Shareholder Servicing Agreement entered into pursuant to the shareholder servicing arrangements will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customer's assets in the Fund (a) Will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each Shareholder Servicing Agreement entered into pursuant to the shareholder services plan will provide that, in the event an issue pertaining to the shareholder services arrangement is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote those shares held for its customers' accounts.

8. The Trustees of the Trusts will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

9. Dividends paid by each Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that distribution and shareholder servicing payments relating to each respective class of shares will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to each of the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the Existing Shares and the New Shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or an appropriate substitute Expert.

12. Each Fund will have more than one class of shares outstanding only when and for so long as such Fund declares its dividends on a daily basis, accrues its payments under the Plan and the Shareholder Servicing Agreements daily, and has received undertakings from the persons that are entitled to receive payments under the Plan and Shareholder Servicing Agreements waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any class of shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in a Fund will remain the same.

13. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The Distributor will adopt compliance standards, substantially in the form of Exhibit D to the Application, as to when each class of shares may appropriately be sold to particular investors. Applicants will require all Shareholder Servicing Agents or broker-dealers selling shares of each of the Funds to agree to conform to such standards.

15. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees.

16. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privilege applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

17. The Applicants acknowledge that the grant of the exemptive order requested by this Application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to Rule 12b–1 distribution plans or shareholder servicing arrangements in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14704 Filed 6–25–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Rescheduling of Meeting; Region II Advisory Council Public Meeting

The U.S. Small Business Administration Region II Advisory Council meeting scheduled for June 28, 1990 has been postponed until July 19, 1990.

The meeting will be held at the Jacob K. Javits Federal Building, room 3100 (31st floor), 26 Federal Plaza, New York,

NY 10278, to discuss such matters as may be presented by members, staff of the Small Business Administration, or other present.

For further information, write or call Mr. Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–1318.

Dated: June 20, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–14751 Filed 6–25–90; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 05/05–0215]

Application for a Small Business Investment Company License; Harriscorp Equity Corp.

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Harriscorp Equity Corp. (Applicant), 111 West Monroe, Chicago, Illinois, 60690, with the Small Business Administration pursuant to 13 CFR 107.102 (1990).

The Proposed Officers, Directors and Shareholders of the Applicant will be as follows:

Name	Title or position	Percent of ownership
Roger A. Molzahn, 8107 Winter Circle, Downers Grove, Il 60516.	President/Director	
Peter D. Morris, 2320 Lawndale, Evanston, Il 60201.	Executive Vice President/ Director	
Jeffrey D. Butterfield, 667 Bluff, Glencoe, Il 60022.	Executive Vice President Director	
William L. Johnson, 1229 Jane, Naperville, Il 60540.	Vice President	
Jeffrey D. Nicholas, 53 Dogwood Street, Park Forest, Il 60466.	Vice President	
Philip A. Washburn, 253 Woodlawn Avenue, Glencoe, Il 60093.	Vice President	
Thomas R. Sizer, 233 E. Wacker Dr., Chicago, Il 60601.	Secretary/Assistant Treasurer	
P. David Hubbard, 7841 Keystone, Skokie, Il 60076.	Treasurer/ Assistant Secretary	
David S. Finch, 9 Stonewood Drive, St. Charles, Il 60174.	Director	
Edward W. Lymen, Jr., 1510 Tower Road, Winnetka, Il 60093.	Director	
Luke D. Knecht, 1340 W. Deerpath, Lake Forest, Il 60045.	Director	
Ben T. Wilson, 240 Buckminster, Lake Bluff, IL 60044.	Director	
Harris Bankcorp, Inc., 111 West Monroe, Chicago, IL 60690.	Sole Shareholder	100
Bank of Montreal, First Canadian Place, Toronto, Ontario, Canada M5X 1A1.	Indirect Shareholder.	100

The Applicant, a Delaware corporation, is expected to begin operations with $1,000,000 of private capital. The Applicant will conduct its activities in the Midwest region of the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1990.

Robert G. Lineberry,

Associate Administrator for Investment.

[FR Doc. 90–14752 Filed 6–25–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 16, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 1990.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24808.
Petitioner: Pan American World Airways.
Sections of the FAR Affected: 14 CFR 121.404, 121.433, and 121.441 and part 121, appendix F.
Description of Relief Sought: To extend Exemption No. 4833, as amended, that allows petitioner to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check session. In addition, the exemption allows the line check required by § 121.440 to be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training.

Docket No.: 26249.
Petitioner: Simmons Airlines/American Eagle.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To exempt petitioner from the 20 percent and 50 percent equipage requirement of the TCAS II traffic alert and collision avoidance system regulation.

Dispositions of Petitions

Docket No.: 23869.
Petitioner: Strong Enterprises, Inc., and The Relative Workshop, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 4943 that allows petitioners and their respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to make tandem parachute jumps, and to permit the pilots in command of aircraft involved in their operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one main parachute and one approved auxiliary parachute. *Grant, June 14, 1990. Exemption No. 4943A.*

Docket No.: 25864.
Petitioner: Jet Management International, Inc.
Sections of the FAR Affected: 14 CFR 25.857(b)(2).
Description of Relief Sought/ Disposition: To allow the Learjet 25B–170 to be approved for operation in a cargo configuration. *Denial, June 7, 1990, Exemption No. 5188.*

Docket No.: 26009.
Petitioner: Jerry L. Chap.
Regulations Affected: 14 CFR 65.91(c)(1).
Description of Relief Sought/ Disposition: To waive the requirement for holding an airframe and powerplant mechanic rating for at least 3 years prior to eligibility for receipt of an inspector's authorization. *Grant, June 11, 1990. Exemption No. 5191.*

Docket No.: 26068.
Petitioner: British Aerospace, Inc.
Sections of the FAR Affected: 14 CFR 121.411 (a)(2), (a)(3), and (b)(2); 121.413 (b) (c), and (d); part 121, appendix H; 135.337 (a)(2) and (a)(3); and 135.339 (a)(2), (b), and (c).
Description of Relief Sought/ Disposition: To allow petitioner to use certain qualified instructor pilots to train pilots of part 121 and part 135 certificate holders in a Phase II simulator and in airplanes manufactured by petitioner. *Grant, June 11, 1990. Exemption No. 5190.*

Docket No.: 26253.
Petitioner: MarkAir.
Sections of the FAR Affected: 14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6) and 121.413 (b) and (c).
Description of Relief Sought/ Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from FlightSafety, Canada, for the purpose of training petitioner's initial cadre of pilots in the DHC Dash 8–300 type airplane in Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart N of part 121. *Grant, June 11, 1990. Exemption No. 5189.*

[FR Doc. 90–14714 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–01–M

Federal Railroad Administration

[RS–Ap–No. 2923]

Southern Pacific Transportation Co.; Cancellation of Public Hearing

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned signal petition because the petition has been withdrawn by the railroad. The hearing had been scheduled for July 11, 1990, in San Bernardino, California.

In the now-withdrawn application that was to be the subject of this hearing, the Southern Pacific Transportation Company petitioned the FRA seeking approval to discontinue and remove the traffic control system on 901 Track near Colton, California. (See the original hearing notice in 55 FR 21139 and 21140, May 22, 1990.)

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC, on June 20, 1990.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 90–14736 Filed 6–25–90; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 20, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0175.
Form Number: 4626.
Type of Review: Revision.
Title: Alternative Minimum Tax—Corporations.
Description: Form 4626 is used by corporations to calculate their alternative minimum tax and environmental tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—10 hours, 31 minutes
Learning about the law or the form—11 hours, 49 minutes
Preparing and sending the form to IRS—12 hours, 31 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 3,485,000 hours.

OMB Number: 1545–0177.
Form Number: 4684.
Type of Review: Extension.
Title: Casualties and Thefts.
Description: Form 4684 is used by all taxpayers to compute their gain or loss from casualties or thefts and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—1 hour, 12 minutes
Learning about the law or the form—20 minutes

Preparing the form—58 minutes
Copying, assembling, and sending the form to IRS—35 minutes
Frequency of Responses: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 924,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,
Departmental Reports Management Officer.

[FR Doc. 90-14716 Filed 6-25-90; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION.

Notice

June 20, 1990

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: June 27, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 919th Meeting—June 27, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 7270-005, Northern Wasco County People's Utility District
CAH-2.
Project No. 1889-007, The Montana Power Company
CAH-3.
Project No. 3823-030, Youghiogheny Hydroelectric Authority
CAH-4.
Project No. 10845-001, Parcoal Energy, Inc.
CAH-5.
Project No. 10521-001, Mahoning Hydro Associates
CAH-6.
Project No. 8262-004, K&K Hydroelectric
CAH-7.
Project Nos. 3021-016 and 023, Allegheny Hydro No. 8 L.P. and Allegheny Hydro No. 9 L.P.
CAH-8.
Project No. 619-013, Pacific Gas and Electric Company
CAH-9.
Project No. 6186-001, Camille E. Held, Walton B. Held, A.W. Stuart Trust, W. Titus Nelson and Dale E. Grenoble
CAH-10.
Omitted.
CAH-11.
Project No. 1957-005, Wisconsin Public Service Corporation
CAH-12.
Omitted.
CAH-13.
Project No. 199-053, South Carolina Public Service Authority
CAH-14.
Project No. 10102-001, Franklin Springer
CAH-15.
Project No. 5833-000, Pennsylvania Hydroelectric Development Corporation
CAH-16.
Project No. 10502-000, Garkane Power Association, Inc.
Project No. 10334-000, Warren T. Jacobson
CAH-17.
Project No. 137-002, Pacific Gas and Electric Company
Project No. 619-023, City of Santa Clara, California

Consent Agenda—Electric

CAE-1.
Docket No. ER90-348-000, Southern California Edison Company
CAE-2.
Docket No. ER90-304-000, Florida Power & Light Company
CAE-3.
Docket No. ER90-38-000, Entergy Services, Inc.
CAE-4.
Docket No. EC89-10-000, Consumers Power Company
Docket No. ER89-258-000, Palisades Generating Company
CAE-5.
Docket No. ER90-247-001, Montaup Electric Company, Eastern Edison Company and Blackstone Valley Electric Company
CAE-6.
Docket No. ER89-581-001, Portland General Electric Company
CAE-7.
Docket No. ER90-232-001, Union Electric Company
CAE-8.
Omitted
CAE-9.
Docket No. ER90-166-001, Pacific Gas and Electric Company
CAE-10.
Docket No. ER90-184-001, Ford Motor Company and Rouge steel Company
CAE-11.
Docket No. ER85-720-013, The Connecticut Light and Power Company
Docket No. ER85-707-008, Western Massachusetts Electric Company
Docket No. ER85-689-008, Holyoke Water Power Company and Holyoke Power and Electric Company
CAE-12.
Docket No. ER90-66-001, Arkansas Power & Light Company
CAE-13.
Docket Nos. ER90-26-001 and ER89-470-004, American Electric Power Service Corporation
CAE-14.
Omitted
CAE-15.
Docket No. QF89-205-002, Virginia Turbo Power Systems-II, L.P.
CAE-16.
Docket No. ER86-645-001, ER87-140-001, ER87-159-001 and ER87-160-001, Boston Edison Company
CAE-17.
Docket Nos. E-7777-000, and 011 (Phase II), Pacific Gas ad Electric Company
Project No. 67-000, Southern California Edison Company
CAE-18.
Docket No. ER89-203-000, Carolina Power & Light Company
CAE-19.
Docket No. QF85-199-002, Vulcan/BN Geothermal Power Company
Docket No. ER86-727-003, Del Ranch, L.P.
Docket No. QF88-1043-001, Desert Power Company
Docket No. QF87-511-002 and QF89-207-001, Earth Energy, Inc.

Consent Agenda—Gas and Oil

CAG-1.
Docket No. RP90-118-000, Northwest Pipeline Corporation
CAG-2.
Docket No. RP90-121-000, NATGAS U.S. Inc.
CAG-3.
Docket No. RP90-122-000, Tennessee Gas Pipeline Company
CAG-4.
Docket No. RP90-123-000, Williams Natural Gas Company
CAG-5.
Docket No. RP90-125-000, Transcontinental Gas Pie Line Corporation
CAG-6.
Docket No. RP87-62-004, Pacific Gas Transmission Company
CAG-7.
Docket No. TA90-1-6-000, South Georgia Natural Gas Company
CAG-8.
Docket No. TF90-3-63-000, Carnegie Natural Gas Company
CAG-9.
Docket No. TM90-3-3-000, East Tennessee Natural Gas Company
CAG-10.
Docket No. TQ90-3-18-000, National Fuel Gas Supply Corporation
CAG-11.
Docket No. TA90-1-33-000, El Paso Natural Gas company
CAG-12.
Docket Nos. GT90-6-000 and 001, United Gas Pipe Line Company
CAG-13.
Docket No. TA90-1-17-000, Texas Eastern Transmission Corporation

CAG–14.
Omitted
CAG–15.
Docket No. RP90–114–000, Mississippi River Transmission Corporation
CAG–16.
Docket Nos. RP89–38–002, 004, 005, RP89–99–002, 004 and 006, U–T Offshore System
CAG–17.
Docket No. RP90–119–000, Texas Eastern Transmission Corporation
CAG–18.
Docket No. RP90–108–000, Mississippi River Transmission Corporation
CAG–19.
Docket Nos. RP90–88–002 and RP90–89–002, Transcontinental Gas Pipe Line Corporation
CAG–20.
Docket No. RP89–124–005, CNG Transmission Corporatin
CAG–21.
Docket No. RP90–100–002, Sea Robin Pipe Line Company
CAG–22.
Docket Nos. RP87–62–003 and RP86–148–005, Pacific Gas Transmission Company
CAG–23.
Docket No. RP86–136–007, National Fuel Gas Supply Corporation
CAG–24.
Docket Nos. RP85–11–028, RP86–11–028 and RP87–86–014, KN Energy, Inc.
CAG–25.
Docket No. TM90–7–17–001, Texas Eastern Transmission Corporation
CAG–26.
Docket No. CP83–254–003, Williston Basin Interstate Company
CAG–27.
Docket Nos. RP85–250–020, RP89–136–001 and 005, Northern Natural Gas Company, Division of Enron Corporation
CAG–28.
Docket No. RP90–52–001 and RP88–115–010, Texas Gas Transmission Corporation
CAG–29.
Docket Nos. RP85–115–009, CP88–31–001, CP88–818–001 and CP88–58–002, Texas Gas Transmission Corporation
CAG–30.
Docket No. RP89–196–001, Texas Gas Transmission Corporation
CAG–31.
Docket Nos. TA90–1–7–001 and RP90–45–002, Southern Natural Gas Company
CAG–32.
Omitted
CAG–33.
Docket No. TA90–1–49–009, Raton Gas Transmission Corporation
CAG–34.
Docket Nos. TQ90–3–49–002 and TQ90–1–49–000, Raton Gas Transmission Company
CAG–35.
Docket No. PR90–4–000, J–W Gathering Company
CAG–36.
Docket Nos. RP89–36–000, CP89–273–000, CP88–336–000, CP88–386–000, CP87–107–000 and CP87–108–000, Viking Gas Transmission Company
CAG–37.
Docket No. ST89–3801–000, Sonat Intrastate–Alabama Inc.
CAG–38.
Docket Nos. RP90–69–000 and RP87–30–000, Colorado Interstate Gas Company
CAG–39.
Docket No. TM90–13–28–000, Panhandle Eastern Pipe Line Company
CAG–40.
Docket No. RM89–16–001, Order Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAG–41.
Docket No. CI85–513–012, Tenngasco Gas Supply Company v. Southland Royalty Company
CAG–42.
Docket No. CI87–547–008, Enron Gas Marketing, Inc.
CAG–43.
Docket No. CP88–136–022, Texas Eastern Transmisison Corporation
CAG–44.
Docket No. CP88–171–002, Tennessee Gas Pipeline Company
Docket Nos. CP88–94–003 and CP88–194–005, National Fuel Gas Supply Corporation
Docket No. CP88–92–002, Transcontinental Gas Pipe Line Corporation
Docket No. CP88–196–006, PennEast Gas Services Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation
Docket Nos. CP87–131–003 and CP87–132–004, Tennessee Gas Pipeline Company
CAG–45.
Docket No. CP89–1953–001, ANR Storage Company
CAG–46.
Docket No. CP88–557–001, Koch Hydrocarbon Company
CAG–47.
Docket Nos. CP89–1580–001, and CP86–578–028, Northwest Pipeline Corporation
Docket No. G–17350–009, Pacific Gas Transmission Company
CAG–48.
Docket No. CP89–1628–000, Trunkline Gas Company
CAG–49.
Omitted.
CAG–50.
(A) Docket No. CP89–1651–002, Altamont Gas Transmission Company
(B) Docket No. CP89–18[51–001, Altamont Gas Transmission Company
(C) Docket Nos. CP89–460–000 and 001, Pacific Gas Transmission Company
(D) Docket No. CP90–1375–000, Altamont Gas Transmission Company
CAG–51.
Docket No. RP90–124–000, Northern Natural Gas Company, A Divsion of Enron Corporation

Hydro Agenda

H–1.
Project No. 9711–000, Inghams Corporation. Order on motion to dismiss preliminary permit application.
H–2.
Project No. 8713–000, Beardslee Corporation. Order on motion to dismiss preliminary permit application.
H–3.
Project No. 9049–002, Carex Hydro. Order on appeal of order issuing license.
H–4.
Project No. 2528–004, Central Maine Power Company. Order on appeal of order issuing license.

Electric Agenda

E–1
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters.

PR–1.
(A) Docket Nos. RP87–15–019 and RP89–160–000, Trunkline Gas Company. Initial decision on refunctionalization of gathering costs and classification of LNG costs.
(B) Docket No. RP87–15–027 (Phase I), Trunkline Gas Company. Remand on minimum bill.
(C) Docket No. RP87–15–001, Trunkline Gas Company. Rehearing of a suspension order.
PR–2.
Docket Nos. OR87–1–000, OR87–3–000, OR87–3–000, OR87–4–000, OR87–5–000, and OR87–8–000, Oxy Pipeline, Inc.
Docket No. OR87–6–000, Cxy Offshore Systems Inc.
Docket No. OR85–3–000, Samedan Pipe Line Corporation. Declaratory order on jurisdiction under the Interstate Commerce Act over oil pipelines on the outer Continental Shelf.
PR–3.
Docket Nos. RP90–72–001, and 000, Carnegie Natural Gas Company. Technical conference on gas inventory charge passthrough mechanism and rehearing.

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Omitted
PC–2.
Docket Nos. CP88–180–000 and 002, Texas Eastern Transmission Corporation
Docket Nos. CP88–185–000 and 002, Algonquin Gas Transmission Company. Certificate application to construct facilities, to sell and transport natural gas, and to abandon sales of natural gas (CDS project).
PC–3.
Omitted
PC–4.
Docket No. CP89–1223–000, Delta Pipeline Company. Optional certificate application to construct and operate facilities out of Arkoma Basin and for blanket certificate.
PC–5.
Docket No. CP89–2084–000, Colorado Interstate Gas Company. Certificate application to add compression to increase transportation capacity.

Lois D. Cashell,
Secretary.
[FR Doc. 90–14845 Filed 6–21–90; 4:48 am]
BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. June 26, 1990.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: North Altantic Enforcement Program—Status Report.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 90–14852 Filed 6–21–90; 4:50 pm]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 29, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless amember of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to reduce the filing requirements under the Change in Bank Control Act.

Discussion Agenda

2. Publication for comment of proposed modifications in the Board's Section 20 securities orders regarding director, officer and employee interlocks, cross-marketing activities, and the purchase and sale of U.S. agency securities.

3. Proposed 1991 Federal Reserve Bank budget objective.

4. Proposed establishment of a third investment fund for the Thrift Plan for employees of the Federal Reserve System.

5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 22, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–14862 Filed 6–22–90; 9:55 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Friday, June 29, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 22, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–14863 Filed 6–22–90; 9:55 am]
BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 26, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: There is a correction and addition to the agenda items listed in the notice, served June 19, 1990, for the Commission voting conference to be held on June 26, 1990.

MATTERS TO BE DISCUSSED:

The fifth agenda item should read as follows:

Docket No. 40131 (Sub-No. 1) *Ashley Creek Phosphate Company v. Chevron Pipe Line Company.*

The following item has been added to the agenda:

Docket No. MC–1515, *Greyhound Lines, Inc. (Dallas, Texas), Authorization to be a Self-Insurer—Show Cause Order.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,
Secretary.
[FR Doc. 90–14942 Filed 6–22–90; 3:53 pm]
BILLING CODE 7035–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, July 3, 1990.

PLACE: Conference Room 6 A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aviation Accident Report: US Air, Inc. Flight 3050 Boeing 737–400, Flushing, New York 09/20/90.

News Media PLEASE Contact TED LOPATKIEWICZ 382–6605

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 22, 1990.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 90–14866 Filed 6–22–90; 2:09 pm]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 25, July 2, 9, and 16, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 25

Wednesday, June 27

9:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
Civil Litigation Matters (Closed—Ex. 10)

Week of July 2—Tentative

There are no Commission meetings scheduled for the Week of July 2.

Week of July 9—Tentative

There are no Commission meetings scheduled for the Week of July 9.

Week of July 16—Tentative

Monday, July 16

2:00 p.m.
Briefing by NUMARC on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)

Tuesday, July 17

2:00 p.m.

Briefing on Resolution of Uncertainties in the HLW Repository Program (Public Meeting)

Wednesday, July 18

2:00 p.m.
Briefing on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: June 21, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–14946 Filed 6–22–90; 3:53 pm]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 10, 1990, in Hartford, Connecticut. The meeting is open to the public and will be held in the Goodwin Room of the J.P. Morgan Hotel at Goodwin Square, One Haynes Street, Hartford. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 9, 1990, but it is not open to the public. It will consist entirely of briefings, the agenda item to discuss possible strategies in collective bargaining negotiations noted in 55 FR 23835, June 12, 1990, having been deleted.

Agenda

Tuesday Session—J.P. Morgan Hotel—Goodwin Room

July 10—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 4–5, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Report on the Northeast Region. (William R. Cummings, Regional Postmaster General)
4. Report on the Hartford Division. (Robert L. Payne, Field Division General Manager/Postmaster)
5. Capital Investments:
   a. Retrofit of Flats Sorting Machines. (Peter A. Jacobson, Assistant Postmaster General, Engineering and Technical Support Department)
   b. Seattle, Washington, Area Plan, Delivery Distribution Centers. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and Craig G. Wade, Seattle Field Division General Manager/Postmaster)
   c. 373 Cargo Vans. (Arthur I. Porwick, Assistant Postmaster General, Operations, Systems and Performance Department)
6. Tentative Agenda for August 6–7, 1990, meeting in Washington, DC.

David F. Harris,

Secretary.

Neva R. Watson,

Certifying Officer.

[FR Doc. 90–14905 Filed 6–22–90; 2:11 pm]

BILLING CODE 7715-13-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on June 26, 1990, the Board of Directors of the Resolution Trust Corporation will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the Discussion Agenda.

Matters regarding the resolution of certain failed thrift institutions.

Discussion Agenda:

Recommendation regarding the Corporation's administrative activities.

Recommendation regarding the relocation and leasing of office space for the Corporation's Western Regional Office.

The meeting will be held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC., immediately following the FDIC Board of Directors' closed meeting beginning at 2:00 p.m.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7572.

Dated: June 21, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90–14998 Filed 6–22–90; 2:10 pm]

BILLING CODE 6714-01-M

federal register

Tuesday
June 26, 1990

Part II

Federal Election Commission

11 CFR Parts 102, 104 and 106

Methods of Allocation Between Federal and Non-Federal Accounts; Payments, Reporting; Final Rule; Transmittal of Regulations to Congress

BEST COPY AVAILABLE

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104 and 106

[Notice 1990-6]

Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR Parts 102, 104 and 106. These regulations implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. 441a and 441b, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.*, by providing for allocation of expenses for activities that jointly benefit both federal and non-federal candidates and elections. The amended rules apply to party committees, nonconnected committees, and (under certain circumstances) separate segregated funds making disbursements on behalf of both federal and non-federal candidates and elections. The revisions provide guidance to committees on how to allocate such costs by creating a comprehensive set of allocation rules, and by enhancing the Commission's ability to monitor the allocation process to ensure that prohibited funds are excluded from federal election activities. In addition, the revisions clarify how committees are to allocate expenses attributable to more than one clearly identified candidate. The revisions also specify additional information that is to be reported to the Commission by each type of committee covered by the rules. Further information on these revisions is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR parts 102, 104 and 106. These revisions set forth rules for allocation of expenses for four categories of activity that jointly benefit both federal and non-federal candidates and elections. These include (1) Administrative expenses such as rent, utilities, office supplies, and salaries; (2) the direct costs of fundraising programs or events; (3) state and local party activities exempt from the definitions of "contribution" and "expenditure" under the Act, when conducted in conjunction with non-federal election activities; and (4) generic voter drive activity such as voter identification, voter registration, and get-out-the-vote campaigns. The new rules set percentages and methods by which committees are to allocate the costs of these activities between their federal and non-federal accounts. The rules also provide procedures for how committees are to pay the bills resulting from these activities, and require disclosure of information related to allocated expenses and disbursements.

The final allocation rules published today are the result of a long and complex rulemaking process. The Commission first considered revising its allocation regulations in 1984. In November of that year, the Commission received a petition for rulemaking urging it to address the alleged use of funds raised outside of the Act's requirements for the prohibited purpose of influencing federal elections. The Commission received five written comments on the petition, in response to a Notice of Availability issued on January 4, 1985. See 50 FR 477. On December 18, 1985, the Commission published a Notice of Inquiry seeking further input on the alleged use of undisclosed funds to influence federal elections (see 50 FR 51535), and received seventeen comments in response. In addition, a public hearing was held on January 29, 1986, at which three witnesses testified. After reviewing all comments and testimony, the Commission voted on April 17, 1986, to deny the petition for rulemaking. See 51 FR 15915.

The petitioner subsequently filed suit in federal district court for judicial review of the denial of the petition. The court rejected the claim that the Commission was required to prohibit the allocation of any expenses to non-federal accounts. The court did, however, direct the Commission to revise its allocation regulations to give party committees more guidance in complying with the FECA. See *Common Cause* v. *Federal Election Commission*, 692 F. Supp. 1391, 1396 (D.D.C. 1987). The Commission issued a new Notice of Inquiry in compliance with this order on February 23, 1988 (see 53 FR 5277), and received three comments in response.

On September 29, 1988, the Commission issued a Notice of Proposed Rulemaking ("NPRM") in which it sought comments on proposed revisions to its allocation regulations. See 53 FR 38012. In the Notice, the Commission presented four alternative proposals, along with draft regulatory language for each alternative. These proposals ranged from complex sets of rules providing options of allocation methods for different categories of activity and varying requirements for different types of election years, to a uniform requirement that all committees with federal and non-federal accounts must allocate their expenses on a fixed percentage basis between those accounts. A public hearing was held on December 15, 1988, at which six witnesses presented testimony on the issues raised in the rulemaking. These witnesses represented national committees of both major political parties, a state party committee, and two public interest organizations. The Commission also received sixteen written comments, including several submitted after the close of the comment period while the Commission was considering drafts of final allocation rules.

In addition to the Notice of Proposed Rulemaking and the public hearing, the Commission initiated two other measures to obtain input relevant to allocation of expenses for federal and non-federal activities. On February 10, 1989, the Commission sent a seven-page questionnaire to the 110 Democratic and Republican state party chairs, soliciting information on current allocation practices in the states. Twenty-two responses to the questionnaire were received, providing a substantial amount of new information supplementing the comments previously submitted. In addition, on April 17, 1989, the Commission sent letters and questions to the chief fundraiser for each of the major political parties during the 1988 election year. These questions focused on (1) the fundraisers' roles in their parties' presidential campaigns and in the national party committees during the 1988 election cycle, (2) the relationship between the national party committees' fundraising activities and the presidential campaigns, and (3) the national parties' involvement in raising and spending money not subject to federal limits and prohibitions.

Each of these forms of input provided valuable information which serves as the basis for the revised rules published today. These rules also incorporate elements of each of the four proposals previously published in the Notice of Proposed Rulemaking.

Section 438(d) of title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 15, 1990.

Explanation and Justification

In regulations promulgated in 1977, the Commission required political committees active in both federal and non-federal elections to allocate their administrative expenses between separate federal and non-federal accounts "in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis." 11 CFR 106.1(e). Since 1978, the Commission has also recognized that such committees may allocate the costs of certain activities that affect both federal and non-federal elections, provided that they defray a reasonable portion of those costs with funds permissible under the Act. See Advisory Opinion 1978-10.

The revised regulations published today provide committees with significantly more guidance on how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. Unlike current 11 CFR 106.1(e), which addresses only administrative expenses, the revisions specify explicit percentages or methods for allocation of each category of allocable expense by each type of committee covered by the rules. See §§ 106.5 and 106.6. Similarly, new paragraph 106.1(a) extends the allocation and reporting requirements of current 11 CFR 106.1(a) to cover payments that include both amounts attributable to specific non-federal candidates and amounts attributable to specific federal candidates, as well as expenditures on behalf of specific federal candidates alone. The new rules also ensure that the public record reflects how committees are allocating their shared federal and non-federal expenses by requiring more detailed disclosure of such allocation, to be reported on a new set of reporting forms. See § 104.10. In addition, the revised rules significantly alter the procedure by which committees are to pay the bills for their allocable activities. For the first time, committees are required to pay their allocable expenses from their regular federal accounts or from new separate allocation accounts, rather than making such payments from their non-federal accounts as permitted under the Commission's current policy. The new rules include specific payment and reimbursement procedures to allow the Commission to track the flow of non-federal funds transferred into federal accounts, and to ensure that such funds are used solely to pay the non-federal portion of a committee's allocable expenses. See paragraphs 106.5(g) and 106.6(e). Finally, the new rules provide additional safeguards against the use of impermissible funds in federal election activity by expanding the disclosure of receipts and disbursements by national party committees, and by creating a presumption that funds solicited by party committees with reference to federal candidates or elections are solicited for the purpose of influencing federal elections. See §§ 102.5(a)(3), 104.8, and 104.9.

Part 102—Registration, Organization and Recordkeeping by Political Committees

Section 102.5 Organizations Financing Political Activity in Connection With Federal and Non-federal Elections, Other Than Through Transfers and Joint Fundraisers

Revised § 102.5 adds a technical amendment regarding transfers of non-federal funds into a committee's federal accounts, and sets forth a presumption regarding funds solicited by party committees. Current 11 CFR 102.5(a)(1)(i) prohibits committees from transferring funds from a non-federal account to a federal account for any reason. Under the new rules, committees are required to make such transfers for the limited purpose of paying for allocated expenses. See paragraphs 106.5(g) and 106.6(e). Thus, paragraph (a)(1)(i) has been amended to allow transfers of non-federal funds into a federal account as provided in paragraphs 106.5(g) and 106.6(e) of the new rules.

New paragraph (a)(3) creates a presumption that any funds solicited by a party committee with reference to a federal candidate or election are raised for the purpose of influencing a federal election, and are thus subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating that the funds were solicited with express notice that they would not be used for federal election purposes. Paragraph (a)(3) has been added to the rules to address the common perception, reflected in several comments, that funds prohibited under the Act have been solicited on behalf of political parties with the implication that they would be used to benefit federal candidates when, in fact, the funds could only be used for non-federal election activity. This provision, in combination with current 11 CFR 102.5(a)(2) regarding funds deposited in federal accounts, will ensure that funds collected by party committees are used for the purpose for which they were solicited, and will make clear to donors that funds prohibited under the Act will only be used to support non-federal candidates and elections.

Part 104—Reports by Political Committees

Section 104.8 Uniform Reporting of Receipts

Revised § 104.8 requires national party committees to disclose the source and amount of receipts by their non-federal accounts and building funds, as well as by their federal accounts as required under the current rules. The section has therefore been retitled to reflect its broadened application to both federal and non-federal receipts.

Paragraph (a), which governs disclosure of receipts by all reporting committees, has been amended to make clear that it only applies to committee's federal accounts. New paragraphs (e) and (f) require national party committees to also disclose information about receipts to their non-federal accounts and buildings funds. The language of paragraphs (e) and (f) parallels that of paragraph (a), applying the same itemization threshold to all three types of accounts. National party committees are to disclose this information on a separate Schedule A for each of their accounts, but shall list their non-federal and building fund receipts as memo entries, in order to isolate them from the federal receipts that are summarized for each reporting period.

This broadened disclosure provision has been added to the rules based on the Commission's belief that it will help eliminate the perception that prohibited funds have been used to benefit federal candidates and elections. This approach was supported by several comments on the rules. Representatives of the major parties' national committees testified that their committees did not object to broader disclosure at the national party level. However, several commenters strongly objected to such disclosure at either state or local party levels, and some Commissioners expressed concern about the FEC's jurisdiction to require such reporting by state and local party committees. Based, in part, on this input, the Commission has limited the reporting of non-federal receipts to national party committees. The Commission also took into consideration

the national committees' primary involvement in Presidential and other federal elections, such committees' ability to comply with more complicated reporting requirements, and the fact that there is no comprehensive reporting of non-federal activity by national party committees that is comparable to the non-federal reporting by state and local party committees at the state level.

Section 104.9 Uniform Reporting of Disbursements

This section has been amended to require national party committees to disclose disbursements from their non-federal accounts and building funds, as well as from their federal accounts as required under the current rules. These changes parallel the expansion of § 104.8 regarding national committee disclosure of non-federal receipts. Section 104.9 has also been retitled to reflect its broadened application to both federal and non-federal disbursements.

Paragraph (a), which governs disclosure of expenditures by all reporting committees, has been amended to make clear that it only applies to a committee's federal accounts. New paragraphs (c) and (d) require national party committees to also disclose information about disbursements from their non-federal accounts and building funds. The language of paragraphs (c) and (d) parallels that of paragraph (a), applying the same itemization threshold to all three types of accounts. In addition, new paragraph (e) requires national party committees to report each transfer of funds from their non-federal accounts to the non-federal account of a state or local party committee. National party committees are to disclose this information on a separate Schedule B for each of their accounts, but shall list their non-federal and building fund disbursements as memo entries, in order to isolate them from the federal expenditures that are summarized for each reporting period.

These revisions, together with revised § 104.8, have been added to the rules based on the belief that increased disclosure will help eliminate the perception that prohibited funds have been used to benefit federal candidates and elections. Like the disclosure of non-federal receipts, the reporting of disbursements from non-federal accounts has been limited to national party committees.

Section 104.10 Reporting of Expenses Allocated Among Candidates and Activities

Section 104.10 sets forth the rules for the reporting of information related to a committee's allocable expenses. These rules only apply to committees that qualify as "political committees" under the Act. See 2 U.S.C. 431(4). Current 11 CFR 104.10 addresses only the reporting of allocation of expenditures made on behalf of more than one specific candidate. In contrast, the revised section also covers the reporting of allocation of a committee's administrative expenses and its costs for fundraising, exempt activities, and generic voter drive activity. The new section has therefore been retitled to reflect its broadened application to the reporting of expenses allocated between federal and non-federal activities as well as expenses allocated between specific candidates.

New § 104.10 is based on the reporting provisions described in the Notice of Proposed Rulemaking. However, several additional requirements have been added to the final rules to reflect the changed procedure by which payment for allocable activities is made. Under that procedure, committees are to pay their allocable expenses from their regular federal accounts or from new separate allocation accounts, which are also federal accounts and therefore subject to the full reporting requirements of the Act. See §§ 106.5(g) and 106.6(e). Revised § 104.10 requires committees to itemize each transfer of non-federal funds to their federal or allocation accounts, as well as each allocated disbursement made from those accounts.

These rules were designed to provide sufficient information to allow the Commission to monitor committees' allocation procedures, while reflecting the Commission's commitment to avoiding overly burdensome reporting requirements. The information required is the minimum necessary to track the flow of non-federal funds into federal accounts, and to ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities. In contrast, any information that could be deduced from a committee's reports or calculated by the Commission will not be required on the new reporting forms, which are being designed to implement these reporting provisions.

It should also be noted that these rules have been placed in a different section than the reporting provisions described in the Notice of Proposed Rulemaking. The NPRM alternatives addressed reporting in draft § 106.5, which was intended to cover all allocation issues. In the revised regulations, these requirements have been moved to § 104.10, so that all reporting requirements will continue to be located together in part 104 of the regulations.

Paragraph 104.10(a) Expenses Allocated Among Candidates

This paragraph expands current 11 CFR 104.10 to more clearly describe the rules for reporting the allocation of expenses attributable to specific candidates. In the case of expenditures allocated between more than one clearly identified federal candidate, political committees must report the amount of each in-kind contribution, independent expenditure, or coordinated party expenditure attributed to each candidate. In the case of payments involving both expenditures on behalf of one or more specific federal candidates and disbursements on behalf of one or more specific non-federal candidates, political committees with separate federal and non-federal accounts shall report the payments according to the instructions included in new paragraph 104.10(a). These instructions parallel those contained in paragraph 104.10(b) for the reporting of other allocable costs, but make clear the added requirements for reporting costs attributable to specific federal candidates. In paragraphs (a)(1) through (a)(4), the new rules set forth procedures by which committees are to report their allocation ratios used, as well as transfers of funds between their accounts and disbursements made from their federal accounts for the purpose of paying for activities conducted on behalf of both specific federal and specific non-federal candidates. Committees are instructed to assign a unique identifying title or code to each such activity, in order to track the funds designated to pay for its costs. These identifying titles and codes are also intended to decrease the burden placed on reporting committees, by allowing them to state relevant allocation ratios one time only, rather than repeating them for every itemized expense. Thus, it is especially critical that committees use precisely the same identifier each time they refer in their reports to a particular activity.

Paragraph 104.10(b) Expenses Allocated Among Activities

This new paragraph sets forth the rules by which political committees with separate federal and non-federal accounts are to report their allocation of administrative expenses and the costs of fundraising, exempt activities, and generic voter drive activity. In paragraphs (b)(1) through (b)(5), the new rules set forth procedures by which committees are to report their allocation ratios used for each category of activity, as well as transfers of funds between their accounts and disbursements made from their federal accounts for the purpose of paying their allocable expenses. In contrast to the allocation of administrative expenses and generic voter drive costs, for which one ratio is calculated for each category as a whole, committees are to calculate a separate allocation ratio for each fundraising program or exempt activity because the allocation methods used for these categories would be expected to yield different ratios for each such event. See paragraphs 106.5 (e) and (f) and 106.6(d). Committees are also instructed to assign a unique identifying title or code to each fundraising program or exempt activity, in order to track the funds designated to pay for its costs.

Part 106—Allocations of Candidate and Committee Activities

Section 106.1 Allocation of Expenses Between Candidates

Current 11 CFR 106.1 contains both the rules for allocation between specific candidates and the rules for allocation of administrative expenses. In the revised regulations, the Commission has created new §§ 106.5 and 106.6 to govern allocation of administrative expenses and the costs of all activities not attributable to specific candidates, including fundraising events, exempt activities, and generic voter drive activity. Thus, new § 106.1 is limited to allocation of expenses attributable to more than one clearly identified candidate, and has been retitled accordingly. Paragraph 106.1(a) has been revised to clarify how committees are to allocate expenses for activities conducted on behalf of several specific candidates. Paragraph 106.1(e) has been revised to cross-reference the reader to new §§ 106.5 and 106.6 for the rules governing allocation of administrative expenses, and the costs of fundraising, exempt activities, and generic voter drive activity.

Paragraph 106.1(a) General Rule

This paragraph has been expanded to more fully describe the methods by which committees are to allocate expenses attributable to more than one specific candidate, including in-kind contributions, independent expenditures, and coordinated party expenditures. These rules present no change in Commission policy as to when a given expense constitutes an in-kind contribution or particular type of expenditure. Rather, the rules are intended to provide guidance as to how committees are to allocate such expenses once they are determined to be in-kind contributions, independent expenditures, or coordinated party expenditures.

The new paragraph retains the general rule of current 11 CFR 106.1(a) that expenses shall be attributed to each candidate according to the benefit reasonably expected to be derived. The revision adds examples of the general rule, specifying allocation methods for two different types of activity that may be conducted on behalf of several specific candidates.

The first example stated in the rules covers publications and broadcast communications, which are to be allocated according to the space or time devoted to each candidate as compared to the total space or time devoted to all candidates. If the costs of a phone bank are attributable, in whole or in part, to one or more federal candidates as an in-kind contribution, independent expenditure, or coordinated party expenditure, then those costs should be allocated on a similar basis, according to the number of questions or statements devoted to each candidate.

The second example stated in the rules covers the costs of fundraising events where funds are collected by one committee for more than one clearly identified candidate. Such costs are to be allocated according the amount of funds received on behalf of each candidate as compared to the total receipts by all candidates. This situation should not be confused with that described in 11 CFR 102.17, which concerns joint fundraising activities conducted by more than one committee. The Commission intends that any other types of activity not covered by the stated examples are to be allocated according to the general rule of this paragraph when those activities are conducted on behalf of more than one clearly identified candidate.

New paragraph 106.1(a) also makes clear that committees are to use the designated methods to allocate costs between specific federal candidates, as well as to allocate payments involving both expenditures on behalf of specific federal candidates and disbursements on behalf of specific non-federal candidates. In the case of the latter type of payments, political committees with separate federal and non-federal accounts are to make such payments according the same procedures required for paying administrative expenses and the costs of joint federal and non-federal activities (see paragraphs 106.5(g) and 106.6(e)), but shall report such payments according to paragraph 104.10(a). It should be noted that the methods set forth in paragraph 106.1(a) will also be used by publicly-financed presidential general election candidates, who are to allocate the costs of joint activities pursuant to 11 CFR 9002.11(b)(3). Such candidates must keep records of their allocable expenses pursuant to paragraph 104.10(a).

Paragraph 106.1(e)

This paragraph cross-references the reader to new §§ 106.5 (for party committees) and 106.6 (for nonconnected committees and separate segregated funds) for the rules governing allocation for administrative expenses and all activities not attributable to specific candidates. In contrast to current 11 CFR 106.1(e), which provides only for allocation of administrative expenses, the new rules apply the referenced allocation requirements to fundraising events, exempt activities, and generic voter drive activity as well. This expanded application is consistent with the Commission's position in Advisory Opinions 1978–10, 1978–28, and 1978–50. These opinions clarified the scope of 11 CFR 106.1(e) by interpreting "administrative expenses" as including generic voter activities such as voter registration and get-out-the-vote drives, and requiring that such activities be allocated according to the same methods as approved for other administrative expenses. The Commission has also interpreted the allocation requirement of 11 CFR 106.1(e) as applying to publications and fundraising events. See Advisory Opinions 1978–46 and 1979–12.

In addition, the new rules extend the allocation requirements to all committees that make disbursements for joint federal and non-federal election activities, whereas current 11 CFR 106.1(e) applies only to political committees with separate federal and non-federal accounts. Under the revised rules, organizations that are not political committees and that maintain only a single account shall demonstrate, upon the Commission's request, that their expenses for joint activities have been allocated as required by these rules, and that the federal share of such expenses has been paid with funds permissible under the Act. See 11 CFR 102.5(b)(1)(ii).

Section 106.5 Allocation of Expenses Between Federal and Non-federal Activities by Party Committees

This section has been added to the rules to provide party committees with detailed instructions as to how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. These rules apply only

to those committees that make disbursements in connection with both federal and non-federal elections. Paragraphs 106.5 (a) through (g) specify percentages and methods by which different types of party committees are to allocate expenses for each category of allocable activity, and set forth procedures by which committees are to pay the bills for these allocable expenses. The allocation methods required by § 106.5 are based on those previously approved in Commission advisory opinions and described in the Notice of Proposed Rulemaking. However, following receipt of the comments and testimony on the rules, the Commission refined several of the allocation methods, and combined aspects of the four NPRM proposals.

One of the major issues addressed by the Commission in developing these regulations was whether uniform rules should be applied to all committees and activities, or whether options of methods should be available for certain committees and circumstances. Of the four alternatives described in the Notice of Proposed Rulemaking, two specified uniform allocation methods to be used by all committees, and two offered a choice of methods in given situations. The latter two alternatives also allowed committees the option of allocating expenses "on any other reasonable basis approved by the Commission in an advisory opinion," based on the language of the current allocation rule at 11 CFR 106.1(e).

In response to the Notice, one non-party commenter urged the Commission to adopt a uniform method for all committees, based on the concern that too much flexibility would lead to confusion in application of the rules. This comment also suggested that allowing different methods for state versus local party committees would result in a diversion of funds to whichever level permitted a higher non-federal share of allocable expenses. In constrast, the party committee commenters stressed the importance of flexibility in the rules, given the disparities between political activity at different levels of party organizations, and in different states and localities.

While concerned about keeping the rules as simple as possible, the Commission concluded that some differences between types of committees and activities must be acknowledged. Thus, the revised regulations include different requirements for national versus state and local party committees, as well as special variations for the House and Senate campaign committees, and for state and local party committees that elect statewide officers in years with no regularly scheduled federal elections. In the course of the rulemaking, it also became clear that some allocation methods were appropriate for certain activities and committees, while inappropriate for others. For example, the funds received method (see paragraph 106.5(f)) may reflect a fair division of costs involved in paying for a particular fundraising event, but bears no relationship to a committee's administrative functions and get-out-the-vote activities. Similarly, the ballot composition method (see paragraph 106.5(d)) may accurately reflect the priorities of state and local party committees, but is less applicable to national party committees primarily focused on national candidates and elections. Thus, the new regulations require different allocation methods for different types of committees and expenses, and eliminate the option of choosing between methods within each category of activity. While these variations may initially appear complex, once a committee determines the category into which it falls, the rules applied to that class of committee will be clear, and will not vary from year to year.

A second major issue addressed by the Commission in developing these regulations was whether committees should be required to allocate fixed or minimum percentages to their federal accounts for certain categories of activity. One alternative described in the Notice of Proposed Rulemaking would have set a minimum federal percentage for all allocable expenses, to be applied if greater than the percentages produced by the specified allocation methods. A second alternative would have set fixed allocation percentages for all activities, with a higher federal percentage required for generic voter drive costs in presidential election years. A third alternative would have required different allocation methods in federal versus non-federal election years, with a set minimum federal percentage for generic voter drive costs in presidential election years.

Following receipt of the comments on the NPRM alternatives, the Commission considered several variations on the concept of minimum or fixed allocation percentages. These ranged from proposals that would have set minimum federal percentages only for national party committees or in presidential election years, to other proposals that would have applied minimum percentages to all activities by all party committees in all years. The Commission also considered proposals that would have set fixed allocation percentages presumed appropriate for all party committees, but that would have allowed a committee to rebut the presumption by demonstrating through the advisory opinion process that, in its case, the fixed federal percentage was too high.

The new allocation rules published today are drawn from the proposals described in the Notice of Proposed Rulemaking and from the variations subsequently considered by the Commission. In the revised rules, the Commission has retained the concept of minimum percentages only for allocation of administrative expenses and costs of generic voter drive activity by the House and Senate campaign committees of the national parties. See paragraph 106.5(c). For other national party committees, the Commission has set fixed percentages for allocation of these categories of expense. See paragraph 106.5(b). In contrast, all of these committees are to allocate their fundraising costs solely according to the funds received method, as described in this section. See paragraph 106.5(f). State and local party committees, nonconnected committees, and separate segregated funds shall also calculate allocation ratios according to methods specified in the rules, with neither fixed nor minimum federal percentages required. See paragraphs 106.5 (d), (e) and (f), and 106.6 (c) and (d).

The revised regulations also eliminate the option of case-by-case approval of customized allocation methods through the advisory opinion process, as well as the option of allowing committees to rebut fixed allocation percentages by a showing of individual circumstances. These decisions were based on the Commission's concern that such open-ended options would be very difficult to administer, and would potentially allow many exceptions to the general rules. They would also risk a return to the "any reasonable method" standard of the current rules that was disapproved by the United States District Court. See *Common Cause* v. *Federal Election Commission*, 692 F.Supp. 1391, 1398 (D.D.C. 1987).

Paragraph 106.5(a) General Rules

This paragraph provides a general overview of the allocation rules for party committees and defines the four categories of activity for which costs are to be allocated. These include administrative expenses, fundraising programs, exempt activities conducted by state and local parties, and generic voter drive activity such as voter registration and get-out-the-vote campaigns. While earlier drafts of these rules and the alternatives described in the Notice of Proposed Rulemaking included fundraising costs in the category of administrative expenses, the revised rules divide these expenses into two separate categories. This distinction became necessary to allow for the difference in allocation methods applied to each of these types of expense. See paragraphs 106.5(b), (c), (d) and (f). Please note that all administrative expenses must be allocated between federal and non-federal accounts, if incurred by a committee that makes disbursements in connection with both federal and non-federal elections, and that chooses to pay any portion of such disbursements from its non-federal account. Such committees must also allocate all costs of generic voter drive activity, except for get-out-the-vote drives conducted on behalf of a wholly federal or wholly non-federal special election. In contrast, fundraising costs are allocable only when federal and non-federal funds are collected by one committee through the same fundraising event. Similarly, exempt activities are allocable only when conducted in conjunction with non-federal election activities.

One of the alternatives described in the Notice of Proposed Rulemaking offered committees the option of defraying the total cost of an allocable activity with funds raised under federal law. This option has been retained in paragraph 106.5(a)(1), reflecting the Commission's view that allocating a portion of certain costs to a committee's non-federal account is a permissive rather than a mandated procedure. Thus, the amounts that would be calculated under the rules for a committee's federal share of allocable expenses represent the minimum amounts to be paid from the committee's federal account, without precluding the committee from paying a higher percentage with federal funds.

The same NPRM alternative offered certain local party committees the option of selecting fixed allocation percentages for their administrative expenses and generic voter drive activity. In subsequent drafts of this paragraph, the Commission considered a similar "safe harbor" provision by which certain local party committees could choose to allocate these categories of expense according to a low fixed federal percentage. This option was originally conceived as a way for local party committees with limited activity to avoid the burden of calculating complicated allocation ratios, and to be assured of a relatively low federal percentage. However, the Commission has since revised the ballot composition method by which such committees are to allocate their administrative expenses and generic voter drive costs. See paragraph 106.5(d). Under the revised method, the process of calculating an allocation ratio is greatly simplified, and the resulting federal percentages for all local party committees are generally similar to those provided by the "safe harbor" option. For these reasons, the Commission decided to eliminate this option from the final allocation rules.

Paragraph 106.5(b) National Party Committees Other Than Senate or House Campaign Committees; Fixed Percentages for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which national party committees other than the House or Senate campaign committees are to allocate their administrative expenses and costs of generic voter drive activity. Unlike other committees, which are to calculate individualized ratios according to specified allocation methods for these categories of activity, the national party committees are to allocate fixed percentages to their federal and non-federal accounts each year. The fixed federal percentage is set at 65% in presidential election years, and at 60% in all other years. While committees are free to allocate higher percentages to their federal accounts, they may not allocate less than the specified percentages.

The Commission adopted this fixed percentage rule after considering several other alternative approaches. Previous drafts of the regulations would have allowed national party committees to allocate their administrative expenses and costs of generic voter drive activity according to the funds expended method or an aggregate ballot composition method, in combination with specified minimum federal percentages. These approaches were ultimately rejected by the Commission based on concerns about the practicability of applying either method at the national committee level. The particular percentages adopted by the Commission are intended to reflect the national party committees' primary focus on presidential and other federal candidates and elections, while still recognizing that such committees also participate in party-building activities at state and local levels of the party organizations.

Paragraph 106.5(c) Senate and House Campaign Committees of a National Party; Method and Minimum Federal Percentages for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which the Senate and House campaign committees of the national parties are to allocate their administrative expenses and costs of generic voter drive activity. Such expenses shall be allocated according to the funds expended method, with a minimum of 65% to be allocated to the committees' federal accounts each year. This rule differs from that applied to the other national party committees, which sets fixed allocation percentages that need not be compared to any other calculated ratios. In contrast, the minimum percentages required by this paragraph create a floor for federal allocation, while requiring a higher federal share if a higher percentage is calculated under the funds expended method. This more stringent requirement has been applied to the House and Senate campaign committees due to their narrower focus on Congressional candidates, and their limited involvement in non-federal elections.

The funds expended method was first described in Advisory Opinion 1975-21 and is codified in the current allocation rule at 11 CFR 106.1(e). It also appeared in two of the alternatives described in the Notice of Proposed Rulemaking. Under one alternative, committees were to allocate their administrative expenses and costs of generic voter drive activity according to the ratio of federal disbursements to total federal and non-federal disbursements made in the year four years prior to the year in question. The second alternative would have required committees to estimate a ratio at the beginning of the calendar year based upon their federal and non-federal disbursements in a prior comparable year, and to adjust their allocation ratio at the end of the year to reflect actual disbursements made during the year.

These proposals were addressed in several of the comments received by the Commission. While commenters from both national parties endorsed the concept of the funds expended method, they opposed as unworkable the four year "look back" approach described in the first NPRM alternative. One non-party commenter opposed any "prior year" model based on the concern that it would allow continued misallocation if the prior year's ratio had been improperly calculated. Another non-

party commenter described the method as circular, requiring a committee to have calculated an allocation ratio for a prior year without any guidance on how the calculation should have been done. This commenter supported the use of estimated and adjusted allocation ratios, using actual disbursements in the prior year as a guideline for estimating the initial allocation.

The revised regulations incorporate elements of several of these approaches. New paragraph 106.5(c) requires committees to report estimated allocation ratios at the beginning of the year, and to adjust their ratios on each periodic report to reflect the ratio of actual federal and non-federal funds expended, to date. However, the method has been revised from earlier drafts of the rules to resolve a concern about its application in years in which no federal election is held. Under the revised method, allocation ratios are determined by disbursements made over the two-year federal election cycle, rather than by disbursements made in the current calendar year. Thus, committees would have a basis for allocating their administrative expenses and costs of generic voter drive activity each year, including years in which no federal election is held. Such allocation is necessary to account for the portion of a committee's off-year administrative functions and generic activities that impact on future federal elections. The estimated ratio reported at the beginning of the year may be based either on disbursements from a prior comparable election cycle, or on a reasonable prediction of disbursements in the coming election cycle if no data from prior years is relevant or available. The revised rule also requires committees to transfer funds from their federal to their non-federal accounts to reflect their adjusted ratios, if the non-federal account has paid more than its allocable share due to an estimate later shown to be incorrect.

Paragraph 106.5(d) State and Local Party Committees; Method for Allocating Administrative Expenses and Costs of Generic Voter Drive Activity

This paragraph sets forth the rules by which state and local party committees are to allocate their administrative expenses and costs of generic voter drive activity. Paragraph 106.5(d)(1) states the general rule that such committees are to allocate these categories of expense according to the ballot composition method, as set forth in paragraphs (d)(1) (i) and (ii).

The ballot composition method was first described in the Commission's response to Advisory Opinion Request 1978-72, which permitted committees to allocate expenses according to the ratio of federal offices on the ballot to total federal and non-federal offices on the ballot, with the federal offices given proportionately more weight. It also appeared in three of the alternatives described in the Notice of Proposed Rulemaking, with two of them specifically limiting use of the method to allocation of administrative expenses and costs of generic voter drive activity by state and local party committees. The new rule replaces the poorly defined "weighting" concept with an "average ballot" approach, as suggested by several of the comments received on this method. Under this approach, committees are to calculate a ballot composition ratio according to the ballot which an average voter would face in that committee's state or geographic area, rather than basing the ratio on the aggregates of all federal and all non-federal races on the ballot. The method has been further simplified to produce a ratio by counting the categories of offices on the ballot rather than counting each individual office. Paragraph 106.5(d)(1)(ii) specifies the categories to be included in the ratio, and the number of federal or non-federal offices to be counted for each such category.

It should be noted that in states where candidates for governor and lieutenant governor run on a single ticket, the latter office may not be separately counted in the category of "other partisan statewide executive candidates." The same principle applies to the offices of president and vice president, which are counted together as one federal office. In contrast, in states where the governor and lieutenant governor are independently elected, the office of lieutenant governor may be counted separately from the governor, in the category of "other partisan statewide executive candidates." California is one example of such a state, where candidates from different parties may be simultaneously elected to the offices of governor and lieutenant governor.

The ballot composition method was the subject of several late comments from national and state party committees, expressing concern that the scope of party activity at state and local levels was not adequately reflected in the method, as revised. In response to this concern, the Commission reexamined the method and further refined the ballot composition rules. In the final version of paragraph 106.5(d)(1)(ii), the Commission deleted the category of "partisan statewide judicial offices," which would have benefited only those states that elect statewide judges through partisan elections. In its place, the Commission added to the ratio an additional non-federal office to reflect state party support for partisan local candidates. Thus, this non-federal slot is now available to virtually every state party committee.

It should be noted that the ballot composition method has also been revised from earlier drafts of the rules to resolve a concern about its application in years in which no federal election is held. Under the revised method, allocation ratios are determined by the offices expected on the ballot in the next general election to be held in the committee's state or geographic area. Thus, committees would have a basis for allocating their administrative expenses and costs of generic voter drive activity each year, including years in which no federal election is held. Such allocation is necessary to account for the portion of a committee's off-year administrative functions and generic activities that impact on future federal elections.

The broader language of new paragraph 106.5(d)(1) also generally covers years in which a special election is held. However, because of the varying situations that might arise, the Commission has not spelled out rules to cover each variation. The allocation formula to be used and attribution of disbursements to specific candidates will have to be determined on a case-by-case basis.

In the course of refining the ballot composition method, the Commission became aware of an additional problem in applying the method to states that do not hold federal and non-federal elections in the same year. The method as described in paragraph 106.5(d)(1) would have allowed these states to allocate 100% of their administrative expenses and costs of generic voter drive activity to their non-federal accounts in years in which "the next general election" was only for non-federal offices. Such an allocation would not account for the impact of these activities on upcoming federal elections. Thus, the Commission adopted an exception to the regular rule for states that hold non-federal elections in odd-numbered years when no special federal election is scheduled. Paragraph 106.5(d)(2) describes a variation of the ballot composition method to be used by such states, whereby one ratio is calculated for generic voter drive costs based on the election to be held that year, and a separate ratio is calculated for administrative expenses based on the federal election cycle. This variation will ensure that committees allocate a portion of their administrative expenses to their federal accounts even in solely non-federal election years, as well as providing guidance on how to allocate costs in years in which no elections are held.

Paragraph 106.5(e) State and Local Party Committees; Method for Allocating Costs of Exempt Activities

This paragraph sets forth the rules by which state and local party committees are to allocate the costs of activities that are exempt from the definitions of "contribution" and "expenditure" under the Act (see 11 CFR 100.7(b)(9), (15) and (17), and 100.8(b)(10), (16) and (18)), when such activities are conducted in conjunction with non-federal election activities. Committees are to allocate these expenses according to the time or space devoted to federal elections as compared to the total time or space devoted to federal and non-federal elections in a particular publication or phone bank. This method was described in Advisory Opinion 1978-46, and appeared in two of the alternatives included in the Notice of Proposed Rulemaking. Under the method, committees are to calculate a separate allocation ratio for each individual exempt activity, unlike administrative expenses and generic voter drive activity, which are allocated according to a single ratio calculated for the entire category of activity. This procedure is necessary because each exempt communication is likely to devote a different amount of time or space to federal and non-federal elections. It should also be noted that an exempt activity may be conducted in conjunction with a non-exempt activity that is attributable to one or more clearly identified candidates. In that case, the costs of the activity must be proportionally allocated between the committee's federal and non-federal accounts according to this paragraph, and allocated between candidates as required by paragraph 106.1(a).

Paragraph 106.5(f) All Party Committees; Method for Allocating Direct Costs of Fundraising

Paragraph 106.5(f) sets forth the rules by which all party committees are to allocate the direct costs of each fundraising program or event, where both federal and non-federal funds are collected by one committee through such program or event. These rules should not be confused with 11 CFR 102.17, which concerns joint fundraising activities conducted by more than one committee. Under this paragraph, committees are to allocate their fundraising costs according to the funds received method. As with allocation of exempt activity costs, committees are to calculate a separate allocation ratio for each individual fundraising event.

The funds received method was first described in the *FEC Record* of December 1977 as an example of an allocation procedure that would meet the "reasonable basis" requirement of current 11 CFR 106.1(a). The method was subsequently cited in several advisory opinions as a permissible method for allocating administrative expenses (later extended to include voter registration and get-out-the-vote drives), along with the funds expended and ballot composition methods. See, e.g., Advisory Opinion 1978-46.

Of the four alternatives described in the Notice of Proposed Rulemaking, only one retained the funds received method, proposing that it be used to allocate administrative expenses and costs of generic voter drive activity in non-federal election years. All of the comments received on this method expressed concern that the amount of federal versus non-federal funds received by a committee is not meaningfully related to how expenses for joint federal and non-federal activities should be divided. However, several commenters suggested that the method be retained for the narrow purpose of allocating the costs of fundraising activities, because it provides the most accurate basis for division of these costs. Based on these comments, the Commission adopted this method for allocating the direct costs of fundraising programs and events through which both federal and non-federal funds are obtained.

Paragraph 106.5(g) Payment of Allocable Expenses by Committees With Separate Federal and Non-federal Accounts

This paragraph sets forth the procedures by which party committees with separate federal and non-federal accounts are to pay the bills for their administrative expenses and shared federal and non-federal activities. These rules do not apply to organizations that maintain only a single account, even though such organizations may be required to demonstrate to the Commission that they have allocated their expenses as required by other sections of the allocation regulations.

The provisions of new paragraph 106.5(g) represent a significant departure from the Commission's current policy. In enforcing the current allocation rule at 11 CFR 106.1(a), the Commission has permitted three procedures by which committees may pay their administrative expenses. Under current policy, committees are allowed to write two separate checks from their federal and non-federal accounts to cover the respective portions of each expense. Alternatively, committees could pay the entire expense from their non-federal accounts, which would then be reimbursed by their federal accounts. Finally, committees could pay the expense through a separate "escrow" account established solely for the purpose of paying for allocable expenses. Reimbursement of a federal account by a non-federal account that contains funds prohibited by the Act is not permitted under the current rules. See 11 CFR 102.5(a)(1)(i) and Advisory Opinion 1978-6.

While the Commission has interpreted 11 CFR 106.1(a) to also require allocation of fundraising, exempt activity, and generic voter drive costs (see Advisory Opinions 1978-10, 1978-28, 1978-68, 1978-80 and 1978-12), it has limited the option of paying allocable bills through a non-federal account to the payment of administrative expenses. This distinction has been based on the premise that fundraising, voter drives, and exempt activities have a direct impact on federal elections, and thus committees should not be permitted to advance non-federal funds for those purposes.

This distinction was incorporated into three of the alternatives described in the Notice of Proposed Rulemaking. These alternatives would have allowed payment of an entire administrative expense by a committee's non-federal account, provided that it was reimbursed by the committee's federal account within ten days after the bill was paid. All other allocable expenses were to be paid by two separate checks from the federal and non-federal accounts, which was also provided as an option for payment of administrative expenses. The fourth NPRM alternative permitted the same two procedures, but made no distinction between different categories of expense. The option of paying expenses through a separate "escrow" account was eliminated in all four of the NPRM alternatives, but was raised for comment as an additional issue.

The Commission received considerable comment on these proposed payment procedures. First, the ten-day reimbursement limitation was unanimously rejected as unworkable. Several commenters asserted that at least thirty days were needed for such reimbursement to realistically occur. Second, two commenters expressed the

concern that federal account reimbursement of a state account could trigger state law disclosure requirements for the federal account, thus creating a duplicate federal and state-level reporting burden. Third, the same two commenters proposed that the current "escrow" procedure be retained as a payment option, even though it had been excluded from the alternatives described in the Notice of Proposed Rulemaking. Finally, one commenter suggested that the Commission consider changing its policy to allow a committee to pay an entire allocable expense through its federal account, with reimbursement from its non-federal account. This procedure would ensure that disbursements for allocable expenses would be disclosed by a committee's federal accounts under the Act's reporting requirements.

Based on these comments, the Commission significantly revised the proposed payment procedures described in the Notice of Proposed Rulemaking. Paragraph 106.5(g)(1) of the rules published today offers committees an option of two procedures by which they may pay for their administrative expenses and shared federal and non-federal activities. Under the first procedure, committees would pay an entire bill from their regular federal accounts, and would transfer funds from their non-federal accounts to their federal accounts to cover the non-federal share of the allocable expense. The second procedure would allow committees to establish a separate allocation account (referred to previously as an "escrow" account), which is considered by the Commission to be a federal account, and to transfer funds to that account from their regular federal accounts and their non-federal accounts solely for the purpose of paying allocable expenses. Under both procedures, transfers of non-federal funds must be itemized in the committee's reports to show the allocable activities for which they are intended to pay, and must occur within ten days before or thirty days after the bills for those activities are paid. Each allocated disbursement from a committee's federal account or allocation account must also be itemized, to show the particular expenses covered by that disbursement. These requirements will allow the Commission to track the flow of non-federal funds into federal accounts, and to ensure that the use of such funds is strictly limited to payment for the non-federal share of allocable activities.

It should be noted that this is the first time that the Commission has allowed non-federal funds to be transferred to a committee's federal account, and that it does so now only for the limited purpose of paying allocable expenses. Under the new rules, committees are prohibited from making such payments through their non-federal accounts, as permitted under the Commission's current policy. That procedure has failed to provide sufficient disclosure of the federal and non-federal portions of allocated disbursements. Such disclosure is critical to the Commission's ability to monitor whether expenses have been allocated as required, and is the basis for the procedures adopted by the new allocation rules.

It should also be noted that the new rules allow committees to transfer funds to their federal account or allocation account prior to actual payment of a vendor's bill, as well as allowing reimbursement of those accounts after the bill has been paid. This rule is more flexible than that proposed by the NPRM alternatives, which would have limited such transfers to post-payment reimbursement. However, the new rules set a ten-day time limit on pre-payment transfers that are made from a non-federal account, in order to prevent such accounts from subsidizing federal election activity with prohibited funds. This ten-day limit differs from the one objected to by the commenters in response to the Notice, as the new rules provide for a total forty-day time period in which transfers for allocation purposes may occur.

The procedures contained in paragraph 106.5(g) are intended to provide committees the flexibility to make single payments to their vendors, rather than requiring that every expense be paid with two separate checks. Such flexibility is indispensable for committees paying large numbers of bills from many different vendors. In fact, the new rules have eliminated the two-check option altogether, as that procedure does not provide sufficient disclosure of how funds allocated for shared federal and non-federal activity are actually spent. Instead, committees must choose from the two payment procedures authorized by the new allocation rules.

Section 106.6 Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees

This section has been added to the rules to provide separate segregated funds and nonconnected committees with detailed instructions as to how they are to allocate their administrative expenses and costs for combined federal and non-federal activities. These rules apply only to those committees that make disbursements in connection with federal and non-federal elections. For purposes of this section, "nonconnected committee" includes any committee that conducts activities in connection with a federal election, but which is not a party committee, an authorized committee of any candidate for federal office, or a separate segregated fund.

Paragraph 106.6(b) describes the categories of activity that are to be allocated by each type of committee. These categories are generally the same as those defined in paragraph 106.5(a)(2) for party committees, with one important difference. Unlike party committees and nonconnected committees, separate segregated funds need only allocate their administrative and fundraising expenses if those expenses are not paid by their connected organizations, as permitted by 11 CFR 114.5(b).

Paragraph 106.6(c) specifies the method for allocating administrative expenses and the costs of generic voter drive activity. Separate segregated funds and nonconnected committees are to allocate these expenses according to the funds expended method calculated over a two-year federal election cycle. This method is identical to that described in paragraph 106.5(c) for use by the Senate and House campaign committees, except that no minimum federal percentages are required for separate segregated funds or nonconnected committees.

Paragraph 106.6(d) specifies the method for allocating the direct costs of each fundraising program or event, where both federal and non-federal funds are collected by one committee through such program or event. Separate segregated funds and nonconnected committees are to allocate these expenses according to the funds received method, which is identical to that described in paragraph 106.5(f) for use by all party committees.

Paragraph 106.6(e) sets forth procedures by which separate segregated funds and nonconnected committees are to pay the bills for their allocable expenses. These procedures are identical to those described in paragraph 106.5(g) for use by all party committees.

In earlier drafts of these regulations, the Commission considered combining the allocation rules for separate segregated funds and nonconnected committees with those required for party committees. However, the Commission was concerned that different types of committees might have difficulty sorting out the particular rules that applied to them. By creating new § 106.6, the Commission intends to make it as simple as possible for each type of committee to easily locate the appropriate set of allocation rules. In contrast, the reporting requirements of part 104 apply to all political committees, including party committees, separate segregated funds, and nonconnected committees. Similarly, the rules set forth in § 106.1 apply to all committees that make disbursements on behalf of more than one clearly identified candidate.

List of Subjects

11 CFR Part 102

Political committees and parties, Campaign funds.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting requirements, Political candidates.

11 CFR Part 106

Campaign funds, Political committees and parties, Political candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary purpose of the revision is to clarify the Commission's rules governing allocation of certain costs by party committees, nonconnected committees and separate segregated funds.

For the reasons set out in the preamble, title 11, chapter I, subchapter A of the Code of Federal Regulations, is amended as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.5 is amended by revising paragraph (a)(1)(i), and by adding paragraph (a)(3) as follows:

§ 102.5 Organizations financing political activity in connection with Federal and non-federal elections, other than through transfers and joint fundraisers.

(a) * * *

(1) * * *

(i) Establish a separate federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 CFR part 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 CFR 106.5(g) and 106.6(e). Administrative expenses shall be allocated pursuant to 11 CFR part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

* * * * *

(3) Any party committee solicitation that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election, and contributions resulting from that solicitation shall be subject to the prohibitions and limitations of the Act. This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for federal election purposes.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

4. Section 104.8 is amended by revising the heading and paragraph (a), and by adding paragraphs (e) and (f) as follows:

§ 104.8 Uniform reporting of receipts.

(a) A reporting committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year, the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

* * * * *

(e) National party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) National party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

5. Section 104.9 is amended by revising the heading and paragraph (a), and by adding paragraphs (c), (d) and (e) as follows:

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made from the reporting committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or

description as to the reasons for the expenditure. See 11 CFR 104.3(b)(3)(i)(A).

* * * * *

(c) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-federal account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(d) National party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount and purpose of such disbursement, in accordance with 11 CFR 104.9(b). As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(e) National party committees shall report in a memo Schedule B each transfer from their non-federal account(s) to the non-federal account(s) of a state or local party committee.

6. Section 104.10 is revised to read as follows:

§ 104.10 Reporting of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee making an expenditure on behalf of more than one clearly identified candidate for federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate. If a payment also includes amounts attributable to one or more non-federal candidates, and is made by a political committee with separate federal and non-federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate, but shall be reported pursuant to paragraphs (a)(1) through (a)(4), as follows:

(1) *Reporting of allocation of expenses attributable to specific federal and non-federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more federal candidates and disbursements on behalf of one or more non-federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates.

(3) *Reporting of allocated disbursements attributable to specific federal and non-federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified federal candidates and one or more clearly identified non-federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each federal candidate, and the total amount attributed to the non-federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific federal and non-federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that has established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, exempt activities, and generic voter drives according to 11 CFR 106.5 or 106.6, as appropriate, and shall report those allocations according to paragraphs (b) (1) through (5), as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives.*

(i) In the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall state the allocation ratio to be applied to these categories of activity according to 11 CFR 106.5 (b), (c) or (d) or 106.6(C), and the manner in which it was derived. The Senate and House campaign committees of each political party shall also state whether the calculated ratio or the minimum federal percentage required by 11 CFR 106.5(c)(2) will be used.

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expenses or generic voter drives:

(A) The committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the federal and non-federal accounts that year, to date, for each such category.

(B) Nonconnected committees, separate segregated funds, and Senate and House campaign committees of a national party that have allocated expenses according to the funds expended method as described in 11 CFR 106.5(c)(1) or 106.6(c) shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific state and local candidates, to date, in that calendar year.

(2) *Reporting of allocation of the direct costs of fundraising and costs of exempt activities.* In each report disclosing a disbursement for the direct costs of a fundraising program or an exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.5 (e) and (f) or 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the federal and non-federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursement for three years, in accordance with 11 CFR 104.14.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

7. The authority citation for part 106 is revised to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

8. Section 106.1 is amended by revising the heading and paragraphs (a) and (e) to read as follows:

§ 106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

(2) An expenditure made on behalf of more than one clearly identified federal candidate shall be reported pursuant to 11 CFR 104.10(a). A payment that also includes amounts attributable to one or more non-federal candidates, and that is made by a political committee with separate federal and non-federal accounts, shall be made according to the procedures set forth in 11 CFR 106.5(g) or 106.6(e), as appropriate, but shall be reported pursuant to 11 CFR 104.10(a).

* * * * *

(e) Party committees, separate segregated funds, and nonconnected committees that make disbursements for administrative expenses, fundraising, exempt activities, or generic voter drives in connection with both federal and non-federal elections shall allocate their expenses in accordance with § 106.5 or § 106.6, as appropriate.

9. Part 106 is amended by adding § 106.5 as follows:

§ 106.5 Allocation of expenses between federal and non-federal activities by party committees.

(a) *General rules.* (1) Party committees that make disbursements in connection with federal and non-federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate federal and non-federal accounts under 11 CFR 102.5(b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii) shall also allocate their federal and non-federal expenses according to this section. This section covers (i) General rules regarding allocation of federal and non-federal expenses by party committees, (ii) percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees, (iii) methods for allocation of administrative expenses, costs of generic voter drives, and exempt activities by state and local party committees, and of fundraising costs by all party committees, and (iv) procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* Committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected by one committee through such program or event;

(iii) State and local party activities exempt from the definitions of "contribution" and "expenditure" under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18) ("exempt activities") including the production and distribution of slate cards and sample ballots, campaign materials distributed by volunteers, and voter registration and get-out-the-vote drives on behalf of the party's presidential and vice-presidential nominees, where such activities are conducted in conjunction with non-federal election activities; and

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its federal and non-federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum federal percentage for allocating administrative expenses and costs of generic voter drives*—(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1) (i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d) *State and local party committees; method for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* All state and local party committees except those covered by paragraph (d)(2) of this section shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the ballot composition method, described in paragraphs (d)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee's state or geographic area. This ratio shall be determined by the number of categories of federal offices on the ballot and the number of categories of non-federal offices on the ballot, as described in paragraph (d)(1)(ii) of this section.

(ii) In calculating a ballot composition ratio, a state or local party committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next general election, as one federal office each. The committee shall count the non-federal offices of Governor, State Senator, and State Representative, if expected on the ballot in the next general election, as one non-federal office each. The committee shall count the total of all other partisan statewide executive candidates, if expected on the ballot in the next general election, as a maximum of two non-federal offices. State party committees shall also include in the ratio one additional non-federal office if any partisan local candidates are expected on the ballot in that election. Local party committees shall also include in the ratio a maximum of two additional non-federal offices if any partisan local candidates are expected on the ballot in that election.

(2) *Exception for states that do not hold federal and non-federal elections in the same year.* State and local party committees in states that do not hold federal and non-federal elections in the same year shall allocate the costs of generic voter drives according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for that calendar year. These committees shall allocate their administrative expenses according to the ballot composition method described in paragraph (d)(1) of this section, based on a ratio calculated for the two-year Congressional election cycle.

(e) *State and local party committees; method for allocating costs of exempt activities.* Each state or local party committee shall allocate its expenses for activities exempt from the definitions of "contribution" and "expenditure" under 11 CFR 100.7(b) (9), (15) or (17), and 100.8(b) (10), (16) or (18), when conducted in conjunction with non-federal election activities, as described in paragraph (a)(2) of this section, according to the proportion of time or space devoted in a communication. Under this method, the committee shall allocate expenses of a particular communication based on the ratio of the portion of the communication devoted to federal candidates or elections as compared to the entire communication. In the case of a publication, this ratio shall be determined by the space devoted to federal candidates or elections as compared to the total space devoted to all federal and non-federal candidates or elections. In the case of a phone bank, the ratio shall be determined by the number of questions or statements devoted to federal candidates or elections as compared to the total number of questions or statements devoted to all federal and non-federal candidates or elections.

(f) *All party committees; method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(g) *Payment of allocable expenses by committees with separate federal and non-federal accounts*—(1) *Payment options.* Committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1) (i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (g)(1) (i) or (ii) of this section, the committee shall transfer funds from its non-federal account to its federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

10. Part 106 is amended by adding new § 106.6 as follows:

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

(a) *General rule.* Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and nonconnected committees that have established separate federal and non-federal accounts under 11 CFR

102.5 (a)(1)(i) or (b)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall allocate their federal and non-federal expenses according to paragraphs (c) and (d) of this section. For purposes of this section, "nonconnected committee" includes any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund.

(b) *Costs to be allocated*—(1) *Separate segregated funds.* Separate segregated funds that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, if such expenses are not paid by the separate segregated fund's connected organization;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event, if such expenses are not paid by the separate segregated fund's connected organization; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(2) *Nonconnected committees.* Nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected through such program or event; and

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(c) *Method for allocating administrative expenses and costs of generic voter drives.* Nonconnected committees and separate segregated funds shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (b) of this section, according to the funds expended method, described in paragraphs (c) (1) and (2) as follows:

(1) Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(2) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(d) *Method for allocating direct costs of fundraising.* If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio. The committee shall adjust its estimated allocation ratio following each fundraising program or event from which both federal and non-federal funds are collected, to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers in its report for the period in which the fundraising program or event occurred.

(e) *Payment of allocable expenses by committees with separate federal and non-federal accounts*—(1) *Payment options.* Nonconnected committees and separate segregated funds that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (b) of this section according to either paragraph (e)(1) (i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established an allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (e)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Such funds may not be transferred more than 10 days before or more than 30 days after the payment for which they are designated is made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (e)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

Dated: June 15, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-14461 Filed 6-25-90; 8:45 am]

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June 26, 1990

Part III

Consumer Product Safety Commission

16 CFR Ch. II

Choking Hazards Associated With Toys and Children's Articles; Withdrawal of Advanced Notice of Proposed Rulemaking

Choking Hazards Associated With Balloons; Small Balls; Toys and Articles; and Marbles; Requests for Comments and Information; Proposed Rules

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Toys and Children's Articles Which Present Choking Hazards Because of Small Parts; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Commission has decided to terminate a proceeding for the possible amendment of regulations banning certain toys and articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. The Commission began this proceeding by publication of an advance notice of proposed rulemaking (ANPR) on June 7, 1988.

On March 21, 1990, the Commission decided to terminate this proceeding and to withdraw the ANPR published on June 7, 1988. The Commission took this action after considering written comments received in response to the ANPR, information about choking deaths and injuries to children during the years 1980 through 1989, estimates of costs to manufacturers and importers of toys and children's articles which could result from amendment of the existing small parts regulations, other written materials prepared by the Commission staff, on oral briefing presented by the Commission staff, and other information.

The Commission concluded that the existing small parts regulations, and the test cylinder specified by those regulations to determine if a toy has small parts which present a choking hazard, have been effective in preventing choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for use by that age group. The Commission also concluded that any amendment of those regulations which would enlarge the size of the test cylinder could be expected to require modification of a significant percentage of toys and other articles intended for children younger than three years of age, and to impose widespread costs on almost every aspect of producing and selling those products.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

In 1979, the Commission issued regulations under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) to ban certain toys and other articles intended for children younger than three years of age which present unreasonable risks of injury because of small parts. Those regulations are codified at 16 CFR 1500.18(a)(9) and part 1501.

The regulation codified at 16 CFR 1500.18(a)(9) bans any toy or other article intended for children younger than three years of age which presents a choking, aspiration, or ingestion hazard because of small parts, and which is introduced into interstate commerce after January 1, 1980. The regulation codified at 16 CFR part 1501 specifies the equipment and test method to determine whether an article presents a choking, aspiration, or ingestion hazard because the article itself, or any part which could be detached or broken off during normal or reasonably foreseeable use, is too small. The equipment specified by 16 CFR part 1501 includes a hollow truncated cylinder having an interior diameter of 1.25 inches, a minimum interior depth of 1.0 inches, and a maximum interior depth of 2.25 inches. If the toy being tested, or any detachable component or part of that toy, fits entirely within the cylinder, it is banned by provisions of 16 CFR 1500.18(a)(9) and part 1501.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) to begin a rulemaking proceeding for the possible amendment of the small parts regulations for toys and articles intended for children younger than three years of age (4).[1]

B. Information Considered by the Commission

On January 26, 1990, the Commission staff transmitted a briefing package to the Commission concerning the proceeding for amendment of the small parts regulations (1–12). That package included a summary of the written comments received in response to the ANPR (5); information about choking deaths and injuries to children associated with toys, children's articles, and other products (6, 7); and information about the manufacture and sale of toys and children's articles (9).

The briefing package included an analysis by the Commission's Directorate for Epidemiology of choking-related deaths and injuries to children younger than 10 years of age associated with toys and children's articles (6). This analysis examined reports of 146 choking deaths received by the Commission from January 1980 through April 1989, and found that a large portion of these deaths were associated with toys and other children's articles which are either exempted from the small parts regulations, or are not subject to those regulations because they are intended for children three years of age and older. For example, balloons, small balls, and marbles were involved in 103 (approximately 70 percent) of the choking fatalities under consideration. However, balloons are excluded from the requirements of the small parts regulations by 16 CFR § 1501.3(a). In most cases, the staff was unable to determine whether any of the small balls involved in the fatalities under consideration were intended for children younger than three years of age. In the enforcement of the small parts regulations, the staff has taken the position that marbles are generally intended for children older than three years of age, unless they are part of a toy intended for children younger than three. For that reason, marbles ordinarily are not subject to the small parts regulations.

This analysis found only five choking deaths of children younger than three years old associated with a toy or children's article which was intended for children of that age group and which was large enough to comply with the existing small parts requirements (6). During the oral briefing presented to the Commissioners of the agency, the Commission staff reported that after the analysis of choking deaths had been completed, the staff received information about one additional choking death associated with a toy intended for children younger than three years of age and large enough to comply with the existing small parts regulations.

The Commission's Directorate for Economic Analysis estimated that as many as 150 million toys are purchased each year for children three years of age or younger, and that as many as 300 to 450 million toys may be in use during any given year by children of that age group (9). That directorate was not able to estimate the number of toys which would require modification if the small parts regulations were amended to increase the size of the test cylinder.

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

However, the staff expressed the expectation that any amendment of the small parts regulations to increase the size of the test cylinder would affect a significant percentage of the toys currently produced for use by children three years of age and younger (9). The staff also expressed the expectation that an amendment of the small parts regulations to increase the size of the test cylinder could require changes to almost every aspect of producing and selling the toys affected by such an amendment. Those changes could include modifications of molds, increased costs for materials, and redesign of packaging.

C. Action by the Commission

On March 21, 1990, the Commission voted to terminate the proceeding for amendment of the small parts regulations and to withdraw the ANPR published on June 7, 1988. The Commission took this action after considering written comments received in response to the ANPR, information about choking deaths and injuries to children during the years 1980 through 1989, estimates of costs to manufacturers and importers of toys and children's articles which could result from amendment of the existing small parts regulations, other written materials prepared by the Commission staff, an oral briefing presented by the Commission staff, and other information.

The Commission concluded that the existing small parts regulations, and the test cylinder specified by those regulations to determine if a toy has small parts which present a choking hazard, have been effective in preventing choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for use by that age group.

The Commission also concluded that any amendment of those regulations which would increase the size of the test cylinder could be expected to require modification of a significant percentage of toys and other articles intended for children younger than three years of age, and to impose widespread cost on almost every aspect of producing and selling those products.

In addition to terminating the proceeding to amend the small parts regulations applicable to toys and other articles intended for children younger than three years of age, the Commission also directed the staff to develop regulatory options for preventing choking incidents caused by toys in the shape of small human figures and by other toys of similar dimensions with rounded ends, which pose a similar hazard.

Additionally, the Commission decided to begin rulemaking proceedings to address choking hazards to children associated with balloons, small balls, marbles, and toys and other articles intended for use by children three to six years of age which contain or consist of small parts. Elsewhere in this issue of the **Federal Register**, the Commission has published advance notices of proposed rulemaking to begin proceedings which may result in the development of mandatory labeling and other requirements for those specific categories of toys and children's articles.

The Commission concluded that any risks of choking deaths or injuries to children younger than three years of age which may be associated with toys or other children's articles can be adequately addressed by the actions taken with respect to toys in the shape of small human figures and other toys of similar dimensions with rounded ends, balloons, small balls, marbles, and toys and other articles intended for children three to six years of age with small parts.

Accordingly, the Commission hereby withdraws the ANPR published in the **Federal Register** of June 7, 1988 at 53 FR 20865.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standards which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 24, 1990, entitled "Review of Balloon Package Labels," 3 pages.

14. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90–14720 Filed 6–25–90; 8:45 am]

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16 CFR Ch. II

Choking Hazards Associated With Balloons; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling or other requirements for ballons to address risks of choking deaths and injuries to children associated with those products.

Research conducted by the Commission discloses that 63 children younger than 10 years of age died from choking on uninflated balloons or fragments of balloons during the years 1980 through 1989. Although the Commission has issued regulations banning certain toys and other articles intended for children younger than three years of age which present choking hazards because of small parts, balloons are exempted from those regulations.

In the proceeding initiated by this notice the Commission particularly

desires to receive technical and medical data and other information relevant to: (1) The possible need for and potential effectiveness of labeling of balloons or balloon packaging to warn of choking hazards which balloons may present to children of all ages; (2) changes in the design, construction, of materials used to produce balloons which might eliminate choking hazards associated with these products; and (3) the economic impact of any of the regulatory options discussed in this notice. The Commission also invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with balloons.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980. The regulation codified at 16 CFR part 1501 exempts balloons and several other categories of products from its provisions. See 16 CFR § 1501.3(a)

In the Federal Register of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations codified at 16 CFR 1500.18(a)(9) and part 1501.[4]. [1] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the Federal Register, The Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1988, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1988, and found that balloons were involved in 63 choking deaths, more than 40 percent of the total. Victims of the fatal incidents involving balloons were about equally divided between children younger than three years of age and children three years old and older (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements applicable to balloons intended for use by children of all ages to eliminate or reduce risks of choking deaths and injuries to children which may be associated with those products. The regulations which may be issued as a result of this proceeding could include requirements for labeling or other technical requirements.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). The first step in a proceeding under provisions of sections 3(e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

C. The Products and Risks of Injury

This proceeding is concerned with balloons, particularly latex or rubber balloons, and risks of choking deaths or injuries which may result when an uninflated balloon or a fragment of a balloon becomes lodged in a child's airway.

D. Voluntary Standard

The Commission is aware of only one voluntary standard applicable to balloons and the risks of injury with which this proceeding is concerned. That standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety.

This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age.

The Commission staff has worked with the toy industry and the Toy Manufacturers of America to develop warning labels for balloon packages. The American Society for Testing and Materials (ASTM) has circulated a ballot on a proposed revision of the voluntary safety standard for toys to add provisions for labeling of balloons. The proposed revision of the voluntary standard would require the following statement to appear on all packages of balloons:

> Warning: Young Children Could Choke on or be Suffocated by an Uninflated Balloon or Piece of a Broken Balloon. Adults Should Inflate Balloons and Supervise Their Use With Children Under Six (6) Years. Discard Broken Balloons Immediately.

In comments to ASTM, the Commission staff recommended revisions of the wording and format of this labeling (1).

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

The proposal to add requirements for labeling of balloons now being considered by ASTM contains provisions to specify a minimum type size for the label statement, and to require that the statement must be printed in a contrasting color and must be distinctively separate from other wording or designs on the package. In comments to ASTM, the Commission staff expressed concern that these provisions may not be adequate to assure the labeling statement will be sufficiently prominent and conspicuous to be effective, and made recommendations to improve their effectiveness (14).

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing one or more rules to address risks of choking deaths and injuries associated with balloons. The Commission is considering the following approaches:

1. Requiring labeling on packages of balloons to warn of choking hazards to children.

Uninflated balloons and fragments of balloons were involved in 63 of the 146 choking fatalities (approximately 43 per cent) reported to the Commission from 1980 through 1988. Balloons were involved in more of the reported choking fatalities than any other product (6). The balloons involved in these incidents appear to have been made from latex or rubber rather than from metalized polyester film or other materials, although in most instances the type of material was not reported.

The Commission is not aware of any immediately available technology which would prevent or appreciably reduce choking hazards associated with balloons. For this reason, the Commission is considering issuance of requirements for labeling on packages of balloons to warn purchasers of the risks of choking deaths and injuries to children associated with these products.

2. Developing technical requirements or other measures to eliminate or reduce choking hazards associated with balloons.

The Commission is aware of two innovative approaches to reducing risks of choking deaths and injuries to children associated with balloons. The first approach involves the use of a disk inside the balloon which would be large enough to prevent a child from swallowing an unbroken, deflated balloon. The second approach involves the use of a bittering agent in or on the surface of the material used in the production of balloons. Use of a bittering agent might make the taste of balloons sufficiently unpleasant to children that they would not want to keep balloons in their mouths or to chew on them.

While these and other innovative approaches might eliminate or reduce risks of choking deaths and injuries associated with balloons, the Commission does not have information about their practicability or effectiveness. Nor does the Commission have information about other hazards which might be created such approaches were used. In this notice, the Commission solicits information which could lead to the development of innovative technical requirements to eliminate or reduce choking hazards associated with balloons.

In addition to the regulatory alternatives described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries associated with balloons. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children which are associated with balloons.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of regulations to eliminate or reduce risks of choking deaths and injuries to children associated with balloons. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of addressing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 28, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. Federal Register notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1988.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 18 pages, September 1988

8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages; memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 26, 1990, entitled "Review of Balloon Package Labels," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

14. Letter from Elaine A. Tyrrell, Project Manager, Consumer Product Safety Commission, to Ms. Rose Dougherty, F 15 Committee Staff Manager, ASTM Standards Coordination, dated April 30, 1990, concerning comments of the staff of the Consumer Product Safety Commission on revision of F 963–86, Consumer Safety Specification on Toy Safety to include labeling of balloons.

[FR Doc. 90–14721 Filed 6–25–90; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR Ch. II

Choking Hazards Associated With Small Balls; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling and other requirements for small balls to address risks of choking deaths and injuries to children associated with those products.

Research conducted by the Commission discloses that 32 children younger than 10 years of age died from choking on small balls during the years 1980 through 1988. The Commission has issued regulations banning certain toys and other articles intended for children younger than three years of age which present choking hazards because of small parts. The sizes of the balls involved in 10 choking fatalities during the year 1980 through 1988 are known. Six of those balls were large enough to comply with the requirements of the small parts regulations. Some of the balls involved in the 32 choking fatalities may not have been subject to the small parts regulations because they were not intended to be used by children younger than three years of age.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to: (1) The possible need for and potential effectiveness of labeling of games of skill which contain or utilize small balls to warn of choking hazards they may present to children; (2) the possible need to establish a minimum size for children's balls which are not part of a game of skill and for balls which are part of a toy or game intended for children younger than three years of age to eliminate choking hazards associated with these products; and (3) the economic impact of any of the regulatory options discussed in this notice. The Commission also invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with small balls.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger that three years of age which present a choking, aspiration, or ingestion hazard because of small parts. In the Federal Register of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[1] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the Federal Register the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that small balls were involved in 32 choking deaths, about 22 per cent of the total (6).

Nineteen of the children who died in choking incidents involving small balls were younger than three years of age; 13 of the children were three years of age and older (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements applicable to small balls intended for use by children of all ages to eliminate or reduce risks of choking deaths and injuries to children which may be associated with those products. The regulations which may be issued as a result of this proceeding could include requirements for labeling of games of skill which contain or utilize small balls to warn of choking hazards which those balls may present to children, and the specification of a minimum size for children's balls which are not part of a game of skill, or are part of a toy or other article intended for children younger than three years of age.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)(1)(D) of the FHSA (15 U.S.C. 1261(f)(1)(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e) through (i)). The first step in a proceeding under provisions of sections 3(e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

[1] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

C. The Products and Risks of Injury

This proceeding is concerned with balls intended for use by children which have a diameter of less than approximately 1.75 inches. Some of these balls are components of, or are used in conjunction with, games of skill. Others are sold by themselves, and are not part of a game of skill. The balls which are the subjects of this proceeding may be intended for children who are younger than three years of age as well as for children three years of age and older.

This proceeding is concerned with risks of choking deaths or injuries which may result when any of the products described above become lodged in a child's throat.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which may be applicable to small balls intended for use by children and the risks of injury with which this proceeding is concerned. That standard is published by the American Society for Testing and Materials and is designated *F 963–86, Standard Consumer Safety Specification on Toy Safety.* This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, at this time, the voluntary standard does not contain any provisions specifically intended to address choking hazards associated with small balls.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing one or more rules to address risks of choking deaths and injuries associated with small balls. The Commission is considering the following approaches:

- Requiring labeling on packages of games of skill intended for children three years of age and older which contain or consist of small balls to warn of choking hazards the small balls may present to children.
- Establishing a minimum diameter for all children's balls which are not part of a game of skill for which a ball is required, and for balls which are part of a toy or other article intended for children younger than three years of age.

Small balls were involved in 32 of the 146 fatal choking incidents (approximately 22 per cent) reported to the Commission from 1980 through 1989 (6). (Only balloons were involved in a greater number of choking fatalities reported during the same period. Elsewhere in this issue of the Federal Register, the Commission has published another advance notice of proposed rulemaking to initiate a rulemaking proceeding to address choking hazards to children associated with balloons.)

In 1978, the Commission issued regulations which ban toys and other articles intended for children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts (2). Of the 32 choking deaths to children involving small balls which were reported to the Commission from 1980 through 1989, the size of the ball was known in ten cases. Six choking fatalities involved balls which were large enough to comply with the existing small parts regulations. These six balls had diameters ranging from 1.38 inches to 1.73 inches (6).

Of the 32 choking fatalities associated with small balls, 19 involved children younger than three years of age; 13 involved children three years of age and older (6). Balls are used by children of all ages, and many have play value for children younger than three years of age. A requirement that balls must have a minimum diameter of at least 1.75 inches would have prohibited all of the balls involved in the choking fatalities reported to the Commission from 1980 through 1989 in which the size of the ball is known. A physiological analysis of choking incidents involving children prepared by the Commission's Directorate for Health Sciences provides support for a requirement of a minimum diameter for children's balls ranging from 1.68 inches to 1.75 inches (7).

The Commission is considering issuance of a requirement which would prohibit the sale of any children's ball having a diameter smaller than approximately 1.68 to 1.75 inches which is not part of a game of skill, or which is part of a toy or other article intended for children younger than three years of age. The specific minimum size for the diameter of such balls would be established after further evaluation of available information by the Commission. Balls subject to such a requirement would include high-bounce balls as well as conventional rubber balls, hollow rubber balls, sponge rubber balls, and rigid balls made of plastic, wood, or other materials (1).

The Commission recognizes that some games of skill, such as "jacks," require a ball with a diameter smaller than 1.75 inches. The Commission is considering the issuance of requirements for labeling on packages of all games of skill intended for children three years old and older which contain or consist of balls with diameters less than 1.68 to 1.75 inches to warn of the choking hazard associated with small balls (1).

In addition to the regulatory alternatives described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to add provisions to specifically address risks of choking deaths and injuries to children associated with small balls. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children which are associated with small balls.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of regulations to eliminate or reduce risks of choking deaths and injuries to children associated with small balls. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being

considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.
2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.
3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.
4. Federal Register notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).
5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.
6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.
7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.
8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).
9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989
10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.
11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.
12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.
13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90-14722 Filed 6-25-90; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Ch. II

Choking Hazards Associated With Toys and Articles Intended for Children Three Years of Age and Older; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of labeling requirements applicable to toys and other articles intended for children from three to about six years of age which contain or consist of small parts to warn of choking hazards to children younger than three years of age associated with those products.[1]

In 1979, the Commission issued regulations banning certain toys and other articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. Research conducted by the Commission discloses that during the years 1980 through 1989, 146 children younger than 10 years of age died from choking on toys and other children's products. Although manufacturers' age recommendations for the products involved were not available in the majority of these cases, a large portion of these products appear to have been developmentally appropriate for children three years of age and older. Consequently, many of the toys and other children's products involved in the choking fatalities reported to the Commission during the years 1980 through 1989 may have been outside the scope of existing regulations banning certain toys which contain or consist of small parts.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to the possible need for and potential effectiveness of labeling of toys and articles intended for use by children three to approximately six years of age to warn of the potential choking hazards they may present to children younger than three years of age because of small parts. The Commission also solicits information about the economic impact of the regulatory options discussed in this notice. The Commission invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with the products described in this notice.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492-6800.

[1] The Commission decided to begin this proceeding by a 2-1 vote, with Commissioner Carol G. Dawson dissenting. Copies of the Commissioners' separate statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 492-6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and Part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980.

In the Federal Register of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[2] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the Federal Register the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that a large portion may have been developmentally appropriate for children three years of age and older, although manufacturers' age recommendations were not available in the majority of cases. The Commission staff was able to determine the appropriate age of the intended user for 42 of the products involved in the choking fatalities analyzed by the staff (6). (These 42 products did not include balloons or small balls, but did include marbles. The Commission has initiated separate rulemaking proceedings to address choking hazards to children associated with balloons, small balls, and marbles by publishing advance notices of proposed rulemaking elsewhere in this issue of the Federal Register.)

[2] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492-6800.

Of the 42 products for which a determination of appropriate user age could be made, 18 (more than 40 per cent) appeared to be toys or articles often appropriate for children three years of age and older. Of the 18 articles suitable for children three years of age and older, 15 were involved in choking fatalities to children younger than three (6).

The Commission recognizes that elimination of all small parts from children's toys is not feasible. Older children are not generally prone to choking on small objects, such as game parts, that are often necessary components of products intended for older children (1). However, toys intended for older children, or small pieces from such toys, often are accessible to younger siblings. Additionally, parents sometimes give a toy which is appropriate for older children to a younger child because the parents believe that the child is sufficiently advanced to be able to use the toy (12). A warning label to advise parents of the presence of small parts in toys or other articles intended for use by children three to six years of age could alert them to choking hazards associated with the use of such toys by children younger than three (12).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling of toys and children's articles which contain or consist of small parts and which are intended for use by children three to about six years of age to warn of risks of choking deaths and injuries to children younger than three years of age which may be associated with those products.

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261 (f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). The first step in a proceeding under provisions of sections 3 (e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

C. The Products and Risks of Injury

This proceeding is concerned with toys and other articles intended for children three to about six years of age containing or consisting of small parts which may present a choking hazard to children younger than three years of age. This proceeding is concerned with risks of death and serious injuries to children younger than three years of age which may result from choking on such toys or children's articles, or parts of those products.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which is applicable to toys and other articles intended for children from three to six years of age and which might address the risks of injury with which this proceeding is concerned. This standard is published by the American Society for Testing and Materials and is designated F 963-86, Standard Consumer Safety Specification on Toy Safety. This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, this voluntary standard does not currently include provisions which are specifically intended to address the choking hazards described in this notice.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing a labeling rule applicable to toys or other articles intended for use by children from three to approximately six years which contain or consist of small parts. The contemplated rule would require that such products must be labeled to warn of choking hazards which they may present to children younger than three years of age because of the presence of small parts. The upper age limit for this labeling requirement would be determined on the basis of (a) developmental information about children's interests and abilities; and (b) marketing information about how products intended for children three years old and older are currently labeled (1, 12).

In addition to issuing a mandatory labeling rule of the type described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries to children younger than three years of age associated with toys and other articles intended for children three to about six years old which contain or consist of small parts. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children younger than three years of age which are associated with toys or other articles intended for children from three to approximately six years of age that contain or consist of small parts.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of a mandatory rule for toys and other articles intended for use by children from three to about six years of age containing or consisting of small parts. The rule would require labeling to warn of choking hazards which those products may present to children younger than three years of age because of small parts. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data on the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Child development and marketing information indicating an appropriate product range for this labeling requirement.

(5) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(6) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 28, 1990.

2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.

3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.

4. **Federal Register** notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).

5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.

6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.

7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1989.

8. **Federal Register** notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2198).

9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.

10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.

11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.

12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.

13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90-14723 Filed 6-25-90; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Ch. II

Choking Hazards Associated With Marbles; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling packages of marbles to warn of choking hazards marbles may present to children younger than three years of age.[1]

In 1979, the Commission issued regulations banning certain toys and other articles intended for use by children younger than three years of age which present choking, aspiration, or ingestion hazards because of small parts. However, in the enforcement of the small parts regulations, the Commission staff has always considered marbles to be articles which are intended for children older than three years of age, except those marbles which are components of a toy intended for children younger than three. For that reason most marbles are not subject to the existing small parts requirements.

Research conducted by the Commission discloses that during the years 1980 through 1989, 146 children younger than 10 years of age died from choking on toys and other children's products. Eight of these fatalities involved marbles. All of the children who died from choking on marbles were younger than three years of age.

In the proceeding initiated by this notice the Commission particularly desires to receive technical and medical data and other information relevant to the possible need for and potential effectiveness of labeling packages of marbles to warn of the potential choking hazards they may present to children younger than three years of age because of small parts. The Commission also solicits information about the economic impact of the regulatory options discussed in this notice. The Commission invites all interested persons to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address risks of choking deaths and injuries to children associated with marbles.

DATES: Written comments and submission in response to this notice must be received by September 10, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, room 528, 5401 Westbard Avenue, Bethesda, Maryland; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: David W. Thome, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background

Regulations codified at 16 CFR 1500.18(a)(9) and part 1501 ban certain toys and articles intended for children younger than three years of age which present a choking, aspiration, or ingestion hazard because of small parts if they are introduced into interstate commerce after January 1, 1980. However, in the enforcement of the small parts regulations, the Commission staff has always considered marbles to be intended for children older than three years of age, unless they are part of a toy intended for children younger than three. For that reason, most marbles are not subject to the existing small parts requirements.

In the **Federal Register** of June 7, 1988 (53 FR 20865), the Commission published an advance notice of proposed rulemaking (ANPR) with a view toward the possibility of amending the small parts regulations (4).[2] On March 21, 1990, the Commission voted to terminate this proceeding. Elsewhere in this issue of the **Federal Register** the Commission has published a notice to withdraw the ANPR of June 7, 1988, and to explain its reasons for terminating that proceeding.

In 1989, the Commission's Directorate for Epidemiology completed an analysis of reports of choking-related deaths and injuries to children younger than 10 years of age associated with children's products (6). This analysis examined reports of 146 choking-related deaths received by the Commission from January 1980 through April 1989, and found that eight of these deaths involved children who choked on marbles. All of the children who died from choking on marbles were younger than three years of age (6).

For this reason, the Commission is beginning a rulemaking proceeding which may result in the issuance of requirements for labeling of packages of marbles to warn of risks of choking deaths and injuries to children younger than three years of age which may be associated with those products.

(The analysis of choking deaths also disclosed 63 deaths associated with balloons, 32 deaths associated with small balls, and 10 deaths associated with other products (not including marbles) which were developmentally appropriate for children three years of age and older (6). Elsewhere in this issue of the **Federal Register**, the Commission has published separate advance notices of proposed rulemaking to begin proceedings which may result in the issuance of labeling or other requirements for balloons, small balls, and toys and other articles intended for children older than three years of age.)

B. Statutory Authority

This proceeding is conducted under provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 2(f)1(D) of the FHSA (15 U.S.C. 1261(f)1(D)) defines the term "hazardous substance" to include "[a]ny toy or other article intended for use by children" which the Commission determines by regulation to present "an electrical, mechanical, or thermal hazard." Section 2(s) of the FHSA provides that an article may be determined to present a "mechanical hazard" if in normal use or reasonably foreseeable use or abuse it presents an unreasonable risk of personal injury or illness because the article or any of its parts may be aspirated or ingested. The Commission may make its determination that a toy or children's article presents a mechanical hazard by issuance of a regulation in accordance with provisions of sections 3(e) through (i) of the FHSA (15 U.S.C. 1262 (e) through (i)). The first step in a proceeding under provisions of sections 3 (e) through (i) of the FHSA for issuance of a rule to declare that a toy or children's article presents a mechanical hazard is the publication of an advance notice of proposed rulemaking (ANPR) in accordance with provisions of section 3(f) of the FHSA. If, after considering comments received in response to the ANPR, the Commission decides to continue the proceeding, section 3(h) of the FHSA requires publication of the text of the proposed rule and a preliminary regulatory analysis of the proposal including a description of potential benefits and potential costs of the proposal. If the Commission issues a final rule, it must publish a third notice which sets forth the text of the final rule, a summary of significant issues raised by comments on the proposal, a final regulatory analysis including a description of potential benefits and potential costs, as well as specified findings about voluntary standards and the relationship of the costs and the benefits of the rule.

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[1] The Commission decided to begin this proceeding by a 2–1 vote, with Commissioner Carol G. Dawson dissenting. Copies of the Commissioners' separate statements are available upon request from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6800.

[2] Numbers in parentheses identify reference documents listed in Bibliography at the end of this notice. Requests for inspections of any of these documents should be made at the Commission's Public Reading Room, 5401 Westbard Avenue, room 528, Bethesda, Maryland, or by calling the Office of the Secretary at (301) 492–6800.

C. The Products and Risks of Injury

This proceeding is concerned with marbles which are sold in packages, and risks of death and serious injuries to children younger than three years of age which may result from choking on marbles.

D. Voluntary Standard

The Commission is aware of only one voluntary standard which might be applicable to the risks of injury with which this proceeding is concerned. This standard is published by the American Society for Testing and Materials and is designated F 963–86, Standard Consumer Safety Specification on Toy Safety. This voluntary standard has provisions intended to address a variety of hazards presented by a wide range of toys, some of which are intended for children as old as 14 years of age. However, this voluntary standard does not currently include provisions which are specifically intended to address choking hazards associated with marbles.

E. Regulatory Alternatives Under Consideration

In the proceeding initiated by publication of this ANPR, the Commission is considering the possibility of issuing a labeling rule applicable to marbles sold in packages to warn of choking hazards which they may present to children younger than three years of age.

In addition to issuing a mandatory labeling rule of the type described above, the Commission also is considering the possibility that the voluntary standard for toys, ASTM F 963–86, could be revised to reduce even further risks of choking deaths and injuries to children younger than three years of age associated with marbles sold in packages. The Commission also is considering the possibility that a new voluntary standard might be developed to address the risks of choking deaths and injuries to children younger than three years of age which are associated with marbles sold in packages.

F. Solicitation of Information and Comments

This advance notice of proposed rulemaking is the first step of a proceeding which could result in the issuance of a mandatory rule applicable to marbles sold in packages to warn of choking hazards which those products may present to children younger than three years of age. All interested persons are invited to submit to the Commission:

(1) Written comments concerning the risks of injury described in this notice; the regulatory alternatives being considered by the Commission to address those risks; and other possible alternatives to address those risks.

(2) Information and data about the potential effectiveness of labeling as a means of reducing the risks of death and injury described in this notice.

(3) Estimates of the potential effects of these regulatory alternatives on the cost, price, and utility of affected products, and any other economic effects such as those on trade and distribution of these products.

(4) Any existing standard or portion of an existing standard which could be published as a proposed regulation to address the risks of injury described in this notice.

(5) A statement of intent to modify or develop a voluntary standard to address the risks of injury discussed in this notice, together with a description of the plan for modification or development of that standard.

Any plan submitted with a statement of intent to modify or develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is under way; a description of how the views of interested groups and persons will be addressed in the modification or development of the standard; a detailed discussion of how the modification or development of the standard will proceed; a realistic estimate of the length of time that will be required to modify or develop the standard; a list of persons expected to participate in the modification or development of the standard, together with information about backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

All comments and submissions should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and received not later than September 10, 1990.

Dated: June 21, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum to the Commission from David W. Thome, OPMB, concerning choking hazards, 16 pages, January 26, 1990.
2. Text of small parts regulations applicable to toys and articles intended for children younger than three years of age codified at 16 CFR 1500.18(a)(9) and part 1501, 2 pages.
3. Summary of provisions of mandatory regulations and voluntary standard which address choking hazards associated with toys and children's articles, 2 pages.
4. Federal Register notice "Toys and Articles Intended for Children Under Three Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Request for Comments and Information," published by the Consumer Product Safety Commission, 5 pages, June 7, 1988 (53 FR 20865).
5. Memorandum to the Commission from Elaine A. Tyrrell, OPMB, concerning comments received in response to advance notice of proposed rulemaking published on June 7, 1988, 10 pages, September 21, 1988.
6. "Analysis of Choking Related Hazards Associated with Children's Products," by Deborah Kale Tinsworth, Directorate for Epidemiology, 34 pages, September 1989.
7. "A Physiological Review of Toys Causing Choking in Children," by Sharee Pepper, Ph.D., Directorate for Health Sciences, 19 pages, September 1988.
8. Federal Register notice "Medical Advisory Committee on Asphyxiation; Establishment and Solicitation of Applications for Membership," published by the Consumer Product Safety Commission, 2 pages, January 19, 1989 (54 FR 2196).
9. Memorandum from Terrence R. Karels, ECPA, to David W. Thome, OPMB, concerning focus project on choking hazards, 4 pages, November 15, 1989.
10. Description of new test procedure to determine choking hazards presented by toys and articles intended for children younger than three years of age, 1 page.
11. Draft of Advance Notice of Proposed Rulemaking to address choking hazards associated with toys and children's articles.
12. Memorandum from Carol Pollack-Nelson, EPHF, to David W. Thome, OPMB, dated January 10, 1990, entitled "Rationale for Labeling Requirements for Toys and Other Articles Intended for Use by Children Age 3 to 6 Years," 3 pages.
13. Vote sheet, "Regulatory Options to Address Choking Hazards," dated January 26, 1990, 3 pages.

[FR Doc. 90-14724 Filed 6-25-90; 8:45 am]
BILLING CODE 6355-01-M

federal register

Tuesday
June 26, 1990

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for April 1990

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53130; FRL 3771-4]

Premanufacture Notices; Monthly Status Report for April 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPTS-53130)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previous and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1990 PMN Status Report is being published.

Dated: June 20, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for April 1990

I. 425 Premanufacture notices and exemption requests received during the month:

PMN No.

P 90-0614	P 90-0624	P 90-0625	P 90-0627
P 90-0628	P 90-0629	P 90-0630	P 90-0631
P 90-0632	P 90-0633	P 90-0634	P 90-0635
P 90-0636	P 90-0637	P 90-0638	P 90-0639
P 90-0640	P 90-0641	P 90-0642	P 90-0643
P 90-0644	P 90-0645	P 90-0646	P 90-0647
P 90-0648	P 90-0649	P 90-0650	P 90-0651
P 90-0652	P 90-0653	P 90-0654	P 90-0655
P 90-0656	P 90-0657	P 90-0658	P 90-0659
P 90-0660	P 90-0661	P 90-0662	P 90-0663
P 90-0664	P 90-0665	P 90-0666	P 90-0667
P 90-0668	P 90-0669	P 90-0670	P 90-0671
P 90-0672	P 90-0673	P 90-0674	P 90-0675
P 90-0676	P 90-0677	P 90-0678	P 90-0679
P 90-0680	P 90-0681	P 90-0682	P 90-0683
P 90-0684	P 90-0685	P 90-0686	P 90-0687
P 90-0688	P 90-0689	P 90-0690	P 90-0691
P 90-0692	P 90-0693	P 90-0694	P 90-0695
P 90-0696	P 90-0697	P 90-0698	P 90-0699
P 90-0700	P 90-0701	P 90-0702	P 90-0703
P 90-0704	P 90-0705	P 90-0706	P 90-0707
P 90-0708	P 90-0709	P 90-0710	P 90-0711
P 90-0712	P 90-0713	P 90-0714	P 90-0715
P 90-0716	P 90-0717	P 90-0789	P 90-0800
P 90-0803	P 90-0804	P 90-0848	P 90-0859
P 90-0868	P 90-0888	P 90-0927	P 90-0928
P 90-0929	P 90-0930	P 90-0948	P 90-0949
P 90-0950	P 90-0951	P 90-0952	P 90-0953
P 90-0954	P 90-0955	P 90-0958	P 90-0959
P 90-0960	P 90-0961	P 90-0962	P 90-0964
P 90-0965	P 90-0966	P 90-0967	P 90-0968
P 90-0969	P 90-0970	P 90-0971	P 90-0972
P 90-0973	P 90-0974	P 90-0975	P 90-0976
P 90-0977	P 90-0978	P 90-0979	P 90-0980
P 90-0981	P 90-0983	P 90-0984	P 90-0986
P 90-0987	P 90-0989	P 90-0990	P 90-0991
P 90-0992	P 90-0993	P 90-0994	P 90-0995
P 90-0996	P 90-0997	P 90-0998	P 90-0999
P 90-1000	P 90-1001	P 90-1002	P 90-1003
P 90-1004	P 90-1005	P 90-1006	P 90-1007
P 90-1008	P 90-1009	P 90-1010	P 90-1011
P 90-1012	P 90-1013	P 90-1014	P 90-1015
P 90-1018	P 90-1017	P 90-1016	P 90-1019
P 90-1020	P 90-1021	P 90-1022	P 90-1023
P 90-1024	P 90-1025	P 90-1026	P 90-1027
P 90-1028	P 90-1029	P 90-1030	P 90-1031
P 90-1032	P 90-1033	P 90-1034	P 90-1035
P 90-1036	P 90-1037	P 90-1038	P 90-1039
P 90-1040	P 90-1041	P 90-1042	P 90-1043
P 90-1044	P 90-1045	P 90-1046	P 90-1047
P 90-1048	P 90-1049	P 90-1050	P 90-1051
P 90-1052	P 90-1053	P 90-1054	P 90-1055
P 90-1056	P 90-1057	P 90-1058	P 90-1059
P 90-1060	P 90-1061	P 90-1062	P 90-1063
P 90-1064	P 90-1065	P 90-1066	P 90-1067
P 90-1068	P 90-1069	P 90-1070	P 90-1071
P 90-1072	P 90-1073	P 90-1074	P 90-1075
P 90-1076	P 90-1077	P 90-1078	P 90-1079
P 90-1080	P 90-1081	P 90-1082	P 90-1083
P 90-1084	P 90-1085	P 90-1086	P 90-1087
P 90-1088	P 90-1089	P 90-1090	P 90-1091
P 90-1092	P 90-1093	P 90-1094	P 90-1095
P 90-1096	P 90-1097	P 90-1098	P 90-1099
P 90-1100	P 90-1101	P 90-1102	P 90-1103
P 90-1104	P 90-1105	P 90-1106	P 90-1107
P 90-1108	P 90-1109	P 90-1110	P 90-1111
P 90-1112	P 90-1113	P 90-1114	P 90-1115
P 90-1116	P 90-1117	P 90-1118	P 90-1119
P 90-1120	P 90-1121	P 90-1122	P 90-1123
P 90-1124	P 90-1125	P 90-1126	P 90-1127
P 90-1128	P 90-1129	P 90-1130	P 90-1131
P 90-1132	P 90-1133	P 90-1135	P 90-1136
P 90-1137	P 90-1138	P 90-1139	P 90-1140
P 90-1141	P 90-1142	P 90-1143	P 90-1144
P 90-1145	P 90-1146	P 90-1147	P 90-1149
P 90-1150	P 90-1151	P 90-1152	P 90-1153
P 90-1154	P 90-1155	P 90-1156	P 90-1157
P 90-1158	P 90-1159	P 90-1160	P 90-1161
P 90-1162	P 90-1163	P 90-1164	P 90-1165
P 90-1166	P 90-1167	P 90-1168	P 90-1169
P 90-1170	P 90-1171	P 90-1172	P 90-1173
P 90-1174	P 90-1175	P 90-1176	P 90-1177
P 90-1179	P 90-1180	P 90-1181	P 90-1182
P 90-1183	P 90-1184	P 90-1185	P 90-1186
P 90-1187	P 90-1188	P 90-1189	P 90-1190
P 90-1191	P 90-1192	P 90-1193	P 90-1194
P 90-1197	P 90-1198	P 90-1199	P 90-1200
P 90-1236	P 90-1237	P 90-1238	P 90-1239
P 90-1240	P 90-1241	P 90-1242	P 90-1243
P 90-1244	P 90-1245	P 90-1246	P 90-1247
P 90-1248	P 90-1249	P 90-1250	P 90-1251
P 90-1252	P 90-1253	P 90-1254	P 90-1255
P 90-1256	P 90-1257	P 90-1258	P 90-1259
P 90-1260	P 90-1261	P 90-1262	P 90-1263
P 90-1264	P 90-1265	P 90-1266	P 90-1267
P 90-1268	P 90-1269	P 90-1270	P 90-1271
P 90-1272	P 90-1273	P 90-1274	P 90-1275
P 90-1276	P 90-1277	P 90-1279	P 90-1280
P 90-1281	P 90-1282	P 90-1283	P 90-1284
P 90-1285	P 90-1286	P 90-1287	P 90-1288
P 90-1289	P 90-1290	P 90-1323	Y 90-0184
Y 90-0186	Y 90-0187	Y 90-0188	Y 90-0189
Y 90-0190	Y 90-0191	Y 90-0192	Y 90-0193
Y 90-0194	Y 90-0195	Y 90-0196	Y 90-0197
Y 90-0198	Y 90-0199	Y 90-0200	Y 90-0201
Y 90-0202	Y 90-0203	Y 90-0204	Y 90-0205
Y 90-0207			

II. 246 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 85-0216	P 85-0433	P 85-0535	P 85-0536
P 85-0619	P 85-0718	P 85-0730	P 86-1602
P 86-1603	P 86-1604	P 86-1607	P 87-0105
P 87-0197	P 87-0198	P 87-0199	P 87-0200
P 87-0201	P 87-0323	P 87-0502	P 87-0723
P 87-1192	P 87-1555	P 87-1760	P 87-1872
P 87-1881	P 87-1882	P 88-0083	P 88-0217
P 88-0319	P 88-0320	P 88-0353	P 88-0468
P 88-0515	P 88-0522	P 88-0576	P 88-0671
P 88-0831	P 88-0836	P 88-0837	P 88-0894
P 88-0918	P 88-1020	P 88-1021	P 88-1035
P 88-1211	P 88-1212	P 88-1271	P 88-1272
P 88-1273	P 88-1274	P 88-1303	P 88-1460
P 88-1473	P 88-1540	P 88-1567	P 88-1568
P 88-1618	P 88-1619	P 88-1620	P 88-1621
P 88-1622	P 88-1630	P 88-1631	P 88-1632
P 88-1690	P 88-1691	P 88-1761	P 88-1763
P 88-1783	P 88-1807	P 88-1809	P 88-1811
P 88-1844	P 88-1856	P 88-1937	P 88-1938
P 88-1980	P 88-1982	P 88-1984	P 88-1985
P 88-1985	P 88-1999	P 88-2000	P 88-2001
P 88-2160	P 88-2169	P 88-2177	P 88-2179
P 88-2180	P 88-2181	P 88-2188	P 88-2196
P 88-2210	P 88-2212	P 88-2213	P 88-2226
P 88-2229	P 88-2230	P 88-2231	P 88-2236
P 88-2237	P 88-2271	P 88-2275	P 88-2369
P 88-2469	P 88-2473	P 88-2484	P 88-2516
P 88-2529	P 88-2530	P 89-2566	P 89-0030
P 89-0031	P 89-0073	P 89-0080	P 89-0090
P 89-0093	P 89-0225	P 89-0254	P 89-0321
P 89-0328	P 89-0336	P 89-0365	P 89-0366
P 89-0367	P 89-0388	P 89-0445	P 89-0536
P 89-0539	P 89-0589	P 89-0701	P 89-0711
P 89-0723	P 89-0750	P 89-0760	P 89-0764
P 89-0775	P 89-0776	P 89-0810	P 89-0887
P 89-0870	P 89-0900	P 89-0910	P 89-0924
P 89-0942	P 89-0957	P 89-0958	P 89-0959
P 89-0965	P 89-0977	P 89-0978	P 89-0979
P 89-0980	P 89-0998	P 89-1010	P 89-1056
P 89-1058	P 89-1072	P 89-1082	P 89-1093
P 89-1104	P 89-1125	P 89-1148	P 90-0002
P 90-0009	P 90-0013	P 90-0113	P 90-0142
P 90-0145	P 90-0158	P 90-0159	P 90-0169
P 90-0187	P 90-0211	P 90-0212	P 90-0220
P 90-0228	P 90-0231	P 90-0237	P 90-0244
P 90-0245	P 90-0248	P 90-0249	P 90-0260
P 90-0261	P 90-0262	P 90-0263	P 90-0274
P 90-0299	P 90-0313	P 90-0314	P 90-0315
P 90-0316	P 90-0317	P 90-0318	P 90-0319
P 90-0321	P 90-0331	P 90-0333	P 90-0335
P 90-0347	P 9080349	P 90-0350	P 90-0359
P 90-0360	P 90-0361	P 90-0364	P 90-0372
P 90-0383	P 90-0385	P 90-0404	P 90-0405
P 90-0406	P 90-0440	P 90-0441	P 90-0458
P 90-0473	P 90-0474	P 90-0475	P 90-0476
P 90-0477	P 90-0480	P 90-0481	P 90-0489
P 90-0496	P 90-0498	P 90-0514	P 90-0539
P 90-0533	P 90-0549	P 90-0550	P 90-0558
P 90-0559	P 90-0560	P 90-0564	P 90-0578
P 90-0581	P 90-0583	P 90-0585	P 90-0587
P 90-0594	P 90-0609	P 90-0666	P 90-0615
P 90-0617	P 90-0946		

III. 115 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration or the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88-1529	P 88-1850	P 88-2575	P 89-0028
P 89-0730	P 89-0769	P 89-1009	P 89-1036
P 89-1062	P 89-1135	P 90-0125	P 90-0264
P 90-0304	P 90-0332	P 90-0334	P 90-0336
P 90-0337	P 90-0338	P 90-0339	P 90-0340
P 90-0341	P 90-0342	P 90-0343	P 90-0344
P 90-0345	P 90-0346	P 90-0349	P 90-0351
P 90-0352	P 90-0353	P 90-0354	P 90-0355
P 90-0356	P 90-0357	P 90-0358	P 90-0362
P 90-0363	P 90-0365	P 90-0368	P 90-0367
P 90-0368	P 90-0369	P 90-0370	P 90-0371
P 90-0373	P 90-0374	P 90-0375	P 90-0376
P 90-0377	P 90-0378	P 90-0379	P 90-0380
P 90-0381	P 90-0382	P 90-0386	P 90-0387
P 90-0388	P 90-0389	P 90-0390	P 90-0391
P 90-0392	P 90-0393	P 90-0394	P 90-0395
P 90-0396	P 90-0397	P 90-0398	P 90-0399
P 90-0400	P 90-0401	P 90-0402	P 90-0403
P 90-0407	P 90-0408	P 90-0409	P 90-0410
P 90-0411	P 90-0432	Y 90-0153	Y 90-0154
Y 90-0155	Y 90-0156	Y 90-0157	Y 90-0158
Y 90-0159	Y 90-0160	Y 90-0161	Y 90-0162
Y 90-0163	Y 90-0164	Y 90-0165	Y 90-0166
Y 90-0167	Y 90-0168	Y 90-0169	Y 90-0170
Y 90-0171	Y 90-0172	Y 90-0173	Y 90-0174
Y 90-0175	Y 90-0176	Y 90-0177	Y 90-0178
Y 90-0179	Y 90-0180	Y 90-0181	Y 90-0182
Y 90-0183	Y 90-0184	Y 90-0188	Y 90-0187
Y 90-0188	Y 90-0189	Y 90-0190	

IV. 78 Chemical substances for which EPA has received notices of commencement to manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P 83-0455	G Alkanoyl disubstituted cycloalkane	July 18, 1990.
P 83-1224	G Flourocarbon	March 13, 1990.
P 84-0668	G 9,10-Anthracenedione sulfonic acid, sodium salt	March 8, 1990.
P 86-0001	G Polyester of unsaturated dicarboxylic acid, diglycol, biebenzoic acid	July 25, 1988.
P 86-1689	G Copolymer of acrylic and methacrylic esters	March 12, 1990.
P 86-1771	G Benzotriazole derivative	August 29, 1988.
P 87-0930	G 1,2-Epoxybutane, 2-propenoic acid, dibutylene glycol mono-2-propenoic acid esters dibutylene glycol 1,2-butanediol, 2-hydroxybutyl acetylate	March 23, 1990.
P 87-0931	G 1,2-Epoxybutane, 2-propenoic acid, dibutylene glycol mono-2-propenoic acid esters dibutylene glycol 1,2-butanediol, 2-hydroxybuty acetate	March 23, 1990.
P 87-1176	G Dimethyl, alkoxy functional fluid	March 21, 1990.
P 87-1205	G Acrylic polymer	March 13, 1990.
P 87-1223	G Bis(substituted phenyl)cycloalkane	March 30, 1990.
P 87-1515	G Fluorinated copolymers	February 23, 1990.
P 87-1600	G Styrene-acrylate methacrylate polymer	February 20, 1990.
P 88-0014	G Substituted benzotriazole	March 29, 1990.
P 88-0364	Alkylammonium chloride	April 6, 1990.
P 88-1772	G Graft copolymer on polyvinyl alcohol	March 22, 1990.
P 88-1890	G Polycaprolactone ester	March 20, 1990.
P 88-2301	G Toluene dieocyanate terminated polyether urethane	March 6, 1990.
P 88-2566	G Aromatic methacrylate	March 14, 1990.
P 89-0001	G Peroxy-initiated acrylate ester/ether nitrile polymer	January 20, 1990.
P 89-0175	G Hydroxy functional acrylic copolymer	March 21, 1990.
P 89-0211	2-Methyl-1,3-propanediol	March 2, 1990.
P 89-0215	G Intaglio Varnish	March 20, 1990.
P 89-0301	G Disubstituted glycine potassium complex	March 9, 1990.
P 89-0399	G Amine functional epoxy salted with an organic acid	March 21, 1990.
P 89-0402	G Substituted aminobenzoic acid	March 19, 1990.
P 89-0421	Sodium sulfonisophthalic acid; isophthalic acid; sebacic acid; 5-t-butyl isophthalic acid; neopentyl glycol; ethylene	February 27, 1990.
P 89-0440	Ethanol, 2-(2-hydroxypropyl)amine	February 23, 1990.
P 89-0484	Isophoronediisocyanate; 2-hydroxy ethyl acrylate carbonic acid polymer accession	March 16, 1990.
P 89-0502	G Polyurethane-polyvinyl chloride complex	February 21, 1990.
P 89-0606	G Substituted polyhydroxy aromatic compound	March 2, 1990.
P 89-0616	G Polyoxyalkene polyester urethane block polymer	November 4, 1989.
P 89-0628	G Polymer modified acrylated epoxide	January 15, 1990.
P 89-0657	G Acrylate terpolymer	March 20, 1990.
P 89-0658	G Acrylate terpolymer	March 19, 1990.
P 89-0659	G Acrylate terpolymer	March 22, 1990.
P 89-0660	G Acrylate terpolymer	March 13, 1990.
P 89-0778	G High solids polyester	September 14, 1989.
P 89-0799	G Fluoro-substituted urethane	March 21, 1990.
P 89-0857	G Adduct of an aromatic polyisocyanate and a substituted phenol	February 25, 1990.
P 89-0859	G Polyether-modified polyurethane	April 7, 1990.
P 89-0880	G Halo-aliphatic oxy-substituted saturated pyran	October 13, 1989.
P 89-0923	G Partially fluorinated polyamic acid	April 6, 1990.
P 89-0964	G Polyester resin (alkyd resin)	February 15, 1990.
P 89-1039	Emulsion of blocked iso-cyanate product	March 21, 1990.
P 89-1063	G Polyester resin of alkyl and aryl dicarboxylic acids and esters and alkyl diols	March 16, 1990.

IV. 76 Chemical substances for which EPA has received notices of commencement to manufacture.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 89-1069	G Substited phenol, 1,3,-(bis(2-carboxybenzyl)azo)-,mixed ester	March 21, 1990.
P 90-0036	G Cyclohexyl substituted silicic acid ester	April 3, 1990.
P 90-0037	G Amino resin	March 26, 1990.
P 90-0046	Random copolymer of 1,3-butadiene with 2-propenen-itrile alpha-(4-cyano-4-methylbutyricacid)-omega-2,2-dimethylenenitrile	February 15, 1990.
P 90-0047	Random copolymer of 1,3-butadiene with 2-propenen-itrile-alpha-(4-cyano-4-methylbutyricacid)-omega-2,2-dimethylbutyronitrile	March 21, 1990.
P 90-0053	G Polymeric alpha, omega-dicarboxylic acid	April 4, 1990.
P 90-0081	G Thiadizole derivative	February 27, 1990.
P 90-0084	G Quaternary ammonium compounds	March 2, 1990.
P 90-0122	G Polyether polyol	March 27, 1990.
P 90-0152	G Acrylate copolymer	February 28, 1990.
P 90-0172	G Aromatic polyester polyol	March 20, 1990.
P 90-0174	G Polyurethane based on polyisocyanates, polyols and polyamines	March 20, 1990.
P 90-0188	G Fatty acid polymer with (alkylamino) diamine diyl diamine	March 23, 1990.
P 90-0213	G Ketoxime-blocked aromatic isocyanate	March 21, 1990.
P 90-0215	G Metal treatment compound	March 20, 1990.
P 90-0229	G Quaternary phosphonium/ polyphenol	March 20, 1990.
P 90-0230	G Halogenated aliphatic halo-ellene	March 24, 1990.
P 90-0236	G Perfluoroalkylsulfonamide salt	March 20, 1990.
P 90-0247	G Disubstituted cyclopentanone	April 6, 1990.
P 90-0254	G Amine functional epoxy resin salted with organic acid	March 28, 1990.
P 90-0268	G Fluorinated substituted urethane	March 26, 1990.
P 90-0276	G 1,4-Benzenediamine, N,N,N,N-tetrakis (4-(dipropylamino)phenyl)-	March 21, 1990.
P 90-0277	G Antimonate (1-), hexafluoro-, (oc-6-110-,salt with N,N,N,N-tetrakis (4- (dipropyl-amino)phenyl)-1,4-benzenediamine (1:1)	March 21, 1990.
Y 89-0117	G Saturated, oil-free polyester resin	January 3, 1990.
Y 89-0140	G Copolymer of butadiene and methacryic monomers	February 23, 1990.
Y 90-0018	Epsilon-caprolactone-tere-phthalic acid-tetramethy-lene glycol copolymer	April 22, 1990.
Y 90-0020	G Styrene-acrylic acid polymer	January 11, 1990.
Y 90-0093	G Polyester	March 15, 1990.
Y 90-0100	G Long oil sunflower alkyd resin solution	March 19, 1990.
Y 90-0103	G Copolymer of styrene and acrylic esters	March 28, 1990.
Y 90-0116	G Epoxy ester polymer	March 27, 1990.
Y 90-0155	G Acrylic resin	April 5, 1990.

V. 19 Premanufacture notices for which the period has been suspended.

PMN No.

P 88-0515 P 90-0331 P 90-0333 P 90-0335
P 90-0347 P 90-0349 P 90-0350 P 90-0359
P 90-0360 P 90-0361 P 90-0364 P 90-0372
P 90-0383 P 90-0384 P 90-0385 P 90-0404
P 90-0405 P 90-0406 Y 90-0137

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Part V

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50580; FRL-3737-1]
RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is August 27, 1990. If EPA receives notice before July 26, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received, and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50580 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The SUPPLEMENTARY INFORMATION section of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemicalsubstance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28, and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name, CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance, toxicities of concern, any tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. The preamble identifies recommended testing for each substance, and in cases where the section 5(e) order establishes a production limit, describes the tests that must be completed by the PMN submitter prior to exceeding the limit. If the specific chemical name is claimed as CBI, the citation includes a generic chemical name. The specific uses (including the production limit) which are designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations are set out at 40 CFR part 721 subpart B. Certain new uses, including production limits (and other uses designated in the rule) are also claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

The SNURs for the following PMN substances, P-84-482, P-88-1658, P-89-279, P-89-292, P-89-303, P-89-506, P-89-596, and P-89-770 regulate chemical substances subject to section 5(e) orders where the finding under TSCA is based solely on substantial production volume and substantial human or environmental exposure. In each of these cases there was limited or no toxicity data available for the PMN substance, a potentially substantial production volume, and a potentially substantial human or environmental exposure. In such cases EPA regulates new chemicals under section 5(e) by requiring certain toxicity tests. For instance, chemicals with

potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently than dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier 5(e) orders as well as those companies covered by the SNURs, are now generally subject to the requirements of OSHA's hazard communication standard at 29 CFR 1910.1200. Therefore EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards. In some instances, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

Some of the SNURs that contain worker protection or hazard communication provisions, the substances designated P-84-824, P-84-913, P-84-1007, P-84-954, P-84-983, P-85-730, P-85-832, P-85-933, P-88-500, P-88-502, P-88-582, and P-87-502, provide an exemption from such provisions if the substances are present at low levels and are not expected to reconcentrate in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and will make these SNURs consistent with those based on more recent section 5(e) orders. If a substance was determined to pose a cancer concern by structure-activity analysis or actual data (as described in this manner in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture in order to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's Hazard Communication Standard exemption of MSDS requirements § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures. In addition, a number of section 5(e) orders restrict manufacturing, processing, or use to a specific site or sites based on a determination that the substance may present ecotoxicity or human health concerns if released at concentrations above a certain concern level, and that use at alternative sites could result in releases above such level. In these cases, EPA has not included the site restriction in the SNUR, but instead has defined a new use for the substance to include any release that exceeds the identified concern level, as provided in § 721.90.

PMN Number P-84-482

Chemical Name: (specific) Urea, condensate with poly[oxy(methyl-1,2-ethanediyl)]-α-(2-aminomethylethyl)-μ-(2-aminoethylethoxy).
CAS number: Not available.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Recommended testing: A 28-day dermal subchronic toxicity test with rats as the test species on the lowest molecular weight product (Jeffamine DU-700) of the PMN substance as identified by the PMN submitter. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR Number: 40 CFR 721.2480.

PMN Number P-84-591

Chemical Name: (generic) Sodium salt of an alkylated, sulfonated aromatic.
CAS number: Not available.
Effective date of section 5(e) consent order: April 28, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Toxicity tests have shown this chemical to be acutely toxic to aquatic organisms.
Recommended testing: A daphnid chronic toxicity test and a fish early life stage study would help characterize possible effects of this substance on aquatic organisms. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.445.

PMN Number P-84-824

Chemical Name: (generic) Brominated aromatic compound.
CAS number: Not available.
Effective date of section 5(e) consent order: June 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer, and chronic liver, lung, and kidney effects in test animals.
Recommended testing: A 2-year oral rodent bioassay to help characterize possible carcinogenicity of the substance and a 90-day subchronic study to assess potential chronic liver, lung, and kidney effects. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day study.
CFR citation: 40 CFR 721.523.

PMN Number P-84-913

Chemical Name: (generic) *N,N'*-Bis(2-(2-(3-alkyl)thiazoline)vinyl)-1,4-phenylenediamine methyl sulfate, double salt.
CAS number: Not available.
Effective date of section 5(e) consent order: April 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have caused acute neurotoxicity effects and death.
Recommended testing: Acute toxicity tests including multiple dosing by the oral, dermal, inhalation, and ocular routes.
CFR citation: 40 CFR 721.612.

PMN Number P-84-954

Chemical Name: (generic) Substituted aromatic.
CAS number: Not available.
Effective date of section 5(e) consent order: December 24, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA

based on a finding that this substance may present an unreasonable risk of injury to health and the environment and this substance is expected to be produced in substantial quantities and there may be substantial environmental and human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to be acutely toxic to aquatic organisms.
Recommended testing: A 2-year dermal rodent bioassay to help characterize possible cancer effects.
CFR citation: 40 CFR 721.450.

PMN Number P-84-1007

Chemical Name: (generic) 3-Alkyl-3-(2-anilino)vinylthiazolinium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: April 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have caused acute neurotoxicity effects and death.
Recommended testing: Acute toxicity tests including multiple dosing by the oral, dermal, inhalation, and ocular routes.
CFR citation: 40 CFR 721.2585.

PMN Number P-84-1067

Chemical Name: 6-Nitro-2(3*H*)-benzooxazolone.
CAS number: Not available.
Effective date of section 5(e) consent order: March 13, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in laboratory animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize potential carcinogenicity.
CFR Citation: 40 CFR 721.1483.

PMN Number P-85-739

Chemical Name: (generic) Substituted phosphate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: November 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to cause kidney and liver effects.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible cancer effects of the substance.
CFR citation: 40 CFR 721.1585.

PMN Number P-85-832 and P-85-833

Chemical Name: (generic) Disubstituted alkyl triazines.
CAS number: Not available.
Effective date of section 5(e) consent order: January 24, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals. Toxicity tests of this chemical have shown it to cause heart, kidney, liver, and immunotoxic effects.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible cancer effects of the substance.
CFR citation: 40 CFR 721.2192.

PMN Number P-86-500 and P-86-502

Chemical Name: (generic) Tetraglycidylamines.
CAS number: Not available.
Effective date of section 5(e) consent order: March 3, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer in test animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible carcinogenicity of the substance and a 90-day subchronic assay to assess potential reproductive effects.
CFR citation: 40 CFR 721.976.

PMN Number P-86-1429

Chemical Name: (generic) Alkylphenoxypolyalkoxyamine.
CAS number: Not available.
Effective date of section 5(e) consent order: February 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Toxicity tests have shown this substance to be acutely toxic to aquatic organisms.
Recommended testing: A chronic aquatic toxicity test in daphnids and an early life stage toxicity study in fish.
Explanation of SNUR terms: The preamble to the 5(e) consent order states that EPA is concerned if the PMN substance is released to surface waters and that the order will restrict use and disposal of the PMN substance so that there are no significant environmental releases of the PMN substance. The best translation of the 5(e) consent order restrictions for use and disposal is to designate any release to surface waters a significant new use.
CFR citation: 40 CFR 721.236.

PMN Number P-87-502

Chemical Name: (generic) Dialkenylamide.
CAS number: Not available.
Effective date of section 5(e) consent order: January 19, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and this substance is expected to be produced in substantial quantities and there may be substantial human exposures.
Toxicity concerns: Similar chemicals have been shown to cause cancer, developmental toxicity, reproductive effects, and chronic toxicity in test animals.
Recommended testing: A 2-year two-species rodent bioassay to help characterize possible carcinogenicity of the substance, an oral developmental toxicity test in rabbits to assess potential developmental effects, and a 90-day dermal rodent subchronic test with functional observational battery to characterize possible reproductive and chronic effects. The PMN submitter has agreed not to exceed the production volume limits without performing the developmental toxicity test and the 90-day dermal rodentsubchronic test.
CFR citation: 40 CFR 721.783.

PMN Number P-88-854

Chemical Name: (generic) Polymer of alkenoic acid, substituted alkylacrylate, sodium salt.
CAS number: Not available.
Effective date of section 5(e) consent order: October 20, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause respiratory complications in test animals.
Recommended testing: A 90-day subchronic inhalation study in rats (40 CFR 798.2450) to help characterize possible respiratory complications of the substance.
CFR citation: 40 CFR 721.1534.

PMN Number P-88-1658

Chemical Name: (generic) Polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked.
CAS number: Not available.
Effective date of section 5(e) consent order: October 27, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant and substantial human exposure.
Recommended testing: EPA has determined that the results of a 28-day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus by the intraperitoneal route (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1630.

PMN Number P-88-279

Chemical Name: (generic) Formaldehyde, polymer with bisphenol A and substituted phenol.
CAS number: Not available.
Effective date of section 5(e) consent order: September 20, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an early life stage toxicity test in fish (40 CFR 797.1600) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1060.

PMN Number P-88-282

Chemical Name: (generic) Carboxy alkyl silyl, salt.
CAS number: Not available.
Effective date of section 5(e) consent order: December 13, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1860.

PMN Number P-88-303

Chemical Name: Urea, (hexahydro-6-methyl-2-oxo-4-pyrimidinyl)-.
CAS number: 1129-42-6.
Effective date of section 5(e) consent order: October 20, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental and human exposures.
Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400), an acute algal study (40 CFR 797.1050), an acute daphnid study (40 CFR 797.1300), and an acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2400.

PMN Number P-88-806

Chemical Name: (generic) Alkylated diarylamine, sulfurized.
CAS number: Not available.
Effective date of section 5(e) consent order: November 20, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant and substantial human exposure.
Recommended testing: EPA has determined that the results of a 28-day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus by the intraperitoneal route (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.792.

PMN Number P-88-896

Chemical Name: (generic) Alkylene glycol terephthalate and substituted benzoate esters.
CAS number: Not available.
Effective date of section 5(e) consent order: October 13, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental exposures.
Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2070

PMN Number P-89-778

Chemical Name: (generic) Coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzene propenoic acid.

CAS number: Not available.

Effective date of 5(e) consent order: December 13, 1989.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures.

Recommended testing: EPA has determined that the results of an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395) and a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) For all test doses, a neurotoxicity functional observational battery (48 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.

CFR citation: 40 CFR 721.770

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders. In the case of chemical substances for which the designated uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective August 27, 1990, unless EPA receives a written notice by July 26, 1990, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period. This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. A section 5(e) order has been issued in all cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which NOCs have not been submitted, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 19 out of the 23 substances contained in this rule have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing. EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in § 721.45 (h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50580).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50580). The record includes information considered by EPA in developing this rule. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: June 13, 1990

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.296 to subpart E to read as follows:

§ 721.296 Alkylphenoxypolyalkoxyamine (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylphenoxypolyalkoxyamine (PMN P-88-1489) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (f), and (g)(9)(ii), (g)(4)(iii), and (g)(5).

(ii) *Release to water.* Section 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part

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apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(f), (g), (h), and (k).

(2) *Limitations or revocation of certain requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.445 to subpart E to read as follows:

§ 721.445 Sodium salt of an alkylated, sulfonated aromatic (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a sodium salt of an alkylated, sulfonated aromatic (PMN P–84–591) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as a dye leveler) and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.450 to subpart E to read as follows:

§ 721.450 Substituted aromatic (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted aromatic (PMN P–84–654) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (level set at 0.25 ppm).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.523 to subpart E to read as follows:

§ 721.523 Brominated aromatic compound (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a brominated aromatic compound (PMN P–84–824) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j) (use as an additive flame retardant for plastics) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (k).

(2) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(3) *Limitations or revocation of certain notification requirments.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.612 to subpart E to read as follows:

§ 721.612 N,N'-Bis(2-(2-(3-alkyl)thiazoline) vinyl)-1,4-phenylenediamine methyl sulfate double salt (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as *N,N'*-Bis(2-(2-(3-alkyl)thiazoline)vinyl)-1,4-phenylenediamine methyl sulfate double salt (PMN P–84–913) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv),(a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e), (f) (concentration set at 1 percent), (g)(1)(iii), (g)(1), (may be lethal if inhaled or in contact with eyes), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.770 to subpart E to read as follows:

§ 721.770 Coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid. (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as coconut oil reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (PMN P–89–770) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.783 to subpart E to read as follows:

§ 721.783 Dialkenylamide (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a dialkenylamide (P–87–502) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2) and (c)(1), (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.792 to subpart E to read as follows:

§ 721.792 Alkylated diarylamine, sulfurized (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylated diarylamine, sulfurized (PMN P–89–506) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.976 to subpart E to read as follows:

§ 721.976 Perfluoroalkyl epoxide (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoroalkyl epoxide (PMN P–88–562) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), (j), and (k).

(2) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(3) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11. By adding new § 721.1060 to subpart E to read as follows:

§ 721.1060 Formaldehyde, polymer with bisphenol A and substituted phenol (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as formaldehyde, polymer with bisphenol A and substituted phenol (PMN P–89–279) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (volume set at 161,000 kg).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

12. By adding new § 721.1483 to subpart E to read as follows:

§ 721.1483 6-Nitro-2(3*H*)-benzoxazolone.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance 6-nitro-2(3*H*)-benzoxazolone (PMN P–84–963) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), and (g)(2)(v). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (w)(1), (x)(1), and (y)(2).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(d), (e), (f), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

13. By adding new § 721.1585 to subpart E to read as follows:

§ 721.1585 Substituted phosphate ester (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted phosphate ester (PMN P–85–730) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (k).

(iv) *Release to water.* Section 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

14. By adding new § 721.1630 to subpart E to read as follows:

§ 721.1630 Polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polymer of alkanepolyol and polyalkylpolyisocyanatocarbomonocycle, acetone oxime-blocked (PMN P–88–1658) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

15. By adding new § 721.1634 to subpart E to read as follows:

§ 721.1634 Polymer of alkenoic acid, substituted alkylacrylate sodium salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identifed generically as polymer of alkenoic acid, substituted alkylacrylate sodium salt (PMN P-88-854) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (l), (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

16. By adding new § 721.1890 to subpart E to read as follows:

§ 721.1890 Carboxy alkyl silyl salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carboxy alkyl silyl salt (PMN P–89–292) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

17. By adding new § 721.2070 to subpart E to read as follows:

§ 721.2070 Alkylene glycol terephthalate and substituted benzoate esters (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylene glycol terephthalate and substituted benzoate esters (PMN P–89–596) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q)

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

18. By adding new § 721.2132 to subpart E to read as follows:

§ 721.2132 Tetraglycidalamines (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as tetraglycidalamines (PMN P–86–500 and P–86–502) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5) (vi), (a)(6)(i), (a)(5)(xi) and (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c). The respirator required under § 721.63 (a)(5)(vi) is applicable only when the PMN substance is in the form of a dust. The respirator required under § 721.63 (a)(5)(xi) is applicable only when the PMN substance is in the form of a mist.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2) and (c)(1), (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi) and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

19. By adding new § 721.2192 to subpart E to read as follows:

§ 721.2192 Disubstituted alkyl triazines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as disubstituted alkyl triazines (PMNs P–85–932 and P–85–933) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(1), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iv) *Release to water.* § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (l) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

20. By adding new § 721.2480 to subpart E to read as follows:

§ 721.2480 Urea, condensate with poly[oxy(methyl-1,2-ethanediyl)]-α-(2-aminomethylethyl)-ω-(2-aminoethylethoxy) (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance urea, condensate with poly[oxy(methyl-1,2-ethanediyl)]-α-(2-aminomethylethyl)-ω-(2-aminoethylethoxy) (PMN P-84-482) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

21. By adding new § 721.2490 to subpart E to read as follows:

§ 721.2490 Urea, (hexahydro-6-methyl-2-oxopyrimidinyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance urea, (hexahydro-6-methyl-2oxopyrimidinyl)-. (PMN P-89-303) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (level set at 1,975,000 and 2,200,000 kg).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

22. By adding new § 721.2585 to subpart E to read as follows:

§ 721.2585 3-Alkyl-2-(2-anilino)vinyl thiazolinium salt (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as 3-alkyl-2-(2-anilino)vinylthiazolinium salt (PMN P-84-1007) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(5)(vii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e), (f) [concentration set at 1 percent], (g)(1)(iii), (g)(1) (may be lethal if inhaled or in contact with eyes), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

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40 CFR Part 721

[OPTS-50577; FRL-3710-6]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: This rule is effective August 27, 1990.

If EPA receives notice before July 26, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50577 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit VI of this preamble contains additional information on inquiries involving CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the Federal Register of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name, CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order for the substance, toxicities of concern, any tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. The preamble identifies recommended testing for each substance, and in cases where the section 5(e) order establishes a production limit, describes the tests that must be completed by the PMN submitter prior to exceeding the limit. If the specific chemical name is claimed as CBI, the citation includes a generic chemical name. The specific uses (including the production limit) which are designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations are set out at 40 CFR part 721 subpart B. Certain new uses, including production limits and other uses designated in the rule are also claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. In some instances, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

The SNURs that contain worker protection or hazard communication (all nineteen of these substances except P-87-304 and P-87-1456) provide an exemption from such provisions if the substances are present at low levels in mixtures and are not expected to reconcentrate. The exemptions are provided in §§ 721.63(b) and 721.72(e) and will make these SNURs consistent with SNURs based on more recent section 5(e) consent orders that contain this exemption. If a substance was determined to pose a cancer concern, whether by structural-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. Other substances must be at a level not to exceed 1.0 percent in order to qualify for the exemption. In addition, a number of section 5(e) orders restrict manufacturing, processing, or use to a specific site or sites based on a determination that the substance may present ecotoxicity or human health concerns if released at concentrations above a certain concern level, and that use at alternative sites could result in releases above such level. In these cases, EPA has not included the site restriction in the SNUR, but instead has defined a new use for the substance to include any release that exceeds the identified concern level, as provided in § 721.90.

PMN Number P-84-820

Chemical name: Phosphonium salt (generic name).

CAS number: Not assigned.

Effective date of section 5(e) consent order: December 10, 1984.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concerns: This substance may be neurotoxic.

Recommended testing: A 28-day repeated exposure study to characterize neurotoxicity of the substance. The duration of recommended testing should not be less than 28 days. A 90-day test is preferred.

CFR citation: 40 CFR 721.1600.

PMN Number P-84-1079

Chemical name: Alkylated diphenyl oxide (generic name).

CAS number: Not assigned.

Effective date of section 5(e) consent order: April 17, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause developmental and reproductive effects in test animals. In addition, analog data support a concern for acute and chronic toxicity to aquatic organisms, and for bioconcentration.
Recommended testing: A Chernoff Screening Test to help characterize possible developmental and reproductive effects of the substance. Ecotoxicity tests have not been specified.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order restricts the PMN submitter to disposal as described in the PMN only. The PMN specifies release to industrial waste treatment where primary and secondary treatment occur. The release to water reporting provision merely extends the pre-release treatment as a requirement to others.
CFR citation: 40 CFR 721.853.

PMN Number P-85-367

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system. Also a similar substance is linked to carcinogenicity and liver toxicity.
Recommended testing: An acute and 90-day subchronic inhalation studies using motor activity and including liver pathology on P-85-367. A 2-year bioassay in rodents would be necessary to address the cancer concern.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-368

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system.
Recommended testing: The 90-day subchronic inhalation study on P-85-367 is sufficient to evaluate the potential neurotoxicity to this substance due to analogous structure.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-369

Chemical name: Haloalkyl substituted cyclic ethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 17, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Animal tests have shown this substance to cause damage to the central nervous system.
Recommended testing: The 90-day subchronic inhalation study on P-85-367 is sufficient to evaluate the potential neurotoxicity to this substance due to analogous structure.
CFR citation: 40 CFR 721.1078.

PMN Number P-85-505

Chemical name: Trisubstituted phenol (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: July 25, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1542.

PMN Number P-85-680

Chemical name: 1,1-Dimethylpropyl peroxyester (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 30, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1560.

PMN Number P-85-1331

Chemical name: Naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (specific name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Similar substances have been shown to be toxic to aquatic organisms.
Recommended testing: A daphnid test and fish early life stage study would help characterize possible effects of this substance on aquatic organisms.
CFR citation: 40 CFR 721.1460.

PMN Number P-86-501

Chemical name: Aromatic diamines (generic name).
CAS number: Not available.
Effective date of section 5(e) consent order: March 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, hepatotoxicity, and retinopathy in test animals.
Recommended testing: A 2-year bioassay would help characterize the possible carcinogenic effects of the substance.
CFR citation: 40 CFR 721.782.

PMN Number P-86-503

Chemical name: Aromatic diamines (generic name).
CAS number: Not available.
Effective date of section 5(e) consent order: March 2, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar chemicals have been shown to cause cancer, hepatotoxicity, and retinopathy in test animals.
Recommended testing: A 2-year bioassay would help characterize the possible carcinogenic effects of the substance.
CFR citation: 40 CFR 721.782.

PMN Number P-86-626

Chemical name: Dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycerylether and alkylenepolyols polyglycidylethers (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: November 13, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and reproductive effects in test animals.
Recommended testing: A 2-year rodent bioassay and a 90-day rat subchronic study to help characterize possible carcinogenicity and reproductive (testicular) effects of the substance.
CFR citation: 40 CFR 721.818.

PMN Number P-86-1043

Chemical name: Monosubstituted alkoxyaminotrizines (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 9, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, heart, kidney, liver, and immunotoxic effects in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and the concern that it could reach drinking water. In addition, based on similar substances, this substance is expected to cause phytotoxicity. The Agency has concluded that levels of this substance above 10 ppb raise concerns for effects on aquatic organisms.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order contains a provision that the company can manufacture the PMN substance only at approved locations. The specified locations were assessed and found not to meet or exceed the concern level. Release of the substance from other sites at a level of 10 ppb could be a concern. Therefore, a significant new use notice is required if the concern level could be exceeded.
Recommended testing: A 2-year rodent bioassay of P-86-1044 would help characterize possible carcinogenicity of this substance as well.
CFR citation: 40 CFR 721.291.

PMN Number P-86-1044

Chemical name: Monosubstituted alkoxyaminotrizines (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 9, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, heart, kidney, liver, and immunotoxic effects in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and that it could reach drinking water. In addition, based on similar substances, this substance is expected to cause ecotoxicity. The Agency has determined that levels of this substance above 1 ppb raise concerns for carcinogenicity and ecotoxicity.
Recommended testing: A 2-year rodent bioassay of this substance would help characterize possible carcinogenicity of P-86-1043 as well.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order contains a provision that the company can manufacture the PMN substance only at approved locations. The specified locations were sites at which the PMN submitter intended to release the substance. EPA allowed the release because it estimated that the proposed releases would cause aquatic concentrations below the 1 ppb concern level. A significant new use notice is required if the concern level could be exceeded.

PMN Number P-86-1252

Chemical name: Boric acid, alkyl and substituted alkyl esters (generic name).
CAS number: Not assigned.
Effective date of 5(e) consent order: May 11, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer, developmental, hematological, and immune system effects in test animals.
Recommended testing: A 2-year bioassay, developmental toxicity test, and a 90-day subchronic test in rats to help characterize possible carcinogenicity, developmental, hematological, and immune system effects of the substance.
Rationale for using SNUR reporting triggers not matched in 5(e): The Consent Order provided for a disposal option of releasing hydrolyzed liquid wastes containing the substance from an on-site treatment facility. Although this method of disposal may be approved for others, the approved release to water is specified in the regulatory text.
CFR citation: 40 CFR 721.617.

PMN Number P-86-1483

Chemical name: Substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: January 21, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals. Specific release concerns are based on suspected carcinogenicity of the substance and that it could reach drinking water. In addition, based on test data this substance showed a LC_{50} effect at 7.3 ppm in fish. The Agency has determined that levels of this substance above 5 ppb raise carcinogenicity and ecotoxicity concerns.
Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
Rationale for using SNUR reporting triggers not matched in 5(e): The section 5(e) order allowed as a method of disposal the release to an on-site waste water treatment facility. These conditions of disposal did not result in release levels at or above 5 ppb. EPA would be concerned with levels that met or exceeded the 5 ppb.
CFR citation: 40 CFR 721.1505.

PMN Number P-87-304

Chemical name: Nitrothiophene carboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: July 1, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer in test animals.

Recommended testing: A 2-year rodent bioassay to help characterize possible carcinogenicity of the substance.
CFR citation: 40 CFR 721.1468.

PMN Number P-87-1265

Chemical name: 3-Naphthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: February 1, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and mutagenicity in test animals.
Recommended testing: A 2-year rodent bioassay and chromosomal aberration study to help characterize possible carcinogenicity and mutagenicity of the substance.
CFR citation: 40 CFR 721.1465.

PMN Number P-87-1458

Chemical name: Polyamine ureaformaldehyde condensate (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: May 4, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concerns: Similar substances have been shown to cause toxicity to aquatic organisms. Analog data from substances with similar chemical structures show this substance to have a potential EC_{50} at 0.04 ppm for algae. EPA has determined that levels of this substance above 1 ppb raise concern for ecotoxicity.
Recommended testing: An acute ecotoxicity test for algae, daphnia and fish to help characterize possible toxicity to aquatic organisms.
Rationale for using SNUR reporting triggers not matched in 5(e): Although the section 5(e) order allows for effluent of wastes containing this substance to Publicly Owned Treatment Works which discharge into oceans and the Gulf of Mexico, the established concern level of 1 ppb may not be exceeded.
CFR citation: 40 CFR 721.2500.

PMN Number P-88-63

Chemical name: Substituted thiazino hydrazine salt (generic name).
CAS number: Not assigned.
Effective date of section 5(e) consent order: April 22, 1988.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Similar substances have been shown to cause cancer and systemic effects in test animals.
Recommended testing: A 2-year rodent bioassay and a 90-day subchronic study to help characterize possible carcinogenicity and systemic effects of the substance.
CFR citation: 40 CFR 721.2160.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for certain of the substances regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders. In the case of chemical substances for which the designated uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: that EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), the rules will be effective August 27, 1990, unless EPA receives a written notice by July 26, 1990, that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III of this preamble lists those recommended tests.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is incorporated by reference into each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. A section 5(e) order has been issued in all these cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. EPA has received a Notice of Commencement (NOC) on all nineteen of these substances and each one has been added to the Inventory. EPA recognizes when chemical substances identified in these SNURs are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all but one of these nineteen substances have CBI chemical identities, and since EPA has received only one corresponding post-PMN *bona fide* submission, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through these SNURs will have to cease any such activity before the effective date of these rules. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If a person were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50577).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50577). The record includes information considered by EPA in developing this rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC

20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: June 13, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.291 to subpart E to read as follows:

§ 721.291 Monosubstituted alkoxyaminotrazines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance monosubstituted alkoxyaminotrazines (PMN P-86-1043) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv), (g)(1)(vii), and (g)(1)(viii), (g)(2)(i) and (g)(2)(v), (g)(4)(xi), and (g)(5). The provision of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(E) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 10 ppb], (b)(4) [concern level of 10 ppb], and (c)(4)[concern level of 10 ppb].

(ii) [Reserved]

(2) The chemical substance monosubstituted alkoxyaminotrazines (PMN P-86-1044) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv), (g)(1)(vii), and (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), (g)(4)(xi), and (5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (a)(2) and (b)(1) and (b)(2).

(E) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 1 ppb], (b)(4)[concern level of 1 ppb], and (c)(4)[concern level of 1 ppb].

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.817 to subpart E to read as follows:

§ 721.817 Boric acid, alkyl and substituted alkyl esters (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance boric acid, alkyl and substituted alkyl esters (PMN P-86-1232) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(i), (g)(1)(iv), (g)(1)(vii), (g)(1)(viii), and (g)(1)(ix), (g)(2)(i) and (g)(2)(v), (g)(4)(i) and (g)(4)(iii), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (b)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.782 to subpart E to read as follows:

§ 721.782 Aromatic diamines (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances aromatic diamines (PMN P-86-501 and P-86-503) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(xv), (a)(6)(i) and (a)(6)(ii), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85 (a)(1) and (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi), (b)(2)(vi), and (c)(2)(vi).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.818 to subpart E to read as follows:

§ 721.818 Dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycidyl ether, and alkylenepolyols polyglycidyl ethers (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycidyl ether, and alkylenepolyols polyglycidyl ethers (PMN P-86-628) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(vi) and (g)(1)(vii), (g)(2)(i) and (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (y).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(b) Specific requirements. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (l).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.853 to subpart E to read as follows:

§ 721.853 Alkylated diphenyl oxide (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance alkylated diphenyl oxide (PMN P-84-1079) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 1.0 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) [concentration set at 1.0 percent], (f), and (g)(1)(vi) and (g)(1)(ix), (g)(2)(i) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g). The term intermediate as used in § 721.80(g) is defined as intermediate for a sulfonated product to be used on site to manufacture sulfonated surfactants or as a product sold to others as a raw material to make sulfonated surfactants.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.1078 to subpart E to read as follows:

§ 721.1078 Haloalkyl substituted cyclic ethers.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances haloalkyl substituted cyclic ethers (PMN P-85-368 and P-85-369) are subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii) and (a)(6)(v) and (a)(6)(vi), (b) [concentration set at 1.0 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 1.0 percent], (f), and (g)(1)(iii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring

placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of the substances, as specified in § 721.125(a) through (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(2) The chemical substance haloalkyl substituted cyclic ether (PMN P–85–367) is subject to reporting under this section for the significant new uses described in this paragraph.

(i) The significant new uses are:

(A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), and (a)(6)(v) and (a)(6)(vi), (b) [concentration set at 0.1 percent], and (c).

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv) and (g)(2)(v), and (g)(5). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(D) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(C) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.1460 to subpart E to read as follows:

§ 721.1460 Naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (specific name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance naphthalene,1,2,3,4-tetrahydro(1-phenylethyl) (PMN P–85–1331) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (e) [concentration set at 1.0 percent], (f), and (g)(3)(i) and (g)(3)(ii), (g)(4)(i) and (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1) and (2), (b)(1) and (b)(2), and (c)(1) and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.1465 to subpart E to read as follows:

§ 721.1465 2-Naphthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-naphthalenecarboxamide-N-aryl-3-hydroxy-4-arylazo (PMN P–87–1265) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(i), (g)(1)(v), and (g)(1)(vii), and (g)(2)(ii) and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.1488 to subpart E to read as follows:

§ 721.1488 Nitrothiophenecarboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance nitrothiophenecarboxylic acid, ethyl ester, bis[[[[(substituted)]amino]alkylphenyl]azo] (PMN P–87–304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.1542 to subpart E to read as follows:

§ 721.1542 Trisubstituted phenol (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance trisubstituted phenol (PMN P–85–605) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii) and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 0.1 percent], (f), (g)(1)(vii), and (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1560 to subpart E to read as follows:

§ 721.1560 1,1-Dimethylpropyl peroxyester (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 1,1-dimethylpropyl peroxyester (PMN P–85–680) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), and (a)(6)(v), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), and (g)(4)(i).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(3) and (b)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1565 to subpart E to read as follows:

§ 721.1565 Substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted alkyl peroxyhexane carboxylate (mixed isomers) (PMN–86–1493) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), and (g)(4)(i).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 5 ppb], (b)(4) [concern level of 5 ppb], and (c)(4) [concern level of 5 ppb].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1606 to subpart E to read as follows:

§ 721.1606 Phosphonium salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance phosphonium salt (PMN Number P–86–620) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3), (b) [concentration set at 1.0 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) [concentration set at 1.0 percent],

(f), and (g)(1)(iii) and (g)(2)(i) and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when a MSDS was not required under § 721.72(c). The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.2160 to subpart E to read as follows:

§ 721.2160 Substituted thiazino hydrazine salt (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted thiazino hydrazine salt (PMN P–88–63) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iii) through (a)(5)(vii), and (a)(6)(i), (b) [concentration set at 0.1 percent], and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) [concentration set at 0.1 percent], (f), and (g)(1)(iv) and (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1) and (a)(2) and (b)(1) and (b)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.2500 to subpart E to read as follows:

§ 721.2500 Polyamine ureaformaldehyde condensate (specific name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polyamine ureaformaldehyde condensate (PMN P–87–1456) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4) [concern level of 1 ppb], (b)(4) [concern level of 1 ppb], and (c)(4) [concern level of 1 ppb].

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Tuesday
June 26, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Spotted Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Spotted Owl

AGENCY: U.S. Fish and Wildlife, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the northern spotted owl (*Strix occidentalis caurina*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The present range of the subspecies is from southwestern British Columbia through western Washington, western Oregon, and the coast range area of northwestern California south to San Francisco Bay. The northern spotted owl is threatened throughout its range by the loss and adverse modification of suitable habitat as the result of timber harvesting and exacerbated by catastrophic events such as fire, volcanic eruption, and wind storms. Northern spotted owls primarily occur in old-growth and mature forest habitats, but may also be found in younger forests that possess the appropriate structural and vegetational attributes, with attendant prey populations. The rule extends the Act's protection to the northern spotted owl.

EFFECTIVE DATE: The effective date of this rule is July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 1002 NE Holladay Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159).

SUPPLEMENTARY INFORMATION:

Background

The spotted owl (*Strix occidentalis*), consisting of three subspecies (northern, California, and Mexican), is a medium-sized owl with dark eyes, dark-to-chestnut brown coloring, with whitish spots on the head and neck and white mottling on the abdomen and breast. The adult female is slightly larger than the male. The first record of the spotted owl was made in 1858 in the western portion of the Tehachapi Mountains in southern California (Xantus 1859) and it was first documented in the Pacific Northwest in 1892 (Bent 1938). Though observed only occasionally prior to the 1970s, the northern spotted owl since that time has been found to be more common in certain types of forested habitat throughout its range (USDA 1986).

Although a secretive and mostly nocturnal bird, the northern spotted owl is relatively unafraid of human beings (Bent 1938, Forsman *et al.* 1984, USDA 1986). The adult spotted owl maintains a territory year-round; however, individuals may shift their home ranges between the breeding and nonbreeding season. A "floater" population is comprised of subadults and adult owls who have not secured territories. Monogamous and long-lived, spotted owls tend to mate for life, although it is not known if pair-bonding or site fidelity is the determining factor.

Spotted owls are perch-and-dive predators and over 50 percent of their prey items are arboreal or semiarboreal species. Spotted owls subsist on a variety of mammals, birds, reptiles, and insects, with small mammals such as flying squirrels (*Glaucomys sabrinus*), red tree voles (*Arborimus longicaudus*) and dusky-footed woodrats (*Neotoma fuscipes*) making up the bulk of the food items throughout the range of the species (Solis and Gutierrez 1982, Forsman *et al.* 1984, Barrows 1985).

Three subspecies of the spotted owl currently are recognized by the American Ornithologists' Union (1957): the northern spotted owl (*Strix occidentalis caurina*), the California spotted owl (*S. o. occidentalis*), and the Mexican spotted owl (*S. o. lucida*). Northern spotted owls are distinguished from the other subspecies by their darker brown color and smaller white spots and markings (Merriam 1898, Nelson 1903, Bent 1938). Juvenile plumage is similar to adult plumage except for ragged white downy tips on the tail feathers of the juvenile which are retained until the bird is about 27 months old. Oberholser (1915) reported that there was considerable overlap in color of plumage between the northern and California spotted owl subspecies in California. Presumably the geographic separation between these two subspecies occurs within a 12-to-15 mile gap of forested habitat between southeastern Shasta and northwestern Lassen National Forests, where the Sierra Nevada contacts the Klamath physiographic province; the Pit River is generally accepted as the boundary between the two subspecies in California (USDA 1986; G. Gould, California Dept. of Fish and Game, Sacramento, CA., pers. comm.). The width of the geographic separation between the northern and California subspecies is within the dispersal capabilities of the owl (E.C. Meslow, U.S. Fish and Wildlife Service Cooperative Wildlife Research Unit, Oregon State Univ., Corvallis, OR., pers. comm.).

Barrowclough (1985) examined available museum specimens of all three spotted owl subspecies to investigate geographic variation within and between these taxa. In his unpublished findings, he reported clinal variation over the range of the northern and California subspecies and questioned the validity of considering these two taxa as distinct subspecies. Recent electrophoretic work did not detect any variation between the northern and California spotted owl subspecies, at least for the blood proteins examined (Barrowclough and Gutierrez 1987). After reviewing these reports, however, the American Ornithologists' Union (AOU) informed the Service that it continues to recognize the northern spotted owl as a distinct subspecies (the AOU is the recognized authority for taxonomic issues pertaining to North American birds). In addressing the subspecific distinction between the California and northern spotted owls, the AOU notes, "* * * the lack of genetic variation as determined by starch gel electrophoresis among the California and Oregon populations is not grounds for taxonomic merger of those populations." The present techniques for exposing genetic variation examine only a minute fraction of the genome and a lack of differentiation in this small fraction in the genome is without significance (N. Johnson, American Ornithologists' Union, letter dated December 12, 1989).

Secific spotted owl pairs usually do not nest every year nor are nesting pairs successful every year. Nesting behavior begins in February to March with nesting occurring from March to June; however, the timing of nesting and fledging varies with latitude and elevation (Forsman *et al.* 1984). The modal clutch size is 2 eggs, with a range of 1 to 4. Fledging occurs from mid-May to late June, with parental care continuing into September. Females are capable of breeding in their second year, but most probably do not breed until they are in their third year (Barrows 1985, Miller and Meslow 1985b, Franklin *et al.* 1988). A few males in juvenile plumage have been observed paired with adult females (Miller and Meslow 1985, Wagner and Meslow 1988). Males

do most of the foraging during incubation and assist with foraging during the fledging period.

Both the proportion of pairs occupying territories that attempt to breed and the proportion of pairs attempting to breed that are successful (i.e., fledge young) vary from year to year (Forsman *et al.* 1984, Gutierrez *et al.* 1984, Barrows 1985, Miller and Meslow 1985, Meslow *et al.* 1986, Allen *et al.* 1987, Franklin *et al.* 1987, Washington Department of Wildlife 1987, Thomas *et al.* 1990, Miller 1989).

However, in one study reproduction was relatively stable, at least for the years studied (Franklin *et al.* au). Average reproductive rates for Oregon and California (Marcot 1986) range from 0.49 to 0.67 juveniles per pair (Forsman *et al.* 1984, Gutierrez *et al.* 1985a, Barrowclough and Coats 1985, Franklin *et al.* 1987, Marcot and Holthausen 1987, Thomas *et al.* 1990). In some years most pairs may nest, whereas in other years very few pairs even attempt to breed. For example, Gutierrez *et al.* (1984) noted a broad failure in reproduction from northern California through Washington in 1982. It has been suggested that fluctuations in reproduction and numbers of pairs breeding may be related to fluctuations in prey availability (Forsman *et al.* 1984, Barrows 1985, Gutierrez 1985).

Mortality rates of juveniles are significantly higher than adult rates (Forsman *et al.* 1984, Gutierrez *et al.* 1985 a and b, Miller 1989). Recent studies of juvenile dispersal in Oregon and California indicate that few of the juvenile spotted owls survived to reproduce (Miller 1989, Gutierrez *et al.* 1985 a and b). These research studies all report very high mortality during pre-dispersal and the first months of dispersal. Using these data, Marcot and Holthausen (1987) estimated that about 60 percent of juveniles live until they disperse from their nesting areas, but only about 18 percent of those fledged survive for 1 year. In one study, only 7 out of 48 juveniles radio-tracked during a 3-year study (1982-1985), were known to be alive after 1 year (the fate of 4 was unknown because transmitter signals were lost) (Miller 1989). Survival of first year birds was estimated at 19 percent; predation by great horned owls and starvation were the two main causes of mortality (Miller 1989). Twelve of 23 juveniles in a 2-year study in California died during the dispersal period; the fate of the other 11 was unknown (Gutierrez *et al.* 1985b). It is not known whether the use of radio transmitters attached to juveniles for tracking purposes contribute to juvenile mortality (Irwin 1987; Dawson *et al.* 1988); researchers using this technique believe it should not measurably influence juvenile survival if done properly (Foster *et al.*, unpub. ms.).

The current range of the northern spotted owl is from southwestern British Columbia, through western Washington, western Oregon, and northern California south to San Francisco Bay. The southeastern boundary of its range, separating this subspecies from the California spotted owl, is the Pit River area of Shasta County, California. Populations are not evenly distributed throughout its present range. The majority of individuals is found in the Cascades of Oregon and the Klamath Mountains in southwestern Oregon and northwestern California (USDA 1986; Gould, pers. comm.; USDI 1989). Evidently, northern spotted owls reach their highest population densities and may have their best reproductive success in suitable habitat in this part of their range (USDI 1987, 1989; Franklin and Gutierrez 1988; Miller and Meslow 1988; Franklin *et al.* 1989; Robertson 1989). Habitat in southwestern Oregon south of Roseburg begins to change to a drier Douglas-fir/mixed conifer habitat with a corresponding change in prey base (from flying squirrels to woodrats (Meslow, pers. comm.). In addition, historical logging practices in the mixed conifer zone consisted of more selective timber harvesting than in other areas, leaving remnant patches of old growth or stands of varying ages with old-growth characteristics. This situation is also present along the east side of the Cascades in Washington.

The northern spotted owl is known from most of the major types of coniferous forests in the Pacific Northwest (Gould 1974, 1975, 1979; Forsman *et al.* 1977, 1984; Garcia 1979; Marcot and Gardetto 1980; Solis 1983; Sisco and Gutierrez 1984; Gutierrez *et al.* 1984, Forsman and Meslow 1985). The historical range of the northern spotted owl extended throughout the coniferous forest region from southwestern British Columbia south through western Washington, western Oregon, and the Coast Ranges of California to San Francisco Bay (USDA 1986). The current range and distribution of the northern subspecies is similar to the historical range where forested habitat still exists. The owl has been extirpated or is uncommon in certain areas (in intermingled private and State lands in southwestern Washington and intermingled Federal, State, and private lands in portions of Oregon and California) as the result of a decline or modification of old-growth and mature forest habitat and, thus, its distribution is now discontinuous over its range (Dawson *et al.* 1988, Forsman 1988). Specific areas of concern are discussed in detail in the Status Review Supplement (USDI 1989, 3.6).

Population densities and numbers are lowest in northern Washington, southern British Columbia, and the eastern portion of its range in California. Few pairs have been located in British Columbia; all have been located near the United States border. Few owls (pairs or singles) are presently found in the Coast Ranges in southwestern Washington or in the northwestern Oregon Coast Ranges (north from the southern portion of the Siuslaw National Forest). The population also decreases in density toward its southern extreme along the Coast Range in Marin, Napa, and Sonoma Counties, California and the Mendocino National Forest.

In California, northern spotted owls most commonly use the Douglas-fir (*Pseudotsuga menziesii*) and mixed conifer forest types (Marcot and Gardetto 1980, Solis 1983, and Gutierrez 1985). Gould (1974) reported finding spotted owls in northwestern California in coast redwood, Douglas-fir and Bishop pine (*Pinus muricata*) forests, and also in stands dominated by ponderosa pine (*Pinus ponderosa*). In Washington's coastal forest, the spotted owl is found in forests dominated by Douglas-fir and western hemlock (*Tsuga heterophylla*). At higher elevations in western Washington, Pacific silver fir (*Abies amabilis*) is commonly used by owls whereas on the east side of the Cascades Douglas-fir and grand fir (*Abies grandis*) are used (Postovit 1977). Availability of forest types within a region may be responsible for the observed differences in use among types (Gutierrez 1985; Meslow *et al.* 1986). Gould (pers. comm.) observed that preferred habitat, particularly in California, is not continuous, but occurs naturally in a mosaic pattern, especially in the southern portions of range of the bird.

Spotted owls have been observed over a wide range of elevations, although they seem to avoid higher elevation, subalpine forests (USDA 1986). Garcia (1979) reports that spotted owl densities in Washington were greatest below 4,100 feet elevation. Postovit (1977) found owls on the Olympic Peninsula at elevations ranging from 70 to 3,200 feet and an elevation range of 1,600 to 4,200 feet in the Cascade Mountains of Washington. On the east side of Washington's Cascades, J. Casson (USDA Forest Service, Wenatchee National Forest, WA., pers.

comm.) found owls up to 5,000 feet elevation and almost always in association with Douglas-fir. Northern spotted owls have been observed occasionally at elevations up to 6,000 feet or more in California (Gould, pers. comm.).

The age of forests is not as important a factor in determining habitat suitability as are vegetational and structural components. Suitable owl habitat has moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy dominated by large (> 30 inches in diameter at breast height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, dwarf-mistletoe infections, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990). Usually the features characteristic of owl habitat are most commonly associated with old-growth forests (a widely used definition of old growth is provided in the "PNW–447 Old Growth Task Force Definition" (Franklin *et al.* 1986) or mixed stands of old-growth and mature trees, which do not assimilate these attributes until from 150 to 200 years of age (Thomas *et al.* 1990). The Interagency Scientific Committee (Thomas *et al.*1990) reports that its members have seen sites used by owls throughout the range of the owl where the attributes of suitable owl habitat are present in relatively young forests (60+ years). Attributes of owl habitat are sometimes found in younger forests, especially those with significant remnants of earlier stands that were influenced by fire, wind storms, inefficient logging, or highgrading (removal of the most economically valuable trees). However, nests and major roost sites were located, in almost all instances, in the portions of the stand containing the oldest components (Thomas *et al.*1990).

Recent field investigations in northern California documented the presence of northern spotted owls in 30–80 year-old forests that contain suitable structural characteristics (Diller 1989, Irwin *et al.* 1989d, Pious 1989, Kerns 1989 a and b). In some instances, nesting pairs of northern spotted owls were found in stands that developed 60–80 years after either selective cutting or clearcutting (Richards 1989; Irwin *et al.* 1989a; Pious 1989; Kerns 1988; G. Gould, pers. comm.). At several sites spotted owls nested in predominantly coastal redwood (*Sequoia sempervirens*) stands that had acquired suitable habitat conditions in as little as 40–60 years (Pious 1989). Redwood-dominated forest stands within coastal northwestern California are believed to develop suitable habitat characteristics relatively more rapidly than other types because of unique conditions: a fast growing tree species, good soil conditions, high precipitation, coastal fog, long growing season, understory composed of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). The coastal redwood zone constitutes only 7 percent of the owl's overall range and caution is urged in assuming that these unique growing conditions will occur elsewhere (Thomas *et al.* 1990).

Northern spotted owl preferences for old-growth forests and forests with old-growth characteristics have been established using different types of information, including relative abundance, proportion of occupied sites containing old growth, and allocation of time by monitored owls. For the coniferous forest within the range of the northern spotted owl, young-growth forest is generally defined as less than 100 years of age, mature forest as stands from 100 to 200 years old, and old growth as forest more than 200 years old. However, habitat characteristics that are typical of suitable owl habitat may not neatly coincide with age classifications that are used primarily for timber purposes.

Forsman *et al.* (1977) computed an index to density of spotted owls based on response rates to simulated calls in Oregon, and estimated that spotted owl pairs were 5 to 12 times more abundant in old growth than in young-growth forests. Of 1,502 owl sites, Forsman *et al.* (1987) found that 1,282 were in old growth, 22 in mature forest, 131 in old-growth/mature forest, and 67 in stands less than 100 years age, demonstrating that the spotted owl is dramatically and disproportionately found in association with old growth (USDI 1989). Pairs were evident at 928 of these 1,502 sites. Other studies by Forsman *et al.* (1984, 1987) analyzed the habitat characteristics of spotted owl sites in Oregon and observed that more than 90 percent of sites occupied by owls contained a major component of old-growth forest. Similar studies conducted by Marcot and Gardetto (1980) in northern California found that 95 percent of spotted owl sites were in old-growth stands. Ninety-seven percent of the spotted owl population in Washington was found in old-growth/mature forest; there were no known reproductive pairs in managed second-growth forest (Allen 1988). The Interagency Scientific Committee (Thomas *et al.* 1990) reports that with the exception of recent work in the coastal redwood zone of California, all studies assessing habitat use suggest that throughout the range spotted owls concentrate their foraging and roosting activities during the entire year in old-growth or mixed-aged stands of mature and old-growth trees. Owls primarily nested either in remnant old-growth patches or in old-growth stands. Although there were exceptions, even these tended to support that owls nest in stands with old growth characteristics (Thomas *et al.* 1990).

There are a number of observations of nest sites in younger growth forests, including mixed-conifer forest in the Wenatchee and Okanogan National Forests in the eastern Cascades (Irwin *et al.* 1989a) and on private land in northern California (Irwin *et al.* 1989b, Pious 1989). Irwin *et al.* (1989c) found 13 of 29 nests in trees within what they describe as younger stands (78 to 120 years old). Marcot and Holthausen (1987) compared percent occurrence of occupancy to amount of area in old growth at each site. The results of their analysis showed probability of use is positively correlated with the percent of area containing old-growth forest types. In a recent study comparing densities of spotted owls in areas dominated by clearcuts and young forest (50–80 years of age) in northern California, Oregon, and Washington, to nearby areas with old growth, Bart and Forsman (unpub. ms.) found that forests regenerating from clearcuts of less than 80 years and containing little remnant older forest patches provided poor owl habitat. Young-growth forest supported a mean density of spotted owl pairs of 0.83 pairs/100 square miles, whereas mean density in old growth was 12.75 pairs/100 square miles. All old-growth areas contained owl pairs in comparison to only 2 of the 12 younger-growth study areas.

Even considering recent data indicating that owls can be found in 30–80 year-old stands in northern California, the vast majority of known successfully reproducing northern spotted owls are resident in old growth or in forested areas containing remnant patches of large trees or scattered individual large older trees. In instances where spotted owls have been found in stands other than old growth, in almost all cases the owls occur in situations that exhibit appropriate structural characteristics. Occurrences of owls in such habitats were known prior to the 1989 survey work conducted in northern California and, therefore, were not unexpected (Thomas *et al.*, letter dated December 20, 1989).

Although the literature strongly supports the generalization that owls preferentially select old-growth forests over young growth (USDI 1989), there are records of owls using young-growth forests. These data on young-growth forests have led to questions on the importance of old-growth habitat to spotted owl populations (e.g., Irwin 1987). In addition to the studies noted earlier (Irwin *et al.* 1989a), Irwin *et al.* (1989c) examined the immediate vicinity surrounding and including 29 nest sites on the Wenatchee and Okanogan National Forests in the Washington Cascades. Each of these nests apparently had successfully fledged at least one young in 1987 and/or 1988. The authors noted that while characteristics of many of these sites did not completely coincide with the general description of old growth, most of the sites retained dense, multi-layered canopies; no estimates was made of the amount of old growth within the home ranges of the owls whose nest sites were included in the analysis. In the Irwin *et al.* (1989a) study, the average age of 52 nest trees was approximately 194 years and ranged from 67 to 700 years. Surveys in the northern third of the Oregon Coast Ranges (Forsman 1988) and in southwestern Washington (Irwin *et al.* 1989d), revealed a low density of spotted owls and a paucity of old-growth habitat, suggesting that this type of habitat (i.e., 40- to 120-year-old managed forest or predominantly young-growth forest) in this area is not preferred or suitable habitat for northern spotted owls. It is recognized that not all old growth is suitable northern spotted owl habitat because of either forest type, elevation, or stand size. Moreover, some suitable habitat is present in mature forest lacking some old growth characteristics, in young forests with remnant old growth components, and in younger forests where appropriate habitat characteristics were attained relatively early.

Nine studies assessing owl foraging habitat use in relation to forest habitat type and its availability within an individual home range were evaluated (USDI 1990). All nine studies quantitatively determined the amount of habitat and statistically analyzed use of the habitat by owls. Data were from the Oregon Coast, Oregon Cascades, Washington Cascades/Olympic Peninsula, and Klamath Province (E. Forsman, USDA, Forest Service, Pacific Northwest Experiment Station, Olympia, Washington, pers. comm.). Results of these studies clearly indicate that owls use old forest more than expected for foraging (i.e., a "preferred" habitat). Sixty-eight of 81 (84 percent) owls having old forest within their home ranges used old forest more frequently than expected while 13 of 81 owls (16 percent) used old forest in relation to its availability (i.e., "neutral"). No individual owl monitored used old forest less than expected (i.e., "avoided"). The majority of owls (40 of 60; 67 percent) having mature forest in their home ranges were neutral towards mature forest; 9 of 60 (15 percent) avoided mature forest and 11 of 60 (18 percent) exhibited preference for mature forest in their home ranges. In contrast, owls having young forest within their home ranges tended to avoid (31 of 67; 46 percent) or were neutral (33 of 67; 49 percent) towards this habitat type. Owls having pole-sized forest types in their home ranges avoided (39 of 57; 68 percent) or were selectively neutral (18 of 57; 32 percent) with respect to their use of these forest types. Three (4 percent) exhibited preference for pole-sized forest. Note that none of the 57 owls with pole-sized forest and only 3 of 67 (4 percent) owls with young forest in their home ranges preferred these habitats. The clear conclusion is that owls having an array of habitat types within their home ranges select old forest, use mature forest in relation to its availability and tend to avoid or use young forest in relation to its availability (USDI 1990). The preponderance of data suggest that pole-sized forest is avoided (USDI 1990).

Three studies in the Oregon Coast (Thrailkill and Meslow 1989, Carey *et al.* 1990) and Oregon Cascades (Miller and Meslow 1989) were examined to determine the relationship of roost selection to habitat availability within home ranges (USDI 1990). These three studies are the only ones that examined attributes of roost characteristics and statistically compared roost attributes in relation to their availability in the home range. Although data are limited to studies in Oregon, they clearly indicate a strong association of roost sites with old forests. All 27 owls having old forest in the home range selected that forest type (i.e., "preferred") for roosting purposes. Mature stands were used in rough proportion to their availability, while only a few selected for or against mature stands for roosting. Owls having young and pole-sized forests in their home ranges used those habitats for roosting less than expected. These results provide no indication of what attributes associated with old forest owls find important in roost sites, but they do indicate that strong selection for this forest type is occurring within an owl's home range (USDI 1990). Hypotheses such as the need for dense canopy for thermoregulatory balance (Barrows and Barrows 1978, Barrows 1981) will require additional study before they can be evaluated (USDI 1990).

Northern spotted owls have relatively large home ranges as demonstrated through studies using radiotelemetry techniques. In the 1990 Status Review (USDI 1990), home range size estimates are based on the 100 percent minimum polygon method (Southwood 1966) and are the union of annual home range estimates of paired male and female owls only. Because of small sample sizes of paired birds for which an annual home range has been calculated, and because of uncertainty regarding underlying assumptions, the median rather than mean home range size was calculated. Median annual pair home ranges were estimated to be 9,990 acres for the Olympic Peninsula (n=10), 6,306 acres for the Washington Cascades (n=13), 2,955 for the Oregon Cascades (n=11), 4,786 acres for the Oregon Coast Range (n=22), and 3,340 acres for the Klamath Province (n=36) (Thomas *et al.* 1990). Home range size varied from 1,033 acres in the Klamath Province to a high of 30,961 acres in the Washington Cascades (USDI 1990). Mean percent acres of old-growth and mature forest within a home range ranged from 25 percent in the Oregon Coast Range to 74 percent in the Klamath Province (USDI 1990). These data strongly suggest that paired northern spotted owls require large tracts of land containing significant acreage of old forest to meet their biological needs (e.g., foraging and breeding) (USDI 1990). In general, home range sizes are smallest during the spring and summer (reproductive period), largest during the fall and winter (non-reproductive period), increase from south to north, and increase with increasing elevation. Pairs of owls also may occupy overlapping home ranges (Solis 1983, Forsman *et al.* 1984).

Significantly, research indicates that spotted owls on the Olympic Peninsula and Oregon Coast Ranges consistently occupy larger home ranges than owls in the other provinces. These areas also have the fewest pairs of spotted owls and the least remaining old-growth forest (USDI 1989). The large home range sizes reported for owl pairs on the Olympic Peninsula, Oregon Coast Ranges, and on the west side of the Cascade Range in Washington (USDI 1989) may reflect: (1) The adverse influence of forest fragmentation

resulting from timber harvest; (2) difference in prey biomass availability; and (3) the fact that the Washington locations are near the periphery of the subspecies' range. Forests within these provinces are highly fragmented and have the least amount of old-growth forest remaining within the range of the owl. For example, on Bureau of Land Management (Bureau) property and on the Siuslaw National Forest, located within the Coast Ranges of Oregon, remaining old-growth timber occurs in widely separated and relatively small parcels (Harris 1984). In this area, the owls utilize the available old growth in a highly fragmented and patchy environment (Friesen and Meslow 1988). This pattern is probably true for the Olympic Peninsula as well. The above findings and those of Allen and Brewer (1985), Forsman *et al.* (1984), Carey (1985), and Dawson *et al.* (1986), suggest that home range size increases as quality and quantity per unit area of preferred habitat declines (USDI 1989).

There are no estimates of the historical population size and distribution of the northern spotted owl within preferred habitat, although spotted owls are believed to have inhabited most old-growth forests throughout the Pacific Northwest prior to modern settlement (mid-1800s), including northwestern California (USDI 1989). Spotted owls are still found within their historical range in most areas where preferred and suitable habitat exist, although most of the owls are restricted within this range to mature and old-growth forests managed by the Federal government. Approximately 90 percent of the roughly 2,000 known breeding pairs of spotted owls have been located on federally managed lands, 1.4 percent on State lands, and 6.2 percent on private lands; the percent of spotted owls on private lands in northern California would be slightly higher (Forsman *et al.* 1987; USDA 1988; USDI 1989; Thomas *et al.* 1990; Gould, pers. comm.).

Petition Process Background

On January 28, 1987, the Fish and Wildlife Service (Service) received a petition submitted by Greenworld requesting the listing of the northern spotted owl (*Strix occidentalis caurina*) as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). On July 23, 1987, the Service accepted the Greenworld petition as presenting substantial information indicating that listing might be warranted and initiated a status review.

On August 4, 1987, the Service received a second petition, submitted by the Sierra Club Legal Defense Fund, Inc. on behalf of 29 conservation organizations, requesting that the populations of northern spotted owls on the Olympic Peninsula in Washington and the Coast Ranges of Oregon be listed as endangered pursuant to the Act, and that the subspecies be listed as threatened throughout the remainder of its range in Washington, Oregon, and northern California. The Sierra Club Legal Defense Fund, Inc. requested that its petition be consolidated with the petition by Greenworld. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. As a result, the time frames and schedules required by the first petition remained the same. Both petitions sought the designation of critical habitat.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. In conducting its review, the Service published a notice in the **Federal Register** (52 FR 34396) on September 11, 1987, requesting public comments and biological data on the status of the northern spotted owl. In addition, a status review team of three Service biologists was established. This team reviewed and evaluated all comments and information received in response to the September 11 notice as well as all other information in the Service's files or gathered in the effort to review the status of the subspecies. Two sequential drafts of the status review were prepared by the Service team and submitted for review by scientists, researchers, and others knowledgeable about the spotted owl in the Pacific Northwest.

On December 14, 1987, the Service team completed its status review on the northern spotted owl. On December 17, 1987, the Service's Regional Director for Region 1 made a finding, based on the review, that listing the northern spotted owl pursuant to Section 4(b)(3)(B)(i) of the Act was not warranted at that time. The Regional Director noted that because of the need for population trend information and other biological data, high priority would be given to this subspecies for continued monitoring and further research. Notice of this finding was published in the **Federal Register** on December 23, 1987 (52 FR 48552).

On May 5, 1988, the Sierra Club Legal Defense Fund, Inc. filed suit on behalf of 23 environmental organizations in the U.S. District Court for the Western District of Washington (*Northern Spotted Owl* v. *Hodel*, No. C88-573Z, W.D., Wash. 1988) challenging the Service's finding on the listing petitions. In an order issued on November 17, 1988, the Court concluded that the Service's finding was arbitrary and capricious or contrary to law, and remanded the matter to the Service for further review. The Service was specifically ordered to: provide an analysis and explanation for its finding; explain the reasoning for not listing the owl as threatened; and to supplement its status review and petition finding.

On December 5, 1988, the Director of the Service established a new status review team, consisting of 12 Service biologists, to conduct an in-depth review and interpretation of all data and other information that had been made available to the Service in 1987 on the issue. After reviewing the 1987 administrative record, the Service concluded that there was considerable new information available that had not been present in the original record and that such information was needed to respond sufficiently to the Court's request and to meet the Act's requirement to evaluate the best available biological information. In an order issued on January 12, 1989, the Court granted the Service's request to reopen the administrative record for the status review and petition finding for a period not to extend beyond February 28, 1989. In a notice published in the **Federal Register** (54 FR 4048; January 27, 1989), the Service reopened the comment period for 30 days and solicited comments, data, and other information. In its order of January 12, the Court gave the Service until May 1, 1989, to complete the additional status review, supplement the status review report, and submit to the court a new analysis and finding on the petition to list the northern spotted owl as endangered or threatened. On April 21, 1989, the team completed the review and submitted a supplemental status review report to the Regional Director, Region 1, Fish and Wildlife Service. On April 25, 1989, the Regional Director issued a revised petition finding indicating that listing the northern spotted owl as a threatened species throughout its entire range was warranted and that the Service would promptly pursue the listing process for the species.

The entire spotted owl species (*Strix occidentalis*) is listed on the Service's Notice of Review for vertebrate wildlife as a candidate species for listing, category 2. A category 2 species is one for which listing may be appropriate but for which additional information is needed. The information submitted and reviewed as part of the status review process for the northern spotted owl contributed to the supplemental information needed on which to base a decision to propose this subspecies for listing. On June 23, 1989 (54 FR 26666), the Service published a proposal to list the northern spotted owl as a threatened species.

Summary of Comments and Recommendations

In the June 23, 1989, proposed rule (54 FR 26666) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally closed September 21, 1989. On September 15, 1989, the Service published in the **Federal Register** (54 FR 38256) a notice extending the comment period to December 20, 1989. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Numerous newspaper notices were published which invited general public comment. In the proposed rule, the Service published notice of four public hearings to obtain comments from interested parties on the proposal. Public hearings were conducted as follows: August 14, 1989, at the Columbia River Red Lion Inn, Portland, Oregon; August 17, 1989, at the Redding Convention Center, Redding, California; August 21, 1989, at the Washington Center for the Performing Arts, Olympia, Washington; and August 28, 1989, at the Lane County Convention Center Auditorium, Eugene, Oregon. Testimony was taken from 1:00–4:30 p.m. and from 6:00–9:00 p.m. or later depending on need. Notice of the proposal and public hearings was published in 66 daily and weekly newspapers in California, Oregon, and Washington. Between July 16 and 23, 1989, a notice of the proposal and public hearings was published in each of the following newspapers: (California) *Del Norte Triplicate* (Crescent City), *Times-Standard* (Eureka), *Redwood Record* (Garberville), *Siskiyou News* (Yreka), *Trinity Journal* (Weaverville), *Record-Searchlight* (Redding), *News* (Red Bluff), *Advocate-News* (Fort Bragg), *Journal* (Ukiah), *Lake County Record Bee* (Lakeport), *Press Democrat* (Santa Rosa), *Advocate* (Novato), *Register* (Napa), *Journal* (Willows), *Sun-Herald* (Colusa), *Modoc County Record* (Alturas), *Lassen County Times* (Susanville), *Bee* (Sacramento), *Union* (Sacramento), *Chronicle/Examiner* (San Francisco); (Oregon) *Astorian* (Astoria), *Headlight-Herald* (Tillamook), *News-Register* (McMinnville), *News-Times* (Newport), *Register-Guard* (Eugene), *News-Review* (Roseburg), *World* (Coos Bay), *Coastal Pilot* (Brookings), *Courier* (Grants Pass), *Mail Tribune* (Medford), *Herald-News* (Klamath Falls), *Democrat Herald* (Albany), *Gazette Times* (Corvallis), *Polk Sun-Enterprise* (Monmouth), *Oregonian* (Portland), *Times* (Beaverton), *Enterprise-Courier* (Oregon City), *Statesman-Journal* (Salem), *Sentinel-Chronicle* (St. Helens), *News* (Hood River), *Chronicle* (The Dalles), *Pioneer* (Madras), *Bulletin* (Bend), *Sherman County Journal* (Moro); (Washington) *Peninsula Daily News* (Port Angeles), *Leader* (Port Townsend), *World* (Aberdeen), *Willapa Harbor Herald* (Raymond), *Wahkiakum County Eagle* (Cathlamet), *Chronicle* (Centralia), *News* (Longview), *Columbian* (Vancouver), *Skamania County Pioneer* (Stevenson), *Sentinel* (Goldendale), *News Tribune* (Tacoma), *Olympian* (Olympia), *Mason County Journal* (Shelton), *Sun* (Bremerton), *Herald-Republic* (Yakima), *North Kittitas County Tribune* (Cle Elum), *Times* (Seattle), *Herald* (Everett), *World* (Wenatchee), *Argus* (Mount Vernon), and *Herald* (Bellingham). On March 29, 1990, the Service published a notice (55 FR 11625) reopening the comment period for 14 days to solicit additional biological information on the status of the spotted owl. In an additional notice, the Service extended the comment period to April 18, 1990 (55 FR 13578).

To review the available biological data on the owl, including the information and data provided during the comment periods, the Service established a Northern Spotted Owl Listing Review Team. This team consisted of the Spotted Owl Listing Coordinator and five Service research scientists. These individuals prepared the 1990 Status Review (USDI 1990) and prepared the final decision document which included responding to the issues raised during the comment periods.

During the comment period, totaling about 6.5 months, 23,255 comments on the proposal were received. Of these, 3,674 (15.8 percent) supported the proposal, 18,718 (80.5 percent) were opposed, and 863 (3.7 percent) stated no opinion. Of the commenters who supported the proposal, 2,301 (9.9 percent) recommended that the northern spotted owl be listed as endangered, rather than threatened. Of the supporting comments, 2,084 (56.2 percent) were form letters. Of the 18,718 letters against the listing, 16,239 (86.8 percent) were form letters. In addition to individual letters and form letters, 5,361 individuals signed petitions urging the Service to list the spotted owl as either an endangered or threatened species. Petitions opposing the listing were signed by 3,963 people. Various companies and organizations, that are directly or indirectly related to the timber industry were opposed, as were local governments in timber-dependent communities and numerous private citizens who rely on a timber-supported economy. The Oregon Department of Fish and Wildlife commented that Federal listing of the northern spotted owl as a threatened species is warranted. Although the Washington Department of Wildlife and California Department of Fish and Game submitted extensive comments and reports outlining their concerns for the continued viability of northern spotted owls, neither stated its position on the proposed Federal listing. Of the main Federal agencies involved, the U.S. Forest Service opposed the listing, the Bureau of Land Management stated no position, and the National Park Service supported protecting the northern spotted owl on the Olympic Peninsula.

Written comments and oral statements obtained during the public hearings and comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in a number of general groups, organized around specific issues. These categories of comment, and the Service's response to each are listed below.

Issue 1. Public Hearings/Public Comment Process

Hearings

Comment: A commenter stated that public hearings were inadequate to obtain public input on the proposal and should have been held in towns that are directly affected by the proposal. Another said that public hearings should have been held in "middle ground," where the community represented a more neutral atmosphere. According to one commenter, the purpose of the public hearings seemed to be to allow the timber industry to create a media circus over economic considerations. Several commenters maintained that the hearings were not run fairly because the first speakers were all anti-owl. Other commenters said that the hearings were biased in favor of individuals being paid to present testimony and that other people could not afford to take time off from work to appear or had to wait too long before they were called to speak. Several commenters recommended that the decision-makers in the Service should have been present to hear the testimony given at the hearings.

Service response: Under provisions of the Endangered Species Act, the Service is obligated to hold one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). In the case of the northern spotted owl the Service gave notice in the proposal that four public hearings would be conducted in Portland, Oregon; Redding, California; Olympia, Washington, and Eugene, Oregon. One hearing, however, would have met the legally mandated requirement. The locations of meetings were selected because they provided an opportunity for a large number of interested parties to attend. The Service acknowledges that the hearing locations may not be regarded as "middle ground" by some people. However, with a proposal that has generated the level of interest that this one has, it may not have been possible to find four neutral locations within the range of the northern spotted owl in which to hold the hearings. The Service notes that at several of the hearings, individuals with a given viewpoint were present in high numbers. Anyone who felt too uncomfortable to present testimony at the public hearings was free to submit written comments. Such written comments receive the same consideration as oral testimony. The purpose of the public hearings was to obtain pertinent public input on this proposal. While an individual has the latitude to present whatever testimony he/she chooses during the public hearing, the Service is limited to considering only relevant biological information and data in its deliberations. Hence, the Service cannot take the numerous economic comments into account and has repeatedly stated this.

During each public hearing, after elected officials and representatives of Federal, State, and local agencies provided testimony, the next speakers were taken in order according to when they signed up to speak. The Service held the hearings in the afternoons and evenings to accommodate the schedules of most working individuals. Also, the Service limited the amount of time each individual was given to present testimony to minimize the waiting time of subsequent speakers. However, the public hearings were well attended and because of the large number of people desiring to speak, it was not possible for the hearing officer to proceed as quickly as some individuals would have liked. For those not wishing to wait, the address where written comments could be submitted to supplement or substitute for oral testimony was prominently posted and was announced by the hearing officer. Further, during all four public hearings, a court recorder was present who transcribed the proceedings to create a public hearing transcript. These transcripts are part of the official administrative record associated with this proposal and are considered along with written comments by decisionmakers. Each pertinent issue raised during the oral testimony and in the written comments is responded to in this Federal Register document.

Comment Procedure

Comment: One respondent said it was unfair that people outside of the impact area have an opportunity to comment and stated that those who are affected should make the decision. Others maintained that there was insufficient notification to the public of the proposal. Another commenter claimed that the Service's Status Review Team drafted the Status Review Supplement and largely reached its conclusions in January 1989 before the Service reopened the public comment period prior to revising the original petition finding. A commenter stated that the Service should have obtained input from industry on the use of second growth by spotted owls even before convening the public hearings.

Service response: The Service does not agree that the opportunity to provide public comments should be limited to only those individuals that believe they may be affected by the proposal. Endangered and threatened species issues are of interest to Americans throughout the Nation. In the Service's view it would be unfair to deny all interested parties an opportunity to comment simply because they do not reside in the Pacific Northwest.

The Service's notification process is extensive and is summarized at the beginning of this section. The Service is required to publish a notice in local newspapers soliciting comments on the proposal and stating the particulars of any public hearing(s) (if any are scheduled), to give notice of the proposal to appropriate scientific organizations, and to hold a public hearing (if requested to do so within 45 days of publication of the proposed rule). The Service has met all requirements pertaining to the notification process as indicated at the beginning of this section.

The Service's Status Review Team developed the initial draft of the 1989 Status Review Supplement in January 1989, after which several revisions were prepared. However, the recommendation of the team was not developed until April when the "finding" was prepared. Prior to developing the finding, the public comment period was opened on January 27, 1989 (54 FR 4049) for 30 days to obtain additional input on the status review supplement and petition finding. Service personnel had the benefit of reviewing all additional information submitted during this comment period prior to reaching a recommended determination. When evaluating a species for listing, the Service must rely upon the best available scientific and commercial data. Had industry conducted its studies earlier and made those results available, the Service would have considered such data in its proposal. Input from industry on the use of younger growth by spotted owls was submitted subsequent to publication of the proposal and is considered in this final decision document.

Issue 2. Evidentiary Hearing

Comment: A number of parties requested that an evidentiary hearing be held on this proposal. One commenter provided an extensive comment outlining the specifics of the requested action including provision for cross-examination of witnesses. This comment included a request to extend the comment period for six months, hold an additional public hearing, and prepare a revised status review supplement concluding that listing is not warranted. The commenter viewed the evidentiary hearing as not being burdensome or unduly time-consuming and believed the hearing could be completed with the six-month extension period for the decision (the Act provides for a six-month extension of the one-year due date to solicit additional data for purposes of resolving a substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination (16 U.S.C. 1533(b)(6)(B)(i)).

Service Response: Congress deliberately made listings under the Endangered Species Act subject to the informal rulemaking procedures of Section 553 of the Administrative Procedure Act and provided for one public hearing to be held if requested within 45 days of a proposal. If Congress had intended a more formal process for proposed listings, it would have used different language. Four public hearings have already been held, more than meeting the hearing requirements of the Endangered Species Act and Administrative Procedure Act. There is no legal requirement that any further hearings or any different type of hearing be conducted. In addition, the Service has conducted three status reviews and

has received over 23,000 written and oral comments, making it unlikely that additional information bearing on the listing will be brought to light through a further hearing procedure. The Service already has convened a pre-proposal evaluation team and a second team to examine the record and recommend final action on the proposal. The second team consists of a group of Service scientists with established research credentials. In addition, the Service participated in the Interagency Scientific Committee (ISC), a group of highly qualified agency biologists responsible for preparing a conservation plan for the northern spotted owl throughout its range. Further, the Service has considered the ISC's comments on the proposal. The Service is not persuaded that another scientific panel convened to assist in the evidentiary hearing, as recommended by the commenter, would improve the decision-making process.

Issue 3. National Environmental Policy Act

Comment: Several commenters suggested that the Service should prepare an Environmental Impact Statement (EIS) on the proposal to list the northern spotted owl. According to a comment, listing violates the National Environmental Policy Act (NEPA), which requires that any effects on the human environment be identified before a decision is made.

Service response: For the reasons set out in the NEPA section of this document, the Service takes the position that rules issued pursuant to Section 4(a) of the Endangered Species Act do not require the preparation of an EIS. The decision in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Circuit 1981) held that as a matter of law an EIS is not required for listings under the Act. The decision noted that preparing EIS's on listing actions does not further the goals of NEPA or the Endangered Species Act.

Issue 4. General Issues

Comment: A commenter stated that listing has not helped other species until they have been almost eliminated by research studies. Another individual maintained that single-species management is wrong and other species will suffer if the spotted owl's needs are made a priority for management. Another comment indicated that old-growth forest ecosystems should be listed, rather than concentrating on single-species management. Others said that the owl already has sufficient protection. Several individuals expressed the viewpoint that if the owl does not adapt, it should become extinct and speculated whether owls were good for anything. Numerous commenters recommended that the fate of the owl should rest with a divine power, rather then with mortals.

Service response: The Service disagrees with the implication that research studies have contributed significantly to the need to list species. Research has been instrumental in aiding the recovery and conservation of many endangered and threatened species. It is the Service's position that actions taken to conserve the northern spotted owl would benefit a number of species inhabiting the same ecosystems. However, the possibility does exist that an action beneficial to the management of the spotted owl may be deleterious to non-listed sympatric species. Although a purpose of the Act is to conserve ecosystems upon which endangered and threatened species rely, the Act does not specifically authorize listing an ecosystem. Under Factor D, "Inadequacy of Existing Regulatory Mechanisms," the Service outlines its rationale for concluding that existing mechanisms are insufficient to protect the owl. A species may not be able to adapt to modifications in its habitat precipitated by human-related activities. Adaptation is an evolutionary mechanism, that requires considerable time. The view expressed by the commenters that the owl should either adapt to the effects of logging or become extinct is directly contrary to the intent of Congress as stated in the purposes of the Act. Nor does the Service view the remark that a divine power should dictate whether or not the owl survives as having merit, particularly when it is really the power of people, harvesting timber, that is the primary cause for the bird's decline.

Comment: One party wrote that the owl will become another snail darter because the Service is being duped by preservationist groups into listing. The spotted owl issue was viewed by some commenters as a mechanism to reduce public access to public land for recreation. Another stated that the Act was being used to create more parks where Congress has not appropriated funds to acquire land. Others accused the Service of using the owl as an excuse to support its own environmental agenda. Another said the Service is making a biological decision based on a court injunction which was in turn based on a mathematical computer model that is highly questionable. Several commenters maintained that listing the owl is being used to block industry and is an abuse of the Act. Numerous commenters stated that the owl was being used as a political tool. Another suggested that the President should request that Congress exempt the owl from the Act as it did the snail darter.

Service response: By assessing all available information and data, the Service reached a decision on the biological status of the northern spotted owl. The Service does not believe that it was unduly influenced in this decision by any particular group. There also is no evidence to support the contention that listing the northern spotted owl will reduce access to public land for recreational purposes or is being used to create additional parks.

Under provisions of the Act, the Service is required to review the status of species and list those it believes qualify for listing. After the supplemental status review of the northern spotted owl, the Service concluded that the owl should be proposed for listing. No mathematical viability model influenced the Service during the status review, proposal development, or final decision process. The decision on the listing is based on the best available scientific and commercial data and is not determined or influenced by the court injunctions against timber sales. As mentioned, the Service has certain legal obligations under the Act and to fulfill those obligations is not an abuse of the Act. Further, the Service did not propose to list the owl to inhibit the timber industry but rather to provide for the conservation of a threatened species. Whether or not the owl is being used as a "political tool" to further the personal views of certain individuals has no bearing on the Service's decision on this listing proposal. When the Service receives a petition requesting that a species be listed, the information must be objectively evaluated on the basis of biology regardless of the petitioner's motivation for submitting the petition. Whether Congress would be amenable to a proposal to exempt the northern spotted owl from the protection provided by the Act is unknown.

Comment: In one commenter's view, listing would further diminish the rights of private landowners and restrict the use of private property without compensation when the prerequisites of the Act are not met. Another commenter stated it was appropriate to protect wildlife on State and Federal lands but questioned such protection on private lands. A commenter challenged the Service's jurisdiction over the spotted owl, stating that the Federal Constitution gives the Federal Government no power over any place

that it does not own. Another commenter stated that on private land in California, no suitable owl habitat could be harvested without an approved habitat conservation plan (HCP). Further, the commenter wrote that 1.5 to 2 years may be needed to obtain the permit based on the HCP and that during the interim, the California Department of Forestry would not approve any timber harvest plans. Simpson Timber Company stated that if the northern spotted owl is listed, it will be unable to experiment with new approaches to forest management to determine if suitable spotted owl habitat can be retained or created at the same time that harvesting occurs in managed forests. Further, Sierra Pacific stated that listing the owl will cause them to cancel assessments of the impacts of harvesting operations on nesting pairs because a HCP must be in place prior to any such work to ensure that these activities do not result in violating Section 9 of the Act by "taking" a listed species.

Service response: Under Section 9 of the Act the prohibition against "take" of listed species is not based on land ownership. Under Section 10(a) of the Act, a private landowner may develop a conservation plan and apply for a Section 10(a) permit to allow take of a listed species that is incidental during the course of otherwise lawful activities. Such a permit constitutes an exception to the prohibition against taking. Details of the procedures involved in applying for a Section 10(a) permit may be found in 50 CFR 17.32(b). In California, resource agencies and the private sector have established a Habitat Conservation Plan Committee to cooperatively develop a conservation plan for the northern spotted owl. This plan may provide the basis for an incidental take permit under Section 10(a) of the Act. One subcommittee is responsible for preparing draft interim guidelines to clarify situations where logging may occur while the plan is under preparation. These guidelines will be submitted to the California State Board of Forestry, who could accept them and issue emergency regulations implementing the guidelines as early as July 1990. This being the case, the Service does not concur with the commenter's view that all logging in suitable owl habitat on private land in California will cease until a HCP is approved. The Service does not view the listing as a taking of private property without compensation.

Both Sierra Pacific and Simpson have been conducting research on the northern spotted owl on their properties in northern California. Permits for scientific research involving listed species are available for qualified applicants (See 50 CFR 17.32 and Section 10(a)(1)(A) of the Act).

Comment: If the owl is listed, one commenter was concerned that its company's efforts of adaptive management would be constrained by protracted litigation. Sierra Pacific Industries commented that a positive listing decision would cause them to terminate all research on the owl (e.g., fledgling success, etc.), and channel those resources into simply canvassing its extensive ownership for owls. According to another commenter, the Service is required to conduct a takings implications assessment under Executive Order 12630 prior to making a major decision that may involve a taking of private land. In the commenter's opinion, although the Department of the Interior has issued a categorical exemption for certain listing decisions under the Endangered Species Act, the spotted owl proposal does not fall within the exclusion because the involved private land owners have not consented to the proposed listing.

Service response: The Service will prepare a takings implications assessment under Executive Order 12630.

Comment: Another position was that the spotted owl should not be listed until there is a consensus reached by noted authorities from government, business, and the private sector.

Service response: Under the Act, the Service has the responsibility to review the status of species to determine if listing is warranted. While "noted authorities from government, business, and the private sector" may provide information and data through the public comment period during the petition and proposal phases of the process, the decision to list rests with the Service and must be based solely on biological factors.

Comment: Several respondents expressed the opinion that the Service should prove beyond a shadow of a doubt that the northern spotted owl qualifies for listing. Another stated that it was unclear what level of burden of proof was needed for the Service to list. According to another party, the individuals requesting listing, not the taxpayers, should provide the proof. Someone requested that the Service state what criteria were used to propose the owl as a threatened species.

Service response: The Act requires a listing determination to be made on the basis of the five biological factors set forth in Section 4(a)(1). In making the determination, the Service must conduct a status review and use the best scientific and commercial data available. A listing determination will be upheld by the courts unless it is arbitrary and capricious.

Comment: In one person's opinion, once the owl is listed there will be no further research to find solutions for a compromise to accommodate the owl and timber harvesting. Another stated that an unnecessary listing will never be corrected. Another said there should be a mechanism to delist if further research indicates it was listed in error or the need for threatened status no longer exists.

Service response: When a species is listed, the Service is required to prepare a recovery plan, which is intended to conserve the species so that it eventually will qualify for delisting. Research activities are frequently included as necessary tasks in recovery plans. Further, both the Forest Service and the Bureau of Land Management have ongoing research and inventory and/or survey programs for spotted owls, and these are anticipated to continue. The conservation plan developed by the Interagency Spotted Owl Scientific Committee recognizes the need to explore various silvicultural strategies to conserve the spotted owl and its habitat and yet allow for a certain degree of commercial timber harvesting. If a listed species is found to have been listed in error or if the species recovers so that it no longer requires the protection afforded by the Act, it can be delisted. The delisting process requires formal proposal for delisting in the Federal Register, soliciting of public comments, analysis of the comments and all available data, other formal notifications, and publication of a final decision.

Comment: Several respondents maintained that the decision to make the proposal final rests with 14 people (the 12 Service biologists on the Status Review Team, Regional Director, and Director).

Service response: A decision to list a species rests with the Secretary of the Interior who has delegated this responsibility to the Assistant Secretary for Fish and Wildlife and Parks. The Service established a listing review team for the northern spotted owl composed of Service scientists who reviewed pertinent data and made a recommendation to the Regional Director, who weighed this information, making a further recommendation to the Director and Assistant Secretary. The 12 Service biologists referred to in the comment were involved in preparing the 1989 Status Review Supplement.

Comment: One person expressed the opinion that if the Forest Service has spent considerable money researching the northern spotted owl and concluded that listing is unnecessary, then the Service should abide by that recommendation. Another stated that the Forest Service, not the Fish and Wildlife Service, should handle the listing issue.

Service response: While the Service appreciates the efforts of the Forest Service to undertake research on the northern spotted owl, the Act charges the Secretary of the Interior with listing decisions. Decision-making authority within the Department has been delegated to the Assistant Secretary for Fish and Wildlife and Parks, with the Fish and Wildlife Service assuming the role of reviewing and evaluating scientific evidence. Responsibility for reviewing and assessing the available biological data on this proposal rests with the Fish and Wildlife Service and cannot be delegated to another agency.

Comment: One commenter suggested that listing of the northern spotted owl should be precluded because listings of other species are of greater priority.

Service response: Although the Act provides for a petition finding of "warranted but precluded" by work on higher priority species, such a provision does not apply once a species has been proposed for listing. After a proposal has been published, Section 4(b)(6)(A) of the Act permits the Service one year from the date the proposal appeared in the Federal Register to publish a final decision. This one year period may be extended for six months if the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of the relevant available data.

Issue 5. Modify Listing Decision

Comment: Numerous commenters requested that the northern spotted owl be designated as an endangered, rather than a threatened, species throughout its range. One commenter stated that endangered status is appropriate because the species already has declined to a few thousand individuals and has specialized habitat needs. Others asked that the owl be listed as endangered in portions of its range (e.g., Coast Ranges, Olympic Peninsula) and as threatened elsewhere. Several others requested that the northern spotted owl be upgraded to endangered if Section 318 of the 1990 House Interior Appropriations Bill (P.L. 101–121), passes (note: Section 318 did pass). Another commenter stated that the Service proposed threatened status rather than endangered because critical habitat is not presently determinable.

Service response: When a species is proposed for threatened status, the final decision can be either to list or not list as threatened within all or a portion of its range. The Service cannot generally make a final determination that is more restrictive than the original proposal. If the Service concludes that a proposal for threatened status is in error and that endangered status would more accurately reflect the status of the species, the Service may re-propose the species as endangered. Section 318 is applicable only through fiscal year 1990 (ending September 30, 1990). It is the Service's belief that passage of this amendment is not justification to propose the northern spotted owl as endangered. To list the northern spotted owl as endangered would require that the Service publish a new proposal. Whether or not critical habitat is being proposed has no bearing on whether a species is proposed for endangered versus threatened status.

Comment: One commenter stated that the proposal was in error because the available data do not demonstrate a "gradual, range-wide decline in the species," but rather a rapid decline throughout the entire range. Further, it noted that the red-cockaded woodpecker (*Picoides borealis*) and the northern spotted owl, while having different life histories, are similar in a number of respects. For example, red-cockaded woodpeckers require large stands of mature coniferous forest for nesting and foraging and the loss of old growth is the most serious threat to their long-term viability. The population of red-cockaded woodpeckers exceeds 9,000 breeding pairs and it is listed as endangered. According to this comment, the northern spotted owl likewise should be classified as an endangered species.

Service response: The Service does not agree that the owl would properly be listed as endangered. Endangered status is warranted in situations where the species is in immediate danger of extinction throughout all or a significant portion of its range. As stated in the proposal and restated in this document at the end of the "Summary of Factors Affecting the Species" section, the Service recognizes that the situation with regard to the owl is most severe in certain portions of the range. However, it is the Service's conclusion that when the status of the entire subspecies is analyzed rangewide, the likelihood of extinction of the subpopulations of owls in these areas is not so immediate as to justify a classification of endangered at this time. This was also the rationale for not proposing endangered status even though the number of known breeding pairs of northern spotted owls is lower than that of some other listed species such as the endangered red-cockaded woodpecker.

Comment: The Service was requested to expand the listing to include the California spotted owl, while others asked that all three subspecies of spotted owl be listed in the final decision. Still others requested that the northern spotted owl not be listed in California even if the Service were to decide to proceed with listing the birds in Oregon and Washington. Someone else requested that the great horned owl be listed.

Service response: Only the northern spotted owl was the subject of the proposed rulemaking and only this subspecies can be considered in the final decision, thus the Service is precluded from expanding the final decision to include the other two subspecies. The Service has received a petition to list the Mexican spotted owl (*Strix occidentalis lucida*) and is now reviewing the status of that subspecies. After reviewing the entire status of the northern spotted owl, it is the Service's decision to promulgate a final decision that includes the entire range of this subspecies. Although there are portions of the range where the status of the northern spotted owl is more perilous than in others, the Service concludes that considered rangewide, threatened status is warranted. For the reasons presented under Factors A and D in the "Summary of Factors Affecting the Species" section, the Service concludes that habitat loss and adverse modification of spotted owl habitat on both Federal and private lands throughout the range is anticipated to continue into the foreseeable future and, if continued as currently planned, will adversely affect the long-term viability of the northern spotted owl. The great horned owl is not considered a candidate for listing by the Service.

Issue 6. Do Not Proceed or Delay the Decision Because More Information Is Needed

Comment: One commenter believed that the northern spotted owl already was listed, and said until more data are available the northern spotted owl should be taken off the Endangered Species List. Others maintained that because the data do not suggest that extinction is an imminent possibility, the owl should not be listed. According to a commenter, it is premature to designate acreage of prime timber growing lands

to be set aside because there is no conclusive proof that the owl needs this vast amount of old growth timber. Another commenter stated that no subspecies of spotted owl should be listed until more data are available on the use by owls of second growth.

Service response: The commenter was incorrect in that prior to today's decision the northern spotted owl was not listed under the Act. According to the Act, an endangered species is one that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)). A threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). In its proposal, the Service stated that while it did not believe the evidence justified an immediate threat of extinction, the owl was likely to become endangered in the foreseeable future if suitable protective measures were not successfully undertaken. The proposal did not set aside any specific lands to conserve the owl. From the available data, the Service concludes that spotted owls do have large home ranges and are associated with old-growth timber or stands with old-growth characteristics (USDI 1989, 1990; Thomas *et al.* 1990). This decision only addresses the northern spotted owl, one of three subspecies of spotted owl. The Service believes that sufficient data on the northern spotted owl's use of younger growth are available to reach a decision on the proposal. The Service can postpone a decision on a proposed listing pursuant to Section 4(b)(6)(B)(i) of the Act, but only for six months and only after a finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the listing determination.

Comment: Another commenter stated that the Service had not done a comprehensive study to determine whether listing is warranted. A commenter stated that a 20–40 year study is needed on the northern spotted owl before it is listed because the proposal has too many assumptions and presumptions that are unsupported by facts.

Service response: The Service has conducted three status reviews for this taxon and believes the results, including the public comment input, are sufficient to reach a determination on listing the northern spotted owl. In the Service's view there is no justification for a 20–40 year study before a decision is made. If future research and management actions provide for conserving and recovering the spotted owl, it can be considered by the Service for delisting.

Comment: Many commenters requested that the Service take more time, collect more data, or wait and consider data being collected in the summer of 1989 and spring/summer 1990, especially in California, before reaching a decision. The Service received many requests to extend the public comment period, some asking for a 90-day to as much as a three-year extension. Another commenter opposed extending the comment period to December 20, 1989, because it may delay listing. The Service was requested by one commenter to delay the decision until the Meyer *et al*, report on the effects of forest fragmentation on owl habitat is available in the Fall of 1990. Other commenters asked for additional time beyond the last comment period which extended from March 28, 1990 to April 18, 1990.

Service response: The Service granted the request to extend the closing date of the initial public comment periods so that the results of research being conducted on the northern spotted owl during the summer of 1989 could be submitted to the Service. Neither the extension of the comment period to December 20, 1989, nor the reopening of the comment period from March 28–April 18, 1990, prevented the Service from making a timely final decision. In the Service's view, the available biological data are accurate and sufficient upon which to base a decision on this proposal. In the Service's opinion, no such scientific dispute exists. Hence, it is not appropriate to delay the decision to receive additional biological data or information.

Issue 7. Economic Considerations

Comment: Numerous people expressed economic concerns in their comments. Some maintained that a decision of this magnitude should consider the economic impact on the affected communities and individuals. Numerous commenters stated that old growth needs to be harvested to support jobs and the economy. Another commenter asked of what use is public input if economics cannot be considered? Several commenters stated that if the owl is listed, landowners would experience severe hardships. Another commenter said listing is a scam to drive the price of wood up. One commenter stated that bids for Bureau of Land Management and Forest Service timber have at least doubled and they could cut one-half as much and still generate the same amount of money for the counties and Federal treasury. According to another, the preservation of trees for tourism and recreation outweighs the economic value of cutting them.

Service response: Under Section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision states clearly the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions". H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species . . ." *Id.* at 20. Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service cannot respond to comments concerning possible economic consequences of the listing.

Issue 8. Critical Habitat

Comment: One individual recommended that the Service should designate critical habitat for the northern spotted owl. Another commenter specifically requested that the entire known range of the northern spotted owl be determined to be critical habitat. Another commenter stated that according to Service regulations, the Service should have had a discussion of critical habitat at the time the owl was proposed for listing. Several commenters stated that without taking economic information into consideration, it is not possible to evaluate the economic impacts on surrounding communities of such a designation. The commenter indicated a desire to have a followup public hearing if critical habitat is proposed.

Service response: Under Section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be endangered or threatened. In the proposed rule, the Service detailed its rationale for not proposing critical habitat concurrently with the proposal to list the owl. In the "Critical Habitat" section of this document, the Service states its rationale for not designating critical habitat for the northern spotted owl at this time. The Service concluded that designation of critical habitat is not presently determinable as defined under implementing regulations at 50 CFR 424.12(a)(2). When a finding is made that

critical habitat is not determinable at the time of listing, the regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed to the maximum extent prudent within two years from the date of publication of the proposed rule to list the species. Any proposal to designate critical habitat will be published in the Federal Register including maps and legal descriptions of all areas included in the proposal and solicitation of public comments, including oral testimony at one or more public hearings. The potential economic impacts of the critical habitat designation will be evaluated during preparation of the required economic analysis.

Comment: The Service was asked if it could define the difference between preferred and critical habitat and allow peer review by world scientists to be certain of methodology and results. One commenter requested that land within the Quinault Ranger District on the Olympic Peninsula not be designated as critical habitat. Another person said the Service should not list until the true critical habitat needs of the owl are known.

Service response: Critical habitat is a legal term defined in the Act (Section 3(5)(A)) as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species." Under Section 7 of the Act, Federal agencies must ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of an endangered or threatened species or destroy or adversely modify its critical habitat, if any has been designated.

Preferred habitat can have a variety of definitions. For example, it may be defined as the habitat in which an individual bird spends proportionately more of its time than predicted on the basis of availability of that habitat in its home range. In comparison critical habitat is an area demarcated by a legal boundary description that utilizes either permanent structural features such as roads, bridges, rivers, etc., or survey descriptions (township, range, section), etc. Hence, it is not uncommon for critical habitat to include within its boundaries some acreage that is not used by the species in question and may even contain, for example, substantial agricultural, urban, or commercial facilities, which could not be construed as preferred habitat. Should the Service decide to propose critical habitat for the northern spotted owl, public comments would be solicited as they were for the proposal to list. At that time anyone, including scientists, wishing to comment would be free to do so. Further, prior to any proposal for critical habitat, the Service would assess potential areas to be included. At that time a decision on including the Quinault Ranger District on the Olympic Peninsula would be made. As previously stated, the Service believes critical habitat for the northern spotted owl is presently not determinable. However, the Act provides for listing a species, under certain circumstances, without concurrently designating critical habitat.

Issue 9. Mitigation, Section 7 Procedures, Timber Sales

Comment: One commenter maintained that before the owl is listed the Service should notify involved parties of what mitigation will be required for specific projects not related to timber harvesting operations.

Service response: Pursuant to Section 7(a)(2) of the Act, Federal agencies are required to consult formally with the Service if they propose to authorize, fund, or carry out any activity that may affect a listed species. If the Service finds that the action is not likely to jeopardize the spotted owl, then project modifications may not be required by Section 7(a)(2). However, if it is determined that the action is likely to jeopardize the continued existence of the owl, then reasonable and prudent alternatives to the proposal should be considered. Such alternatives, which satisfy the requirements of Section 7(a)(2), may involve significant project modifications if they are economically and technologically feasible and can be implemented in a manner consistent with the intended purpose of the action and the scope of the Federal agency's legal authority and jurisdiction. Section 7 consultations are conducted only with Federal agencies and would involve not just proposed timber harvest on Federal land, but any other projects or activities that a Federal agency authorizes, funds, or carries out which may affect a listed species. Private landowners or other non-Federal entities may choose to prepare conservation plans under Section 10(a) of the Act. The Service will assess these plans during pre-application consultation to determine if the provisions of Section 10(a) have been met so that the Service can consider issuing a Section 10(a) incidental take permit. As part of a conservation plan, a permit applicant must specify, among other things, how the plan will be funded and implemented to minimize and mitigate, to the maximum extent practicable, the impacts of the incidental taking sought to be authorized. Regulations governing incidental take permits were published September 30, 1985, in the Federal Register (50 FR 39681 and are codified at 50 CFR 17.22(b)(1) for endangered species and 50 CFR 17.32(b)(1) for threatened species).

Comment: One commenter questioned how the spotted owl can be threatened if it is found in almost every timber sale and maintained that these sales were being closed down or taken off the market to protect owls within the sale boundary. Another commenter stated that if conferencing pursuant to Section 7 of the Act was taking place, why were timber sales being halted. Another stated he did not agree with the Forest Service testimony at the Redding public hearing to the effect that Section 7 conferencing in California was going well. Someone criticized the Service's Section 7 conferencing guidelines pertaining to the Olympic National Forest because, according to the commenter, the guidelines do not take into consideration that owls live in smaller, fragmented old-growth stands in that area.

Service response: As noted by the commenter, many timber sales on Federal land in the Pacific Northwest contain suitable owl habitat. The juxtaposition of owl habitat and proposed timber sales was one of the major reasons for proposing threatened status for the northern spotted owl. Logging has substantially reduced the quantity, availability, and distribution of spotted owl habitat. Informal conferencing reports have been completed for all timber sales in Oregon for all six spotted owl Bureau of Land Mangement districts in the state and for most of the timber sales for the Forest Service in northern California. The conferencing process addressed the overall impacts of the agencies' timber sale program and the specific impacts of individual sales. These reports recommend measures intended to minimize impacts to nesting, foraging, and dispersal habitat. The Service issued an informal conference report to the Forest Service for its timber sale program in fiscal years 1989 and 1990 for Oregon and Washington that addressed

the overall impacts of that program on spotted owls. Specific impacts of individual sales were not reviewed by the Service. In California, the Service conferred with the Forest Service on 185 timber projects and recommended no modification for 130, some modification for 24, reduction in volume for 9, and deferral on 2.

The Service's interim guidelines to assist in the review of timber sales do recognize that habitat within the Olympic Province is quite fragmented. In the Olympic Peninsula, the Section 7 review includes an evaluation of timber harvesting activities occurring within 2.5 miles of the activity center of a pair of owls, if data regarding use of the habitat by owls are available, otherwise impacts within 2.1 miles are assessed. Reviews are concentrated on timber harvesting activities located between 0.5 miles to 2.5 miles of a nest site or pair activity center unless more than 7,500 acres of suitable spotted owl habitat would remain after harvest.

Comment: Another commenter stated that logging should continue until something is worked out and the Forest Service and Bureau of Land Management should be allowed to do their jobs. According to one commenter, the Service should develop an interim program of owl management designed to allow the Forest Service to maintain its targeted levels of timber production until a final listing for the northern spotted owl is developed. Another commenter suggested that forest management plans be developed to manage the owl as well as the economic aspects of timber production.

Service response: Logging has not been discontinued as the result of the Section 7 conferencing process. Both the Forest Service and Bureau of Land Management are continuing to review and process timber sales. In a sense, the Section 7 conferencing provided an interim program for owl management in the face of timber harvest while the owl was a proposed species.

Issue 10. Adaptability of the Northern Spotted Owl

Comment: Many commenters maintained that spotted owls are adaptable and will relocate to other non-old-growth areas if the old growth they are inhabiting is harvested. Several commenters expressed the opinion that spotted owls can adapt to many environments and are found in residential areas, light industrial areas, new growth, oak timber, abandoned cars, mailboxes, and orchards. A commenter stated that when given the opportunity, northern spotted owls select barn lofts rather than old growth. Another individual stated that wildlife does much better and is more abundant in close proximity to human beings. Another commenter questioned protecting the spotted owl and maintained that it can survive in any habitat from barren desert, to wheat fields, to tropical rain forest. Someone stated that spotted owls also nest in holes in banks and hillsides. Another commenter wrote that the spotted owl is not native to Oregon and Washington which proves it is adaptable to change. Several noted that the oldest trees are only around 1,000 years old and wondered where the owls were when today's old growth was second growth.

Service response: There is no evidence available to prove that northern spotted owls are flexible in their habitat requirements, nor have they been verified to occur in residential areas, mailboxes, junk cars, barn lofts, etc. However, even if a northern spotted owl were to be documented nesting in one of the referenced locations, it would constitute an aberrant nesting situation and not the normal nest site selection. Further, no data were presented to substantiate the claim that wildlife does much better in close proximity to human beings. Although for a limited number of species, such as rats (*Rattus spp.*), *house mice* (*Mus musculus*), starlings (*Sturnus vulgaris*), and house sparrows (*Passer domesticus*), this may be true, there are no data to conclude that this is the case for the northern spotted owl. The distribution of the northern spotted owl does not include barren desert, wheat fields, tropical rain forests, etc. Nesting preferences of the owl are not known to include holes in banks and hillsides. Contrary to the commenter's statement, the northern spotted owl is native to Oregon and Washington. Historically, the landscape consisted of a mosaic of habitat types at any one time. Some areas contained old growth, while others were young, regenerating forest stands resulting from fires, windstorms, disease, etc. Hence, the northern spotted owl evolved in a habitat that consistently had a proportion of the landscape in old-growth forest. Moreover, historically the entire area was not comprised of even-aged forest stands as suggested by the commenter.

Issue 11. No New Data Were Presented, Initial Decision Was Correct, Need for Peer-Review

Comment: A commenter stated he believed the Service did a five-year survey and found that spotted owls were not threatened. What happened to this report?

Service response: The Service has not undertaken a five-year survey of the northern spotted owl. However, as noted in the Petition Process Background section, the Service completed its initial status review on December 17, 1987, and published its finding that the northern spotted owl did not warrant listing under Section 4(b)(3)(B)(i) at that time. In a subsequent legal challenge by the Sierra Club Legal Defense Fund, Inc., the court found that the Service's 1987 decision was arbitrary and capricious or contrary to law, and remanded the matter to the Service for further review.

Comment: Other commenters expressed the belief that the Service's 1987 decision that the listing of the northern spotted owl was not warranted was correct and that the Service had reversed the earlier decision only because of either pressure from the Court of other political pressure. Several commenters expressed the view that the proposal changed the Service's original position without using new data. One commenter reported that the U.S. District Court for the Western District of Washington found that the Service's original petition finding of not warranted was "arbitrary and capricious" and required an explanation between the known facts and the decision, but that the court did not mandate that the northern spotted owl be listed (*Northern Spotted Owl* v. *Hodel*, 716 F. Supp. 481 (W.D. Wash, 1988)). Several commenters stated that although the proposed rule claims that new information supports the conclusion to list, most of the data cited in the proposed rule were available prior to the original finding of not warranted. These commenters maintained that much of the "new" data consists of brief cumulative reports derived from old data on population trends and owl biology. The commenters further stated that about 67 percent of the studies evaluated by the Service (94 of 140 studies) predate the 1987 Status Review; roughly two-thirds of the information dated after December 1987 was oral communication and fails to meet the same standards of data quality. Several individuals said the proposal relies heavily on personal communications and unverified information rather than sound scientific studies. Others noted that many of the reports cited in the Status Review Supplement and proposal were unpublished and maintained, therefore, they had not been subjected to adequate peer-review. Someone requested that all research projects be peer-reviewed. Another commenter stated that the Status Review Supplement dismissed Barrowclough's (unpublished draft 1987) manuscript on the taxonomic status of the spotted owl because it had not been peer-reviewed and published. The commenter maintained that this dismissal is inconsistent with the Review Team's reliance on other non-peer-reviewed documents in the Status Review Supplement to support listing.

Service response: The Service revised the earlier "not warranted" petition finding after reviewing additional information that became available subsequent to the 1987 petition decision. Of the 140 sources listed in the references section, 46 (about 33 percent) were dated 1988 or later. The commenter is correct in stating that the court did not direct the Service to alter its "not warranted" finding. However, after a review of all the best available data the Service did not adhere to its earlier decision. According to the listing regulations given in 50 CFR 424.13, "Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties." Cumulative reports dealing with data on population trends and owl biology were certainly of interest to the Service in its review because they represented confirming analyses of biological data pertaining to its status. The Service disagrees that "roughly two-thirds of the information dated after December 1987 was oral communication." Of the 46 references cited above, several were oral communications and several were letters. Personal communications can provide valuable data that may not have been published. As such the Service is obligated to consider this information and sees no rationale to diminish the input from such data sources. Nor does the Service agree that it relied heavily on personal communications or unverified information rather than sound scientific studies. The commenter presented no additional data to indicate that the information obtained from personal communications was incorrect and no examples were presented to support the contention that the Service used data from studies that were not scientifically sound. A number of the reports the Service examined were drafts or had been submitted to scientific journals for consideration of publication. Other agency reports update or summarize results of research studies. Agencies generally have an in-house review process whereby scientists critique each other's study proposals and work prior to initiation of projects and preparation of final reports. Although these reports may not have been peer-reviewed at a level required by a scientific journal, authors routinely obtain input from other researchers prior to submitting their reports. Some of these reports present interim data associated with a long-term research effort whose results would normally not be expected to be submitted to a scientific journal until the entire project was completed. The Service does not believe that these reports should be dismissed because they were not peer-reviewed or published. In addition, the scientific community has neither criticized nor objected to the reports or the information they contain.

When considering taxonomic questions, the Service generally accepts the latest published work on the taxon. However, the Service is under no obligation to do so and may conduct its own evaluation to clarify taxonomic status if necessary. In this case the Service accepted the nomenclature as provided by the "American Ornithologists' Union Check-list of North American Birds" and restated in a letter to the Service from the AOU (Dr. Ned Johnson, letter dated December 12, 1989) rather than Barrowclough's unpublished report. The 1957 edition of the AOU Check-list includes subspecies and recognizes the northern spotted owl. Additional information on the taxonomic questions regarding the owl is given in a later issue entitled, "Taxonomy."

Comment: One commenter asked why the Service did not assume the responsibility to fully analyze and interpret the considerable amount of data that is available on the northern spotted owl prior to formally proposing it for threatened status (ref: Status Review of 1989, p. 7.5. "In addition, except for the various attempts at viability analyses, little effort has been made by any involved parties to fully analyze or interpret the considerable amount of data that is available on this species.") Another commenter wondered what the value of public comments was if the Service knows of data from researchers such as Dr. Larry Irwin (NCASI) refuting the proposal and knows that the population viability model of Dr. Russell Lande "has been discredited." Some data relating to radio-telemetry studies on the owl (Washington Department of Wildlife) are not available to the public and have not been peer-reviewed according to another commenter.

Service response: The Service believes that the individual who asked why the Service did not analyze the available data, misunderstood the sentence that was quoted from page 7.5 of the Status Review Supplement. In fact the Service did analyze the available data to prepare the 1989 Status Review Supplement and to formulate the final decision on this proposal. All biological information provided to the Service, including the information submitted during the public comment period, has been reviewed and considered in this decision. This includes the reports and data from Dr. Irwin. As mentioned previously, the Service did not rely on any population viability model to reach its decision on the proposal.

Issue 12. Data Needs, Gaps, Best Available Data, and Bias

Comment: Several commenters maintained that the information gaps identified in the original finding are not filled by the new information: for example, no new information was forthcoming on habitat needs, how many acres of suitable habitat exist, biological requirements, or population declines of the owl. A number of commenters stated that other information regarding such issues as lack of knowledge on forest characteristics utilized as habitat; whether the northern spotted owl, California spotted owl, and Mexican spotted owl are the same subspecies; the extent of juvenile mortality; current number and location of spotted owls; and whether spotted owl populations are declining. A commenter maintained that the Service's decision must be based on the same information used to justify not listing and is therefore, arbitrary and capricious under the Administrative Procedure Act (5 U.S.C. 701). The commenter further stated that without this information, spotted owl habitat cannot be defined and it cannot be concluded that habitat is being lost.

Service response: USDI (1990) presented new information on habitat needs, acres of suitable habitat, biological requirements of owls and estimates of the rate of population decline. Owl use in various stand classifications was provided in USDI (1990) and the subspecies classification by the American Ornithologists' Union was reviewed and documented. In addition, estimates of juvenile mortality, number and location (e.g., by State) of owls, and the rate of population decline were provided. The Service's decision was based on the best and most current information available. The Service believes that there is more than sufficient information available on the northern spotted owl to warrant making a determination on its status. These additional data became available during

development of the Service's 1989 Status Review Supplement (USDI 1989) and 1990 Status Review (USDI 1990) which included a review of the information submitted during the public comment periods. The Service concluded that substantial amounts of habitat have been and will continue to be lost or modified due to timber harvest.

Comment: According to one commenter, the Service must do independent research to fill any significant information gaps. As stated by the commenter, at a minimum, the Service must resolve the gaps in its logic before proceeding with listing and should at least have the benefit of the data the private industry groups and others will produce in 1990. Several commenters stated that poor or incomplete data, even if it is the best available, will not support a listing, and that gaps in the information require the Service to withdraw the proposal and conduct additional research.

Service response: The Service has completed independent research, and the results were presented in USDI (1990). The Endangered Species Act sets certain deadlines in the Listing process. Under the Act, a final decision on a listing proposal must be made within 12 months after publication of the proposed rule, unless the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of available relevant data.

The Service is not required to conduct independent research to fill data gaps pertaining to the status of a species under consideration for listing. However, the Service has conducted and completed independent research on the northern spotted owl and the results were presented in the 1990 Status Review (USDI 1990) as well as being summarized in this Federal Register document. The Service's analysis included reviewing recent research findings provided by the timber industry for private forest lands. From March 29 to April 11, and from April 12 to 18, 1990, the public comment period on this proposal was reopened to accommodate anyone wishing to submit biological information obtained prior to that time but subsequent to the close of the previous comment period (December 20, 1989). Although the Service acknowledges that ongoing and future research efforts are likely to provide additional insight into the biology of spotted owl, it is the Service's conclusion that the information currently available is more than sufficient to reach a determination on the proposed listing. To withdraw the proposal and conduct additional research would not improve the status of the owl and would not be in keeping with the mandates of the Endangered Species Act.

Comment: Numerous individuals stated that surveys are needed in wilderness, parks, set-asides, and other areas where harvesting presumably will never occur. One party questioned whether with 4.2 million acres of unsurveyed wilderness, the Service can say the owl is threatened. A commenter stated that the Service should analyze the 300 California state parks and recreation areas, comprising 1.1 million acres, because many are in timber regions and will provide permanent old growth. According to one commenter, many other acres are protected by conservancy easements instituted by private, non-profit organizations and these should be evaluated to determine if habitat diversity is adequate for the owl. Numerous commenters suggested that all second growth less than 100 years old should be surveyed.

Service response: Results of surveys in wilderness, parks and other areas have been summarized in Thomas *et al.* (1990) and USDI (1990). Although not all wilderness and other set-aside areas have been surveyed, estimates have been made of the number of owls that may occur in some of these areas based upon an assessment of the amount of suitable habitat (Thomas *et al.* 1990). Indications are that for the most part reserved areas do not represent optimal habitat conditions for the owl. Data for owls suggest that the density of reproductive pairs and their reproductive success is significantly less in reserved areas than non-reserved. An accurate count of the number of remaining individuals is not required in order to make a determination regarding the species' status, nor is it necessary to have complete population surveys throughout the entire range to reach that determination. The Service considers convincing evidence that suitable habitat is being lost at a substantial rate, that the habitat is highly fragmented, and that the population of owls is declining, to provide an adequate basis for reaching a conclusion on the owl's status. Estimates of habitat quantity and owl numbers in state parks and other such areas are presented in Thomas *et al.* (1990). New data now exists for stands less than 100 years old, especially in northern California and these results are summarized in Thomas *et al.* (1990).

Comment: According to several commenters, the proposal is vague and replete with assumptions. Several commenters maintain that because the Forest Service was only interested in surveying areas scheduled for timber harvesting, no inventories have been done in wilderness or other set-aside areas. Another commenter stated that to be scientifically valid, studies must include a random sample of all areas, not just old growth that is planned to be logged.

Service response: Considerable new data exist on owl numbers in wilderness and other set-aside areas and these are summarized in Thomas *et al.* (1990). Results of surveys employing a random sample of habitats (Random Sample Areas, RSAs) have been summarized and analyzed in the ISC report. These data have been reviewed by the Service and incorporated into the Summary of Factors Affecting the Species. USDI (1990) provides an analysis of the quality of protected lands, avoids using terms employed in the proposal that could be considered vague, and clearly identifies the assumptions used. The Forest Service had to concentrate owl surveys on areas that were being considered for sales to assess the potential impacts of such sales on the owl. Thus, the survey information in reserved areas was not as complete as that in areas planned for logging. However, the Service considered and reviewed all information available on the distribution and numbers of owls in preparing its proposal.

The proposal contained assumptions, but they were clearly stated as such and not represented as established facts. Many surveys have now been conducted in all types of forest habitat, not just those that were considered for logging. The Service considered all the results of these surveys.

Comment: Several commenters believed there is a need to determine what kinds of silvicultural techniques and harvesting methods can be used to manage for high quality timber and still assure long-term viability of the northern spotted owl.

Service response: The Service agrees that information is needed on silvicultural methods to manage for high quality timber harvest and still assure long-term viability of the owl. Selective cutting may provide a partial solution; however, clearcutting is the method being used on almost all public (>95 percent) and on many private lands.

Comment: According to one commenter, the data on the northern spotted owl are not the best available. Several statements referenced comments that Service biologists made on draft versions of the Status Review Supplement while it was under internal review. For example, one commenter said that several Service biologists strongly criticized the following statement in the Status Review Supplement. "In our opinion, although there is always a need for more information, more is known about the northern spotted owl than many other wildlife species, and certainly more than for most species considered for listing under the Endangered Species Act." The commenter also wrote that a Service biologist noted in the margin of the February 1989 draft of the Status Review Supplement that he did not agree that sufficient data existed to do a good assessment of the northern spotted owl's status, and stated the Service could not "predict extinction probability for any time frame * * * with any confidence at all". The commenter wrote that the revised finding ignores these and other significant data gaps noted by Service reviewers (who also were members of the Status Review Team). Hence, the commenter maintained that the Service failed to meet its obligation to rely solely on the best available data.

Service response: The Service used the best data available to prepare the proposed rule. A tremendous amount of data have been collected recently by government agencies, private timber groups, and environmental organizations. New demographic data are available since April 1989 on large study areas in northwest California and southwest Oregon. Large scale monitoring data collected by the Bureau of Land Management and U.S. Forest Service during the summer of 1989 are also now available. The Timber Association of California provided extensive survey data on private timber lands for 1989. The current situation is updated and summarized in both Thomas *et al.* (1990) and USDI (1990). Moreover, the Service is not obligated to have data on all aspects of a species' biology prior to reaching a determination on listing. Comments on the draft of the Status Review Supplement by members of the 1989 status review team were considered in preparing the Status Review Supplement, even if all comments were not accepted or incorporated. The Service has reviewed and assessed the new available data pertaining to the status of the owl and incorporated this information into the final decision on the proposal.

Comment: Several commenters were concerned that data furnished from logging interests on owl usage of second growth forest may not be accurate and suggested that such data should be examined carefully as industry may be tempted to falsify or misinterpret data to its advantage. Other persons said studies done under the auspices of the timber industry are biased and that data have been falsified. According to other commenters, data presented by the Wilderness Society on spotted owl habitat distribution and trends are biased and should not be relied on to provide viable scientific input. Another commenter said the Service data are false and demanded the resignation of all those involved in developing the proposal because the proposal was synonymous with the long-term goals of certain environmental groups.

Service response: The Service studied industry data, techniques, and results with industry biologists to understand and assess the data that were collected. In like manner, Service biologists also coordinated with environmental groups to understand and review the data and other information that these groups submitted. The Service found no evidence to support the claim of falsification or misinterpretation of data by any of these parties. The Service's biologists responsible for preparing the proposal followed standard Service guidelines and procedures and, in the Service's opinion, did nothing improper.

Comment: One individual said studies on the spotted owl are inaccurate because owls are only counted at night and not all of them can be seen. Numerous persons stated that owl survey data are biased because surveys were concentrated along roads. Also, according to a commenter, radio tracking near clearcuts was excluded from research findings, thus biasing the results against use by owls of clearcuts. Someone expressed the opinion that research supported by the Timber Association of California is deficient and does not meet the requirements of Forest Service standard scientific protocols.

Service response: The Service agrees that nighttime surveys do not count all owls present. In addition, some bias may occur because many owl surveys are conducted along roads. However, night surveys provide only an index to abundance, thus the bias is not thought to be a major limitation in the use of these data. Radio tracking data collected near clearcuts were not excluded from research findings; rather, research tends to indicate that owls generally avoid clearcut areas. Surveys conducted by the Timber Association of California were an excellent attempt to further understand the situation in California. The first year of its surveys (1989) started late in the season and other "startup" problems were encountered. The Association made every effort to conduct its surveys according to the U.S. Forest Service protocol and the Service considered its findings in the 1990 Status Review (USDI 1990).

Comment: An individual said that he had heard that Bureau of Land Management biologists felt they were finding too many owls and, hence, stopped reporting them. Another person said a Forest Service biologists falsified owl record data to get a particular drainage taken out of a timber sale.

Service response: The Service found no evidence to support the contention that Bureau of Land Management or Forest Service biologists falsified data or failed to report owl locations. The commenter failed to provide any specific evidence that the Service could use to inquire further into these claims.

Comment: One commenter wrote that there was a conflict among the data regarding the survey results on Simpson Timber Company lands in northern California and the Status Review Supplement. Further, the commenter stated that the Service must await completion of or institute comprehensive studies of the entire range in order to explain the direct contradiction between the Service's data and industry's findings and that listing should be deferred until the 1990 studies are completed.

Service response: The Service did not find a substantial "conflict" between the Status Review Supplement and the data collected on Simpson Timber Company lands. Previous to the owl survey work initiated by industry groups, including Simpson Timber Company, little data were available on private industry lands in northern California. These new data and the current situation are summarized in the 1990 Status Review (USDI 1990) and in this document. Unless there is a finding of substantial disagreement regarding the sufficiency or accuracy of available data, the Service is required under Section 4(b)(6) of the Act to reach a decision on a proposal within one year of publication of the proposed rule. Hence, the Service cannot postpone the decision solely to await the results from the 1990 field season. Whereas the proposal suggested that spotted owls may have been eliminated from private commercial forest lands because of lumbering activities, these recent studies document the occurrence of owls on some private land that had been harvested in the early 1990s and on lands that had several entries for selective cut. Lands in the redwood zone represent a small portion (probably less than 7 percent,

Thomas *et al.* 1990) of the overall range of the owl.

Issue 13. Taxonomy

Comment: Several commenters are of the opinion that Oberholser (1915) should be considered the most recently published, peer-reviewed analysis dealing with the taxonomic status of the spotted owl and conclude that the northern and California spotted owls are a single subspecies. One commenter wrote that the northern spotted owl differed from the California spotted owl in means of size and color, but not enough to be distinguishable by a 95 percent rule, and that they barely make a 75 percent rule. This commenter also said that the two subspecies had highly significant differences in plumage pattern, size (several body measurements such as culmen, gonys, tail, middle claw), and color. One commenter stated that Barrowclough (unpublished 1987) concluded that the northern and California spotted owls cannot be distinguished by generally accepted taxonomic standards and that the taxonomic variation is clinal in nature between the birds in British Columbia and those in southern California. The commenter further stated that recent electrophoretic data show that the California and northern spotted owls are not different. According to one commenter, to arbitrarily delineate a geographic boundary among subspecies is improper; hence, the best available data should incorporate the data available for the California spotted owl. Because the Status Review Supplement does not include the California spotted owl, a commenter maintained that it is incomplete and must be reversed to meet the criteria under the Act. Several commenters suggested that the presence of a serious scientific dispute exists regarding the taxonomic validity of the northern spotted owl and that it requires that the Service withdraw the proposal until the dispute is resolved.

Service response: The taxonomic status of birds in North America is under the purview of the American Ornithologists' Union (AOU). The present classification follows the 1957 AOU check-list and formally recognizes the northern spotted owl (*Strix occidentalis caurina*). The taxonomic status of this species was reviewed by the AOU Committee on Classification and Nomenclature in August 1989. The Committee concluded a recent report by Barrowclough and Gutierrez (1989) provided insufficient grounds for a taxonomic merger of the populations because present techniques for exposing genetic variation examine only a tiny fraction of the genome. The formal decision by AOU was to retain the northern spotted owl as a distinct subspecies (Dr. Ned Johnson, AOU, letter dated December 12, 1989). The Service accepts this taxonomic disposition. The report by Oberholser (1915) was not peer-reviewed. The Service does not accept the opinion that Oberholser provides the most recent paper on this issue. The Service has not proposed the California spotted owl for listing, thus information on this subspecies was not incorporated. It is the Service's opinion that there is no dispute regarding the taxonomic status of the northern spotted owl and the suggestion to withdraw the proposal or delay the decision has been considered and rejected.

Comment: One person stated that the Service should define the status of the different subspecies of "northern spotted owls" and the owl habitat area types (area and quality) necessary for each subspecies.

Service response: The American Ornithologists' Union (AOU) gives the range of the three subspecies. Only the northern spotted owl was the subject of the proposal and this final rule. Hence, habitat characteristics of the other two subspecies of spotted owls will not be addressed.

Issue 14. Population Trends and Size

New Information

New information on aspects of the biology of northern spotted owls was provided during the extended comment period and has been incorporated into the Status Review (USDI 1990). Additional information on owl distribution and numbers was provided through research funded by Federal and State agencies, the Timber Association of California (an umbrella organization for industry groups in California), other private companies, and various interested parties. The recent survey work in northern California documented numerous northern spotted owls on private lands; however, surveys of private lands in Oregon and Washington and public lands in California have noted low numbers of northern spotted owls. The significance of northern spotted owls on private lands in California is addressed in greater detail later in this section and also under Factor A in the Summary of Factors Affecting the Species section. Several reports on the California spotted owl were submitted; these are not summarized below because they did not deal with the subspecies that was the subject of the proposed rulemaking.

Comment: One commenter maintained that the Status Review Supplement fails to note that there was no survey work on private lands except Kerns (1988) to support its conclusion of extirpation of spotted owls. The Timber Association of California, however, detected approximately 284 spotted owls including 63 pairs on private forested lands in northern California. However, another commenter stated that according to all available data, spotted owl habitat no longer exists on private forest lands and is rapidly being depleted on public lands. The commenter indicated that Forest Service figures show only 48,000 acres of old growth out of a total of 6.9 million acres on private forest lands in Oregon.

Service response: The Status Review Supplement, in reaching its conclusion that the listing proposal was warranted, stated that the northern spotted owl "* * * may have been nearly extirpated on private land * * * due to the reduction of old-growth habitat." (USDI 1989). The Status Review Supplement incorporated all available information at that time, including data from public and private lands (e.g., Postovit 1977, Irwin *et al.* 1988, 1989b). The present document reflects recent data on the distribution and numbers of northern spotted owls on private lands estimated from studies conducted by the Timber Association of California (1989b) and other private groups (e.g., Kerns 1989a,b; Pious 1989). A total of 332 responses, defined as 1 auditory or visual location of at least 1 northern spotted owl during the period 31 May 1989 to 31 August 1989, was recorded. One hundred eighty-two of these 332 vocal responses were determined to represent sites occupied by at least one northern spotted owl. The number of adult owls was estimated at 247. Sixty-three of 83 sites sampled to determine pair status contained pairs (76 percent). Reproductive success was assessed at 55 of the sites and 28 (51 percent) were recorded as having been successful.

The Service acknowledges that the amount of old growth remaining on private forest land in Oregon is quite small, but does not know the exact amount.

Comment: One commenter cited his research on spotted owls to indicate that night-based estimates during the first year of a study over-estimated the population size by 72 percent, when using a direct count which he believes is within 90 percent of the true estimate based on the amount of habitat present and considering the intensity of conducted searches (Ward *et al.*, 1990).

He urged caution in reviewing data based on night surveys alone.

Service response: The Service accepts the comment.

Comment: In 1989, inventory and monitoring by the Bureau of Land Management indicated the presence of 946 spotted owls (801 adults, 145 young) on Bureau of Land Management land in Oregon. Seventy percent of the sites (461 of 661) visited were occupied and of these, 74 percent (340 of 461 occupied sites) contained pairs. Of the 293 pairs checked for reproduction, 128 displayed evidence of nesting. Of the 128 pairs studied, 100 produced offspring (78 percent reproductive success rate) and fledged 145 young (1.45 young/successful nest).

Service response: The Service accepts the comment provided by the Bureau of Land Management.

Comment: The Bureau of Land Management commented that the increasing numbers of occupied sites reported during the last five years does not imply an increase in population trend, but rather represents expanded surveys on all Bureau of Land Management districts and active banding program. The Bureau of Land Management reported that the level of spotted owl habitat surveys of its lands varies by district office and between resource areas ranging from 50–90 percent. In the past, the Bureau of Land Management had said that 80–90 percent of its habitat had been examined; however, some of these earlier surveys did not use standardized survey protocol and often made only one visit.

Service response: The Service agrees that increases in numbers of northern spotted owls may be a consequence of increased sampling effort rather than increased population numbers.

Comment: During 1989, the Forest Service inventory, monitoring, and survey program in Regions 5 and 6 detected 771 pairs, of which 314 were known to be reproductive. The total number of adults and subadults on Forest Service land in California, Oregon, and Washington was estimated at 2,400 birds. The Forest Service commented that different personnel participated in the inventory, monitoring, and survey efforts, so detection of a single owl in the inventory and monitoring segments also could have been made during a survey. Although every attempt was made to determine if birds had been double-counted, the true overlap is unknown and there is the potential for significant overlap for single birds. The Forest Service stated the numbers for single birds probably are high but has confidence in the estimate for the number of pairs.

Service response: The Service considered the comments provided by the U.S. Forest Service and Thomas *et al.* (1990).

Comment: The Washington Department of Wildlife (WDW) updated the number of owls in Washington with a cumulative total of 326 pairs (144 reproductive) and an additional 173 singles for a total of 825 birds (the data for the Cascade Range for 1989 were not updated). Nineteen new sites, primarily in previously unsurveyed areas, were found on the Olympic Peninsula. This value includes 65 pairs on the Olympic National Forest and 22 pairs on the Olympic National Park.

Service response: The Service accepts the comment provided by the Washington Department of Wildlife but notes that the number of pairs in Olympic National Park has been estimated at 14–20 (Thomas *et al.* 1990).

Comment: WDW divided the State into cells and surveyed a random sample of these cells for spotted owls. The survey included 47 transects, with nine on the Olympic Peninsula, six in southwestern Washington, 18 in the western Cascades, and 14 in the eastern Cascades. The results indicated that the two regions with the highest percent of old growth (Olympic Peninsula and western Cascades) had the highest response rate (0.05 response/mile), 10 times as great as southwestern Washington (0.005 response/mile), where there was no old growth along surveyed transects. Although the results indicate spotted owls may inhabit younger forest, they were found at much lower densities there than in older forests. According to the WDW, the vegetation analyses obtained from data collected within the one-quarter-mile radius circles surrounding the calling stations may have underestimated the percent composition of older forests and overestimated the percentage composition of younger growth. Therefore, it was possible to underestimate the amount of old growth within an area in which spotted owls could be heard.

Service response: The Service accepts the comment.

Comment: The Washington Department of Natural Resources (WDNR) manages 180,000 acres of the Hoh-Clearwater block of state trust lands on the western Olympic Peninsula. Roughly 70 percent of this area has been logged within the last 30 years. About 53,000 acres of mature/old growth forest remains. During a survey of the area in 1988–89 by WDNR, owls were detected at 18 sites (11 pairs, 7 singles). Three of these pairs produced five young. All owl sites were in mature forest, which while not equivalent to classical old growth, is very old (>1000 years of age in some instances) and has never been harvested. Although mature forest in this area looks different (i.e., shorter in height than classical old forest), it is the functional equivalent (Eric Cummins, Washington Department of Wildlife, pers. comm., 1990).

Service response: The Service accepts the comment.

Comment: There were three main studies conducted by the timber industry in northern California pertaining to the status of the spotted owl. The Timber Association of California reported on a survey of spotted owls that it oversaw encompassing nine ownerships in northern California during the summer of 1989 (see Irwin *et al.* 1989b). A number of individual companies that participated in the Timber Association of California survey also submitted separate comments; these will not be reported on in detail here as their findings are incorporated within the Timber Association of California submittal. In the second investigation, the Pacific Lumber Company funded a study (see Kerns 1989 a, b) of its property. In the third study, timberland owned by Louisiana Pacific and Georgia Pacific were inventoried in a joint survey (see Pious 1989). In all, more than 360,000 ha (912,000 acres) of managed young growth forests (30–80 years old) were examined in northern California. During the course of the three studies, a combined total of 284 spotted owl sites were located. Of 136 sites that were checked, 100 were found to be occupied by pairs (74 percent occupancy rate). These industry studies estimated that 458 owls were detected, including fledglings (Timber Association of California 284 owls, Pacific Lumber Company 36, Louisiana Pacific/Georgia Pacific 138).

Service response: The Service accepts, with the minor exception noted, the comments provided by the Timber Association of California. A total of 136 (totals from the Timber Association of California 1989b), not 138, sites were checked by the Timber Association of California, Pacific Lumber Company and Louisiana Pacific/Georgia Pacific. The Service considers the difference in reporting values minor since they represent a <2 percent error.

Comment: Timber Association of California efforts surveyed 40 tracts in coastal and interior northern California covering approximately 182,000 ha (456,000 acres). The Timber Association

of California did not include old growth tracts in its survey. According to the Timber Association of California most of the tracts do not qualify as mature stands under the Status Review Supplement definition because they are less than 100 years old. During the surveys, 332 vocal responses were heard at 182 sites on 36 of the 40 tracts and estimated to represent 247 adults and 37 fledglings (a site is defined as an area occupied by at least one owl). Of these 182 sites, 83 were checked during the daytime and determined to contain 63 pairs (76 percent occupancy rate). Rate of response/km was calculated as 0.20 response/km of transect (0.32/mile). A crude density estimate of adults and subadults was 0.14 owl/sq km (0.35 owl/sq mi). Of 55 pairs that were sampled in more detail, 28 produced 37 fledglings in 1989 (0.67 fledgling/pair; 1.32 fledglings/successful pair).

Service response: The Service accepts the comments provided by the Timber Association of California with one exception. The Service contends that definitions of forest type based strictly on age are inappropriate across broad geographical ranges. For example, redwood forest 60 years of age has many of the characteristics of older forests, including standing snags, dead and down material and a multilayered canopy. Kerns (1988) reported that 78 percent of the redwood vegetative complexes containing owls had characteristics similar to old growth, but none could be considered "old growth" based strictly on age. Application of an age definition based on coniferous forest to redwood forest is incorrect. The Service contends that structure rather than age is more important in defining habitat characteristics that are important to owls.

Comment: Simpson Timber Company owns about 100,000 acres of timberlands that were included in the Timber Association of California study. The company wrote that its property in northwestern California consists of some fragmented old growth, redwood, and Douglas-fir forests and that the timber stands are primarily recently cut to 80-year-old-second-growth. These lands are managed under a 60-year rotation. In the Simpson Timber Company funded study, Diller (1989) located 124 owls of which 29 were believed to be pairs that produced 29 fledglings. Further, he calculated a tentative density estimate of 1 pair/950–1300 acres and stated that these densities are more closely aligned with those reported for old growth than for second growth. Diller (1989) calculated a fledgling success rate of approximately 1.2 owlets/pair in comparison to a crude estimate of all reported studies of about 0.5 owlet/pair (including non-reproductive pairs) (USDA (1988)). He concluded that spotted owls can nest successfully in young growth. Of the nest sites he located; one was found in a residual older redwood, whereas only 6 of the 14 others had older residual trees in the area. Simpson Timber Company submitted initial findings for the beginning of the 1990 field season. During April 1–16, 1990, they rechecked 60 sites that were occupied last year by owls and found that 53 sites were occupied (41 pairs, 19 nests). The company stated that owl densities in coastal redwood sites appear comparable to more xeric inland conditions dominated by Douglas-fir. The age of the 19 nest trees varied from 30 to 150 years. Nest trees generally were relatively large in relation to the average tree in the stand; however, in two instances they were smaller.

Service response: Comparisons of the acreage per pair on land owned by Simpson Timber Company are tentative because in at least one area (Mad River tract) Forest Service protocols were not followed (Diller 1989:4). Thus, the lower limit of the range, 1 pair per 950 acres, may not be a correct estimate. While the Service does not dispute findings of successful reproduction in younger-aged forests, it is important to note that redwood stands exhibit many of the structural characteristics of old-growth forest at younger ages (Kerns 1988). In addition, comparisons of different tree types in markedly different ecosystems (e.g., Douglas-fir in the Cascades versus redwoods in coastal California) may not be valid. The Service accepts the data from the studies, with the one exception noted, but cautions that estimates from coastal redwoods cannot be strictly compared against estimates from Douglas-fir forests. Also, only about 7 percent of the northern spotted owl's range is within the coastal redwood forest (USDI 1990).

The Service accepts the comments provided by the Simpson Timber Company for the beginning of the 1990 field season.

Comment: A consultant for Sierra Pacific Industries stated that four tracts in coastal California were surveyed with a general mosaic of second-growth Douglas-fir or redwood forest with hardwood vegetation and scattered residual old growth and clearcut areas. In these areas, spotted owls were found within a variety of habitats, near or in drainages with some old growth or dense vegetation. Two fledglings were found in a mixed-hardwood habitat. Another consultant for the same company surveyed about 140,000 acres in three interior counties in California. All spotted owls were found in fragmented habitat with only small pockets of old growth. He stated that selective harvesting was practiced over much of northern California and produces a forest that is younger and more open than old growth, but still quite structurally diverse. Most stands with spotted owls had two, sometimes three vertical strata in the overstory because of the way the trees had been removed in the past. Dominant trees were not as large as old growth. It appeared that the number of layers was more important than the size of the layers. Suppression of fire, especially combined with a selective cut, leads to development of a shrub and understory and accumulation of dead and down woody material. Both conditions may be associated with high rodent densities. This consultant did not believe that his findings contradicted or refuted any work that has been done elsewhere in the owl's range. He did not know where owls were nesting.

Service response: Patterns reported in these two studies are consistent with those reported elsewhere on private lands in California (e.g., Kerns 1988, Pious 1989). Northern spotted owls are associated with structurally diverse habitat that contains one or more layers, some older forest providing an overstory and dead and down material. However, the habitats described were created by repeated harvest entries and do not occur under a clearcut harvest regime. Continued use of clearcut prescriptions on public and private land and any additional shift towards an increased use of clearcuts will make it difficult to maintain the structurally diverse conditions used by owls.

The Service accepts the comment that two active nests were located in stands containing residual trees, and that several birds noted as singles in 1989 are paired in early 1990. The Service also considers as reasonable the hypothesis that retaining some amount of older forest in managed younger growth stands provides some of the habitat characteristics needed by northern spotted owls. Data from other studies in California (e.g., Timber Association of California 1989b, Pious 1989) also provide support for the hypothesis. However, under current harvest methods, remnant trees are seldom left after harvest, and the stands will be harvested again before reaching the size at which they would provide suitable habitat for northern spotted owls.

Comment: Sierra Pacific Industries submitted comments on its initial field work for 1990. It noted that two active nests were found in the interior of northern California (non-redwood tracts) and stated this suggests the hypothesis that retention of small amounts of remnant, decadent trees with managed second growth provides all the habitat requirements needed by spotted owls. Several birds noted as singles in 1989 were documented as pairs in 1990.

Service response: The Service has considered the information provided in this comment.

Comment: Tracts for the Timber Association of California study were selected on the basis of continuous private land with a minimum of several thousand hectares. The primary composition was 30- to 80-year-old stands, on average, with less than 10 percent residual forest conditions. In general, these areas had been completely clearcut in the early 1900s, and subsequently burned repeatedly for up to two to three decades in a futile attempt to convert the land to grassland for domestic livestock grazing. The type conversion effort was abandoned in the 1920s and 1930s, after which the areas reforested naturally resulting in the 60- to 80-year-old stands that Timber Association of California surveyed. There was some variation in the above historical management perspective. For example, Simpson Timber Company's Mad River tract, in coastal northern California, is a redwood forest that was clearcut about 1900 and burned. Since 1900 parts have been harvested a second time and the area is being regenerated with a mixture of Douglas-fir and redwood. The Hilt tract, owned by Fruit Growers, is a white fir/ponderosa pine site located along the California-Oregon border. During a railroad logging operation, most of this area was clearcut. Reforestation occurred naturally and subsequent management has been primarily of a selective nature. Sierra Pacific's Wells Mountain tract, 50 km west of Redding, California, also has a history different from the other tracts. It is a mixed forest type with interspersions of prairie grasslands and hardwood stands. It was entered in the early 1900s after a major fire.

Service response: The Service has considered this information.

Comment: Fruit Growers Supply Company submitted additional data on its initial field work for 1990. Of the 11 confirmed sites with pairs in 1989, 10 were observed with owls by mid-April 1990. Two additional sites also have owls. Of these sites, one contains a nesting pair, one a suspected pair, two contain other pairs, and eight have single birds. Also, the company noted the presence of owls in basins that were logged last year. According to the commenter, in one sale area, the birds relocated and re-nested outside the sale area about 0.66 miles away. The commenter noted that the birds are not banded. Fruit Growers Supply Company stated it believes that not all nest sites in the interior of northern California were in remnant old-growth patches.

Service response: The Service has considered the information in the comments.

Comment: A study funded by the Pacific Lumber Company, the second major private study in northern California, indicated that radio-tagged spotted owls used all available habitat roughly in proportion to its availability (except thinned young growth) during the June-September 1989 study period (Kerns 1989 a, b). Approximately 40 individual owls were detected. Of 12 pairs, five were determined to have reproduced in 1989. Birds used thinned young growth 31 percent of the time which was higher than the predicted use based on availability of 25 percent (n=8). Approximately 35,000–45,000 acres of Pacific Lumber Company land were surveyed, during which 40 birds were identified. Only two of eight radio-tagged birds had old growth in their home ranges. Therefore, Kerns (1989 a, b) concluded that the owls are not dependent on old growth. Birds foraged in closed canopy timber types with 75–100 percent canopy closure, and roosted in vegetative types with canopy closures of 25–100 percent.

Service response: The Service believes that the conclusions of this study are premature and, therefore, unwarranted. Unlike other studies evaluating use versus availability and reviewed in the Status Review (USDI 1990), sample sizes (i.e., locations of owls) in this study were not large enough to estimate the annual home range of any of the radio-marked owls (Kerns 1989b:2). Without proper delineation of the home range boundary it is impossible to estimate what is "available" for use by the individual owl. Modification of the home range size as additional location points are added will change the definition of "available" and hence the assessment of "use." As described in the Status Review (USDI 1990), demonstration of selection is a consequence of how "available" is defined. The Service also disagrees with the contention that owls are not dependent on "old growth" or stands containing "old growth" structural characteristics, and argues that the data from this study are not sufficient at this time to either reject or support the hypothesis that northern spotted owls in coastal California redwoods use habitat in relation to its availability.

In addition to inadequate data for determining a home range size, the Service also believes that the definition of "old growth" in this study as only uncut timber (Kerns 1989b: figure 9) is unnecessarily restrictive and one that ignores the importance of structure when defining forest type. For example, a YY2 stand in this study was defined as "young" growth having trees with a dbh >40 inches and 50 percent to 75 percent crown coverage. A Y1 stand consisted of "young" growth with a dbh "up to 28 [inches]" and a crown coverage of 75 percent to 100 percent. Although direct comparisons of dbh of different tree species are questionable, note that the YY2 and Y1 definitions could be reassessed, based on the structural definitions for Douglas-fir (*Pseudotsuga menziesii*) presented in the Status Review (USDI 1990), into old and mature forest, respectively. In the absence of more specific descriptions of the characteristics of each stand type, the Service is reluctant to redefine each stand type and reanalyze Kerns' data, but does caution against interpretation based strictly on the "young" and "old" labels attached to each forest type.

The Service believes that statements regarding selection for or against available habitat types must be statistically sound. In reviewing studies claiming to address use versus availability, the Service excluded from consideration those that concluded selection for or against habitat types but provided no rigorous statistical analysis (USDI 1990). The method employed by Kerns, that of simply subtracting the proportion of observations in each habitat type from the proportion of that habitat type in the owl's "Observed Area of Use" (Kerns 1989a,b), has no statistical basis. He gives no way of statistically ascertaining whether a difference of 1, 5 or 10 percent in any direction represents no selection, or selection for or against habitat types until sample sizes increase. Thus, the Service considers the conclusions of this study of limited use.

Comment: Louisiana Pacific (Pious 1989) reported that 1,382 km of transects of managed second growth coastal redwood timber lands in northern California, Mendocino County, were surveyed and owls were detected at 90 sites, 51 of which contained pairs. Breeding was verified at 31 of the 51 sites and fledged young were produced by 32 percent of the 25 pairs checked

(0.44 young fledged per female and 1.36 young/productive female). Relative abundance was 0.1 owl/km. Most sample plots were dominated by small-sized (28–52 cm dbh) and medium-sized (53–90 cm dbh) trees. Various structural classes or seral stages exist within potential foraging habitat. Within the roosting sites, canopy closure exceeded 85 percent and ground cover consisted of shrubs, logs, coarse woody debris, and litter. Seven nests were found in sites with a total canopy closure of 86 percent. Vegetation structure at nest sites was characterized as a stratified canopy with an overstory dominated by conifers (trees >40 cm dbh), and an understory dominated by hardwoods (trees 13–40 cm dbh). In general, habitats used by spotted owls were vigorous, young, even-aged to uneven-aged stands with sparsely distributed older conifer trees.

Service response: The Service accepts in general the comments by Louisiana Pacific and notes again that presence of owls is strongly associated with structurally diverse habitats. Most of the stands surveyed by Louisiana Pacific had vertical structuring that could be attributed to repeated harvest entries; clearcuts, when mentioned in stand history descriptions, occurred in the late 1800s and early 1900s. Use of the term "young" in describing the stands to which owls were associated may be misleading, and it would be incorrect to conclude that because owls are found in "young" redwood they could be found in "young" Douglas-fir. Twenty-five of the 29 sites described in Pious (1989:appendix H) were dominated by redwoods, a tree species that attains characteristics similar to "old growth" at a relatively young age (see Kerns 1988).

Comment: One representative of Harbor Against Land Take (HALT) used aerial photographs of the Olympic Peninsula to estimate the amount of habitat for spotted owls in 12 major drainages. He speculated that there are 210 potential spotted owl sites.

Service response: The Service does not consider use of 1 pair of owls per 2 to 3 miles of river drainage multiplied by the miles of river drainage to be an accurate estimator of the number of potential owl sites in a given area. Not all habitat on both sides of the drainage can be considered suitable owl habitat. Instead, the amount of suitable habitat divided by the median home range provides a maximum estimate of the number of paired owls if all available habitat was occupied by owls. Under these guidelines the Service estimates up to 30 pairs of owls are present in Olympic National Park at any one time. A total of 12 to 20 pairs have been documented in the park (USDI 1990:table 4.6). Even if the low end of home range size in the Olympic Peninsula rather than the median (data from Thomas *et al.* 1990) was used to estimate the potential number of sites, only a total of 61 potential sites are estimated, well below the suggested value of 210. The Service therefore rejects the estimate of 210 potential spotted owl sites.

Comment: Results were reported for the Willow Creek Study Area on the Six Rivers National Forest (Franklin et al., in press). Surveys during 1985–89 indicated that the population was either stable or slightly increasing in this area. In 1989 there were 138 owls, 66.5 percent of the pairs nested and 41.4 percent fledged young (0.67 young/pair). Annual survival figures were 0.16, 0.83, 0.96, and 0.87 for juveniles, subadults, males, and females, respectively. The increase in population density was attributed to processes such as immigration, rather than internal increases in the sample areas. The population increased either from immigration from other areas rendered unsuitable by logging or to have reflected changes in the composition of the "floating" population. Franklin et al. (in press) state, "Based on our population estimates, current management plans for spotted owls proposed a 60.0–82.5 percent reduction in current populations, assuming that habitat around SOHAs becomes unsuitable for occupancy under planned timber management programs over the next 50 years. Proposed reductions in spotted owl populations will coincide with reduction and fragmentation of suitable habitat: a situation incompatible with density-dependent mechanisms."

Service response: The Service has considered the information provided in this comment.

Comment: Frank Wagner (Oregon Cooperative Wildlife Research Unit [OCWRU], Oregon State University) commented that his research indicates that spotted owls use highly fragmented habitat in southwestern Oregon, and that he found relatively high densities in the Elk Creek watershed (0.117 pairs/sq km in 1988, and 0.128 pairs/sq km in 1989). He noted that although his study area has been referred to by others as dominated by young and partially cut forest with limited fragmentation, this is not the case. His study area consisted of three distinct general landscapes: (1) Relatively large blocks of unentered old-growth and mature forest; (2) stands of moderately fragmented old-growth and mature forest; and (3) a highly fragmented area with limited old growth, but with a matrix of diverse young and partial cuts (part of this last area comprises the Miller Mountain Telemetry Study Area). In 1989, he found that home ranges of 23 pairs of owls averaged 205 acres (range 26–445 acres) of unentered old growth within a 0.5 mile radius of the center of activity and that this contrasts to 70 acres (range 0–225 acres) within a 0.5 mile radius from random points. He stated that in southwestern Oregon owls occupying areas with a low availability of older forest but a high degree of young stands and previously partially cut stands, appear to be operating as a population sink.

Service response: The Service accepts all of the comments except for the specific assertion that the areas mentioned appear to be operating as a population sink. Data from the study are insufficient to adequately determine whether the area is acting as a population sink.

Present Population Estimates

Comment: One commenter stated that the Service admits that estimates of present population estimates are flawed ("few data on numbers and distribution on private, State, and tribal lands * * * are available.") A number of commenters asked if all preserved/reserved and non-reserved lands had been surveyed or whether the generalizations of owl non-occurrences on non-Federal lands such as private, Indian, and State, were based more on speculation than actual inventories. A commenter asked what proportion of owls occur on private lands. Several people stated that because the Forest Service was only interested in surveying areas scheduled for timber harvesting, no inventories have been done in wilderness or other set-aside areas. Someone questioned the finding that northern spotted owls are found primarily below 3,500 feet in elevation. Another stated that wilderness areas in California are not primarily high elevation lands above tree line.

Service response: The Service realizes that not all lands in the range of the northern spotted owl have been surveyed. However, in the past three years, many new surveys have been conducted on private, State and tribal lands. These results are summarized in detail in Thomas *et al.* (1990) and in general in USDI (1990). Approximately 8 percent of known owls occur on private land. It is incorrect to state that no surveys have been conducted in younger stands (details are summarized in USDI 1990 and Thomas *et al.* 1990). Thomas *et al.* (1990) reported that approximately 6 percent of the owls occur on private lands. There have been inventories on Wilderness Areas and other set-aside areas. In fact, most owls are found at elevations below 3,500 feet. Forested Wilderness Areas in California have only 13–18 percent suitable habitat, some of which is at higher elevations. Details are provided in USDI (1990) and Thomas *et al.* (1990).

Comment: A party commented that earlier estimates of a population decline are fraught with methodological, analytical, and factual errors. A commenter maintained that the Status Review Supplement relies on survey work by Forsman to support the assumption of a population decline, yet his survey method suffers from several methodological deficiencies and, therefore, his data are unreliable. The commenter continued that Gould (1974) used a similar monitoring program and recently stated that those estimates are subject to uncertainties. According to this individual, the methodology employed by Forsman and Gould is not adequate because it assumes that an owl that moved slightly or left the study area was dead.

Service response: Past efforts to estimate the rate of population decline have been criticized because of methodological issues and the fact that the rate of decline was not statistically significant. USDI (1990) corrects these issues and presents firm evidence that resident populations are declining at a statistically significant rate (e.g., 5 percent and 14 percent per year). The ISC (Thomas *et al.*, letter dated December 20, 1989) stated to the Service that the population was declining in response to timber harvest of available habitat. Count data on the Willow Creek Study Area do not show a population decline because of significant immigration each year. The Service agrees with the commenter that reproduction and mortality rates were nearly constant over the course of the study (1984–89). The Jolly-Seber model (Pollock *et al.* 1990) for open populations employed in the Status Review (USDI 1990) allows estimates of the entry of "new" owls into the adult population. This total was partitioned into the two components: recruitment of young into the adult population and the immigration of owls from surrounding areas. The Service found that the resident population of adult females was declining 5 percent per year (21.6 percent over the 5 years of study). However, the immigration into the study area kept the population size nearly constant (the "rescue effect").

Thus, in a trivial way, the population has not declined at the Willow Creek Study Area. However, the simple count data from standard surveys do not properly portray the sharply declining population of resident, territorial owls. The Service has strong evidence of significant population declines (USDI 1990). The Service agrees that emigration is a source of bias in the estimates of juvenile survival.

The Service did not follow Franklin's alleged convention of assuming "the owl is dead if he fails to return to the territory in two seasons." USDI (1990) used contemporary analysis theory for capture-recapture surveys to avoid the criticisms noted (i.e., 100 percent site fidelity, owls immediately responding in a single follow-up visit in succeeding years, and movement within the same general territory). Early surveys by Gould were similar to those by Franklin and Forsman. Jolly-Seber type models for the analysis of capture-recapture/resight data incorporate a capture/sighting probability to avoid the criticisms noted by the commenter. In fact, the capture/resight probability can vary be age, sex, and year to properly allow for non-detection of owls, given they are present. Details of these procedures are cited in USDI (1990).

Comment: According to one commenter, a thorough survey of the entire range of the northern spotted owl is needed to determine nesting and foraging habitat. Another asked if the owl is still found in most of its range, why is it thought to be threatened. Several commenters stated that in the proposal, assumptions not yet clearly established are used as evidence that owl numbers are declining.

Service response: It would be ideal if intensive surveys could be conducted over the entire range of the owl. This is not possible or practical. A species can be widespread, but could be "threatened" if the population was thought likely to become in danger of extinction in the foreseeable future due to, for example, drastic loss of habitat. The amount of suitable habitat for the northern spotted owl has decreased substantially over the past 40–100 years. It now seems clear that the population of the northern spotted owl is declining throughout its range.

Has the Owl Population Increased in Size?

Comment: Numerous commenters expressed opinions regarding owl population estimates indicating that owl numbers have increased with an increase in survey efforts and that the number of owls has increased from several hundred 10 years ago to about 5,000 today. Several individuals questioned how the spotted owl can warrant listing if the count in 1990 is higher than in 1985 and is still increasing. Someone stated that studies show there are more owls now than 50 years ago when little or no old growth had been harvested; however, he did not provide or cite references for these studies. Another said that owl numbers on Bureau of Land Management lands have reportedly doubled in three years and that if this rate is typical, there will be serious problems associated with owl over-population in the next few years. Another maintained that owl populations are large and stable.

Service response: The number of owls detected during surveys has increased with survey effort. The Service is not aware of any estimate that there were only a few hundred owls ten years ago. The population is now believed to be decreasing throughout much or all of its range, although counts of owls have increased due to expanded survey efforts. The Service is unable to confirm the abundance of owls 50 years ago. It is very likely that owl population size was larger when larger amounts of old growth existed. The Service cannot confirm that the population of owls on Bureau of Land Management land has doubled or tripled in the past three years. The commenter failed to give a reference for this statement. However, the Service acknowledges that the Bureau of Land Management has increased its efforts to survey for owls and, therefore, the increase in the number of owls encountered is not unexpected.

Comment: One commenter understood that private parties were undertaking their own surveys and had located over 6,000 pairs. One commenter said the data from private land surveys in northern California produced 62 pairs, almost double the previous population estimate for private lands in the State, and show the Status Review Supplement underestimated the number of spotted owls on private land in northern California by almost 100 percent.

Sevice response: The Service is not aware of studies by private parties that have located over 6,000 pairs of owls. It is true that the Service had underestimated the number of owls on private land in California. New information provided, for example, by the Timber Association of California, however, has been considered in USDI (1990) and in this document.

Comment: Someone else stated that there are over 3,000 known pairs in

eastern Oregon where they were not supposed to be. Another wrote that there are thousands, maybe millions of spotted owls. In one person's view, the spotted owl population is healthy throughout at least five of seven western states. Someone commented that because the spotted owl ranges into Arizona, New Mexico, and southern U.S.A., it is difficult to believe that with this large a range the spotted owl is not able to adjust to environmental changes.

Service response: The Service is not aware of any estimate of 3,000 pairs of owls in eastern Oregon. According to the ISC (Thomas *et al.* 1990), there are approximately 2,000 known pairs rangewide of northern spotted owls although they estimate that 3,000–4,000 pairs actually may be present. There is no evidence to support the statement that there may be millions of spotted owls. The northern spotted owl occurs in 3 states and one Canadian Province, not in at least 5 of 7 western states. It is the Mexican spotted owl that occurs in Arizona and New Mexico, not the northern spotted owl. Long-lived birds such as the spotted owl are not considered likely to adjust rapidly to drastic environmental change. Such adaptations ordinarily take place only on an evolutionary time scale of thousands of years.

Comment: A commenter referenced work by Franklin *et al.* (1986, 1987, 1989) that indicates a stable and even increasing population in the Willow Creek study area. Someone stated that the Status Review Supplement erroneously quotes Franklin as stating the northern spotted owl population is declining in northwestern California. Another reported that the Service ignored research data from Franklin in which he found there were 830 owls in the Six Rivers National Forest. Franklin *et al.* (in press) extrapolated the population of the Six Rivers National Forest at 833–912 owls, which was twice the Forest Service estimate of 400 based on suitable owl habitat. However, only about 50 percent of the Six Rivers National Forest has been adequately surveyed. The higher estimate did not account for any effects of habitat fragmentation. In discussing the estimate of 833–912 owls, Mr. Franklin stated in his comments, "I do not know whether our extrapolated estimates of numbers are correct. You need to bear in mind that we extrapolated to an area that was 13.3 times larger than the sampled area. Any errors in our estimates would be magnified by that factor. However, the point in the extrapolation was not to strictly estimate population size for the SRNF but to examine the relationship between potential and managed populations. Intuitively, I believe the Forest Service estimate of 400 may be more accurate than our extrapolations."

Service response: Population change on the Willow Creek Study Area (WCSA) is treated in detail in USDI (1990), including updated estimates of vital rates. Confusion arises over the fact that the resident (territorial) population has experienced a significant decline over the past 6 year study interval, but the population has been maintained by immigration into the area of floaters (non-territorial birds) and territorial birds displaced by timber harvest in surrounding lands. The Service shares the commenter's concern that the extrapolated estimates made by Franklin are likely to be inaccurate.

Comment: According to one party, the Status Review Supplement failed to adequately estimate the effects on the overall population estimate of the spotted owls in reserved areas. This individual maintained that populations living in extensive reserved areas may be expected to be stable and those living in managed forests older than about 50–80 years may even be increasing as habitat grows back (Irwin 1989b).

Service response: Information on owl abundance in reserved areas was treated in the Status Review Supplement and is treated in more detail in Thomas *et al.* (1990) and USDI (1990). The available evidence suggests that the populations in reserved areas may have low viability and may not be replacing themselves. This poor viability is likely due to higher elevation, poorer site quality, and more open canopies typically found on many reserved areas (USDI 1990). Thus, suspected low viability is not due to declining amount of habitat in reserved areas.

The Service believes that the proposal accurately portrayed the loss of habitat. Owls in managed forests are unlikely to be viable. Before a managed forest reaches an age that is fully suitable for owls, it is likely to be cut again. In general, the forest rotation age and the stand age at which owls begin to utilize the stand for foraging, nesting, and roosting are similar.

Comments: One commenter stated that the Forest Service confirmed 640 new owl sites of which 321 have pairs and 141 of these pairs (43.9 percent) successfully reproduced (USDA 1989). One commenter said the Status Review Supplement estimated the owl population on Forest Service lands would vary from 58–81 percent of estimated habitat capability. Further, he believed that in Region 6 of the Forest Service, the habitat capability is estimated at 1,289 pairs. Since confirmed pairs on Forest Service land now total 1,287 pairs, or almost 100 percent of habitat capability, the commenter maintained that this assumption was obviously incorrect. One commenter stated that in only one season, survey work confirmed 537 new pairs (35 percent increase) on Bureau of Land Management, Forest Service, and private lands, and that this number excludes the results from Forest Service lands in Region 5 and from National Parks.

Service response: Table C–1 in the ISC (Thomas *et al.* 1990) report presents the most recent comprehensive compilation of spotted owl habitat and owl pairs located in the last 5 years. On Forest Service lands within the range of the northern spotted owl 1,387 pairs of owls have been confirmed (809 pairs with evidence of reproduction) since 1985. Not all spotted owl sites are occupied by pairs each year. Monitoring of SOHAs by the Forest Service indicated that for 1989 58 percent of the SOHAs had pairs while for 1988 and 1989 combined 78 percent had pairs present in at least one year: 55 percent of the SOHAs had documented reproduction in one of the 2 years (USDA 1989). The habitat capability estimate for Region 6 Forest Service is 1,283 reproductive pairs of spotted owls (USDA 1988, USDA 1989). As of the end of the 1989 field season 525 pairs of owls (sites) have had documented reproduction within the past 10 years (USDA 1989). The greatly increased inventory efforts of federal timber managing agencies in 1989 resulted in the location of many "new" owls. Caution must be exercised in interpreting these new owl locations. For instance, because few of the owls on Forest Service lands were banded it is difficult to assess what proportion are new and which may represent double counting of known owls at adjacent locations. There is no question, however, that the increased survey effort in 1989 disclosed many additional owls.

Comment: One commenter stated that additional population surveys had detected new birds as follows: 537 pairs, 549 singles, and 334 juveniles, for a total of 1,957 new owls, and that these data increase the previous count to about 2,200 pairs and more than 6,000 individuals. The commenter stated that the Forest Service in Oregon and Washington had completed surveys on less than 2 million of its 13.7 million acres of forest.

Service response: The compilation of spotted owl pairs presented in table C–1 of Thomas *et al.* (1990) report represents the most recent comprehensive enumeration of known northern spotted owl pairs. The figure of 2,022 pairs of owls located between 1985 and 1989 does not include any estimate of single birds. The ISC report further offers (Appendix C, p. 67) an estimate of between 3,000 and 4,000 pairs rangewide on all land ownerships. No agency has completed owl surveys on all land holdings; Bureau of Land Management has surveyed a greater proportion of its holdings in Oregon than has the Forest Service. Most survey effort has been in older forests—where owls are most abundant and where timber sales are planned; less effort has been expended in young forests—where owls are absent or at low density. Wilderness Areas, which are mostly at high elevations and have reduced densities of spotted owls, have not been surveyed intensively for owls. Because of the above, densities on unsurveyed lands are not likely to be proportional to densities on already surveyed lands.

Comment: Another individual estimated that lands in California had the capability of supporting about 775 pairs of spotted owls. He emphasized that this is an estimate of pairs, not of pairs that would constitute the breeding core of the population. He noted that in the Willow Creek study area, only about 45 percent of the pairs were found to be consistent breeders over the 5-year period of the study.

Service response: The Service had considered this information. The Timber Association of California surveys found 63 pairs. The Service cannot verify the comment that California lands have the capability of supporting "about 775 pairs of spotted owls." USDI (1990) tabulated 533 observed owls on surveyed lands in northern California during 1985–89. However, these are only the number observed at least once during this 5 year period. Other areas have not yet been surveyed. In addition, the Service notes that many pairs breed only in alternate years or irregularly.

Comment: A biologist stated it is not necessarily true that owl numbers have increased because Forest Service estimates have not dropped out those owls that cease to exist as the result of logging or natural mortality. Another biologist commented that many "new" owls have been known for more than 10 years, but the Forest Service has simply just verified them by the new standard of seeing a male and female in daylight less than 200 yards apart. A minority of the new pairs are actually newly discovered.

Service response: The Service has considered this information.

Comment: Several commenters suggested that there is no empirical information to support the Status Review Supplements' spotted owl population estimate. Another commenter stated that the 1,500-pair estimate is based on the summary in the Status Review Supplement of inventoried sites and projections of estimated habitat capacity, and that no data show that the overall population is decreasing. One commenter referenced the pers. comm. by E.C. Meslow cited in the Status Review Supplement to the effect that the population had declined in many portions of Oregon, and said this statement was not verified with data or citations.

Service response: A complete census of the owl throughout its range would be extremely difficult. However, based upon the latest survey results, there are approximately 2,000 known pairs of northern spotted owls (Thomas *et al.* 1990). The Service presents evidence that the population is decreasing (USDI 1990) and provides estimates of the average annual rate of decline (i.e., 5–14 percent). Field biologists believed the population had declined based on occupancy rates for established territories and based on the drastic declines in suitable habitat. USDI (1990) provides the statistical evidence of sharply declining populations of resident, territorial owls (5 percent per year in northwest California and 14 percent per year in southwest Oregon).

Comment: Another speculated that the spotted owl population may be at carrying capacity and, therefore, the young have a high mortality and the adults a low reproductive rate.

Service response: The Service agrees with this comment and suggests that the current population may in fact be above the current carrying capacity.

Comment: One commenter noted that in 1988, the Audubon Society wrote that a stable population of northern spotted owls would consist of 2,000 pairs and that a minimum of 1,500 pairs were needed to maintain the population. The commenter stated that if the Service says there are 1,500 known pairs, this is quite a difference in population since 2,000 were readily found in California). A commenter asked if 1,500 known breeding pairs are not sufficient to preclude the need to list.

Service response: The Service agrees that the Audubon Report (Dawson *et al.* 1986) suggested a minimum of 1,500 pairs of owls. However, this figure included the California subspecies, and the authors stated that they were "* * * marginally comfortable with this number." Dawson *et al.* (1986) present no mathematical formulation or analysis of demographic data to support their figure. This issue is discussed in detail in Thomas *et al.* (1990:30–31). The Service has no evidence that 2,000 pairs of northern spotted owls have been verified in California. The number of verified pairs in northern California is 533, not 2,000. In fact, the 533 relates to only pairs on sites observed at least once during the 1985–89 period and is, thus, somewhat of an optimistic count for the areas surveyed. The numerical size of the population of owls is not necessarily critical to the species' survival; rather, the critical issue is related to the population dynamics. The Service believes that (1) the population is above carrying capacity due to drastic reductions in habitat and an increase in forest fragmentation, (2) the owl population is declining rapidly, and (3) the population will decline much further, even if all harvest of suitable habitat is halted. Changes in the amount and quality of suitable habitat remaining from past management practices and changes anticipated in the future are more important considerations than total population size alone. The Service's evaluation of the status of the northern spotted owl is presented in the "Summary of Factors Affecting the Species" section of this document. The Service notes that the present population size is not included as one of the factors.

Comment: A number of commenters questioned how is it possible to conclude that loss of habitat represents a significant loss to the owl if there is no reliable estimate of remaining suitable habitat in the Northwest. Further, if there are no estimates of historical owl population numbers, how one can make reasonable assumptions regarding the impacts of timber harvesting on the status of the owl. Numerous commenters stated that before any action on endangered or threatened status can be taken, the total number of owls must be known. One commenter maintained that the Service has withdrawn proposed rules when it has been demonstrated that population numbers are actually greater than had been previously believed. Since survey data show the spotted owl to be more abundant on Federal and private lands than was previously believed, the commenter recommended that the proposal should be withdrawn.

Service response: Good estimates of the amount of remaining suitable habitat

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are available (USDI 1990, Thomas *et al.* 1990). However, estimates for Oregon and Washington made by the Forest Service are nearly double those made by The Wilderness Society. By either measure, the amount of suitable habitat remaining is limited and is anticipated to decline further if expected losses from planned timber harvesting and natural perturbations continue. A strong relationship exists between the amount of suitable habitat and the abundance of owls (USDI 1990). The continued cutting of suitable habitat and resulting high fragmentation rates are both detrimental to owls. Although the total number of owls is not known, this is of little importance as the Service has solid evidence of a drastic population decline in owl numbers as a consequence of sharp declines in suitable habitat and increasing habitat fragmentation. The Service believes that the dynamic changes in the population are more important than the size of the population in assessing long-term viability. Although not all estimates of the amount of historical suitable owl habitat agree, it is clear that the net amount has declined dramatically over what was available historically.

Distribution of Owls

Comment: One commenter stated that the assumption that 90 percent of owls are on Federal land must be re-evaluated. The commenter noted that it was assumed that few spotted owls occurred on National Parks and Wilderness Areas, yet surveys during 1988 in Yosemite, Sequoia, and Kings Canyon National Parks for the California spotted owl found relatively high densities (Roberts *et al.* 1988, Roberts 1988). In this commenter's opinion, survey efforts for national forests in Regions 5 and 6 of the Forest Service are woefully behind, and no National Forest in Oregon or Washington has surveyed 100 percent of its suitable owl habitat.

Service response: According to the latest summary of survey results, approximately 90 percent of the known spotted owl pairs occur on Federal land (Thomas *et al.* 1990); the proposal relied on a similar estimate. The National Park Service estimates that fewer than 100 owls exist in its parks within the range of the northern spotted owl. Roberts *et al.* (1988) dealt only with the California spotted owl, not the northern subspecies, and his study is therefore not directly applicable to the Service's decision on this proposal. The Service acknowledges that no National Forest has surveyed 100 percent of its suitable owl habitat. However, complete survey data are not required for the Service to reach a determination on the status of the northern spotted owl.

Comment: One commenter suggested that the California studies reveal that the owl is apparently expanding its range.

Service response: Owls had been assumed to inhabit private lands, however surveys had not been conducted previously. The recent studies in California were within the known range of the species and confirm the presence of owls on private lands. There is no evidence to suggest that the owl is expanding its range.

Correlation of Decline in Old Growth and Spotted Owl Population

Comment: Several parties noted that the Status Review Supplement assumes that the projected decrease in old-growth forests will result in a corresponding reduction in the owl population and that historical numbers were much higher; they considered this to be an incorrect and unproven assumption. Further, if there were 41.2 million acres of suitable owl habitat historically, at the turn of the century there would have been about 8,950 pairs. This population estimate does not add up with the historical estimate presented in Figure 6 of the Status Review Supplement, according to one commenter. As stated by this commenter, the spotted owl population has not been shown to be declining because historical population estimates relied on the incorrect assumption that the number of spotted owls could be directly correlated with the number of acres of old growth. One commenter maintains that the estimates of northern spotted owl historical population numbers are not credible. One person referenced a comment made by a reviewer of a draft of the Status Review Supplement who noted that without historical population numbers, the current population size is meaningless. The commenter stated that the review team realized this and fabricated a linear relationship to obtain an historical population figure. According to one commenter, the Status Review Supplement fabricated historical old-growth estimates to enable the Review Team to claim massive spotted owl population declines without considering that forests are dynamic systems and that they will regenerate once cut. Further, the commenter questioned the assumed linear relation between old growth and spotted owl populations because it does not consider that owls use young-growth forest. Also, the commenter stated that it has been shown that suitable habitat can be maintained through existing timber harvesting methods (Irwin 1989b, Smith 1989, Gould deposition).

Service response: The Service acknowledges the difficulty of estimating how many northern spotted owls existed in historical times, and did not base its determination of the status of the northern spotted owl on estimates on historical numbers. Further, the Status Review Supplement estimated there were 14–19 million acres of old-growth historically in Washington and Oregon, not 41.5 million acres as the commenter suggests. However, ample evidence indicates that the northern spotted owl prefers forest habitat with old-growth characteristics. As there has been a net loss of suitable habitat, the Service believes it is reasonable to conclude that overall owl population numbers have declined. The Service did not fabricate historical old-growth estimates to substantiate a significant decline in the owl population. The Service acknowledges that forests can regenerate after harvesting but notes that rotation ages are such that throughout most of the range of the owl, stands are re-cut before sufficient time has elapsed for them to obtain the structural characteristics of suitable owl habitat.

Comment: Another commenter said that the conclusion that the owl population will continue to decline because of timber harvesting is speculative as the Service has not defined "biologically effective" owl habitat.

Service response: From the substantial data relating habitat use to availability, it is apparent that suitable (or effective) spotted owl habitat contains structural characteristics commonly associated with old-growth forest. These attributes are described in the Background section of this document. The Service has shown that northern spotted owls are rare or absent in regions where stands less than 80 years old cover more than 80 percent of the area, and it has shown that such areas will increase due to timber harvest activities, if current land use trends continue (see Discussion under Factor A).

Comment: A commenter was concerned that the owls seen today reflect the habitat conditions of 5–15 years ago and may say nothing about what will happen to the next generation because there is a time lag between loss of habitat and reduction in owl population size. Hence, the future may be even more bleak according to this commenter than the presence of 1,500 known pairs indicates.

Service response: The Service shares the concern expressed in this comment.

Comment: One commenter noted that because the Status Review Supplement found that many suitable habitats are not occupied every year, he believes that this contradicts the assumption that owl numbers are correlated with the amount of old-growth acreage. According to this commenter, most population experts disagree that the number of spotted owls can be calculated based on the number of old-growth acres.

Service response: The Service believes that convincing evidence exists showing that the abundance of northern spotted owls is correlated with the amount of old growth present in an area (see discussion under Factor A). There is no reason to expect that northern spotted owls will occur in every tract of suitable habitat every year because many patches are now small and isolated. Furthermore, some surveys are not sufficiently intensive to detect every owl present, so some reported cases of suitable habitat being vacant may be due to not detecting birds. The Service agrees that the actual number of northern spotted owls present in an area cannot be calculated from the amount of old growth present, and the listing decision does not rely on any such calculations.

Issue 15. Habitat Use

Habitat Preferences

Comment: A number of commenters indicated that the owl's preference for old growth in northern California has not been demonstrated. One comment reported that studies by industry organizations found northern spotted owls using 40 different vegetative types, 70 percent of which were not old growth. Several commenters said that old-growth Douglas-fir forests have only been present for 200 years because prior to that time, Indians burned the forests on the valleys and mountains. These commenters questioned where the owl had resided. A commenter noted that preservationists did not object in one instance to logging within 60–70 acres around a pair nesting in a second growth area and asked how owls can be considered endangered in old growth and surplus in second growth. Several commenters suggested that the owl's assumed preference for old growth in Northern California also is not shown. A number of individuals questioned why the spotted owl should be entitled to preferred habitat instead of just what it needs.

Service response: After reviewing all available data, the Service has concluded that northern spotted owls are closely associated with old-growth forest or forest with old-growth structural and vegetational characteristics (for details, refer to background section and Factor A). Northern spotted owls in northern California are found in areas having remnant old growth or in situations where site conditions and tree species composition were such that stands attained the characteristics usually associated with old growth at relatively young tree ages (Pious 1989, Kerns 1988, Blakesley *et al.* 1990b).

No evidence was presented to substantiate the claim that old growth was not present prior to 200 years ago. The Service is of the opinion that it would be unreasonable and illogical to conclude that Indians burned all forests approaching or more than 200 years of age.

Whether or not preservationists failed to object to logging activities associated with a particular timber sale has no bearing on the Service's decision on the proposal.

Studies by Sisco and Gutierrez (1984) and Solis (1983) demonstrated selection for old-growth forest by radio-marked northern spotted owls. Results from an additional study (Kerns 1989a,b) examining habitat use of radio-marked owls in coastal redwoods are inconclusive due to small sample sizes at this time. Kerns (1988) noted that 78 percent of the vegetative components in which owls were located in northern California, while not 200+ years of age, had many of the habitat characteristics of old growth. Work by Pious (1989) in coastal redwoods also demonstrated the association of owl roost sites with a multi-layered canopy, a characteristic of old growth forests. The Service maintains that the association of northern spotted owls with forest having old growth characteristics, including multi-layered canopy, large trees of varying species and size, and down logs and snags, is clearly demonstrated in northern California, and that these structural characteristics are similar to those associated with old growth.

It is the Service's opinion that although owls were documented in sites in northern California that did not meet the definition of old growth given in the proposal as to age (generally >200 years), the site did contain the structural characteristics identified in the proposal as constituting suitable habitat. As discussed in the Background section, the Service believes that spotted owl habitat is more appropriately defined by structural and vegetational attributes than by age. Given the preponderance of data indicating that northern spotted owls, when given the opportunity to select from a variety of habitat types within their home range (USDI 1990), spend a disproportionate amount of time in older forests, the Service contends that attributes of old-growth forest are critical to owls. Hence, the Service believes that the northern spotted owl's long-term viability is related to the availability of suitable habitat. Further, the Service maintains that a strong association or preference demonstrates biological needs, particularly in the absence of significant numbers of owls in young forests throughout the range of the owl. In the Service's opinion, preferred habitat is more likely to provide for maintaining owls on a long-term basis because of higher reproductive and survival rates than would lower quality habitat.

Comment: Several commenters objected to the Status Review Supplements' use of data from Oregon and Washington to support conclusions in California, arguing that the climate and prey base are different. One commenter noted that California forests are more complex with respect to plant species composition and tend to have uneven size classes in even-age forests in contrast to Oregon and Washington. Commenters also pointed out that non-Federal clearcuts in California are usually 80 acres, cannot legally exceed 120 acres, and must be separated from adjacent clearcuts by a minimum of 300 feet of forest area. The commenter continued that in Oregon and Washington, clearcuts of hundreds of acres are not uncommon. Several commenters wrote that in California, watercourses and lakeside protection zones, ranging from 50–200 feet, must retain 50 percent of overstory canopy and, therefore, provide corridors through many clearcuts.

Service response: The Service agrees that data from different physiographic provinces in Oregon or Washington, particularly with respect to the use of age only as an indicator of forest stand characteristics, may not be directly applicable to California; the same may be true between Oregon and Washington. The Service likewise agrees that data from California are not entirely applicable to Oregon and Washington. The Service maintains that although there exist differences both in tree species composition and growing conditions across the range of the northern spotted owl, there nonetheless exists strong evidence that owls are associated with structurally diverse habitats with old-growth characteristics.

While the Service recognizes there exist regulatory mechanisms specific to

timber harvest on private and State lands in California (as well as in Oregon and Washington), such as provisions for streamside corridors and restrictions on sizes of clearcuts, these afford only incidental protection to northern spotted owls on private lands. The Forest Practice Act of California [4513(b)] does state that the "goal of maximum sustained production of high-quality timber products is [to be] achieved while giving consideration to values relating to * * * wildlife * * *," but as noted by K. Delfino, California Division of Forestry, "The Department does not have any specific direction for spotted owl management" (letter of December 14, 1989, to Jack Ward Thomas, Chairman, Interagency Spotted Owl Scientific Committee). Although the Service recognizes that watercourse protection zones are an integral part of any habitat protection scheme for northern spotted owls, the protection they afford by themselves is minimal.

Both the Forest Service and Bureau of Land Management have policies regarding the maximum size of clearcuts and the circumstances under which areas adjacent to clearcuts can be harvested. Larger clearcuts are permitted in instances of salvage operations arising from blowdown, fire, or insect infestation. Also, Federal policies provide for streamside protection zones for streams meeting certain criteria. Both Federal agencies maintain that their harvesting policies are at least as stringent as those of the respective states. State and Federal regulations and policies are discussed in greater detail under Factor D in the Summary of Factors Affecting the Species section.

Comment: Comments pertaining to northern spotted owl habitat preferences and usage included statements that owls do not require old-growth forest to survive and that information is inadequate to establish the actual habitat needs of the owl. According to a number of commenters, there are no data showing that owls occur in old growth more frequently than in other forest types. Several commenters stated that reports on use of macro-habitat were employed to support the preference of owls for old growth are incomplete and did not compare owl use in a statistically valid manner. One commenter maintained that the Status Review Supplement asserts that only large patches of old growth are biologically effective habitats and relied on only four reports for this conclusion. Further, the commenter stated that the Service should not have relied on these reports because Allen (1988), Forsman (1988), Forsman *et al.* (1984), and Irwin *et al.* (1989d), do not provide appropriate bases for this conclusion. Another commenter stated that the Status Review Supplement failed to mention the work of Gutierrez and Call (1988) and Gutierrez and Bias (1988) on the California spotted owl and habitat use. A commenter noted that Garcia (1979) found 2, 2, 2, 3 and 21 pairs in 60–80, 81–100, 101–120, 121–200, and 200+ year-old forests, respectively, and that data on prefcrences for old growth have been taken out of context.

Service response: The Service disagrees with the contention that owls do not use old growth more frequently than other forest types and that the studies used by the Service to conclude owls select old growth are not statistically valid. Data from use versus availability studies clearly demonstrate strong selection by owls for old-growth forest in the Oregon Coast Range, Olympic Cascades, Washington Cascades/Olympic Peninsula and Klamath Provinces (USDI 1990). Further, only studies that evaluated use versus availability in a statistically rigorous fashion were considered by the Service. The studies evaluated all used widely accepted statistical tests (USDI 1990). Excluded were studies that provided no statistical basis for concluding selection for or against habitat types. While providing a rich collection of anecdotes and incidental observations, these latter studies did not evaluate the relation between northern spotted owls and forest types in a statistically rigorous fashion.

The Service agrees that demonstration of true dependency requires a well-designed experiment, but maintains that the evidence overwhelmingly demonstrates strong association between owls and old-growth forest. If owls did not select so strongly for old-growth forest, more evidence indicating non-random use of other forest types might have been evident. Use of large patches of habitat is a consequence of the large home ranges used by owls, which range from a median size of 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990).

Work by Gutierrez and Call (1988) was referenced in the Status Review Supplement (USDI 1989). That study, and another by Gutierrez and Bias (1988), were on the California spotted owl, a different subspecies not the subject of the proposed rulemaking.

Data often are amenable to a variety of analyses, including an X^2 test. Under the hypothesis of independence, pairs of northern spotted owls should be randomly distributed among the 5 age categories of trees. Thus, if owls were randomly distributed across the landscape, and exhibited no selection for a particular forest type, the expected number of pairs in each age category would be 30 (the total) divided by 5 (the number of age categories)=6. Using the data provided, an X^2 statistic of 47.0 having 4 degrees of freedom can be completed. Comparison to an X^2 distribution table indicates this value is very unlikely ($P<0.001$) and the hypothesis of independence is rejected. Given that 21 of 30 pairs were found in forest >200 years of age, and that this one category contributed most to the X^2 statistic, a reasonable conclusion would be that the paired owls in this study were associated with forest >200 years of age.

However, such an analysis is not strictly correct because it assumes that the 5 age categories themselves are equally distributed across the landscape (i.e., each age category comprises one fifth of the total forest). When the proportional makeup of the forest types is not equal, pairs of owls cannot be equally distributed across the landscape. Under the hypothesis of independence they would be distributed in proportion to each of the forest types. Consequently, the expected values used to estimate the X^2 statistic must be weighted by the proportional makeup of the habitat types across the landscape. Because Garcia (1979) did not present the proportional makeup of the landscape on which he conducted his study, it is impossible to weight the expected values in the appropriate fashion. Even though the X^2 value indicates that the owls were not using the age categories in a random fashion, the Service would maintain that the study indicates selection but does not evaluate it in a statistically rigorous fashion. Incomplete knowledge regarding the availability of each of the age categories precludes a complete evaluation of the relationship between the owls and the forest types. When evaluating studies pertaining to habitat use by northern spotted owls, the Service relied principally on those that assessed data in a statistically rigorous manner.

Comment: Another commenter stated that there is some evidence indicating that a handful of spotted owls "preferred" forests in the pole/medium timber category (Sisco and Gutierrez 1984), 61–80 year old stands (Forsman *et al.* 1984), and 50–100 year old class (Carey *et al.*, in press).

Service response: Data summarized by the Service and presented in the Status Review (USDI 1990) indicate that only 3 of 61 owls (4 percent) having young forest in their home range exhibited selection for that forest type. Forty-five of the same 61 birds selected against young forest. The Service considers the numbers exhibiting selection for young forest small and not indicative of the habitat needs of northern spotted owls.

Comment: One commenter stated that the second highest density of spotted owls in 1989 was found on the Miller Mountain study area, near Medford, Oregon; an area with little old growth. The commenter also indicated that no habitat preferences have been demonstrated for forest stands more than 50 years old. Moreover, he stated that earlier studies only compared stands less than 50 years of age to those more than 200 years old; but that new studies document that use of stands 50–200 years old is equal or higher than expected based on availability. Further, according to this opinion, no study documents that spotted owls prefer old growth to these intermediate successional stage forests.

Service response: The Service accepts the density estimate of owls on the Miller Mountain study area in 1989, but notes that Wagner (letter of 18 April 1990) disagreed that the Miller Mountain Study Area can be characterized as an area with little old growth. Wagner estimates that approximately 29 percent of the study area can be considered older forest, a value he considers relatively high for unreserved commercial forest land in that area.

The Service maintains that selection has been demonstrated for stands >50 years of age. Sixty-eight of 61 owls having old-growth forest >200 years of age in their home range selected for that forest type (USDI 1990). Only 3 of 61 owls having forest <70 years of age in their home range selected for that forest type. While data indicate that 41 of 61 owls used mature forest 70 to 200 years of age in proportion to its availability, only 11 of the 61 owls selected from mature forest. This value is offset somewhat by 9 owls that selected against use of mature forest. These studies clearly demonstrate that owls select forest >50 years of age.

Comment: Frank Wagner (OCWRU, Oregon State University) submitted additional data on his research on spotted owls in the Elk Creek watershed near Medford, Oregon. Wagner offers that habitat use data from the Miller Mountain Study Area portion of his study indicates that spotted owls select old growth in excess of availability, avoid regenerating forest, and have various responses to intermediate age forest. He suggests that initial entries of three-stage partial cuts or heavier entries (greater than or equal to about 30 percent basal area removal) diminishes habitat suitability significantly for at least several decades. In contrast, light partial cut entry (less than 20 percent basal area removed around 25 years ago) was used both in excess and in proportion to its availability.

Service response: The Service also believes that conclusions from Wagner (letter of 18 April 1990) suggesting that in his study area northern spotted owls select for old-growth forest, select against regenerating forest and use intermediate-aged forest in a variable fashion are premature and unwarranted. Thus far habitat types within individual owl home ranges in his study area have not been classified, making it impossible to determine availability and hence evaluate use.

Data were not presented supporting the contention that three-stage partial cuts or heavier entries diminished habitat suitability for several decades, and the Service thus is unable to verify its accuracy.

Comment: One commenter indicated that the Bureau of Land Management found 10 pairs of spotted owls in a drainage that is a highly fragmented stand of timber of all age classes with most of the remaining timber second growth Douglas-fir, 80–150 years old. Of these 10 pairs, four successfully reproduced in 1989. One commenter stated that since there are no 2,000-acre tracts of old growth to support the birds, how can they survive in this area?

Service response: The estimate of 2,000 acres per pair of northern spotted owls was used to establish the Spotted Owl Habitat Area network on Forest Service Lands. The intent was not to state that precisely 2,000 acres of old growth was needed before owls could be expected to survive and reproduce. Clearly, there exists variability in the requirements of individual owls, as well as of owls in different physiographic provinces. For example, median home range size varies from 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990). While the Service accepts that 4 to 10 pairs successfully bred in areas containing some young growth Douglas-fir, it cautions against the inference that without a 2,000 acre block of old growth owls are not expected to be present. Clearly some owls can live successfully in areas containing <2,000 acres of old-growth forest while others require more than 2,000 acres. Moreover, although highly fragmented, the stand referred to in the commenter's letter contained timber of all age classes, with most of it being young-growth Douglas-fir 80 to 150 years old. It is anticipated that Douglas-fir of that age class would have developed structural characteristics commonly associated with northern spotted owl habitat. Hence, the use of such an area by owls would not be unexpected.

Comment: The Forest Service commented that no reproductive pairs in Region 6 were found in what was considered unsuitable spotted owl habitat; however, seven owls were located in what was deemed unsuitable habitat in seven random sample areas. In six of these cases, the responses were single birds, one of which eventually paired with a bird in suitable habitat. The seventh response was a pair located above what was believed to be the elevational limit for the spotted owl in that area.

Service response: Observation of individual birds in habitat considered "unsuitable" is not unexpected in territorial birds. Such birds are likely "floaters" searching for mates and/or territories.

Comment: One commenter included results of a study by Miller, Speich, and Irwin (1989) on the status of the owl in a managed forest mosaic in the McKenzie Resource Area, Eugene Bureau of Land Management District. These researchers did not observe that the birds foraged more in old growth, but did note that use of 120–130 year old stands was greater than expected on the basis of availability. In this study, trees 80–99, 60–79, and 40–59 years old were used in proportion to their availability, whereas trees 0–19 and 20–39 years old were used less than expected. The study was too brief to provide detailed data on owl reproductive success, although the author noted that little reproduction has been observed during the last three years in this area.

Service response: The Service accepts the comments.

Comment: A radio telemetry study of spotted owls was conducted between 1982 and 1987 on the Olympic, Okanogan, Gifford Pinchot, and Mt. Baker-Snoqualmie National Forests (Hays *et al.*, 1989b). Researchers found that old growth, large saw timber (dominant trees 20–34 in dbh, fewer canopy layers and less dead woody material), and small saw timber (dominant trees 13–20 in dbh, little or no dead woody material) were the only cover types used more than expected by availability by any of the 10 owls studied. Use of small saw timber was variable. There was no significant preference for young growth and recent clearcuts.

Service response: The Service accepts the comments.

Comment: The Bureau of Land Management stated that the number of known sites on Bureau of Land Management land increased from 350 to 461 from 1988 to 1989, largely as the result of an increased survey effort. Further, the Bureau of Land Management commented, "Clarification is required to correct the misconception that most of these new sites are being found in all forest successional stages, including even-aged young stands. The new sites located on Bureau of Land Management lands in western Oregon have been found to be strongly associated with optimum habitat (suitable) 80 year-old or greater forests that have the similar structural components of older forests."

Service response: The Service accepts these comments.

Comment: The Bureau of Land Management commented that its banding studies revealed that a pair of owls may remain in a drainage following a timber sale, but banding often demonstrates that it is a new pair of non-breeding adults. The unmated floaters seem to be numerous, especially in less suitable habitat. The Bureau of Land Management reported that some pairs raised young in habitat that was generally thought to be unsuitable because of partial cutting or low quantities of nearby old growth or mature trees. However, the sample size was said to be too small to generalize as to what proportion of time this occurred.

Service response: The Service accepts the comments.

Comment: A researcher reported on results of a recent study on owl habitat use in the Willamette National Forest in the central Oregon Cascades (Miller and Meslow 1989). All owls used old growth for roosting more than expected on the basis of availability; mature growth stands were used in proportion to availability, and younger growth was either not used or was used significantly less than predicted on the basis of its availability. While foraging, 13 of 14 owls used old growth significantly more than on the basis of proportion of availability, and one used it in proportion to availability; mature growth was used in proportion to its presence, but in several cases at a significantly higher rate. Younger growth was used significantly less than would be predicted on the basis of availability. Some of these areas had up to 69 percent young growth, defined as trees 10 to 79 years of age.

Service response: The Service accepts the comments.

Comment: Results of a nest and roost site selection study in northwest California during 1985–1989 were submitted by Blakesley et al. (1990b). Conifer forest with trees greater than 53.3 cm was selected by owls significantly more than expected based on availability. Hardwood stands and stands dominated by smaller trees were not used or were used in proportion to their availability. Spotted owls preferred the lower third of slopes, used the middle third in proportion to availability, and avoided the upper third for roosting and nesting.

Service response: The Service accepts the comments from Blakesley *et al.* (1990b).

Comment: The Timber Association of California submitted additional comments which were received by the Service on April 19, 1990, shortly after the close of the last comment period. In its letter, the Timber Association of California described what it considers to be suitable nesting, foraging, and roosting habitat for spotted owls in northern California. According to the Timber Association of California, for example, nesting habitat generally includes an average canopy closure around the nest stand of over 80 percent, total conifer and hardwood basal areas within nest stands generally average 330 square feet/acre, and diameter of the nest tree is usually 25–55 inches dbh. Also according to the Timber Association of California, attributes to roosting habitat appear similar to those of nesting habitat, but are more flexible; for instance, canopy closures are usually more than 40 percent and the surrounding area can have a variable canopy closure ranging from 19–100 percent. According to this comment letter, in total basal area of conifers and hardwoods, roost stands average 330 square feet/acre. The Timber Association of California commented that the requirements for foraging habitat seem to be the most variable with canopy closures as low as 10 percent appearing usual and that foraging habitat variability over the area seems to be important.

Service response: The Service accepts the comments from the Timber Association of California about nesting and roosting habitat, but disagrees with the statement by the Timber Association of California that foraging habitat is the most variable of the age classes studied. The Service maintains that data from Kerns (1989 a, b) are insufficient in scope to allow for a statistically rigorous evaluation of habitat use versus availability and rejects as premature his conclusions that northern spotted owls are flexible with respect to habitat use (USDI 1990). The Timber Association of California also maintains that Appendix B to its comments (Timber Association of California 1989b) documents a broader range of habitats used for foraging than had previously been indicated. The Service believes this to be incorrect because Appendix B deals with habitat type descriptions and roosting and nest site descriptions, not foraging habitat. Available range-wide studies of foraging owls clearly demonstrate that owls select old-growth forest for foraging (USDI 1990). The Service therefore does not accept the comment that northern spotted owls in California are highly flexible in the selection of habitat for foraging.

Use of Young Growth

Comment: A number of commenters stated that spotted owls adapt and reproduce in second growth. Another said that it was proven that spotted owls nest anywhere and cannot differentiate between old growth and second growth. One commenter noted that in a study undertaken in northern California by the Pacific Lumber Company, the vegetation components where owls were found comprised 22 percent of true old growth. According to this commenter, the remaining 78 percent of vegetation used by owls may contain some of the characteristics of old growth. Young growth in many of these stands was 60–80 years old, and managed timberlands on the Pacific Lumber Company land that are not true old growth by age are being used by the spotted owl (Kerns 1988; 1989 a, b). One commenter stated that results from studies conducted under the auspices of the Timber Association of California broaden existing young-growth owl data. Further, the commenter maintained that several reports cited in the Status Review Supplement actually show substantial use of young growth by owls (Solis 1983; Forsman 1976; 1986, Irwin et al. 1988, 1989d; Kerns 1988; Meslow et al, 1986). Additional details pertaining to recent studies of the northern spotted owl in young growth are provided in a following section entitled "New Information."

Service response: The Service accepts that northern spotted owls may reproduce in second growth. However, care must be exercised when using phrases like "second growth" and in concluding that owls have adapted to "second growth." This care is necessary primarily because most forests within the owl's range are to some degree young growth. Historically, a variety of natural and man-induced factors have altered forest composition and created a mixture of older-aged and younger-aged stands. The preponderance of data indicate that northern spotted owls preferentially select old-growth forest for foraging and roosting and have in general higher densities in areas containing high amounts of old-growth forests (USDI 1990). If the owls were equally "adapted" to both "second" and "old" growth, then distribution and use patterns would indicate equivalent usage rather than the strong association with old-growth forests documented in the Status Review (USDI 1990).

Although the Service does not claim to understand the behavioral mechanisms by which northern spotted owls differentiate between old and second growth, the fact that 66 of 81 owls having a mixture of old, mature, young, and pole/sapling forest in their home range selected for old-growth forest (USDI 1990) suggests some form of discrimination by owls is occurring. Fifty-eight of 79 nests of northern spotted owls in northern California found by Blakesley *et al.* (1990b) were in forest defined as large sawtimber and old growth, while 21 of 79 were found in forest defined as small sawtimber. No nests were found in seedlings and saplings or pole timber. Although there appears to be some variability in nest site characteristics, nests are generally found in stands having a well-developed multi-layered canopy (USDI 1990). The Service does not accept the comment that owls can nest anywhere or that they cannot differentiate between old and young forest.

The Service accepts the comment that 22 percent and 78 percent of the lands surveyed by the Pacific Lumber Company and found to support owls in California were true old growth and stands containing attributes of old growth, respectively, but again notes that data from Kern's (1989 a, b) study are insufficient to analyze use patterns in a statistically rigorous manner. The Service further notes that the "young growth" on these lands is mostly redwood in coastal California, and that even though defined as "young growth" by Kerns (1988; 1989 a, b), is not characteristic of younger forests in other regions. As noted by Kerns (1988), redwood stands 60 to 80 years of age have many of the characteristics of mature and old Douglas-fir forests. Thus the age categories presented may be accurate for redwoods, but it would be incorrect to extrapolate these age classes to other forest types like Douglas-fir.

The Service contends that structure rather than age *per se* is the more important criterion. As mentioned previously, data from the Timber Association of California and other California studies indicate that owls are associated with structurally diverse habitat (USDI 1990). While these structural characteristics may arise because of repeated harvest entries (interior California) or better growing conditions (e.g., coastal redwoods), they occur in forests structurally similar to mature and old-growth forests. Thus, the Service believes that rather than apply the term "young" to California private forest lands, it is appropriate to examine structural characteristics to define owl habitat.

Comment: One commenter suggested that without surveying young-growth forest, one cannot assume the spotted owl prefers old growth. Numerous commenters maintained that because spotted owl research has been concentrated in old growth, the data are biased in favor of locating owls in old growth.

Service response: In the proposal and the Status Review Supplement (USDI 1989), the Service considered and included results of research studies that surveyed forests of all age classes. Bart and Forsman (1990) estimated the abundance of spotted owls in tracts lacking old-growth forest but containing extensive 50 to 80 year-old stands ("young-growth tracts") and tracts containing large amounts of old-growth forest ("old-growth tracts"). The tracts were well-distributed throughout the range and each had been surveyed 3 or more times for at least one year. Young-growth tracts varied in size from 5 to 277 mile^2 and old-growth tracts from 17 to 113 mile^2. Single owls were found on only two of the young growth tracts for a maximum estimate of 0.02 owl per mile^2. Pairs were rare or absent in these tracts, occurring on only 2 sites, for a maximum estimate of 0.01 pair per mile^2. In contrast, maximum abundance in old-growth tracts was 0.19 per mile^2 for single birds and 0.36 per mile^2 for pairs. Mean number of pairs per square mile was 0.01 on young-growth tracts and 0.14 on old-growth tracts. These data are not biased against younger forest and clearly demonstrate that northern spotted owls are found in old-growth forest in far greater numbers than in younger forest.

Abundance of owls on young growth on private lands in California has been described by Irwin *et al.* (1989b). Their review included surveys of 713 mile^2 of land, most of which was in stands <100 years of age. Most of the stands in the redwood zone were former clearcuts. The other surveys were primarily in selectively cut stands. The estimated density for the study area was 0.35 owls per mile^2.

In Washington, Irwin *et al.* (1989d), surveyed approximately 277 mile^2, of which 52 percent was stands 40 to 80 years of age, and found only two pairs (one in the only large block of old growth on their study area) and an average of 4 single owls per year during their 1-year study. Estimated abundances from these data are 0.006 pair per mile^2 and 0.03 single per mile^2.

New data received during the comment period greatly expands the coverage of younger-aged forests (e.g., Bart and Forsman 1990, Timber Association of California 1989b). When coupled with studies reviewed in the Status Review Supplement (USDI 1989), the studies cover a broad spectrum of habitat types, including young growth. The Service therefore considers young-growth surveys to be adequate in coverage and does not accept the comment.

Comment: According to one party, data were misinterpreted for some young-growth surveys. Another comment was that surveys by Forsman *et al.* (1977, 1986, 1988) were too brief and did not include a sufficiently broad range of forest age classes to rule out the presence of spotted owls in young forest. One commenter said that the Status Review Supplement misinterpreted the study by Meslow *et al.* (1986) in that only three of five sites were evaluated. The commenter stated that the use values only ranged from 22–33 percent compared to the 3–6 percent availability of old growth. Also, the Status Review Supplement, in the commenter's opinion, failed to note that the nests for three of these sites were in old growth, so one would expect the owl to tend to be found in this area more frequently. According to this commenter, because this study showed owls used young growth 67 to 78 percent of the time, it cannot be concluded that owls use old growth a significant part of the time. This commenter further maintained that the utilization of young growth contradicts the impression elsewhere in the Status Review Supplement that data show that spotted owls use primarily old growth out of proportion to its availability.

Service response: Although work by Forsman *et al.* (1977) covered a relatively short duration, from 12 to 28 July, later surveys by Forsman (1988) lasted from 31 March to 21 July. Missing from the surveys were stands 70 to 110 years of age although stands with younger-aged trees were relatively well covered. The Service does not believe

data were misinterpreted in some young-growth surveys. Since then, work by Bart and Forsman (1990) evaluated density values from areas having stands 50 to 80 years of age. Density of pairs in these areas was approximately 1 per 300 mi^2. In contrast, density of pairs in areas having older forest was approximately 40 times greater.. Although information on owls in younger forests may have been limited in the Status Review Supplement, information since then clearly demonstrates that northern spotted owls are not present in large numbers in young forests, with the possible exception of coastal California redwood forests (USDI 1990). The Service also believes that a wide range of age classes has been covered in sufficient detail to justify the conclusion.

Studies of habitat selection by northern spotted owls have been accomplished mainly through radio-telemetry studies. Proper analysis of the data requires an assessment of the availability of forest types in an area as well as some quantification of use of the area. Simply stating the amount of time a forest type was used without assessing the availability of that forest type does not provide a basis for judging preferential use of habitat types. In the Meslow *et al.* (1986) study, use of old-growth forest by owls ranged from 22 percent to 33 percent, even though old-growth forest comprised only 3 percent to 6 percent of the landscape. This means use in relation to availability of this forest type was greater and conversely, that use of young forest was less, than expected. Young forest, although used by owls 67 percent to 78 percent of the time, comprised 94 percent to 97 percent of the landscape. The Service considers the information that 3 of 5 nest sites were located in old growth and that the owls used these areas to be an indication that northern spotted owls select for old-growth forest. Biased use estimates would occur only if sample locations were consistently taken when the birds were at the nest rather than when the birds were away from the nest. Study protocol precluded this. The Service disagrees with the statement that utilization of young growth contradicts data elsewhere, and maintains that data such as these support the position that owls select for old-growth forest.

Comment: Several commenters stated that the Status Review Supplement does not adequately discuss other studies in younger growth forests. For example, maintaining that the Status Review Supplement dismisses the importance of the findings of Irwin (1987) and Kerns (1988) who found owls using young-growth forest by stating that these sites had old-growth characteristics. One commenter wrote that the Status Review Supplement failed to discuss the 29 nest sites in young growth that were less than 80 years old, five of which were in stands that averaged 257 years old (Irwin *et al.* 1989c). Another commenter said that seven of the 1988 surveys contradict the Status Review Supplements' assumptions regarding the northern spotted owl. For example, stating that Ganey (1988) reports that the Mexican spotted owl requires larger home ranges when there is more old growth and Roberts *et al.* (1988) report high numbers of California spotted owls in Yosemite National Park. The commenter maintained that relatively high numbers of owls were found in Yakima Indian Reservation lands (letter from C. Palmer of the Yakima Indian Nation to B. Mulder, FWS, 1989). These two reports, according to the commenter, contradict a statement in the proposed rule that National Parks and Indian lands generally do not contribute significantly to spotted owl populations. According to this commenter, the reports by Ganey (1988), Roberts *et al.*, (1988), Miller (1989), Gutierrez and Call (1988), Irwin (1989), and Kerns (1988) contradict either the assumption in the Status Review Supplement that young growth is not suitable habitat or the assumption that habitat fragmentation arising from timber harvesting is detrimental to juvenile survival.

Service response: In the Service's opinion, the proposal and 1989 Status Review Supplement adequately addressed the use of younger forest based upon the data that were available at that time. The 1990 Status Review contains an extensive review of the abundance and productivity of northern spotted owls in young stands, including a review of Irwin (1987) and Kerns (1988). In Washington and Oregon, surveys have repeatedly shown that owls are rare or absent in stands less than 80 years old (see Discussion under Factor A). In Irwin's (1989a) study, 53 nest sites were examined, and nest tree age varied from 67 to 700 years. Many of the stands had been logged in the past several decades, using selective harvest methods, rather than clearcutting. As discussed under Factor A, it is well established that northern spotted owls sometimes persist in areas harvested by selective cutting methods. Survey work in 1988 on the Yakima Indian Reservation noted 10 individual owls (including 4 pairs), a relatively small component of the overall population estimate. The Service maintains that when compared to the numbers and amount of suitable habitat on Forest Service and Bureau of Land Management land, the contribution from National Parks and Indian land is relatively small. Miller (1989) is discussed in the Status Review Supplement. As discussed above, the Service disagrees with the commenter who stated that 7 of the 1988 surveys contradict the Status Review Supplement assumptions regarding the northern spotted owl. The reports by Ganey (1988), Roberts *et al.* (1988), and Gutierrez and Call (1988) do not refer to the northern spotted owl but rather the California spotted owl or Mexican spotted owl, different subspecies. The stands studied by Irwin (1989a) and Kerns (1988) had been selectively harvested, contained remnant older trees, or were older than currently anticipated rotation ages. The study by Miller (1989) pertained to owl abundance and reproductive success in areas partially covered by older forest. The 1990 Status Review shows clearly that abundance and productivity decline sharply as the proportion of young forest in an area increases (see Discussion under Factor A).

Comment: One commenter suggested that the proposal be revised because the statement "no known reproductive pairs in second growth" now needs to be amended. The commenter noted the following: 11 sites on Bureau of Land Management land in western Oregon had owls breeding with no old growth in the habitat; seven other pairs bred in sites with less than 100 acres of old growth which amounted to less than 10 percent of the home range; 30 other sites on Bureau of Land Management land where birds bred in forests with 75 percent young, managed forest; two successful breeding sites on the Rogue River National Forest in relatively young managed forests; two dozen sites where birds were reproducing in mixed-age managed forests in the Wenatchee National Forest. The commenter noted that although many of the owl sites contain some relatively large-diameter trees, they cannot be described accurately as old growth or, on the other hand, as second growth.

Service response: The Service accepts the comment that owls have been observed breeding in second growth. The final rule reflects the available data on owl reproduction in younger growth. The Service agrees that owls have been observed to breed in younger forests and notes that many of the owl sites referred to by the commenter contained relatively large trees. The Service also accepts that it would be inaccurate to describe these stands as either old growth or as young growth.

Comment: According to one commenter, recent data from northern California (Irwin *et al.*, 1989b; Kerns 1989 a, b; Pious 1989) indicate that owls recolonized regenerating forest, some as young as 30 years postharvest in coastal redwood. A commenter stated that ostensibly some harvested tracts that maintained relatively dense (>40 percent) canopies of coniferous timber and hardwoods still retained or developed important structural components (scattered large trees and snags, downed logs, multi-layered conditions) that have allowed for recolonization after 30–50 years. He continued by stating that spotted owls may be present, in part, because timber management practices left a hardwood understory in conifer stands. He speculated that these hardwood stands provide a cooler operative thermal condition than open-canopy situations and are, therefore, more conducive to owl use. The commenter noted that mature stands of Douglas-fir with no hardwood understory are not used. One commenter stated that forests within the mixed-coniferous/evergreen hardwoods and coastal redwood regions in northern California produce suitable habitat within 50–60 years (perhaps earlier in redwood). This commenter maintains that limited evidence from field observations would indicate that the same may be true in mixed-coniferous forest on the east side of the Cascades in Washington because of the relatively high number of owls consistently breeding in forests managed via partial harvests.

Service response: The Service agrees in general with this comment, but cautions that use of the lower limit of the age range (i.e., 30 years post harvest) as an indicator of when habitat may be recolonized by northern spotted owls may not be correct. More confidence could be placed in a mean value. The Service also notes that these forests frequently had remnant older trees that they did not arise as a consequence of large-scale clearcuts, and that the estimate of 30 years is for coastal redwoods only and cannot be extrapolated to other tree species or regions.

Comment: A researcher commented that in a monitoring study of Miller Mountain funded by the Medford District of the Bureau of Land Management, he and his colleagues examined owl use in areas with limited old growth, but relatively large amounts of diverse young forest and previously partially cut stands. They found a crude density of 0.346 adult and subadult owl per square kilometer in one area, and 0.283 in a second (Wagner and Meslow 1989). This compares to 0.127 owl per square kilometer for the central western Cascades of Oregon (Miller and Meslow 1988) and 0.229 owl per square kilometer in northwestern California (Franklin and Gutierrez 1988). During 1989 in the vicinity of Medford, the mean number of young fledged/successful pair was 1.47 and the number of young fledged per pair was 0.437 (n=64) (Wagner and Meslow 1989).

Service response: The Service accepts this comment.

Comment: One commenter believed the Status Review Supplement applied the Fretwell-Lucas-Rosenzweig theory of habitat distribution in birds incorrectly because all the references pertained to passerines (songbirds). Also, according to this commenter, the Fretwell-Lucas concept predicts that average individual fitness may well be equal across a gradient of suitability because density-dependent interactions will reduce average fitness of individuals in the best habitat where populations may be more dense. Hence, the commenter maintains that northern California data collected in 1989 could be interpreted as establishing that managed forests are equally as suitable as is old growth, because densities were high and reproductive rates also appeared to be high.

Service response: The Service does not believe that the discussion in the Status Review Supplement pertaining to the Fretwell-Lucas theory of habitat distribution is invalidated simply because the examples presented were of passerines. The Service notes the other points raised in this comment, but considers them conjecture only.

Is Young Growth As Good As Old Growth for Spotted Owls?

Comment: According to one commenter, as suitable habitat diminishes, ecological density will increase in the short term, even if the population size remains stable, because the individuals will be occupying less habitat; therefore, ecological density is a poor measure of population change over a short sampling period.

Service response: The Service accepts the comment as being in general agreement with existing ecological theory and pertinent to research on the owl.

Comment: Irwin *et al.* (1989d) found a rate of 0.05 response/mile in 40–120-year old forest in southwestern Washington. Sixty percent of the surveyed tract consisted of trees less than 80 years old. The commenter noted that this contrasts with a rate of 0.08 response/mile that Forsman *et al.* (1977) found in surveying the largest and oldest stands. Irwin *et al.* (1989a) found 53 nest sites, all of which were in young growth and many in 70–80-year-old stands. Five were in stands 40 years old. According to this commenter, the Status Review Supplement misrepresented the results of the Irwin *et al.* (1989c) study. He noted that Irwin *et al.*, found that owl responses per mile in younger growth were approximately one-third of that of adjacent old-growth habitat, but 62 percent of his forested area was less than 80 years of age and had a low survey effort. Also, Irwin reported that he did not sample 1,500 miles as mentioned in the Status Review Supplement because some routes were covered 2–3 times, so the actual transect length was less; however, he did not provide a corrected survey length.

Service response: The Service believes that the best way to compare owl abundance is to calculate number detected/mi^2 rather than number detected per linear mile, and Irwin *et al.* (1989d) used the former approach in their final analysis of these data. Irwin *et al.* (1989d) detected 0.01 owl/mi^2 and 0.002 pair/mi^2. They detected one pair in one year in stands less than 80 years old. In the study by Forsman *et al.* (1977) old-growth stands occurred in small, isolated patches, which the authors hypothesized were probably too small to provide suitable habitat. In contrast, for surveys elsewhere in this region on sites where >80 percent of the area was older forest, the average number of pairs/mi^2 was >0.10. Examination of all currently available evidence thus shows that spotted owl abundance in southwestern Washington is much lower in young forests than in older forests. In the Service's opinion it is incorrect to characterize the stands studied by Irwin *et al.* (1989a) as 40–80 years old because they had been selectively harvested, and therefore contained trees of various ages. The nest sites, for example, were in trees varying from 67 to 700 years old.

Comment: One commenter cited relative owl density figures of 0.12 response/survey mile in young growth vs. 0.18 response/mile in old growth (Garcia 1979) to indicate that there is not much difference in densities of owl occurrence between the young- and old-growth stands.

Service response: Garcia (1979) surveyed only 11 km of transect in young forest. Since that time, many more studies, in which much larger areas were surveyed, have been carried out. The results (see discussion under Factor A) indicate clearly that northern

spotted owls are far more abundant in older forest than in stands less than 80 years old.

Comment: One comment provided density figures for stands ranging from 30–80-year-old managed second growth with no old growth to lands with substantial old growth and some fragmentation. On the youngest stands, densities ranged from 0.14 owl/sq. km. to 0.38 owl/sq. km. Areas with some fragmentation but substantial old growth ranged in density from 0.064 owl/sq. km. (Olympic Peninsula) to 0.235 owl/sq. km. on the Willow Creek Study Area in northern California.

Service response: These younger stands were either in the redwood zone and contained both remnant older trees and some stands up to 100 years old or they were in the interior of California and included stands that had been selectively harvested. The Service acknowledges that such stands often do support populations of northern spotted owls. These stands, however, occur on less than 15 percent of the range of the northern spotted owl (see discussion under Factor A). Throughout the rest of the range, even-age harvest methods predominate and the rotation age is expected to be less than 80 years on most areas. There is now abundant evidence that owls are rare or absent in such stands (see discussion under Factor A).

Comment: One commenter noted that about half of the 27 pairs he and his colleagues found in relatively young managed forests in northern California had access to a few trees in small patches of older forests (about 2–3 percent of the sites) (Irwin *et al.* 1989b). Further, this researcher stated that numerous fledgling owls in extensive old growth were observed to have been killed in a severe storm on Memorial Day 1989. Because their surveys started late, it is possible that the number of owls that bred may have been higher, according to this researcher.

Service response: The Service accepts the factual content of this comment, but notes that the speculation that more owls may have bred, is conjecture.

Comment: The Timber Association of California study (1989b) found densities of 0.37 owls/sq. mile or 0.14 owls/sq. kilometer in managed young-growth in northern California. Irwin et al. (1989b) note that these estimates for northern California surveys of private lands are similar to population densities reported in Willow Creek in the Six Rivers National Forest by Franklin and his coworkers (1986, 1987, 1988). Franklin et al. reported densities of 0.33 owls/sq. mile for territories and 0.58 owls/sq. mile for individuals. Industry's preliminary findings on studies over 920,000 acres (360,000 ha) in northern California in second growth noted that the number of fledglings appeared to be greater in second growth of all types than in old growth. One commenter stated that spotted owls were living and reproducing by the 100's if not 1,000's in managed forests.

Service response: The Service accepts the data presented by the Timber Association of California and Irwin *et al.* (1989b).

The assertion that 100's if not 1,000's of owls are living and reproducing in managed forests is essentially correct if managed forests are defined as all forest in the range of the owl. The Service has recognized that approximately 2,000 pairs of owls have been verified throughout the range of the owl (USDI 1990). On nonreserved forest lands available for timber harvest, however, the Service estimates there exist about 1,400 pairs. Whether this estimate represents "1,000's" of owls is a subjective determination, and as such the Service does not accept the comment. Instead, the Service presents the estimate of the number of owls on lands managed for timber production.

Comment: The Timber Association of California submitted comments that its data indicate that timber harvesting in northern California under current regulation and practice does not diminish overall spotted owl density or viability. The Timber Association of California believes that an owl will successfully incorporate substantial clearcut areas into its home range and reconfigure its home range as needed, even relocating its nesting area following timber harvest. Also, according to the Timber Association of California, owls may successfully live in managed forests subject to any combination of silvicultural prescriptions, including those resulting in extensive fragmentation. In the Timber Association of California studies, it was concluded that the limiting characteristics to nesting and roosting habitat are tree size—at least 30 to 40 feet in height, canopy closure—greater than 50 percent, and proximity to water and foraging habitat including appropriate perch sites and prey base.

Service response: Assertions that owls may successfully live in any combination of silvicultural prescription, including those that result in extensive fragmentation, that they will reconfigure their home range and relocate nesting areas, and that harvest practices under current law in northern California do not diminish owl density or viability, remain untested and represent speculation on the part of the Timber Association of California. The Service has reviewed current regulations and policies pertaining to private, State, and Federal land and concludes they are inadequate to provide sufficient protection to the northern spotted owl's habitat (see Factor D in the Summary of Factors Affecting the Species section). The Service does not accept this comment.

Although the Timber Association of California concludes that the limiting factors for owl habitat are trees 30 to 40 feet in height, canopy closure >50 percent and proximity to both water and foraging habitat, these merely represent the lower limits to observed ranges. Mean age of trees in known and presumed nest stands evaluated by the Timber Association of California (1989a: appendix b, Part 2) ranged from 45 to 60 years in coastal redwood and redwood/Douglas-fir stands and 45 to 80 years in interior California stands dominated by Douglas-fir. Canopy closure was 80 percent to 90 percent and 70 percent to 80 percent, respectively. Two hardwood stands containing nests had mean tree ages of 40 to 65 years and canopy closure of 80 percent. Mean age and canopy closure of coastal redwood stands associated with nests in Mendocino County were similar to those reported by the Timber Association of California (44 to >150 years of age; canopy coverages 73 percent to 91 percent) (Timber Association of California 1989b: appendix b, Part 2).

Over 90 percent of the roosts examined by Forsman *et al.* (1984) were in old-growth forest. Studies from the Six Rivers National Forest, California (Klamath province), also indicate that owls roost in habitat containing both an over- and understory component (Solis 1983, Sisco and Gutierrez 1984). Overstory there was dominated by Douglas-fir >45 inches dbh and the understory by hardwoods such as tanoak (*Lithocarpus densiflorus*) 4 to 20 inches dbh and 15 to 70 years of age. Mean estimated canopy closure for summer roosts was 87 percent. Additional estimates of canopy closure recorded at northern California roost sites in Douglas-fir habitat ranged from 40 percent to 90 percent (Gould 1975, Cordano and Cordano 1981). Information on habitat attributes of an additional 18 roost sites located on private timber lands in California was supplied by the Timber Association of California (1989b: appendix B, part 2). Overstory canopy closure ranged from 55 percent to 90 percent and 75 percent to 90 percent in sites predominated by Douglas-fir and hardwoods, respectively. Because these values are substantially in excess of those listed in

the comment, the Service rejects the specific values of the commenter.

Comment: One commenter stated that survey data indicate that commercial thinning as well as either selective or group harvesting methods are compatible with owls in at least some areas such as the eastside of the Washington Cascades, southwestern Oregon, and northern California. Further, he stated that population data suggest that some level of disturbance may be beneficial to owls. He noted further that during a Forest Service briefing on April 5, 1990, Dr. Barry Noon stated that if elevational effects are statistically removed, there was more chance of finding a spotted owl pair in general managed forest than within current reserved areas (Wilderness Areas, National Parks, etc.). The commenter also stated that all existing data indicate that road building is not detrimental to the owl or its habitat.

Service response: The Service agrees that some silvicultural practices may be compatible with owls, such as those that would enhance habitat suitability at younger stand ages, but also notes that no data exist to support this conclusion. A variety of silvicultural treatments must be assessed before definitive statements can be made on this subject (see Thomas *et al.* 1990).

The Service does not accept the comment that work by B. Noon can be used to support the assertion that disturbance is beneficial to northern spotted owls. One variable in the analysis referred to was status of land classified as reserved (i.e., mostly higher elevation wilderness areas) or nonreserved (i.e., lower elevation forest managed for timber). Densities of owls were greater on the nonreserved than reserved lands, but not because the nonreserved lands are subject to "disturbance" factors. Rather, the nonreserved lands, by virtue of their being lower in elevation, are more productive timber sites and provide more favorable owl habitat. Thus, the likelihood of owl presence is not a consequence of disturbance but rather of the fact that, once elevational effects are removed, nonreserved lands are more productive forest.

The Service agrees that effects of roads on northern spotted owls are unknown.

Comment: One commenter stated that the Status Review Supplement did not include results of the Gutierrez and Call (1988) report on the California spotted owl that found no significant differences between the number of California spotted owls in old growth and in second growth. The commenter continued that Wagner and Meslow (1988) found spotted owl densities comparable to old growth in highly fragmented forests with substantial second growth.

Service response: Work by Gutierrez and Call (1988) was considered in preparing the Status Review Supplement. In addition, the Service notes that Gutierrez and Call's work was on the California subspecies, not the subspecies proposed for listing.

Wagner (letter of 18 April 1990) disputes the assertion that his study site could be considered as highly fragmented. The Service therefore does not accept the comment that spotted owl densities in highly fragmented forests with second growth are comparable to densities in old growth.

Comment: A commenter stated that current intensive timber management particularly by clearcut, has not been effective in maintaining spotted owl habitat features. She continued that current intensive management in the general forest involves short timber rotations which preclude development of multi-canopy layering that is vitally important to spotted owls. According to the commenter, it is therefore not reasonable to equate mature natural fire stands that have been studied to intensively managed second growth, which has not been studied in terms of capability to support reproductive owls.

Service response: The Service accepts this comment.

Comment: One commenter cited a definition (Pulliam 1988) of population sinks as local areas where mortality exceeds reproduction, but where the population persists because of immigration. One commenter feels that the Status Review Supplement implies that young growth represents a population sink, with lower densities, depressed reproduction, and an increase in home range size. The commenter believed this statement is incorrect with respect to the Klamath Province. One commenter expressed the opinion that the Service does not recognize the "packing phenomenon" and that if the Service embraces the packing theory, then the data used to assess habitat suitability and comparisons of habitat quality will need to be reevaluated.

Service response: Population "sinks" represent local areas where mortality exceeds reproduction (after Pulliam 1988). Although the commenter maintains that the characterization of young-growth forest as a sink is incorrect, he presents no evidence to substantiate his assertion. The Service maintains, as it did in the Status Review Supplement, that the implication that young growth serves as a population sink represents an hypothesis only. The commenter provided no data or other information to support his belief that young growth in the Klamath Province does not act as a population sink.

The Service has never stated that is does not recognize the concept of "packing" and does not accept the comment that recognition of this concept would require wholesale re-evaluating of its habitat evaluations. Mobile animals have the capability to move from disturbed habitats to less disturbed habitats. Packing can be considered a temporary increase in local density of individuals (in less disturbed patches). Such local increases are not indicators of healthy populations and can, in fact, be misleading if considered as positive indicators (Van Horne 1983).

Comment: One researcher stated that current second-growth owl studies are at least four to six years away from demonstrating the existence of a self-sustaining population, and that birds occupying second-growth areas have fitness or survivorship equal to that of populations found in comparable geographic areas with old growth habitat. He suggests that studies document quantified habitat structure, tree species composition in the overstory and understory, age of dominant trees, habitat quantity by seral stage, and logging method or salvage prescription that resulted in the stand to assess conditions of second growth.

Service response: The Service accepts this comment in general, and notes that extensive research is being conducted by a variety of State, Federal, and private organizations. However, the Service notes that sufficient data are available to make a decision on the status of the owl.

Comment: One conservation organization responded that reports of owls in second growth are inconsequential. These commenters maintained that second growth areas that support owls are mostly coastal redwood retaining snags, coarse woody debris, and other structural features, and are extremely productive in that trees are able to grow rapidly and therefore attain some of the attributes of old growth at a much younger age than do Douglas-fir forests in Washington and Oregon. Hence, the commenters stated, this represents a special case with little relevance to other areas. Further, these commenters indicated that different silvicultural practices may permit a faster return to suitability, but that all practices result in a loss of habitat for some period of time.

Service response: The Service agrees that the conditions arising in coastal California redwoods are specific to that

region only, and that extrapolation of the results elsewhere in the range of the northern spotted owl would be improper. The role of silvicultural practices in "creating" suitable habitat for northern spotted owls remains uncertain and requires further research (Thomas *et al.* 1990: appendix T).

Is Old Growth Preferred Habitat?

Comment: One commenter responded that in the Status Review Supplement, it was assumed that a direct loss of owls was correlated with loss of old growth, and that only growth provides suitable habitat. According to the commenter, even though 90 percent of the presently known spotted owl sites in Oregon contained a major component of old growth forest, the Service cannot demonstrate that owls depend on old growth because surveys in young growth may have been minimal. The commenter maintained that only six surveys cited in the Status Review Supplement looked at younger growth (Meslow *et al.* (1986), Forsman *et al.* (1977, 1988), Irwin *et al.* (1988), and Kerns (1988)): of these, only Irwin tried to compare owl sites between old and young growth. As indicated by the commenter, as of early 1989, only two studies were designed to find owls specifically in young growth (Kerns 1988 and Irwin *et al.*, 1989d).

Service response: In the Status Review Supplement the Service reviewed all available studies on the use of young and older forests by northern spotted owls. The Service did not assert that only old growth provided suitable habitat but that surveys of spotted owls had demonstrated a clear association of spotted owl with mature and old-growth forests. In the 1990 Status Review (USDI 1990), the Service further examined the use of forest stands of various ages by spotted owls. Various studies (Forsman *et al.* 1977, Wickham 1981, Postovit 1977, Forsman 1986, Irwin *et al.* 1989d, Bart and Forsman 1990), have shown conclusively that throughout most of their range, northern spotted owls are absent or rare in stands younger than approximately 80 years of age. Irwin *et al.* (1989d) surveyed young-growth stands (<80 years) in southwestern Washington detected only 1 pair of spotted owls in a survey of 277 square miles of young growth. Bart and Forsman (1990) investigated the abundance of northern spotted owls throughout their range in areas containing extensive 50 to 80-year old stands but little older forest. They found that the density of pairs was about 40 times higher in nearby areas that had substantial areas of older forest. The Service concludes from the available biological data that northern spotted owls require large tracts of land containing significant acreage of old-growth and mature forest to satisfy their life history requirements (i.e., foraging, breeding) and that stands less than 80 years old seldom provide habitat for spotted owls (USDI) 1990).

Comment: In one person's opinion, the Status Review Supplement only reports limited portions of study results to support the conclusion that the spotted owl prefers old growth. The commenter further stated that although many of these studies may show some owls utilizing old growth in greater proportion than its availability, owls also use other habitat types. In the commenter's view, this coupled with a bias for surveying predominately old growth, results in misinterpretation of the study results, such as occurred with Meslow et al. (1986) and Solis (1983). For example, mature/old growth comprised 63 percent of the area within the home range, but was used 74.4 percent of the time by the owls (Solis 1983). The commenter concluded that although owl use in old growth was greater than expected based on the availability of old growth, these data cannot be considered significant.

Service response: The Service agrees that northern spotted owls do use habitat types other than old growth within a home range. The evidence, however, clearly demonstrates that owls having old growth forest in their home ranges select for it (USDI 1990). The Service rejects the comment that such habitat use studies are biased against other forest types. Within a home range, owls typically have a variety of forest types (e.g., old and mature forest comprised approximately <40 percent of the habitat in studied home ranges, USDI 1990: table 2.1) available for foraging, roosting, and other activities. Owls typically select against other habitat types, particularly pole/sapling and young forests. Clearly, since owls have access to these forest types in their home ranges, the statement of bias cannot be supported. In the example provided, availability of the old-growth forest type was 63 percent of the area and 74 percent of the owl observations were in this forest type. Using widely accepted statistical tests, such as the X^2 test (Neu *et al.* 1974), it was demonstrated that there was a significant difference between availability and use. All owls studied by Solis (1983, table 5) demonstrated selection for mature/old growth forest. Data from surveys on both old and young forest also demonstrate that owl densities are lower on younger forests (USDI 1990). With the addition of data obtained during the recent comment period, the Service believes there has been adequate coverage of the spectrum of forest types ranging from young to old. The Service rejects the comment that data such as these cannot be considered significant.

Comment: In one commenter's view, if floristic instead of age class descriptions of the habitat are used, the owl may be shown to use a different kind of habitat than what has been identified. Another commenter responded that population performance has not been evaluated across the full range of variability in structure and vegetation composition within the available environment. The commenter further stated that there is no quantified description of specific factors that constitute the niche requirement, or basic determinants, upon which the owls depend for survival and reproduction.

Service response: Floristic descriptions typically refer to species composition, and the Service agrees that different habitat types may be shown to be important if floristic rather than age class descriptions were used to define owl habitat. However, the Service contends that structural, not floristic characteristics, are more important to northern spotted owls. For example, owls use stands dominated by both redwood and Douglas-fir that contain structural characteristics similar to old-growth forest. Clearly, floristic definitions of these habitat types would differ.

Descriptions of stands based on structural characteristics generally agree with age class, particularly where clearcut harvest prescriptions have been used. In some areas (for example, in California), past harvest practices, such as allowing natural regeneration, retention of residual trees and selective harvests, have tended to mimic the structural conditions found elsewhere. Whether structural characteristics or age descriptions are used, owls are still associated with structurally diverse forest types. The Service recognizes that much of the confusion about age class stems from the application of age-related classifications developed in one region (e.g., Douglas-fir forests in the Oregon Cascades) to another region (e.g., redwood forests in California). For example, stands classified as "young" growth by Kerns (1989 *a*, b) and used to conclude that owls select for young growth can be reclassified as "old" or "mature" forest based on structural characteristics (USDI 1990). The Service maintains that structural rather than age classifications provide a better description of owl habitat.

The Service agrees that population performance has not been evaluated across the entire range of the northern spotted owl. To assess the population performance of the owl across the entire spectrum of vegetation variability would require an elaborate experimental scheme of enormous magnitude. The Service does not accept the inference that such data across the entire range of the owl are required prior to reaching a decision about the proposed rulemaking. Further, the Service rejects the comment that habitat features have not been quantified (see USDI 1990).

Comment: The Forest Service commented that recent Forest Service research has found more evidence that suitable spotted owl habitat is found in old growth.

Service response: The Service accepts this comment from the Forest Service.

Are Spotted Owls Dependent on Old Growth?

Comment: Several commenters noted that the **Federal Register** proposal concluded that old growth is required for survival of the owl based on several assumptions: 1. Owl density is lower in younger forests, and therefore owls are less abundant; 2. Reduction in old growth by timber harvesting will fragment habitat and increase home range size; 3. Prey is less plentiful in young forests; and 4. Spotted owls have been extirpated from private land. The commenters stated that pre-existing and new data contradict these assumptions, and that owls are almost as dense in young forests as in old growth. Further, they maintained that fragmentation does not appear to be detrimental, that home range size is not correlated with the amount of old-growth habitat, and that prey abundance is equal in young and old-growth forests.

Service response: The Status Review Supplement (USDI 1989) summarized information on abundance of owls in relation to stand age as presented by Forsman *et al.* (1977), Postovit (1977), and Forsman (1988), all of whom reported that owls were seldom found in forests <80 years old. Since then, analysis of owl abundance in younger and older forests clearly demonstrates that owl densities are substantially lower in younger forest, with the possible exception of some private lands in California (USDI 1990). These lands, however, have had markedly different harvest histories than the vast majority of public lands and have retained the structural characteristics of old-growth forest in some areas. Therefore, with the exception noted above, the Service rejects the comment that owl densities are as high on younger-aged as on older-aged forest.

Effects of fragmentation considered by the Service to adversely affect northern spotted owls included direct elimination of key roosting, nesting, or foraging stands, potential increases in predation or competition risk, and the possible reduction of interactions between individuals (USDI 1989). All of these factors led the Service to conclude that fragmentation effects would be detrimental (USDI 1989). Since then, Meyer *et al.* (1990) have initiated a study examining fragmentation effects on northern spotted owls by comparing random sites on the landscape against those occupied by owls. Although results are still preliminary, sites occupied have significantly less fragmentation than randomly selected sites, suggesting that owls are less frequent in fragmented areas. Further analysis of the data is planned, but the authors "doubt that the large differences associated with old-growth habitat between random owl sites and random landscape locations will change considerably as a result of the additional data or the use of alternate statistical procedures" (Meyer *et al.* 1990). The Service therefore does not accept the comment that fragmentation does not appear to be detrimental.

The large size of home ranges in the Olympic Peninsula were assumed to reflect the adverse influence of fragmentation (USDI 1989). Although median percent acres of old-growth and mature forest within a home range varied from 25 percent in the Oregon Coast Range to 74 percent in the Klamath Province (USDI 1990), the assumption that these large ranges are a consequence of fragmentation has not been documented by the Service. Nonetheless, these data clearly indicate that northern spotted owls require large tracts of land containing significant amounts of old-growth and mature forest.

The Service never stated that prey abundance was lower in younger than older forests. Data presented in the Status Review Supplement (USDI 1989:2.7–2.8) quite clearly stated that although evidence regarding prey abundance was limited, prey abundances were similar in old and young forest stands. The Service therefore does not accept this comment.

Comment: Another comment stated that although the Status Review Supplement carefully avoids stating that the northern spotted owl depends on old growth, the proposed rule concludes that old growth is essential to the spotted owl's long-term survival, and assumes that preference indicates dependence. According to the commenter, the Status Review Supplement avoided the term dependence and emphasized "preference" and "association" and offered little, if any, factual support for its assertion that old growth is necessary for the owl's survival. The commenters maintain that there is no showing that a preference for a single type of habitat evidences biological needs.

Service response: The Service agrees that no study has yet demonstrated true strict dependence on old-growth forest by spotted owls. Demonstration of dependence would require an elaborate experiment designed to specifically address the question. However, the overwhelming evidence is that owls are strongly associated with old-growth forest and not with young forest, and the evidence is strong enough for the Service to conclude that old-growth forest or forests with old growth structural characteristics are essential for northern spotted owls. Evidence indicating selection for older forest types and limited numbers of pairs of owls in young forests all indicate a strong association of northern spotted owls with older forest types (USDI 1990). Further, landscapes having large expanses of younger-aged forest have fewer owls and lower measures of productivity relative to landscapes with large portions of older forest. The Service contends that strong association demonstrates biological needs, particularly in the absence of significant numbers of owls in young forests throughout the range of the northern spotted owl.

Comment: One commenter cited testimony from a deposition of a state fish and game biologist (Gordon Gould, November 16, 1989 as cited in Oregon Lands Coalition, letter of December 19, 1989) that in a clearcut prescription for most redwood forest habitats in California, a site will be suitable for foraging by the owl within 30–60 years and roosting and nesting within 50–70 years. The commenter then asked how the Service can conclude that old growth is essential to the spotted owl's survival especially when the Service acknowledges that the spotted owl is not dependent on old growth? Numerous individuals said that knowledgeable experts believe that the owl does not select for old growth, just structural characteristics present in old growth and in other forest habitats. One commenter maintained that this issue must be resolved before the listing decision is made. Another commenter stated that because no one knows the

exact habitat characteristics selected by the spotted owl, there is significant scientific dispute and the proposal should be withdrawn.

Service response: Redwood forests are influenced by coastal conditions in California and are high growth sites. Strict age comparisons with old-growth forests further north which are mostly Douglas-fir, are therefore incorrect. As noted by Kerns (1988), redwood forests assume many of the characteristics of "old growth" at a younger age, presumably because of the influence of coastal conditions. The Service also notes that many of the age classes defined as young by Kerns (1989 a, b) could easily be reclassified as old or mature forest based on structural attributes (USDI 1990). These structural characteristics, while possibly arising at younger ages in redwoods, do not occur in Douglas-fir and hemlock-cedar forests until stands are >100 years of age. The data clearly indicate that owls are associated with structural attributes that occur in older-aged Douglas-fir and hemlock-cedar forests (i.e., typical "old growth") and possibly in younger-aged redwood forests (USDI 1990). The Service therefore contends that old growth or forests with old growth characteristics are essential to northern spotted owls.

The Service agrees that structural characteristics like those present in old growth forests are most important to northern spotted owls.

The Service disagrees with the contention that a serious scientific dispute exists and contends that habitat attributes selected by owls are well documented (USDI 1990). In the Service's opinion ample scientific data exist on which to base a decision on the proposal to list the northern spotted owl.

Comment: Several stated that the Status Review Supplement misuses Ruggiero *et al.* (1988) because the Status Review Supplement assumes that old growth remained basically static. A number of commenters wrote that the Status Review Supplement is factually incorrect because change is characteristic of the Pacific Northwest. One commenter cited Teensma (1987) who showed that prior to arrival of Europeans, fires resulted in a rotational age of 78 years for the central western Cascades and, thereafter, rotational age was increased to 587 years (as cited in Irwin 1989b). The commenter feels that the Status Review Supplement ignores this by asserting that natural perturbations within old-growth forests have been small and localized. Several commenters maintain that to apply Ruggiero's *et al.* (1988) theory requires studying the full range of habitats over the long-term to determine habitat preferences and this has not been done for the owl.

Service response: The Service acknowledges that the proposal did not place enough emphasis on the importance of natural perturbation such as fire in determining the overall forest landscape. The final rule acknowledges the significance of natural perturbations. However, timber harvesting results in a net decline over time in old-growth forest rather than a relatively constant amount that simply shifts across the landscape as might be expected in the case of natural disturbances considered over an extended period of time. Hence, the conclusion that historically the amount of old-growth forest may have been fairly constant is not unreasonable. The Service recognizes, however, that these statements represent conjecture.

Large-scale perturbations, such as the Mt. St. Helens eruption in 1980, the Tillamook burn in 1933, and the Cowlitz fire circa 1800 (Martin *et al.* 1976), do occur. However, the Service still contends that most natural perturbation would generally have been small and localized relative to the entire Pacific Northwest. Irwin (1989) cited Teensma (1987) as calculating a rotational age of 78 years in central western Cascades of Oregon. In contrast, Martin *et al.* (1976: table 2) estimated fire frequencies of 50 to 400 years and >150 years for western Cascade Douglas-fir and hemlock forests, respectively. They further recognized that there exist a wide variety of factors influencing forest types and hence fire frequency, and implied that fire frequency should be expressed as a broad spectrum rather than a specific average value. Thus, while the Service accepts the fire rotation value of 78 years cited by Irwin *et al.*, it also recognizes that variability in fire frequency as noted by Martin *et al.* casts doubt on the use of a single average value as a meaningful estimate of fire rotation time.

Franklin *et al.* (1988) also examined the scale of 14 major fire events in Mt. Rainier National Park from 1230 to 1703 and estimated that these fires burned from 8 percent to 47 percent (median of 24 percent) of the park's reconstructed forested area. Fire rotation in the park was estimated at 495 years (Hemstrom and Franklin 1982). Given that these represent major fires events, it is not unreasonable to conclude that the impact of most other, non-major natural perturbations would be smaller. Moreover, since the arrival of European man, the most common disturbance in Pacific Northwest forests is clearcutting, a disturbance regime whose impact differs markedly from wildfire (Franklin 1988).

The Service agrees that further study is required before Ruggiero *et al.*'s hypothesis can be validated for most species, not just northern spotted owls. However, the Service contends that overwhelming evidence exists that owls are strongly associated with forests having old growth structural characteristics and not with young forest lacking those characteristics (USDI 1990), and that the evidence is strong enough for the Service to conclude that forest with old-growth forest characteristics is essential for northern spotted owls. The Service does not accept the comment that data across the entire range of the northern spotted owl is required before reaching a decision on the proposed rulemaking.

Comment: According to one commenter, Ruggiero *el al.* is not persuasive because it does not discuss a number of scientific articles one would anticipate to be included in an in-depth review of ecological dependency and population persistence. The commenter maintained that Ruggiero *et al.*'s concept of ecological dependency does not account for cases where an important habitat is used less often than predicted by availability because the animal does not have to be there often to acquire a resource critical for survival.

Service response: The Service quoted Ruggiero *et al.* (1988) as stating "It is *likely* * * * that habitat preferences are indicative of the long-term needs of a species * * *," not that preference is equated with strict true dependency. The Service contends that Ruggiero *et al.*'s statement constitutes an hypothesis that remains largely untested. Questions about the adequacy of the literature base in Ruggiero *et al.*'s paper or its failure to account for all possible uses of habitat merely reflect opinion and as such are considered by the Service to represent opinion. Much like the conclusion that Ruggiero *et al.*'s concept of ecological dependency remains a largely untested hypothesis for northern spotted owls, the hypothesis that important habitat features could be used less often than predicted by availability is a largely untested hypothesis.

Comment: Before the Service adopts Ruggiero *et al.*'s theory of habitat association as the equivalent of ecological dependence, one commenter stated that it must, under the Endangered Species Act, determine whether the three subspecies are only ecotypes adapted to different climates and geographic regions (Smith 1989). In this commenter's view, the absence of variation between northern and California spotted owls supports the ecotype theory (Smith 1989).

Service response: The Service accepts the decision of the American Ornithologists' Union that the northern spotted owl is a recognized subspecies (N. Johnson, letter of 12 December 1989) and rejects the comment.

Comment: The Forest Service commented that its recent research reiterates the importance of old growth in physiographic provinces where research is most complete (Oregon Coast Range, western Oregon Cascades). For example, Carey *et al.* (1990) restated the importance of old growth in this region; the proportion of home ranges in old growth explained 64 percent of the variance in the minimum convex polygon home range size, using regression analysis. The Forest Service concludes that these results provided strong evidence that spotted owls depend on old growth in the western hemlock zone in Oregon.

Service response: The Service accepts the comment from the Forest Service.

Issue 16. Habitat Trends

Definition of Old Growth

Comment: A number of commenters questioned the definition of old-growth forest—how old is old growth? Several commenters asked how it can be argued that only ten percent of the critical habitat is left when there is no agreement on a definition of old growth or how and when it was measured.

Service response: The Service recognizes that there exist numerous definitions of what constitutes old growth. In general, old-growth forest is characterized by a multi-layered canopy, dense tree canopy closure and the presence of dead and down material. Ages used to characterize old-growth vary as well, although age in excess of 200 years is generally agreed on (e.g., Forsman *et al.* 1984, Carey *et al.* 1990). Tree diameter at breast height has also been used in some instances (e.g., Allen *et al.* 1989, Hays *et al.* 1989b). Northern spotted owls, however, do not select habitat based on its age *per se*. Instead, owls likely select for structural characteristics that are correlated with older trees in some instances (e.g., Douglas-fir and Hemlock/cedar forests) and with younger trees in others (e.g., coastal California redwood forest). The Service believes it is more appropriate to emphasize structure instead of age. Hence, use of the term old-growth refers to the structural characteristics important to owls, not tree age *per se*.

Historical Amount

Comment: Several commenters noted that there is no widely accepted estimate of the amount of historical old-growth forest in the Pacific Northwest. They stated further that the assumption of 17.5 million acres in the Status Review Supplement is unsubstantiated and discounts the role of fire. Several commenters argued that the Service does not have the data to construct the historical quantity of old growth and concludes such an estimate is a guess, especially considering the impacts of natura disasters.

Service response: The Service agrees that estimating historical amounts of old growth is difficult. The estimate in the Status Review Supplement was based on published reports, which are cited in the Status Review Supplement. The Service did estimate the decline in amount of suitable habitat on lands managed for timber production by Region 6 of the Forest Service. In making its estimate, the Service assumed that approximately 70 percent of this land provided suitable habitat for northern spotted owls prior to widespread timber harvest. The basis for this estimate is explained in Factor A, and it was developed in consultation with staff of Region 6, Forest Service. The Service does not discount the role of natural perturbations such as fire, windstorms, volcanic eruptions, etc.

While it is true that the precise amount of old growth originally present in the Pacific Northwest is impossible to determine, the Service accepts the estimate of about 17.5 million acres provided by the Forest Service (USDA 1989) and accepted by ISC (Thomas *et al.* 1990). This figure does factor in the probable fraction of forest land in young stages due to fire, volcanism, storms, and other natural events. It is quite clear that old growth has been severely reduced due to harvest, and that there is considerably less than what was originally present.

Comment: A conservation organization quoted Norse (1989) regarding the amount of historical old growth; estimates range from 78.5 percent (27 million acres) (Brown and Curtis 1985) to 90 percent of western Washington and 90 percent of western Oregon (Harris 1984) as being old-growth forests. The commenter felt that these estimates seem high and allowed for an overestimate of 20 percent, resulting in an estimate of 19 million acres of old growth before settlement.

Service response: Because of the difficulties of determining the amount of original old growth in the Pacific Northwest, it is not surprising that estimates differ. The Service accepts the Forest Service estimate of 17.5 million acres (see above comment).

Current and Future Habitat Trends, Amount of Old Growth Remaining

Comment: Another commentar noted that the Forest Service's estimate of 6 million acres of old growth remaining west of the Cascade Range in Oregon and Washington is too high and that a more realistic estimate is about 3 million acres. When The Wilderness Society analyzed six National Forests, it found the amount of old growth to be about 45 percent of that estimated by the Forest Service. Hence, The Wilderness Society calculated that 1.1 million acres of suitable habitat remained on these six national forests. Further, the Society stated that had its estimate of available suitable habitat been used in the viability analysis presented in the Forest Service SEIS, a much lower probability for survival would have been predicted under the preferred alternative F. When one considers that a substantial proportion of the remaining old growth is adjacent to roads or clearcuts, the amount of viable old growth may be less than one-third of that estimated by the Forest Service, according to one view. One commenter reported that a recent survey of the Willamette National Forest by the Forest Service found that the actual old growth was 36 percent less than what was presented in the draft forest plan.

Service response: The Forest Service currently (USDA 1989) estimates that about 4.2 million acres of habitat suitable for the spotted owl is found in its lands in Oregon and Washington. This includes old growth and mature forest that has structural characteristics similar to that of old growth. The Wilderness Society (Morrison 1988) used a more restrictive criterion for old growth. The Service accepts the Wilderness Society figures that 1.1 million acres of old growth exists on the six forests he studied (Mt. Baker-Snoqualmie, Olympic, Gifford Pinchot, Mt. Hood, Willamette, and Siskiyou); the Forest Service estimates that there are 2.6 million acres suitable for spotted owls (about 44 percent of which is old growth by Morrison's criteria in these 6 forests). The Service accepts the Forest Service acreage figures as suitable for owls because spotted owls do, in fact, use mature forests.

Morrison points out that 52 percent of old growth forest occure in areas modified by roads and clear cuts, and thus fragmented to varying degrees. Owls are adversely affected by fragmentation, responding to a

decreasing percentage of suitable habitat with decreasing density (USDI 1990). An unknown fraction of suitable habitat may, in fact, be incapable of supporting any owls because it is so highly fragmented (USDI 1990). Because the impacts of fragmentation were not adequately considered, the FSEIS (USDA 1988) estimate of spotted owl viability was probably too high.

In the draft forest plan, the Forest Service estimated that the Willamette National Forest contains 639,000 acres of mature and old growth habitat and later revised the estimate to 630,800 acres (USDA 1989). However, updated estimates suggest 552,930 acres of suitable habitat remains, a decline of just under 9 percent. Because old growth and mature forests are being logged, these acreage figures will continue to decline. The Service has found no evidence that Forest Service estimates of the amount of remaining old growth are 36 percent less than presented in the draft forest plan.

Comment: The Forest Service's Regional Forester, Region 6, estimates that there are 6.23 million acres of old growth in Oregon and Washington, of which approximately 2.87 million acres are available for timber harvesting. One commentor cited Norse (1989), who estimated that only 13 percent of old growth acreage present in the Pacific Northwest prior to European settlement remains.

Service response: The Service has calculated that there are about 5.34 million acres of habitat suitable for spotted owls (mature plus old growth) in Washington and Oregon, of which about 3.59 million acres (61 percent) is available for timber harvesting. This does not include some State, tribal, or private lands with habitat available for harvest; estimates are small. About 17.5 million acres of old growth was present in the Pacific Northwest at the time of settlement. About 6.79 million acres of mature and old growth forest is currently estimated. According to Morrison (1988), somewhat less than half of suitable owl habitat meets his old growth definition. Spotted owls now inhabit some coastal redwood stands that were cleared at the end of the 19th century. However, the occupied stands show many of the characteristics of old growth, which develop far more rapidly in redwoods growing under the high-site conditions in coastal northern California than do other tree species elsewhere within the range of the spotted owl. It is incorrect to assume growing conditions in the redwoods, which comprise about 7 percent of the owl's range, apply elsewhere. Spotted owls thrive primarily in those areas on public lands (especially the National Forests) that have been little-modified by timber management. Their density decreases as the percentage of suitable habitat in the landscape declines (USDI 1990). With the possible exception of the coastal redwood zone and some forests that have been selectively harvested, there is no evidence that spotted owls thrive on private land that has been harvested. Only 36 of 906 known reproductive pairs have been located on private land, only two of them in Washington and Oregon (Thomas *et al.* 1990)

Comment: Several commenters stated that because spotted owls are now known to be living on land cleared at the turn of the century, spotted owl habitat lost during clearcutting develops into suitable habitat more quickly than previously believed. These individuals stated that spotted owls thrive within national forests and private forested lands and are abundant in second growth. A commenter said that the status review is notably deficient in its forecasts of future timber harvesting treads (see graph on 2.19 of status review). He had heard that the Forest Service, the Bureau of Land Management, and industry say they need 25 more years before they enter second growth. Hence, by his calculations there are still 25 more years of old growth on non-reserved lands plus 2.7 million acres in reserved lands (74 percent of what is now present). Another said there are 6.2 million acres of old growth in the Pacific Northwest, plus an additional 943,000 acres of old growth in national parks within Oregon and Washington, and 403,000 acres owned by the Bureau of Land Management for a total of 7.3 million acres. Of this amount, the commenter stated that 2 million acres are preserved and cannot be harvested and asked how it can be said that we are on the verge of cutting the last old growth.

Service response: The Service acknowledges that there are spotted owls living in regenerated forest in the redwood zone and some interior areas of northern California that were clearcut at the turn of the century. However, as described under Factor A, some of these areas contained residual old growth. Because of favorable site conditions, stands in the redwood zone apparently grow more rapidly than in the rest of the range and achieve the old growth structural attributes that are characteristic of spotted owl habitat at an earlier age.

Private timber companies are currently harvesting second growth timber. Also, the Siuslaw National Forest anticipates that 74 percent of its annual harvest over the next 10 years will consist of trees 60 to 80 years old. The Forest Service plans to harvest about 40,000 acres of old growth per year (1 percent of its supply); this represents a decline in the harvest rate of about 20,000 acres/year. The Bureau of Land Management its currently harvesting 3 percent of its old growth/year, and anticipates running out of old growth in 12 years on the Eugene District, 14 years on the Salem District, and 17 years on the Coos Bay District. Therefore, the Service does not agree that a 25-year supply of old growth remains available for harvesting.

The Service agrees that there are about 2.7 million acres of suitable habitat in reserved lands (National Parks, Wilderness Areas, Research Natural Areas, etc.). The Service calculates that there are about 6.796 million acres of suitable owl habitat remaining in all ownerships in the Pacific Northwest; this includes 5.06 million acres held by the Forest Service, .878 million by the Bureau of Land Management, and .570 million by the National Park Service. However, this does not include State, tribal, or private land. Anticipated harvest schedules will continue to result in a decline in spotted owl numbers.

Comment: The Wildlife Society stated that the 1989 surveys on the Olympic Peninsula showed an increased loss of critical habitat in the Cedar River watershed, Interstate 90 Corridor, Clearwater block on the Peninsula, Columbia River Gorge area, southwestern Washington, and many other areas. Further, The Wilderness Society stated that it had examined the amount of old growth now available and concluded that the northern spotted owl has lost over 80 percent of its preferred habitat. The Society cites Morrison's (1989) estimates that suitable habitat consists of 1,153,000 acres, including 816,000 acres of optimum habitat: this is compared to 2,714,000 acres of habitat that is referenced as being available in the Forest Service SEIS.

Service response: The Service accepts that there has been a continuing decline in suitable habitat throughout the range of the spotted owl, and calculates that about 6.79 million acres of suitable habitat remains (39 percent of what was present at settlement). Morrison (1988) excludes mature forest (which is used by spotted owls) from his calculations of suitable owl habitat (old growth), yet mature (>100 years old in Region 6) forest is used by spotted owls. Recent Service calculations (USDI 1990) show that there are 4.2 million acres of suitable habitat on Forest Service land in Region 6 (not 2.7 million), of which 1.5 million is reserved or unsuited for harvest.

Comment: One commenter who owns over three million acres in second growth in Oregon and Washington provided data on the number of acres of habitat that would be present in 60–120, 130–240, and >250 year old stands in the future.

Service response: The Service has considered the information presented.

Comment: Simpson Timber Company argued that owls return to regenerating forest after 30 years. Simpson noted that it takes perhaps 10–20 years to harvest substantially one drainage. Since this company is on a 60 year rotation, it stated that for 40 out of every 60 years, each drainage will have owls and that at any one time about 50 percent of Simpson's 380,000 acres in California will support owls. Given that if it takes 10 years to harvest a drainage, Simpson stated that 20 years after the logging operation is completed, at least some of the regenerating stand will be 30 years old and will provide suitable owl habitat.

Service response: The Service cautions that use of the lower limit of the age range (i.e., 30 years post harvest) as an indicator of when habitat may be recolonized by northern spotted owls may not be correct. More confidence would be placed in a mean value. The Service also notes that these forests had remnant older trees, that they did not arise as a consequence of large-scale clearcuts, and that the estimate of 30 years is for coastal redwoods only and cannot be extrapolated to other tree species or regions. Hence, in regard to current logging practices, the Service believes it would be premature to conclude that for 40 years of a 60-year rotation schedule, suitable habitat for owls will be present throughout all stands >30 years of age.

Comment: One commenter said that evidence indicates there are several million acres of land currently 30–60 years of age that is available for spotted owls. Further, the commenter stated that existing inventory data indicate the presence of 4.4 million acres in pole timber stands, 11.8 million acres in small saw timber (11–21 dbh), and 4.1 million acres in large saw timber.

Service response: With the possible exception of coastal California redwood forest, the evidence clearly indicates that forest 30 to 60 years of age is selected against by nesting, roosting and foraging northern spotted owls, and that few owls exist in landscapes containing large amounts of forest 30 to 60 years of age (USDI 1990). The Service does not accept the comment that all commercial forests 30 to 60 years of age can be considered available for northern spotted owls.

The Service has considered the comment regarding the estimates of timber, but has no way to verify the amounts indicated or the exact condition or structural characteristics of the stands indicated. In the Service's opinion not all of this timber is considered suitable owl habitat.

Comment: One commenter asked how much young growth is on private lands today that will provide habitat over the next few decades; what percent of private timber lands will constantly be coming into or existing in a successional stage that will provide owl habitat; and how much land currently 30–60 years of age is available in the Pacific Northwest?

Service response: Although the figures requested by the commenter are unavailable, the Service has found that spotted owls do not occur in significant numbers or densities on lands under even-aged management (clearcuts), the principal method of timber harvest on about 95 percent of all forest land, private and public. Thus very little acreage in young growth today will reach an age suitable for owls because rotation ages will preclude the growth of young stands into habitat suitable for owls.

Comment: Several commenters argue that the Status Review Supplements' failure to consider future new forests is fatal to estimating future habitat trends. According to the commenter, the Status Review Supplement ignores young-growth forest acreage that may develop old-growth characteristics or conditions during the next 60 years, because conversion of younger habitat to mature was not expected to be significant unless current logging practices change. The Timber Association of California commented that it estimated that at least 1,137,699 acres of industrial California forest land is expected to produce owls. Another commenter referenced the State of California's "California's Forests and Rangelands: Growing Conflict Over Changing Uses" (1988) and stated that by the year 2010, the amount of tree volume in California will begin to increase by 80,000,000 mbf in 50 years from the regrowth of forests. The Timber Association of California estimated the number of acres of land subject to different management intensity and stated that it believes over 8,400,000 acres in California will be available for owl nesting within and for the foreseeable future, an amount "significantly larger than the Status Review Supplement would lead one to believe (over 8,400,000 acres vs. 998,000 acres (Status Review Supplement 2.25, Table 1))." Sierra Pacific Industries stated that it had used the Wildlife Habitat Relationships system of vegetation typing to estimate the amount of habitat that will be maintained and created on its land. According to the commenter, this system underestimated the amount of suitable owl habitat because its vegetation types are based on the size and density of overstory trees and generally neglects understory components. Further, Sierra Pacific retains 60,000 acres in watercourse protection zones (8.5 percent of its land base) and stated this is superior owl habitat. An additional 120,000 acres is unsuitable for timber production. Hence, Sierra Pacific commented that about 180,000 acres or more than 25 percent of its ownership is dedicated to non-timber management.

Service response: The Service agrees that forests systems are dynamic and that "new" forests arise through time. However, much of this new forest is harvested before it reaches the age it can be considered suitable habitat for owls. For example, current timber plans call for the harvest of most Douglas-fir forest at approximately 70 years of age, close to the age at which stands begin to be used by owls. Thus, conversion of young forest to mature is not expected to add significant amounts of habitat suitable for owls unless current logging practices change.

The Timber Association of California's submittal to the Service included estimates derived from Smith and Self (1988), who present a table entitled "Suitable Habitat Table" (page 24) for owls in California. It contains estimates for five categories of land, including industrial lands with a timber emphasis, non-industrial lands with a timber emphasis, non-timber emphasis lands, retained lands (i.e., incidental timber production), and preserved lands. Under each of the categories is an estimate of the amount of each land type (acres) multiplied by a proportion that, according to the Timber Association of California, represents the proportion of each land base that is available owl habitat (e.g., Preserved 1,723,985×.5). For example, the "lightly or never harvested" subcategory is multiplied by 20 percent. The Timber Association of California assumes that all lightly or never harvested land constitutes suitable owl habitat, even though this amount is defined as rock outcrops and landslide, land that clearly cannot be considered suitable owl habitat. Consequently, a land base multiplied by this figure overestimates owl habitat.

Similar concern can be expressed about the 90 percent multiplier used to estimate the amount of suitable habitat on retained and preserved lands. The 90 percent multiplier for preserved lands was created by recognizing that 10 percent of the land is unsuitable due to fire, disease and other natural disturbance (100 percent−10 percent=90 percent). Clearly not subtracted were the same geographic features mentioned under the industrial lands category. The Service contends that it is unreasonable to assume these features are present on industrial lands, but not present on preserved lands, and that they constitute suitable owl habitat. Therefore, the 90 percent estimate used to estimate the amount of suitable habitat in both preserved and retained lands is too high and results in an overestimation by the Timber Association of California of the amount of suitable habitat. The Service notes that the "regenerated but unharvested" subcategory is multiplied by 0.4, but the accompanying description provides no explanation as to how the 0.4 estimate was derived. In fact, no explanations were provided for any of the proportional estimates used. The Timber Association of California states that these resultant values are estimates of the amount of timber not being harvested at any one time (e.g., "When harvesting prescriptions other than clearcut are appropriate, vegetation after harvest is often suitable owl habitat" page 20) or of habitat "* * * considered unsuitable for harvest * * *" (page 21). Apparently the Timber Association of California is maintaining that all the resultant value (amount × proportion) in each category is suitable/potential habitat capable of providing the habitat attributes necessary to sustain viable populations of northern spotted owls. Moreover, many of these values are carried through all the calculations used to estimate available land, resulting in probable overestimations for every land category mentioned by the Timber Association of California. By letter dated February 21, 1990, the Service asked the Timber Association of California to provide clarification of this table including an explanation of how the figures were estimated. However, no response was received.

In evaluating this table, ISC (Thomas *et al.* 1990) notes for example the Timber Association of California calculated that at any given time 40 percent of the 1,750,727 acres of industrial timber land that has regenerated (700,307 acres) will be in stands old enough to provide suitable spotted owl habitat. However, in making its predictions, the Timber Association of California assumed that all such habitat is capable of supporting owls and used rotation ages for coastal areas of 50 to 60 years and inland areas of 80 to 90 years, whereby suitable habitat would become available in 25–30 years and 40–50 years post harvest in each area, respectively (Thomas *et al.* 1990). Although some habitat within these age-classes does support owls, the ISC believes that the Timber Association of California underestimated by about 50 percent the age at which habitats in these areas usually attain the attributes associated with spotted owl habitat (Thomas *et al.* 1990). Similarly, the ISC believes that the Timber Association of California has provided an optimistic prediction that 1,037,671 of 2,599,177 acres of timber-emphasis lands owned by small landowners will be suitable owl habitat at any given time (Thomas *et al.* 1990). The degree to which these lands will be subject to harvest will depend on the timber market which reflects the demand for lumber, changes in company ownership, impacts of corporate takeovers, and other market uncertainties.

The Service also notes that 103,100 acres of spotted owl habitat were estimated for reserved areas (parks, Wilderness Areas, or other protected ownership) in California by the ISC (Thomas *et al.* 1990). In contrast the Timber Association of California calculated there were 1,732,965 acres of preserved lands (parks, Wilderness Areas) in California of which 90 percent (1,559,686 acres) were predicted by the Timber Association of California to be suitable spotted owl habitat at any given time. The Service estimates there are 1,145,000 acres in Wilderness Areas in California of which 148,900 or 13 percent is estimated to be suitable spotted owl habitat (USDI 1990, USDA 1989). Hence, whereas the Timber Association of California predicted 1,559,686 acres of preserved lands would be available at all times as suitable spotted owl habitat, the Service estimates this figure to be 148,900 acres, and the ISC estimates it at 103,100 acres. Although data are not available to review every component of the Timber Association of California's suitable habitat table, it is the Service's opinion that the Timber Association of California's overall estimate of 8,408,531 acres of "expectable and owl habitat" in California at any given time is substantially overestimated. Given the lack of explanation for how the estimates were derived, the clear lack of any reasonable biological basis for some of the multipliers used to estimate suitable owl habitat, and what the Service contends is the resultant overestimation of the amount of suitable habitat in preserved lands, the Service rejects the specific figures of available habitat presented by the Timber Association of California.

Although the State of California's "California's forest and rangelands: growing conflict over changing uses" document states that the amount of tree volume will begin to increase by approximately the year 2010 (California Department of Forestry and Fire Protection 1988), the Service contends that current rates of loss of suitable owl habitat are such that the owl population is undergoing a rapid decline (USDI 1990).

The Service does accept the comment that the Wildlife Habitat Relationships (WHR) underestimated suitable owl habitat. Because the WHR system only identifies overstory trees, there is no way to determine whether an understory component is present or absent. Consequently, it is impossible to distinguish between lands having an understory and overstory component from lands having only an overstory. In this circumstance the WHR system will more likely overestimate suitable habitat by including all habitat having an overstory component.

Streamside protection zones are narrow strips, at most a few hundred feet wide, that are found along certain streams. Not every stream has a streamside protection zone. Although they cannot be clearcut, 50 percent of the canopy within the zone in California can be removed at each harvest entry. Sierra Pacific states these zones occupy 8.5 percent of its land base; however, owls make little use of areas with less than 20 percent older forest (USDI 1990). Hence, streamside protection zones do not provide a significant amount of suitable habitat for northern spotted owls. Given that owls demonstrate selection for forest having high canopy coverage for roosting, nesting and foraging purposes, it is unlikely that canopy coverage of 50 percent can be considered superior habitat. The Service does not accept the comment that streamside protection zones provide superior owl habitat.

Areas outside streamside protection zones and considered unsuitable for timber production are not necessarily suitable for owls. For example, many of these areas are too small, lack one or more of the structural characteristics of suitable owl habitat, or lack forest cover. Furthermore, as harvest techniques improve or timber prices rise, areas once considered unsuitable for timber production may be reclassified and harvested. For these reasons, lands considered unsuitable for timber production cannot be relied upon to provide suitable habitat for northern spotted owls. The Service does not dispute the commenter's estimate that 25 percent of its land base is dedicated to non-timber management, only that not all of the noncommercial acreage can be considered suitable owl habitat.

Comment: The Timber Association of California submitted additional comments during the last comment period. The Timber Association of California reports using a growth and yield computer model to estimate the approximate time to grow timber to size classes and densities in which owls have been found roosting, nesting, and foraging. Based upon these models, the Timber Association of California suggests that the commercially managed regenerating tracts alone may provide all the attributes needed by owls. Further, that when combined with non-managed areas that contain "residual trees" such as riparian areas, the Timber Association of California believes that between 20–35 percent of the interior managed landscape in California will support these "residual tree" stands that maintain suitable spotted owl structural characteristics. The Timber Association of California stated that the previous studies used the age of "wild" rather than managed stands to predict the time required to attain structural characteristics attributed to suitable spotted owl habitat. In the Timber Association of California's opinion, by applying appropriate forestry techniques, stands with these attributes can be achieved in one-half to one-third the time that would be required for wild stands.

Service response: The Service notes that this comment is conjecture only. There is no evidence that commercially managed tracts alone will provide all the attributes required by spotted owls. Although studies on private land in California indicate that stands managed using uneven-aged methods often continue to support owl populations or support them at earlier ages than if the stands had been clearcut, it also is clear that stands less than 80 years of age seldom provide suitable habitat for northern spotted owl (USDI 1990). Further, northern spotted owls are rare or absent where less than 20 percent of the region is suitable habitat (USDI 1990). Most timber production land is managed using even-aged logging methods. Once stands more than 80 years old have been harvested it is improbable that these areas will support spotted owls (USDI 1990). Although clearly the stands less than 80 years of age in the redwood zone in California support spotted owls, such stands are expected to eventually fall into a 60–80 year, or possibly less, rotation schedule whereby they will attain the attributes of spotted owl habitat for a relatively brief period before they are harvested. Further, harvesting methods today in this zone are less likely to leave the remnant old growth as was done in the early 1900s. In fact, under current harvest management such large, remnant trees will not be present in future stands (USDI 1990). Further, analysis indicates that owl productivity per pair was lowest in areas with little older forest; hence, this suggests that even if some owls persist in these areas, it is probable that their productivity rate would be insufficient to maintain the population long-term (USDI 1990). The Service maintains that it is extremely unlikely given current and anticipated management strategies for commercial forest lands, that these lands will provide a significant amount of suitable northern spotted owl habitat. Moreover, the commenter provided no empirical evidence that modern forestry techniques are capable of regenerating spotted owl habitat in one-half to one-third the time required for wild stands to be reforested, although there is evidence that uneven-aged management may provide suitable habitat in younger stands.

Comment: One researcher stated that he was not aware of any owl populations that exist in young even-aged (<40 years) stands established by clearcuts, followed by site preparation and planting, and he hypothesizes that spotted owls depend on old growth. He maintained that if the predicted harvest trends are coupled with preferred clearcutting harvest methods and short rotation age, then the limited managed (i.e., second growth) conditions under which spotted owls now exist would be eliminated. He argued that if spotted owls are abundant and widespread in second growth, then spotted owl populations will be more heavily impacted in the future because a much larger proportion of the population will be unmanaged or unprotected. The commenter stated that for private land to make significant contributions would entail a change from clearcut to alternative harvesting methods, a change in appropriate silvicultural prescription, longer rotation time, and encouragement of hardwoods, in some forest types.

Service response: The Service accepts the comment that no populations apparently exist in young even-aged (<40 years) stands established by clearcuts and followed by site preparation and planting. The Service also contends that northern spotted owls clearly and consistently select old-growth forest or forest with old-growth characteristics (USDI 1990).

The Service maintains that northern spotted owl habitat will continue to decline if predicted harvest trends and current harvest methods continue. Forest systems are dynamic, and timber not considered suitable at one point in time may become suitable at another. However, current timber plans call for harvest of most Douglas-fir at approximately 70 years of age, close to the age at which stands begin to be used by owls. Moreover, the rate at which old-growth forest is declining due to harvest far exceeds the rate at which it is regenerating.

The Service accepts the comment that for private lands to make a significant contribution to the habitat base for northern spotted owls they would have to change some silviculture practices, but notes that several private landholders in California already practice some of these techniques.

Impacts From Natural Perturbations

Comment: A commenter stated that new forests are quite vulnerable to climatic shifts resulting in the loss of more habitat. Natural forest ecosystems in old growth are expected to show greater resistance to change and to recover more quickly from wildfire, storms, pest and pathogen disease than intensively managed forests.

Service response: The Service accepts the comment.

Comment: Massive natural disturbances (wind, fire, disease) are common in the Douglas-fir forests of the Northwest according to numerous commenters. That being the case, if these natural disturbances have not led to the extinction of the spotted owl, the commenters asked why will logging. In the view of several commenters, because uncontrolled natural disturbances of the past did not threaten the owl, modern timber harvesting which mimics natural disturbances in a controlled manner should not pose a threat.

Service response: The Service agrees that natural disturbance like fire are an integral component of coniferous forests in the Pacific Northwest. According to Franklin (1988), windthrow tends to accelerate succession towards climax species by eliminating larger trees and

leaving shade-tolerant seedlings and saplings untouched. Fire, in contrast, tends to favor the establishment of early successional species. However, impacts from clearcutting, the common current perturbation on Pacific Northwest forests, are not analogous to natural disturbance (Franklin 1988). Successional paths and nutrient cycling are disrupted by logging and subsequent replanting and other silvicultural practices (Franklin 1988). Other factors important to the proper functioning of a diverse ecosystem, such as nonarboreal plant species and snags and down logs, also are typically removed during logging. These factors distinguish logging from natural disturbances. Wildfire, in contrast, typically leaves individual trees and groups and stands of trees that enhance rapid revegetation and reestablishment of trees, even when the fire is extremely large (e.g., the Tillamook Burn) (Franklin 1988). In addition, timber damaged from windstorms and light intensity wildfire obviously was not salvaged until the arrival of European man and would have been left on the landscape. Current U.S. Forest Service practices call for the timber from natural perturbations like wildfire and windstorms to be salvaged as soon as possible for commercial interests. Clearly this does not mimic natural disturbance regimes, where the residuals from wildfire and windstorm would naturally recycle into the ecosystem. Pathogens can create significant disturbances in some situations but are not considered as important a disturbance factor in the Pacific Northwest as in other conifer forests (Franklin 1988). The Service contends that the assertion that current logging practices mimic natural disturbance patterns is unwarranted and the Service rejects the comment.

Comment: Fire intensity, severity, and duration were exacerbated by managed young-growth in the 1987 fires in California that burned thousands of acres of potential SOHA stands distributed throughout the landscape according to one researcher. He continued that these younger stands carried the fire to the crown of many old growth stands.

Service response: The Service accepts the comment.

Comment: One researcher stated that of 52 nest sites on the Wenatchee National Forest that he studied, 97 percent were influenced by fire in the last 40 years (Irwin *et al.* 1989a). The commenter cites Huff (1984) who notes that wildfire is considered important in the distribution of Pacific Coast conifers and without such fires (or other disturbances) to remove the canopy and duff layers, establishment of Douglas-fir would be severely restricted.

Service response: The Service accepts the comment that fire plays an important role in the Pacific Northwest but again notes that current logging practices do not mimic natural disturbances.

Issue 17. Fragmentation

Comment: Issues pertaining to the impacts of forest fragmentation on owl distribution and numbers were raised by various commenters. One asked if the increased home range of birds residing on the Olympic Peninsula relative to birds further south could be attributed to something other than habitat fragmentation. Another commenter suggested that fragmentation of habitat on the Olympic Peninsula may only be a contributing factor to the population decline and that a combination of factors, such as natural causes and being on the edge of the subspecies' range, may be responsible. Another asked if we are trying to maintain the spotted owl on the Olympic Peninsula in a portion of its range which may not be conducive to its survival.

Service responses: It is probable that the increased home range exhibited in the northern part of the northern spotted owl's range results from a combination of factors. Possibilities include a different or sparser prey base, harsher climatic conditions, and perhaps different vegetation composition or structure. There is no indication that any factor, other than amount of suitable habitat, has changed during the past few decades on the Olympic Peninsula. The Olympic Peninsula is within the owls' historic range. There is no reason for believing that populations there will not be viable if adequate habitat for them is available.

Comment: Several commenters argued that larger home range sizes in Washington and Oregon may be attributable to this being the periphery of the distribution of the owl, rather than reflecting any effects of fragmentation. In the view of these commenters, if home range size was directly correlated with poor quality habitat, then presumably home range in Oregon and Washington would be smaller because home ranges there contain a large proportion of old growth. Several commenters stated they believe that prey is equally abundant in young and old-growth forests and, therefore, the adverse effects from fragmentation are disproved. They argued that high densities of owls in fragmented private forest lands in California, coupled with successful reproduction, indicate that the concern for impacts of fragmentation is unwarranted. One commenter wrote that the issue needs to be further researched.

Service response: The Service agrees that the large home range size in Washington may be related to being near the edge of the subspecies' range. The relative abundance of different prey in old-growth and in different kinds of young-growth has not been studied well enough for clear patterns to emerge. Evidence does exist, however, that over all or most of the northern spotted owl's range, including public land in California, increasing fragmentation is associated with decreasing owl abundance (see discussion under Factor A). The Service agrees that the issue of prey abundance in different habitats warrants additional research.

Comment: Another commenter stated that the proposal failed to account for or address the implications of harvest unit size restrictions imposed by the National Forest Management Act on fragmentation of spotted owl habitat. Someone stated that the proposal ignores a study done on highly fragmented Bureau of Land Management land that shows some of the highest densities and best reproduction known for the spotted owl.

Service response: The National Forest Management Act sets upper limits on the size of clearcuts, but under current harvest schedules, most of the land will be maintained at ages too young to support owls (see discussion under Factor A or Issue 15). The Service agrees that some highly fragmented land managed by the Bureau of Land Management contained high numbers of northern spotted owls, but they were associated with the few remaining parcels of old-growth, and, as in other areas, numbers were higher in portions of the study area with the greatest amount of old-growth. The Service also accepts that densities in these areas may be examples of "packing."

Comment: Several parties assumed the position that no ill effects for the owl have been demonstrated to result from habitat fragmentation. These commenters argued that the Status Review Supplement implies that fragmentation is detrimental to the owl, yet predation and competition were not shown to increase because of fragmentation. According to several commenters, the impacts of fragmentation on home range and the importance of these impacts, if any, is unclear. Further, there is nothing detrimental per se to increased home range size. One commenter argued that because spotted owl hunting methods do not involve long flight, home range size should not even be an issue. Another commenter argued that data in the States Review Supplement on home range contradicts the Status Review Supplements' assumption that an increase in home range size is related to fragmentation.

Service response: The discussion of Factor A shows clearly that owl densities in landscapes with little old growth are signficantly lower than those in less fragmented landscapes containing more contiguous old growth. The number of owls, number of pairs, and number of young produced per square mile all decline significantly as the level of fragmentation increases. The mechanism that leads to these declines is not known nor has it been demonstrated that fragmentation leads to increased home range size.

Comment: The Forest Service reports that results of recent research (Carey, in review) suggest that light fragmentation may increase the variety of prey available, but that this benefit is short-lived as the young seral stages grow into closed-canopy sapling-pole stands. One commenter noted that according to a recent study (Chavez-Leon 1989), owls within areas of highly fragmented spotted owl habitat in northwestern California may have lower fitness than owls in nearby more contiguous habitat.

Service response: The Service noted the cited studies with interest and anticipates that additional research on these points will be carried out.

Comment: One commenter stated that isolation is not demonstrated to result from fragmentation, at least not in California. Another commenter maintained that survival of the spotted owl is only dependent on two families being able to exchange members and breed: as there are many such families capable of interbreeding, the northern spotted owl is neither endangered nor threatened.

Service response: The Service agrees that slight isolation, caused by timber harvest or other factors, undoubtedly does not endanger a population. But if current trends in California and elsewhere continue, then large portions of the northern spotted owl's range will contain only widely separated patches of suitable habitat (see discussion in Factor A). Under these conditions successful dispersal and genetic exchange would be difficult or impossible. The Service maintains that survival of the spotted owl is predicated on the maintenance of sufficient suitable habitat to provide for long-term viability throughout the range. By maintaining well distributed owls, genetic exchange should be sufficient. The Service does not believe that the future success of the spotted owl is merely dependent on two owl families interbreeding.

Comment: Meyer *et al.* (1990) submitted a progress report on work assessing the influence of habitat fragmentation on spotted owl site selection, reproductive status or site occupancy for Bureau of Land Management lands in western Oregon. In the Coast Ranges and Klamath Provinces, the results indicated that considerably more old-growth habitat and larger average tree size in old-growth patches were found within random owls sites than within random landscape sites. Although the results are preliminary because not all data have been evaluated, the authors stated that they doubt these general preliminary findings will change with the incorporation of additional data into the analysis. One commenter stated that the Meyer *et al.* progress report suggests that once a pair of spotted owls has 500 acres of suitable habitat available, there is less of an effect of fragmentation of the remaining landscape on the pair's reproduction and behavior.

Service response: This commenter seems to imply that habitat outside the 500 acres surrounding an owl site is of little importance to northern spotted owls. The study by Meyer *et al.* (1990), however, does not lead to that conclusion. Meyer *et al.* (1990) found significant differences between randomly selected sites and both 0.8-km-radius circles centered on owl sites and 3.4-km-radius circles centered on owl sites. The differences were larger between the 0.8-km circles and random sites, but the larger circles were also significantly different from the random sites indicating that "site selection may also be influenced to at least some degree by habitat quality in an area at least as large as 3500 ha (8600 acres) * * *" (Meyer *et al.* 1990). The Service agrees with Meyer *et al.* (1990) that habitat in an areas of at least 8,600 acres around the owl site appears to be important to northern spotted owls. Meyer *et al.* (1990) reported that their analysis of reproduction showed similar trends to the site occupancy results; they did not study behavior.

Issue 18. Management Activities

Estimates of the Amount of Habitat Per Pair

Comment: One commenter expressed the opinion that the Chief of the Forest Service said he will set aside 7,800 acres per pair; thus making it impossible for the Forest Service to implement the short-term timber sale compromise pending before Congress (note; section 318 did pass). Someone else said that the Fish and Wildlife Service announced a tentative plan to set aside 8,000 acres, or 14 square miles for every pair of spotted owls. A party commented that only 10-15 acres of old growth are needed to support a pair of owls. Others said there was no proof that an owl cannot survive in 1 acre, 100, or 640 acres. Someone else said that in Roseburg, Oregon, the Bureau of Land Management found two pairs over a 10-year period in an isolated 80 acre tract of old growth, and questioned the owls' requirement for large blocks (2,000 acres or more) of old growth for survival. One commenter stated that it is unclear why the emphasis is on preserving old growth in large acreage tracts when the spotted owl seems to need more specialized habitat which might be enhanced rather than hindered by management techniques.

Service response: The Chief of the Forest Service in the Forest Service Record of Decision, established the following SOHA acreages: Olympic Peninsula, 3,000 acres; Washington Cascades, 2,200 acres; Oregon Cascades, 1,500 acres; Oregon Coast Range, 2,000 acres; and Klamath Province, 1,000 acres.

Median home range size of paired northern spotted owls ranged from 1,411 acres in the Klamath Province to 9,930 acres in the Olympic Peninsula (Thomas *et al.* 1990). Not unexpectedly, as the home range size increased, so did the actual acreage of suitable habitat contained in the home range. The median percent of old-growth forest within home ranges varied from 25 percent to 74 percent. Even when the lowest percentage value is multiplied by the lowest median range size, the value exceeds the 10 to 15 acres suggested adequate for owl survival. Data from home range studies clearly demonstrate that northern spotted owls require large tracts of land containing substantial amounts of suitable habitat.

The Service considers the observation of 2 pairs in an isolated 80 acre block of old growth over a 10 year period an incidental observation and not indicative of the requirements of northern spotted owls.

The Service agrees there is some indication that owl habitat might be enhanced through certain silvicultural practices (see also Thomas *et al.* 1990), although the effects of specific silvicultural prescriptions remain unknown at this time.

Spotted Owl Habitat Areas (SOHAs)

Comment: Several commenters asked if the SOHAs were established based on

biological or economic considerations. Setting aside SOHAs with large blocks of old growth is a misguided approach according to one person because there was no systematic attempt to sprinkle SOHAs on private land, yet the birds are still there. One individual believes that SOHAs have increased in size from 640 to about 4,000 acres without a sound basis.

Service response: The establishment of SOHAs is based primarily on biological considerations; SOHAs must include certain amounts of habitat suitable for owls within a 1.5 mi. or 2.1 mi. radius circle. The amount of suitable habitat required depends upon the physiographic province in which the SOHA is established, and this is based upon owl home range sizes. For example, in the Klamath Province of California and southern coastal Oregon, where median home range sizes vary from 1,992–6,314 acres that include 800–2,464 acres of suitable habitat, SOHAs should contain 1,000 to 1,250 acres of suitable habitat, respectively. In the Olympic Peninsula (Washington), the median home range of a pair of spotted owls is 3,930 acres, of which 4,579 is suitable habitat. SOHA acreages are 3,200 acres of suitable habitat within a 2.1 mi. radius circle. Site selection for SOHAs depends on both biological and management considerations. The Forest Service has no authority to establish and manage SOHAs on private land. A system of areas managed for the owl is necessary on public lands because northern spotted owls generally are scarce in privately managed timberlands throughout most of its range. No reproductive pairs are known from private lands in Oregon, 2 have been found in Washington, and 36 are known from private land in California (of a total of 969 known reproductive pairs) (Thomas *et al.* 1990).

The basis for the SOHA dimensions was determined by radio-tracking spotted owl pairs and determining their spatial requirements. The largest SOHAs (on the Olympic Peninsula) are required to contain 3,200 acres of suitable spotted owl habitat.

Comment: Someone reported that the Forest Service had sold a sale adjacent to a SOHA so that it could study the effects of logging on the northern spotted owl. Even though road construction and logging were underway during the course of this study, the owls were located and found to be nesting. Juveniles were observed, but not every year. A biologist stated that on the Siuslaw National Forest, there were 11 breeding pairs between 1984 and 1989 of which seven were in SOHAs. Of the four breeding pairs outside of SOHAs, two have logging within 100 yards of the nest sites and habitat of the third may be included in a land exchange.

Service response: The SOHA system is designed to protect a limited amount of suitable habitat within a specified radius (1.5 or 2.1 miles). Other commercial forest stands within that circle, including parcels adjacent to protected units with breeding pairs of owls, can be harvested.

According to the Forest Service, there are 22 designated SOHAs on the Siuslaw National Forest, of which 8 (36 percent) contained reproductive pairs of spotted owls. Sixty-nine percent of all known reproductive pairs on the Siuslaw were found in reserved land, SOHAs, or in lands unsuited to timber production. The Siuslaw Forest Plan anticipates a 29 percent decline in spotted owl habitat over the next 50 years.

Comment: The Forest Service commented that in 1989, 82 percent of the SOHAs in Region 5 and 95 percent in Region 6 were occupied. In 1988 and 1989, more than 50 percent of SOHAs in each physiographic province in Region 6 had a resident pair at least for one of these years. During 1989 in Region 5, 95 percent of the SOHAs were occupied by at least one owl, 58 percent contained pairs, and 46 percent contained pairs with young. In comparison, for random sample areas in reserved sites, 40 percent were occupied, 14 percent contained pairs, and 83 percent contained pairs with young; for random sample areas in non-reserved sites 67 percent were occupied, 23 percent contained pairs, and 82 percent contained pairs with young.

Service response: The Service has considered these data in the assessment of the status of the spotted owl. Most forests report modest occupancy of SOHAs by owls. Forest Service figures indicate that 67 percent of SOHAs on the Olympic National Forest have contained breeding owls in the last 10 years. Comparable figures are 52 percent for the Washington Cascades, 36 percent for the Oregon Cascades and Coast, and 47 percent for the Klamath Province (best year, 1988–89). It is equally important to consider how many reproductive owls occur in areas other than SOHAs, reserved areas, or lands unsuitable for timber production. The figures for this suitable and available habitat range from 79 percent (Winema National Forest) to 0 percent (Okanogan National Forest) in Region 6, and from 84 percent (Six Rivers National Forest) to 24 percent (Klamath National Forest) in Region 5.

Comment: The Forest Service comments included a report by Lamberson *et al.* (1989) that concluded that crowding of adult owls into remaining suitable habitat as logging of spotted owl habitat continues is likely to lead to very high occupancy rates in SOHAs—much higher than expected under long-term stable conditions. Therefore, the authors conclude that caution should be exercised when using occupancy data to infer the condition of the population.

Service response: The Service accepts the comment.

Comment: One commenter questioned the statement in the Status Review Supplement, "Future management options are lost if SOHAs are deficient" because of the amount of small and large saw timber in the Pacific Northwest, and suggested that the Service interpret net habitat change over the region.

Service response: Most SOHAs have been placed in areas with good owl habitat. Even so, few of them could be enlarged if it were required. In Region 5, for example, the percentage of SOHAs with 1,000 acres of suitable habitat within a 2.1 mi. radius circle ranges from 56 percent (of 50 SOHAs in Mendocino National Forest) to 100 percent (of 50 SOHAs in Six Rivers National Forest). These figures reduce to 14 percent and 82 percent for 1,500 acres on the Mendocino and Six Rivers National Forests, respectively, and 4 percent and 66 percent, respectively, for 2,000 acres. Clearly, options have already been lost in forests like Mendocino, in which barely half the SOHAs contain the requisite acreage.

Larger areas of suitable owl habitat are required in most forests in Region 6. For example, Olympic National Forest must provide 3,200 acres in its SOHAs, yet only 09 percent of them have 3,000 acres. Because habitat is so fragmented over the owl's range, it would be difficult to add new SOHAs, or expand many of those already established.

The Service has considered net habitat change over the entire range of the spotted owl. About 1 percent of suitable habitat on Forest Service lands and 3 percent on Bureau of Land Management lands is being cut each year, leading to an inexorable decline in the owl population. Even though younger forest is regenerating, anticipated rotation ages are short enough to prevent most of this younger growth from developing to a stage where it would provide suitable habitat for the spotted owl.

Comment: A recent survey of Bureau of Land Management and Forest Service personnel by the Interagency Spotted Owl Scientific Committee indicated that fewer than one-half of the SOHAs could be expanded (Thomas *et al.* 1990). Also, existing SOHAs within most of the physiographic provinces would need to be increased 65–80 percent to reach mean amounts of suitable habitat in spotted owl home ranges. The general opinion as revealed in the survey was that options are fast disappearing. Sales for fiscal years 1989 and 1990 are in proximity to a high proportion of SOHAs. A commenter stated that its organization had been informed by the Forest Service that there exist empirical data from spotted owl inventories over the last two years indicating that the SOHA network may have been working as intended, with only moderate long-term risk to the species.

Service response: The Interagency Scientific Committee found that about 20 percent of the SOHAs in the Pacific Northwest failed to contain their 1986 target acreages because of insufficient suitable habitat before section 318 called for expanded SOHA acreages (for one year) throughout the range of the owl. Clearly, there are no options for these SOHAs, for no suitable habitat remains to add to them.

Most SOHAs do not need to be increased 65–80 percent to include the acreages required in the Record of Decisions or Section 318. In Olympic National Forest, 27 of 30 SOHAs contain 2,000 acres of suitable habitat, while 21 (69 percent) contain the 3,000 acres required under the Record of Decision. In the Siuslaw National Forest, 21 (95 percent) SOHAs contain the requisite 2,000 acres, and all could be expanded to include 2,500 acres as required under Section 318. The Four National Forests in the Washington Cascades have designated 138 SOHAs: 83 (60 percent) of them contain the requisite 2,500 acres within a 2.1 mi. radius circle. The Mendocino National Forest in California has many SOHAs with small acreages of suitable habitat, and only 30 percent of them contain 1,000 acres, and only 2 (4 percent) of them could be expanded to 1,500 acres. While 20 percent of the SOHAs in Region 6 (Oregon and Washington), and about 38 percent of those in Region 5 (California) fail to meet their acreage requirements, the shortfall in about 20–60 percent, not as severe as suggested by this commenter.

Many timber sales are near SOHAs simply because that is where much of the good timber remains. According to the Thomas *et al.* (1990) report, and contrary to the Forest Service's Record of Decision, options are fast disappearing, and will no longer be available in 5 years. In a thorough review, the ISC (Thomas *et al.* 1990) concluded that the SOHA network is fatally flawed and does not provide long-term protection to the owl.

Interagency Spotted Owl Scientific Committee (ISC) Conservation Plan

In August 1988, an interagency agreement was signed by the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service establishing the Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. This committee prepared a conservation plan (Thomas *et al.* 1990) for the northern spotted owl and released the plan in April 1990. To accommodate inclusion of the biological information in the plan pertaining to the status of the owl, the Service reopened the comment period on the listing proposal on March 29, 1990.

Comment: Numerous commenters reviewed the ISC conservation plan and submitted comments on the plan to the Service. A number of commenters stated that the plan was sufficient to postpone or delay indefinitely the listing decision. Others said the plan went too far in restricting harvesting. A number of commenters said that if the plan is approved and implemented, there will be no need to list the spotted owl and, therefore, the Service should withdraw the proposal. Still others stated the plan was unproven and that the owl should be listed regardless of whether the plan is accepted and implemented. A commenter stated that the public comment period should remain open indefinitely until such time as the documents used to develop the ISC plan are available for public review, inspection, and analysis such that the public can comment on the management plan. The commenter further wrote that the Service's consideration of the ISC plan should be limited to the information that is documented in the plan and should give no weight to the overall conservation strategy in the listing decision. Moreover, it is the commenter's opinion that the underlying data used in the ISC report are not part of the Service's administrative record on the owl listing proposal and, therefore, the Service cannot consider peronsal communications regarding such data.

Service response: The Service has responded to comments generated by the ISC plan only insofar as they are germane to the listing decision. Comments pertaining to the adequacy of the plan or the need or lack thereof to list the owl in light of the plan will not be addressed specifically. As discussed under Factor D "Inadequacy of Existing Regulatory Mechanisms," the Service regards the ISC document as a draft plan that remains largely untested. Its possible effectiveness, therefore, is yet to be tested. There is no assurance that the plan will be approved by the four agencies, nor that it will be implemented. Most importantly, however, it is uncertain whether the plan, if fully implemented, would be sufficient to recover the northern spotted owl. Even if the plan were to be implemented using accredited, proven methodology with a high likelihood of success in protecting the species, anticipated implementation of the plan is not sufficient justification for the Service to withdraw the proposal or delay its decision on listing. The Service sees no need to reopen the comment period further for individuals to comment on the validity or lack thereof of the ISC plan. Although the specific strategy suggested in the plan did not enter into the Service's decision on the proposal, the Service did review data on which portions of the plan were based. These data were entered into the administrative record on this listing proposal during the open comment period and were available along with the entire record for public inspection, by appointment. It is the Service's opinion that the conservation strategy developed in the ISC plan presents a possible starting point for the development of a recovery plan for the owl. Under provisions of the Act (Section 4(f)), the Service is required to develop recovery plans for listed species that are likely to benefit from such plans. If any conservation strategy is undertaken and successfully implemented so that the northern spotted owl no longer requires the Act's protection, the Service will consider a delisting action.

Other Management Plans and Options

Comment: One commenter reported that because owls can live in mixed-age managed forests, the Service should be able to provide suitable habitat for owls. Numerous commenters stated that recent research suggests that it is possible to provide owl habitat in managed forests. Others said that remnant old-growth trees remaining after timber harvesting contain nesting pairs of spotted owls, and provide further evidence that it is possible to provide suitable owl habitat in managed forest. Another commenter argued that owl research, to date, has focused on assessing habitat damage caused by timber harvesting and this is the wrong approach. According to this commenter, the question that needs to be asked is.

"What habitat conditions must be present in a managed forest to insure the survival of a viable owl population?"

Service response: The Service agrees it may be possible to provide suitable owl habitat in managed forest in some locations and under certain conditions. Evidence from private lands in California, for example, suggest that owl populations may survive in forest subjected to repeated harvest entries. Such methods tend to create a multilayered canopy with mixed ages of trees. However, more than 95 percent of the timber harvest occurs using clearcuts, a method not immediately conducive to the creation of mixed-age timber stands.

The Service does not accept the comment that owl research has focused on assessing damage caused by timber harvest. Most research has assessed how owls perform in a landscape where timber harvest has occurred and is made independent of any subjective assessment of damage. In general, habitat conditions in most managed forest—even aged stands with little structural diversity, young age classes of trees due to short rotation periods—are not conducive to a viable owl population.

Comment: Several commenters stated that Bureau of Land Management and Forest Service personnel are capable of developing habitat management plans for the owl, that they are doing a fine job, and that they should be trusted to continue to do so. In contrast, another party stated that current forest plans do not protect habitat. Someone else asked what effect Forest Service plans will have on the Service's decision and whether they are sufficient to maintain the spotted owl. Several commenters expressed confidence in reforestation plans that will suffice for all species.

Service response: Although Forest Service and Bureau of Land Management personnel have developed an elaborate network of habitat areas for the spotted owl, there is no guarantee that those areas will protect the owl. The Bureau of Land Management has set aside 121 agreement areas, yet 12 of these are temporary (one year), and the other 109 (226,000 acres) are not permanently protected—they could be changed when new management plans are completed in 1992. In fact, 72 percent of all known owls on Bureau of Land Management land are not covered in the agreement area network. Overall, suitable habitat on Bureau of Land Management land is declining (being harvested) at a rate of about 3 percent per year. There are 644 SOHAs in the Forest Service network, as well as additional acreage in wilderness areas and other reserved lands. However, the SOHA system has been criticized and may be incapable of sustaining a population of owls due to inherent problems with fragmentation, and loss to fire, storm, volcanos, or administrative decisions. Additionally, with harvest rates anticipated to be about 30,400 acres per year, about 1 percent of spotted owl habitat on Forest Service lands will be lost each year.

Obviously, the anticipated loss of most Bureau of Land Management suitable habitat, and about 70 percent of Forest Service habitat, has been carefully considered by the Service. It is the Service's opinion that current management plans are insufficient to prevent the continued loss or degradation of suitable spotted owl habitat and that current regulatory mechanisms are inadequate (see Factor D in "Summary of Factors Affecting the Species" section).

Reforestation plans may prove insufficient to provide suitable spotted owl habitat if the rotation age is such that the regenerated stands are harvested prior to attaining the attributes associated with owl habitat. The role of silvicultural treatments needs to be assessed to determine which management systems produce suitable spotted owl habitat and the amount of such habitat that can be regenerated.

Comment: According to one opinion, at the current rate of harvest there is a 60–70 year supply of old growth left. By that time there will be new stands of trees to take the place of old growth. Another party believes it is possible to harvest without decreasing the spotted owl population yet maintain the sustained yield and timber harvest to supply the needs of industry from an economic standpoint. One individual maintained that with so much habitat already preserved, options exist to accommodate both the owl and timber-dependent communities. According to a commenter, owl populations persist in eastern Oregon and Washington because logging techniques have resulted in timber growth patterns that mimic old-growth forest in western Oregon and Washington, thereby suggesting that viable owl populations can be sustained in managed forests.

Service response: The supply of old-growth forest remaining depends upon the National Forest or Bureau of Land Management District. To talk about a 60–70 year supply oversimplifies the issue. For example, about 23,400 acres (3 percent) of old-growth forest on Bureau of Land Management lands in Oregon are being cut each year. The Eugene District will run out of old growth in 12 years, Coos Bay District in 17 years, and Salem District in 14 years. The Forest Service plans to log just under 40,000 acres of old growth each year, which is about 1 percent of its total remaining spotted owl habitat. Much of the remaining old growth is in small, fragmented acreage, and forests with less than about 20 percent old growth are little used by owls (USDI 1990).

In most situations, managed forests provide poor habitat for spotted owls. Anticipated rotation ages will lead to harvest schedules that remove the trees before they become suitable for spotted owls.

Some silvicultural prescriptions (i.e., selective removal) allow owls to persist, or repopulate, managed forests at younger ages. However, selective logging is practiced on only about 5 percent of the timber base in the Pacific Northwest (USDI 1990). Also, after 2 or 3 entries, selective removal techniques generally fail to provide an adequate crop of commercial trees, and clearcuts are then used to increase future production. Abundant data show throughout much of the range that owls persist only in very low numbers in areas managed for timber production, especially when the amount of remaining old growth decreases to less than about 40 percent of the total acreage, and that areas with less than 20 percent old growth are little used by owls (USDI 1990).

Habitat preserved in National Parks, Wilderness Areas, and lands unsuited for timber production exists in a highly fragmented patchwork. Owl population densities and reproductive output are lower in protected areas than in non-protected old growth (USDI 1990). This is because a high percentage of suitable habitat in reserved status is at higher elevation or on poor timber sites. The Service believes that options do exist to accommodate both the owl and the timber-dependent communities, but also believes that more old growth and mature forest than is currently reserved will have to be left standing to assure the owl's survival.

There is no evidence to suggest that owls persist because of logging techniques. There is more habitat available in the Cascades than in the Coast Ranges of both Oregon and Washington, and habitat availability explains the larger populations there.

Comment: Someone suggested that timber harvesting be allowed to continue under current sustained yield management while intensive research and planning for owls continues. A number of commenters stated that non-use of renewable natural resources is not in keeping with sound forest management for multiple use, that much of the old-growth timber is deteriorating and should be systematically harvested, and that harvested old growth should be replaced with young healthy forests. Another writer asked that no further cutting be allowed on disputed lands until it is definitely known whether there is or is not endangerment to the owl. If the Forest Service continues with its current harvesting program, this commenter believes that the spotted owl would not become extinct for 300 years.

Service response: There is abundant information available on the requirements of the northern spotted owl, and an equally rich source of information that suggests that current forest management is resulting in an inexorable decline in owl numbers and a reduction in future management options for the species. Therefore, it would be imprudent to assume that continued harvesting would not be deleterious to the owl even if research were being conducted concurrently.

Non-harvest of commercially-suitable trees does not equate with non-use of old-growth forest in a multiple-use strategy. Old-growth forest is a dynamic ecosystem with a complex flow of energy through countless organisms. It serves a number of crucial human uses, such as watershed protection, and is used extensively for hunting, fishing, and many non-consumptive types of outdoor recreation. Old growth is not "deteriorating"—it constantly renews itself through the replacement of old trees by young ones.

Injunctions against harvesting certain lands were lifted by the courts subsequent to the passage of section 318. In the Service's opinion, continued harvesting of old growth and mature forest will result in further decreases in owl numbers. The need is to implement a management plan that provides for the continued existence of the northern spotted owl in perpetuity. The Service does not agree that the owl could persist for 300 years if the present rate of harvesting were to continue.

Comment: One commenter indicated that even-aged management was presumed to be incompatible with the maintenance and development of spotted owl habitat. In the Service's proposal it was implied that uneven-age management would perpetuate owl habitat. This commenter disagreed and argued that over much of its range Douglas-fir is less shade tolerant than its associated species and that it naturally develops an even-age structure within much of its range. He stated that forest openings (created by a group selection form of timber harvesting) or minor perturbations in the primary tree canopy (created by single tree selection) will create canal conditions conducive to the germination and establishment of Douglas-fir and that this type of uneven age-management creates within-stand fragmentation and edge effects that favor invasion by great horned owls.

Service response: Even-aged management may produce suitable owl habitat under certain circumstances, such as when reserved trees are left after a selective harvest entry (Thomas *et al.* 1990). Silvicultural treatments that produce a multiple-canopy structure may also provide one possibility for integrating owl habitat requirements with timber demands. However, the extent to which silvicultural treatments could produce habitat suitable for northern spotted owls is unknown.

Current evidence clearly indicates that even-aged Douglas-fir stands do not become suitable for owls until >100 years of age (USDI 1990), well in excess of the current more or less 70 year rotation plans. The Service recognizes that Douglas-fir is a shade-intolerant tree species whose growth may be inhibited under less than clearcut prescriptions, but considers the relation between owls and alternative silvicultural treatments a potentially fruitful area of future research.

Whether smaller, more localized fragmentation impacts resulting from uneven-aged management favor invasion of great horned owls relative to even-aged managed stands is unknown.

Comment: One commenter maintained that a recovery plan is needed to provide consistent direction for public land managers to follow. Another stated that the owl should be listed and a habitat conservation plan developed.

Service response: The Service is required by provisions of the Endangered Species Act (Section 4(f)) to prepare a recovery plan for each listed species. The Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl has produced "A Conservation Strategy for the northern spotted owl" (Thomas *et al.* 1990) that will provide a significant contribution to the development of a recovery plan. A habitat conservation plan is prepared by private parties applying for an "incidental take" permit under Section 10(a) of the Act (see Issue 4 for details).

Comment: A commenter provided an extensive report pertaining to management alternatives and suggesting future research activities.

Service response: The Service recognizes that many potential management alternatives can be developed for the northern spotted owl, and further realizes that some spotted owls persist in, or recolonize quickly, forests harvested under selective cut prescriptions. However, such prescriptions now occur in less than 5 percent of managed forests, and have had little overall positive impact on owl numbers. Until adaptive management strategies have been shown to benefit the owl, the Service concludes that current harvesting methods are resulting in a continued decline of the species.

Reserved, Set Aside, or Land Otherwise Unavailable for Timber Harvest

Comment: Another party stated that old growth will never be eliminated totally because about one-third of Federal lands are set aside for total preservation with another approximately one-third designated for multiple-use other than timber production. The commenter maintained that it is pure conjecture that wilderness areas may be logged someday.

Service response: There were originally about 17.5 million acres of old growth that may have contained forest land suitable for the spotted owls in the Pacific Northwest. Much of this has been harvested. Presently about 8.7 million acres of suitable habitat (old growth and mature) still remain. Of this, about 2.7 million acres is preserved in National Parks, Wilderness Areas, watershed management areas, wild and scenic rivers, research natural areas, etc. Not all of this is "totally preserved." For example, watershed areas such as Bull Run (Mt. Hood National Forest) serve a multitude of functions, are extensively roaded, have reservoirs, and can be salvage-logged. The 2.7 million acres also contain areas unsuited to timber harvest (about 0.8 million acres), and some of this may be logged as silvicultural techniques change. As an example, the Siuslaw Forest Plan (1990) changed the protected stream headwall areas from 5 to 4 acres, thus increasing their timber base and reducing the area considered unsuitable for timber production and tallied as protected. In reality, about 84 percent of the timber base is available to timber production. The Service agrees that it is conjecture that wilderness areas may someday be logged.

Comment: Numerous parties argued that enough land is set aside already to manage for spotted owls and with 4.2 million acres of old growth in Oregon and California, there is more than enough habitat. One party stated that there are 3 million acres of roadless and other areas that are protected. Another said there were 5 million acres set aside and if the spotted owl cannot survive

within that area, let it become extinct. Some asked how much more habitat does the spotted owl need. Several commenters maintained that even if further study establishes the dependence of owls on old growth, adequate old-growth timber is now protected in wilderness to maintain viable spotted owl populations. According to one commenter, more forest and national park lands (53 percent) are available to the owl than are designated for multiple-use. One individual questioned how the northern spotted owl can be "endangered" if it has more land than people do. A number of commenters stated that no more timber lands should be taken out of the economy to create additional protected habitat. Another questioned why spotted owls must be found in every National Forest.

Service response: As stated above, the widely accepted figure for the amount of old growth set aside today is about 2.7 million acres. In the Service's opinion, considering anticipated logging prescriptions and rotation ages, the protected owl habitat is not sufficient to provide for long-term viability.

The owl needs sufficient, well-distributed habitat to ensure its survival. How much secure habitat is enough? In a thorough review of the needs of the northern spotted owl, Thomas *et al.* (1990) described a management plan that set aside 193 Habitat Conservation areas in California, Oregon and Washington that totalled about 7.6 million acres. It was the reasoned opinion of Dr. Thomas' team of scientists that this much suitable habitat was required to maintain the owl in perpetuity. Only about one-third of this acreage is contained now in National Parks, Wilderness Areas, SOHAs, and other reserved lands.

There are about 4.7 million acres in the wilderness system in the Pacific Northwest. Much of this does not provide owl habitat. It is estimated that only about 1 million acres is suitable for spotted owls, and owls in wilderness sites studied have lower densities and lowered reproduction compared to owls in non-reserved forest lands, which tend to have better habitat (USDI 1990). The Service has concluded that wilderness areas are not sufficient to assure the long-term survival of the spotted owl.

The amount of land available to owls is nowhere near the 53 percent claimed by the commenter. For example, of the 13.8 million acres of lands controlled by the Forest Service in Oregon and Washington, 2.6 million acres (19 percent) is reserved, but only .8 million (6 percent) is suitable for spotted owls. About 2.7 millions acres (15 percent) is now protected: the rest are available for timber harvest (multiple-use).

Clearly, owls do not have more land than people, and will only survive with prudent land management.

The issue to list the northern spotted owl as threatened or endangered must, by law, be made without considering the potential economic impacts of the listing decision.

The likelihood that a species will persist through time is increased if its original distribution can be maintained. An interconnected population covering a large geographic area is much less vulnerable to natural disasters (such as fires, severe storms, volcanic activities, or disease) and less susceptible to the deleterious effects of inbreeding than a population broken into fragmented, isolated units. Also, the National Forest Management Act of 1976 requires that the National Forests maintain "a minimum number of reproductive pairs and that habitat must be well distributed so that those individuals can interact with others in the planning area" (36 CFR 219.19). Hence, the Service believes that a reasonable approach at owl management would involve maintaining viable owl populations on all National Forests within its range.

Issue 19. Regulatory Mechanisms

Existing Management Plans for Federal Lands

Comment: According to one commenter, in the **Federal Register** the Service failed to consider the adequacy of existing regulatory mechanisms. Someone argued that listing is not needed because the Bureau of Land Management and Forest Service already have considered the biological needs, allocated habitat, have a monitoring program, and the flexibility necessary to provide for the continued existence of the spotted owl. Another commenter stated that the Fish and Wildlife Service is now doing a forest-by-forest, distribution-by-distribution review of the plans and allocation process; hence, it is not necessary to list.

Service response: The Service considered all the major applicable regulatory mechanisms in place that deal with timber harvest and spotted owls on private, State, and Federal (Bureau of Land Management, Forest Service, and National Park Service) lands in California, Oregon, and Washington (see 54 FR 26673–4). These issues are again considered and discussed in the 1990 Status Review, and in this **Federal Register** document (see Factor D). It is the Service's opinion that existing management plans pertaining to timber harvest and the spotted owl are inadequate to ensure the long-term viability of the species.

The Bureau of Land Management, which administers about 11 percent of all spotted owl habitat, operates under constraints imposed by the Oregon and California Act, which mandates that their lands (over 2,000,000 acres in Oregon) provide for production of timber in perpetuity. Lands can be set aside for the protection of owls for short periods of time (10 years). Even though the Bureau of Land Management has 121 SOHAs with over 230,000 acres set aside, these are temporary, and may last only until a new management plan is completed in 1992. Although it is true that the Forest Service has a comprehensive network of SOHAs, research, and monitoring programs, the SOHA system is considered flawed because it is scattered, subject to natural disasters, and isolates small numbers of birds (generally pairs). Of about 5 million acres of suitable spotted owl habitat on Forest Service land, 3.2 million acres (63 percent) is suitable for harvest, and logging of these lands is anticipated to greatly reduce owl numbers.

The most comprehensive Fish and Wildlife Service study of the spotted owl is the most current status review (USDI 1990) to assess the current and future status of this species.

Comment: The Bureau of Land Management noted that it manages 2 million acres of commercial forest lands in western Oregon, of which over 800,000 acres is considered suitable spotted owl habitat (mature and old growth). Less than three percent of these lands will be harvested in any one year. There are 122 management agreement areas on Bureau of Land Management land during fiscal year 90. Further, 254,000 acres of mature/old growth is constrained from harvesting to protect owls.

Service response: The Service agrees with these comments. There are 121 management agreement areas (one was lost in a land transfer to the Bureau of Indian Affairs) that protect over 230,000 acres of forest for spotted owls. Twelve of these are one-year interim areas required by section 318 of the FY 1990 Interior Department Appropriations Act. All 121 areas are interim areas, and may be changed or eliminated when management plans are finalized in 1992. Since none of them are permanently dedicated to owl protection, the Service cannot rely on their long-term adequacy. While it is true that 3 percent of the suitable habitat is being harvested each year, habitat will be lost from entire districts much sooner than implied by these figures (i.e., <33 years). For example, it is expected that all suitable habitat will be lost from the Eugene District in 12 years, the Salem District in 14 years, and the Coos Bay District in 17 years. Only the Medford District anticipates that available habitat will last more than 33 years.

Comment: The Forest Service commented that 5 million acres of suitable spotted owl habitat exist on National Forests in California, Washington, and Oregon and that 51 percent of this (2.6 million acres) is not available or suited for timber harvesting. The Forest Service defines suitable habitat as "forest that includes considerable large dominant trees, multi-layered canopy with moderate to high canopy closure, and downed logs."

Service response: The Service agrees that there may be about 5 million acres of spotted owl habitat on Forest Service land in California, Oregon, and Washington. However, according to the Service's estimates only about 1.8 million acres (37 percent) of this is not available for timber harvest (USDI 1990). This represents about 10 percent of the original spotted owl habitat in the Pacific Northwest.

Comment: One commenter urged the Service not to list the spotted owl in the Quinault Ranger District on the Olympic Peninsula because of the unique status of the unit. This unit was established by the Chief of the Forest Service in 1949 who dedicated this portion of the area's timber supply for manufacture within communities so vitally dependent on it.

Service response: The Service is required by law to consider the status of the owl throughout its range on biological grounds only, and thus cannot apply non-biological criteria to the Quinault Ranger District.

Comment: According to one opinion, the Status Review Supplement cavalierly treats the Forest Service's expected compliance with its statutory duty under the National Forest Management Act. The commenter stated that the anticipated compliance is speculation on the part of the Fish and Wildlife Service and should be given no weight. Contrary to a statement in the Status Review Supplement, one commenter maintained that forest plans under the National Forest Management Act are legally binding upon the Forest Service. The commenter noted that the Status Review Supplement asserts that cutting rates and forest harvest activities will eliminate most spotted owl habitat that is available within the next 60 years; yet forest plans and regulatory guides establish land protection and preservation of spotted owl habitat. In this commenter's opinion, regulatory mechanisms exist on Forest Service and Bureau of Land Management land to permanently protect what is now perceived to be spotted owl habitat and these mechanisms are flexible enough to take into account new information on habitat use.

Service response: In the Service's opinion, the responsibilities of the Forest Service under the National Forest Management Act were carefully considered in the previous status reviews (USDI 1987, 1989) as well as the proposal. The 1990 Status Review (USDI 1990) has reached similar conclusions about the effects of harvesting upon the long-term survival of the spotted owl. The continued harvest of old-growth forest, coupled with anticipated shorter rotation ages for younger even-aged stands (the Siuslaw Forest Plan anticipates that 74 percent of their harvest will come from 80 to 80 year old stands) will guarantee that suitable habitat will be lost, with a diminished chance that it will be replaced by growing managed forests. The Service agrees that the Forest Service has assumed an active role in, but has concluded that current measures are not enough to guarantee the survival of the owl. If the Bureau of Land Management's and Forest Service's regulatory mechanisms are flexible in managing for the owl, then there is no assurance that any plans developed and implemented under such regulations could not be altered in the future to the detriment of the owl and its habitat. Current management, however, is inadequate to prevent the continued decline of the northern spotted owl.

Comment: WDW commented that it filed an administrative appeal to the Forest Service's Region 6 Record of Decision. About 80 percent of the spotted owl population in Washington is on Federal land. According to WDW, the Forest Service management plan (Final Supplement Environmental Impact Statement/Record of Decision) will prevent the state from fulfilling its mandate "to preserve, protect, and perpetuate" the native wildlife of Washington. It will foreclose options to recover the northern spotted owl. WDW commented that there is no scientific evidence to support the Chief of the Forest Service saying that the plan will ensure viable populations. Further, WDW stated that habitat areas have about a 50 percent chance of being occupied and provide about 50 percent of the average amount of suitable habitat used by owls in Washington and Oregon. WDW argued that silvicultural options to manage for spotted owls are experimental and untested, and further that no current evidence exists that spotted owl habitat can be created or maintained through silvicultural management. WDW noted that the Gifford Pinchot National Forest recently revised its estimate of old growth downward by 20 percent. According to WDW, the Forest Service failed to consider cumulative impacts of harvesting on spotted owls and did not consider all pertinent information. Hence, in WDW's view, the Forest Service violated NEPA.

Service response: The Service shares the concerns expressed by WDW. The Forest Service has 186 SOHAs on the 5 National Forests in Washington; 92 of them (50 percent) have had reproductive pairs in the last 10 years, and only 47 of them (52 percent) hold 3,000 acres of suitable habitat. Continued harvest will further reduce owl populations and reduce future options to manage the species.

Comment: Several commenters argued that evidence indicates that current levels of timber harvesting can be continued for five years without jeopardizing the owl, during which time additional information will be provided to determine available habitat and future needs and plans. They maintained that current management plans provide adequate habitat protection and allow time to study owls before making a decision regarding listing. According to comments from the Forest Service presented at one of the public hearings, about 95 percent of habitat capability for spotted owls during the next five years is protected and this approach provides for 95 percent of the timber supply that would have been available without the added protection of owl habitat.

Service response: Evidence indicates that current levels of timber harvest are resulting in adverse impacts to the owl. Spotted owls are reduced to lower levels by timber harvesting, cut blocks are regularly placed near SOHAs and non-network pairs of owls, and a large portion of SOHAs do not contain the required acreage of suitable habitat. The SOHA system itself is flawed, and options for management of larger areas will be lost with continued harvest. Thomas *et al.* (1990) disagree with the Record of Decision that five more years of harvesting will not affect the availability of future options. There is ample evidence already available to determine the status and management needs for the owl. Thomas *et al.* (1990) have concluded that the present distribution and quantity of old-growth

forest is not enough to guarantee the long-term survival of the spotted owl.

An assessment and survey of current management by the Forest Service and the Bureau of Land Management (Thomas *et al.* 1990) indicates that it is not adequate to protect the owl. In 5 years about 15 percent of suitable owl habitat on Bureau of Land Management lands, and 5 percent on the national forests, will be lost at current harvest levels. The harvest on Forest Service lands does not equate, however, to a retention of a 95 percent capability of the habitat to support owls. Many timber sales are adjacent to SOHAs or in concentrations of suitable habitat: 60 percent of all 1989 and 1990 timber sales were in the vicinity of known spotted owls. The impact of harvesting where owls are most abundant will further reduce management options in future years.

Comment: Numerous commenters said there is no evidence that the Forest Service can continue to allow timber harvesting for five more years with no risk to the long-term viability of the spotted owl. The commenters argued that the proposed rule failed to communicate the information available at the time of publication, which demonstrated the problems associated with existing efforts to protect the owl on public lands. Several commenters stated that the Forest Service consistently refused to adopt guidelines protecting non-SOHA owls or pairs, that it failed to adopt guidelines to maintain management options during the five-year operating period of the Record of Decision, and that it chose to ignore its own established guidelines for timber harvesting in the vicinity of all nest sites or owl pair activity sites (USDI 1989). A commenter noted that Forest Service staff were forced to pass over more suitable habitat occupied by owls to establish SOHAs that met spacing requirements and that in 1982–88 only 44 percent of SOHAs in Region 5 supported breeding pairs during at least one season.

Service response: The Service accepts this comment (see above), but disagrees that the proposed rule failed to adequately acknowledge the inadequacies of Forest Service management as it pertains to the spotted owl. The ISC (Thomas *et al.* 1990) surveyed Forest Service staff throughout the range of the owl, and found little consistency with direction related to how timber sales impacted non-network owls. "The general sense appeared to be that the situation is so dynamic that policy is not keeping up with events" (Thomas *et al.* 1990, p. 107). The Service was told by Forest Service biologists that spacing requirements did necessitate placing some SOHAs in areas of marginally suitable habitat, or areas lacking owls, rather than placing them in areas that supported owls. In the best year during the 10-year period 1980–89, 128 of 288 SOHAs (48 percent) in Region 5 held reproductive pairs of owls (USDA 1989).

Possible Adaptive Management Alternatives

Comment: One commenter expressed the view that the Service professes not to know whether the opportunity exists for a successful adaptive management strategy and states that the Service concluded that adequate regulatory management mechanisms do not exist because: 1. It is not known if the number of sites and allocated acreage of habitat per managed site will provide for long-term population viability; 2. flexibility in future management options may be limited; and 3. little or no allowance has been made for long-term catastrophic environmental changes in habitat which may affect small habitat patches. In this commenter's view, these conclusions are wrong and not supported by the record. He states that Forest Service management activities as early as 1972 were routinely modified to protect the owl habitat. In this commenter's opinion, the Service has been part of this regulatory system on public lands and has been accommodated at every step.

Service response: Management activities to date have not demonstrated that adaptive management is a viable option for the owl on land subjected to clear cutting. About 95 percent of all commercial land, public and private, is harvested using clearcut prescriptions. While it is true that younger-aged stands that have been selectively harvested do harbor owls when they structurally resemble old growth (especially in Klamath Province and the California redwoods), such prescriptions account for only about 5 percent of all potential owl habitat in the timber base. There is no indication that adaptive management will be undertaken. The two most recently-completed Forest Plans (Siskiyou and Siuslaw National Forests) rely predominately upon clear cutting, and anticipate further declines in owl numbers. The owl has continued to decline since 1972 under Forest Service, Bureau of Land Management, and private land management practices. The Service continues to maintain that existing regulatory mechanisms are insufficient to provide for the long-term population viability of the owl. Further, the Service disagrees that its concerns for the owl on public land have been routinely accepted and accommodated.

Comment: One commenter wrote that the Status Review Supplement assumes that an intensively managed forest of even-aged trees with an average cutting rotation of 70–120 years will no longer develop or retain the variation of old-growth characteristics which require about 200 years of development. In the commenter's view, this type of analysis is flawed because it assumes that all non-public forested lands will be managed on a short rotation, even-aged basis and ignores the fact that owls can live in younger forest.

Service response: The Service agrees that some silvicultural treatments may create the structural attributes of old-growth forest at younger stand age, but also notes that the long-term effectiveness of this approach is untested (Thomas *et al.* 1990). The Service also agrees that not all nonpublic timberlands are even-aged forests managed on a short-term basis. However, lands subject to other than harvest clearcut prescriptions, the basis of even-aged management, comprise less than 5 percent of the managed timber base in the range of the northern spotted owl (USDI 1990).

Forest Service Old-Growth Guidelines

Comment: The Forest Service commented that it had issued new old-growth guidelines on October 11, 1989, to provide for considering old-growth values in managed National Forest lands. The Forest Service estimates that about 15 percent of the old growth in Region 6 is scheduled for harvesting during the 1990s. By memo dated November 3, 1989, Mr. John Butruille, Regional Forester for Region 6, in responding to the new Forest Service guidance stated, "It is important to note the new statement by the Washington Office [re: policy on old growth] does not alter any of the land allocations set forth in the forest or draft forest plans, nor does it indicate a need to halt completion of plans or the need for immediately revising completed plans." In an accompanying position statement, dated October 11, 1989, the Forest Service stated that old growth land suitable for timber production and not subject to extended rotations is to be scheduled for harvest to establish young stands which more fully utilize potential timber productivity and also meet other resource objectives.

Service response: The Service agrees with this comment. Since Mr. Butruille's statement, the Siuslaw Forest Plan has been published, and there is no indication of a policy change on old growth. The Siuslaw holds about 33,800 acres of old growth (3.7 percent of the land base), of which 23,100 acres is reserved. Of the 10,700 acres of non-reserved old growth (32 percent), old patches >40 acres will not be cut *until a new inventory is completed.* The plan anticipates a 29 percent decline in spotted owl habitat over the next 50 years—virtually eliminating all the unprotected old growth remaining on the forest. Apparently the Forest Service will continue its policy of converting old growth to younger stands, with subsequent losses to the spotted owl.

Management on Non-Federal Lands

Comment: In another's view, the owl policy on Federal land is forcing the cutting of private forest lands that should grow another 40–60 years. A number of commenters stated the proposal has hastened the extinction of the owl as companies increase the cutting of old growth because they fear they will be unable to continue to harvest if the owl is listed.

Service response: Very few reproductive pairs of owls (2) are known to remain on private land in Oregon and Washington, and only 36 are known from California (Thomas *et al.* 1990). Cutting on private land has been at the discretion of the landowner, with whatever State approvals are required. There has been no acceleration of the sale of old-growth timber on Forest Service or Bureau of Land Management land, where the majority (92 percent) of the known reproductive pairs of owls occur. Indeed, because of litigation, the Allowable Sale Quantity (ASQ) has declined about 9 percent on Forest Service lands in the past two years.

Comment: The Washington Department of Natural Resources stated that there is a program to defer logging for 15 years on 15,000 acres of spotted owl habitat on trust lands on the Olympic Peninsula during which time research will be conducted to ensure an improved information base for future decisions. It anticipates eventually applying a new ecosystem-based approach to forestry on all the 200,000 acres of state owned lands in the area. Another commenter responded that the recent recommendation by the Washington Department of Natural Resources for the Olympic Peninsula by the Commission on Old Growth Alternatives for Washington's Forest Trust Lands (Commission) will result in the reduction of habitat for 24 pairs or single owls and certainly eliminate at least five pairs and five single spotted owls.

A commenter maintained that given the nature of experimental science and that logging will occur in areas now occupied by spotted owls, it is likely there will be a loss of existing spotted owls on experimental forest lands. Further, the commenter stated that implementation of the Commission's recommendations will likely result in a significant reduction in the spotted owl population on the Olympic Peninsula.

Service response: The Service accepts the comments. The Service agrees that if experimental forests containing spotted owl are harvested in the usual manner, it is likely that owl numbers there will decline. The Service also agrees that it appears that spotted owl numbers on Washington Trust Lands on the Olympic Peninsula will decline if all but 15,000 acres of old growth are eliminated.

Section 318

Comment: In commenting on Section 318, one commenter wrote that under this amendment the Forest Service would have to sell almost all the old-growth timber currently locked up by a Federal court order, violate Forest Service guidelines on protection for the owl, and exceed its own long-term timber production capacity.

Service response: The normal ASQ for the "owl forests" in the Pacific Northwest has been about 3.2 billion board feet/year (USDA 1988). Sec. 318 of P.L. 101–121 mandated a sale of 5.8 bbf for 1989–1990. This is a 9 percent reduction in the normal ASQ. The Service understands that one difficulty with Section 318 is the short time constraints under which the volume must be sold (by September 1990). This makes it difficult to apply all the proper environmental safeguards when developing the timber sales.

Comment: WDW recently looked at 50 sales and found that 30 of these contained sale units within 2 miles of spotted owl nests or activity centers. According to WDW, several nests or activity centers are inside of or within one-half mile of sale units and a large percentage of the 1990 timber sales will have impacts to spotted owls. The Department is particularly concerned about the area in the central Cascades (I–90 Corridor).

Service response: The Service concurs with these findings.

Comment: One commenter stated that the protective measures provided for by Section 318 are being ignored or cannot be met. The commenter noted that some SOHAs have sale units within expanded SOHA boundaries or in large old-growth blocks adjoining SOHAs.

Service response: It is clear that the requirements for expanded SOHA areas cannot be met for a large number of SOHAs throughout the Pacific Northwest. In California, only 210 of 287 SOHAs (79 percent) include 1,000 acres. On the Oregon Coast Range (Siuslaw National Forest), 21 of 22 (95 percent) SOHAs can hold 2,000 acres, and 20 of them (91 percent) can achieve the required 2,500 acres. On the Olympic Peninsula, fewer than 21 (69 percent) can be expanded to 3,200 acres. These figures are typical for the entire SOHA system, and illustrate how options for managing the owl have been lost. The SOHA consists of protected acreage within the bounds of a circle. For example, a 2.1 mi. circle contains 8,867 acres. On the Olympic Peninsula, only 3,200 acres within that circle needs to be protected. By Forest Service policy, timbers sales can be (and often are) placed on other acreage within the 2.1 mi. circumference.

Issue 20. Finite Rate of Population Increase and Modeling

Comment: Another commenter questioned the use of population models because these relatively new models are predicated on hypotheses that have not been tested and proven over time. One commenter maintained that the Status Review Supplement relies on several population viability models that have been criticized as inadequate to support the opinion that the spotted owl population is declining. Another commenter noted that subsequent to the release of the Status Review Supplement (1989), Review Team Leader Barry Mulder wrote in a letter that population viability models played no role in the listing decision. The commenter maintains that this subsequent recanting of the population viability analysis chapter in the Status Review Supplement shows the Service failed to establish a rational basis for its proposed rule. The commenter questioned why the population viability analysis was discussed if it did not affect the decision.

Service response: Population viability analysis played no role in the Proposed Listing (June 23, 1989) or in the 1989 Status Review Supplement (USDI 1989). The issue was reviewed briefly in the 1990 Status Review (USDI 1990) and the use of these techniques was again dismissed from consideration. Careful review of all information is required and appropriate. If some material is found to be unreliable, the reasons for this are provided and no further consideration is given in the decision.

Comment: It appeared to one commenter that the Status Review Supplement relies on four theoretical ecology and modeling studies to corroborate that the spotted owl is

declining (See Ewens 1969; Lande 1988, 1988; Pulliam 1988). However, the commenter argues that the projections from these models contradict the conclusion that the population is declining. The commenter maintained that Lande (1988) states that the owl population growth rate is not significantly different from that of a stable population, even assuming that all available old-growth habitat is clearcut. Further, the commenter stated that Ewens (1969) concludes that geographically subdivided populations, like that of the spotted owl, are actually more likely to maintain their overall genetic diversity than geographically homogeneous populations. The commenter cites Pulliam (1988) as stating that interspersed population "sources" and population "sinks" represent a stable condition for a species.

Service response: The estimates of population parameters have been updated in the 1990 Status Review (USDI 1990). Estimates are based on the most current data, the best models and estimation methods, and the best model selection methods. These current estimates make all other estimates in survival and fecundity parameters obsolete. Using the best available information, it is clear that populations are declining (USDI 1990). In fact, there is solid evidence that the populations are declining at a statistically significant rate. The new information makes prior analyses, based on former estimates, of no relevance.

Ewens (1969) speculated that genetic diversity may be enhanced in geographically subdivided populations. Nothing is said about the northern spotted owl by Ewens (1969). The spotted owl is currently subdivided by forest fragmentation. In addition, the ISC Habitat Conservation Plan, if implemented, would allow geographic subdivision. Pulliam's (1988) theoretical paper examines model populations and model stability. He does not mention the northern spotted owl, nor did he examine models where habitat and carrying capacity were declining drastically. The Service did not consider any of these 4 models in its decision.

Comment: According to one commenter, three growth rate figures used in the Status Review Supplement (USDA 1988, Lande 1988, and Noon and Biles 1990) have serious methodological, factual, analytical errors. The commenter states that each study assumes a constant rate of survival and reproduction, but this assumption is not supported by demographic data. Hence, the estimated asymptotic finite rates of population increase values (ranging from 0.85 to 0.98) are not the best available data. According to this commenter, both the Forest Service and Noon and Biles use incorrect reproduction and survival data; with correct data the Forest Service and Noon and Biles would have to conclude the spotted owl population is increasing. This commenter maintains that if these parameters are corrected, all the respective studies show the population is stable, the USDA rate being 0.99 and Noon and Biles being 0.98.

Service response: Although specific statistical tests were made, no significant year to year variation could be found in survival or fecundity for the two sets of demographic data (northwest California 1984–1989 and Roseburg Study Area 1985–1989). Therefore, it is reasonable to assume a constant rate of survival and reproduction during the 5 or 6 year study periods. The result of likelihood ratio tests are given in USDI (1990). Likelihood ratio test allow 2 models, each making different assumptions, to be statistically compared. Thus, parameters constant over years were estimated and were used in the estimation of lambda (the average finite rate of population change). The best estimate of survival (or fecundity) of a given year, is the constant (average) value. This applies to the estimates of lambda. The estimate of the sampling variance of the constant parameter includes a year to year component using quasi-likelihood theory where appropriate (e.g., section 3 of USDI, 1990).

Previous estimates of the rate of population change were from 0.85–0.96. The best estimates currently available show a significantly declining population in both areas where sufficient data are available (see USDI 1990 for details). Had the Forest Service and Noon and Biles (1990) used the best estimates of parameters now available, it is the Service's opinion that they also would have concluded that the population was declining. The Service has estimated the finite rate of population change to be 0.95 for northwest California and 0.89 for the Roseburg Study area in southwest Oregon. The populations are declining at a significant annual rate.

The estimates of lambda of 0.99 and 0.98 are based on old data, and the parameter estimates are based on a model that is not the best. Estimates of precision were only approximations. If the best and most current estimates were based on the most current data and the best models, the estimates of lambda would be 0.95 and 0.85 for northwest California and southwest Oregon, respectively. Lambda values less than 1 indicate declining populations.

Comment: A commenter remarked that using work by Marcot and Holthausen (1987), the Forest Service assumed the spotted owl's life span was 15 years (USDA 1988), yet Lande (1988) states that spotted owls may live as long as 55 years. The commenter maintained that this changes the asymptotic rate of population increase from 0.85 to 0.985. The commenter stated that with a corrected life expectancy value, the Forest Service calculated 0.99 as the rate of population increase and used this value in its analysis of spotted owl management in Region 6 National Forests (USDA 1988). Even so, according to this commenter, the Status Review Supplement did not recognize this fact and concluded the Forest Service assumed a decline of 0.85.

Service response: The issue of senescence is now summarized in a recent paper by Noon and Biles (1990). USDI (1990) provides insight on this matter and concludes that the failure to include senescence in the survival and reproductive process might lead to substantial overestimates of lambda. This overestimation is particularly relevant to northwest California where the estimate is 0.95, as the true rate might be substantially less than this. If this is the case, the rate of decline is underestimated.

There is no evidence to support the commenter's statement that the corrected value of lambda should be 0.985. This value is based on data, methods, and models that are obsolete or poor, relative to what is currently available.

Comment: According to one commenter reproductive rates are significantly higher than those cited in the Status Review Supplement. Using these new data, the commenter claims that the growth rate model in the Status Review Supplement now projects that the northern spotted owl population throughout the range has been increasing at a rate of 1 percent per year since 1988. The commenter remarked that lambda value for 1986–1989 were 1.006 for Oregon (a population increase of 0.6 percent/year), 1.016 for California (a population increase of more than 1.6 percent per year), and 1.01 for Oregon, California, and Washington combined (a population increase of more than 1 percent per year). The commenter did not provide a separate growth rate value for Washington.

Service response: The reproductive rates given in USDI (1990) are the best available, based on the current data, and estimates of precision are provided. Age- and year-specificity are tested and final estimates so given. The estimates of lambda cited by the commenter are based on old and crude estimates of parameters) (e.g., lambda=0.94). Estimates of lambda > 1.0, cited by the commenter are simply incorrect because they are based on old data, poor models and methods. In addition, the demographic data for Washington (Olympic Peninsula) consist of only three years of data and are, therefore, inadequate for a rigorous analysis. At least 4 years of capture-recapture/resight data are required to perform a rigorous analysis and assess goodness of fit. The northern California data were taken over 6 years while 5 years of data are available on the Roseburg area in Oregon.

Comment: One commenter noted that the Forest Service (USDA 1988) model and that of Lande (1988) both conclude the spotted owl population is nearly stable. Several commenters stated that the models developed by the Forest Service and Lande have numerous errors and inadequacies and cannot be used to conclude the owl population is declining. One commenter stated that these models are flawed, ignore valid biological factors and common sense, and do not allow for variations in demographic parameters. Further, the commenter noted that the analyses by Lande (1988) and the Forest Service (USDA 1988) both assume that owls are dependent on old growth. As indicated by several commenters, Lande's population model for the northern spotted owl was criticized for predicting extinction in 20 years and for estimating unreasonably large historical spotted owl numbers based on the amount of available habitat. One individual stated that Dr. Mark Boyce's comments criticizing the Lande and Forest Service models were omitted from the Status Review Supplement discussion. The commenter stated that the Service cannot ignore criticism and this constitutes an important omission. According to one commenter's view, population demographics were subject to scathing criticism by noted scientists yet the status review did not mention this criticism much less discuss the work of those who disagree.

Service response: The Service agrees with the comment that the Forest Service (USDA 1988) model and that of Lande (1988) both concluded that the population was "nearly stable" but an indication of population decline was found. The data and the analysis methods available at the time the above work was done are now obsolete and the results are no longer useful. USDI (1990) presents a full analysis, using the best models, the best estimation methods, and the most current demographic data available. Thus, comments concerning prior analyses, possible errors and flawed models are no longer relevant. Tests were conducted to determine if significant variation existed in the demographic parameters over years (i.e., both survival and fecundity rates). No such year-specific variation could be found in either demographic data set for the parameter estimates used in the calculation of the finite rate of population change. However, significant year-defendent adult survival was found and the estimated standard errors incorporated this component of the variance using quasi-likelihood methods (USDI 1990). Both Lande (1988) and the Forest Service (USDA 1988) assumed that owls were dependent on old growth. The Service has strong evidence that owls are tightly linked with characteristics found in old-growth forests (USDA 1990, Thomas *et al.* 1990). This is not to say that owls are never found in other age stands.

A full discussion of the criticisms mentioned by the commenter, of the population viability models, including those were omitted from the Status Review Supplement because this type of model was not used by the Service in its decision. While the Service recognizes that such analyses have been the subject of extensive criticism, their shortcomings and other associated problems are not pertinent to a decision on this proposal. Basically, these analyses have not been demonstrated to have credibility and, hence, were evaluated but not considered by the Service in its deliberations.

Comment: Frank Wagner (OCWRU, Oregon State University) submitted comments on results of his research on spotted owls in the Elk Creek watershed, near Medford, Oregon. He noted that there is some evidence in his study area for substantial immigration of owls in 1986–1989. He calculated lambda values for three areas; 6 sites on the Miller Mountain Telemetry Study Area (with less than 200 acres of old growth near the activity center); 12 sites dominated by partial cut or young forest; and 11 sites in which old growth within the vicinity was greater than 1,000 acres. Lambdas for the three areas were 0.78, 0.87, and 1.05, respectively. The calculations were done by setting first year juvenile survival at "an optimistic rate of 0.80." Many of the birds in this study carried radio-transmitters.

Service response: The Service found the pattern in the estimates of lambda values interesting; however, the results are inconclusive for two reasons. First, the sample sizes are extremely low and the precision (although not reported) would be quite poor. Second, all of the birds on the Miller Mountain Telemetry Study Area and approximately one-half of the birds on the Meslow *et al.* (1986) area carried radio transmitters (see issue 23). Setting the juvenile survival rate at 0.80 is simply incorrect and not substantiated by any evidence.

Comment: One population modeler (M. Boyce) stated that his preliminary results of a density-dependent model suggest a low probability that spotted owls will go extinct under the Forest Service's preferred alternative.

Service response: The Service agrees that models incorporating a density dependent component generally predict a lower probability of extinction than models that are density independent. The Service did not give serious consideration to population viability models because they are based on too many assumptions that cannot be validated and because they lack credibility (see USDI 1990).

Comment: One commenter stated that the Service should not cite significantly flawed analyses and then conclude the errors are overborne by preconceived ideas; rather the errors should be corrected. In this commenter's opinion, for the Service to rely on these studies to justify the reversal of the previous decision is arbitrary and capricious.

Service response: New analyses in USDI (1990) correct previous errors. Flaws in analyses were discussed in USDI (1990) with respect to population viability models and these models and results were not considered in the Status Review. The Service did not rely upon the various models to reverse a previous decision on the status of the owl. In the proposal to list, the Service presented the data and other information on which the proposal was based.

Comment: If current Forest Service and Bureau of Land Management counts are showing a greater number of owls, one commenter asked if the prediction formula would be changed regarding the base number.

Service response: USDI (1990) and the ISC report contain updated estimates of owl numbers and are the best estimate currently available. The Service is not in a position to answer the question whether or not the Forest Service will modify its prediction formula based

upon an updated spotted owl population estimate.

Comment: Several commenters stated that the Status Review Supplement uses incorrect juvenile survival, adult survival, and reproductive rates and misinterprets Franklin's data for Willow Creek. One weakness, according to a commenter, is that Franklin never statistically corrected for the absence of owls that cannot be attributed to specific causes. One commenter stated that the low adult survivorship value for spotted owls without radio transmitters in the Roseburg demographic study area may be a consequence of the birds not being fully territorial and simply relocating elsewhere. Hence, the commenter believes the low adult survival may be in error and that no reliable data exist to demonstrate any present population decline in spotted owl populations anywhere within the range.

Service response: The Service believes the comment is in error regarding the low adult survivorship in the Roseburg demographic area. Thomas *et al.* (1990) presented data on the emigration of adults from the Roseburg demographic study area. They found only one occurrence of permanent emigration of adults in 100 bird-years. Thus, the estimated adult survival rate is not in error and the sharp population decline in the Roseburg area is fully supported by the data.

USDI (1990) reports the best and most current estimates of survival and fecundity available. The Status Review Supplement (USDI 1989) used the best estimates of population parameters available; however, these estimates are obsolete because more data and better analysis methods are now available.

Comment: The survival problem of the young is a factor one would expect since the owl habitat is at carrying capacity and this is a no vacancy situation according to one commenter.

Service response: The Service agrees that the survival of young owls may be depressed because the population may be above long-term carrying capacity. Habitat has decreased in some areas faster than the owl population. Hence, there may be insufficient habitat available to support juvenile owls.

Comment: One commenter believed the Status Review Supplement and Forest Service SEIS placed a great deal of faith on an untested HSI model, developed using assumptions about relative values of habitat other than old growth. The commenter stated that data for this HSI model came from a small population size.

Service response: USDI (1990) gave no consideration to the HSI model concept. However, the Forest Service has considered this approach in the SEIS and the Status Review Supplement mentioned the methods briefly.

In its status reviews (USDI 1987, 1989, 1990), and listing proposal, the Service did not consider the HSI model concept.

Issue 21. Experimental Design/Statistics

Comment: According to one commenter, the use of stand classifications in the literature and Status Review Supplement is confusing. Several commenters stated that little, if any, of the research referenced in the Status Review Supplement was conducted totally in old-growth timber stands. Many authors have lumped data from forest stands of various ages. Several commenters wrote that it is grossly inadequate to use age as a shorthand for forest stand characteristics as stand classification varies widely even among age groups, depending on latitude, elevation, species, and growing site qualities. A number of commenters stated that most owl studies were conducted on Federal lands which contain an inadequate representation of age classes and forest stand conditions. According to these commenters, because these forests usually have only older, unmanaged forests or regenerated stands less than 60 years old, studies are not available that conclusively examined habitats between 80–200 years.

Service response: The Service believes that terminology regarding old growth, second growth, young growth and stand age has been carelessly used and is, thus, confusing. USDI (1990) is more specific regarding these matters. Stand age is often quite useful, but not adequate in many cases (e.g., the Klamath Province). Data on younger stands, but those having some old-growth characteristics, notably coastal redwood forest, are reviewed in the USDI (1990). Information on owl use in various stand classifications is provided. The Service acknowledges that Federal lands have few regenerated stands over 60 years of age. The commenter is correct in that most studies have been conducted on Federal land where more old-growth forests still exist. However, during the past three years a number of studies have been conducted in younger stands, including private lands (e.g., Irwin *et al.* 1989b,d; Diller 1989; Pious 1989). Studies on Bureau of Land Management lands (Forsman 1989a,b; Thrailkill and Meslow 1989; and Wagner and Meslow 1989) all involve intermingled private and Federal lands.

Comment: Several commenters stated that studies showing preferential use of old growth are subject to statistical errors that may mask owls using young forests more often because none had a sample size greater than 20, the minimum size to avoid this defect. The commenters noted that this problem is not addressed in the Status Review Supplement. According to one view, Chi-square statistical tests (a statistical test to determine deviation from randomness) are used to calculate the distribution of the habitat in proportion to use, however, this statistical test minimizes a Type I statistical error but is subject to a Type II error in cases with a small sample size. Hence, these commenters maintain that habitat use calculations may omit a habitat type that the species actually prefers, such as young-growth.

Service response: Contingency tables are frequently analyzed and a test statistic T computed. Under some general conditions, T is asymptotically distributed as chi-square. Generally, T is approximately chi-square if the smallest expected value is greater than 2 (not 20 as was suggested). Habitat use versus availability studies analyzed by the Service typically had five or fewer habitat categories and greater than 50 independent observations per bird (USDI 1990). The number of owls followed per study ranged from 5 to 16 (USDI 1990: table 2.4). In a paper examining error rates for a variety of statistical methods used to assess selection studies, Alldredge and Ratti (1986) estimated Type I and II error rates for studies having different numbers of animals, observations per animal and habitat types. Type I error occurs when the null hypothesis, in this case the hypothesis that owls do not preferentially select any forest type, is rejected when in fact it is true. A type I error rate <0.05 percent is considered acceptable. Type II error is the acceptance of a false null hypothesis, that is acceptance of the null hypothesis that northern spotted owls do not preferentially select a particular habitat when in fact the hypothesis is false. Type II error is a function of several factors in studies of habitat selection by northern spotted owls, including the number of owls studied, number of habitats and number of observations per owl. A Type II error rate of 10 percent to 20 percent is considered acceptable (Snedecor and Cochran 1980:102 cf. Alldredge and Ratti 1986).

One method of resource selection analyzed by Alldredge and Ratti was that proposed by Neu *et al.* (1974), a method used in studies of habitat use verses availability by northern spotted owls (e.g., Forsman *et al.* 1984). The estimated Type II error rate for studies using the Neu *et al.* method and having <7 habitats and >80 observations per animal. One potential problem, however, is the number of animals analyzed in each study. The maximum estimated Type II error rate for studies of 20 animals, <7 habitat classes and 50 observations per owl was 3.6 percent. Although all studies evaluated by the Service had fewer than 20 owls, and therefore likely have a Type II error rate greater than 3.6 percent, the criticism regarding number of study animals would be valid only if the studies had statistically analyzed the population of owls (i.e., the number of study animals). Instead, owls were analyzed individually and discussions of habitat selection were restricted to statements like "4 of 5 birds studied exhibited preference for * * *". In studies of relatively few animals, such as most of the studies examining habitat selection of northern spotted owls, "conclusions should be restricted to the * * * study animals per se" and not extrapolated to other populations (Alldredge and Ratti 1990:17). As noted above, conclusions about habitat selection were restricted to the study animals.

Given the preponderance of birds exhibiting selection for old growth (68 of 81, USDI 1990), however, there is little need for additional statistical analysis on the population. The data clearly indicate selection by owls for old-growth forest. The Service therefore does not accept the comment that the results of habitat selection studies on northern spotted owls were affected by Type II error rates due to small sample sizes.

Comment: One researcher noted that many of his observations resulting from nighttime surveys on Pelican Butte, Klamath County, Oregon, were in second growth, whereas all roost sites and the one nest site in its particular study were in mature/old growth. The second growth had been logged less than 40 years ago. Because spotted owls are attracted to limitations of their call, this researcher believes he could have falsely concluded that this was a population using second-growth forest if he had relied totally on nighttime surveys. He concluded that nighttime surveys were inappropriate to draw inferences about habitat use.

Service response: Surveys using owl calls can be misleading, particularly if only a single visit is made. Owls from surrounding areas may fly toward the observer and then call. If the observer is in a young stand, the owl's call might thus be misinterpreted and the observer could conclude that the owl was using the young stand. In fact, the owl had been in another stand type, but flew to the young stand prior to calling and being heard. Therefore, the Service acknowledges that caution should be exercised when interpreting nighttime survey results regarding habitat use.

Issue 22. Studies Using Radio Telemetry/Potential Impacts of Radio Transmitters

Comment: According to several commenters studies by Forsman *et al.* (1984) and Reid *et al.* (1987) of radio-equipped owls do not prove that owls prefer old growth even though owls spent far more time in old growth than expected based on the availability of old growth in the home range. For these commenters, the studies at best indicated that owls do not prefer very young forests.

Service response: There is no evidence to question the home range and habitat use data garned via radio telemetry. The data sets used for estimates of home range and habitat use rely on a pair of owls or individual owls, respectively, tracked for 1 or more years; such birds demonstrated their capabilities, habitat selection and home range use over 12 months or longer without apparent impairment. The impact of radio transmitters on actual population performance of spotted owls is slight; at any one time only a very small proportion of the overall population has borne transmitters.

Comment: The Forest Service commented that on the Olympic Peninsula, Forsman (1989) found that survival of radio-tagged adult owls was not significantly different from color-banded owls. A commenter noted that similar work in the Oregon Coast Range, Sierra Nevada, and northwestern California on birds fitted with radio backpacks caused concern.

Service response: Backpack radio transmitters have been used since the mid-1970's as a standard technique to allow research of home range, habitat use, dispersal and behavior of spotted owls. The Service notes that results from several studies found statistically significant differences in some measures of owl demographic rates and none in others in comparing results of birds equipped with transmitters versus those without. Observations of apparent differential mortality between radio-marked owls and color-banded owls at some study sites (Paton *et al.* 1990, Forsman unpublished data) prompted close examination of both survival and reproduction of radio-marked owls. Data from radio-marked owls were not used in calculating demographic parameters.

Research requiring use of radio-telemetry techniques is currently adopting methodology to avoid or minimize use of backpack transmitters on spotted owls. Lightweight transmitters, less than 9 g, are available that can be attached to the central tail feathers or used as a backpack. Research utilizing radio-telemetry has had no significant effect on northern spotted owl populations and has been an important source of information for spotted owl conservation plans.

Comment: In the view of several commenters, data show a high juvenile mortality rate that cannot exclude radio-transmitters as the primary cause of death in dispersing owls. According to one commenter, virtually all the mortality data, especially for juveniles, are derived from studies using radio transmitters and are, therefore, biased because the use of transmitters affixed to the birds affects the results.

Service response: Backpack radio transmitters were used between 1982 and 1985 in studies of juvenile dispersal (Miller 1988, Gutierrez *et al.* 1985); these studies were also the source of some survival rates of juvenile spotted owls. The computed annual survival rates varied between years and between regions and averaged 19 percent. Various individuals have questioned the accuracy of the estimated rates because they viewed the rates as high and suspected that the radio transmitters were responsible for elevating the rate of mortality. Because some studies have demonstrated elevated mortality rates in radio-marked adult owl the Service cannot dismiss these concerns. Dispersing juvenile owls carrying backpack transmitters weighing about 20 g had an annual survival rate of about 19 percent (Miller 1989). Whether or not this is a low or high rate is unknown; it is simply the average rate observed over 4 years of studying radio-marked juveniles. The only other survival rates of juvenile owls are based on banding studies and these averaged 13.8 percent for northwest California and 21.9 percent in the vicinity of Roseburg, Oregon (USDI 1990). Hence, there is no evidence to conclude that mortality in radio-marked juvenile owls was higher than that of birds without radios. Neither is there evidence that the sustained mortality was related to the use of radio-transmitters. Nevertheless birds carrying radio transmitters were excluded from calculations of survival rates employed in computation of lambda values (USDI 1990).

Comment: Several commenters stated that the Status Review Supplement dismisses the impacts of radio

transmitters even though Forsman (1988) had data indicating that radio transmitters interfered with reproduction. One commenter remarked that the Forest Service's Pacific Northwest Research Station found that 24 percent of radio-tagged birds fledged young versus 81 percent for non-radio tagged owls (USDA 1988). Another commenter wrote that in a study conducted on the Roseburg District of the Bureau of Land Management comparing radio-tagged to color-banded spotted owls, it was found that the proportion of radio-tagged owls nesting was significantly lower than that of banded birds (Forsman, unpubl. data), but that over a five-year period, no clear relationship was detected in nesting success. The commenter stated that radio-tagged birds produced fewer young, but this apparently reflected that such birds had fewer nesting attempts rather than a higher failure rate. A researcher reported that in a monitoring study conducted for the Bureau of Land Management on Miller Mountain, Oregon, there was no significant difference between mean annual number of young fledged at sites occupied by radio-marked and non-telemetry owls in 1986, 1987, 1988, and 1989 (Wagner and Meslow 1989).

Service response: At least in some studies it appears that backpack radio transmitters decrease survival of adult spotted owls. The effect of backpack radio transmitters on reproduction seems more widespread. Radio-marked owls have been excluded from all calculations of adult survival and reproduction; therefcre, any effect of radio-transmitters on survival or reproduction does not extend to or bias the various estimations of population increase/decrease or models of population viability.

Paton *et al.* (1990) working in California, and Foster *et al.* (1990) working in Oregon and Washington contrasted survival and reproduction of radio-marked adult spotted owls with a color-banded sample matched temporally and geographically. In California female radio-marked owls experienced significantly lower survival rates than their color-banded control group. The California sample of radio-marked pairs also was less likely than color-banded owls to attempt nesting. In Washington and Oregon there were no significant differences between the survival rates of combined made and female radio-marked owls and their color-banded counterpart. The radio-marked cohort of owls in Oregon and Washington exhibited evidence of lower reproduction than the color-banded cohort in some areas; in other areas that was not the case.

Comment: One commenter stated that many credible scientists believe that heavy radios interfere with a young bird's ability to hunt and forage. Someone asked why Dr. Fred Gilback's (Baylor University) data on tagged screech owls were not reviewed. His study according to one commenter, revealed that tagged screech owls were not as successful in prey capture as those that were not tagged

Service response: Dr. Frederick Gehlbach of Baylor University (Texas) has studied screech owls for a number of years, mostly in a suburban setting. He has presented no reports of differential capture success between radio-marked and unmarked screech owls. Dr. Gehlbach indicated that he had conducted limited experiments with 2 radio-marked owls versus 2 unmarked owls in flight cages and free-flying (pers. comm., March 1990). Dr. Gehlbach interprets the results as indicating radio attachment severely limits the performance of the screech owls. He further stated that he believes that radio attachment influences the performance of a wide variety of wildlife.

Issue 23. Foraging and Prey Base

Comment: Several individuals remarked that owls move from old growth to areas where food and mates are available and that studies in which researchers assumed that an owl had died if it could not be relocated in old growth were in error. A number of commenters maintained that openings created by clearcuts are beneficial to owls because that is where they hunt. The commenter also maintains that wildlife, in general, does better in clearcuts. A further comment was that owls use old growth only for shelter because there is no food under the forest canopy. One commenter wrote that loggers enhance foraging for owls as they walk through woods and flush rodents and other prey that spotted owls can capture. Another viewpoint was that second growth provides more foraging habitat for spotted owls.

Service response: Extensive data obtained by radio-tracking 81 individual northern spotted owls in the various physiographic provinces offers no evidence that owls leave old forest areas to preferentially use young forests (USDI 1990). Survival rates of spotted owls do not utilize information from birds marked with radio transmitters. Survival rates of spotted owls are calculated using repeat observations of individually marked owls on demographic study areas; search for missing, marked owls is not limited by forest age class. Hence, such studies did not assume that an owl with a radio-transmitter had died if it was not relocated in old growth. The suitability of young stands or clearcuts as foraging habitat is best addressed by examining locations of foraging spotted owls. In examples cited from across the range of the subspecies the 1990 Status Review (USDI 1990) reported that in studies comparing habitat used to habitat available 68 of 81 owls selected old forest for foraging. In contrast, none of 57 owls selected for pole stands and only 3 of 81 owls selected young stands for foraging. In the proposal and previous status reviews (USDI 1987, 1989) similar habitat use patterns were reported. Spotted owls forage heavily on nocturnal arboreal mammals; these prey are either not present in adequate numbers or are apparently not available to spotted owls in clearcuts (Thomas *et al.* 1990). Because spotted owls are nocturnal and most human beings, including loggers, use the forest during daylight hours, it is unlikely that people walking in the forest assist the owls by flushing prey. Although a considerable area of the landscape is young forest, spotted owls disproportionately avoid young forest and choose to forage in old forest.

Comment: A commenter noted that data available on prey cannot be cited to conclude that old growth provides more or better prey for owls than does young growth. The commenter stated that the Status Review Supplement refers to old growth as supporting a high density of prey species for the spotted owl, apparently implying that old growth provides a better prey base than any other habitat type.

Service response: The Service concurs that recent summaries of prey abundance (Thomas *et al.* 1990) do not support a generalization that prey are more abundant in old than in younger forests. Rather, abundance of prey species by forest age varies with the species of prey, geographic region, and probably year. The fact remains that spotted owls forage disproportionately in older forests with the clear inference that they obtain prey in proportion to the time spent in the various age classes of forest.

Comment: According to one commenter, studies cited in the Status Review Supplement to indicate a high density of prey species in young growth were misinterpreted. Another asked why, if the owl survives only on red voles, can it be easily enticed to catch a white mouse that has been released near the owl by a biologist? A party stated that disease and food supply are

the limiting factors on the spotted owl population.

Service response: The Status Review Supplement (USDI 1989) indicated that on the H.J. Andrews study area densities of flying squirrels were not significantly different in old-growth versus young-growth stands; that interpretation is correct for the specific study. The fourteen papers cited on p. 2.1 of Status Review Supplement (USDI 1989) were cited primarily to document descriptions of spotted owl habitat. These papers provide only a limited assessment of prey habitat relationships. Red tree voles are only one of a variety of prey taken by the spotted owl (see review in Thomas *et al.* 1990). Adult spotted owls can be enticed to take a variety of offered prey items including white mice especially when young owls are present. The Service concurs that food supply is likely a limiting factor for spotted owls as it is for most wildlife. No new evidence since the Status Review Supplement (USDI 1989) leads the Service to suspect that disease currently plays an important role in limiting the spotted owl population.

Comment: Several commenters maintained that the Status Review Supplement inadequately assesses the relationship between prey base and the spotted owl by omitting data suggesting that prey base is a significant component of reproductive success. According to these commenters, the Status Review Supplement is contradictory in that it states that high prey density is an important factor in selection of old growth. Elsewhere prey abundance is said to be similar in old growth and young growth, thereby suggesting that prey abundance may not be the determining factor in selecting for old-growth forest, yet the revised finding states that fluctuation in reproductive success may be attributed to prey availability. According to these commenters, the Review Team failed to appreciate the importance of understanding prey relationships. Several commenters wrote that the team concluded that the study by Ward and Gutierrez (1989) showed no correlation between prey abundance and reproductive success, but that this was an improper conclusion. It appears to several commenters that studies present contradictory findings and no conclusion can be reached based on current data. In their view, these contradictions are indicative of a significant scientific dispute on the relation of prey base to the definition of suitable habitat. Further, commenters argued that the interpretation in the Status Review Supplement that prey density is comparable in old-growth and young-growth forest is not supported. One commenter recommended that the proposed rule be withdrawn until information on prey abundance and availability in young- and old-growth forest is available.

Service response: The most recent comprehensive review of spotted owl food habits and prey is presented in Appendix J of the Thomas *et al.* (1990) report. The hypothesis that variation in reproduction by spotted owls is linked to variation in prey abundance is based on such studies as those of tawny owls (Southern 1970) and great horned owls (Rusch *et al.* 1972). The relationship of spotted owl reproduction to abundance of prey has not been well established. The reported positive association between reproduction and the frequency of large prey in spotted owl diets may represent either differential capture or differential transport of large prey to the nest; this issue is unresolved. The Ward and Gutierrez (1989) study was unable to demonstrate differences in prey abundance between reproducing and nonreproducing owl pairs by sampling prey at foraging sites used by the male owls (Thomas *et al.* 1990). Small mammal populations vary greatly from location to location and from year to year. It is not surprising, therefore, that investigators in different regions, and often in different years, report differing measures of abundance of the same or different species over a variety of forest types and age classes. It is not accurate to portray the lack of strong congruity among the assortment of studies as evidence of significant scientific dispute. There is ample evidence to indicate that spotted owls obtain their necessities from forests with old-growth characteristics and are present at much reduced densities, if at all, when forests lack such characteristics. It is unnecessary to resolve the question of prey availability in old versus young forests, or, managed versus unmanaged forests, to make a determination of the status of the northern spotted owl.

Comment: A possible hypothesis regarding prey availability and habitat use by owls was provided by one commenter who speculated that general prey unavailability in most young (40–80 year old) even-aged stands may be the result, in part, of dense overlapping crowns preventing access to prey. He suggests that pre-commercial or commerical thinnings may improve habitat quality for owls.

Service response: Even-aged stands 40 to 80 years old that have not been thinned often develop a dense overlapping crown. The dense crown intercepts most light and thereby limits the development of the understory; such stands have little structural diversity which is likely reflected in a reduced complement of small mammals, the primary prey of spotted owls (Forsman *et al.* 1984). A dense overlapping canopy may also limit maneuverability of foraging spotted owls and preclude their effective use of such habitat. Whether thinning stands would increase prey abundance or availability and, thus, increase use of managed stands by spotted owls has not been demonstrated.

Issue 24. Home Range

Comment: According to one commenter, the proposal assumes that spotted owls are very territorial, yet this ignores empirical study to the contrary. Further, the commenter maintained that basic data included in the home range analysis are also problematic in that overestimation is possible. Also, one commenter stated that because the use of transmitter backpacks appear to affect the owl's ability to forage, they probably also modify home range data. According to one viewpoint, the convex polygon method of measuring home range contains numerous mathematical and biological problems such as a high probability of overestimating the area of use (*e.g.*, Samuel and Garton 1985).

Service response: There is no empirical evidence indicating that northern spotted owls are not territorial and the Service rejects the comment.

The minimum convex polygon method for estimating home range (Southwood 1966) results in the smallest possible convex polygon containing all the observed locations. The area of this polygon represents the home range. One problem with use of the convex polygon method as a means of estimating home range size is a tendency for the estimated home range to increase in size as the number of locations increases (Jennrich and Turner 1969, Schoener 1981, Anderson 1982). As the number of locations increases, the probability of an "outlier" location being noted increases. Because the method connects the most distant points from the center of location points, a particularly distant "outlier" results in a larger area being contained with the polygon.

For example, the method is likely to overestimate the home range if a bird has two different use areas some distance apart, that is it forages in one area, nests in another, and tends to move in a straight line between the two (*e.g.*, a barbell shaped territory). No one approach to estimating home range,

however, is free of problems (Anderson 1982, Samuel and Garton 1985). Because of the difficulty in comparing home range estimates derived from different methodologies, a more important concern than the technique *per se* is whether different investigators used the same technique so that comparisons can be made. Comparisons of home range estimated from different methodologies are incorrect. Most estimations of home range size for northern spotted owls were obtained using the minimum convex polygon method, and although the Service recognizes there is a tendency for overestimation to occur under some circumstances it nonetheless considers the estimates reliable.

An informal "rule" for biologists planning to place radio transmitters on birds is that the weight of the package should not exceed 5 percent of the bird's mass (Cochran 1980, Caccamise and Hedin 1985). Effects of the "rule" on attributes such as behavior (e.g., home range size, distance for foraging bouts) and survivorship have not, however, been evaluated for many species. Gessaman and Nagy (1988) demonstrated that homing pigeons wearing backpack transmitter of 2.5 percent and 5 percent of their body mass expended more energy and flew slower, but their work was on high performance homing pigeons (i.e., birds trained to fly as rapidly as possible and in as straight a line between two points as possible), inferences to other bird species like the northern spotted owl are limited. In fact, Gessaman and Nagy conclude that since the majority of flights of birds in the wild are at or near the most efficient flight speeds, effects of transmitters on energy expenditure should be smaller than those demonstrated for homing pigeons. Effects of transmitters on behavior such as home range size are, at this time, unknown, but it is reasonable to assume that if there was an effect it would lead to smaller, not larger, home range estimates.

Comment: One commenter disagreed with the statement in the Status Review Supplement that (2.16). "Home range size increases as quality and quantity/unit area of preferred habitat decreased" and believes there are no data to support this as no one has measured habitat quality relative to population fitness. According to this commenter, large spotted owl home ranges have larger amounts of old growth than contained in small home ranges. He speculates that home range size may be affected by continuity of acceptable habitat (fragmentation effect), and hypothesizes that home range increases in fragmented habitat (see Solis 1983, Forsman et al., 1984, Carey 1985, Gutierrez 1988). Although this is a reasonable hypothesis, there is no proof, according to this commenter.

Service response: The Service agrees with the comment that there are no data to support the suggestion in the Status Review Supplement (USDI 1989:2.16) that home range size increases as the quality and quantity per unit area of suitable habitat decreases. The current Status Review (USDI) 1990) reflects this change. The hypothesis that home range size increases with increasing fragmentation is reasonable, but has not yet been demonstrated.

Issue 25. Nesting and Roosting

Comment: One commenter stated that the Status Review Supplement noted that nesting activities of northern spotted owl are strongly associated with old-growth forests, but fails to support this contention. Several commenters wrote that in California, studies on private lands show that nests are located in managed forests containing considerably less canopy cover than 100 percent. Commenters cited studies on private land to show that broken tree tops and/or large cavities are not required nor even preferred as nest sites.

Service response: Nest sites of northern spotted owls are strongly associated with old-growth forest and forest containing structural characteristics similar to old growth (USDI 1990).

The Service rejects the specific assertion that nests on private managed forests in California contain considerably less than 100 percent canopy. Canopy coverage in coastal redwoods and redwood/Douglas-fir ranged from 80 percent to 90 percent, and 70 percent to 80 percent, respectively. Two hardwood stands containing nests had canopy coverage of 80 percent. The lowest reported value by the Timber Association of California was 70 percent (1989b; appendix B, part 2). Although the Service recognizes that there undoubtedly are nests in stands having canopy coverage <70 percent, the vast majority are in excess of 70 percent, a value the Service does not consider to be "considerably" less than 100 percent.

Evidence from across the range of northern spotted owls suggests owls exhibit considerable flexibility in the nesting substrate (USDI 1990) and the Service accepts the comment.

Comment: Results of a recent study of 53 spotted owl nest sites within the Wenatchee and Okanogan National Forests in Washington were reported by one commenter (Irwin et al. 1989a). Many of the stands had been selectively logged within the past 70–80 years and five nests sites had been harvested over 40 years ago, Nest trees were 67–700 years old (average 194 years) and nests were mostly found in platforms created by mistletoe or in nests originally constructed by hawks. The majority of nests were in uneven-aged stands classified as mid-successional (climax species were grand fir or western red cedar and western hemlock, these were overtopped by residual Douglas-firs which survived previous logging or fires). Twenty of the nests were in trees 67–125 years old.

Service response: The Service accepts the comments.

Comment: According to one view, the Status Review Supplement has not proven the point that owls prefer to roost in old growth because the studies they cite (Miller 1989, Forsman *et al.*, 1984) failed to analyze a complete range of age classes. Further, commenters stated that the studies rely almost exclusively on public lands that only have mature/old growth and very young stands. Moreover, several commenters noted that the studies lumped various age classes and covered a limited geographical area. One commenter maintained that the Status Review Supplement omitted relevant data from Franklin *et al.*, (1986) in which none of 10 roost sites in 1983 and seven of 14 roost sites in 1984 were in old growth. A study by Diller (1989) was quoted to indicate that on Simpson's lands the average age of the dominant trees used for roosting was 57 years even though an old-growth stand was within 8.8 miles on average.

Service response: Studies by Thrailkill and Meslow (1990) and Miller and Meslow (1989) both examined use versus availability of forest type used by roosting northern spotted owls. Both studies examined three age classes of forest, including old, mature and young. Young was defined as <100 years of age by Thrailkill and Meslow and "less than mature" by Miller and Meslow. An additional study by Carey *et al.* (1990) analyzed the same three classes plus pole/sapling forest. Owls in all three studies selected for old-growth forest and against young and pole/sapling forests. The Service considers the age classes examined sufficient and therefore rejects the comment that studies examining habitat use of northern spotted owls failed to include a broad representation of all age classes of trees. Recent work by Blakesley *et al.* (1990b) also supports the contention that roosting owls select old growth.

Franklin *et al.* (1986) did not state that none of 10 roost sites in 1983 and 7 of 14 roost sites in 1984 were in old growth. The Service therefore does not accept the comment that relevant data was omitted from the Status Review Supplement (USDI 1989).

The Service accepts the data from Diller's (1989) study in coastal California redwoods. However, the Service again notes that redwood stands have many of the structural characteristics of old growth at younger ages (Kerns 1988) and that selection of stands for roosting by northern spotted owls is more likely related to stand structural characteristics than age *per se*.

Issue 26. Reproductive Rates

Comment: Several commenters stated that industry data for northern California indicate that young growth supports owls as well as does old growth and reproductive rates are similar. Although the Timber Association of California did not band birds, did not have several years to conduct the study, and did not undertake numerous site visits in the survey areas, it believes its results are comparable to studies on Federal lands (note that the Timber Association of California also included data on the California spotted owl). Therefore, the Timber Association of California concludes that the Status Review Supplements' hypothesis that northern spotted owls only successfully reproduce in old growth is disproved or at least unreliable. The Timber Association of California data from California show a reproductive success rate (50 percent) slightly higher than other reported rates in Franklin *et al.*, (1986, 1987, 1988) (42–47 percent). Furthermore, one commenter maintained that recent data show an increase in reproductive success.

Service response: The Timber Association of California data from the coastal redwood zone included many stands of up to 100 years in age, whereas rotation ages in the future are likely to be approximately 60 years or less. The surveyed stands also included remnant older trees (see discussion under Factor A) which are believed to have been important in making the stands usable by northern spotted owls. These remnant older trees, however, would not be present in the future if the stands are clearcut. The Timber Association of California data from inland areas were gathered primarily on lands that had been harvested using selective cutting methods. These lands contain the structural characteristics that are associated with spotted owls. These methods are seldom used on public land and are not used on much of the private land in northern California. The Timber Association of California study therefore did not characterize typical commercial timberland in California.

Comment: One commenter stated that the actual reproductive rates are significantly higher than the Status Review Supplement indicates. For example, the rangewide mean reproductive rate for 1982–1985 was 0.20 +.16 and for 1986–1989 was 0.32 +.09.

Service response: The Service believes that the Status Review Supplement provided a thorough review of the information available at the time the Status Review Supplement was prepared. Since the Status Review Supplement was prepared, new information has become available which indicates that reproductive rates are higher than the estimates contained in the Status Review Supplement. Current estimates (female fledglings produced per adult female) are 0.32 and 0.38 for study sites in Oregon and California, respectively. Even when these higher rates are used, however, analyses indicated that both populations are declining (USDI 1990).

Comment: According to one commenter, data regarding spotted owl reproductive success do not conclusively show that the rate of reproduction is insufficient to maintain a viable population and averages between 40 and 60 percent. One commenter wrote that the Status Review Supplement states there was no reproduction in young growth, yet this was inaccurate because Irwin *et al.* (1989c) had reported 29 nest sites in young growth in the Wenatchee and Okanogan National Forests.

Numerous commenters argued that data on spotted owl survival, especially of juveniles, and reproductive rates, are not the best available data and reveal significant information gaps in population trends and dynamics.

Service response: The Service has conducted a thorough analysis, since the Status Review Supplement was prepared, of all existing data (see Discussion under Factor A). The analysis used state-of-the-art methods both to estimate the demographic parameters and to estimate whether populations in the Willow Creek Study area of California, and in the Roseburg Study Area in Oregon, are reproducing at replacement rates. The conclusion was that resident birds in both populations are not reproducing at self-sustaining rates. The reproductive rate was 0.38 and 0.32 fledglings/adult female in the Willow Creek and Roseburg Study Areas, respectively. These values are less than those cited by the commenter and in the Service's analysis were found to be insufficient to maintain a stable population size. Data are insufficient from other sites to make such an assessment. The study by Irwin *et al.* (1989a) was in stands harvested using selective methods. Many of the trees were much more than 100 years old. For example, nest site trees varied in age from 67 to 700 years. Thus, these were not young stands.

Issue 27. Competition and Predation

Comment: One commenter stated that the Status Review Supplement concludes that the barred owl competes with the northern spotted owls for habitat, however, this is conjecture. Another party stated that it was not shown that the presence of the barred owl is detrimental to the spotted owl. In contrast, another said that the real threat to the northern spotted owl is the presence of the barred owl and the expansion in range of the latter species, and that this threat will continue even if the old-growth trees are not removed. According to one commenter, because the barred owl is a much better competitor, it will replace the spotted owl regardless of the management efforts implemented to protect habitat. One commenter stated that recent work seems to indicate that barred owls displace spotted owls.

Service response: The 1989 Status Review Supplement did not reach a conclusion regarding the impact of the barred owl on the distribution, reproductive success, abundance, or survival of the spotted owl. Rather, the Status Review Supplement indicated that the long-term impact of the expansion of the barred owl into the range of the spotted owl was unknown, but of concern. The issue remains unresolved (USDI 1990).

Comment: One investigator submitted a recently completed study on the relationship between barred and spotted owls (Hamer *et al.* 1989). The study concluded that by reducing the amount of available habitat to spotted owls, barred owls appear to be placing more food stress on at least one spotted owl population (northwestern Washington on the west slope of the North Cascade Mountains) that shows signs of being near its energetic and ecological limits (Hamer *et al.*, 1989).

Service response: The Service accepts the comment noting that the Maser *et al.* (1989) study was conducted on the northern edge of the spotted owl's distribution.

Comment: One commenter stated that the Status Review Supplement assumes that predation in combination with timber harvesting poses a threat to the owl. According to one commenter, assumptions pertaining to a small area were extrapolated to the entire range. One individual maintained that the listing team was selective in its use of terminology and studies to avoid finding that the owl might be increasing at other places.

Service response: The Status Review Supplement (USDI 1989) recounted both the observation of predation on spotted owls by great horned owls and the concern that such predation may increase with increasing habitat fragmentation. The Status Review Supplement did not make a judgment as to the impacts of great horned owl predation on the spotted owl population; the 1990 Status Review (USDI 1990) deals with the situation in a similar fashion (Sec. 3.5). The Service employs the best scientific information available and extrapolates where warranted and does not believe that unwarranted conclusions were drawn concerning the significance of predation or competition to the status of spotted owl populations. Nor does the Service accept the commenter's statement that the listing team was selective in its use of terminology or in its review of studies.

Issue 28. Captive Propagation, Relocation, and Miscellaneous

Comment: Several commenters stated that the forest products industry should propagate northern spotted owls in captivity so that there would be no need to list them. A number of commenters recommended that northern spotted owls be relocated to wilderness areas from areas scheduled for timber harvesting. Another commenter asked if studies are being done to enable the transfer of spotted owls from areas scheduled for timber harvest to areas already preserved as wilderness or roadless areas.

Service response: Among the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of such endangered and threatened species (section 2(b)). It would not be in keeping with the intent of the Act to substitute a captive propagation program for maintaining the owl in its native habitat.

The Service generally dismisses proposals to transfer listed individuals from known suitable occupied habitat to other areas simply to expedite or permit destruction or adverse modification of existing suitable habitat. Instead, the Service may require compensation for habitat losses through section 7 consultation process with other Federal agencies for activities proposed that require Federal funding, approval, or authorization. Nor would the Service encourage capture and translocation of owls to other areas. Generally spotted owls have large home ranges. There is no reason to believe that large blocks of suitable, but currently unoccupied, habitat exist within wilderness or other protected areas that are free from logging pressure. Evidence indicates that home range size increases with elevation. As most wilderness areas within the owl's distribution are at higher elevations, home ranges in such locations would tend to be larger than those in many of the nearby lower elevation, non-wilderness areas scheduled for harvesting. The premise that owls occurring within the scheduled harvest areas could be captured and successfully established at translocation sites in wilderness or other protected areas is without foundation. Presumably the majority of suitable owl habitat located within wilderness areas already is occupied by spotted owls.

Comment: One commenter feels that the Service's analysis should be expanded to address many non-timber cutting uses of Forest Service land and that there should be guidelines for recreation and other non-consumptive activities. Without such guidelines, the commenter feared that restrictions may be developed for timber harvesting and inadvertently applied to forest activities that have little or no impact on the owls such as ski developments, camping, and off-road vehicle use.

Service response: In its assessment of the status of the northern spotted owl, the Service did not restrict its analysis to timber harvesting activities on Forest Service land. The Service recognizes that modification and loss of owl habitat can occur as the result of other activities. However, it is the Service's opinion that logging is the major factor affecting the continued availability and distribution of suitable habitat on Forest Service lands. Under section 7 provisions of the Act, the Forest Service will review any proposed projects that it is considering authorizing, funding, or carrying out to determine if such activities may affect the northern spotted owl. If proposed projects, including recreational activities, may affect the northern spotted owl, the Forest Service must consult with the Service who will evaluate the potential impacts of actions on the owl. These section 7 consultations will provide the guidance suggested by the commenter.

Comment: Several commenters were concerned that owls were being killed by loggers and other individuals and that immediate enforcement action is needed. The commenters referenced an article in the Oregonian that a mutilated spotted owl had been found hanging in a noose from a Forest Service kiosk. Others were concerned about the, "If it flies, it dies" bumper stickers.

Service response: As a listed threatened species, the northern spotted owl will be protected against "take" under prohibitions outlined in section 9 of the Act upon the effective date of this rule. Hence, at that time Service law enforcement agents may investigate possible violations of the Act and take whatever legal action is deemed appropriate. The Migratory Bird Treaty Act provides inadequate protection against take (see Factor E for details).

Comment: Several commenters indicated that the greenhouse effect will alter vegetation patterns in the Pacific Northwest and will have far more significant effects on the spotted owl than timber management. One said that these dying old-growth forests are contributing to the greenhouse effect.

Service response: The possible implications of the greenhouse effect have not been studied in relation to long-term viability of the northern spotted owl. The Service infers from this comment that if a threat is identified that may possibly have a more significant impact on the spotted owl than timber harvesting does, that the effects of clearcutting and other logging activities should be dismissed as inconsequential. However, the Service must include in its review and assessment, past, current, and foreseeable impacts on the habitat of the spotted owl. Clearly, timber harvesting has contributed and will continue to contribute to modifying and reducing the amount of suitable owl habitat. The Service cannot minimize the import of this impact simply because there may be other elements impinging on the owl's status. Furthermore, in a recent article in *Science*, Harmon *et al.* (1990) reports that old-growth forests capture and store much larger amounts of carbon from the atmosphere than younger forests. For landscapes with rotations of 50, 75, and 100 years, the carbon stored is at most 36, 44, and 51 percent, respectively, of that stored in an old-growth stand. Moreover, this study concludes that, contrary to the commenters' opinions, logging old growth contributes to the global greenhouse effect by releasing large amounts of carbon dioxide into the atmosphere, even when the old trees are replaced by new seedlings. More than half of the wood harvested from old-growth stands is burned or used in other ways that releases carbon dioxide into the atmosphere (Harmon *et al.* 1990).

Comment: One commenter asked if there was a comprehensive report of the scientific literature on the owl that included current studies.

Service response: The scientific literature on the northern spotted owl is extensive. Anyone wishing a list of references pertaining to research findings on this taxon may contact the Service. Moreover, the Northern Spotted Owl 1987 Status Report, 1989 Status Review Supplement, the 1990 Status Review (prepared by the Service), and the ISC report (Thomas *et al.* 1990) provide a comprehensive report which discusses much of the scientific literature available on the owl.

Comment: Another noted that recently the eastern boundary line of habitat for the northern California province had been extended to the east to include part of Modoc County, California.

Service response: The Service has heard of several possible northern spotted owl occurrences in western Modoc County, California, as referenced by the commenter. However, further survey work has not verified the permanent status of these owls (G. Gould, pers. comm.; Don DeLorenzo, pers. comm.). Additional work may substantiate the presence of northern spotted owls in western Modoc County.

Comment: In the view of one party, if nest boxes and hunting posts were erected, there would be plenty of owls.

Service response: Suitable habitat of the northern spotted owl includes a host of characteristics, not just suitable nest sites and foraging posts. For example, quantity and quality of appropriate prey species as well as vegetation to protect against inclement weather conditions and to provide escape cover from predators are a consideration. There is no evidence that installation of nest boxes and perch sites will overcome the threats affecting the northern spotted owl.

Comment: One commenter noted a low level of infestation of a parasitic fly in spotted owls. He stated that Hippoboscid flies are known vectors of Haemoproteus, an internal blood parasite.

Service response: It is not known at this time to what extent the northern spotted owl is infected with the referenced internal blood parasite. Hence, the Service presently cannot assess the threat this possible condition may pose to the owl.

Summary of Factors Affecting the Species

The provisions of section 4 of the Act and regulations promulgated to implement the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern spotted owl *(Strix occidentalis caurina)* are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Western Oregon and Washington were covered by approximately 24 to 28 million acres of forest at the time of modern settlement (early to mid-1800s), of which about 70 percent (14 to 19 million acres) may have been old growth (Society of American Foresters Task Force 1983, Spies and Franklin 1988, Morrison 1988, Norse 1988). Historical estimates for northwestern California are not as precise, but suggest there were between 1.3 and 3.2 million acres of old-growth Douglas-fir/mixed conifer and about 2.2 million acres of old-growth coastal redwood (Society of American Foresters Task Force 1983, Laudenslayer 1985, Fox 1988, California Department of Forestry and Fire Protection 1988, Morrison 1988).

Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of suitable habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and 7.1 million acres today (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates (Spies and Franklin 1988, Morrison 1988, Norse 1988) suggest that the reported decline in historical habitat, in fact, may have been as high as 83 to 88 percent. Habitat reduction has not been uniform throughout the range of the spotted owl, but has been concentrated at lower elevations and the Coast Ranges. Reduction of old growth is largely attributable to timber harvesting and land conversion practices, although natural perturbations, such as forest fires, have caused losses as well.

Current surveys and inventories have shown that while northern spotted owls are not found in all old-growth forests, nor exclusively in old-growth forests, they are overwhelmingly associated with forests of this age and structure (USDI 1989). It is well-established that northern spotted owls tend to be associated with forest stands in which many of the trees are more than 80 years old ("older forest") (USDI 1990, Thomas *et al.* 1990). For example, in 9 studies throughout the range of northern spotted owls, 85 percent of 81 radio-marked owls spent more time foraging in old growth than expected by chance, whereas only 4 percent spent more time foraging in young-growth stands than expected by chance (USDI 1990). Studies also show clearly that northern spotted owls preferentially select old growth for roosting (USDI 1990, Thomas *et al.* 1990).

Approximately 90 percent of suitable habitat for northern spotted owls now occurs on public land (Thomas *et al.* 1990). In Washington and Oregon less than 5 percent of the suitable habitat is in private or State ownership. Relatively speaking, little old growth presently exists on private, State, or tribal lands (Society of American Foresters Task Force 1983, Old-Growth Definition Task Group 1986, Morrison 1988, Spies and Franklin 1988, California Department of Forestry and Fire Protection 1988, Thomas *et al.* 1988, Greene 1988). In California, a significant amount of habitat may occur on private land but the exact amount is currently difficult to estimate. Historically, non-Federal lands probably contained a significant amount of owl habitat and may still offer the opportunity to provide vital linkages between islands of federally managed habitat in many areas. However, current logging practices, such as clearcutting, even-aged management, and short logging rotations, preclude development of future mature and old-growth conditions from most existing young forest stands.

The Forest Service manages 79 percent of the habitat on federal land, the Bureau of Land Management manages 14 percent, and the National Park Service manages 7 percent (Thomas *et al.* 1990). Of the 6.8 million acres of northern spotted owl habitat in government ownership, 60 percent is classified as timber production land, 28 percent is withdrawn from timber harvest (principally land in Wilderness Areas and National Parks), and 12 percent is classified as unsuitable for timber production (Thomas *et al.* 1990).

The amount of northern spotted owl habitat on land suitable for timber production has decreased rapidly since 1900 as indicated in Figure 1 for Forest Service land in Washington and Oregon. While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years, and on some forests, the unprotected habitat could disappear within 10 years.

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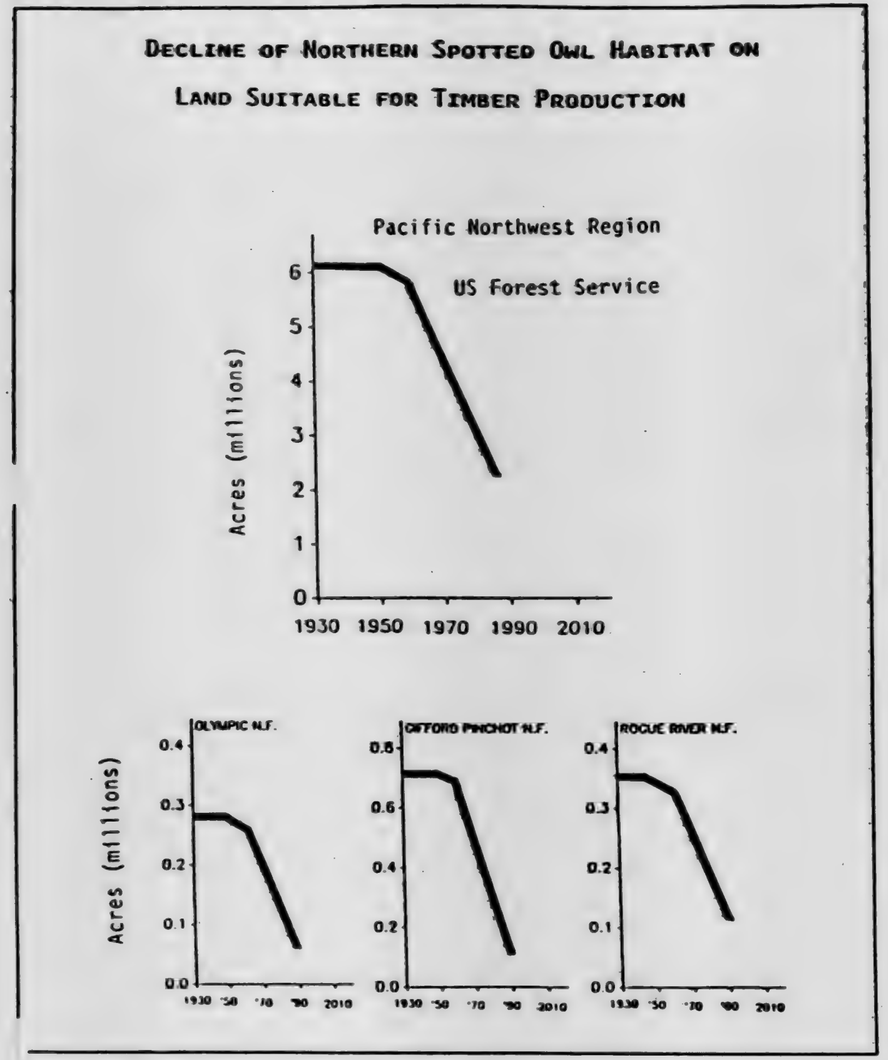


Figure 1. Decline in acreage of unprotected suitable northern spotted owl habitat on Forest Service lands also suitable for timber production. Based on information provided by the Forest Service (Pacific Northwest Region, Timber Management).

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Conversion of younger habitat to old-growth condition is not expected to be significant unless current logging practices change (Beuter *et al.* 1976, Heinrichs 1983, Society of American Foresters Task Force 1985, Harris 1984, Spies and Franklin 1988). As a result of habitat fragmentation, reduction in individual stand size, and edge effects, it has been speculated that the amount of suitable habitat presently available for the spotted owl (i.e., a matrix of patches of suitable habitat of sufficient size to support reproductively successful owls) may actually be less than 50 percent of the total habitat remaining today. This reduction in the quality of remaining forest habitat under present logging patterns will continue to the point where less than 10 percent of historical levels remains (Harris 1984; Harris *et al.* 1982; Morrison 1988, 1989; Norse 1989).

At present, a substantial amount of land on Forest Service and Bureau of Land Management land has been dedicated to spotted owl management areas. This system, however, has been called into question by Thomas *et al.* (1990), who consider it inefficient and unlikely to succeed in preserving northern spotted owls. They have urged that this approach be abandoned and have proposed a new system.

Under current management plans, the distribution of spotted owl habitat remaining in the near future will closely coincide with National Parks, reserved areas on federally managed forests, or other lands that are not considered suitable or available for timber harvest for other reasons (e.g., lands too steep or rocky for timber production, lands needed for hydrologic protection, scenic areas, etc.). These areas will contribute to maintaining spotted owl populations only to the extent that they contain suitable habitat of adequate size and quality for the birds (USDI 1989). By then, most remaining suitable habitat will no longer be continuous, but will exist as islands of varying size, spacing, and suitability spread over the range of the subspecies. Although more suitable habitat is likely to develop with time, it does not seem probable that recruitment of suitable habitat will significantly offset currently anticipated losses resulting from timber harvesting and natural events such as fire and wind storms (Thomas *et al.* 1990). With the currently anticipated timber harvest schedules, there is no assurance that this developing habitat will exist long enough to contribute significantly to northern spotted owl viability (Thomas *et al.*, letter dated December 20, 1989). Moreover, rotation age for managed forest stands is expected to be as low as 40-60 years on private land (Thomas *et al.*, letter dated December 20, 1989). Many of the current Wilderness Areas and parks are largely high-elevation lands above timberline and it is unlikely that northern spotted owl populations would be viable if their habitat were restricted to these areas (USDI 1990). These protected areas are concentrated within only about one-third of the current range (USDI 1990). Furthermore, abundance and reproductive success of northern spotted owls in these areas is much lower than in good habitat outside the protected areas. The low productivity is especially significant because it suggests strongly that reproductive success in these areas would be too low to balance mortality due to natural causes (USDI 1990). Lands unsuited for timber production may have poor soil conditions or be too steep or rocky for successful reforestation; such areas generally are not suitable habitat for spotted owls, nor are they likely to effectively support successfully reproducing pairs of owls (Meslow, pers. comm.).

To achieve the primary objective of timber management in Oregon, Washington, and northern California of producing wood at a non-declining rate, forests must be intensively managed with average cutting rotations of 70 to 120 years (USDI 1984, USDA 1988). Current preferred timber harvest systems emphasize dispersed clearcut patches for even-age management as the pattern of harvest. Thus, public forest lands that are intensively managed for timber production are, in general, not allowed to develop "old-growth characteristics," which often require about 200 years to develop. As a result, loss and fragmentation of remaining forests and old-growth stands suitable for spotted owls will continue if current management practices are unchanged. Suitable spotted owl habitat can develop in considerably less than 200 years depending on stand history, site productivity, and precipitation. There are examples of accelerated stand development in northern California, the Coast Range, and the east slope of the Cascades (Thomas *et al.* 1990).

The effect of timber harvest on northen spotted owls depends on whether even-aged, or mixed-aged techniques are used. Even-aged stands are created by clearcutting, or other methods in which only a few older trees are left, and by complete burns or blowdowns. Mixed-aged stands are created by selective cutting or partial burns or blowdowns. More than 90 percent of the timber harvest throughout the range of the northern spotted owl is accomplished using clearcutting or other methods that produce even-aged stands (USDI 1990). In considering the effect of timber harvest on northern spotted owl populations, primary attention must be given to the effects of even-aged harvest methods.

Several studies have concluded that northern spotted owls are seldom found in even-aged stands younger than currently planned rotation ages. For example, Forsman *et al.* (1977) surveyed 104 miles of roads in western Oregon and detected only one pair and four single northern spotted owls (0.06 owls/mile). In a nearby area with more abundant older forest, they detected 0.93 owls/mile. Forsman *et al.* (1987) surveyed some of the same areas lacking older forest 10 years later and obtained similar results (0.03 owls/mile). Postovit (1977) surveyed roads in Washington. He detected only 2 single birds (0.008 owls/mile) on routes lacking older forest. On nearby routes with abundant older forest he detected 0.052 owls/mile. Irwin *et al.* (1988d) surveyed 277 miles [2] in southwestern Washington in areas lacking older forest. They found only one pair (in one of two years) and detected 0.01 owls/mile [2] and 0.002 pairs/mile.[2] Bart and Forsman (1990) tabulated data from eight surveys excluding the ones mentioned above in areas containing extensive 50 to 80 year-old stands but little older forest. The surveys covered a total of 679 miles [2] and were located throughout the range of northern spotted owls. The density of owls was only one per 100 miles [2] and of pairs was one per 300 miles [2]. In contrast, nearby areas with substantial areas of older forest, surveyed using similar methods, had a density of one pair per 7 miles [2], approximately 40 times higher than the density reported from areas lacking older forest (Table 1) (USDI 1990).

The Service (USDI 1990) analyzed data from the Forest Service monitoring program (O'Halloran 1988, Simon-Jackson 1989). Northern spotted owl abundance and productivity decreased steadily as the amount of older forest decreased and areas with <20 percent older forest had few owls (Table 2). Meyer *et al.* (1990), in comparing habitat fragmentation at owl sites with random sites on Bureau of Land Management land in Oregon, found significantly lower levels of fragmentation at the owl sites. Bart and Forsman (1990) obtained data from 186 study areas covering 4,319 miles [2] located throughout the range. Their analysis demonstrated that in areas with less than 20 percent older forest, northern spotted owls were rare, and had low reproductive success

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(Figure 2). Further, these trends were similar throughout the range (Figure 3).

TABLE 1.—Results of Surveys for Northern Spotted Owls in Landscapes With Abundant 50–80-YEAR-OLD STANDS BUT LITTLE OLDER FOREST (BART AND FORSMAN 1990).

Location	Area surveyed (mi²)	Percent of area covered by 50–80 yr. stands	Owls per mi²	Pairs per mi²
Washington				
Cedar R. Watershed	20	50	0.00	0.00
Packwood Ranger Dist	9	92	0.00	0.00
Randle Ranger Dist	36	75	0.00	0.00
Olympic Peninsula	16	81	0.00	0.00
Southwestern Wash	277	52	0.01	0.00
Oregon Cascades				
Oakridge Ranger Dist	21	68	0.00	0.00
Eugene District, BLM	115	57	0.04	0.02
Klamath Province				
McCloud Ranger Dist	185	59	0.00	0.00
All areas	579	67	0.009	0.003

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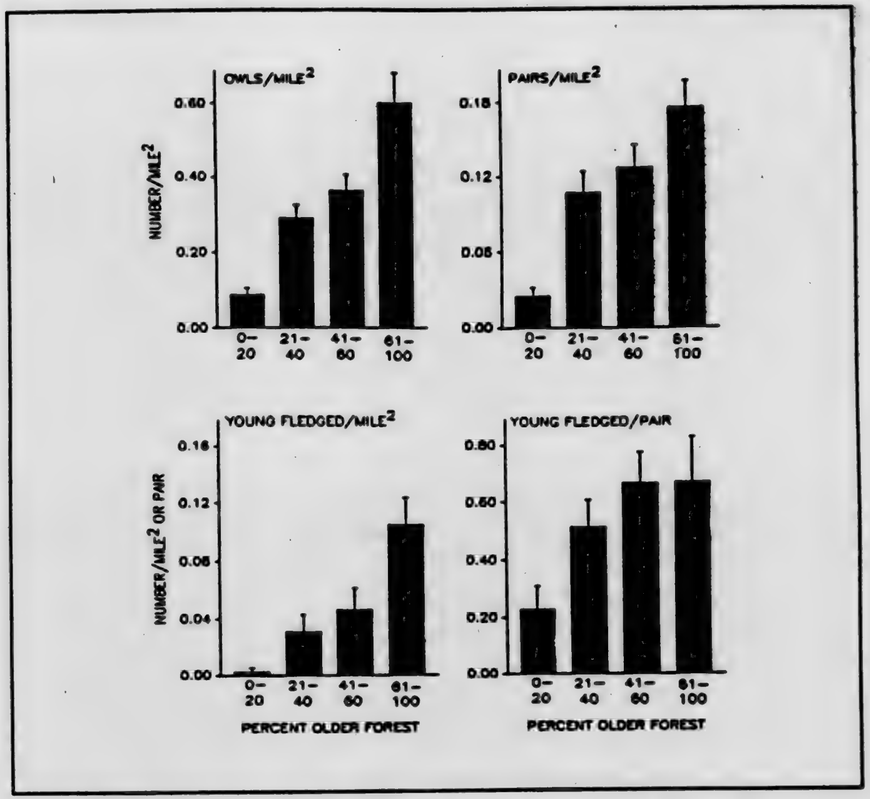


Figure 2. Abundance and productivity of northern spotted owls in relation to amount of older forest on the surveyed areas. Vertical bars indicate 1 standard error (Bart and Forsman 1990).

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TABLE 2.—ABUNDANCE AND PRODUCTIVITY OF NORTHERN SPOTTED OWLS IN RELATION TO AMOUNT OF OLDER FOREST AS INDICATED BY FOREST SERVICE MONITORING DATA (USDA 1989)

Variable	Percent suitable habitat			
	0–20	21–40	41–60	>60
Owls/site	[a] 0.31	[a] 0.64	[b] 0.85	[b] 0.95
Pairs/site	[a] 0.04	[b] 0.19	[b] 0.29	[b] 0.27
Young fledged/pair	0.33	0.77	0.67	0.93
Young fledged/site	[a] 0.01	[b] 0.13	[b] 0.21	[b] 0.22
Number of sites	101	56	58	39

[a, b] Different superscripts indicate significantly different ($P < 0.05$) values within rows.

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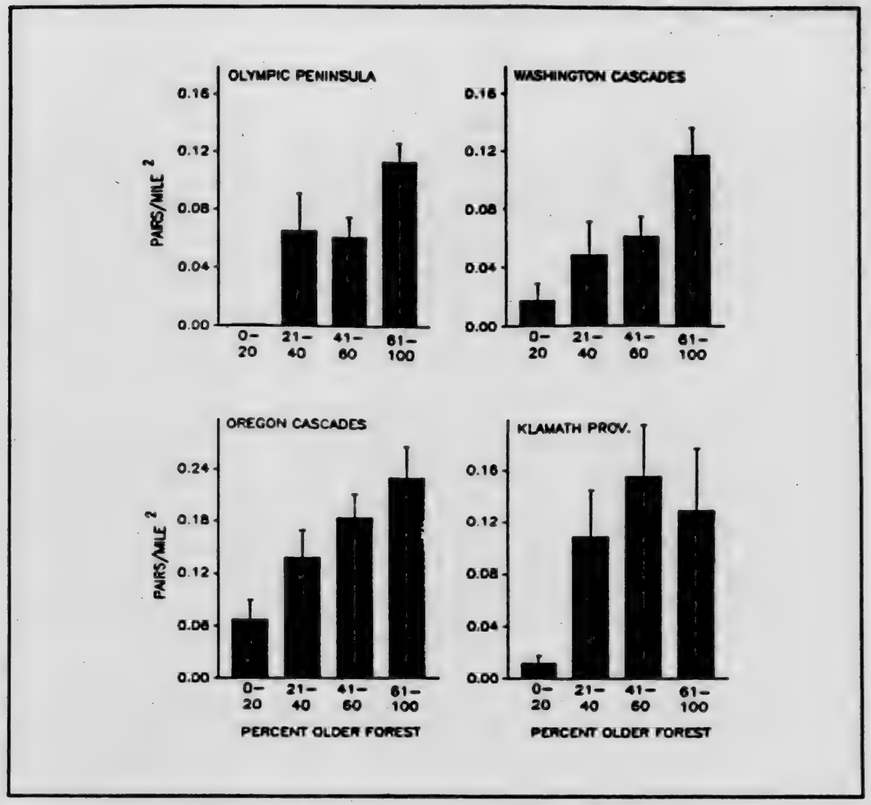


Figure 3. Abundance of spotted owls in four portions of their range in relation to amount of older forest on the surveyed area. Vertical bar indicates 1 standard error (Bart and Forsman 1990).

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Abundant evidence from surveys of large areas also shows that northern spotted owls become rare or are absent on lands managed for timber production once the older forest is harvested. In one of the first comprehensive summaries of northern spotted owl locational data, Forsman *et al.* (1977) concluded that northern spotted owls in Oregon were found primarily in areas with abundant older forest, and only occasionally in areas with little or no older forest. In Washington, Hays *et al.* (1989a) surveyed northern spotted owls in regions that differed in amount of older forest and detected more owls in regions with more older forest. For example, ten times more owls were detected in the Olympic Peninsula, where older forest was more common, than in southwest Washington where there was no older forest in the surveyed areas.

Additional evidence that northern spotted owls are rare in timber production lands once the older forest has disappeared comes from the numerous surveys on public and private land in portions of the range that lack older forest. The largest such region includes the Coast Range north of the Siskiyou National Forest and south of the Olympic Peninsula. Throughout this region, 50 to 80 year old stands are common, but few older stands are present. If land managed for timber production provided suitable habitat, then northern spotted owls should be widespread in this area. In fact, however, owl density is extremely low, and is approximately one-eighth that recorded in a nearby study with substantial amounts of older forest (Thomas *et al.* 1990). The few birds present are concentrated around the remaining blocks of older forest. Thomas *et al.* (1990) discuss several other areas of special concern where northern spotted owls have largely disappeared due to timber harvest activities.

Northern spotted owls appear to use at least some land that has been managed to produce uneven-aged stands, but this silvicultural approach is generally rare throughout the range. Land managed to produce uneven-aged stands includes small patches of older forest along streams and in areas unsuitable for timber harvest, but such lands generally comprise 20 percent or less of the area (USDI 1990). In these areas northern spotted owls are rare and have low reproductive success. The abundance and productivity of northern spotted owls in mixed-age stands has been studied on private land in California. In the interior, Douglas-fir zone, preliminary data indicate that owl abundance and productivity on the selectivity harvested areas approximated the levels on clearcut areas containing about 40 percent older forest (Irwin *et al.* 1989b, USDI 1990). In the coastal redwood zone, abundance and productivity is high in stands containing remnant older trees (Diller 1989, Irwin *et al.* 1989b, USDI 1990). It is difficult to predict whether these lands will support owl populations in the future because current harvest methods favor even-age stands and trees younger and smaller than many of the trees that were present in these studies.

Annual cutting rates of old-growth and old-growth/mature age classes of trees have been established by the Forest Service and the Bureau of Land Management (USDI 1989). During the 1980s, the Bureau has been harvesting old-growth and old-growth/mature trees at the rate of about 22,000 acres per year in Oregon. At the present time, the Forest Service estimates its harvesting of spotted owl habitat (mature and old-growth classes) at the rate of about 26,000 to 40,000 acres per year in Oregon and Washington combined, and 12,000 acres annually in California. Unless these cutting rates or patterns of cutting are altered, much of the existing spotted owl habitat remaining that is available for timber harvest will be gone within about 20 to 30 years (USDI 1990). Much of what remains may be too small and fragmented to support successfully breeding pairs of owls.

As a result of past and present harvest patterns, potential isolation of several subpopulations of northern spotted owls is also of considerable concern (e.g., the Olympic Peninsula, the Coast Ranges in southwestern Washington and northwestern Oregon, and the Marin County area in California) (USDA 1988, USDI 1989). The central problem of subpopulation isolation is one of maintaining a critical population size level in the absence of genetic or demographic contributions from other subpopulations. The smaller a population or subpopulation and the greater its isolation from other populations, the greater the risk of its elimination as a result of chance demographic and environmental events or genetic effects (Shaffer 1987).

The population of spotted owls on the Olympic Peninsula may be isolated demographically, and perhaps even genetically, from other owl populations, since there does not appear to be an effective, self-sustaining population in either southwestern Washington adjacent to the Olympic Peninsula or the northwestern Oregon Coast Ranges (Irwin *et al.* 1988, 1989d; A. Potter, Wash. Dept. of Wildlife, Olympia, WA, pers. comm.; Forsman *et al.* 1977; Forsman 1988; W. Logan, Bureau of Land Management, Salem, OR, pers. comm.). While the population in the Oregon Coast Ranges may not be currently isolated due to a tenuous connection to the Cascade populations at the southern part of the range provided by lands managed by the Bureau, the scale of habitat fragmentation throughout the range is of considerable concern (USDI 1989). As one moves north along the Oregon Coast Ranges, habitat ownership becomes fragmented because of checkerboarding of Bureau and private lands. Remaining old growth and mature forests become more fragmented as well. During the next 10 to 15 years, given the existing direction of land management, the current degree of isolation on the Olympic Peninsula and the potential for isolation of portions of the Oregon Coast Ranges province are likely to become exacerbated, as most intervening habitat is privately owned. Currently there are few pairs of owls in the northern part of the Oregon Coast Range and under current management trends, these may disappear as remaining suitable habitat is lost or becomes too isolated.

The Washington and Oregon Cascade populations of owls are at risk of becoming demographically isolated from one another by loss of habitat along the Columbia River corridor. The impounded section of the Columbia River upstream of Bonneville Dam and the associated transportation and urban/agricultural corridor downstream from Bonneville Dam may serve as a significant dispersal barrier to the north-south movement of owls. In addition, the Columbia River downstream from Portland is very wide with little or no old-growth and mature habitat adjacent to the river, nor is there a self-sustaining spotted owl population in this area (Logan, pers. comm.; Forsman *et al.* 1977; Forsman 1988; Potter, pers. comm.). No evidence exists of spotted owls moving across the Columbia River, nor have birds been observed crossing the Willamette Valley (Thomas *et al.*, letter dated December 20, 1989).

Other possible problems with isolation of populations of spotted owls, or at least areas that present possible "bottlenecks" in distribution, occur in the central Washington Cascades ("I-90 corridor"), the Santiam Pass area, the Shasta/Modoc area, the Pit River connection to the Sierras, and the juncture of the Oregon Cascades and Klamath physiographic provinces.

Northern spotted owl surveys conducted on private commercial

timberlands during 1989 documented that owls were more numerous in 30–100-year-old even-aged and mixed-age forests than had been previously reported (Irwin *et al.* 1989b; Kerns 1989a, b; Pious 1989). At the present time it is not known if this portion of the population is self-sustaining; however, these areas do represent the potential to contribute to the regional owl population. Because these lands provide a habitat link southward from Forest Service holdings and inland to National Park Service lands in Marin County, the Marin-Sonoma-Napa County northern spotted owls may not be as isolated from adjoining populations as was previously suggested (Thomas *et al.*, letter dated December 20, 1989). However, current timber management regimes indicate it is economically beneficial to harvest stands 60–90 years of age, the approximate age at which these stands are beginning to support spotted owls (Thomas *et al.*, letter dated December 20, 1989). Further, although the hardwood component of many of these stands has had little commercial value, in the future it may be removed to produce pulp (Thomas *et al.*, letter dated December 20, 1989).

Although natural habitat is never constant, the old-growth forest habitat prior to 1900 was more continuous than the present landscape. Natural perturbations have been significant in terms of the amount of area influenced as evidenced by, for example, the Tillamook Burn(s) in Oregon, the first of 1967 in the southern portion of the range, the "21 blow" in Washington, the Columbus Day storm in 1962, and the eruption of Mount St. Helens (Thomas *et al.*, letter dated December 20, 1989). However, most natural perturbations would generally have been small and localized relative to the entire Pacific Northwest. Franklin *et al.* (1988) examined the scale of 14 major fire events in Mt. Rainier National Park from 1230 to 1703 and estimated that these fires burned from 8 percent to 47 percent (median of 24 percent) of the park's reconstructed forested area. Given that these represent major fire events, it is not unreasonable to conclude that the impact of most other, nonmajor natural perturbations would be smaller and more localized. Because natural disturbances are less uniform both in effect and in time than those precipitated by broad-range timber harvest, such natural disturbances usually create more heterogeneous forest structure throughout the landscape (Thomas *et al.*, letter dated December 20, 1989). The current habitat situation for spotted owls continues to change from the original condition where unsuitable habitat patches were small and isolated, to the reverse where suitable habitat now occurs in small and isolated patches. These factors all interact to decrease habitat suitability or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988; Harris 1984; Meslow *et al.* 1981; Spies and Franklin 1988; Thomas *et al.* 1988).

Timber harvesting and natural perturbations result in the loss of suitable spotted owl habitat and an increase in forest fragmentation. Habitat fragmentation may be defined as the breakup of contiguous tracts of forest habitat into smaller, more isolated parcels (USDI 1989). Timber harvest, employing a pattern of small, dispersed clearcuts, eventually leads to a situation where parcel sizes are so small as to be influenced by edge effects (windthrow, invasion by alien species, microclimatic changes, etc.). As a result, the original parcels may no longer be able to sustain the species or the community originally found in the larger and contiguous tracts of habitat and the quality (i.e., effectiveness of the habitat to support successful reproduction) of remaining preferred forest stands may be lessened considerably when the effects of adjacent roads and clearcuts are considered. Impacts from edge effects and environmental disturbances may be most noticeable in areas where little old growth currently remains, for example, in the Oregon Coast Ranges.

A recent assessment of the effects of forest fragmentation suggests that in areas of highly fragmented and isolated habitats in northwestern California, there may be lower reproductive fitness among owls relative to birds in nearby, more contiguous habitat (Chavez-Leon 1989). Ripple *et al.* (1990) contrasted the percentage of cutover lands, in circles of various diameters, at 30 northern spotted owl nest sites and 30 random sites on the Willamette National Forest, Oregon. The percent cutover land was significantly lower near nest sites compared to random sites. Statistically significant differences existed at all circle sizes. They concluded that northern spotted owls appear to select for low levels of cutover land adjacent to their nests. Meyer *et al.* (1990) selected 50 owls sites and 50 random sites and compared several indices of habitat fragmentation in the two data sets. According to preliminary results, habitat at owl sites was significantly less fragmented than the habitat at random sites. The findings of Meyer *et al.* (1990) and Ripple *et al.* (1990) that areas selected by northern spotted owls have lower levels of habitat fragmentation than random sites is consistent with other studies showing lower abundance in areas with little older forest (USDI 1990).

Fragmentation of habitat also may adversely affect spotted owls by: (1) Directly eliminating key roosting, nesting, or foraging stands; (2) indirectly reducing the survival of dispersing juvenile owls; (3) perhaps increasing competition or predation, and (4) reducing population densities and interaction between individuals. These factors may interact to decrease habitat quality, suitability, or effectiveness for supporting a well-distributed population of spotted owls over time (Greene 1988, Harris 1984, Meslow *et al.* 1981, Spies and Franklin 1988, Thomas *et al.* 1988).

Fragmentation can also have harmful genetic consequences through its effect on the effective population size. Each subpopulation occupying a discrete habitat patch, such as those that result from habitat fragmentation, comprises a component of the overall population, referred to as a "metapopulation." The processes of extinction and colonization within individual patches can have deleterious genetic effects that might not be predicted by models that do not consider metapopulation structure (USDI 1989).

The patchwork pattern of even-aged, dispersed, clearcut timber harvest systems has imposed a checkerboard pattern on present old-growth and mature forests, fragmenting remaining habitat throughout the owl's range and reducing the total amount of suitable spotted owl habitat. This fragmentation of spotted owl habitat may be especially noticeable on Bureau lands which are additionally checkerboarded because of land ownership patterns. However, it should be noted that the present timber cutting pattern may provide a more persistent distribution of some relatively mature forest stands throughout the landscape (Thomas *et al.*, letter dated December 20, 1989). If a "minimal" fragmentation strategy were to be implemented using even-age forest management, more extensive areas may consist of young-growth stands (Thomas *et al.*, letter dated December 20, 1989). Relatively large areas of early young-growth forest may prevent or reduce the interaction of northern spotted owls. It is not known whether the dispersed clearcuts or broad expanses of young forest stages would provide the better situation for northern spotted owls in managed forests (Thomas *et al.*, letter dated December 20, 1989).

Although the actual numbers of owl sites and pairs on all lands is not

precisely known, recent surveys (1985–1989) indicate that there are about 2,000 known pairs of northern spotted owls within the present range of the subspecies, although 3,000–4,000 pairs are suspected (Thomas *et al.* 1990). Of these, approximately 90 percent are found on federally managed lands (USDI 1988, Thomas *et al.* 1990). Data contributing to estimates of present population size have been collected for about 20 years, with counts of owls increasing over that period as greater areas of habitat were surveyed (Gould 1988; Gould, pers. comm.; Forsman *et al.* 1987; USDA 1988; Robertson 1988; Vetterick 1988). However, the increase in numbers of spotted owls counted in these surveys reflects an increase in inventory effort and improvements in inventory methods rather than an indication of any upward population trend. Not all forest habitat has been fully surveyed, as some areas, particularly Wilderness Areas, are difficult to inventory. An estimate of population trends in relation to habitat over time is likely to provide a better understanding of the status of the population than just total numbers of individuals and pairs.

Information about population trends for spotted owls is provided by three different kinds of data: (1) Changes in spotted owl habitat; (2) changes in spotted owl population size; and (3) survival and reproductive rates. Both the close association between the spotted owl and old-growth and mature forests and the dramatic reductions in old growth that have occurred have been thoroughly discussed earlier. This loss of old-growth and mature habitat continues, with projected losses on Federal lands of about 3 percent per year on Bureau of Land Management and 1 percent per year on Forest Service land (USDI 1990). Northern spotted owls that are displaced when suitable habitat is lost within their home ranges will likely relocate into nearby remaining habitat, creating an apparent increase in densities, referred to as the "packing" phenomenon, in the remaining habitat (Thomas *et al.*, letter dated December 20, 1989). If this results in competition with owls already present in the habitat, there may be a decline in reproductive success. Hence, high owl densities in such areas must be assessed with care to determine their true significance as the same population may provide two different estimates of trend (Thomas *et al.*, letter dated December 20, 1989). The first pertains to the actual numbers of birds and may be interpreted as an indication of increasing population. However, the second estimate would be based on demographic parameters and would suggest a declining population (Thomas *et al.*, letter dated December 20, 1989). The disparate results can be reconciled by invoking recruitment from outside the population being assessed to account for the increases in numbers (Noon and Biles 1990). Finally, when the best available estimates of spotted owl survival and reproductive rates are combined and analyzed, resulting values point to a declining population (USDI 1989, USDI 1990).

The Service conducted an analysis of the effects of the substantial loss of suitable habitat on the dynamics of the spotted owl population using the results from two large demographic studies: (1) Willow Creek (113 mi.²) and surrounding Regional Study Area (8,681 mi.²) in northwest California, studied from 1984–89 (Franklin *et al.* 1990a) and (2) the Roseburg Study Area (1,209 mi.²) in southwest Oregon, studied from 1985–89 (Forsman 1990a). The study areas in northwest California were managed by the Forest Service and although these had been substantially clearcut, there were still extensive areas of suitable habitat. The Roseburg area, a checkerboard ownership pattern consisting of Bureau of Land Management and private lands, has been intensively clearcut; thus the remaining habitat is highly fragmented. These areas are the only ones currently available with adequate data (four years or more) for a thorough, comprehensive, and rigorous analysis.

Estimates of age-specific survival and fecundity of females were needed as these values were used to estimate trends in the size of the population of resident, territorial owls. Estimation of the number of immigrants were important in understanding the dynamics of the population. Further technical details of the methodology and results of the analysis of the capture-recapture data used to estimate the needed values from these areas can be found in USDI (1990). The Service's results (see USDI 1990) update all prior estimates of population parameters of the northern spotted owl for these two study areas. To eliminate any possible bias that radio transmitters may have imposed, birds equipped with radio devices were not used in these analyses. As is typical of these types of analyses, the female component of the population was emphasized.

Intensive analysis of the data for females provided the following estimates of annual survival probabilities and standard errors (a measure of precision):

Area and parameter*	Est. mate*	Standard error (est.)
Northwest: Juvenile survival	0.130	0.046
California:		
Subadult survival	.503	.094
Adult survival	.893	.024
Roseburg: Juvenile survival	.219	.072
Oregon:		
Subadult survival	.698	.069
Adult survival	.812	.025

* Juvenile—0–12 months of age, subadult—12–24 months, and adult more than 24 months.
* Probability of female of that specific age class surviving until the next year.

The Service concluded that the estimated survival of adults on the Roseburg area was quite low and that there was no significant year to year variation in the survival parameters. The mean life span of adults was 2.80 years (se—2.55) and 4.70 years (se—0.71) for northwest California and Roseburg areas, respectively. Many other technical details are contained in USDI (1990).

Information on fecundity (the number of young fledged per female of age *x*) of individuals was averaged across years to provide estimates of average fecundity:

Age	Northern California			Roseburg Study Area		
	n	Fecundity	Std. error	n	Fecundity	Std. error
Subadult 1	17	0.147	0.083	23	0.0652	0.0477
Subadult 2	23	.261	.068	23	.0652	.0477
Adult	197	.376	.032	215	.3209	.0281

No significant year to year variation was found in the fecundity on either study area. The estimates of age-specific survival and fecundity (above) have little bias and are quite precise. Because these estimates employ the best and most current data available and the analysis is based on the best statistical theory for the analysis of capture-recapture data, the Service believes these to be good estimates.

The entry of new owls into the adult female component of the population was found to be statistically significant each year on both study areas. Average annual estimates of this augmentation are summarized below:

Study area	Total entry	Internal recruits	Immigrants
Northwest CA	8	2	6
Roseburg, OR	42	3	39

These estimates clearly suggest that most new adult females entering these areas were immigrants and that relatively few young females, produced on the study areas, were recruited into the resident population of territorial females (USDI 1990). The estimates (above) made it clear that the resident population of territorial females on both study areas was being augmented each year by female owls from surrounding areas. These immigrants included "floaters" (nonterritorial subadults or adults) and perhaps dispersing juveniles and subadult birds from surrounding areas. The size of the floating component of the population was perhaps drawn down as these birds found territories and entered the resident population. Some of the immigrants were likely birds displaced by timber harvest in surrounding areas that had been clearcut and fragmented.

In its analysis, the Service found that a statistically significant number of owls entered these two study areas each year, and this by itself is strong evidence that the resident population of territorial birds was decreasing. Very substantial immigration was occurring, especially on the Roseburg area, where relatively little suitable habitat remained.

Lambda was computed from the age-specific survival and fecundity rates (above) using traditional methods (e.g., Leslie 1945). If lambda=1, the population is "stationary," but if lambda <1, then a declining population is indicated. To estimate if the owl population has declined in response to habitat loss and fragmentation from timber harvesting, the Service estimated lambda values and tested the hypothesis that lambda=1 vs. lambda <1. The estimates of survival (above) where derived from marked, territorial birds residing on the two study areas and the estimates of fecundity (above) were computed for resident females on the two study areas. Thus, lambda answers the question, "Have the resident territorial owls replaced themselves?"

The Service believes its estimates of lambda update previous estimates, including those in Thomas *et al.* (1990). The estimates of lambda are properly interpreted as the average annual rate of population change of female owls during the period of investigation and data collection (i.e., 1984–89 for northwest California and 1985–89 for the Roseburg area). No inference was made about the value of lambda prior to these studies or in the future. These estimates of lambda represent a "snapshot" of the average annual change in the resident female component of these two populations and their recruitment. Because no significant year-to-year variability in survival or fecundity rates was found in either area, interpretation of lambda is possible. Final estimates of lambda are given below with their estimated standard errors:

Area	Lambda	se (Lambda est.)
Northwest CA	0.9584	0.0284
Roseburg, OR	.8699	.0288

A one-sided test of the null hypothesis lambda=1 vs. the alternative lambda <1 was statistically significant for both areas, where z is a test statistic:

Area	z	P
Northwest CA	1.578	0.0468
Roseburg, OR	4.944	0.0000

These results indicate that the resident population of females was declining on both of these large study areas and was not able to replace itself. The declining population in northwest California was of particular interest because it occurred in an area with considerable amounts of suitable owl habitat. Here the annual rate of decline in the resident female population was approximately 5 percent. Over the five years of study, the population of territorial females declined an estimated 21.6 percent (se = 11.7 percent) per year. In contrast, the Roseburg area in southwest Oregon contained much less suitable habitat, had been extensively clearcut, and was highly fragmented. Here the estimated rate of population decline of resident females was approximately 14 percent per year. Over the four years of study, this population of territorial females declined an estimated 45.6 percent (se = 7.2 percent). Based on habitat quality and quantity, it was expected *a priori* that lambda would be smaller in the Roseburg area compared to the northwest California area and this was shown to be the case.

According to the Service's results, the resident population of owls on these areas was declining sharply and significantly in both areas but was sustained each year by owls from surrounding areas, including floaters on the areas (the "rescue effect"). Hence, the Service maintains that these areas are population sinks where mortality exceeds recruitment. Because there has been a dramatic loss of suitable habitat throughout the range of the northern spotted owl, it seems likely that the population of owls has declined substantially throughout its range. This population decline was the fundamental basis for the interagency conservation strategy (Thomas *et al.* 1990). Moreover, there is a high likelihood that the population is currently above the carrying capacity. Franklin *et al.* (1990a) provided evidence of packing where birds crowd into suitable habitat with the resulting increased competition for resources affecting both survival and fecundity rates. Floaters probably constitute most of the immigrants, and this tends to mask the drastic rates of population decline of the resident populations. Further, standard survey counts tend to remain little changed because immigrants cannot be distinguished from the resident birds in most cases. Current counts of owls may be misleading (optimistic) because the population was above the carrying capacity due to habitat loss. Thus, even if the loss of habitat were halted, these data suggest that the population would continue to decrease substantially for, at least, several generations (also see Thomas *et al.* 1990). At some future time, the population would come into a new equilibrium with the habitat and become somewhat stationary.

USDI (1990) also provides the results of a simple approach to estimating the population change for northwest California, somewhat independent from the results outlined above. Here, the estimate of average population change was even less optimistic (lambda' =0.929). The available evidence indicates sharply declining populations of owls as a result of the intensive clearcutting of suitable habitat at least in these two study areas.

Sources of bias in the estimates of lambda were reviewed in USDI (1990). First, emigration of (especially) juvenile birds that survived the year, left the study, and did not return was not accounted for by the analysis

procedures; this bias would result in an estimate of lambda that was too low (perhaps 2–3 percent). Secondly, the analysis procedures failed to account for senescence in either survival or fecundity rates; thus, providing estimates of lambda that were too high (perhaps by 2–3 percent). Little could be done to correct for either bias. Although it is unlikely that these two biases would exactly cancel each other, it appears that considered jointly, they would provide little impact to the final results. Other sources of bias were reviewed in USDI (1990) and found to be of little probable importance. In summary, the best and most current estimates of the finite rate of annual population change are those given above (e.g., 0.95 for northwest California and 0.86 for the Roseburg area in southwest Oregon). These results indicate a sharply declining population of resident, territorial owls due to habitat loss. The populations are above carrying capacity and are being temporarily maintained by immigration.

It is unknown whether the amount and distribution of spotted owl habitat remaining at the end of commercial harvest of old-growth forests on public lands (USDI 1989) will be adequate to support a viable population of the northern spotted owl. Attempts to answer this question by using the concepts and tools of population viability assessments have been undertaken by the Forest Service (USDA 1988, 1988), Lande (1987a, 1987b, 1988), and Doak (1989). Although subject to criticism on a number of grounds, the population viability assessments indicate that implementation of the Forest Service's preferred alternative for managing the spotted owl in Oregon and Washington (Alternative F, USDA 1988) will not provide a high probability of persistence for the spotted owl over the next 50 to 100 years, at least not in significant portions of its range. Litigation has been initiated regarding the Forest Service's preferred alternative. At this time it is not known whether this alternative will be implemented. Moreover, at this writing, final individual forest plans pertaining to spotted owl management based on the regional guidelines have been adopted only for the Siskiyou and Siuslaw National Forests.

Moreover, spotted owl population viability assessments performed to date (USDA 1988, 1988; Lande 1987a, 1987b, 1988) have not explicitly considered habitat differences in reproductive rates and how different fitnesses of owls in different habitats would affect population dynamics. In particular, the life table and population viability analyses that have been performed to date may present an optimistic view of the future status of spotted owl populations for two reasons (USDI 1989). First, the population viability analyses conducted by the Forest Service were based on a single frequency distribution of reproduction rates, with a mean value from owl pairs in the most preferred habitats. However, as discussed previously, theory and empirical data suggest that owl pairs in less suitable, younger habitats may have significantly lower per capita reproductive rates. Therefore, as more preferred habitat is cleared, population growth rates may be reduced to values lower than were used in existing models. Second, the Forest Service's population viability analyses assume that a given Spotted Owl Habitat Area (SOHA) will be occupied with a probability proportional to the amount of old-growth forest within the SOHA. However, the assumed relationship is based on the present landscape configuration, the existing amounts of old growth, and the current spatial relationships between old growth and young growth forests. The assumed SOHA occupancy probabilities are likely to decline as surrounding old growth is cleared and SOHAs become more isolated from other large patches of preferred habitat. These points are intended to emphasize the fact that the models should be interpreted cautiously, and that planning for the owl should include built-in safety factors to insure that future habitat requirements for a viable population are not underestimated.

Forest Service modeling (USDA 1988) predicts that the mortality of dispersing juvenile owls will increase whenever the amount of suitable habitat areas decreases. As spotted owl habitat continues to be reduced further by timber harvest, the current spotted owl population is expected to decline correspondingly, and perhaps more precipitously.

Based on ecological theory, several predictions about the effects of continued harvesting of suitable habitats on the future demographic performance of spotted owls can be made. Given the data, it is likely that continued harvest of preferred habitat will adversely affect spotted owl populations. As more of this habitat is removed and fragmented, a number of possible scenarios may occur: (1) Individual owls will have to use habitats comprised of a higher proportion of young forests, necessitating an increase in their home range size to meet their energetic and nutritional requirements and resulting in an overall decrease in density of spotted owls; (2) as more owls use less suitable habitats, there will likely be a decrease in the average reproductive success of the population as a whole; and (3) displaced individuals may be unable to encounter suitable nesting habitat. Analysis of available information for spotted owls seems to support these theoretical predictions (USDI 1989).

In a second possible scenario: (1) Displaced owls may become concentrated in the remaining suitable habitats (Thomas *et al.*, letter dated December 20, 1989); (2) thus, occupancy rates of spotted owls in such habitats may remain inordinately high or even increase ("packing") even if the total population size within a larger area is declining (Thomas *et al.*, letter dated December 20, 1989); (3) a greater proportion of the population could consist of non-territorial owls ("floaters") (Thomas *et al.*, letter dated December 20, 1989); (4) in turn, the floaters could consist of an increasing proportion of older birds, perhaps with a preponderance of males (Thomas *et al.*, letter dated December 20, 1989); (5) hence, juvenile survivorship could decrease as the periodically few vacated sites are usurped by subadult and adult floaters (Thomas *et al.*, letter dated December 20, 1989).

The reported variation in per capita reproductive rates between habitats of different suitability implies that owls using young-growth forests may actually contribute proportionately less to population recruitment than their numbers would suggest. Because of apparent differences in reproductive rates, it would be incorrect to assume that a given owl population, normally concentrated in old-growth forests, could be maintained for any length of time on a relatively larger area of less suitable, young forests. The data on spotted owls suggest that use of young forests by owls is largely dependent on the presence of old-growth stands within the home range.

The dependence of northern spotted owls on older forest, the low probability that significant amounts of suitable habitat will persist outside of preserved areas, and the inability of the protected areas to support a viable population of northern spotted owls, all indicate that the northern spotted owl is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Considerable research by

Federal, State, and private groups is being conducted on this subspecies. This work is providing valuable information and is not having a negative impact on the subspecies. The spotted owl is not a game bird, nor is there any known commercial or sporting use.

C. *Disease or Predation.* Predation by great horned owls (*Bubo virginianus*) has been identified as a major source of juvenile mortality in spotted owls (USDI 1987; Dawson *et al.* 1988; USDA 1988; Simberloff 1987; and USDA 1988). Concern has been expressed that increasing habitat fragmentation may be subjecting spotted owls to greater risks of predation as they move into or across more open terrain, or come into more frequent contact with forest edges where horned owls may be more numerous. Hamer (1988) has been studying spotted owl and great horned owl interactions in the north Cascades of Washington. His survey of the 145-square-mile Mt. Baker study area showed that great horned owls were more common than spotted owls in this mostly fragmented habitat. He found, with a limited sample size, that spotted owls avoided areas intensively used by pairs of great horned owls. In young-growth forests in southwestern Washington, Irwin *et al.* (1988d) reported that great horned owls, along with the western screech owl (*Otus asio*), were the most commonly found owls, and that spotted owls were frequently found. Specific impacts of great horned owl predation on the overall spotted owl population are unknown, but this remains an issue of concern.

In a recent study, the incidence of hematoma in spotted owls was found to be one of the highest of any avian species yet examined (Gutierrez 1988). Recent research indicates there may be both long- and short-term ecological effects of hematoma on birds such as the possibility of adversely influencing their energetics (Gutierrez 1988).

D. *The Inadequacy of Existing Regulatory Mechanisms.* Although there are numerous State and federal laws and regulations that, if enforced, may protect spotted owls and, to a lesser extent, spotted owl habitat, the implementation and effectiveness of these laws to date has been variable (Thomas *et al.* 1988). The precarious status of the northern spotted owl has been recognized in Washington where it is listed as endangered, in Oregon where it is considered threatened, and in California where it is classified as a sensitive species.

Private companies own approximately 9.7 million acres of forested land within the range of the northern spotted owl in Oregon and Washington (USDA 1984). In northern California, private companies own an additional 6.8 million acres (Thomas *et al.* 1990). This resource base is being utilized for the commercial production of timber. The actual amount of suitable owl habitat is unknown. The California Department of Forestry and Fire Protection (CDF), however, estimates that about 70 percent of the stands in private ownership are less than 16 inches dbh (diameter at breast height) (R. Teasdon, pers. comm.); these are unlikely to provide suitable spotted owl habitat. An even smaller amount of suitable habitat is estimated on private lands in Oregon and Washington. Commercial logging on private and State-owned land is regulated by forestry practice laws in each of the three states.

In Washington, logging practices on State, State Trust, and private lands are regulated by the State Department of Natural Resources. Harvest of timber on lands containing endangered species requires that an "environmental checklist" be addressed or possibly a more detailed environmental statement be written, before harvest can be approved and initiated. Timber sales with owl conflicts are decided on a case-by-case basis. In 1989 the Washington Commission on Old Growth Alternatives for Washington's Forest Trust Lands, which exist to provide revenue to trust beneficiaries, agreed to defer harvest on 15,000 acres (out of 80,000 acres) of old growth in western Washington for 15 years. This represents less than 6 percent of the land base in State ownership in the area, and would protect, at most, two of 15 pairs of spotted owls on these lands (Wash. Dept. Wild. 1988). The 15,000 acres withheld would be included in normal harvest schedules after the 15-year period specified in the agreement. However, "Implementation of the Old Growth Commission recommendations will likely result in a significant reduction in the Olympic Peninsula Spotted Owl population" (Wash. Dept. Wildl. 1988). Current management practices provide little hope for the long-term protection of spotted owl habitat on Department of Natural Resources lands.

In Oregon, logging practices on State and private lands are regulated under the Oregon Forest Practices Act (FPA), which does "not specifically mention the northern spotted owl" (Brown 1988). However, the spotted owl is listed by the Oregon Fish and Wildlife Commission as threatened within the State. Relatively new legislation (HB 3396, 1987) in Oregon directs the Oregon Department of Forestry to protect species that the State designates as endangered or threatened and develop appropriate guidelines to implement this protection. However, these guidelines are not scheduled for completion until 1991. As part of this effort, the Department of Forestry has issued "forest practices rules" that are applicable to State and private lands. However, the only protection for northern spotted owls appears to be short-term protection of nest sites that become apparent prior to or during harvesting operations (Thomas *et al.*, letter dated December 20, 1989). Most State lands in Oregon (786,000 acres) are managed by the Department of Forestry (ODF), but only 25,000 acres are reserved from timber production (Thomas *et al.* 1990). The Interagency Scientific Committee (Thomas *et al.* 1990) estimates that fewer than 20 pairs of owls are found on State land in Oregon, and that most of this habitat will be harvested within the next 20 years.

In California, decisions on timber harvest management plans for private timber land are made by the California Department of Forestry. Although harvesting plans are reviewed by the California Department of Fish and Game (CDFG), approval by that agency is not required. Despite the spotted owl being classified as a Species of Special Concern, this classification confers no special protection to either the owl or its habitat. The Department of Forestry and Fire Protection has initiated a timberlands task force to address the needs of wildlife on forest lands throughout the State. This will include consideration of a habitat conservation plan for spotted owls if the owl is listed. The California Department of Parks and Recreation currently provides protection to about 58,000 acres of suitable spotted owl habitat in its redwood parks. These areas, managed for their natural values, provide protection to a small number (five known breeding pairs) of spotted owls (USDI 1988).

Based on present State regulations and policy, clearly no State legislates adequate protection for spotted owls. Private and State-owned forest lands in Washington, Oregon, and northern California total over 21 million acres. Less than 1 percent, mostly in State parks in northern California, provides long-term protection to the northern spotted owl. Although approximately 4 percent of known reproductive pairs occur on private lands (Thomas *et al.* 1990), particularly in northern California, current regulatory mechanisms neither account for their presence, nor protect them.

The Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) prohibits taking of spotted owls or their eggs or nests except as permitted by regulation, and imposes criminal penalties for unlawful taking. However, no Federal regulations deal specifically with protecting spotted owl habitat throughout its range.

The above laws and policies offer little protection for spotted owl habitat. The Endangered Species Act offers additional possibilities for protection and management of this species' habitat as discussed below in the Available Conservation Measures section.

Approximately 85–90 percent of the northern spotted owl habitat is under Federal ownership by the National Park Service, Bureau, and Forest Service. These forested lands are managed under a variety of regulations, objectives, and policies.

The National Park Service manages nine National Parks, Monuments, Seashores, and Recreation Areas containing about 6 percent (570,000 acres) of potential spotted owl habitat (USDI 1990). The National Park Service is required by statute to manage National Parks to conserve their wildlife (16 USC 1) and, hence, timber harvesting and most forms of habitat alteration are not permitted. Owl surveys on National Park Service lands are not as complete as those on lands of other Federal agencies, documenting only 28 pairs, although many more undoubtedly occur (USDI 1990). As many as 100 spotted owls could enjoy legal protection on National Park Service lands (Thomas *et al.* 1990).

The National Forest Management Act of 1976 and its implementing regulations require the Forest Service to manage National Forests to provide enough habitat to maintain viable populations of native vertebrate species, such as the spotted owl. These regulations define a viable population as one which "has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well-distributed . . ." (36 CFR 219.19).

The Forest Service manages about 70 percent of the remaining northern spotted owl habitat and is the largest Federal land-holding agency in the Pacific Northwest. Spotted owl habitat on National Forest lands in Washington, Oregon, and California is estimated to cover about 8 million acres (USDI 1990). Although Forest Service lands are managed for multiple use purposes, 63 percent of its land base within the range of the spotted owl is subject to timber harvest (USDA 1988, Table 1), whereas the remaining 37 percent of its forested lands is reserved (1.0 million acres) or unsuited to timber production (834,000 acres). In Oregon and Washington, about 64,000 acres of old-growth and mature forests suitable for spotted owls have been logged on the National Forests each year over the past nine years; this represents a decline in nonreserved owl habitat on Forest Service land of about 2.3 percent per year and a reduction of about 1.5 percent per year in the total amount of owl habitat on National Forests in Oregon and Washington (Thomas *et al.* 1990). The anticipated harvest rates for old-growth and mature forests for the next 10 years are about 38,400 acres/year, or roughly 1.4 percent of the nonreserved old-growth and mature forests on Forest Service lands annually in Oregon and Washington. About 1 percent (4,700 acres) of the suitable habitat on Forest Service lands in California will be harvested each year (Thomas *et al.* 1990). These cuts will have a significant impact because a majority of recent timber sales have occurred in or near forest stands occupied by owls (Thomas *et al.* 1990).

Spotted owl management on National Forest lands in California, Oregon, and Washington is based on regional guidelines adopted by the Pacific Southwest Region (Region 5) for California and by the Pacific Northwest Region (Region 6) for Oregon and Washington. These guidelines provide for a network of forest-wide owl sites (Spotted Owl Habitat Areas or SOHAs) containing 1,000 acres of suitable habitat in California and from 1,000 to 3,000 acres in Washington and Oregon in conjunction with existing suitable habitat in parks, wilderness, and other reserved areas. Additional acreage (about 25 percent) was added to these sites in Oregon and Washington under Section 318 of the 1990 Interior Appropriations Bill (P.L. 101–121), but for one year only. Some of these sites are located in areas not available for timber harvest (e.g., natural areas, research areas, wilderness), but the majority of the sites (60 to 70 percent) would be surrounded by commercial timber land available for logging. SOHAs, as well as the Bureau of Land Management/Oregon Department of Fish and Wildlife agreement areas discussed below, are designed to protect the habitat needs of small numbers (usually one, but sometimes two or three) of spotted owl breeding pairs by reserving from harvest an area of suitable habitat (old or mature forest) within a 1.5-mile radius circle in California and a 2.1-mile radius circle in Oregon and Washington. By the end of 1989 there were 644 SOHAs totaling 722,127 acres (USDI 1990) on the 17 National Forests containing northern spotted owls (USDA 1988, Appendix H).

To implement forest plans to manage about 375 spotted owl habitat areas within its lands in Oregon and Washington, the Forest Service prepared a Final Supplemental Environmental Impact Statement (USDA 1988) with a preferred alternative. In late 1988, the Forest Service made its final Record of Decision on spotted owl management guidelines for National Forests in Washington and Oregon. The decision provides guidance (habitat amount, location, juxtaposition) to set aside a network of selected Spotted Owl Habitat Areas, totaling approximately 374,000 to 477,000 acres in Washington and Oregon forests.

The Forest Service's Record of Decision for Oregon and Washington set a timetable of 5 years for a full review of the Forest Service's owl management program, continued implementation of a $5 million annual Research, Development, and Application Program, and reaffirmed the Forest Service's commitment to coordinate and cooperate with other agencies. In addition, the final Forest Service spotted owl decision only addresses regional standards and guidelines for spotted owl management. The actual implementation of owl management was intended to be based on individual forest plans once they are finalized. "Networks" of northern spotted owl habitat are now in place on National Forests that support northern spotted owls and fulfill the Forest Service's plan for the management of spotted owl habitat pending completion and approval of individual forest plans (Thomas *et al.*, letter dated December 22, 1989). To date, only the Siuslaw and Siskiyou National Forest Plans have been approved.

The Siuslaw and Siskiyou Forest Plans are the most recently completed planning documents from the Forest Service in Region 6 (Oregon and Washington). They clearly demonstrate that timber production will remain the primary mission of the Forest Service and that timber harvest will continue to have a major impact on spotted owl habitat. Under the Siskiyou National Forest plan, nearly 80,000 acres of mature and old-growth habitat would be cut in this decade. On the Siuslaw National Forest, the harvest of younger-aged stands (60 to 80 years) would preclude the development of habitat suitable for the spotted owl in the decades ahead. This loss of habitat, with no planned replacement, is the primary threat facing the northern spotted owl on forests currently managed for timber.

In California, the Forest Service is implementing a network system similar to that in Washington and Oregon to manage about 265 owl habitat areas within the Klamath province on both lands dedicated to multiple use management (including timber production) and lands reserved from such activities. Sites are to be selected based upon distribution of habitat and owl presence. Some sites were selected for their potential to contain owls rather than on the basis of current occupancy. The potential success of this effort cannot be determined yet, since there have been insufficient time and data to determine trends. The Forest Service in California is preparing to finalize Forest plans implementing a similar habitat management plan on the four National Forests in the northern spotted owl's range.

The intent of this system in both Forest Service Regions is to maintain the viability of the subspecies through a network system that is evenly distributed over the range of the owl. SOHAs in Region 5 tend to occur in groups of two or three, which may provide a more stable management approach than the single SOHA strategy in Region 6.

The Bureau of Land Management manages over 2.4 million acres of forest land in Oregon, of which an estimated 858,700 acres is currently suitable for spotted owls (USDI 1990). Eighty-two percent of this (701,100 acres) is suitable for harvest; most of the remaining 157,600 acres is on extended rotation (i.e., will not be reharvested for approximately 80–250 years). Bureau of Land Management forested lands represent about 11 percent of the overall spotted owl habitat. The Bureau of Land Management manages numerous small parcels of forest lands in California and none in Washington. Only 15,000 acres have been surveyed for owls in California, revealing an estimated 14 pairs (Thomas *et al.* 1990). Most Bureau forest lands in Oregon are administered under the provisions of the Oregon and California Lands Act, which mandates management of these lands for permanent forest production on a sustained yield basis. In Oregon, an average cutting rate of 22,400 acres per year is anticipated to continue. The Bureau of Land Management estimates an annual loss of owl habitat on its Oregon lands of about 3 percent, thus eliminating all northern spotted owl habitat on non-protected Bureau lands, except for the Medford District, within the next 28 years (USDI 1990). These lands cannot be withdrawn or set aside for other long-term management objectives unless other applicable statutes permit. However, short-term (10-year) restrictions can be placed on certain tracts during a 10-year planning period (W. Nietro, Bureau of Land Management, Portland, OR, pers. comm. 1989). Currently, there are timber harvesting restrictions on 109 spotted owl agreement areas that are managed by the Bureau of Land Management under a cooperative agreement with the Oregon Department of Fish and Wildlife through 1990. Twelve additional sites were added pursuant to direction given in Section 318. However, it is not known what will happen to these 12 additional sites after the dates covered in Section 318. The intent of the agreement areas is to provide linkages and habitat for pairs of owls between Forest Service lands in the Oregon Cascades and Coast Ranges and to preserve the integrity of these sites into the next planning period. As currently established, the Bureau of Land Management's network of 121 spotted owl agreement areas protects about 100 pairs of owls, approximately 25 percent of the known pairs on Bureau of Land Management lands in Oregon. Most of the remaining approximately 300 pairs (approximately 75 percent of the known population on Bureau land) are in areas subject to timber harvest.

At current logging rates all remaining suitable habitat on Bureau of Land Management lands will be eliminated in 12 (Eugene District) to 52 (Medford District) years (USDI 1990). The primary management emphasis has been, and continues to be, timber production. Because the spotted owl network is based on interim agreements (Section 318 is effective only through September 1990, and the Bureau of Land Management/Oregon Department of Fish and Wildlife agreements will persist only until the Bureau of Land Management resource plans are completed in 1992), it does not provide long-term habitat protection. Nor is there any legal requirement for the Bureau of Land Management to protect spotted owl areas beyond these dates. An estimated 14 pairs of northern spotted owls are associated with the Bureau's California land (Thomas *et al.* 1990). Although some of these pairs could be protected under proposed Wilderness Areas or as Areas of Critical Environmental Concern, such protection depends upon finalizing a Resource Management Plan. One pair of spotted owls is protected on the Northern California Coast Range Preserve, which is co-owned by the Bureau of Land Management and The Nature Conservancy.

There are 55 Wilderness Areas totaling over 4.7 million acres in the 17 National Forests on which the owl occurs (USDI 1990). Initially, the wilderness system would appear to provide a well-distributed network of owl preserves. However, this is not the case. For the most part, wilderness areas have been established on sites relatively unsuited to timber production and, therefore, generally unsuitable for spotted owls as well. As a result, less than 25 percent of wilderness lands provide suitable owl habitat, and most of that is highly fragmented by intervening areas of high elevation (USDI 1990). The fact that owl density and reproductive output are lower in reserved than nonreserved sites (USDI 1990) provides emerging evidence that Wilderness Areas, and National Parks, at best provide only marginally suitable habitat for northern spotted owls. Without a major change in policy, owl habitat on all land ownerships will be reduced to about 2.7 million acres scattered in a mosaic of fragmented habitat islands in Wilderness Areas, National Parks, and other set-aside lands, plus an unknown number of acres in SOHAs, and on an undetermined and unpredictable amount of private lands (USDI 1990). This may represent about 15 percent of the original suitable forest within the range of the northern spotted owl in Washington, Oregon, and California (USDI 1990). For the reasons discussed above, it is unlikely that the land will be capable of sustaining a viable population of spotted owls over the long-term (USDI 1990).

Both the Bureau of Land Management and Forest Service have policies regarding dispersions of clearcut areas. For example, the Forest Service requires trees in regenerating clearcut stands to attain a height of 4.5 feet and 200 trees per acre before the adjacent stand can be clearcut. Although there is no set width for leave strips (land located between adjacent harvested areas that remains uncut, at least temporarily until reforestation has been achieved at a certain level in the harvested sites), most are 200 to 300 feet wide. Regulations implementing the National Forest Management Act specify that in the Douglas-fir zone and in the mixed-conifer/pine zone, clearcuts can have a maximum size of 20 and 60 acres, respectively. However, in cases of salvage operations resulting from blowdown, fires, or extensive insect infestation, clearcuts may exceed these limits. On Forest Service lands, streamside protection zones varying from 50 to 300 feet, depending on steepness of slope, are required for

certain types of streams. Each National Forest has the latitude to develop its own requirements in the respective forest plans as long as they are no less restrictive than the regional guide (B. Paulson, U.S. Forest Service, Portland, OR., pers. comm.).

According to Bureau of Land Management policy, cutting units generally should not exceed 40 acres. However, harvest units more than this size may be allowed for salvage operations where larger units would minimize road construction and other activities that otherwise would result in more extensive adverse environmental impacts. Streamside buffer strips along perennial and intermittent streams are necessary; however, the width varies with the steepness of the terrain, the nature of the undercover, soil type, size of the stream, the width of the riparian area, and the amount of timber that is to be removed. Although there is no requirement to leave space between clearcuts, in consideration of wildlife values, Bureau policy suggests that 10 years expire before expanding clearcuts, but only if the 10-year wait is compatible with timber management prescriptions.

In August 1988, an Interagency Agreement established in 1957 between the Fish and Wildlife Service and the Forest Service was expanded to include the Bureau of Land Management and the National Park Service. This agreement requires the four agencies to cooperate, coordinate, exchange data, and review proposals designed to manage and protect owl habitat; it also commits them to manage land to maintain viable, well-distributed spotted owl populations. However, at this time, there are no coordinated management schemes in place among the agencies; the Forest Service and Bureau have developed timber harvest proposals and spotted owl protection strategies independently of each other. On April 13, 1990, a new Interagency Agreement was signed among the four Federal agencies and the three States (California Resources Agency, Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife). The anticipated role of this new group is being determined but offers hope for improved coordination and cooperation.

In 1989 an interagency committee of scientists (Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl) was established by joint agreement among the Forest Service, Bureau of Land Management, National Park Service, and Fish and Wildlife Service to prepare a conservation strategy for the northern spotted owl. This plan analyzes the current status of the owl, provides an in-depth critique of present management networks, and calls for the protection of large blocks of habitat (Habitat Conservation Areas or HCAs) from the Canadian border to Marin County, California. It recommends a change in management strategy for the Forest Service and the Bureau of Land Management and will, if implemented, require extensive revision of Forest Service regional guides and forest plans as well as Bureau of Land Management district plans. Moreover, it proposes that an interagency group implement the plan and monitor its effectiveness in managing the owl in the decades to come. The Forest Service must decide on this plan by September 30, 1990. The Bureau of Land Management may not reach a decision on the plan until its resource plans are completed in 1992. At this time, the Service is unable to speculate on whether the plan will be accepted and to what extent, if any, it will be implemented. Hence, the Service cannot consider this plan in its decision as it has been neither accepted nor implemented. Moreover, even if the plan were to be fully implemented, testing would be required to prove its success in maintaining long-term viable spotted owl populations.

The success (viability) of spotted owl pairs, in terms of survival and reproductive output, is predicated largely on the sufficiency of their habitat to support their full range of physical, behavioral, and nutritional needs as expressed by measurement of owl use. The size of the Forest Service's SOHAs and of the Bureau of Land Management/Oregon Department of Fish and Wildlife agreement areas is generally less than the mean amount of preferred habitat documented within the home ranges of paired owls studied in nearly all physiographic provinces (USDI 1988). As a consequence, some pairs may not persist in less than optimally sized habitats (Ruggiero *et al.* 1988).

The SOHA network has been criticized for many shortcomings such as inadequate size (20 percent do not have designated acreages), lack of owls, isolation of SOHAs, adjacent logging activities, fragmentation within SOHAs, shifting SOHAs at administrative discretion (which can either benefit or harm owls), lack of contiguity with other reserved lands within the National Forests or adjacent National Parks, or sporadic and irregular occupancy by owls. Because of these and other factors, it is estimated that only about 50-60 percent of SOHAs will hold pairs of owls, except in the Olympic National Forest, where the figure is 88 percent (Thomas *et al.* 1988). This suggests that this extensive network may, at best, protect about 394 pairs. SOHAs may be lost to fire, windthrow (fragmented SOHAs with much edge are particularly vulnerable), volcanic activity, or other unpredictable events. As logging proceeds to reduce the amount of suitable forest around them, options to replace or create additional SOHAs continue to decrease. In an analysis of the SOHA system, Thomas *et al.* (1988) concluded that a scheme that protects isolated pairs is flawed due to problems associated with the high probabilities of local extinctions over short periods of time, loss of social facilitation, physical and biological limits to dispersion, and the susceptibility to loss of habitat through stochastic events. In comparing the advantages and disadvantages of SOHAs and HCAs, ISC (Thomas *et al.* 1990) recommended that most of the SOHA system be abandoned in favor of HCAs. Further, ISC noted that the committee "* * * believed the SOHA network system to be a prescription for the extinction of spotted owls, at least in a large proportion of the owl's range" (Thomas *et al.* 1990, p. 36).

According to the final regional guidance, and the Record of Decision (for Oregon and Washington), the Forest Service does not quantitatively provide for long-term contingencies in the case of catastrophic environmental events. Similarly, current spotted owl habitat management by the Bureau of Land Management does not take into consideration or provide for such events.

The cumulative impact of timber-cutting practices by land managing agencies increases and exacerbates the fragmentation of existing owl habitat. The proposed spotted owl management plans of the Forest Service and Bureau of Land Management are untested. Recent legal actions aside, there is no indication from the land management agencies that the current rate of change from old growth to young, even-aged forest management will diminish. Further, as agencies concentrate their clearcutting activities outside designated spotted owl habitat management areas, future habitat management options will be lost if currently planned habitat networks prove later to be deficient. Existing regulatory mechanisms are insufficient to protect either the northern spotted owl or its habitat.

E. Other Natural or Man-Made Factors Affecting Its Continued Existence. The barred owl (*Strix varia*) has undergone rapid range expansion over the past 20 years into the range of the spotted owl in the northwestern United States (Hamer 1988; USDI 1989). Gould (pers. comm.) indicates that the barred owl now occurs as far south as Mendocino County, California. Furthermore, it has at least replaced, and possibly displaced, the northern spotted owl in some areas (Forsman and Meslow 1986; Allen *et al.* 1985; Hamer and Samson 1987). Hamer (1988, 1989) noted that barred owls seem to be more prevalent in cut-over areas than spotted owls. On his study area in the northern Cascade Mountains of Washington, the barred owl is now 2.1 times more numerous than the spotted owl.

The barred owl's adaptability and aggressive nature appear to allow it to take advantage of habitat perturbations, such as those that result from habitat fragmentation, and to expand its range where it may compete with the spotted owl for available resources. The long-term impact to the spotted owl is unknown, but of considerable concern. Continued examination is warranted of the role and impact of the barred owl as a congeneric intruder in historical spotted owl range and its relationship to habitat fragmentation. The potential for interbreeding of the two species also merits concern and monitoring.

There are numerous examples of extrinsic factors such as fires, wind damage, and volcanic action affecting forest habitat, including known spotted owl habitat. These natural occurrences have not been factored in an objective way into any future projections of population persistence of the spotted owl, and their impact is unknown. In recent years such natural perturbations have included the Tillamook burns, fires in southern Oregon and northern California in 1987, the "21 blow" wind storm, the Columbus Day Storm, the eruption of Mount St. Helens, and various small fires. It is likely that in the future similar losses in suitable spotted owl habitat will occur from these types of occurrences. In its risk assessment, the Forest Service subjectively considered the impacts of catastrophic events on the probability of persistence of spotted owl populations. However, the Record of Decision did not incorporate provisions for replacement of habitat lost as the result of natural calamities.

Genetic problems (such as inbreeding) have not yet been considered a problem with spotted owls.

Several instances of malicious taking of spotted owls have been reported. In one case, a mutilated spotted owl was found hanging from a Forest Service kiosk. It is not known how widespread or to what extent northern spotted owls are deliberately killed or injured.

In its Status Review (USDI 1987), Supplement (USDI 1989), and 1990 Status Review (USDI 1990), the Service has compiled and carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this rule. Based on this evaluation, the Service has found that listing the northern spotted owls as a threatened species throughout its range is warranted. The Endangered Species Act of 1973 (Act), as amended states that the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range. The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Given the loss of a substantial amount (60 percent) of historical habitat from timber harvesting, and continuing and planned reduction and fragmentation of a large portion of the remaining old-growth and mature habitat, the northern spotted owl population will continue to decline unless steps are taken to offset these losses.

The northern spotted owl shows a clear preference throughout its range for old-growth forests and forests with old-growth characteristics for nesting, foraging, and roosting. Structural characteristics that provide suitable northern spotted owl habitat may occur in forests 80–200 years of age, depending on stand history, location, and site potential. As a result of historical and ongoing timber harvest the once extensive and continuous old-growth forests are being converted to a patchwork landscape dominated by young, even-aged stands. Existing timber management planning and policies offer little opportunity to generate stands with the structural characteristics of spotted owl habitat replacement because rotation periods range from about 70 to 120 years on Federal lands to as little as 40 years on private lands. The point in time at which managed stands being to acquire the structural attributes of spotted owl habitat often coincides with the rotation age and next major removal activity. Hence, there is no provision for long-term maintenance of regenerated spotted owl habitat in existing timber management planning and policies.

If current management practices continue, in the near future most commercial old-growth forests will have been logged and converted to younger, even-aged management forests. This would represent an estimated total decline of 60 percent from the amount of suitable habitat originally estimated for the western part of the Pacific Northwest, including northern California (Thomas *et al.* 1990). Impacts from timber harvesting are rangewide and, in addition to causing the direct loss of preferred habitat, appear to be affecting the quality of the remaining forest habitat throughout much of the species' range. Moreover, the total population of spotted owls is relatively low (recent surveys indicates about 2,000 known pairs, although 3,000 to 4,000 pairs are suspected) and pairs are relatively widely spaced (Thomas *et al.* 1990). This subspecies has very specific habitat requirements. With a low, variable reproductive rate and a low population density, a consequence partly of its large home range requirements, the spotted owl would be especially vulnerable to localized catastrophic events. Lastly, current and proposed management practices may not be designed for nor be sufficient to ensure long-term population viability of the spotted owl. On the basis of the best scientific and commercial data available, the Service believes that threatened status is warranted rangewide for the entire population of the northern spotted owl.

Under the Act's definition, to be considered for endangered classification, the spotted owl would have to be currently in danger of extinction throughout all or a significant portion of its range. While the available data indicate a gradual, rangewide decline in the species commensurate with habitat loss, they do not suggest that extinction is an imminent possibility. The Service recognizes that the situation is most serious in the California Coat Range (especially Marin and Sonoma Counties), the Shasta/Modoc area in California, the Oregon Coast Ranges (beginning with Coos Bay Bureau of land Management lands north to the Columbia River), and from the Olympic Peninsula south to the Columbia River. However, when the status of the entire subspecies is analyzed rangewide, it is the Service's conclusion that the likelihood of extinction of the subpopulations of the owls in these areas is not so immediate as to justify a rangewide endangered classification at this time. The Olympic Peninsula population of the northern subspecies may be the only unit that could qualify as a distinct population under the Act. However, it was not clear that identifying this as a separate population was fully justified by the

date or that the immediacy of threat in relationship to other areas was sufficient to warrant a separate designation as endangered at this time. For the reasons given below, no critical habitat is being designated.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act (Act), as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined as endangered or threatened.

The Service finds that critical habitat for the northern spotted owl is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area of critical habitat. Critical habitat includes specific areas within the geographical area currently occupied by a species on which are found the physical or biological features essential to the conservation of the species and that may require special management considerations or protection (50 CFR 424.02(d)).

The extensive range of the northern spotted owl from British Columbia to San Francisco Bay involves over 7 million acres of its preferred old-growth and mature forest habitat and an undetermined amount of other forest types that may also be of significance to the survival and recovery of the subspecies. Much of this habitat has been fragmented by logging, and many stands are isolated from each other or of such small size as not to support viable populations of spotted owls. The specific size, spatial configuration and juxtaposition of these essential habitats as well as vital connecting linkages between areas necessary for ensuring the conservation of the subspecies throughout its range have not been determined at this time. However, the Interagency Scientific Committee's (Thomas *et al.* 1990) conservation strategy, released in April 1990, includes maps outlining northern spotted owl habitat conservation areas (HCAs). The plan proposes establishment of habitat blocks containing multiple pairs of owls that are distributed throughout the range and thought to be spaced closely enough to facilitate dispersal among the HCAs (Thomas *et al.* 1990). The Service is in the process of reviewing and evaluating the HCAs described within the ISC plan to determine whether they, in addition to possibly other areas, should be proposed as critical habitat.

When a finding is made that critical habitat is not determinable at the time of listing, the Service's regulations (50 CFR 424.17(b)(3)) provide that the designation of critical habitat be completed within two years from the date of publication of the proposed rule to list the species. The Service will continue to evaluate the available information to assess whether designation of critical habitat is prudent. Should the Service decide to propose critical habitat, a proposed rule will be published in the Federal Register. For such a proposal, the notification process parallels that of a proposed listing and provides for a public hearing, if so requested within 45 days of the date of publication of the proposed rule. In addition, as required under Section 4(b)(2) of the Act, the Service will evaluate the economic and other relevant impacts of designating critical habitat. If a designation of critical habitat is proposed, a final determination would be published by June 23, 1991.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and Bureau of Land Management have active timber sale programs in the Pacific Northwest, including northern California, whereby private timber companies bid for the right to log Federal land. Because habitat loss and modification resulting from timber harvesting activities represents the primary threat to the northern spotted owl, the Forest Service and Bureau have reviewed and assessed the potential impacts of timber sales on this species to ensure compliance with section 7 of the Act, as described above.

Section 318 of the Interior and Related Agencies Appropriation Act for fiscal year 1990, required the sale of 5.8 billion board feet (bbf) from 19 national forests with owls in Oregon and Washington, and 1.9 bbf from Bureau of Land Management land in Oregon. These sales represent a reduction in allowable harvests of about 9 percent.

In Fiscal Year 1989, the Forest Service planned 425 timber sales containing about 48,000 acres that included at least some northern spotted owl habitat. The Forest Service had been enjoined through court action from completing 165 timber sales, totalling approximately 22,500 acres, largely because of spotted owls and old growth issues. About 52 timber sales, representing roughly 2,900 acres, were released by the Court and subsequently offered for sale (G. Gunderson, USDA Forest Service, Portland, OR, pers. comm.). The remainder were released by the Court subsequent to the passage of Section 318.

Annual logging rates of mature and old-growth forest on the owl forests are expected to decline from about 94,000 acres/year (average from the last nine years) to about 39,400 acres/year over the next 10 years in Washington and Oregon based on draft forest plans (Thomas *et al.* 1990).

On March 30, 1990, the Service issued an informal conference report to the Forest Service for its timber sale schedule in fiscal years 1989–1990 in Oregon and Washington. Section 318 mandates the sale for harvest of 7.7 bbf of timber from the 19 National Forests in the Pacific Northwest Region. Of this aggregate timber sale level, 5.8 bbf is targeted for the 13 National Forests known to contain spotted owls in Oregon (4.0 bbf) and Washington (1.8 bbf) during fiscal years 1989 and 1990. Approximately 2.3 bbf were sold by the Forest Service in fiscal year 1989. The Service conferred with the Forest Service on timber sales totaling 24,940 acres and 68,140 acres for fiscal years 1989 and 1990, respectively in Region 6. Under section 318, the Forest Service's timber harvest schedule consists of 1,295 sales. Sales are primarily to clearcut green timber. Partial cut harvests include shelterwood cuts, selective cuts, and salvage of both green and dead timber. The Service concluded that 716 pairs or 64.4 percent of the estimated 1,113 pairs of owls on the 19 National Forests are likely to be affected by the section 318 timber sale schedule. Of these, 235 pairs are likely to be subject to the most significant (level 1) impacts (*e.g.*, sales would remove owl habitat within 0.5 miles of a pair activity center; reducing the amount of suitable habitat within the 2.1/2.5 mile radius of a pair below the minimum known to be used by pairs in each respective province, and removing owl habitat from an area of concern). Moreover, 116 sales are within areas of special concern and are considered to represent level 1 impacts. Approximately 93,080 acres (2.2 percent) of suitable habitat on the 13 National Forests in Oregon and Washington will be harvested as per the Forest Service's Section 318 timber sale schedule. Within non-reserved lands, this results in a reduction of 4.2 percent of suitable owl habitat.

In California, the Fish and Wildlife Service and Forest Service informally conferred on 165 timber projects. The Service recommended no modification in 130 of these, some modification for 24, reduction in volume of timber for 9 projects, and deferral on two projects. It is anticipated that about 1 percent of suitable owl habitat will be logged on Forest Service lands annually.

Section 318 of Public Law 101–121 (1989) mandates the sale for harvest of 1.9 billion board feet (bbf) of timber from Bureau lands within Oregon during fiscal years 1989–1990. About 0.8 bbf were sold in fiscal year 1989, thus, an additional 1.1 bbf must be sold during fiscal year 1990. Prior to this amendment, about 1.18 bbf were authorized for harvest annually from 1987 through 1990. The Bureau of Land Management manages more than 2.4 million acres of timber land in Oregon and about 19,000 acres in northern California of which an estimated 858,700 acres is forest land suitable for spotted owls. Of this, 82 percent (701,100 acres) is subject to harvest (USDI 1990).

In 1989, the Bureau of Land Management advertised 229 timber sales for a total of 29,796 acres. Of these planned sales, 41 (5,330 acres) were involved in a lawsuit. During 1989, the Bureau of Land Management planned to advertise 160 timber sales to harvest 24,655 acres; a lawsuit was initiated involving 75 of these sales, covering 9,780 acres (Nistro, pers. comm.). These sales also were released by the Court subject to passage of Section 318. On an annual basis, the Bureau of Land Management awards contracts to harvest 52,940 acres, of which 22,800 acres are clearcut and 10,140 acres are partially cut. Of the acreage cut, approximately 68 percent of the harvest is in forests over 200 years old (Nistro, pers. comm.). On Bureau of Land Management lands in Oregon, an average cutting rate of 28,460 acres/year is expected to continue. This would eliminate all northern spotted owl habitat on non-protected Bureau of Land Management lands, except for the Medford District, within the next 26 years (USDI 1990). At current logging rates all remaining suitable habitat will be eliminated in 13 (Eugene District) to 52 (Medford District) years (USDI 1990). In fiscal year 1989, the Bureau of Land Management offered sales totaling 0.745 bbf and 0.451 bbf through March 1990. The Service, after screening 314 proposed timber sales for Bureau of Land Management land in western Oregon, prepared 79 informal conference reports following the Section 7 conferencing procedures.

This rule brings Section 5 and 6 of the Act into effect with respect to the northern spotted owl. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Fish and Wildlife Service would be able to grant funds (should they become available) to the States of California, Oregon, and Washington for management actions aiding the protection and recovery of the northern spotted owl.

Listing the northern spotted owl as threatened allows for development of a recovery plan which will draw together the State, Federal, and local agencies having responsibility for conservation of the spotted owl. The recovery plan will outline an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate in their conservation efforts. Habitat conservation plans (HCPs) and other comprehensive plans may be a part of any coordinated effort through the recovery plan process. The recovery plan will describe recovery priorities and estimate the costs of various tasks necessary to accomplish them. It will recommend appropriate functions to each agency and a time frame within which to implement them.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

The northern spotted owl is not used for economic purposes, is not a commercial species, and is not legally hunted, sold, or traded. Only a few requests for taking permits are anticipated. This bird is presently protected under 50 CFR parts 10 and 20 as a migratory bird.

On June 28, 1979, the order Strigiformes, which includes all owls, was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are generally required before international shipment may occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Effective Date

The Administrative Procedure Act (5 U.S.C. 553(d)) requires the effective date of a rule to be no less than 30 days after the "publication or service" of the rule, except "as otherwise provided by the agency for good cause" (5 U.S.C. 553(d)(3)). In this case, the Service is submitting the signed rule to the **Federal Register** over 30 days prior to the July 23, 1990 effective date. More importantly, the Service is extensively publicizing the signing of the rule both in the Pacific Northwest and Washington, DC. The Service therefore believes that it is giving actual notice of the availability of the rule within the meaning of 5 U.S.C. 553(d) at least 30 days prior to the effective date. Alternatively, this extensive publicizing of the rule over 30 days prior to the effective date is good cause for allowing less than 30 days between the date of **Federal Register** publication and the July 23, 1990, effective date.

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Spotted Owl Coordinator), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232.

Authors

The primary author of this final rule is Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE. Holladay St., Portland, Oregon 97232–4181 (503/231–6150 or FTS 429–6150), with the assistance of the other members of the Service's Northern Spotted Owl Listing Review Team.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4301–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Birds:							
Owl, northern spotted.	Strix occidentalis caurina	U.S.A. (CA, OR, WA), British Columbia.	Entire	T	393	NA	NA
*	*	*	*	*	*	*	

Dated: June 22, 1990.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 90–14889 Filed 6–22–90; 3:50 pm]

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federal register

Tuesday,
June 26, 1990

Part VII

The President

Proclamation 6150—Korean War Remembrance Day, 1990

Federal Register
Vol. 55, No. 123
Tuesday, June 26, 1990

Presidential Documents

Title 3—

The President

Proclamation 6150 of June 22, 1990

Korean War Remembrance Day, 1990

By the President of the United States of America

A Proclamation

Forty years ago, American men and women were asked to make a stand for freedom in behalf of those who lived in a country about which many of our young citizens probably knew very little. They did know that liberty was in jeopardy, and so these brave young men and women joined United Nations forces from around the world to stop communist aggression in the Republic of Korea.

The immensity of what they undertook may have been best expressed by President Truman when he stated, "In the simplest terms, what we are doing in Korea is this: We are trying to prevent a third World War." Over 5,700,000 Americans were involved directly or indirectly in the conflict. The lives of 54,246 of our soldiers were lost, we saw 103,000 wounded, and 8,000 are still listed as missing in action—all to prevent the world from plunging into the abyss of another World War. After 38 months of bitter combat, the victory was won, and the communists were driven out of the Republic of Korea. It was not only a victory for the South Koreans, but for all those who cherish liberty and self-determination.

After World War II, the world was weary of war, and with an economic recovery in full bloom, many Americans gradually put the memory of the struggle for freedom in Korea behind them. The immense achievement in the cause of freedom was all but forgotten.

Looking back at the Korean conflict, we recognize that our defense of freedom in this early struggle of the Cold War helped lay the foundation for the march of democracy we see today around the world. This new dawning of freedom is the marvelous legacy of all those who fought and died in the Korean War. Soon a magnificent monument—38 figures that will march silently toward a United States flag—will be raised on the grounds of the Mall in Washington in tribute to all who served in the Korean War.

On this 40th anniversary of the Korean War, we resolve as a Nation to sanctify and preserve the memory of all those who, through their courage, dedication, and sacrifice, helped secure the blessings of freedom for the people of the Republic of Korea and kept freedom's light burning brightly.

In respect and recognition of those Americans who served in the armed forces during the Korean War, the Congress, by House Joint Resolution 575, has requested the President to issue a proclamation calling upon the people of the United States to observe the day of June 25, 1990, as "Korean War Remembrance Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 25, 1990, as Korean War Remembrance Day. I ask all Federal departments and agencies, interested groups, organizations, and individuals to fly the flag of the United States at half-staff on June 25, 1990, in honor of the Americans who died as a result of service in the Korean War.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-15074
Filed 6-25-90; 1:30 pm]
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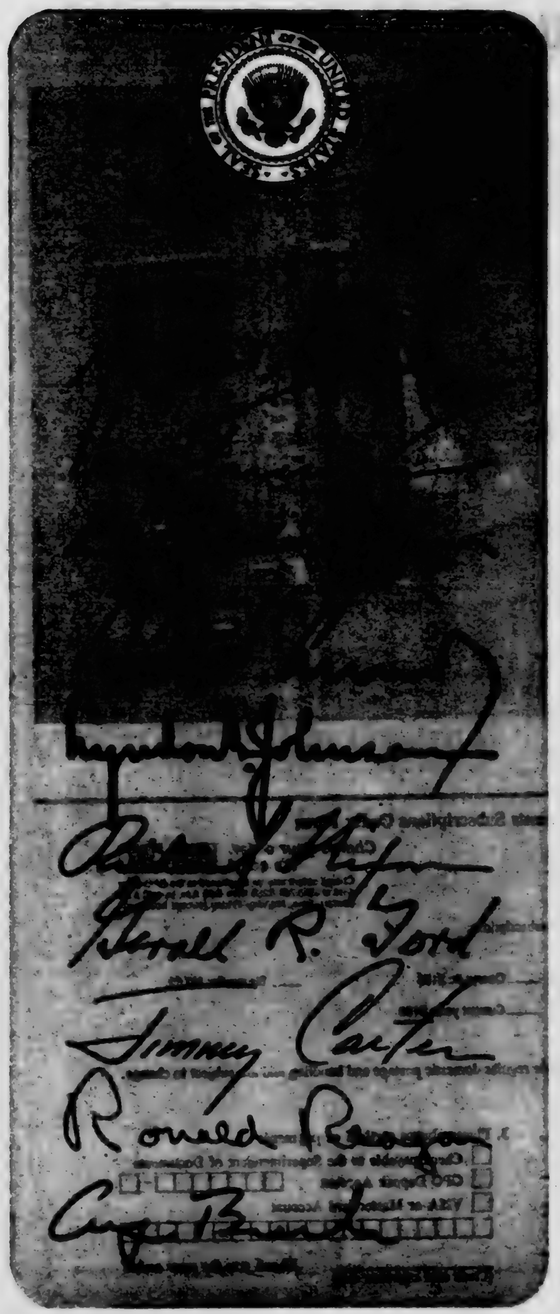
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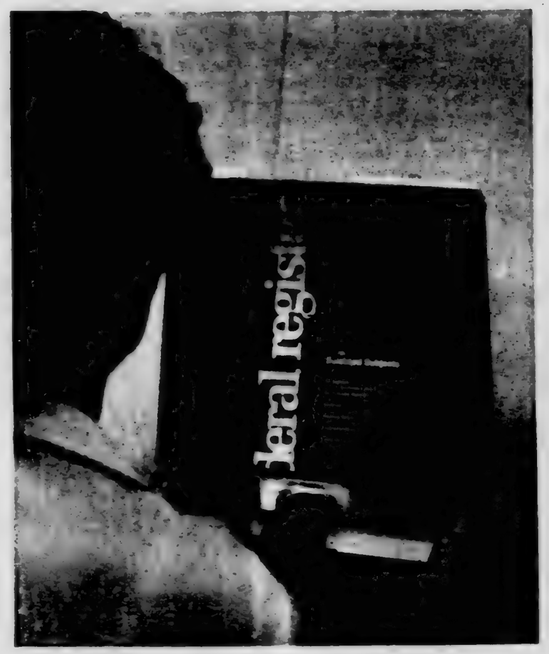
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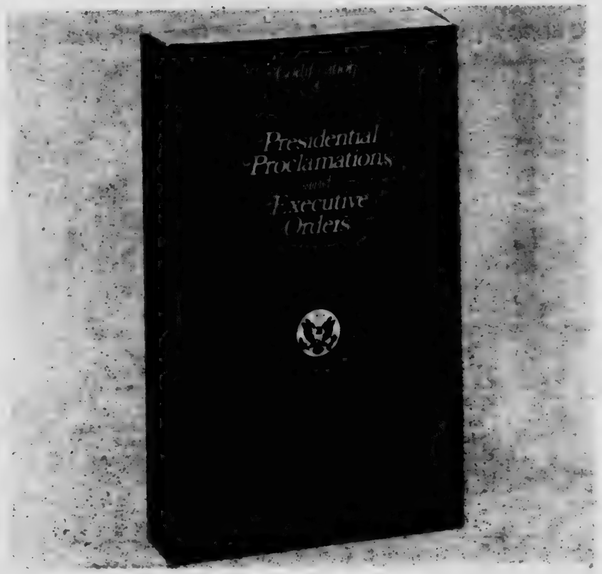
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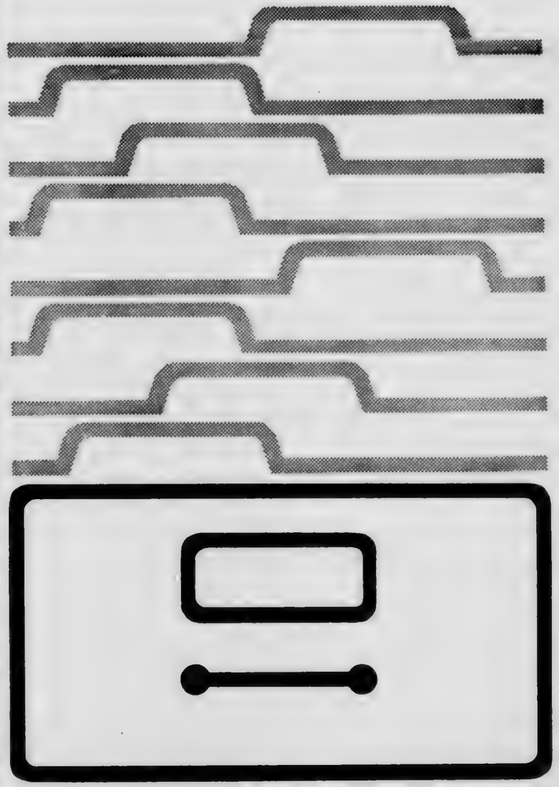
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Rules and Regulations

Federal Register
Vol. 55, No. 124
Wednesday, June 27, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Loan Program—Internal Recordkeeping

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations requiring information on Business and Industry loans to be tracked by use of Form FmHA 2033–24, "Management System Card—Business and Industry," and the Rural Community Facilities Tracking System (RCFTS). The intended effect of this action is to make use of the Form FmHA 2033–24 by FmHA State Offices optional. Enhancements to RCFTS make use of the form as a recordkeeping system no longer necessary.

EFFECTIVE DATE: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Ann Graves, Loan Assistant, Business and Industry Division, Farmers Home Administration, USDA, room 6321, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475–5878.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management.

Internal Review

This program is listed in the Catalog of Federal Domestic Assistance under 10.422, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Final Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal Agency information management and publication for comment is unnecessary.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, title 7, chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; Pub. L. 100–387; Pub. L. 101–82.

Subpart E—Business and Industrial Loan Program

2. In § 1980.451, under *Administrative*, paragraph *A* 5 is revised to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

A. * * *

5. Will input the necessary data via terminal screens into the Rural Community Facility Tracking System (RCFTS). The RCFTS data structure consists of 3 sets: Applicant/Borrower (BOR), Facility (FAC), and Loan/Grant Request (LGR) sets. There are multiple screens for the BOR and LGR sets. The State Director may, if he/she so desires, prepare a Form FmHA 2033–24, "Management System Card—Business and Industry," in accordance with FmHA Instruction 2033–F.

* * * * *

Dated: June 1, 1990.

La Verne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 90-14821 Filed 6-26-90; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 90-056]

Safety Zone Regulations; Tenth Annual Groton-New London Harbor Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in New London Harbor, CT. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation becomes effective at 9 p.m. July 7, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 9:45 p.m., July 7, 1990, unless terminated sooner by the Captain of the Port. Rain date will be July 8th at the same times.

FOR FURTHER INFORMATION CONTACT: Lt. David Skowes (203) 468–4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is

needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are BMC Cassin, project officer, Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 9:15 p.m. on July 7, 1990. It is the launching of approximately 1000 lbs. of fireworks in New London Harbor, New London, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in the channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new 33 CFR 165.T1088 is added to read as follows:

§ 165.T1088 Safety zone: New London/ Groton fireworks display.

(a) *Location.* The following area is a safety zone: All waters within a 1000 ft radius of the Barges "Bay 1", "AM1", and "YPS 3" (the fireworks launching platforms at approximate positions 41°20'58.5"N, 072°05'27"W, 41°20'56"N, 072°05'27"W, and, 41°20'55"N, 072°05'27" W). This safety zone will be marked with 8 large orange spheres/marker bouys. The safety zone will be closed to all marine traffic from 9 p.m. until the completion of the display at approximately 9:45 p.m. on July 7, 1990.

(b) *Effective date.* This regulation becomes effective on July 7, 1990 at 9 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 9:45 p.m. July 7, 1990, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: June 18, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 90–14864 Filed 6–26–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Parts 76, 77, 82, 200, 201, 203, 298, 319, 600 668, 669, and 673

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d).

DATES: For effective dates, see **"SUPPLEMENTARY INFORMATION."**

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Acting Director, Division of Regulations Management, Office of the General Counsel, Department of Education, room 2131, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202–2241. Telephone: (202) 401–2887.

SUPPLEMENTARY INFORMATION: The effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the **Federal Register.** Accordingly, this notice announces the following effective dates:

PART 600—[AMENDED]

1. 34 CFR part 600, final regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, published October 2, 1989 (54 FR 40388).

DATES: *Effective date:* November 16, 1989.

PARTS 200, 201, 203—[AMENDED]

2. 34 CFR parts 200, 201, and 203, final regulations for chapter 1—Migrant Education Program, published October 23, 1989 (54 FR 43220).

DATES: *Effective date:* December 23, 1989.

PART 668—[AMENDED]

3. 34 CFR part 668, final regulations for Student Assistance General provisions and Institutional Eligibility, published November 3, 1989 (54 FR 46536).

DATES: *Effective date:* December 23, 1989.

PART 673—[AMENDED]

4. 34 CFR part 673, final regulations for Income Contingent Loan Program—Due Diligence, published November 6, 1989 (54 FR 46892).

DATES: *Effective date:* December 23, 1989.

PART 319—[AMENDED]

5. 34 CFR part 319, final regulations for Training Personnel for the Education of the Handicapped; Grant to State Educational Agencies and Institutions of Higher Education, published January 3, 1990 (55 FR 194).

DATES: *Effective date:* March 1, 1990.

PART 669—[AMENDED]

6. 34 CFR part 669, final regulations for Language Resource Centers Program, published January 26, 1990 (54 FR 2772).

DATES: *Effective date:* March 28, 1990.

PART 82—[AMENDED]

7. 34 CFR part 82, interim final regulations for New Restrictions on Lobbying, published February 26, 1990 (54 FR 6752).

DATES: *Effective date:* April 27, 1990.

PARTS 76, 77, 298—[AMENDED]

8. 34 CFR parts 76, 77, and 298, final regulations for the Federal, State, and Local Partnership for Educational Improvement, published April 16, 1990 (55 14610).

DATES: *Effective date:* June 14, 1990.

Authority: 20 U.S.C. 1232(d).

Dated: June 19, 1990.

Edward C Stringer,

General Counsel.

[FR Doc. 90–14787 Filed 6–26–90; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 130

[FRL 3790–6]

EPA Action on Individual Control Strategies Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final agency interpretation.

SUMMARY: EPA is clarifying when its final agency action on an individual control strategy (ICS) under section 304(1) of the Clean Water Act occurs. Further, EPA is providing notice of what judicial forum EPA believes is appropriate for review of approvals and disapprovals of ICSs, in cases in which such decisions are reviewable. Finally, EPA is providing notice of its position regarding the reviewability of EPA's decisions to list waters under section 304(1).

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, Diane Regas or Roland Dubois, Office of General Counsel (LE–132S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7700; or, for questions regarding particular decisions, the Water Management Division in the relevant regional office: Region 1, (617) 565–3478; Region 2, (212) 264–2513; Region 3, (215) 597–9410; Region 4, (404) 347–4450; Region 5, (312) 353–2147; Region 6, (214) 655–7100; Region 7, (913) 551–7060; Region 8, (303) 293–1542; Region 9, (415) 705–2078; Region 10, (206) 442–1237.

SUPPLEMENTARY INFORMATION:

On June 2, 1989, EPA published final rules implementing section 304(1) of the Clean Water Act (CWA). 54 FR 23868. Those rules specified the bases on which EPA would approve or disapprove lists and ICSs submitted by the states pursuant to section 304(1). In addition, the rules established EPA's procedures for involving the public in making section 304(1) decisions.

Since then, EPA has made initial approvals or disapprovals of all of the states' lists and ICSs, and has requested public comment on most of these decisions. At the same time EPA and the states, in cooperation, have been developing final lists and ICSs.

In the preamble to the final regulations EPA interpreted section 509(b)(1)(G) of the CWA by saying, "EPA believes that the permits that EPA issues as ICSs reviewable in the court of appeals. Review of any other actions by EPA under section 304(1) must be obtained in district court." 54 FR at 23895. Various questions have arisen regarding when EPA's actions taken under section 304(1) are final for the purposes of judicial review and regarding the above interpretation of section 509(b)(1)(G).

The purpose of this notice is to clarify when EPA believes that decisions made by it under section 304(1) of the CWA are final agency actions for purposes of judicial review. Identifying the date of final agency action will ensure more orderly judicial review of those Agency decisions that are judicially reviewable. The date of final agency action with respect to ICS-related decisions is important because it is now the Agency's position that any judicial challenge to ICS-related actions must be filed in the courts of appeals pursuant to section 509(b)(1)(G) of the CWA. Section 509(b)(1) requires petitions for review to be filed within 120 days of final agency action. This notice does not address defenses to judicial review that the Agency might invoke, but only the timing for bringing such action.

EPA's regional offices made initial decisions approving or disapproving lists [1] and ICSs submitted by the states on or about June 4, 1989. The Regions requested public comment on all of their disapproval decisions and on most of their approval decisions. EPA's regulations require that when a Region seeks public comment on its decision, the Region must issue a subsequent decision and respond to public comments by June of 1990. (54 FR 23868, 23897–23899, 40 CFR 123.46(e)(3).) It is the Agency's position that when a Region solicited public comment on its initial decision, that decision was not final.

I. Finality of ICS Decisions

ICSs, like NPDES permits, may be developed by the states or by EPA. NPDES permits, however, are the only vehicle under the CWA for imposing effluent limitations on point source dischargers. An ICS consists of a draft or final NPDES permit with supporting documentation showing that the limitations in the permit would be sufficient to meet the water quality standards within the statutory deadlines. 40 CFR 123.46(c) (1989). Changes in NPDES permits because of the section 304(1) program are only effective after the permitting authority has determined, as a part of the permitting process, that limitations are necessary to meet water quality standards as required by CWA section 301(b)(1)(C). Until the permitting authority issues a new permit or modifies an existing permit, a discharger listed on a section 304(1) list must only comply with its pre-existing permit requirements, even if an ICS has been developed. Therefore approvals and disapprovals of ICSs do not themselves affect the legal obligations of dischargers. Given that EPA's actions on ICSs do not impose or alter legal obligations, EPA believes that the critical factors in determining whether the Agency has taken final agency action on an ICS are (1) Whether EPA has made its definitive pronouncement on what limitations will be sufficient to comply with water quality standards, and (2) whether EPA intends to take any further action. The timing of this definitive decision in turn depends on whether the state or EPA is issuing the permit.

A. State-Issued Permits

1. After an Approval

EPA will consider regional decisions approving state-developed ICSs to be final agency actions if the Region issues its decision and does not seek further public comment. The decision shall be final on the date the Region publishes notice of the decision pursuant to the June 2, 1989 regulations, 40 CFR 123.46(e)(2) (1989), 54 FR 23867.

EPA approvals of state draft or final permits that constitute ICSs represent EPA's final determination that the limitations in the permit or draft permit will be sufficient to attain and maintain water quality standards. To the extent such a determination may be reviewed at all, the time for seeking judicial review of EPA approvals of ICSs begins on the date of the approval, and is not dependent on issuance of a final permit by the state. The precise permit limitations may be determined only through the state permitting process, including any evidentiary hearing. (If the state unacceptably modifies the permit during that process, EPA may reconsider its approval decision or review the permit pursuant to section 402(d) and object to the permit in accordance with that section.)

When EPA approves a state draft or final permit as an ICS, EPA has made a determination, as required by section 304(1), that the limitations will be sufficient to protect water quality standards. This finding is not a substitute for the normal permitting process in which the necessity of particular limitations is determined by the permitting authority. A determination to impose limitations in the permit must be supported by an administrative record showing that there is a reasonable potential for an

[1] This notice focusses on EPA decisions regarding ICSs because those decisions must be challenged, if judicially reviewable, in the courts of appeals within 120 days of final agency action.

exceedance of the water quality standard, caused or contributed to by the discharger, and thus the limitations are necessary. *See* 40 CFR 122.44(d). Thus, EPA believes that its approval of an ICS can be challenged, if at all, only on claims that the Agency's finding under section 304(1) is in error; this means reviewing EPA's determination that the limitations will be sufficient to satisfy the requirements of that section.

On some initial decisions issued on or about June 4, 1989, the Regions approved ICSs without seeking public comment, finding that there previously had been adequate notice and opportunity to comment. However, in some cases, the regional decisions did not make clear that the Region intended these decisions to be final agency actions. To prevent prejudice stemming from any resulting confusion, EPA is publishing this **Federal Register** notice that the Agency considers those actions final agency actions. Therefore, those regional approvals of state draft or final permits as ICSs, that were initially issued without seeking public comment, are final decisions representing final agency actions for the purpose of judicial review as of the date of publication of this notice. EPA believes the 120-day judicial review period in CWA section 509(b)(1) will start with the publication of this notice.

2. After a Disapproval

After EPA makes a final disapproval decision, the state still may draft a permit that satisfies EPA's reasons for disapproving the state's initial ICS. Where EPA has disapproved a state's initial ICS (or the state's failure to submit an ICS) and the state subsequently drafts an NPDES permit that EPA determines to be an acceptable ICS, EPA intends to revise its disapproval decision and issue an approval decision. Because there is uncertainty with respect to which path will be taken and because further EPA action is contemplated, EPA believes that its disapproval decision would not be directly reviewable. (See the discussion of this issue below at B. 2.)

EPA's revised approval decision would constitute final agency action unless EPA solicits public comment on the approval, in which case final agency action would occur when the Agency issues a decision after considering public comment.

B. EPA—Issued Permits

1. In Unauthorized States

Where EPA is the permit issuing authority, EPA's action in establishing the ICS is not final agency action until EPA's administrative review process regarding the underlying NPDES permit is complete. 40 CFR 124.91(e). Until that time, the Agency will not have made any final determination regarding what limits must be included in the permit that will serve as the ICS.[8] Therefore, a permittee or other interested party in a state not authorized to issue permits must exhaust its administrative remedies on the permit before it can obtain judicial review of any EPA decision regarding the permit limitations including EPA's actions under section 304(1). (This same reasoning would apply to any permit where EPA is the permitting authority, *e.g.*, where EPA has assumed permit issuance authority under section 402(d).) This view has support in a recent decision of the Fourth Circuit Court of Appeals, *Champion Int'l Corp.* v. *United States Environmental Protection Agency*. No. 89–2463 (4th Cir. March 12, 1990). In that case the court dismissed as premature a challenge to EPA's ICS for Champion where EPA has not yet completed the full administrative process on the permit.

2. In Authorized States

Similarly, where EPA disapproves an authorized state's ICS and EPA subsequently issues the permit to the discharger, it is EPA's position that judicial review of EPA's action is not appropriate until EPA takes final action on the underlying permit. Thus, EPA's disapproval would never, by itself, constitute reviewable final Agency action.

Until EPA completes the administrative review process, the Agency will not have taken a definitive position regarding what limitations are necessary and sufficient to meet water quality standards. When EPA is issuing the permit, it will ultimately make only a single decision, *i.e.*, that the limitations in the final permit are necessary and sufficient to meet water quality standards. Where EPA is making both of these findings (*i.e.*, is the permitting authority), neither will be definitive until the other is made. Therefore, the Agency's tentative decisions regarding the limitations that are appropriate will not be final agency action until the end of the permitting process, including the administrative appeal processes. This view was recently endorsed in a case in which the litigant challenged EPA's initial disapproval of an ICS. *Westvaco Corp.* v. *United States Environmental Protection Agency, et al.*, Nos. 89–2180, 89–2181, slip op. at 15 (4th Cir. Feb. 13, 1990). In addition EPA's position regarding when final agency action on disapprovals of ICSs occurs is consistent with the Agency's position regarding the finality of permit objections under section 402(d). *See Champion Int'l Corp.* v. *EPA*, 850 F.2d 182 (4th Cir. 1988); *American Paper Institute* v. *EPA*, 890 F.2d 873 (7th Cir. 1989).

II. Review of ICS Decisions in Federal Court

As discussed above, it is the Agency's position that any judicial challenge to ICS-related decisions must be filed in the courts of appeals pursuant to section 509(b)(1)(G) of the CWA.[9] EPA's position that its approvals of state ICSs, if judicially reviewable, would be reviewable in the courts of appeals under section 509(b)(1)(G) of the Clean Water Act differs from the statement made in the preamble to the section 304(1) regulation. See 54 FR 23895. However, for the following reasons EPA believes challenges to EPA's approval of state ICSs must be brought in the courts of appeals.

Section 509(b)(1)(G) allows review in the courts of appeals of the Administrator's action "in promulgating an individual control strategy under section 304(1)." The use of the term "promulgating" to describe EPA actions on ICSs is ambiguous because there is no action required under section 304(1) that is expressly described as "promulgation." Furthermore, the legislative history does not specify what actions Congress intended to be reviewed in the courts of appeals. Section 304(1) speaks of disapprovals, which may be followed by additional state or federal action, and of approvals, which may be followed by additional state action. All of these actions are federal actions with legal effect that may appropriately be categorized as "promulgations."

EPA believes that it would create an irrational bifurcation of review between federal courts of appeals and district courts to interpret section 509(b)(1)(G) to grant the courts of appeals jurisdiction to review some, but not all, federally reviewable final EPA actions on ICSs. The reasoning of the Supreme Court in *Crown Simpson Pulp Co.* v. *Costle*, 445 U.S. 193 (1980), supports this view. In *Crown Simpson*, the Court held that where the effect of an EPA permit objection was to deny the issuance of the permit, review should be in the courts of appeals under section 509(b)(1)(F) in part to avoid allowing review of similar actions in different courts depending on whether EPA or the state is the permit-issuing authority. A similar result should be reached regarding EPA's decisions under section 304(1). If, for example, review of EPA action were allowed under section 509(b)(1)(G) only if EPA disapproved an ICS and issued the underlying permit, then jurisdiction of the courts of appeals would be dependent "on the fortuitous circumstance of whether the State in which the case arose" issues the permit. *Crown Simpson*, 445 U.S. at 197–98. Similarly, if approvals could be challenged in district court and disapprovals in the courts of appeals, then an approval that was remanded by the district court could be re-litigated in a court of appeals if it subsequently became a disapproval. EPA does not believe that Congress intended to create such a system.

[8] Just as an EPA-issued permit's status as an ICS does not change the timing of judicial review of the permit, where ICS is part of a record of decision under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) the ICS is not subject to review any differently from other records of decision under CERCLA.

[9] Review of listing decisions is discussed separately in section III.

III. Finality and Reviewability of Listing Decisions

Unlike decisions related to ICSs, decisions regarding lists do not fall within the ambit of section 509(b)(1). Nonetheless, because of the amount of interest that has been expressed in these lists, the Agency is announcing its position on the reviewability of EPA approvals of state listing decisions, and EPA's decisions to list water segments on the lists required by section 304(1)(1)(B) ("B lists") and dischargers on the section 304(1)(1)(C) lists ("C lists"). Initial listing decisions were, for the most part, made in June of 1989. These decisions included both approvals and disapprovals of state listings as well as the identification of the waters EPA expected to add to or delete from the lists. (Referred to below as "listing decisions.") At that time EPA requested comments on most of its listing decisions.

EPA will provide notice of its responses to comments, along with any revisions to the B and C lists, in most cases, by June of 1990. Although these lists will represent EPA's decisions regarding listing (and may be called "final lists" or "final agency actions" in some contexts, see *e.g.* 54 FR 23894), EPA does not believe that decisions to include waters or dischargers on lists are reviewable final agency actions within the meaning of the Administrative Procedure Act or are otherwise ripe for review.[4]

The listing of a water segment or a point source identifies that segment or point source as one that EPA or the state expects will need additional controls in order to attain and maintain water quality standards. It is not until the permit process is completed, however, that a definitive determination is made regarding what limitations, if any, will be necessary, and it is only through permit limitations that dischargers are obliged to act. Therefore, listing a facility has no concrete impact on the facility; only the modification of permit limitations does.

Accordingly, EPA believes that the basis for a determination to list a water segment or discharger is not ripe for review until EPA changes a permit on that basis. When the state issues the modified permit, the finding that additional limitations are necessary would only be reviewable in a state forum. In addition, because limitations are only imposed through permits, where EPA does not issue the permit, a discharger would not have standing to challenge EPA's decision because any harm suffered would not be traceable to EPA nor could a court reviewing the listing remedy limitations that a discharger claimed were unnecessarily stringent. Finally, EPA believes the statute's specific allowance for review of the promulgation of ICSs, but not of the lists, indicates that the intermediate steps leading to permit modifications, including the listing or approval of listing, were only intended for review at the end of the process—when the permit is finalized.

The section 304(1) listing process is an important step in the development of water quality-based limitations in permits and thus in ensuring that water quality standards for toxic pollutants are met. The inclusion of a water segment or a facility on a list does not, however, impose obligations on dischargers and is therefore not reviewable.

IV. Effect of Today's Notice

Today's notice is not a legislative rule binding on particular parties; instead, it simply provides persons affected by EPA's actions a clarification of the Agency's position regarding when and where EPA's actions under section 304(1) of the CWA may be judicially reviewable. Accordingly, this notice is an interpretative rule which is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b) and from the requirement that publication of the rule occur not less than 30 days before its effective date, 5 U.S.C. 553(d).

[4] The discussion below does not address challenges to EPA's actions based on EPA's failure to list specific waters.

Dated: June 15, 1990.

F. Henry Habicht,

Deputy Administrator.

[FR Doc. 90-14603 Filed 6-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 8F3579/R1081; FRL-3765-2]

Pseudomonas Fluorescens EG-1053; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent exemption from the requirement for a tolerance for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This exemption was requested by Ecogen, Inc.

DATES: This regulation becomes effective June 27, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3579/R1081], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Sw., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1990 (55 FR 17460), EPA issued a proposed rule that gave notice that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorn, PA 19047-1810, had submitted pesticide petition (PP) 8F3579 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on the raw agricultural commodity cotton. In the **Federal Register** of February 24, 1988 (53 FR 5458), it was announced that Ecogen, Inc., had amended PP 8F3579 to replace cotton specifically with cottonseed and cotton forage for exemption from the requirement of a tolerance. Ecogen's strain of the bacterium *Pseudomonas*

fluorescens was isolated from soil in Mississippi and has not been genetically altered. This microorganism is a natural soil isolate and has not been altered or improved. Microorganisms known as *pseudomonas fluorescens* constitute a rather diverse complement of bacteria that occur in both soil and aquatic habitats. They can be isolated from these sources using enrichment with appropriate media. The use of the biofungicide is for control of the *Pythium/Rhizoctonia* seedling disease complex of cotton.

A rule was published in the Federal Register of March 10, 1988 (53 FR 7739), that established an exemption from the requirement for a tolerance for a period of 2 years after the date of signature. The Agency required various studies to be submitted prior to determining whether the issuance of a permanent exemption would be appropriate. These studies were discussed in the proposed rule of April 26, 1989 (55 FR 17600).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 11, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1086 [Amended]

2. In § 180.1086 *Pseudomonas fluorescens EG-1053; exemption from the requirement of a tolerance*, by removing the last sentance, which reads as follows: "This rule will expire on March 2, 1990."

[FR Doc. 90-14690 Filed 6-26-90; 8:45 am]
BILLING CODE 6560-50-D

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40 CFR Part 761

[OPTS-62059C; FRL 3776-1]

Polychlorinated Biphenyls; Notification and Manifesting for PCB Wastes Activities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued final amendments to its PCB disposal and storage regulations in the Federal Register of December 21, 1989 (54 FR 52716). EPA has discovered several technical errors in these amendments. This document corrects those errors.

EFFECTIVE DATES: These corrections are effective June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency promulgated amendments to its disposal and storage requirements for PCBs under section 6(e)(1) of the Toxic Substances and Control Act in the December 21, 1989 issue of the Federal Register (54 FR 52716). These amendments contained several inadvertent errors which are being corrected in this document. Also, for purposes of clarification, two technical amendments are included in this document.

The corrections and technical amendments are discussed below.

The definitions section (§ 761.3) is being corrected by amending the definition for "Commercial storer of PCB waste" to clarify the meaning of the phrase "exceeds 500 gallons of PCBs." The word "liquid" is being inserted into the phrase such that the phrase will now read "exceeds 500 liquid gallons of PCBs."

A technical amendment is being made to § 761.65, storage for disposal, by changing the references in paragraph (i)(3) from "paragraph (d)(2)(i) and (d)(2)(ii)," to correctly read "paragraph (i)(2)(i) and (i)(2)(ii)."

Section 761.180 is being corrected to bring the regulation in line with EPA's intent and meaning as stated in the preamble to the notification and manifesting rule (54 FR 52729, December 21, 1989) as follows:

1. In paragraph (a)(2)(ii)(C), the phrase "the first date material was placed in each PCB Container for disposal," is being corrected to read "the first date material placed in each PCB Container was removed from service for disposal."

2. In paragraph (a)(2)(ii)(D), the phrase "the first date a PCB Article was placed into each PCB Article Container for disposal," is being corrected to read "the first date a PCB Article placed in each PCB Article Container was removed from service for disposal." The phrase "the total weight of the PCB Articles in kilograms in each PCB Article Container," is being removed because it is a duplication.

3. In paragraph (b)(2)(ii)(A), the phrase "the first date PCB waste was placed in the tanker or truck for disposal," is being corrected to read "the first date PCB waste placed in the tanker or truck was removed from service for disposal."

4. In paragraph (b)(2)(ii)(C), the phrase "the first date PCB waste was placed in each PCB Container for disposal," is being corrected to read "the first date PCB waste placed in each PCB Container was removed from service for disposal." The phrase "the date it was received at the facility," is being added. This phrase was inadvertently omitted from paragraph (b)(2)(ii)(C).

5. In paragraph (b)(2)(ii)(D), the phrase "the first date a PCB Article was placed in each PCB Article Container for disposal," is being corrected to read "the first date a PCB Article placed in each PCB Article Container was removed from service for disposal." The phrase "the date it was received at the facility," is being added. This phrase was inadvertently omitted from paragraph (b)(2)(ii)(D).

6. Paragraph (b)(2)(iii) is corrected by changing the phrase "paragraph (b)(2)(ii)(A) through (B)(2)(ii)(E)," to read "paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E)."

Finally, § 761.215 is being corrected in paragraph (d)(1) to change the phrase "date more than 9 months," to read "date within 9 months." The phrase "date more than 9 months" is clearly in error. EPA indicated in the preamble to the manifesting rule that a generator or commercial storer would be presumed to be in compliance with the 1-year storage limitation if it could demonstrate that the storage period prior to delivery for disposal did not exceed 9 months (54 FR 52732, December 21, 1989).

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

Dated: June 20, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

Accordingly, 40 CFR part 761 appearing in the Federal Register issue of December 21, 1989 (54 FR 52716) is corrected as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.3, on page 52745, the definition for the "Commercial storer of PCB waste" is correctly added to read as follows:

§ 761.3 Definitions.

* * * * *

Commercial storer of PCB waste means the owner or operator of each facility which is subject to the PCB storage facility standards of § 761.65, and who engages in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. It is sufficient under this definition that the facility stores PCB waste generated by others or the facility removed the PCB waste while servicing equipment owned by others. A generator who stores only the generator's own waste is subject to the storage requirements of § 761.65, but is not required to seek approval as a commercial storer. If a facility's storage of PCB waste at no time exceeds 500 liquid gallons of PCBs, the owner or operator is not required to seek approval as a commercial storer of PCB waste.

* * * * *

3. In § 761.65, on page 52749, paragraph (i)(3) introductory text is correctly added to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(i) * * *

(3) In order to qualify for the exemption in paragraph (i)(2)(i) and (i)(2)(ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

* * * * *

4. In § 761.180, on page 52750, paragraphs (a)(2)(ii)(C), (a)(2)(ii)(D), the introductory text of paragraph (b)(2)(ii), paragraph (b)(2)(ii)(A), (b)(2)(ii)(C), (b)(2)(ii)(D), and (b)(2)(iii), are correctly revised to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *
(2) * * *
(ii) * * *

(C) A unique number identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the material in kilograms in each PCB Container, the first date material placed in each PCB Container was removed from service for disposal, and the date each PCB Container was placed in transport for off-site storage or disposal, and the date of disposal (if known).

(D) A unique number identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the content of each PCB Article Container, the first date a PCB Article placed in each PCB Article Container was removed from service for disposal, and the date the PCB Article Container was placed in transport for off-site storage or disposal, and the date of disposal (if known).

* * * * *

(b) * * *
(2) * * *

(ii) For each manifest generated or received by the facility during the calendar year, the unique manifest number and the name and address of the facility that generated the manifest and the following information:

(A) For bulk PCB waste (*e.g.*, in a tanker or truck), its weight in kilograms, the first date PCB waste placed in the tanker or truck was removed from service for disposal, the date it was received at the facility, the date it was placed in transport for off-site disposal (if applicable), and the date of disposal (if known).

* * * * *

(C) The unique number assigned by the generator identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the PCB waste in kilograms in each PCB Container, the first date PCB waste placed in each PCB Container was removed from service for disposal, the date it was received at the facility, the date each PCB Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed of (if known).

(D) The unique number assigned by the generator identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the PCB waste in each PCB Article Container, the first date a PCB Article placed in each PCB Article Container was removed from service for disposal, the date it was received at the facility, the date each PCB Article Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed (if known).

* * * * *

(iii) For any PCB waste disposed at a facility that generated the PCB waste or any PCB waste that was not manifested to the facility, the information required under paragraph (b)(2)(ii)(A) through (b)(2)(ii)(E) of this section.

* * * * *

5. In § 761.215, on page 52750, paragraph (d)(1) is correctly added to read as follows:

§ 761.215 Unmanifested waste report.

* * * * *

(d) * * *

(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date within 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

* * * * *

[FR Doc. 90-14700 Filed 6-26-90; 8:45 am]
BILLING CODE 6560-50-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6783

[CA-940-00-4214-10; CACA 25398]

Partial Revocation of Secretarial Order Dated January 14, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes the Secretarial Order dated January 14, 1927, insofar as it affects 40 acres of land withdrawn for Powersite Classification No. 163. The land is no longer needed for the purpose for which it was withdrawn. This action will open 40 acres to surface entry to permit consummation of a Bureau of Land Management land exchange. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Lavenia Silva, BLM California State Office, room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated January 14, 1927, which withdrew public land for Powersite Classification No. 163 is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 23 N., R. 14 E.,
Sec. 26, NE¼NW¼.

The area described contains 40 acres in Plumas County.

2. At 10 a.m. on July 27, 1990, the land described in paragraph 1 shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 27, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: June 20, 1990.

David C. O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-14880 Filed 6-26-90; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA85

State Legalization Impact Assistance Grants

AGENCY: Family Support Administration, HHS.

ACTION: Final rule with comments.

SUMMARY: This rule amends the regulation implementing the State Legalization Impact Assistance Grants (SLIAG), 45 CFR part 402. This action changes the date by which States' Fiscal Year 1991 SLIAG applications are due from July 15, 1990 to October 1, 1990, and the deadline by which States' FY 1991 applications must be approvable by the Secretary from October 1, 1990 to December 15, 1990. This change gives States additional time to establish the actual amounts of costs reimbursable with SLIAG grant funds.

DATES: *Effective:* Final rule effective June 27, 1990. *Comments:* Comments must be received on or before July 27, 1990.

ADDRESSES: Comments may be mailed to Division of State Legalization Assistance, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade SW., 6th floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson (Director), 202-252-4571 (FTS 252-4571).

SUPPLEMENTARY INFORMATION: The State Legalization Impact Assistance Grant (SLIAG) regulation at 45 CFR part 402.43 currently requires that States submit their applications for FY 1991 funds by July 15, 1990, and that those applications be approvable by the Secretary of Health and Human Services by October 1, 1990. This rule changes those dates to October 1, 1990 and December 15, 1990, respectively.

We are taking this action for the following reasons:

—Our review of States' applications and end-of-year actual cost reports indicates that many States need additional time to complete documentation of actual costs in some of the programs eligible for SLIAG reimbursement.

—A number of States have experienced delays in executing contracts to access the Department's SLIAG Cost Documentation System (CDS). CDS is a computer matching system that allows States to establish the amount of SLIAG-reimbursable costs in a simple, cost-effective manner.

—The Department must, by order of the General Accounting Office, recompete the contract that provides support services for SLIAG. The transition from the current contractor to a new contractor likely will occur this summer. The Department would not be in a position to review States' applications in a timely and efficient manner during this transition.

Because the amendments set out in this rule pertain to agency procedure or practice under section 553(b) of the Administrative Procedure Act, we have dispensed with a Notice of Proposed Rulemaking. We will consider any comments received and, if necessary, publish another rule.

We have consulted with representatives of State agencies administering the SLIAG program and have determined that this change will not disadvantage States.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalogue of Federal Domestic Assistance Program No. 13.786, State Legalization Impact Assistance Grants)

List of Subjects in 45 CFR Part 402

Education, Grant programs—education, Grant programs—health, Grant programs—social programs, Health care, Immigration, Immigration Reform and Control Act, Public assistance programs, Reporting and recordkeeping requirements.

Dated: April 27, 1990.

Jo Anne B. Barnhart,

Assistant Secretary, Family Support Administration.

Approved: April 27, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, 45 CFR part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 is revised to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.43 is amended by revising the second sentence in paragraph (a) and the second sentence in paragraph (b) to read as follows:

§ 402.43 Application deadline.

(a) * * * Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, October 1, 1989, and October 1, 1990, respectively. * * *

(b) * * * In order to receive funds under this part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by October 1, 1988, December 15, 1989, and December 15, 1990, respectively. * * *

* * * * *

[FR Doc. 90-14868 Filed 6-26-90; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-526; RM-6974, RM-7014]

Radio Broadcasting Services; Golconda and Murphysboro, IL; Lutesville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286B1 for Channel 285A at Murphysboro, Illinois, and modifies the license of Station WTAO(FM) to specify operation on the higher class channel. It also substitutes Channel 232A for vacant but applied for Channel 286A at Golconda, Illinois, and substitutes Channel 281A for vacant but applied for Channel 286A at Lutesville, Missouri, at the request of C R Broadcasting, Inc., and William L. Moir. See 54 FR 49779, December 1, 1989. Channel 286B1 can be allotted to Murphysboro, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7 miles) southeast, in order to avoid a short-spacing to the construction permit site for Station WBVN, Channel 283A, Carrier Mills, Illinois. The coordinates for Channel 286B1 at Murphysboro are North Latitude 37-40-35 and West Longitude 89-16-32. Channel 232A can be allotted to Golconda, Illinois, in compliance with the Commission's minimum distance separation requirements at the application site of William Moir (BPH-890315MG) with a site restriction of 2.7 kilometers (1.7 miles) north. The coordinates for Channel 232A at Golconda are North Latitude 37-23-32 and West Longitude 88-29-21. Channel 281A can be allotted to Lutesville, Missouri, in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 281A at Lutesville are North Latitude 37-19-00 and West Longitude 89-57-30. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-526, adopted June 8, 1990, and released June 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—AMENDED

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Illinois by amending the entry for Murphysboro by adding Channel 286B1 and removing Channel 285A and by amending the entry for Golconda, by adding Channel 232A and removing Channel 286A. In addition, the entry for Lutesville, Missouri, is amended by adding Channel 281A and removing Channel 286A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-14930 Filed 6-26-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties; Delegation to the Chief Counsel

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the existing authority under which the Chief Counsel may compromise civil penalty settlements in the amounts of $5,000 or less for violations of the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act, by increasing the amount to $10,000.

EFFECTIVE DATE: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth N. Weinstein, Assistant Chief Counsel for Litigation, NHTSA, 400 7th Street, SW., Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION: On August 31, 1981 (46 FR 43667), NHTSA published an amendment to 49 CFR 501.8(d)(2), delegating to the Chief Counsel the authority of the Administrator to compromise civil penalties in the amount of $5,000 or less. The Administrator's authority to compromise civil penalties originates in the National Traffic and Motor Vehicle Safety Act and titles I and IV of the Motor Vehicle Information and Cost Savings Act. The justification for this delegation was that it formalized an existing practice, and a practice that had expedited agency enforcement actions.

Upon review, NHTSA has concluded that agency enforcement actions would be further enhanced by an increase in the amount under which the Chief Counsel may compromise civil penalties. An increase to $10,000 will afford the Chief Counsel greater flexibility in civil penalty settlement negotiations without the administrative necessity of consulting with and obtaining the approval of the Administrator on relatively less severe infractions of the statutes and regulations that NHTSA administers. The Administrator's approval would be obtained on all settlements exceeding $10,000. Accordingly, 49 CFR 501.8(d)(2) is being amended to increase the Chief Counsel's settlement authority to sums not exceeding $10,000.

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

This amendment relates to matters of agency reorganization and procedure and may therefore be issued without opportunity for notice and comment.

§ 501.8 [Amended]

In consideration of the foregoing, paragraph (d)(2) of § 501.8 in title 49, Code of Federal Regulations, is amended by changing the figure "$5,000" to "$10,000."

Authority: 49 CFR 1.50.

Issued on: June 21, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-14885 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure rescission and groundfish reapportionments; request for comments.

SUMMARY: NOAA announces that the closure of the joint venture processing (JVP) flatfish fishery in the Bering Sea and Aleutian Islands area (BSAI) is rescinded and that certain groundfish specifications are reapportioned to JVP. This action is necessary to assure optimum use of groundfish in the BSAI. It is intended to promote objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP).

DATES: Effective 12 noon Alaska local time (ALT) June 24, 1990. Comments on the groundfish reapportionments to JVP will be accepted through July 9, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675 under authority of the Magnuson Fishery Conservation and Management Act. The FMP controls incidental catches (or "bycatch") of certain prohibited species that are caught incidentally with groundfish catches. One of these prohibited species is Pacific halibut. Under § 675.21(b), primary and secondary PSC allowances of 660 metric tons (mt) and 800 mt, respectively, have been assigned to the JVP flatfish fishery. Under § 675.21(c)(3)(iv), the Secretary of Commerce published a notice in the **Federal Register** closing the BSAI to the JVP flatfish fishery from March 5, 1990, for the remainder of the year after NMFS determined that JVP vessels had caught their secondary Pacific halibut PSC allowance of 800 mt (55 FR 8954, March 9, 1990).

Subsequent analysis of JVP catch information indicates that only 776 mt of the 800 mt JVP halibut allowance has been caught. Therefore, the Secretary is rescinding the closure, effective June 24, 1990. Subject to other relevant provisions of § 611.93 and part 675, the JVP flatfish fishery will be allowed to continue until an additional halibut bycatch amount reaches 24 mt, at which time the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels caught in the BSAI that is composed of 20 percent or more yellowfin sole, "other flatfish" and rock sole in the aggregate.

The Secretary is also reapportioning groundfish to JVP as listed in Table 1. The reason for apportionments to JVP is to provide bycatch amounts for those species expected to be caught incidentally in the flatfish fishery. In determining the groundfish bycatch needs associated with the JVP flatfish fishery, the Secretary assessed the extent to which groundfish amounts specified as domestic annual processing (DAP) would be fully harvested by U.S. vessels. The Secretary determined 2,110 mt of Pacific cod, 300 mt of pollock, 2,500 mt of "other species," and 700 mt of arrowtooth flounder will accommodate existing shortfalls in existing JVP specifications and provide bycatch to support the JVP flatfish fishery. Under § 675.20(b)(1)(ii), the Secretary determined that 2,110 mt of Pacific cod and 700 mt of arrowtooth flounder currently apportioned to DAP will not be harvested by U.S. vessels participating in DAP operations during the remainder of the fishing year. The Secretary is reapportioning these amounts of Pacific cod and arrowtooth flounder to JVP from DAP. Additionally, he is apportioning 300 mt of pollock and 2,500 mt of "other species" from the non-specific reserve to JVP in accordance with § 675.20(b)(1)(i) to accommodate a shortfall and provide needed bycatch of "other species" to support the JVP flatfish fishery.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC [1]

		Current	This action	New
Arrowtooth Flounder	DAP	8,500	−700	7,800
TAC=8,533	JVP	33	+700	733
Pacific cod	DAP	192,950	−2,110	190,840
TAC=199,975	JVP	7,025	+2,110	9,135
Pollock (Bering Sea)	JVP	22,451	+300	22,751

Classification

These actions are taken under §§ 675.20(b), and 675.21, and they comply with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice, including reapportionments of groundfish to JVP, is necessary to benefit U.S. fishermen participating in JVP flatfish operations, which are coordinated with schedules of foreign processing vessels. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 22, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC [1]—Continued

		Current	This action	New
TAC=1,110,451, New TAC=1,110,751	RESERVES	252,298	−300	251,998
Other species				
TAC=6,084	JVP	1,834	+2,500	4,334
New TAC=8,584	RESERVES	251,998	−2,500	249,498
Total (TAC=2,000,000)	DAP	1,495,220	−2,810	1,492,510
	JVP	252,362	+5,810	257,362
	RESERVES	252,298	−2,800	249,498

[1] All values are in metric tons.

[FR Doc. 90-14934 Filed 6-23-90; 2:07 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 124
Wednesday, June 27, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 9

[Docket No. 90-11]

Fiduciary Powers of National Banks and Collective Investment Funds; Investment of Funds

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing an amendment to its regulation governing the exercise of fiduciary powers by national banks. The amendment clarifies the standards which fiduciaries must meet when handling trust funds awaiting investment or distribution ("idle funds") and the policies and procedures associated with these standards. These revisions are necessary to eliminate ambiguities in the current regulation. The revisions will provide trust beneficiaries, bank officials, and regulators with one set of clear, comprehensible regulatory directives governing the investment of idle funds.

DATES: Comments must be received on or before August 27, 1990.

ADDRESSES: Comments should be sent to Docket No. 90-11, Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219; Attention: Jackie England. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Horace Sneed, Attorney, Legal Advisory Services Division, (202) 447-1881.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1980 Proposed Rule

In 1980, the OCC published a notice of proposed rulemaking which, *inter alia*, addressed the temporary investment by national bank fiduciaries of funds awaiting investment or distribution. 45 FR 71571 (October 29, 1980). At the time of the 1980 proposed rule, § 9.10(a) required that funds held in a fiduciary capacity by a national bank not be held uninvested or undistributed any longer than was reasonable for the proper management of the account.

The 1980 proposed rule permitted banks to invest such funds in the bank's own investment vehicles for a period in excess of 60 days only if: (1) The instrument creating the fiduciary relationship, prior court order, or local law [1] specifically authorized the retention of these funds in such deposits; (2) prior consent was obtained from the party having power to terminate the account or, if no such party existed, from all parties holding vested beneficial interests in the account, after full disclosure of all relevant facts, including the availability and rate of return of alternative investments outside the bank; or (3) the bank included in the file of each account so invested a written justification, updated at least once every 30 days, specifying in detail why the subject funds were properly designated as awaiting investment or distribution. In addition, the 1980 proposed rule required that after 365 days fiduciary funds could remain deposited in the bank pursuant only to restriction (1) or (2) above.

B. 1980 Proposed Rule Modified in Final Rule

Following the receipt of comments submitted during the comment period, the OCC decided not to adopt the specific requirements contained in the proposal. Instead, on June 25, 1982, the OCC issued a final rule (47 FR 27828), which revised § 9.10(a). The revised rule required that national banks which exercise fiduciary powers adopt and follow written policies and procedures, taking into consideration all relevant factors to ensure that "the maximum rate of return available for trust-quality, short-term investments" be obtained on funds awaiting investment or distribution, consistent with the requirements of the governing instrument and local law.

C. Banking Bulletin 83-57

It subsequently came to the OCC's attention that some banks might not have been investing idle funds as required by § 9.10(a), as modified. As a result, the OCC issued Banking Bulletin 83-57 ("BB-83-57") which clarified the OCC's policies with regard to bank management of funds awaiting investment or distribution. BB-83-57 indicated that the OCC's policies on the placement of idle funds would be applied to both income cash and principal cash in all accounts for which the bank had investment responsibility, whether the funds were invested in the fiduciary bank or in the investment vehicles of other institutions in the financial marketplace.

BB-83-57 further articulated the OCC's position that trustees not taking advantage of the many highly liquid, prudent, and competitive investment media available in the finanacial marketplace might have violated their fiduciary duty of making trust property reasonably productive. Banks were instructed to review their written internal procedures (*see* current § 9.10(a)) to ensure that these procedures were in compliance with their fiduciary responsibilities. Where noncompliance was found, banks would be expected to remedy the situation and compensate the appropriate parties.

The purpose of BB-83-57 was to put national banks on notice that banks which had improperly placed idle funds at rates of return less than the maximum rate for trust-quality, short-term investments are required to reimburse affected trust accounts in an amount equal to the difference between the amount of return received and the amount that should have been received, with interest. In addition, banks which were found to have improperly placed such funds might be required to notify all similarly situated trust account holders of the possibility of loss to the accounts and of their reimbursement rights.

II. Current Proposed Rule

To provide trust beneficiaries, bank officials, and regulators with one set of clear directives concerning the investment of idle funds, the OCC has decided to request comment on a further revision of § 9.10. This proposed revision does the following:

1. Clarifies the role of local law in establishing the standard for the investment of trust funds awaiting investment or distribution (§ 9.10(a));
2. Clarifies and further defines the rate of return which must be obtained (§ 9.10(b));
3. Establishes a standard for how soon idle funds must be made productive (§ 9.10(c));
4. Makes a minor change in wording and conforming paragraph letter redesignation in the provision requiring collateralization of idle funds deposited in the bank (§ 9.10(d)).

A. Role of Local Law (§ 9.10(a))

Current § 9.10(a) requires that a bank adopt policies and procedures for the investment of trust funds awaiting investment or distribution "consistent with the requirements of the governing instrument and local law."

The proposed revision of § 9.10(a) requires that funds awaiting investment or distribution be made "productive" [2] in trust-quality investments—

> [u]nless otherwise provided by specific reference in the governing instrument or by language in local statutory law which specifically refers to the investment of trust funds awaiting investment or distribution * * *.

This change is intended to eliminate much of the uncertainty or confusion which has arisen concerning the role of local law in establishing the standard for the investment of idle funds. The proposed revision reaffirms that, in establishing policies and procedures for the investment of idle funds, a national bank must defer to local statutory law (and to the governing instrument) in appropriate circumstances. Thus, a national bank exercising fiduciary powers within a given local jurisdiction is subject to local statutory law which specifically addresses the investment of idle funds. If neither local statutory law nor the governing instrument specifically addresses the investment of idle funds, a national bank must follow the standards in § 9.10 (a)-(c).

Under the proposed rule, judicial decisions or "case law," as opposed to statutory law, would not govern national bank investment of idle funds. Thus, for example, a judicial decision based on common law (*i.e.*, non-statutory) precedents which requires a bank to invest escrow funds held in trust within 6 months would not take precedence over the standards set forth in proposed § 9.10 (a)-(c) because the judicial decision is not statutory law and does not interpret statutory law specifically dealing with idle funds.

An exception would occur, however, when the case law interprets "language in local statutory law which specifically refers to the investment of trust funds awaiting investment or distribution * * *". *See* proposed § 9.10(a). If local statutory law specifically addresses the investment of trust funds awaiting investment or distribution, then both the statute and judicial decisions interpreting the statute would be applicable to national banks exercising fiduciary powers. For example, if a local statute dealing with the investment of trust funds specifically permits banks to hold idle funds uninvested for a given period of time, then the statute—and judicial decisions interpreting the statute—would apply to national banks.

This standard would, therefore, require deference only to local statutory law (and cases interpreting that law) which specifically address trust funds awaiting investment or distribution. The purpose of the standard is to prevent, or at least limit, the uncertainty and confusion which can arise from vague or ambiguous statutes as well as outdated cases. For example, a Rhode Island decision has permitted certain funds to be held in a fiduciary capacity without interest for a period of one year. *Almy* v. *Probate Court of Newport*, 30 A. 458 (1894). Such a case fails to take into account the current investment capabilities and practices of bank trust departments, which have access to technological and other developments in the marketplace.

The OCC is particularly interested in receiving comment on this proposed treatment of local law in establishing policies and procedures for the investment of idle funds.

B. Competitive Market Rate (§ 9.10(b))

The current regulation requires that, in the investment of funds awaiting investment or distribution, bank trust departments obtain the maximum rate of return for short-term, trust-quality investment, taking into consideration all relevant factors. This has been revised in the proposed rule to provide clearer guidance. The term "maximum rate" has been changed in the proposed rule to "a competitive market rate." This change is intended to acknowledge the fact that bank investment of idle funds must be considered in the context of the envolving competitive environment in the marketplace and, further, that a "competitive market rate" involves the exercise of prudent judgment and the consideration of all relevant factors. The proposed rule introduces the term "productive" as a shorthand method of referring to the attainment of a competitive market rate. Thus, when funds awaiting investment or distribution are earning a competitive market rate, they are productive. The term appears in proposed § 9.10 (a), (b), and (c).

The current regulation provides that among the relevant factors to be considered in determining the bank's policy in making idle funds productive are the "anticipated return that could be obtained" as well as the "cost" and "anticipated need" for the funds. The proposed rule continues to require the consideration of cost and anticipated need. It also explicitly recognizes that the requirements of the governing instrument, the duration of the investment, and "other relevant factors" must be taken into consideration in setting investment policy. A significant change is the breakout of the "anticipated return" into two factors: (1) The current rates payable for funds in the marketplace, including but not limited to commercial money market rates, and (2) the range of investment choices. The purpose of these changes is to ensure that, in determining the competitive market rate, the bank will consider all of the investment instruments and rates currently payable in the marketplace. Among the rates that should be considered are the money market rates paid by mutual funds and financial institutions.

C. When Idle Funds Must Be Made Productive (§ 9.10(c))

Proposed § 9.10(c) establishes a uniform federal standard for determining how soon a bank must make idle funds productive. These funds are to be invested "as expeditiously as possible." It is anticipated that, as a result of technological developments and other changes in the financial marketplace which have made the rapid investment of funds increasingly accessible to financial institutions, most national bank trust departments either are or will be able to make idle funds productive on the day of receipt or the next business day after receipt. In those cases in which same day or next day investment is not feasible, banks remain under an obligation to invest the funds as soon as possible. In no case shall banks permit funds to remain unproductive for more than five business days.

The OCC believes that this proposal for the rapid investment of idle funds reflects the current practice in many national bank trust departments.

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[1] For purposes of part 9, "local law" is defined in 12 CFR 9.1(g) as "the law of the State or other jurisdiction governing the fiduciary relationship * * *"

[2] See discussion of the term "productive" in the following section.

Therefore, bank costs stemming from the implementation of this proposal should not be significant.

The OCC invites comments on this aspect of the proposed rule.

D. Collateralization of Funds Deposited in the Bank (§ 9.10(d))

The provision requiring the collateralization of idle funds deposited in a department of the bank remains unchanged in the proposed rule, except for the substitution of the words "the bank" for "it " in the first paragraph. The provision has been redesignated § 9.10(d) to conform to the other revisions in the proposed rule.

III. Comments

Comments are solicited on all aspects of the proposed regulation. Comments are especially invited: (1) On the role of local law in § 9.10(a) in establishing the standard for the investment of idle funds and (2) on the requirement in § 9.10(c) that idle funds to be made productive as expeditiously as possible.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Comptroller of the Currency certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12291

The OCC has determined that this proposed rule does not constitute a "major rule" within the meaning of Executive Order 12291. Consequently, a regulatory impact analysis is not required.

VI. List of Subjects in 12 CFR Part 9

National banks, Fiduciary powers, Collective investment funds.

VII. Authority and Issuance

For the reasons set forth in the preamble, part 9 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 is revised to read as follows:

Authority: 12 U.S.C. 92a; 12 U.S.C. 93a; and 12 U.S.C. 481.

2. Section 9.10 is revised to read as follows:

§ 9.10 Funds awaiting investment or distribution.

(a) Unless otherwise provided by specific reference in the governing instrument or by language in local statutory law which specifically refers to the investment of trust funds awaiting investment or distribution, each national bank exercising fiduciary powers shall ensure that funds awaiting investment or distribution are made productive (as provided in paragraph (b) of this section) in trust-quality investments, and shall adopt and follow written policies and procedures to accomplish this purpose.

(b) In order to make funds awaiting investment or distribution productive, the bank shall obtain a competitive market rate, taking into consideration the following factors:

(1) The current rates payable for funds in the marketplace, including but not limited to commercial money market rates,

(2) The range of investment choices,

(3) The appropriate duration of the investment,

(4) The cost of investing the funds,

(5) The anticipated need for the funds,

(6) The requirements of the governing instrument, and

(7) Any other relevant factors affecting the investment of the funds.

(c) Funds being held awaiting investment or distribution shall be made productive as expeditiously as possible. In no event shall such funds be held unproductive for more than five business days from the day of receipt.

(d) Funds held in trust by a national bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in the commercial or savings or other department of the bank: *Provided,* That the bank shall first set aside under control of the trust department as collateral security:

(1) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Readily marketable securities of the classes in which state banks exercising fiduciary powers are authorized or permitted to invest trust funds under the laws of the State in which such national bank is located; or

(3) Other readily marketable securities that qualify as investment securities pursuant to the OCC's Investment Securities Regulation, Part 1 of this Chapter. The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this section are met when qualifying assets of the bank are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

Dated: June 21, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-14853 Filed 6-26-90; 8:45 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6899; File No. S7-12-90]

RIN: 3235-AD60

Summary Prospectuses

AGENCY: Securities and Exchange Commission.

ACTION: Rule proposal.

SUMMARY: The Commission today is publishing for comment proposals to amend the summary prospectus rule, Rule 431 under the Securities Act of 1933 (the "Securities Act"), by revising the issuer criteria for use of a summary prospectus, eliminating the requirement that a summary prospectus be on file five business days prior to use, and deleting the requirement that the exact form of each summary prospectus delivered to investors be filed with the Commission. As proposed, any registrant satisfying specified conditions would be permitted to use a summary prospectus in connection with a registered offering of securities. Further, a summary prospectus could be disseminated immediately after filing of the registration statement and summary prospectus with the Commission. Finally, the information requirements applicable to summary prospectuses are proposed to be amended to include a summary of management's discussion and analysis of the issuer's financial condition and results of operations and disclosure regarding the risks associated with investment in the securities being offered.

DATES: Comments should be received on or before September 15, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6009. Comment letters should refer to File No. S7-12-90. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Martin P. Dunn, Office of Chief Counsel, (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment amendments to rule 431 [1] of regulation C [2] under the Securities Act [3] that would broaden the rule's current issuer criteria to permit any registrant satisfying specified conditions to use the summary prospectus procedure. The proposals also are intended to permit immediate use of a summary prospectus filed with the Commission and to simplify the current filing requirements applicable to these prospectuses. Further, the Commission is proposing revisions to the informational requirements for summary prospectuses that would require disclosure with respect to risk factors and management's discussion and analysis of financial condition and results of operations.

I. Executive Summary

A recent inquiry was made as to the availability of the summary prospectus procedure in connection with a potential initial public offering where the preliminary prospectus would be several hundred pages long. Because of the anticipated length of the preliminary prospectus, expenses associated with soliciting indications of interest would make the offering costs substantial. Since the use of summary prospectuses could significantly decrease such cost, the parties expressed interest in using these procedures.

Following this request, the Commission undertook a review of the summary prospectus procedure of rule 431 to determine the appropriateness of extending the procedure to initial public offerings. As a result of this review, it appears that summary prospectuses can serve as a useful source of information that, due to their ease of preparation and distribution, may be beneficial to a registrant using a lengthy prospectus in connection with the offer and sale of securities. In light of both the significant administrative and civil remedies against the use of a deficient summary prospectus, as well as the prospectus delivery requirements under the Securities Act and the Securities Exchange act of 1934 (the "Exchange Act") [4] and the rules thereunder requiring delivery of either a prospectus subject to completion [5] or final section 10(a) prospectus, [6] the Commission believes it would be consistent with the protection of investors and the purposes of the Securities Act to expand the class of issuers eligible to use the rule. [7] Therefore, the Commission is today proposing for comment several amendments to rule 431.

Under the proposed issuer criteria, the rule would be available to any registrant other than a development stage company, provided that the registrant is not engaged in a "blank check offering" and has not defaulted on specific obligations since the end of its most recent fiscal year. The proposed criteria would further require that where a registrant is subject to the requirements of section 12 or 15(d) of the Exchange Act [8] ("reporting company"), it be timely in its filings under sections 13, 14 [9] or 15(d) for the twelve calendar months and any portion of the month immediately proceeding the filing of the registration statement (or such shorter period during which it has been subject to the reporting requirements of the Exchange Act).

In addition to the proposed expansion of the issuer criteria, the Commission is proposing to revise the rule's prospectus filing requirements in two respects. First, the current five business day pre-use filing requirement is proposed to be deleted, as pre-use filing does not appear necessary. Consequently, the proposed deletion would allow issuers to distribute a summary prospectus immediately after filing the registration statement and summary prospectus with the Commission.

Second, the Commission proposes to conform the summary prospectus filing requirements to the filing requirements applicable to other section 10 prospectuses. [10] Accordingly, while rule 431(a)(1) would continue to require that summary prospectuses be filed as part of a registration statement or amendment thereto, the proposed revisions would no longer require that the exact form be filed, as that appears unnecessary, and would restrict the filing requirement only to summary prospectuses delivered to investors which contain substantive changes from or additions to a summary prospectus previously filed as part of the registration statement.

It is further proposed that the information specifically required to be contained in summary prospectuses include disclosure regarding the risks associated with an investment in those securities and a summary of management's discussion and analysis of the issuer's financial condition and results of operations.

The proposals do not affect investor rights under the federal securities laws. Moreover, the proposals do not affect any person's obligation to deliver a preliminary or final prospectus under the Securities Act, the Exchange Act or the Commission's rules and regulations thereunder. [11]

II. Provisions Relating to Summary Prospectuses

A. Background of Summary Prospectus Rules

Under section 5(b)(1) of the Securities Act, [12] it is unlawful to use a prospectus after a registration statement has been filed unless it meets the requirements of Section 10 of the Securities Act. Section 10(b) [13] of the Securities Act authorizes the Commission to adopt rules and regulations permitting securities to be offered and sold by means of a prospectus which omits in part or summarizes information that must be set forth in a preliminary prospectus or the final Section 10(a) prospectus to be delivered prior to or with either a confirmation of sale or delivery of the securities. [14] Pursuant to this authority

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[1] 17 CFR 230.431.

[2] 17 CFR 230.400—230.460.

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] The term "prospectus subject to completion" refers either to a preliminary prospectus used in reliance on Rule 430 (17 CFR 230.430), or a prospectus used after the effective date of a registration statement that omits information in reliance on Rule 430A (17 CFR 230.430A), or a prospectus omitting information not yet known with respect to a delayed offering under Rule 415(a) (17 CFR 230.415(a)). In this release, a prospectus subject to completion will be referred to as a preliminary prospectus.

[6] 15 U.S.C. 77j(a).

[7] *See* "II.B. Prospectus Delivery Requirements, Administrative Remedies and Investor Rights" *infra* for a discussion of investor rights under the federal securities laws and the delivery requirements applicable to a preliminary and final Section 10(a) prospectus.

[8] 15 U.S.C. 78l and 78o(d).

[9] 15 U.S.C. 78m.

[10] *See* Rule 424 of Regulation C under the Securities Act [17 CFR 230.424] which sets forth the filing requirements for complete preliminary and final section 10(a) prospectuses.

[11] *See* "II.B. Prospectus Delivery Requirements, Administrative Remedies and Investor Rights" *infra.*

[12] 15 U.S.C. 77e(b)(1).

[13] 15 U.S.C. 77j(b). Section 10(b) was adopted as part of the 1954 amendments to the Securities Act (August 19, 1954, c. 667, Title I, § 8, 68 Stat. 684).

[14] *See* sections 2(10) [15 U.S.C. 77b(10)] and 5(b)(2) [15 U.S.C. 77e(b)(2)] of the Securities Act. *See also* Exchange Act Rule 10b-10 [17 CFR 240.10b-10] which contains the timing and informational requirements of a confirmation of sale.

and to encourage dissemination of information to potential investors, the Commission, in 1998, adopted the summary prospectus procedure.[15] The purpose of a summary prospectus is to provide prospective investors with a condensed statement of the more important information contained in the registration statement so as to enable them to determine whether or not they would be interested in more complete information concerning the registrant and the securities being offered.[16]

As originally adopted, only issuers reporting under section 13 or 15(d) of the Exchange Act were eligible to use a summary prospectus.[17] The Commission, in proposing the summary prospectus rule, explained that the purpose of the issuer reporting standard was to restrict the use of summary prospectuses to issuers "which ha[d] been publishing information and financial statements meeting the Commission's disclosure standards."[18] Three years later the Commission proposed and subsequently amended the rule to permit the use of summary prospectuses by non-reporting registrants that met specified standards as to size, earnings, operating history and the prior publication of reports to shareholders.[19]

As part of the integrated disclosure system rulemaking project, the Commission, in 1982, adopted a more restrictive approach to the rule and limited its availability to seasoned reporting issuers.[20] Little public comment was received on the narrowing of the eligibility standards, reflecting in large part the lack of use of such prospectuses.

B. Prospectus Delivery Requirements, Administrative Remedies and Investor Rights

After filing of a registration statement, Securities Act section 5(b)(1) permits distribution of a prospectus complying with section 10 of the Act. A summary prospectus complying with rule 431 constitutes a Section 10 prospectus. Dissemination of a summary prospectus, however, does not obviate compliance with a person's obligation to deliver a final section 10(a) prospectus or to provide a prospectus pursuant to rule 15c2-8, where applicable.

Rule 15c2-8(b) under the Exchange Act [21] requires brokers and dealers participating in an offering of securities by an issuer not previously required to file reports pursuant to section 12(a) or 15(d) of the Exchange Act to deliver a copy of the latest preliminary or final Section 10(a) prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to mailing of such confirmation. Rule 15c2-8 further requires the managing underwriter to take reasonable steps to assure that each participating broker-dealer is furnished with copies of each preliminary and final Section 10(a) prospectus.[22] Moreover, persons associated with a participating broker-dealer must have a copy of the preliminary and final section 10(a) prospectus prior to soliciting orders.[23] The proposed revisions to rule 431 published today would not change these delivery requirements.[24]

In addition, a registrant using the summary prospectus procedure is required to provide a complete prospectus to any person upon request. The summary prospectus must prominently disclose the name, address and telephone number of the person or persons from whom a complete prospectus may be obtained.[25]

A final section 10(a) prospectus must accompany or precede either a confirmation [26] or delivery of securities for sale or after sale.[27] Further, any dealer effecting transactions in the immediate aftermarket for initial public offerings must comply with the prospectus delivery requirements of section 5(b).[28]

The Securities Act provides significant protections against the use of a deficient summary prospectus. While section 10(b) of the Securities Act provides that a summary prospectus filed with a registration statement shall not be deemed a part of such registration statement for the purposes of section 11 of that Act,[29] it authorizes the Commission to suspend the use of a defective summary prospectus.[30] This administrative remedy is a supplement to the Commission's stop order powers under section 8 of the Act.[31] Further, section 11 liability would continue to apply to material misstatements and omissions in a registration statement at the time of effectiveness, and the provisions of sections 12(2) and 17(a) of the Securities Act [32] apply to preliminary, section 10(a) final and summary prospectuses in the offer and sale of securities.

The Commission staff expects, at least initially, to select for review registration statements that contain a summary prospectus. The adequacy of the disclosure in the summary prospectus also will be considered in acting on requests for acceleration of the effective date of the registration statement.[33]

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[15] The Commission proposed the summary prospectus rule, then Rule 434A, in Release No. 33-5274 (August 13, 1998) and adopted the rule in Release No. 33-5722 (November 23, 1998). The rule was extended to investment companies in Release No. 33-6240 (May 9, 1979). As part of the adoption of the integrated disclosure system, Rule 434A was revised and renumbered Rule 431 (17 CFR 230.431) in 1982. *See* Release No. 33-6383 (March 3, 1982).

[16] Release No. 33-5722 (November 23, 1998).

[17] Release No. 33-5722 (November 23, 1998).

[18] Release No. 33-5274 (August 13, 1998).

[19] Release No. 33-6294 (June 11, 1980).

[20] The term "seasoned reporting issuers" in this release refers to companies that have been subject to the reporting requirements of section 12 or 15(d) of the Exchange Act, and are current in their filing obligations for at least thirty-six months immediately prior to the filing of a registration statement under the Securities Act.

[21] 17 CFR 240.15c2-8(b).

[22] *See* paragraphs (g) and (h) of Rule 15c2-8 [17 CFR 240.15c2-8(g) and 17 CFR 240.15c2-8(h)].

[23] *See* paragraphs (e) and (f) of Rule 15c2-8 (17 CFR 240.15c2-8(e) and 17 CFR 240.15c2-8(f)).

[24] Distribution of the preliminary prospectus also is considered in acting upon a request for acceleration of the effective date of a registration statement. *See* Rules 460 [17 CFR 230.460] and 461 (17 CFR 230.461) under the Securities Act.

[25] *See* paragraph (e) of Rule 431.

[26] *See* Section 2(10) and 5(b)(1) of the Securities Act.

[27] *See* Section 5(b)(2) of the Securities Act [15 U.S.C. 77e(b)(2)].

[28] *See* Section 4(3) of the Securities Act [15 U.S.C. 77d(3)] and Rule 174 thereunder [17 CFR 230.174]. Under Rule 174, the prospectus delivery period applicable to reporting companies has been eliminated and, with respect to initial public offerings, shortened from 90 to 25 days if the securities being registered are either authorized for listing on a national securities exchange or for inclusion in an electronic interdealer quotation system sponsored and governed by the rules of a registered securities association. This shortened period is unavailable in securities of a non-reporting company to be traded in the "pink sheets" or the one-year pilot OTC Bulletin Board Display Service. *See* Release No. 34-27997A and note 31 thereto.

[29] 15 U.S.C. 77k. Section 11 of the Securities Act imposes liability for material misstatements or omissions contained in a registration statement when it becomes effective. That section imposes strict liability on the issuer. Section 11 also imposes liability on a wide variety of other defendants, such as persons who signed the registration statement, directors of the issuer at the time the statement is filed, persons who consented to be named in the statement, experts who consented to be named in the statement, and underwriters.

[30] In pertinent part, section 10(b) states: " . . . The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection (b), if it has reason to believe that such prospectus has not been filed [if required to be filed as part of the registration statement] or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading . . . "

15 U.S.C. 77j(b).

[31] *See* sections 8(a) and (d) of the Securities Act [15 U.S.C. 77h(a) and (d)].

[32] 15 U.S.C. 77l(2) and 77q(a) respectively. *See also* section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 CFR 240.10b-5].

[33] *See* section 8(a) of the Securities Act [15 U.S.C. 77h(a)] and rule 461 thereunder.

III. Proposed Revisions to Rule 431

A. Issuer Eligibility Standards

Rule 431(a)[34] currently permits domestic issuers and foreign private issuers eligible to register securities offerings on Form F-2 [35] to use a summary prospectus, subject to limitations regarding the reporting history of the registrant, the presence of enumerated defaults and the form used for registration of the securities. Specifically, a registrant must be a seasoned reporting issuer,[36] must have timely filed such reports for the twelve month period preceding the filing of the registration statement [37] and, since the end of its most recent fiscal year for which certified financial statements have been prepared and filed with the Commission, must not have had a default in dividend or sinking fund payments on preferred stock or on any installments for borrowed money or leases.[38] The rule further requires that the form of registration statement being used permit the use of a summary prospectus.[39]

As proposed, the current issuer eligibility criteria, other than those applicable to specified payment defaults and timely reporting, would be eliminated and replaced with two other criteria. The proposed criteria expand the rule's scope to include unseasoned issuers, subject to specific prohibitions against the use of summary prospectuses in "development stage company" and "blank check" offerings, as defined. Since no changes to the payment default or timely filing criteria are proposed, the rule will continue to require compliance with these criteria.

1. Development Stage Companies and Blank Check Offerings

Under the proposed criteria the summary prospectus procedure would be available to any registrant engaging in an initial public offering provided that it is neither a development stage company," as defined in Rule 1-02(b) of Regulation S-X [40] nor engaged in a "blank check offering." For purposes of the rule, "blank check offering" would be defined as an offering for which the registration statement, at the time of filing, does not describe the specific business and properties of the registrant and does not include specific disclosure concerning explicit investment criteria and objectives and the nature of acquisitions that are to be pursued with the proceeds of the offering.[41]

Because blank check offerings have been used extensively for abusive and fraudulent practices in the penny stock market, the Commission proposes to exclude registrants engaging in such offerings from utilizing the procedure.[42] Further, because of the absence of historical and/or prospective information regarding a registrant that is either a development stage company or engaging in a blank check offering, preliminary prospectuses are not unduly lengthy. Therefore, availability of the summary prospectus procedure in such offerings appears unnecessary. The Commission specifically seeks comment on the appropriations of these two exclusions as well as on the proposed definition of "blank check offering."

The Commission seeks comments on whether expansion of the summary prospectus procedure would be useful to issuers and what issuers could be expected to make use of summary prospectuses. The Commission also requests comment on both the utility to investors of a summary prospectus and the adequacy of the regulatory scheme to protect their interests where summary prospectuses are used. In this regard, comment is requested on whether the expansion of the summary prospectus procedure should be more limited in scope.

Commenters should address whether alternative objective standards more appropriately identify those offerings that would be better suited to the dissemination of summarized or condensed information, in light of the issuer's operating history and financial condition, the availability of issuer information in the marketplace, the nature of the securities being offered or other factors. For example, in connection with initial public offerings, availability of the summary prospectus procedure could be limited to those registrants offering securities that, at the time the offering is commenced, may reasonably be expected to either qualify of listing on a national securities exchange or for designation as NASDAQ National Market System ("NASDAQ/NMS") securities. These listing and designation criteria include standards regarding the issuer's operating history, results of operations, financial condition and the market for the securities to be issued.[43] Because these criteria may reasonably be expected to identify those issuers that are expected to be more widely followed by securities professionals, the Commission, after considering commenters' views, may conclude that such criteria would be an appropriate standard for non-reporting companies.

Under this alternative approach, actual submission of an application for listing or designation would not be required. Rather, availability of the summary prospectus procedure would be measured on whether the registrant would qualify if it submitted a listing or designation application. A registrant would be required to have a reasonable and good faith basis to support its position that the listing or designation standards would be satisfied at the time the securities are issued.

Commenters favoring alternative standards for use of the summary prospectus procedures should also address whether, instead of requiring eligibility for exchange listing or NASDAQ/NMS designation, it would be preferable to use one or more of the types of criteria used by the exchanges and the NASD, or other criteria. Thus, for example, comment is requested on the appropriateness of specifying that a

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[34] 17 CFR 230.431(a).

[35] 17 CFR 239.33.

[36] *See* paragraph (a)(1) of Rule 431.

[37] *See* paragraph (a)(2) of Rule 431.

[38] *See* paragraph (a)(4) of Rule 431.

[39] *See* paragraph (a) to Rule 431. The use of summary prospectuses is permitted only by Securities Act Forms S-1 [17 CFR 239.11], S-2 [17 CFR 239.12], F-1 [17 CFR 239.31] and F-2 [17 CFR 239.33]. No changes to this requirement are being proposed.

[40] *See* proposed rule 431(a)(1). The definition of "development stage company" in rule 1-02(h) of Regulation S-X [17 CFR 210.1-02(h)] states:

A company shall be considered to be in the development stage if it is devoting substantially all of its efforts to establishing a new business and either of the following conditions exists: (1) Planned principal operations have not commenced. (2) Planned principal operations have commenced, but there has been no significant revenue therefrom.

[41] *See* proposed rule 431(a)(3).

[42] Because companies engaging in blank check offerings are not seasoned reporting issuers, current rule 431 prohibits these issuers from using the summary prospectus procedure. For the same reason, the procedure also has been unavailable to development stage companies.

[43] The Quantitative Designation Criteria for NASDAQ/NMS securities set forth two alternative standards. Alternative 1 includes required levels of pre-tax income, net tangible assets, number of publicly held shares, market value of publicly held shares, number of public shareholders, market price of shares and the presence of NASDAQ market makers. Alternative 2 includes required levels of net tangible assets, number of publicly held shares, market value of publicly held shares, presence of NASDAQ market makers, length of operating history and number of public shareholders. *See* NASD Manual, Schedule D, Section 8. The Minimum Numerical Standards of listing on the New York Stock Exchange include required levels of pre-tax income, market value of publicly held shares, net tangible assets, number of public shareholders and length of operating history. *See* New York Stock Exchange Listed Company Manual, Section 1. The Original Listing Requirements for listing on the American Stock Exchange include required levels of stockholders' equity, pre-tax income, length of operating history, stock price, market value of publicly held shares and number of stockholders. *See* American Stock Exchange Company Guide, Part 1.

summary prospectus can be used only by:

(1) Issuers with an operating history of a specified length of time (e.g., three years, as required for NASDAQ/NMS designation [44] and listing on the New York [45] and American Stock Exchanges, [46] or an operating history of a shorter or longer period, such as one or five years);

(2) Issuers with specified results of operations (e.g., pre-tax income of $750,000 as required for NASDAQ/NMS designation [47] and listing on the American Stock Exchange, [48] $2,500,000, as required for listing on the New York Stock Exchange, [49] or pre-tax income for a lesser or greater amount, such as $250,000 or $5,000,000);

(3) Issuers of a specified size (e.g., net tangible assets of $4,000,000 or $12,000,000 as required for NASDAQ/NMS designation,[50] or net tangible assets of $18,000,000 as required for listing on the New York Stock Exchange,[51] or net tangible assets of a lesser or greater amount, such as $1,000,000 or $25,000,000; or stockholders' equity of $4,000,000 as required for listing on the American Stock Exchange, [52] or stockholders' equity of a lesser or greater amount, such as $1,000,000, $10,000,000 or $25,000,000; or some other indicia of a registrant's size);

(4) Issuers with a specified number of publicly held shares (e.g., 500,000 or 1,000,000 publicly held shares as required for NASDAQ/NMS designation, [53] 1,100,000 publicly held shares as required for listing on the New York Stock Exchange, [54] 500,000 publicly held shares as required for listing on the American Stock Exchange [55] or some other level of publicly held shares, such as 250,000 shares or 1,500,000 shares); or

(5) Issuers with a specified market flat (e.g., market value of publicly held shares of $3,000,000 or $15,000,000 as required for NASDAQ/NMS designation,[56] market value of publicly held shares of $18,000,000 as required for listing on the New York Stock Exchange,[57] an aggregate market value of $3,000,000 for a reasonable period of time as required for listing on the American Stock Exchange,[58] or some other level of market float, such as aggregate market value of publicly held shares of $1,000,000 or $25,000,000).

Commenters should address whether it would be preferable to use a combination of two or more of the above or other factors.

The Commission also may consider limiting the use of summary prospectuses for offerings of non-convertible debt and preferred stock by non-reporting companies to offerings of investment grade securities. Non-convertible debt or preferred securities would be "investment grade securities" if at least one nationally recognized statistical rating organization (as that term is used in rule 15c3–1(c)(2)(vi)(F) under the Exchange Act) has rated the security in one of the generic rating categories which signifies investment grade.[59] Typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade. Because investment grade securities are usually purchased on the basis of interest rates or securities ratings, this alternative may serve as a useful standard. Specific comment is sought on this approach as an alternative standard to the qualification for listing and designation discussed above.

2. Reporting Companies

The Commission proposes to maintain the current requirement that a registrant has filed all required reports during the twelve calendar months immediately preceding the filing of the registration statement in a timely manner. Requiring that a reporting company be in compliance with its reporting obligations under the Exchange Act would assure that timely information about the registrant is available to the market. Specific comment, however, is sought on the proposed continued inclusion of this requirement. Further, specific comment is requested with regard to the appropriateness of replacing the timeliness requirement with a standard requiring that reporting companies be current in their Exchange Act reporting obligations.

B. Revisions of Summary Prospectus Filing Requirements

Current rule 431(g) requires that eight copies of every proposed summary prospectus be filed as part of the registration statement and be on file for five business days prior to its use. Further, five additional copies of the exact form of summary prospectus delivered to prospective investors must be filed within seven days after the first use thereof.

The Commission proposes to eliminate the pre-use filing requirement and permit eligible registrants to use a summary prospectus immediately after filing such prospectus with the Commission. The administrative powers granted to the Commission against the use of defective summary prospectuses, as well as the civil liability and antifraud provisions of the Securities Act, provide sufficient protections to ensure compliance with the federal securities laws. The proposed elimination of the pre-use filing requirement does not alter traditional considerations regarding the need to amend, and, if necessary, recirculate an amended or updated summary prospectus.

The requirement of rule 431(g) that the exact form of each summary prospectus delivered to investors be filed with the Commission also is proposed to be deleted. Rather, the rule would be revised to require the filing of a summary prospectus only when it contains substantive changes from the previously filed form of summary prospectus and thereby conform the summary prospectus filing requirement to that applicable to complete preliminary and final section 10(a) prospectuses.[60] The term "substantive" would be interpreted in accord with the filing requirement of rule 424 applicable to all other section10 prospectuses.[61]

As proposed, rule 431(g) would continue to require that the summary prospectus be filed as part of the registration statement. Further, definitive summary prospectuses would be required to be filed as part of the registration statement, provided that such filing would only be necessary when the form of summary prospectus delivered to investors contains substantive changes or additions to the summary prospectus previously filed with the Commission.

Specific comment is requested on the appropriateness of both eliminating the five business day pre-use filing period and requiring the filing of summary prospectuses only when there has been a substantive change to the disclosure.

IV. Proposed Revisions to Summary Prospectus Content Requirements

The information specifically required to be included in a summary prospectus is governed by the "Instructions As To Summary Prospectuses" section in the particular form used for the registration of securities.[62] Summary prospectuses are currently required to include information regarding the offering price to the public, the use of proceeds, the extent to which the offering is made for the account of security holders, the name of the managing underwriters, the plan of distribution, dividend rights, voting rights, conversion rights, interest and maturity of the securities to be offered, the general character of the business done and intended to be done, selected financial data and material pending legal proceedings.[63] The proposed revisions as to content would expand the summary prospectus requirements to include the information required by Item 503(c) of Regulation S–K (Risk Factors) [64] and a summary of the information required by Item 303 of Regulation S–K (Management's Discussion and Analysis of Financial Condition and Results of Operations).[65]

Accordingly, it is proposed that the "Instructions As To Summary Prospectuses" provisions of Securities Act Forms S–1, S–2, F–1 and F–2 be revised to include the above-mentioned informational requirements. Specific comment is requested on the appropriateness of the proposed requirement of this additional information. In particular, comment is requested on whether the entire management's discussion and analysis required by Item 303 of Regulation S–K should be included, rather than a summary. Commenters should also address the extent to which the requirements regarding the content of summary prospectuses should be expanded to include any other information.

V. General Request For Comment

Any interested persons wishing to submit written comments on the rule amendments which are the subject of this release to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals contained herein, are requested to do so.

VI. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views of and other supporting information from the public. It appears to the Commission that the proposals, if adopted, would work significant cost savings for issuers without compromising investor protection.

VII. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed revision of rule 431(a) and rule 431(g). The Analysis explains that the inability to use summary prospectuses may, in certain circumstances, impose undue burdens upon the issuer of securities. As such, the Analysis indicates, the proposed amendments to rule 431 are intended to permit a broader class of registrants to use a condensed form of prospectus. The Analysis explains that the proposed revisions to rule 431 expanding the use of summary prospectuses by specified registrants would not infringe upon the protection of investors. Further, the proposed amendment to rule 431 eliminating the additional filing requirements for summary prospectuses would, the Analysis explains, effect small entities which are issuers in the same manner as other registrants.

The Analysis also indicates that these proposals would in no manner prohibit the use of summary prospectuses by any issuer which currently satisfies the provisions of rule 431(a). Currently, small issuers may use summary prospectuses if they have been a reporting entity for thirty-six calendar months. The proposal would permit use of the prospectus summary procedure by non-reporting companies, other than development stage companies, companies engaging in blank check offerings or companies with recent material defaults on specified obligations. The proposed revision would continue to require that reporting companies be timely in their filing obligations during the twelve-month period immediately preceding the filing of a registration statement or such shorter period during which the issuer has been a reporting company. Thus, adoption of the proposals may result in decreased costs of dissemination of prospectuses by many issuers, including smaller registrants.

Further, the Analysis indicates that the proposed revisions to Securities Act Forms S–1, S–2, F–1, and F–2 specifically requiring the inclusion of additional information in the summary prospectus would not impose a significant additional burden upon registrants, as the additional information to be included in the summary prospectus is based upon information currently required to be prepared and included in the registration statement. Further, the requirement of additional information will affect small entities which are issuers and broke-dealers in the same manner as other issuers and broker-dealers.

As the Analysis indicates, several possible significant alternatives to the proposals were considered, including, among others, establishing diffirent requirements for small entities or exemption them from all or part of the requirements. As discussed in the Analysis, comment has been requested concerning the appropriateness of these alternatives in light of the purposes of the Securities Act and the protection of investors.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Martin P. Dunn, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

The Commission encourages the submission of comments with respect to any aspect of the Analysis. Such written comments will be considered in preparation of the final Regulatory Flexibility Act Analysis if the proposed

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[44] *See* NASD Manual, Schedule D, section 2(b)(5).

[45] *See* New York Stock Exchange Listed Company Manual, Section 102.02.

[46] *See* American Stock Exchange Company Guide, Section 101.B.

[47] *See* NASD Manual, Schedule D, section 2(a)(1).

[48] *See* American Stock Exchange Company Guide, Section 101.A.

[49] *See* New York Stock Exchange Listed Company Manual, Section 102.01.

[50] *See* NASD Manual, Schedule D, sections 2(a)(5) (Alternative 1) and 2(b)(1) (Alternative 2). *See* also footnote 43, *supra*, for a discussion of the alternative criteria for NASDAQ/NMS designation.

[51] *See* New York Stock Exchange Listed Company Manual, Section 102.01. The American Stock Exchange does not have a net tangible asset requirement.

[52] *See* American Stock Exchange Company Guide, section 101.A. The NASDAQ/NMS and New York Stock Exchange do not have a stockholders' equity requirement.

[53] *See* NASD Manual, Schedule D, sections 2(a)(2) (Alternative 1) and 2(b)(2) (Alternative 2).

[54] *See* New York Stock Exchange Listed Company Manual, Section 102.01.

[55] *See* American Stock Exchange Company Guide, section 102(a).

[56] *See* NASD Manual, Schedule D, sections 2(a)(3) (Alternative 1) and 2(b)(3) (Alternative 2).

[57] *See* New York Stock Exchange Listed Company Manual, section 102.01.

[58] *See* American Stock Exchange Company Guide, section 103(b).

[59] 17 CFR 240.15c3–1(c)(2)(vi)(F). This standard is the same as the transactional requirement set forth in General Instructions I.B.2. to Form S–3 (17 CFR 239.13), Form F–2 (17 CFR 239.32) and F–3 (17 CFR 239.33).

[60] *See* rule 434 of Regulation C (17 CFR 230.434).

[61] *See* Release No. 33–6714 (52 FR 21252) (June 5, 1987).

[62] The use of summary prospectuses is permitted only by Securities Act Forms S–1, S–2, F–1 and F–2.

[63] Forms S–1 and F–1 also provide that where securities being registered are to be offered in exchange for securities of any other issuer, the summary prospectus also shall contain a brief statement as to dividend rights, voting rights, conversion rights, interest and maturity of such other issuer's securities, a brief statement of the general business intended to be done and selected financial data and material pending legal proceedings regarding such other issuer.

[64] 17 CFR 229.503(c).

[65] 17 CFR 229.303.

rule is adopted. Persons wishing to submit written comments should file four copies of such comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. All submissions should refer to File No. S7–12–90 and will be available for public inspection.

VIII. Statutory Basis of Rule and Form Proposals

The amendments to rule 431 and Forms S–1, S–2, F–1, and F–2 are being proposed by the Commission pursuant to Sections 6, 7, 10, and 19 of the Securities Act.[66]

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

IX. Text of Rule Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

2. The authority citation following § 230.431 is removed.

3. By revising paragraph (a) of § 230.431 to read as follows:

§ 230.431 Summary prospectuses.

(a) A summary prospectus prepared and filed as a part of a registration statement in accordance with this rule shall be deemed to be a prospectus permitted under section 10(b) of the Act for the purposes of section 5(b)(1) of the Act if the form used for registration of the securities to be offered provides for the use of a summary prospectus and, if the issuer is not a registered open-end investment company, the following conditions are met:

(1) The registrant is not a "development stage company," as defined in Rule 1–02(h) of Regulation S–X;

(2) The registrant is not engaged in a "blank check offering." A "blank check offering," for the purposes of this rule, is an offering for which, at the time of filing, the registration statement does not describe the specific business or properties of the registrant and does not include specific disclosure concerning explicity investment criteria and objectives and the nature of acquisitions that are to be pursued with the proceeds of the offering;

(3) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries has, since the end of its last fiscal year for which certified financial statements were included in a report filed pursuant to section 13(a) or 15(d) of the Securities Exchanges Act of 1934 (the "Exchange Act") or a registration statement under the Securities Act of 1933, failed to pay any dividend or sinking fund installment on preferred stock; or defaulted on any installment or installments on indebtedness for borrowed money, or on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole; and

(4) If the registrant is subject to the reporting requirements of section 12 or 15 (d) of the Exchange Act, it has been timely in its filings under sections 13, 14 and 15(d) of the Exchange Act for the twelve calendar months immediately preceding the filing of the registration statement (or such shorter period during which it has been subject to the requirements of section 12 or 15(d) of the Exchange Act).

4. By revising paragraph (g) of § 230.431 to read as follows:

§ 230.431 Summary prospectuses.

* * * * *

(g) (1) Eight copies of every summary prospectus shall be filed with the registration statement or as an amendment thereto.

(2) Five copies of every form of summary prospectus sent or given to any person prior to the effective date of the registration statement which varies from the form of summary propectus included in the registration statement as filed pursuant to Rule 402(a) (§203.402(a) of this chapter) shall be filed as part of the registration statement not later than the date such form of summary prospectus is first sent or given to any person; Provided, however, That only a form of summary prospectus that contains substantive changes from or additions to a prospectus previously filed with the Commission as part of a registration statement need be filed pursuant to this paragraph.

[66] 15 U.S.C. 77f, 77g, 77j, and 77s.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. Instruction 1 of the Instructions As To Summary Prospectuses in Form S–1 (§239.11) is amended by redesignating paragraphs (b) through (g) as paragraph (c) through (h) and adding a new paragraph (b), which reads as follows:

Note: The text of Form S–1, does not appear in the Code of Federal Regulations.

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

* * * * *

Instructions As To Summary Prospectuses

* * * * *

(b) As to Item 3, a statement of the principal factors that make the offering speculative or one of high risk (Item 503(c) of Regulations S–K (§229.503(c) of this chapter));

* * * * *

3. By revising paragraph (g) of Instruction 1 of the Instructions As To Summary Prospectuses in Form S–1 (§ 239.11) to read as follows:

§ 239.11 [Amended]

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(g) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S–K (§ 229.301 of this chapter)), a summary of management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K (§ 229.303 of this chapter)) and a brief statement of the nature and present status of any material pending legal proceedings; and

* * * * *

4. Instruction 1 of Instructions as to Summary Prospectuses in Form S–2 (§ 239.12) is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h) and adding a new paragraph (b), which reads as follows:

Note: The text of Form S–2 does not appear in the Code of Federal Regulations.

§ 239.12 Form S–2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(b) As to Item 3, a statement of the principal factors that make the offering speculative or one of high risk (Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter));

* * * * *

5. By revising paragraph (g) of Instruction 1 of the Instructions as to Summary Prospectuses in Form S–2 (§ 239.12) to read as follows:

§ 239.12 [Amended]

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(g) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S–K (§ 229.301 of this chapter)), a summary of management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K (§ 229.303 of this chapter)) and a brief statement of the nature and present status of any material pending legal proceedings; and

* * * * *

6. Instruction 1 of Instructions as to Summary Prospectuses in Form F–1 (§ 239.31) is amended by redesignating paragraphs (c) through (h) as paragraphs (d) through (i) and adding a new paragraph (c), which reads as follows:

Note: The text of Form F–1 does not appear in the Code of Federal Regulations.

§ 239.31 Form F–1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(c) As to Item 3, a statement of the principal factors that make the offering speculative or one of high risk (Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter));

* * * * *

7. By revising paragraph (h) of Instruction 1 of the Instructions as to Summary Prospectuses in Form F–1 (§ 239.31) to read as follows:

§ 239.31 [Amended]

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(h) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S–K (§ 229.301 of this chapter)), a summary of management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K (§ 229.303 of this chapter)) and a brief statement of the nature and present status of any material pending legal proceedings; and

* * * * *

8. Instruction 1 of Instructions as to Summary Prospectuses in Form F–2 (§ 239.32) is amended by redesignating paragraphs (c) through (h) as paragraphs (d) through (i) and adding a new paragraph (c), which reads as follows:

Note: The text of Form F–2 does not appear in the Code of Federal Regulations.

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(c) As to Item 3, a statement of the principal factors that make the offering speculative or one of high risk (Item 503(c) of Regulation S–K (§ 229.503(c) of this chapter));

* * * * *

9. By revising paragraph (h) of Instruction 1 of the Instructions as to Summary Prospectuses in Form F–2 (§ 239.32) to read as follows:

§ 239.32 [Amended]

* * * * *

Instructions as to Summary Prospectuses

* * * * *

(h) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S–K (§ 229.301 of this chapter)), a summary of management's discussion and analysis of financial condition and results of operations (Item 303 of Regulation S–K (§ 229.303 of this chapter)) and a brief statement of the nature and present status of any material pending legal proceedings; and

* * * * *

By the Commission.

Dated: June 22, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14997 Filed 6–26–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 146

[DoD Directive 5525.9]

Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary of Defense proposes to amend 32 CFR part 146.6(a) to provide that a Department of Defense Component Head may delay taking action under 146 for 90 days, as authorized by that section. The section currently authorizes a delay of 45 days.

DATES: Written comments on this proposed rule must be received by July 27, 1990.

ADDRESSES: Forward comments to the Office of the Assistant General Counsel (Personnel and Health Policy), Department of Defense, the Pentagon, room 3E999, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Paul S. Koffsky, telephone (202) 695–3657.

SUPPLEMENTARY INFORMATION: The Department of Defense implemented section 721 of Public Law 100–456 by issuing 32 CFR part 146 (see FR Doc. 89–3909, appearing in the Federal Register on February 22, 1989 (54 FR 7539) and FR Doc. 89–133, appearing in the Federal Register on January 5, 1989 (54 FR 298). This proposed amendment is designed to reflect the operational realities of DoD overseas activities.

List of Subjects in 32 CFR Part 146

Courts, Government employees; Intergovernmental relations; and Military personnel.

Accordingly, 32 CFR part 146 is proposed to be amended as follows:

PART 146—[AMENDED]

1. The authority citation for part 146 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 113; 10 U.S.C. 814; Pub. L. 100–456 section 721.

2. Section 146.6(a) introductory text is proposed to be amended to change 45 days to 90 days.

Dated: June 21, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–14833 Filed 6–26–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–90–47]

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Brevard County, the Coast Guard is considering changing regulations governing the SR 402 drawbridge at Titusville by permitting the number of openings to be limited during certain periods. This

proposal is being made because the vehicular traffic pattern has changed. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 13, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and LCDR S.G. Dickman, project attorney.

Discussion of Proposed Regulations

The bridge presently opens on signal; except that, from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Brevard County requested these periods be changed and lengthened to cover the period from 6 a.m. to 7:30 a.m. and 3 p.m. to 4:45 p.m., weekdays except holidays. Analysis of highway traffic data indicates this two lane roadway has a poor level of service during the morning and evening rush hours which now occur earlier than the periods covered by the recent regulations. No justification was presented for lengthening the closed periods.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117 DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261(k) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(k) SR402 bridge, mile 878.9 at Titusville. The draw shall open on signal; except that, from 6:15 a.m. to 7:15 a.m. and 3 p.m. to 4:30 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: June 15, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-14856 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-90-54]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: At the request of Congressman Tom Lewis, the Coast Guard is considering changing regulations governing the PGA Boulevard and Parker drawbridges at North Palm Beach by permitting the number of openings to be limited during certain periods. This supplemental proposal is considered a reasonable compromise between the interests of highway and waterway users. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 13, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave. Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 484, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Proposed Regulations

The PGA Boulevard and Parker bridges presently open on signal; except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the PGA Boulevard bridge opens on the quarter and three-quarter hour and the Parker bridge opens on the hour and half hour. On weekends and Federal holidays both bridges open on the hour, 20 minutes after the hour, and 40 minutes after the hour from 8 a.m. to 6 p.m. At the request of Congressman Lewis, the Coast Guard tested a 30 minute schedule from 7 a.m. to 7 p.m., Monday through Friday, for 60 days that began on January 2, 1990. The results of this test indicated holding conditions near the bridges were inadequate to safely accumulate a large number of vessels awaiting a bridge opening for 30 minutes. Some improvement was noted in reducing afternoon traffic congestion during the winter seasonal period. However, because the traffic light on US 1 at The Old Port Cove entrance has not yet been preempted, the highway intersection gridlock continued during many bridge openings. This has been brought to the attention of Florida Department of Transportation. Comments received from a large boating association indicated vessels could safely accumulate near both bridges for a maxium period of 20 minutes. The proposed rule is, therefore, a compromise between the 15 minute opening schedule proposed by the Coast Guard in the Notice of Proposed Rulemaking that was published on March 13, 1989, and a 30 minute opening schedule that was proposed by Congressman Lewis. This proposal for a seasonal 20 minute opening schedule from November 1 until May 31 would also standardize weekend and weekday bridge schedules as was suggested by many commenters.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Because the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Sections 117.261 (s) and (t) are revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(s) *PGA Boulevard bridge, mile 1012.6.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. and 7 p.m., Monday through Friday, except Federal holidays, the draw need open only on the quarter hour and three-quarter hour. On Saturdays, Sundays and Federal holidays, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30, from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(t) *Parker US1 Bridge, mile 1013.7.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, except Federal holidays, the draw need open only on the hour and half hour. On Saturdays, Sundays, and Federal holidays, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30, from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: June 15, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-14855 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-31, RM-7185]

Radio Broadcasting Services; Oak Grove, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Oak Grove Broadcasting ("petitoner"), seeking the allotment of Channel 283C2 to Oak Grove, Florida, as that community's first local broadcast service. The coordinates for the proposal are North Latitude 29-42-03 and West Longitude 85-15-07.

DATES: Comments must be filed on or before August 13, 1990, and reply comments on or before August 28, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent A. Pepper, Neal J. Friedman, Pepper & Corazzini, 1776 K Street NW., Washington, DC 20006 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-310, adopted June 8, 1990, and released June 22, 1990. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-14931 Filed 6-26-90; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-308, RM-7067, RM-7310]

Radio Broadcasting Services; Griffin, Hogansville, and Sparta, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two interrelated petitions. The first petition, filed by Design Media, Inc., proposes the substitution of Channel 248C3 for Channel 249A at Griffin, Georgia, and modification of its Class A license for Station WKEU(FM) to specify operation on the higher class channel, and the substitution of Channel 288A for vacant but applied for Channel 248A at Hogansville, Georgia. The second petition, filed by Alexander Mitchell Communications Corporation, seeks the substitution of Channel 249C3 for Channel 249A at Sparta, Georgia, and modification of the license for Station WSKS(FM) to specify Channel 249C3. The upgrade at Sparta requires the substitution of Channel 248C3 for Channel 248A at Griffin, Georgia, and the substitution of Channel 288A for Channel 248A at Hogansville, Georgia. Channel 248C3 can be allotted to Griffin, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction 11.0 kilometers (6.9 miles) north. The coordinates for this allotment are North Latitude 33-20-30 and West Longitude 84-18-00. Channel 288A can be allotted to Hogansville, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction 8.5 kilometers (5.3 miles) north. The coordinates for this allotment are North Latitude 33-14-30 and West Longitude 84-54-34. Channel 249C3 can be allotted to Sparta, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction 23.1 kilometers (13.1 miles) west. The coordinates for this allotment are North Latitude 33-19-55 and West Longitude 83-11-17.

DATES: Comments must be filed on or before August 13, 1990, and reply comments on or before August 28, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: B. Jay Baraff, Lee J. Peltzman, Baraff, Koerner, Olender, & Hochberg, P.C., 2033 M Street NW., suite 700, Washington, DC 20036 (Attorneys for Design Media, Inc.), and John F. Garziglia, Howard J. Barr, Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Attorneys for Alexander Mitchell Communications Corporation).

FOR FURTHER INFORMATION CONTACT: Nancy J. Wells, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-308, adopted June 6, 1990, and released June 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until this matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-14932 Filed 6-26-90; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-310, RM-7188]

Radio Broadcasting Services; Tennille, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Michael K. Garner ("petitioner"), seeking the allotment of Channel 280A to Tennille, Georgia, as that community's first local broadcast service. The coordinates for the proposal are North Latitude 32-56-24 and West Longitude 82-48-06.

DATES: Comments must be filed on or before August 13, 1990, and reply comments on or before August 28, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitoner, or its counsel or consultant, as follows: Michael K. Garner, 1980 North Akin Drive, Atlanta, Georgia 30345 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-310 adopted June 8, 1990, and released June 22, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 90-14933 Filed 6-26-90; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 124
Wednesday, June 27, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Rio Rancho Critical Area Treatment: A Sediment Reduction Demonstration, NM

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Rules (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rio Rancho Critical Area Treatment: A Sediment Reduction Demonstration, Hub Resource Conservation and Development (RC&D) project, Sandoval County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Ave., SW., room. 3301, Albuquerque, NM 87102–3157, telephone 505–766–3277.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns critical area treatment. The planned works of improvement will control water erosion. Conservation practices to be installed are demonstrations of 6,100 linear feet of arroyo bank protection and grade stabilization.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. The environmental assessment has had a 30 day review by concerned Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Ray T. Margo Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 15, 1990.

Ronald L. Lauster,

Acting State Conservationist

[FR Doc. 90–14880 Filed 6–26–90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–90]

Foreign-Trade Zone 136—Brevard County, FL; Application for Subzone Flite Technology Machine Parts Plant, Cocoa, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, grantee of Foreign-Trade Zone 136, requesting subzone status for the machinery components manufacturing plant of Flite Technology, Inc. (FTI), in Cocoa, Florida, adjacent to the Port Canaveral Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 19, 1990.

The FTI plant (1.5 acres) is located at 411 Shearer Boulevard, Cocoa, Brevard County, Florida. It is used to produce machinery for the plastics industry, including feed screws, barrels and other injection and extrusion machinery parts. The primary materials used to produce the machinery parts are specialty steel mill products, including alloy steel bar, tool steel bar, feed screw blanks and hard facing. A portion of the specialty steel mill products are sourced abroad. A number of the finished products are exported.

Zone procedures will exempt FTI from Customs duty payments on the foreign materials used to produce items that are exported. On its domestic sales, the company would be able to choose the finished product duty rate on finished machinery parts (3.9%). The duty rates on the foreign-sourced specialty steel range from 10.6 to 11.5 percent. The application indicates that the zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, Inspection and Control, U.S. Customs Service, Southeast Region, 909 SE First Avenue, Miami, FL 33131–2595; and, Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 14, 1990.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 120 George King Boulevard, Port Canaveral, FL 32920.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: June 20, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–14815 Filed 6–26–90; 8:45 am]

BILLING CODE 3510-DS-M

[Docket A–29–90]

Foreign-Trade Zone 151—Findlay, OH; Request for Manufacturing Findlex Automobile/Golf Cart Brake Plant

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Community Development Foundation, grantee of FTZ 151, on behalf of Findlex Corporation (subsidiary of Nissin Kogyo of Japan and Honda of America Manufacturing, Inc.), requesting authority to manufacture vehicle brakes under zone procedures within FTZ 151, located at the Tall Timbers Industrial Park, Findlay, Ohio. It was filed on June 14, 1990.

Findlex began assembling brakes for automobiles and golf carts at the new plant in 1989. Board approval is required before the manufacturing activity can be conducted under zone procedures. Findlex currently sources all of its parts and subassemblies from abroad, but plans to begin sourcing some of its components from domestic suppliers this year. Foreign-sourced parts include springs, plates, rod and wheel cylinder assemblies, pistons, boots and seals.

Presently, most finished components are shipped to domestic automobile and golf cart plants with subzone status. In these situations, Customs duties would be paid on the foreign items when Customs entry is made after the production of the vehicles. The duty rates on the foreign material Findlex uses average 3.1 percent. Under zone procedures, the vehicle assembler would have the option of choosing the finished vehicle rate (2.5%), rather than the rate on brakes/components (3.1%). Products will otherwise be subject to Customs duties upon leaving the Findlex plant, at the rate for brakes/components (3.1%). The request indicates that zone savings will help Findlex compete with foreign vehicle parts producers.

The application is being reviewed by the FTZ Staff. Comments on the request are invited in writing from interested parties. They should be addressed to the Executive Secretary at the address below and postmarked on or before August 14, 1990.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 20, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–14816 Filed 6–26–90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 468]

Foreign-Trade Zones Board; Approval for Expansion of Foreign-Trade Zone 12, McAllen, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the McAllen Economic Development Corporation, Grantee of Foreign-Trade Zone No. 12, has applied to the Board for authority to expand its general-purpose zone to include a site at the McAllen-Miller International Airport, McAllen, Texas, area, within the Hidalgo Customs port of entry;

Whereas, the application was accepted for filing on September 30, 1988, and notice inviting public comment was given in the **Federal Register** on October 17, 1988 (Docket 31–88, 53 FR 40484);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the McAllen area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed September 30, 1988. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 19th day of June, 1990.

Frank J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

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International Trade Administration

[A–580–808]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 5, 1989, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on color television receivers from the Republic of Korea. The review covers four manufacturers and/or exporters for the period April 1, 1988 through March 31, 1987 (fourth review), and one manufacturer for the period April 1, 1987 through March 31, 1988 (fifth review). The review also covers certain entries made during the period January 8, 1986 through March 31, 1988.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the preliminary rates. The final dumping margins range from zero to 2.24 percent.

EFFECTIVE DATE: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Edmond A. O'Neill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 50258) the preliminary results of its administrative review of the antidumping duty order on color television receivers from the Republic of Korea (49 FR 18336, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1989).

Scope of the Review

Imports covered by this review are shipments of color television receivers, complete and incomplete, from the Republic of Korea. The order covers all color television receivers (CTVs) regardless of tariff classification. The

merchandise was classifiable under item numbers 664.9246, 664.9248, 664.9250, 664.9252, 664.9253, 664.9255, 664.9256, 664.9258, 664.9262, 664.9270, 664.9275, 664.9655, 664.9656, 664.9658, 664.9660, 664.9663, 664.9664, 664.9666, 667.3512, 667.3513, 667.3514, 667.3516, 667.3518, and 667.3520 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) items 8528.10.60, 8529.90.15, 8529.90.20, and 8540.11.00. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers and/or exporters for the period April 1, 1986 through March 31, 1987, and one manufacturer for the period April 1, 1987 through March 31, 1988.

On October 20, 1986, we determined that printed circuit boards (PCBs) and color picture tubes (CPTs) imported from Korea and subsequently assembled into CTVs are included in the scope, and we instructed the Customs Service to suspend liquidation on all such entries made on or after January 9, 1986. Because we did not include sales of PCBs and CPTs entered between January 9 and March 31, 1986 in the third administrative review, we are considering those sales in this review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL–CIO–CLC, the Independent Radionic Workers of America, and the Industrial Union Department, AFL–CIO (the petitioners), Zenith Electronics Corp. (Zenith), and four respondents, Goldstar Co. (Goldstar), Samsung Electronics Co. (Samsung), Daewoo Electronics Co. (Daewoo), and Quantronics Manufacturing Korea, Ltd. (Quantronics).

General Comments

Comment 1: Zenith and the petitioners argue, with respect to Korean taxes rebated or not collected by virtue of exportation, that the Department's methodology resulted in two unlawful actions: (1) Failure to cap the amount of tax added to United States Price (USP) at the amount of tax added to or included in the home market price of the comparison model, even assuming full pass-through of the tax into home market price, and (2) adjusting foreign market value (FMV) for a difference in circumstances of sale quantified as the full amount of the difference between the tax added to USP and the tax included in the home market price.

Zenith further argues that the Department should have implemented the ruling of the Court of International Trade (CIT) in *Zenith Electronics Corp. v. United States*, 10 CIT 268, 633 F.Supp. 1382 (1986), appeals dismissed, Fed. Cir. Nos. 88–1259 and 88–1260 (1989), by capping the tax adjustment to USP at the amount of tax added to, or included in, the home market price. Zenith also contends that, since the court prohibited the Department from using the circumstance-of-sale adjustment under § 353.56 to neutralize the tax adjustment required by § 353.41(d)(iii), the Department should not make such an adjustment in this case.

Daewoo and Goldstar argue that the Department should continue to use a 100 percent pass-through amount as well as make a circumstance-of-sale adjustment to eliminate artificial margins. Goldstar further argues against Zenith's position on circumstance-of-sale adjustments, noting that these adjustments have been approved by the court in certain circumstances, even in *Zenith*. Further, Goldstar argues that the Department's long-standing practice is to allow circumstance-of-sale adjustments. Goldstar cites *Color Television Receivers from Korea* (53 FR 24976), and *Television Receivers, Monochrome and Color, from Japan* (54 FR 13,918). Regarding the measurement of tax pass-through, Goldstar argues that the court's ruling on pass-through in *Zenith* is flawed. Goldstar argues that neither the statute nor the legislative history gives any indication that the Department must measure the amount of tax passed through to consumers in the home market.

Department's Position: We do not agree with the court in *Zenith* but have not had an opportunity to appeal the issues on its merits. Consistent with our long-standing policy, we have not attempted to measure the amount of tax "passed through" to customers in the Korean market. We do not agree that the statutory language limiting the amount of the adjustment to the amount of the commodity tax "added to or included in the price" of televisions sold in Korea requires the Department to measure the incidence of the tax in an economic sense.

We agree that the amount of commodity tax forgiven by reason of the export of televisions to the United States must be added to USP under the statute. The tax base in Korea is the net dealer delivered price, which is the price to the first unrelated party. Therefore, to make an appropriate "apples-to-apples" comparison, we used the price to the first unrelated party in the United States as the U.S. tax base. We calculated the adjustment by multiplying the U.S. tax base by the home market tax rate and adding the result to USP. To avoid artificially inflating or deflating margins, we made circumstance-of-sale adjustments equal to the difference in the tax per unit. *See* our position on Comment 1 in *Television Receivers, Monochrome and Color, from Japan; Final Results of Administrative Review* (55 FR 2399).

Comment 2: Zenith argues that the Department should take into account the average age and balance of each account payable relating to home market sales, and apply the respondents' short-term interest rate to those average ages and balances to offset all claimed selling expenses. Zenith maintains that the true cost of a discount or rebate is the discount or rebate amount minus the savings the respondent realizes by paying the rebate or discount after the obligation to pay has been incurred. Goldstar, Daewoo, and Samsung disagree, noting that the Department answered the same comment in the third review of this order. Daewoo further points out that if the Department accepted Zenith's argument, it would be necessary to perform the analysis for both FMV and USP. Daewoo asserts that the impact on margins would therefore be largely nullified.

Department's Position: We disagree with Zenith. Any opportunity cost incurred as a result of a discount or rebate would have been taken into account by the seller in setting the terms of the discount or rebate. Therefore, it is unnecessary to impute any additional costs. This is in contrast to credit costs or inventory carrying costs, where the seller does not know how long it will take for a customer to pay or how long he will store merchandise before it is sold.

Comment 3: Zenith is concerned that the respondents have included, and the Department has accepted, various indirect expenses in the ESP offset to foreign market value (FMV) which are not selling expenses. Respondents have an incentive to assign nonselling expenses to sales offices so that the pool of expenses included in the offset is maximized. Zenith urges the Department to require respondents to demonstrate that each home market indirect expense is a selling expense. Goldstar, Daewoo, and Samsung note that this argument was raised by Zenith in the third review of this order and was not accepted by the Department. Samsung also points out that the Department did not accept the same argument from Zenith in the final results of *Televisions from Japan* (54 FR 35520, Comment 5).

Department's Position: In this review we have followed our practice as stated in the final results of the third review of this order (53 FR 24978, Comment 2). The pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses incurred by the subsidiary in the United States whose function it is to sell merchandise. In this instance, the equivalent home market expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling.

Comment 4: Zenith argues that the Department should include all antidumping legal fees as an indirect selling expense deduction from ESP. Goldstar, Daewoo, and Samsung disagree with Zenith and note that the Department has answered this claim in the final results of the third review of this order, and that the CIT upheld the Department's position not to include antidumping legal fees in *Daewoo Electronics Co., et al. v. United States*, 712 F. Supp. 931, 947 (CIT 1989). Additionally, Samsung cites *Televisions from Japan* (54 FR 35520), and Daewoo cites the Department's "Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change" (November 1985) to show that this position has long been held by the Department.

Department's Position: In this review we have followed our practice as stated in the final results of the third review of this order (53 FR 24978, Comment 12), a position sustained by the court in *Daewoo*. As stated in our "Study," we do not consider legal fees paid in connection with litigation resulting from an earlier antidumping investigation to be an expense related to sales made in the period of review. We view legal fees incurred at the administrative stage of an antidumping proceeding as meriting similar treatment since they are incurred in defending against an allegation of dumping. As such, they are not expenses incurred in selling merchandise in the United States. Further, to deduct antidumping legal fees as selling expenses would effectively discriminate against those respondents who seek legal counsel in proceedings before the Department.

Comment 5: Zenith argues that the statute instructs the Department to reduce USP by the amount of any charges or expenses incidental to bringing the merchandise from the country of exportation to its place of delivery in the United States (section 772(d)(2)(A) of the Tariff Act). Therefore, the Department should reduce USP by the amount of estimated antidumping duties and any expenses associated with paying such duties. Goldstar, Daewoo, and Samsung disagree with Zenith. They cite the third review of this order (53 FR 35520), *Televisions from Japan* (54 FR 35520), *Daewoo*, and the Department's methodological study to demonstrate that the Department's position for not making such a reduction has been well established.

Department's Position: In this review we have followed our position as stated in the final results of the second review (51 FR 41374, Comment 79) and the third review (53 FR 24978, Comment 12) of this order. Like legal fees, we do not consider antidumping duties to be expenses related to the sale under consideration. Given the tenuous nature of these estimated rates and the possibility that they could be zero, we do not consider them to be expenses within the meaning of section 772(d)(2)(A) of the Tariff Act for purposes of determining USP.

Comment 6: Zenith comments that the Department has incorrectly offset U.S. commissions with indirect selling expenses in the home market. Zenith argues that commissions paid on U.S. sales compensate the recipients for both direct and indirect expenses. Unless a commission is broken up into its direct and indirect components, and the FMV offset is capped at only the level of the indirect expense element, the commission offset to FMV will be overstated by the amount of the direct expense portion of the U.S. commission.

Daewoo argues that Zenith's assertion that a portion of independent commissions should be allocated to indirect expenses is nonsensical. Daewoo asserts that commissions are directly tied to individual sales. If sales are cancelled, so are commissions. Daewoo, Samsung, and Goldstar further note that the Department deemed commissions to be direct expenses in their entirety in the third review of this order.

Department's Position: In this review we have followed our practice as stated in the final results of the third review of this order (53 FR 24978, Comment 11). Our regulations require us to make an adjustment for situations in which a commission is paid in one market but not in the other market. That adjustment is limited to "the amount of the other selling expenses" allowed in the other market (§ 353.56(b)(1) (1988)). We do not interpret our regulations to require us to limit the offset only to the direct expenses of the recipient of the commission. We are concerned with the commission expenses from the seller's point of view. From the seller's point of view, commissions are a direct expense in their entirety. Therefore, we have offset the full amount of the commission in the United States with the indirect selling expenses in the home market.

Comment 7: Zenith argues that the Department severely understates the antidumping cash deposit on entered merchandise by basing the weighted-average margins on statutory USP and not on the entered value of the merchandise. Upon entry of the merchandise into the United States, the Customs Service applies the weighted-average dumping margin to the declared entered value as best information available. Zenith argues that because this entered value is often less than the statutory USP, the absolute dollar amount of dumping duty is less than the dollar amount that would be the result if the margin were based on the statutory USP. Therefore, Zenith urges the Department to calculate the deposit rate as a percentage of the entered value and not as a percentage of the statutory USP. Goldstar, Daewoo, and Samsung disagree with Zenith and cite the results of the previous review of *Korean CTVs*, and the court's opinion in *Daewoo*, 712 F. Supp. at 957, in support of the Department's position.

Department's Position: In this review we have followed our practice as stated in the final results of the third review of this order (53 FR 24979, Comment 15), and in the final results of the review of the finding in *Televisions from Japan* (52 FR 8040, Comment 7). Section 736 of the Tariff Act requires the Department of instruct U.S. Customs to "assess an antidumping duty equal to the amount by which the FMV of the merchandise exceeds the United States price of the merchandise * * *" (19 U.S.C. 1673e(a)(1)). At the time that the merchandise is entered, USP has yet to be determined. Since cash deposits of estimated dumping duties are required at that time, we instruct Customs to require such cash deposits based on a percentage of the only value available, the entered value. If, after an administrative review, the amount of the antidumping duties deposited should be less than the actual amount to be assessed, we will collect interest on the difference.

Company-Specific Comments

Daewoo

Comment 8: Daewoo, Zenith, and the petitioners submitted comments concerning various mathematical, computer programming, and clerical errors in the Department's preliminary results analysis of Daewoo's response. Zenith also notes that certain home market expenses were omitted from Daewoo's FMV data base and urges the Department to ensure that these omissions are corrected. In addition, Zenith urges the Department to make sure that these changes are made for purposes of the sales-below-cost test as well.

Department's Position: We have made the following corrections to the appropriate programs in our final results calculations for Daewoo: negative quantities were removed from the data bases prior to conducting sales-below cost tests; missing selling, general, and administrative (SG&A) expenses for certain models were included in the data bases; return set loss was included as part of SG&A in the sales-below-cost test; incorrect or unidentified home market direct and indirect expenses were identified and corrected; royalty expenses were removed from, and commission expenses added to, the ESP offset calculation; home market advertising was included as a direct expense; typographical errors and omissions relating to model matches were corrected; certain incorrect FMV figures were corrected in the ESP program; a programming error in the ESP program, which incorrectly reduced Daewoo's USP, was corrected; the U.S. warranty parts claim in the preliminary analysis purchase price (PP) program was multiplied, rather than divided, by a factor of 100 for the final; and unused portions of the computer programs were omitted for clarity.

Comment 9: Zenith points out that sales of certain Daewoo home market models were made at less than the cost of production. In cases where more than 10 percent of the sales on a model-by-model basis were made below cost, Zenith argues that the below-cost sales should be disregarded.

Department's Position: We agree and have made the necessary deletions of below-cost sales.

Comment 10: The petitioners argue that the Department's use of one annual average cost of production amount per model is unreasonable. The petitioners argue that the Department should use quarterly cost of production data as reported in Daewoo's response. Daewoo argues that the Department has always used yearly data for Daewoo's cost tests and should not change its practice. Daewoo also notes that the use of quarterly data can cause aberrations due to one-time or semi-annual charges, the effects of which are mitigated by using an annual period.

Department's Position: We disagree with the petitioners. As Daewoo points out, the use of quarterly data in this case would cause aberrations due to short-term cost fluctuations, such as employee bonuses or lump-sum insurance payments, which properly should be allocated over one-year accounting period. Averaging over a one-year period provides a more accurate picture of the cost of production.

Comment 11: The petitioners contend that the Department erred in accepting Daewoo's exclusion of bad debt and goodwill expenses in its reported SG&A claim relating to the sales-below-cost test. The petitioners argue that since these expenses are accounted for in Daewoo's financial statements, they should not be treated differently for financial statement purposes and cost of production purposes. Daewoo disagrees, noting that the Department has in the past denied Daewoo's claims for bad debt and goodwill. Daewoo argues that it is unfair for the Department to deny certain claimed expenses when making sales comparisons, but to allow those same expenses when performing a sales-below-cost test.

Department's Position: We agree with the petitioners that bad debt and goodwill expenses should be included in COP. The fact that a particular expense is not considered direct and disallowed as a circumstance-of-sale adjustment does not necessarily mean that no expense was incurred. In some instances, such as here where Daewoo included its bad debt and good will expenses in its financial statements, such expenses are considered part of the manufacturing process, and therefore are included in the cost of production but are not allowable as circumstance-of-sale adjustments to FMV because they are not directly related to particular sales. *See* our position under comments 40 and 42 in the final results of the third review of *Korean CTVs (op cit.)*.

Comment 12: The petitioners note that the Department failed to include dealer movement charges, rebates, and discount in home market prices for the sales-below-cost test.

Department's Position: We agree and have made the appropriate corrections.

Comment 13: Daewoo, Zenith, and the petitioners note that the database erroneously contains miscellaneous sales, other than dealer or department store/co-op sales, which should be excluded, as well as sales from outside the period. Daewoo suggests that the errors should be corrected prior to conducting the remainder of the analysis.

Department's Position: We agree and have made the appropriate changes.

Comment 14: The petitioners argue that the Department should base its cost test on a model-by-model basis, not on an aggregate of home market model data. They further argue that the Department should conduct its 10-60-10 test to determine which sales, if any, can be used.

Daewoo argues that the 10-60-10 rule should not be applied on a model-by-model basis, but rather on an overall product-line basis. Daewoo submits that in circumstances where manufacturers sell large numbers of highly similar products, such as CTVs, it is logical to analyze a firm's entire product line to determine if sales are made in substantial quantities below the cost of production.

Department's Position: We agree with the petitioners and have changed our methodology. W have performed, to the extent possible, a model-by-model cost comparison. It is preferable to perform the cost test on a model-specific basis because we make model-specific comparisons in our price-to-price analysis.

Comment 15: Zenith points out that home market taxes either rebated or not included in sales due to exportation were not included in either the FMV or the USP calculations in the Daewoo ESP computer programs. Zenith argues that the taxes should be calculated and added to both FMV and USP, limiting the amount added to USP to that actually included in the home market price. Daewoo agrees that Korean commodity taxes were not calculated for USP in the ESP analysis, but were included in FMV. Daewoo agrees that HM taxes and imported U.S. commodity taxes should be included in FMV and USP, respectively, and a circumstance-of-sale adjustment should be made for the difference.

Department's Position: We agree that home market commodity taxes either rebated or not included in the sales price due to exportation should be included in FMV, and the imputed U.S. commodity taxes in USP. Daewoo correctly notes that we failed to add the imputed taxes to USP in the ESP analysis, and that we did include home market taxes in FMV. For the final results we added an amount for imputed taxes to USP. *See* comment 1 above. We also made circumstance-of-sale adjustments to FMV, as in past reviews, to preserve tax neutrality between the markets.

Comment 16: Zenith and the petitioners argue that the Department should impute inventory carrying costs for Daewoo, Goldstar, and Samsung ESP sales. Zenith and the petitioners submit that the Department should make the calculations based on the period from the date of shipment in Korea to the date of resale by the U.S. subsidiary, and that the costs should be based on the respondents' home market short-term cost of funds. Barring this, Zenith urges the Department at least to compute the carrying costs by using the transfer price and the home market interest rate for the period from the date of shipment to the date of importation into the United States, and the U.S. interest rate from the date of importation to the date of sale to the first unrelated customer. Zenith also argues that the adjustment should only be made for sales in the United States, not in the home market, since shipments of sets in the home market are made after the sales.

Samsung and Daewood argue that adjustments for inventory carrying charges should not be made at all because inventory carrying charges are incurred regardless of whether sales are made. Daewoo argues that if the Department insists on making the adjustment, the Department should use the U.S. short-term interest rate for the full period and that the calculation should be based on the cost of production, not the transfer price. Daewoo and Samsung further argue that if the Department insists on making an adjustment, inventory charges should be calculated for both FMV and USP. Samsung cites the final determination in *Televisions from Taiwan* (53 FR 49706, 49707 (1988)).

Samsung also points out that if the Department does impute these expenses, it should do so only up until the time of resale since direct credit expenses accrue from that point on.

Department's Position: Inventory carrying costs should be included in the indirect selling expenses deducted from ESP transactions and offset against similar indirect selling expenses incurred in the home market. We have taken this position repeatedly in both the Korean and Japanese television cases.

We used the transfer price between the Korean and U.S. related parties as the base for the inventory carrying cost computation. Since neither Samsung nor Goldstar provided the Department with dates of payment between their respective related parties, we used the period between the date of shipment from Korea to the date of sale to the first unrelated party in the United States to calculate carrying charges. As best information available, we used the home market interest rate to calculate inventory carrying costs from the date of shipment from Korea to the date of importation by the related party in the United States. We used the U.S. interest rate to calculate the inventory carrying costs from the date of importation to the date of sale to the first unrelated party in the United States.

We agree with the respondents that carrying costs should be imputed in the home market as well as the U.S. market. However, Goldstar ships its products only after sale in the home market, and neither Daewoo nor Samsung provided timely information which would have allowed us to calculate the number of days between shipment and sale to make the calculation. Therefore, we were unable to make the adjustment in the home market.

Comment 17: Zenith argues that its comments regarding inventory carrying costs for complete set sales of CTVs should apply equally to sales of incomplete CTVs for both Samsung and Goldstar. Samsung argues that the Department should limit the adjustments to ESP sales of complete sets since incomplete sets are assembled from Korean components, and component parts cannot be classified as televisions in inventory.

Department's Position: We agree with Samsung. Although CPTs and PCBs imported from Korea and subsequently assembled into CTVs in the United States are included in the scope of the order, CPTs and PCBs in and of themselves (*i.e.*, not subsequently assembled into CTVs) are not covered by this order. Imputed inventory carrying costs are based on the cost of carrying finished goods in inventory, not goods in progress, nor parts. Therefore, CPTs and PCBs were not included in the calculation of this cost.

Comment 18: Zenith argues that indirect selling expenses attributable to U.S. sales and incurred in Korea should be included in ESP.

Department's Position: We agree with Zenith and have made the appropriate adjustment according to Daewoo's information.

Comment 19: Zenith argues that the Department's calculation of taxes which were rebated or not collected upon exportation for addition to Daewoo's USP is flawed in that it was incorrectly based on unit sales prices rather than on ex-factory prices. Zenith further argues that the Department should make appropriate deductions from the U.S. sales price to arrive at an ex-factory price to serve as the calculation base. Daewoo supports the position taken by the Department in the preliminary analysis, noting that the home market tax base is not the ex-factory price as claimed by Zenith, but the net sales price.

Department's Position: We disagree with Zenith's assertion that ex-factory prices should be used as the tax base. After determining what the tax base is for this product in the home market, we must establish the equivalent tax base in the United States. The Korean home market commodity taxes are computed on the basis of "net sales price" to dealers. Since Daewoo sells to home market dealers on a delivered basis, the best "apples-to-apples" comparison is the delivered U.S. dealer price, *i.e.*, the price to the first unrelated party in the United States.

Comment 20: The petitioners claim that the Department erred in its ESP analysis by using one average exchange rate for the entire period. They argue that the Department should use the exchange rates in effect on the date of sale. Daewoo points out that the use of multiple exchange rates will complicate the programming.

Department's Position: We agree with the petitioners and have made the appropriate changes.

Comment 21: The petitioners argue that the Department erred in three ways in accepting Daewoo's interest rate calculations for both ESP and PP adjustments. First, petitioners note that Daewoo's reported interest rate should be one percent higher, as reflected in Daewoo's financial statements. Second, petitioners argue that the Department should not have used Daewoo's lowest reported interest rate to calculate ESP credit adjustments. The petitioners contend that the Department should use the average Federal Reserve prime rate plus one percent. Third, petitioners claim that the Department should have adjusted USP for inventory carrying costs.

Department's Position: The petitioners are correct that we should use the interest rate that corresponds to Daewoo's financial statements. In this case it is the Federal Reserve prime rate plus one percent. We have made the appropriate adjustment. Regarding the adjustment for inventory carrying costs, *see* comment 16.

Comment 22: The petitioners argue that the Department erred in not treating Daewoo's U.S. warranty return set loss expense as a direct selling expense in the ESP calculations. The petitioners further argue that Daewoo should not be rewarded for failing to provide

information on whether it is under obligation to replace CTVs sold to the U.S. market. Daewoo counters that in two of the three previous reviews of this order, the Department treated this expense as indirect because it could not be tied to specific U.S. sales and because significant portions of the expense are by definition indirect (such as technicians' salaries). Daewoo notes that if the Department decides to define return set loss as a direct expense, then it should also define it as direct for purposes of calculating FMV.

Department's Position: Daewoo provides a 90-day exchange warranty, whereby it accepts returns of defective CTVs for full credit. Therefore, we agree with the petitioners that U.S. return set loss relates to specific sales under review and should be treated as a direct expense (*see Televisions from Korea*, 53 FR 24965). We also agree with Daewoo that the expense should be treated as direct in the home market as well. Our final results of review reflect these changes.

Comment 23: The petitioners argue that Daewoo's failure to provide home market movement charges on a model-by-model and a month-by-month basis should be addressed by the Department with the appropriate best information available. Furthermore, the Department should deny Daewoo's home market-to-customer inland freight claim.

Department's Position: We have determined that the variations in home market inland freight charges (*i.e.*, model-to-model differences) are insignificant. In accordance with § 353.59 of the regulations, we have disregarded such variations. We agree with the petitioners, however, that Daewoo's depot-to-customer inland freight claim should be denied since Daewoo regularly ships this product to regional warehouses prior to sale, making the expense an indirect selling expense.

Comment 24: The petitioners argue that document handling fees paid to a related party in the United States should be considered expenses directly related to the sales under review for purposes of calculating ESP. Daewoo notes that these payments are intra-company transfers and should be treated as indirect selling expenses.

Department's Position: We disagree with the petitioners. As we have determined in previous reviews, these payments, while they can be tied directly to particular sales, are only intra-company transfers of funds, which we do not treat as expenses.

Comment 25: The petitioners allege that Daewoo's physical difference in merchandise claim includes adjustments for differences in costs for identical parts and should therefore be denied since only differences in costs arising from actual physical differences can be allowed.

Department's Position: We disagree. The petitioners have misinterpreted Daewoo's data. Daewoo addressed the issue of certain identical parts having different costs. Daewoo specifically excluded the difference in costs attributable to identical parts from its physical difference claim. It based its claim on cost differences due only to actual physical differences.

Comment 26: The petitioners argue that the Department should not have used Daewoo's sales to all home market customers, since some sales are not in the ordinary course of trade or have some other anomaly that makes them noncomparable with U.S. sales. Daewoo concurs with the petitioners' assessment.

Department's Position: We agree and have excluded from the home market database "coupon" sales, sales to the military, and other miscellaneous extraordinary sales because these sales are not in the ordinary course of trade.

Comment 27: The petitioners and Daewoo agree that the Department, in its PP analysis, failed to reduce USP by an amount for parts supplied free of charge by Daewoo's U.S. subsidiary to dealers for warranty repairs. This is inconsistent with the Department's ESP calculations, where such a reduction was made.

Department's Position: We agree and have changed the PP analysis to match the ESP analysis.

Comment 28: The petitioners note that the claim for customs duties should be recalculated if customs duties were understated due to after-shipment ocean freight rebates. Daewoo points out that it sells the merchandise to its U.S. subsidiary on an FOB Korea basis, not on a CIF or C&F U.S. port basis. Therefore, all customs duties are assessed on the actual invoiced FOB value, which does not include ocean freight.

Department's Position: Since the Customs Service calculates duties on the FOB value of the merchandise, the petitioners' point is moot.

Comment 29: Daewoo claims that wages and salaries associated with after-sales service should be treated as direct, not indirect, expenses. Daewoo notes that in the home market, after-sales servicing is done almost exclusively by in-house labor, while in the United States servicing is done by independent companies. Therefore, most home market warranty expenses are indirect while most U.S. warranty expenses are direct. Daewoo cites the remand in *AOC Int'l., Inc.* v. *United States*, 13 CIT _____, 721 F. Supp. 314 (1989), in support of its position. Both Zenith and the petitioners argue against this, pointing out that *AOC* is not final. Goldstar argues that all of its home market in-house warranty expenses, including salaries, bonuses, benefits, and supplies should be treated as direct expenses. Goldstar cites the *AOC* remand in support of its position. The petitioners point out that regardless of the facts in *AOC*, Goldstar did not demonstrate that those expenses should be considered direct.

Department's Position: We disagree with both Goldstar and Daewoo. Both companies rely completely on the *AOC* decision to back up their claims. However, the *AOC* remand order is not a final decision, is not yet ripe for appeal, and may yet be reversed. Therefore, we see no reason to reverse our long-standing policy on this issue. As the petitioners point out, neither Goldstar nor Daewoo has made an attempt to demonstrate that the facts of this case and *AOC* are similar, nor has either company attempted to demonstrate that all of its warranty expenses are directly related to the sales under review.

Comment 30: Daewoo argues that the Department should consider inland freight charges from the factory to regional warehouses to be direct expenses in calculating FMV. Daewoo cites the Department's preliminary determination in *Certain Fresh Cut Flowers from Ecuador* (54 FR 47247) and the *AOC* remand order in support of its position. Zenith disagrees and refers to *Silver Reed America, Inc.* v. *United States*, 581 F. Supp 1290 (CIT 1984), which establishes that such costs are general overhead costs and therefore indirect expenses. The petitioners point to the Department's third review position and claim that the facts in this case and *AOC* are different.

Department's Position: In this review we have followed our practice as stated in the final results of the previous review of this order (53 FR 24988, Comment 72). We disagree that the freight expense from the factory to the regional warehouses is directly related to any one sale. Daewoo stores its merchandise in the regional warehouses in anticipation of sales. Any freight costs to transport a television to the warehouses are incurred prior to the sale, not as a result of the sale. Therefore, we have treated freight expenses from Daewoo's factory to its warehouses as an indirect selling expense. Further, as noted in the response to comment 29, since the *AOC* decision is not a final decision, and since the facts in *AOC* are different, we see no basis for reversing our position.

Comment 31: Daewoo suggests that since the Department required the submission of sales data from outside the period of review in the event that comparisons had to be made using the 90/60 day rule, the Department should use the data submitted during earlier reviews for comparision. In the event that the Department is unable to use data from proprietary submissions from other reviews, Daewoo supplied missing sales adjustment data for those periods along with its post-preliminary comments. Both Zenith and the petitioners argue that Daewoo's original submission of data should have contained the appropriate sales adjustment information and that the Department should not allow the use of additional data submitted after the preliminary results.

Department's Position: We were able to obtain adequate model matches without going outside the period of review of data. Therefore, the parties' comments are moot.

Comment 32: Daewoo points out that in the Department's ESP analysis, the Department failed to add to USP taxes rebated or not collected due to export and failed to make a circumstance-of-sale adjustment to FMV for such taxes. Zenith contends that the Department should not make a circumstance-of-sale adjustment for tax equalization.

Department's Position: We added to ESP sales taxes rebated or not collected due to exportation, and we made a circumstance-of-sale adjustment to FMV in order to ensure tax neutrality. (*See* our positions under comments 1 and 15 *supra.*)

Quantronics

Comment 33: The petitioners argue that the Department incorrectly allocated Quantronics' foreign inland and freight charges. Quantronics agrees but claims that these expenses are part of the statutory minimum SG&A expense for constructed value. Therefore, there will be no change in the margins.

Department's Position: We agree with the petitioners and have made the corrections. We disagree with Quantronics' classification of inland freight as an SG&A expense. Rather, inland freight is a movement expense.

Comment 34: The petitioners argue that the Department erred in classifying certain movement charges, *i.e.*, customs clearance fees and export recommendaton fees, as SG&A expenses. Additionally, petitioners argue that the Department erred in using yearly average amounts for these claims instead of actual per shipment figures.

Department's Position: We agree with the petitioners that the claims in question should be classified as movement expenses, not as SG&A expenses, and have made the appropriate reclassifications. However, given the extremely small differences between the per shipment figures and annual averages, we disagree with the petitioners that the use of yearly averages is inappropriate. Nonetheless, we made the allocations on a per shipment basis since the information was readily available and the data base was small.

Comment 35: Regarding inland freight charges, Quantronics argues that since the Department calculated the constructed value of the U.S. product there is in essence only one market. Since the statute instructs the Department to account for differences in the circumstances of sale between markets, the Department cannot adjust for differences in comparing the same item in the same market. Quantronics notes that if the Department insists on making adjustments to USP, it should also make them to FMV.

Department's Position: We erred in accepting Quantronics' classification of movement costs as SG&A expenses in our preliminary analysis. Because we have reclassified these charges as movement costs (which do not involve circumstance-of-sale adjustments), Quantronics' comments regarding circumstance-of-sale adjustments in constructed value are moot.

Comment 36: The petitioners argue that the Department erred in including an amount entitled "other income" from Quantronics' response in the constructed value analysis. This amount includes items not directly related to the company's operations and that are not used by the company in calculating operating income. Quantronics argues that since its entire operations relate to the production and sale of CTVs for the U.S. market, any income must logically be related to the sale of CTVs in the United States and should be included in the Department's analysis.

Department's Position: Nowhere in the record does Quantronics specify how this "other income" is derived. We agree with the petitioners that, barring a direct tie to sales, this "other income" should be excluded from the constructed value calculation. We note, however, that after removing this item from the constructed value calculation, the amounts for SG&A expenses are still below the statutory minimum.

Comment 37: The petitioners argue that the Department incorrectly calculated Quantronics' SG&A expenses by using the ten percent statutory minimum of the cost of manufacture for certain U.S. sales in calculating constructed value. Since the company's first quarter SG&A expenses exceeded the ten-percent minimum, petitioners argue that the Department should use actual SG&A expenses rather than the statutory minimum amount. Quantronics disagrees and notes that the use of quarterly data distorts the analysis due to short-term fluctuations in costs. Such costs should be spread throughout the entire period of review. Quantronics also points out that the Department normally does not use less than annual costs.

Department's Position: We disagree with the petitioners. We used the statutory minimum ten percent because, on an annual basis, Quantronics' actual SG&A was less than the statutory minimum. *See* also our response to comment 10 regarding the use of quarterly data in evaluating production costs.

Comment 38: The petitioners state that the Department's use of one average credit expense for all sales is unreasonable in that it fails to take into account the significant differences in credit costs due to differing terms of sale. Quantronics responds that the credit expense is already reported in SG&A and is below the statutory minimum. Therefore, changing the allocation to a sale-by-sale basis has no effect.

Department's Position: We agree with both the petitioners and Quantronics. Quantronics' credit expenses vary markedly on a sale-by-sale basis, and we would normally require these expenses to be tied to specific sales. However, as Quantronics points out, regardless of the method of allocation, total SG&A expenses are still below the statutory minimum.

Comment 39: Quantronics notes that the Department's preliminary margin calculation was inaccurate since the total for potential unpaid dumping duties was incorrectly calculated.

Department's Position: We agree and have made the appropriate corrections.

Comment 40: Quantronics argues that inland freight should be deducted from the Department's constructed value calculation as a circumstance-of-sale adjustment. Zenith argues that the Department should not deduct inland freight from constructed value since Quantronics' SG&A was based on the statutory ten-percent minimum. Zenith cites *Fumei* (CIT 1989) to support its

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argument that the Department should actually increase constructed value by all identifiable PP adjustments.

Department's Position: We disagree with both Quantronics and Zenith. As the petitioners correctly point out in their reply brief, inland freight is clearly a movement charge. No adjustment should be made since the constructed value is based on ex-factory terms prior to the addition of freight charges.

Comment 41: Quantronics requests that its fifth review data be evaluated in the current review, noting that fifth review data for Cosmos was considered during this proceeding. Both Zenith and the petitioners argue against this, noting that it will only delay the publication of the final results.

Department's Position: We could not comply with Quantronics' request as it would have resulted in additional delays in completion of this review. We considered Cosmos' fifth review data in the current proceeding for two reasons: Cosmos had not been previously reviewed and was therefore subject to the Department's "all other" duty deposit rate, and reviewing Cosmos' data did not pose a significant burden on the Department. Neither reason applies to Quantronics in this proceeding.

Samsung

Comment 42: Samsung, Zenith, and the petitioners submitted comments concerning various mathematical, computer programming, and clerical errors in the Department's preliminary results analysis of Samsung's response.

Department's Position: We have made the following corrections to the appropriate programs in our final results calculations for Samsung: in the indirect purchase price (IPP) computer program, we have corrected an incorrectly coded U.S. television model, which caused errors in calculating royalty values; missing data in certain variables in the U.S. sales data base have been input; and foreign freight forwarding charges were corrected to be direct expenses rather than indirect expenses and were excluded from the ESP cap.

Comment 43: Samsung maintains that its "Major Products Promotional" (MPP) rebate provides a quantity discount which should be applied in calculating FMV in accordance with § 353.55 of the Commerce regulations. Additionally, Samsung notes that since it granted quantity discounts of at least the same magnitude on 20 percent or more of its sales of such or similar merchandise, FMV should be based on the sales with the quantity discounts. Both the petitioners and Zenith retort that the MPP rebate is a cumulative volume rebate, not a quantity discount, and therefore FMV should be based on all sales under consideration, not just those sales which received the MPP rebates.

Department's Position: We disagree with Samsung and agree with the petitioners that the MPP rebate is a cumulative volume rebate. Adjustments for quantity discounts under § 353.55 of the Commerce regulations are based on the premise that higher volume sales lead to cost savings on each individual sale used to establish FMV. Samsung, in fact, demonstrated that the MPP rebate is based on cumulative sales, many of which were low-volume sales. Therefore, we denied Samsung's request that we base FMV exclusively on those sales which received the MPP rebate, and we further denied Samsung's request that the rebate rate be applied to all home market sales under consideration. However, since the rebate was paid on certain sales under consideration, it qualifies as a circumstance-of-sale adjustment to those particular sales.

Comment 44: Samsung argues that its "Installment Sales Incentive" (ISI) rebate should not be considered an indirect selling expense in the home market, but rather a direct expense. Samsung notes that in previous reviews, the rebate was considered an indirect expense either because the Department deemed the rebate to be an after-sale rebate or because it was not identified on a model-by-model basis. Samsung notes that in this review the rebate is allocated to specific sales using actual costs. Samsung further claims that the rebate should be allocated on a screen-size and tuning-type basis rather than on a model-by-model basis, since model-by-model allocations lead to distortions based on widely varying sales volumes of particular models over particular time periods.

The petitioners disagree with Samsung's claim, citing the Department's response to comment 60 in the third review final determination (53 FR 24988), where the Department determined the expense to be indirect. Zenith argues that the ISI rebate claim should not be allowed as either a direct or indirect adjustment. At most, Zenith argues it should only be allowed as an indirect selling expense to the extent that it applies to the sales under review. Since ISI rebates are partially based on sales prior to the current review period, Zenith argues that the Department should reduce the adjustment by any amount attributable to sales outside of the review period.

Department's Position: We have reviewed our preliminary decision on this issue and have determined that the rebate should be treated as a direct expense. Samsung cannot identify which particular sets qualified for the rebate since the rebate is based on sales of individual units by independent dealers. However, these dealers were aware of the rebate program prior to purchases, we verified that Samsung credited its dealers with the claimed rebate amounts, and all models were eligible for the rebate program. Additionally, there were no changes in benefits or major terms of the rebate between or during applicable periods of review. We therefore conclude that Samsung's allocation of these expenses over all models is a reasonable method of quantifying the expense.

Comment 46: Samsung argues that all of its home market in-house warranty expenses, including salaries, bonuses, benefits, supplies, etc., should be treated as direct expenses. Samsung cites the *AOC* remand in support of its position. The petitioners disagree, noting that *AOC* is not final and that Samsung must demonstrate the direct nature of the expenses in order to have them qualify as such.

Department's Position: We disagree with Samsung. Samsung never demonstrated that the expenses were directly related to sales. *See* our response to a similar claim by Daewoo in comment 29 of these final results.

Comment 47: Samsung argues that bad debt should be treated as a direct expense. Samsung cites the remand of the first reveiw in this case and argues that bad debt is similar to warranty in that historical cost data can be used as best information available in order to determine the amount of the claim. The petitioners note that Samsung's claim is not timely and that the company made no attempt to tie bad debt directly to the sales under review. Further, both the petitioners and Zenith point out that both the first review remand and *AOC* are not final decisions and that the Department should not change its policy.

Department's Position: Pursuant to the court's instruction, we treated bad debt in the same manner as warranty for purposes of the remand determination regarding the first administrative review. The remand order is not a final decision, is not yet ripe for appeal, and may yet be reversed. Therefore, in this review, we treated Samsung's bad debt claims as indirect expenses because the company could not tie its claims to specific sales made during the period of review.

Comment 48: Samsung argues that all home market inland freight costs, including factory-to-warehouse freight, should be considered direct expenses. Samsung cites the *AOC* remand in support of its position. The petioners argue that this issue was decided against Samsung in the third review of this case.

Department's Position: In this review we have followed our practice as stated in the final results of the third review of this order (53 FR 24988, Comment 72). We disagree that the freight expense from the factory to the warehouses is an expense directly related to any one sale. Samsung stores its merchandies in warehouses in anticipation of sales. Therefore, any freight costs to transport CTVs to the warehouses are incurred prior to sales and are not the result of sales. We have therefore treated these expenses as indirect selling expenses.

Comment 49: Samsung notes that it included imputed credit in its constructed value calculations, but it believes that the other respondents did not. If this is correct, Samsung requests that imputed credit be removed from its constructed value equation.

Department's Position: All companies correctly included imputed credit in their constructed value calculations.

Comment 50: Zenith argues that the calculation of taxes rebated upon export and added to Samsung's USP is flawed in that it was incorrectly based on the unit sales price rather than on ex-factory prices. Zenith further argues that the Department should make appropriate deductions from the U.S. sales price to arrive at an ex-factory price to serve as the calculation base. Samsung notes that Zenith is incorrect. The home market base is a net dealer or delivered price, not an ex-factory price. Samsung suggests that the most reasonable price on which to base the calculations is the FOB Korean port price.

Department's Position: We disagree with Zenith. *See* our response to comment 19 above.

Comment 51: Zenith argues that for sales of incomplete CTVs by both Samsung and Goldstar, the Department erred in its allocation of U.S. packing expenses. The Department accounted for U.S. packing costs by subtracting home market packing costs for PCBs and CPTs and adding U.S. packing for completed CTVs to FMV. Zenith argues that since U.S. packing is made up entirely of U.S. labor and materials, it should simply be deducted from USP in accordance with section 772(e)(3) of the Tariff Act instead of adding it to FMV.

Department's Position: We agree with Zenith. When using constructed value for FMV, the statute instructs us to calculate the packed, ready-for-shipment price of the merchandise exported to the United States. Therefore, the value of packing materials and labor for CPTs and PCBs must not be deducted from FMV.

For USP, we subtracted all expenses incurred in the United States (including packing materials and labor), plus allocated U.S. profit, to arrive at the value of the goods (*i.e.*, the packed PCB and CPT) as entered into the United States. We then subtracted all movement expenses to return to the packed ex-factory price of the goods for comparison to constructed value. Subtracting the value of U.S. packing of completed televisions from FMV, as done in the preliminary analysis, distorts the value of packing for FMV since the constructed value of the goods already includes export packing costs. *See* also our position under comment 52 below.

Comment 52: Samsung argues that U.S. packing should not be removed from ESP since the statute requires that amounts deducted from ESP should be the result of "a process of manufacture or assembly performed on the imported merchandise * * *," § 772(e)(3), and packing is not a process of manufacture or assembly. Samsung argues further that packing is a process incidental to the sale of a CTV. If the Department includes packing on the U.S. side of the equation, it must include it in constructed value to make a fair comparison.

Department's Position: We disagree. Although packing is not part of the cost of manufacture, it is clearly part of the increased value referred to in section 772(e)(3) since it would be impossible to sell televisions without adequate protection to the merchandise. Because our constructed value calculation includes packing only for PCBs and CPTs, we deducted from ESP packing for CTVs (leaving in packing for the PCBs and CPTs) in order to achieve an apples-to-apples comparison.

Comment 53: Zenith disagrees with the Department's use of Samsung's reported "adjusted" constructed value as Samsung's figures include a reduction to FMV for the entire amount of home market selling expenses without limiting them to the amount of U.S. indirect selling expenses. Additionally, Zenith alleges that the use of Samsung's adjusted constructed value figures does not take into account claims which were disallowed by the Department.

Department's Position: We agree with Zenith and have taken into account the claims which we disallowed. Where home market indirect expenses exceeded indirect selling expenses in the U.S. market, we have limited the claim to the value of the U.S. indirects.

Comment 54: The petitioners claim that the Department erred in accepting Samsung's home market warranty parts claim since Samsung buys parts from related parties and did not demonstrate that these purchases were at arm's length. Samsung claims that the Department verified the arm's length nature of the related warranty parts pricing.

Department's Position: We verified Samsung's related and unrelated parts purchases while we were determining the accuracy of the constructed value portion of Samsung's response. We determined that Samsung's related parts purchases were made at the fully absorbed cost of production, and we therefore have accepted Samsung's claim.

Comment 55: The petitioners argue that the Department unreasonably accepted Samsung's home market credit expense claim. The use of one overall accounts receivable turnover rate distorts the credit claim because it is not tied to particular sales or particular customers. Also the short-term interest rate is not supported by complete information: Samsung's exclusion of usance loans is incorrect as they are a form of short-term borrowing. The petitioners propose that since Samsung did not report information on usance loans, the Department should use as best information available the lowest interest rate, the usance rate, reported by Samsung in its financials. Samsung responds that it did submit its usance loan data in its response to the Department's deficiency letter. It did not, however, include usance loans in calculating its short-term interest rate since it was required by the Department to use only short-term, general-purpose borrowings for this purpose. Samsung argues that funds for usance loans are not provided directly to Samsung but rather to its suppliers. The funds are for the limited use of financing materials purchases and are never available to Samsung for general financing purposes. In defense of the use of one overall accounts receivable turnover rate, Samsung notes that the use of customer-by-customer rates would distort the turnover rate to the extent that an individual customer's purchases are not based on CTV purchases.

Department's Position: We agree with Samsung that these particular usance loans, which are not available for general financing purposes such as accounts receivable, were properly excluded from the calculation of the company's average short-term borrowing rate. Regarding the use of one overall accounts receivable turnover

rate, Samsung's accounting system is not designed to achieve a customer-by-customer breakdown for CTV purchases only. Nonetheless, we have concluded that the use of the overall turnover ratio is an acceptable measure of Samsung's turnover rate for CTVs.

Comment 58: The petitioners claim that Samsung's reported foreign inland freight movement charges are unreasonable for incomplete CTVs sold in the United States since they are based on sales value. The petitioners ask that the Department use as best information available a rate equal to the highest reported movement charge for incomplete CTVs.

Department's Position: As Samsung points out in its rebuttal comments, it reallocated its claim on the basis of quantity shipped, rather than quantity sold, as requested by petitioners. We have used the quantity shipped as the basis for calculating the foreign inland freight expense.

Comment 57: The petitioners note that the Department, in its ESP calculations, failed to make an adjustment for Samsung's inventory carrying costs. Samsung argues that the Department should not impute inventory carrying costs because they are not a selling expense, nor even a real cost. Samsung notes that if the Department imputes such costs it should limit the adjustment to sales of completed CTVs, use a period only up to the time of resale, and should use the U.S. interest rate since the sets are carried on the books of the U.S. subsidiary from the time of export. Samsung also argues that if the Department imputes such costs in the United States, it should also impute them in the home market.

Department's Position: We have made the adjustment according to the methodology explained in our position under comment 16 in these final results since Samsung did not provide the type of data that would have allowed us to do otherwise.

Comment 58: The petitioners and Samsung point out that the Department failed to use Samsung's revised freight allowance and instead used the claim as made in the original questionnaire response.

Department's Position: We agree and have made the appropriate adjustments.

Comment 59: The petitioners note that the Department failed to use Samsung's revised U.S. cash discount and promotional discount adjustments. These amounts are dealer-specific. The petitioners propose that as best information available the Department allocate these dealer-specific rates to specific transactions by dividing the total per dealer discounts by sales of televisions to each dealer. Samsung agrees that the Department should use its revised data but disagrees with the petitioners' transaction-specific methodology. Samsung notes that since dealers buy a variety of products from Samsung, distributing total discounts over only television sales would overstate the margin.

Department's Position: There is no information on the record regarding the ratio of total dealer-specific color television sales to total dealer-specific sales of all products. The methodology proposed by the petitioner clearly would skew the discount amount allocated to color televisions to the extent that dealers purchased other products. As best information available, we have used the total discounts and divided them by total dealer sales to obtain an appropriate allocation amount.

Comment 60: The petitioners claim that the Department erroneously accepted that portion of Samsung's difference-in-merchandise claim that was based on nonphysical characteristics.

Department's Position: We disagree with the petitioners. We only made adjustments that were due to physical differences in merchandise. *See* also our response to comment 25.

Comment 61: The petitioners assert that Samsung's U.S. warranty claim should be revised. Samsung submitted its U.S. warranty claims on a model-by-model basis using an average cost over the past three years. The Department also asked Samsung to submit its actual costs during the period of review. Samsung complied, but only gave total warranty costs for the period of review, not model-by-model costs. The petitioners propose that the Department use current review period figures, but on a model-by-model basis only. Samsung notes that during the third review the Department determined that the petitioners' proposed method would distort the claim.

Department's Position: We disagree with the petitioners. There is nothing in this review period to suggest that Samsung's methodology should be revised. *See* our response to comment 56 in the final results of the third administrative review of this case (53 FR 24985).

Comment 62: The petitioners believe that Samsung's constructed value figures should be corrected to include amounts for general and administrative expenses. Additionally, the petitioners note that transfer prices of parts from Samsung's related party varied from below cost to above cost. The petitioners ask the Department to ensure that at a minimum, all parts are valued at the fully absorbed cost of production.

Department's Position: Samsung's constructed value figures do include general and administrative expenses. As for related parts purchases, the petitioners are correct that some parts purchases were made at less than the fully absorbed cost of production. However, on a yearly average cost basis, parts purchases were made at the fully absorbed cost of production. As we explained in comment 10, we have determined that yearly average costs provide the most accurate measure of actual costs. We therefore conclude that Samsung's constructed value figures are an adequate reflection of its costs.

Comment 63: Samsung contends that Korean forwarding charges should not be considered indirect selling expenses but rather direct movement costs.

Department's Position: We agree and have made the appropriate changes.

Goldstar

Comment 64: Goldstar, Zenith, and the petitioners submitted comments concerning various mathematical, computer programming, and clerical errors in the Department's preliminary results analysis of Goldstar's response.

Department's Position: We made the following corrections to the preliminary analysis computer programs for Goldstar: duty drawback was added to U.S. price rather than subtracted from U.S. price; home market rebates were deducted from FMV; a programming error which dropped the ESP offset from constructed value comparisons was corrected; taxes inadvertently added to constructed value were deleted; in the ESP program a programming error which dropped the constructed value data set was corrected; the double counting of certain home market sales in the ESP computer program was eliminated; inappropriate model matches caused by computer errors in the "90/60" day sales comparison were eliminated; and certain data input errors regarding constructed value and dealer cooperative advertising amounts were corrected.

The petitioners also contend that we added Korean export recommendation fees to USP instead of subtracting them. The petitioners are incorrect. In fact, we made the correct ajustment in our preliminary determination. Zenith alleged that Goldstar miscalculated the profit for CTVs in its constructed value submission. Goldstar did miscalculate the profit rate on one of its models; however, the remaining rates were correctly calculated. We have made the appropriate adjustment to our computer program to reflect the one changed value.

Comment 65: Regarding the test for home market sales below the cost of production, Zenith notes that the Department applied general expense and financing cost ratios to values representing Goldstar's costs of manufacturing and packing. Zenith argues that since these expense ratios were developed on the basis of sales value, not manufacturing costs, they are incorrect.

Department's Position: We agree that in a cost of production analysis, it is appropriate to use manufacturing, not sales, expense ratios. We recomputed the ratios on the basis of manufacturing costs and applied them to our sales-below-cost test.

Comment 66: Goldstar argues that the Department should follow the court's instructions in *Timken Co.* v. *United States*, 673 F. Supp 495 (CIT 1987), and *Toho Titanium Co., Ltd.* v. *United States*, 657 F. Supp 1280 (CIT 1987), and not exclude any sales made below cost unless they were made over an extended period of time in substantial quantities and were not at prices which would permit the recovery of all costs within a reasonable period of time in the normal course of trade. Goldstar submits that none of its sales can be disregarded using this standard since its entire class or kind of merchandise shows profitability in every business cycle. Zenith requests that the Department apply the 10–90 rule, in which home market sales are disregarded if more than 10 percent of the sales by quantity were made below cost, to individual models to determine the home market sales base to be used for comparison.

Department's Position: After making corrections to our sales-below-cost analysis, we determine that at least 90 percent of Goldstar's comparison models were above the cost of production. Therefore, there is no need to exclude any below-cost sales from our analysis.

Comment 67: Zenith argues that in the purchase price analysis, the Department erroneously used the fully-loaded CIF duty paid price instead of the ex-factory price as the base for calculating the amount of taxes rebated upon exportation. Zenith submits that the Department should therefore adjust the tax base. Goldstar states that Zenith is correct that PP sales sold on a CIF basis should be adjusted, but only to an FOB Korean port basis. Those sales made on an FOB basis need no further adjustment.

Department's Position: We disagree with both Zenith and Goldstar. Because the Korean tax base is the net dealer delivered price, we used the price to the first unrelated customer in the United States as the U.S. tax base. *See* also comment 19.

Comment 68: Zenith agrees with the Department that inventory carrying costs should be imputed for Goldstar's ESP sales, but argues that the adjustment should only be made to U.S. sales, not home market sales, because Goldstar incurs no inventory costs after the sets leave the factory in the home market. Goldstar argues that if the Department deducts imputed inventory costs from USP, the Department should do the same in the home market. Goldstar cites *Certain Small Business Telephone Systems and Subassemblies thereof from Korea* (54 FR 53143) and *Korean CTVs* (53 FR 24976).

Department's Position: To the extent that inventory carrying charges are accrued in both markets, we should make adjustments to both FMV and USP. However, because Goldstar did not provide timely information as to the length of time between production and sale of goods in the home market, we cannot make this adjustment in the home market. Goldstar failed to provide adequate data until its post-preliminary brief. Because of this untimely submission, we cannot accept the data. Accordingly we used the same methodology described under comments 16 and 57.

Comment 69: Zenith notes that Korean container yard fees and U.S. merchandise processing fees should be subtracted from USP and the ESP analysis.

Department's Position: We agree with Zenith. These fees are movement charges, and we have subtracted them from USP in the ESP analysis.

Comment 70: Goldstar disagrees with the Department's deduction of profit in situations involving further assembly of the product under consideration in the United States. Goldstar cites section 772(e)(3), which directs the Department to make allowances for "additional material and labor." Goldstar argues that the statute does not include an allowance for profit, only for additional material and labor. Additionally Goldstar argues that even if the Department insists on making an allowance for profit, the Department's reallocation of profit derived from U.S. value added in effect removes all profit earned on the product from the calculation. Goldstar also cites *Sonco Steel Tube Div., Ferrum, Inc.* v. *United States*, 694 F. Sup 959 (CIT 1988) and *Timken*, where the CIT decided that profit earned by a foreign producer's U.S. subsidiary should not be deducted from ESP. The petitioners point out that in the final determinations in *Telephones* (54 FR 53143) and in *Color Picture Tubes from Japan* (52 FR 44173), the Department used the same methodology as in the present case to determine profit allocations.

Department's Position: We disagree with Goldstar that the statute limits allowances to additional material and labor added in further assembly operations in the United States. The statute states that "any increased value, including additional material and labor" (emphasis added) should be taken into account in determining USP in ESP situations involving further assembly. We further disagree that our allocation methodology effectively eliminates all profit made on sales of the product. We simply deducted the percentage of profit attributable to U.S. value added.

Comment 71: Zenith argues that the Department erred in using Samsung's constructed value figures for incomplete televisions since Samsung deducted all selling expenses without respect to the amount of the ESP offset cap.

Department's Position: We agree with Zenith and have taken the amount of the ESP offset cap into consideration in determining the constructed value figures for Samsung.

Comment 72: The petitioners argue that the Department unreasonably accepted Goldstar's home market factory-to-regional warehouse inland freight claim as a direct expense.

Department's Position: We disagree. Goldstar ships its products to its regional warehouses only after sale. The regional warehouses are used as staging areas to consolidate freight from various Goldstar factories for final delivery to customers. This is in contrast to Daewoo's which ships goods to its regional warehouses in anticipation of sales. In Daewoo's case the freight cost to the warehouses is clearly an indirect expense since it is incurred prior to any sales being made. For Goldstar, however, the freight cost is a direct expense because it occurs after sales are made.

Comment 73: The petitioners argue that the Department unreasonably included Goldstar's home market sales to collective end-users in the weighted average FMV calculations.

Department's Position: We agree with the petitioners. Goldstar's sales to collective end-users were erroneously used in the preliminary analysis. In keeping with the methodology of previous reviews we have excluded these sales in our final analysis because they are not at the same level of trade as sales to the United States. (*See* our

response to comment 49 in the final results of the third review of this case (49 FR 2484)).

Comment 74: The petitioners ask that if the Department does exclude sales to collective end-users, then the Department should refrain from deducting home market handling charges and sales commission adjustments. Goldstar notes that some handling charges applied to noncollective end-user sales, and these amounts should be deducted regardless of the Department's treatment of collective end-user sales.

Department's Position: The petitioners' point is moot with respect to sales commissions since home market sales commissions only applied to sales which were excluded from the home market data base (*i.e.*, collective end-user sales). We deducted handling charges that applied to noncollective end-user sales because such charges are clearly movement expenses.

Comment 75: Regarding the Department's analysis of sales below cost in the home market, both the petitioners and Goldstar maintain that the Department should have used transaction-specific selling expenses rather than weighted averages.

Department's Position: We agree and have used Goldstar's transaction-specific data.

Comment 76: The petitioners argue that the Department unreasonably accepted Goldstar's reported PSP rebate claim. The petitioners contend that Goldstar is unable to tie its PSP rebate claim to specific sales, that Goldstar fails to explain how it segregated CTV-specific PSP rebates from all PSP rebates, that it only reports one average PSP rebate by customer even though the rebates varied at different times during the period of review and, finally, that it granted the rebates only on factoring credit sales, and these sales are not segregated from other sales. Goldstar cites *Smith-Corona Group* v. *United States*, 713 F.2nd 1568 (Fed. Cir. 1983), where a similar rebate was allowed, and also notes that its rebates were verified as accurate.

Department's Position: We have reconsidered our treatment of Goldstar's PSP rebate, and we now agree with the petitioners that the rebate cannot be treated as a direct expense. Goldstar only reported one overall rate for the rebate for the entire period. Unlike other expenses that vary minimally throughout an accounting period, Goldstar's PSP rebate percentages varied greatly throughout the period of review. Since the Department computes a monthly weighted-average FMV, using an average of widely varying expenses throughout the period of review would result in distortions to particular monthly FMVs, Goldstar is correct, however, that the total rebate amounts were verified. Since we know that Goldstar did make these payments, we have allowed the rebate as an indirect selling expense.

Comment 77: The petitioners claim that the Department erred in allowing a portion of Goldstar's differences-in-merchandise adjustment that is attributable to nonphysical differences in the merchandise, specifically, differences in costs of identical components.

Department's Position: We disagree. Goldstar excluded differences in the cost of identical parts in calculating its differences-in-merchandise claim.

Comment 78: The petitioners argue that the Department erred in accepting Goldstar's home market credit expense claim because Goldstar based its claim on average accounts and notes receivable collection periods for all products sold by its Domestic Sales Division. Additionally, Goldstar did not tie its claim to the CTV sales under review, and the collection periods vary from customer to customer. Goldstar notes that the Department accepted the same credit methodology in previous reviews.

Department's Position: We disagree with the petitioners. Goldstar sells a variety of products and maintains its accounts receivable on an open account basis. Therefore it is impossible for Goldstar to calculate a turnover period for CTVs only. We verified Goldstar's claim and are satisfied that basing the claim on the average balance of accounts receivable accurately reflects the credit costs incurred on sales of CTVs for the period of review.

Comment 79: The petitioners claim that the Department erred in allowing Goldstar's home market advertising claim as a direct expense since Goldstar did not show that its advertising expenses were at arm's length and since Goldstar also included amounts for promotional expenses such as gifts and leaflets, audio and video shows, promotional shipment, used product trade-ins, and "other," none of which was adequately explained. Goldstar disagrees, pointing out that the Department verified that all claimed advertising expenses related directly to Goldstar's home market CTV sales and that they were at arm's length prices.

Department's Position: We disagree with the petitioners. We verified all claimed advertising and sales promotional expenses and found that they were at arm's length prices and that they were related to the sales under review. Of the expenses questioned by the petitioners, those for promotional gifts and leaflets, audio and video shows, and promotional shipment were directed to the ultimate customer, not the franchise stores. Therefore, we allowed them as direct expenses. We did not allow Goldstar's expenses for used product trade-ins and "other" promotional expenses because these expenses did not apply to CTV sales.

Comment 80: The petitioners assert that the Department acted unreasonably in treating Goldstar's home market repair parts costs as a direct expense even though Goldstar did not submit a "detailed list" of the free parts used in warranty repairs and the cost of these parts on a model-by-model basis. Goldstar argues that its warranty parts cost was verified by the Department and that Goldstar responded in full to the Department's inquiries.

Department's Position: We disagree with the petitioners. We verified Goldstar's repair parts cost by selecting numerous examples of parts and their costs, and we tied the costs to the company's accounting records. We found no discrepancies in Goldstar's claim.

Comment 81: The petitioners argue that Goldstar's ESP credit expense adjustment is unreasonable because Goldstar did not provide a list of its short-term borrowings or worksheets to substantiate its claim and because its calculation of "effective" short-term interest rates does not take into account average outstanding balances.

Department's Position: We disagree with the petitioners. At verification we reviewed the list of all loans outstanding during the review period and found no discrepancies with Goldstar's response, nor with its financial records.

Comment 82: The petitioners argue that the Department erred in accepting Goldstar's reported U.S. warranty expense adjustment since the home market warranty calculation includes freight and delivery charges, but the U.S. calculation does not. Additionally, the petitioners argue that Goldstar unreasonably applied different methodologies to match sales of CTVs to actual warranty expenses in the United States and in the home market.

Department's Position: We disagree with the petitioners. We verified Goldstar's warranty claim and found that it was accurate and consistent with claims made in prior reviews. Warranty claims, by their nature, are based on historical costs because they usually are incurred well after the sales are made, often over the course of several review periods. See comment 81 of the final results of the third review regarding this issue (53 FR at 24984).

Comment 83: The petitioners argue that Goldstar failed to employ the same SG&A reporting methodology in its cost of production and constructed value analyses. The petitioners note that in Goldstar's constructed value analysis, Goldstar calculated SG&A expenses using the weighted average SG&A expenses of comparable home market models. In its cost of production analysis, Goldstar used company-wide SG&A expenses allocated to CTV sales based on sales value. The petitioners argue that the Department should use the SG&A expense amounts from the constructed value calculation in the cost of production requires transaction-specific expenses to the extent possible. Constructed value is based on annual average costs. Therefore selling expenses must be inferred from similiar home market comparison models. There is therefore no inconsistency between the two methods, and the calculations should remain unchanged.

Department's Position: We agree with Goldstar. With respect to below COP allegations we used certified transaction-specific SG&A expenses for the COP calculations. In the instances where there were no comparable home market sales, we used constructed value to determine FMV. Therefore, for CV calculations, selling expenses must be inferred because there are no identical models available. In this case the best evidence of what those expenses might be was to look at selling expenses of similar models. Therefore there is no inconsistency between the two methods.

Comment 84: Goldstar argues that the Department should use the company's suggested home market model comparisons for two U.S. models since the home market models chosen by the Department do not have contemporaneous sales for one month. The petitioners argue that where comparisons are not possible the Department should use constructed value.

Department's Position: The home market comparison models that we selected are more similar to the U.S. models than those proposed by Goldstar. For the one month where there are no contemporaneous sales of the models we selected, we accepted Goldstar's proposed model selections as reasonable alternatives.

Comment 85: Goldstar asks that the Department perform its circumstance-of-sale adjustments in accordance with the methodology mandated by the CIT in *Timken*, that is, in ESP situations the Department should add direct selling expenses to FMV instead of deducting them from USP.

Department's Position: We disagree with *Goldstar*. We disagree with the court in *Timken* and have appealed the decision. Until the *Timken* decision is decided on appeal, we intend to follow our standard methodology as prescribed by the Tariff Act, which states that ESP should be reduced by "expenses generally incurred" in selling merchandise to the United States (section 772(e)(2)).

Comment 86: Goldstar argues that the Department should make a level of trade adjustment with respect to home market sales to dealers in accordance with *American Permac* v. *United States*, No. 88-01-00050, Slip Op. 88-164, CIT, Dec. 1, 1988. The petitioners claim that *American Permac* nothwithstanding, Goldstar still has not provided support for its calculations and therefore the Department should deny Goldstar's claim. Zenith insists that Goldstar's claim is wholly speculative and cites the Department's treatment of Goldstar's level of trade claims in prior reviews of this order.

Department's Position: We have determined in this and in previous reviews that home market sales to distributors, franchise stores (dealers), department stores, and buying groups all occur at the same level of trade. This level is directly comparable to the level at which sales are made in the U.S. market. (*See* 53 FR 24984, comment 49.) Furthermore, even if such a difference were to exist, Goldstar has not provided adequate documentation to support its claim. (*See, e.g.* comment 49 of the final results of the second review (52 FR 41376)).

Comment 87: Goldstar argues that the Department should compare noncommercial set sales in the United States with noncommercial set sales in the home market, or at the very least, a combination of commercial and noncommercial set sales, rather than with strictly commercial set sales. Zenith disagrees, arguing that section 773(a)(1)(A) forbids such a comparison.

Department's Position: We disagree with Goldstar. The statute (section 773(a)(1)(A)) provides that FMV shall be based upon sales "in the ordinary course of trade." We do not consider noncommercial sales to be in the ordinary course of trade. We therefore did not distinguish between commercial and noncommercial set sales in the United States.

Comment 88: Goldstar requests that if the Department does use home market noncommercial set sales as comparisons, the Department should make an adjustment for commissions since these sales are commission sales.

Department's Position: Goldstar's comment is moot since we did not use home market noncommercial sales as comparison sales.

Final Results of the Review

Based on our analysis, we have changed the rates determined in our preliminary results (which includes shipments of CPTs and PCBs retroactively reviewed) as follows:

Manufacturer/exporter	Margin (percent)	Period
Daewoo Corp	0.04	4/1/86-3/31/87
Goldstar Co	.23	4/1/86-3/31/87
Quantronics Manufacturing Korea, Ltd	zero	4/1/86-3/31/87
Samsung Co	.45	4/1/86-3/31/87
Cosmos Electronics Co., Ltd	2.24	4/1/87-3/31/88

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, as cash deposit of estimated antidumping duties based on the most recent of the above margins for each firm shall be required. Since the margins for Daewoo, Goldstar, Quantronics, and Samsung are *de minimis*, the Department shall not require a cash deposit of estimated antidumping duties on entries from these firms. For Cosmos, the cash deposit rate will be 2.24 percent.

For any entries of this merchanside from a new exporter, whose first shipment occurred on or after April 1, 1988, and who is unrelated to any reviewed firm, a cash deposit of 2.24 percent shall be required. These cash deposit requirements are effective for all shipments of CTVs from the Republic of Korea, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: June 15, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[A-351-603]

Certain Iron Construction Castings From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 3, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil. The review covers one manufacturer/exporter of this merchandise to the United States for the period October 21, 1985 through April 30, 1987, and a second firm for the period October 21, 1985 through April 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Linnea Bucher or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 31978) the preliminary results of its administrative review of the antidumping duty order on certain iron construction castings from Brazil (51 FR 81977, May 9, 1986). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basins, grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable during the review periods as heavy castings under Tariff Schedules of the United States Annotated (TSUSA) item numbers 657.0950 and 657.0990, and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable during the review periods as light castings under TSUSA item number 657.0990. These articles must be of cast iron, not alloyed, and not malleable. Heavy castings are currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7325.10.00.10 and 7325.10.00.500.

Light castings are classifiable under HTS item number 7325.10.00.50. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Industria Viana Ltda. (Viana) for the period October 21, 1985 through April 30, 1987, and COSIGUA for the period October 21, 1985 through April 30, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, the Municipal Castings Fair Trade Council and its individually-named members (the Council), and COSIGUA, a respondent.

Comment 1: The Council claims that the Department incorrectly added an amount for countervailing duties both to the U.S. price of merchandise not subject to countervailing duties (light castings) and to the U.S. price of castings sold during a period not subject to countervailing duties.

Department's Position: We agree. Because entries of heavy castings made on or after December 11, 1985 and on or before May 6, 1986 were not assessed countervailing duties as a result of the delay in the issuance of the ITC's final affirmative injury determination, we have eliminated the adjustments for countervailing duties on sales of heavy castings between December 12, 1985 and May 5, 1986. We have also eliminated the adjustments for countervailing duties on sales of all light castings in view of the fact that the order in the countervailing duty case covers only heavy castings.

Comment 2: The Council claims that the Department converted third-country and home market prices and charges into U.S. dollars at exchange rates in effect on the date of the third-country or home market sales. The Department should make all currency conversions at the exchange rate in effect on the date of the U.S. sales.

Department's Position: We agree and have made all currency conversions using exchange rates in effect on the dates of the U.S. sales, in accordance with sections 353.48, 353.49, and 353.60 of the Commerce Regulations.

Comment 3: The Council argues that the Department should offset commissions paid on third-country (Canadian) or home market sales with indirect selling expenses incurred on U.S. sales in those instances where no commission was paid on the U.S. sale.

Department's Position: We agree and have adjusted foreign market value (FMV) for the commission, when incurred. Since COSIGUA provided no information on its U.S. selling expenses, as requested in the questionnaire, we used the amount of the Canadian commission as best information available (BIA) for these expenses and made the appropriate circumstance-of-sale adjustment to FMV.

Viana paid commissions on its sales to only one of its U.S. customers, all of whom were unrelated to Viana. For these sales we deducted a commission from the comparable home market sale and added the amount of the U.S. commission to the FMV, in accordance with section 353.56(a) of the Commerce Regulations. There were no indirect expenses for the remaining U.S. sales and we adjusted FMV for Viana's home market commissions.

Comment 4: The Council contends that the Department should make a circumstance-of-sale adjustment for the credit expenses incurred by COSIGUA on its U.S. sales. The adjustment should be based on the period between the date of shipment from Brazil to the date of payment by the U.S. customer. The Department should use the home market prime rate as the interest rate.

Department's Position: We agree in part. On U.S. sales we calculated a credit expense from the date of shipment from Brazil to the date of payment by the unrelated U.S. customer. We used the Brazilian short-term interest rates submitted by Viana for the first review period, and short-term interest rates from the public version of the response in another Brazilian antidumping case as the best information available for the May 1, 1987, through April 30, 1988 period.

On Canadian sales, due to the payment terms, COSIGUA did not incur any credit expenses after the date of importation. Therefore, for these sales we calculated credit expenses from the date of shipment to the date of importation, using Brazilian short-term interest rates supplied by Viana as the best information available. We then made a circumstance-of-sale adjustment to FMV by deducting Canadian credit expenses and adding U.S. credit expenses.

Comment 5: The Council claims that in its preliminary analysis of Viana, the Department was inconsistent because it made an adjustment for credit expenses on home market sales with at-sight payment terms but made no adjustment for credit expenses on U.S. sales with the same payment terms. Further, Viana's claims for home market credit expenses should be denied because they are at odds with the firm's descriptions of those expenses and do not comport with commercial reality. The claimed credit expenses for individual sales do not reflect the amounts that would have been incurred based on the number of days between shipment and payment.

Department's Position: We disagree in part. On sales to the United States, the payment terms were at-sight through letters of credit. All payments were made on a timely basis, so Viana incurred no credit expense. In the home market, however, although the agreed-upon terms were at-sight, payments were not always received on a timely basis. Therefore, whenever payment was made later than the agreed-upon time, Viana incurred a credit expense for which we made an adjustment to FMV.

Comment 6: The Council argues that the Department should make an adjustment to U.S. price (USP) for antidumping duties reimbursed by COSIGUA to one of its customers.

Department's Position: We disagree. While the Department adjusts USP for antidumping duties finally assessed and then reimbursed, in accordance with section 353.26 of the Commerce Regulations, we do not make adjustments for arrangements involving cash deposits of estimated antidumping duties. In this case, COSIGUA's agreement to assume responsibility for half the difference between the customer's estimated antidumping duty cash deposit rate and the higher "all other" cash deposit rate did not cover any antidumping duties to be finally assessed on entries during the period of review.

Comment 7: The Council contends that, as is its practice, the Department should have based COSIGUA's FMVs on monthly weighted-average prices rather than on individual sales.

Department's Position: We agree and have used monthly weighted-average prices in the four instances in which there was more than one-third country sale in a given month.

Comment 8: The Council argues that the Department should not have used sales between Viana and Aldebara in calculating FMV because the companies are related and the sales were not made at arm's length.

Department's Position: We agree and have not included such sales in our analysis. As a result of such exclusion, there were no contemporaneous home market sales of such or similar merchandise for many U.S. sales. Since Viana declined to furnish requested cost information, as FMV for these U.S. sales we used BIA, which was the "all other" rate from the original fair value investigation.

Comment 9: The Council contends that for COSIGUA the Department should reduce the price to Philipp Brothers (the U.S. importer) by the amounts of various movement expenses between the port of export and the port of delivery in the United States to the ultimate purchaser to the extent they were incurred by COSIGUA. COSIGUA contends that the Department should use the resale price to the unrelated U.S. customer and deduct movement expenses and other direct expenses.

Department's Position: We agree with COSIGUA and have corrected our calculations accordingly.

Comment 10: The Council states that the Department should correct its calculations for two apparent input errors in Viana's home market data sets.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 11: The Council contends that in the 1987–1988 period for COSIGUA the Department added incorrect U.S. commission amounts to FMV in two instances and apparently neglected to add U.S. commissions to several Canadian comparison sales. For sales in the 1985–1987 period, the Department should have made a circumstance-of-sale adjustment for commissions paid on U.S. sales.

Department's Position: We agree and have made the appropriate adjustments.

Comment 12: The Council claims that for COSIGUA the Department should have compared a U.S. sale made on May 16, 1988 with a third-country sale on July 29, 1988, instead of using a third-country sale on January 15, 1988, because the January 15, 1988 sale is not contemporaneous with the U.S. sale.

Department's Position: Rather than the January 15, 1988 sale, we used a February 26, 1988 sale for comparison purposes. (There was only one sale in that month. *See* Comment 7.) Since the February sale is within the 90-day period before the U.S. sale, it is contemporaneous with the U.S. sale, in accordance with our longstanding practice of choosing a home market sale not more than 90 days before or 60 days after the U.S. sale.

Comment 13: The Council contends that the Department's treatment of the ICM and FIN taxes is inconsistent with the treatment of these taxes in other antidumping cases. The Department should follow its established practice and deduct actual ICM and FIN taxes from the home market prices.

Department's Position: We disagree. The amount of these taxes forgiven by reason of the export of this merchandise to the United States must be added to USP in accordance with section 772(d) of the Tariff Act. We calculated the adjustment by multiplying the f.o.b. U.S. price by the tax rates and adding the result to USP. To avoid artificially inflating or deflating margins, we made circumstance-of-sale adjustments to equal the difference in the taxes per unit, where appropriate. (*See Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 54 FR 35517, August 28, 1989).

Comment 14: The Council argues that the Department should reduce Viana's claimed credit expenses to reflect the delay in remittance of the ICM and FIN taxes to the Brazilian government. This delay is equivalent to interest income earned on the deferred payment of taxes.

Department's Position: We disagree. We have addressed this issue in other administrative reviews. *See, e.g.*, our position on comment 5 in *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review* (54 FR 13917, April 6, 1989).

Comment 15: The Council claims that the Department's model-match methodology is unreasonable in an analysis involving an economy experiencing hyper-inflation. The Department compared "such" merchandise sold in the home market with merchandise sold to the United States in the same month; when no matches were found it went back 30, then 60, then 90 days. If no matches were found in the past, it went forward 30, then 60 days. If still no matches were found, the Department then looked for home market sales of similar merchandise in the same fashion.

Instead, the Department should first compare sales of such merchandise in the same month, then similar merchandise in the same month, then such merchandise back 30 days, then similar merchandise back 30 days, then such merchandise forward 30 days, then

similar merchandise forward 30 days. If no sales of similar merchandise are found, the Department should repeat the same procedure using 60 days, then 90 days.

Department's Position: Normally, we make comparisons using a home market sale of such merchandise in the same month as the U.S. sale. If we do not find a match in that month, we continue to look for sales of such merchandise up to 90 days before the U.S. sale, then up to 60 days after the U.S. sale. If we still find no match, we repeat the process using similar merchandise.

In this case, we followed this practice. However, we recognize that home market sales that are not contemporaneous with U.S. sales may distort dumping margins in a hyper-inflationary economy, such as Brazil's during the review period. *See Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order; Tubular Steel Disc Wheels from Brazil (53 FR 34568, September 7, 1988).*

Therefore, when the home market sale date used for comparison purposes occurred in a month other than the month of the U.S. sale and the official inflation rate exceeded 5 percent per month over a sustained period we adjusted the comparison home market price for inflation. We used published Obrigacoes do Tesouro Nacional (OTN) indices to adjust the home market prices to equivalent prices on the date of the U.S. sale. We then converted the home market sale price to dollars using the exchange rate in effect on the date of the U.S. sale.

Comment 16: The Council claims that the Department should consider certain sales from Viana to Aldebara to be part of Viana's U.S. sales because Aldebara later sold the merchandise to the United States.

Department's Position: We disagree. Southern Star, a U.S. importer of Brazilian castings, requested an administrative review of castings imports from Viana. Since no review of Aldebara was requested, we limited our review to Viana's direct U.S. sales, and we did not review Aldebara's U.S. sales.

Final Results of Review

Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results and have determined the margins to be:

Manufacturer/ Exporter	Time period	Margin (percent)
Industria Viana, Ltd	10/21/85-04/30/87	25.50
COSIGUA (USIPA)	10/21/85-04/30/87	
	05/01/87-04/30/88	15.30
		8.46

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisment instructions directly to the Customs Service. Individual differences between U.S. price and foreign market value may vary from the percentage stated above.

As provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the most recent of the above margins for these firms.

For any shipments from manufacturers and exporters not covered by this review the cash deposit will continue to be at the last rate applicable for those firms (51 FR 81977, May 9, 1986). For any entries of this merchandise from a new exporter not covered in this administrative review, whose first shipment occurred after April 30, 1988 and who is unrelated to the reviewed firms, a cash deposit of 25.50 percent shall be required. These cash deposit requirements are effective for all shipments of Brazilian iron construction castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: June 19, 1990.

Frank J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-14820 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from interested parties, the Department of Commerce is conducting an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers seven manufacturer/exporters of the subject merchandise to the United States for the period April 1, 1988 through March 31, 1989. We preliminarily determine the dumping margins to range from 0.0 to 8.40 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, the Department published a notice of initiation of administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (54 FR 22465). Pursuant to section 751 of the Tariff Act of 1930, as amended ("the Act"), we have preliminarily reviewed the following companies for the period April 1, 1988 through March 31, 1989: Kaga Kogyo K.K. (Kaga Industries Co., Ltd.) (Kaga), Sugiyama Chain Co., Ltd. (Sugiyama), I&OC of Japan Co., Ltd. (I&OC), Hitachi Metals Techno, Ltd. (Hitachi), Takasago RK Excel Co., Ltd. (Takasago), Pulton Chain Co., Inc. (Pulton), and Izumi Chain Manufacturing Co., Ltd. (Izumi).

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-heading.

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or

coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. The review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under HTS sub-headings 7315.11.00 through 7315.12.00. These HTS sub-headings are provided for convenience and customs purposes. The written description remains dispositive.

This review covers the seven manufacturers/exporters listed above, of roller chain, other than bicycle, from Japan to the United States for the period April 1, 1988 through March 31, 1989.

A. Koga Industries Co., Ltd.

United States Price

In calculating United States price the Department used purchase price as defined in section 772(b) of the Act. Purchase price was based on the packed, Yokohama port price to an unrelated trading company in Japan because Kaga knew at the time of the sale to the Japanese trading company that the ultimate destination of the merchandise was the United States. We made adjustments for foreign inland freight.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed, delivered prices to unrelated wholesalers and original equipment manufacturers in Japan. We made deductions, where appropriate, for inland freight.

We made circumstance of sale adjustments for differences in credit terms and technical service expenses, in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs.

For sales that could not be matched contemporaneously, we calculated a weighted-average foreign market value for each product based on all reported sales during the review period.

B. Sugiyama Chain Co., Ltd. and I&OC of Japan Co., Ltd.

United States Price

Sugiyama made sales during the review period to I&OC, an unrelated trading company in Japan, and through a related party in the United States that sold the merchandise to unrelated purchasers after importation into the United States.

As provided for in section 772(b) of the Act, we used purchase price between Sugiyama and I&OC to represent the United States price for all sales to I&OC because Sugiyama knew at the time of the sale to I&OC that the ultimate destination of the merchandise was the United States. Therefore, all I&OC sales of Sugiyama-produced subject merchandise are subject to Sugiyama's antidumping duty margin.

We calculated the purchase price based on packed, F.O.B., Tokyo port prices, and made a deduction for foreign inland freight.

As provided for in section 772(c) of the Act, we used the exporter's sales price (ESP) to represent the United States price for all sales made through Sugiyama's related U.S. subsidiary because these sales were made to unrelated purchasers after importation into the United States.

For ESP transactions, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. freight and U.S. brokerage. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit expenses and indirect selling expenses. Indirect selling expenses include U.S. and Japanese incurred selling expenses and inventory carrying costs. In accordance with section 772(e)(1) of the Act, we also deducted commissions.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We determined that sales to a related party were not at prices reflective of arm's length transactions, as claimed by Sugiyama. Therefore, we did not use these sales in making our comparisons.

For comparisons involving purchase price sales, we made deductions for inland freight. We made circumstance of sale adjustments for differences in credit expense and advertising pursuant to 19 CFR 353.56. We deducted home market packing costs from the foreign market value and added U.S. packing costs.

For comparisons involving ESP sales, we made deductions, where appropriate, for inland freight. We made circumstance of sale adjustments, where appropriate, for differences in credit terms and for advertising expenses pursuant to 19 CFR 353.56. We deducted home market indirect selling expenses, including inventory carrying costs, product liability expenses, salesmen's travel expenses, and other indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56. We deducted home market packing costs from the foreign market value and added U.S. packing costs.

For sales that could not be matched contemporaneously, we calculated a weighted-average foreign market value for each product based on all reported sales during the review period.

C. Hitachi Metals Techno, Ltd.

United States Price

As provided for in section 772(b) of the Act, we used purchase price to represent the United States price for certain sales by Hitachi because the merchandise was sold to unrelated parties prior to importation into the United States. For all other sales, where the merchandise was sold to unrelated purchasers after importation into the United States, we used ESP, as provided for in section 772(c) of the Act.

We calculated the purchase price and ESP based on packed, C.I.F., duty paid, delivered prices to unrelated purchasers in the United States. For purchase price and ESP transactions, we made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. freight and U.S. brokerage. We recalculated the above expenses, using data submitted by respondent as the best information available because respondent did not provide sufficient information to support its allocation methodology.

For ESP transactions, in accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit expenses and indirect selling expenses, including bad debt expenses, mailing expenses, indirect advertising expenses, and other indirect selling expenses. We recalculated indirect selling expenses,

including bad debt expenses and other indirect selling expenses as best information available because respondent did not provide sufficient information to support its allocation methodology. In accordance with section 772(e)(1) of the Act, we also deducted commissions.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed prices to related and unrelated customers in Japan. We used sales to related parties only when it was shown that the sales were at prices reflective of arm's length transactions.

We made circumstance of sale adjustments for differences in credit terms in accordance with 19 CFR 353.56. We used the interest rate claimed on home market credit for calculating credit on purchase price sales. We have disallowed a circumstance of sale adjustment for interest expense because it appears the respondent has double-counted this category.

For comparisons involving purchase price sales, we added U.S. commissions to the foreign market value and subtracted home market indirect selling expenses up to the amount of the U.S. commission.

For comparisons involving ESP sales, we deducted home market indirect selling expenses, including indirect advertising and salesmen's salaries and expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56.

In instances where there were no sales of identical or similar merchandise in the home market with which to compare merchandise sold in the United States, we used the best information available because respondent did not provide us with the information necessary to calculate a margin. For some sales there were no matches provided, either identical or similar, and for other sales, respondent provided similar matches but failed to provide difference in merchandise adjustment information.

As the best information available, the Department used the weighted-average margin calculated on the identical comparison sales.

D. Takasago RK Excel Co., Ltd.

Because of the magnitude of the omissions and deficiencies in Takasago's responses and because Takasago failed to respond to the Department's deficiency letter, the Department used the best information available in accordance with section 776(c) of the Act.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

E. Pulton Chain Co., Ltd.

The Department used the best information available in accordance with section 776(c) of the Act. The deficiencies in Pulton's responses, as outlined below, effectively preclude our ability to calculate a margin using Pulton's data.

Pulton failed to: (1) Submit computer diskettes that the Department's data processing equipment was able to utilize. The diskettes were incorrectly formatted so the Department was unable to access the individual data files; and (2) provide complete data necessary to properly match U.S. sales with home market merchandise in time for use in the preliminary determination.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

F. Izumi Chain Manufacturing Co., Ltd.

Because of the magnitude of the omissions and deficiencies in Izumi's responses, the Department used the best information available in accordance with section 776(c) of the Act. The deficiencies, as outlined below, effectively preclude our ability to calculate a margin using Izumi's data.

Izumi failed to: (1) Provide the Department with convincing evidence to support its claim that its home market sales to a related party were at prices reflective of arm's length transactions; (2) properly match its U.S. sales with the most similar home market merchandise in accordance with the Department's requirements; (3) provide information that would allow the Department to select the most similar home market product; and (4) provide the information necessary to calculate the differences in merchandise associated with any new matches.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

Currency Conversion

In accordance with 19 CFR 353.60 of the Department's regulations, we used the official exchange rate in effect on the appropriate dates for determining foreign market value. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margins to be:

Manufacturer/exporter	Margin percent
Kaga Kogyo, K.K.	0.00
Sugiyama Chain Co., Ltd	.62
Hitachi Metals Techno, Ltd.	8.40
I&OC Of Japan Co., Ltd.	.62
Takasago RK Excel Co., Ltd.	8.40
Pulton Chain Co., Inc.	8.40
Izumi Chain Co., Ltd	8.40

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of roller chain, other than bicycle from Japan entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of this Act; (1) The cash deposit rate for any shipments of this merchandise manufacturered or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the latest rate applicable for each of those firms (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1989 and who is unrelated to any reviewed firm, or previously reviewed firm, will be 8.40 percent.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 23, 1990, and rebuttal briefs no later than July 30, 1990. In accordance with 19 CFR 353.38(b), and we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Any hearing, if requested, will be held August 6, 1990, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 18, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-14817 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from interested parties, the Department of Commerce is conducting an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers six manufacturer/exporters of the subject merchandise to the United States for the period April 1, 1987 through March 31, 1988. We preliminarily determine the dumping margins to range from 1.36 to 17.04 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1988, the Department published a notice of initiation of administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (53 FR 18324). Pursuant to section 751 of the Tariff Act of 1930, as amended ("the Act"), we have preliminarily reviewed the following companies for the period April 1, 1987 through March 31, 1988: Sugiyama Chain Co., Ltd. (Sugiyama), I&OC of Japan Co., Ltd. (I&OC), Hitachi Metals Techno, Ltd. (Hitachi), Takasago RK Excel Co.; Ltd. (Takasago), Pulton Chain Co., Inc. (Pulton), and Izumi Chain Manufacturing Co., Ltd. (Izumi).

Scope of Review

The United States has developed a system of tariff classification based on the International harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS") as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS subheading.

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. There term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pink links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. The review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under HTS subheadings 7315.11.00 through 7315.12.00. These HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

This review covers the six manufacturer/exporters listed above, of roller chain, other than bicycle, from Japan to the United States for the period April 1, 1987 through March 31, 1988.

A Sugiyama Chain Co., Ltd. and I&OC of Japan Co., Ltd.

United States Price

Sugiyama made sales during the review period to I&OC, an unrelated trading company in Japan, and through a related party in the United States that sold the merchandise to unrelated purchasers after importation into the United States.

As provided for in section 772(b) of the Act, we used purchase price between Sugiyama and I&OC to represent the United States price for all sales by I&OC, because Sugiyama knew at the time of the sale to I&OC that the ultimate destination of the merchandise was the United States. Therefore, all I&OC sales of Sugiyama-produced subject merchandise are subject to Sugiyama's antidumping duty margin.

We calculated the purchase price based on packed, F.O.B., Tokyo port prices, and made a deduction for foreign inland freight.

As provided for in section 772(c) of the Act, we used the exporter's sales price (ESP) to represent the United States price for all sales made through Sugiyama's related U.S. subsidiary because these sales were made to unrelated purchasers after importation into the United States.

For ESP transactions, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. freight and U.S. brokerage. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit expenses and indirect selling expenses. Indirect selling expenses include U.S. and Japanese incurred selling expenses and inventory carrying costs. In accordance with section 772(e)(1) of the Act, we also deducted commissions.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed, delivered prices to unrelated customers in the home market. We determined that sales to a related party were not at prices reflective of arm's length transactions, as claimed by Sugiyama. Therefore, we did not use these sales in making our comparisons.

For comparisons involving purchase price sales, we made deductions for inland freight. We made circumstance of sale adjustments for differences in credit expense and advertising pursuant to 19 CFR 353.56. We deducted home market

packing costs from the foreign market value and added U.S. packing costs.

For comparisons involving ESP sales, we made deductions, where appropriate, for inland freight. We made circumstance of sale adjustments, where appropriate, for differences in credit terms and for advertising expenses pursuant to 19 CFR 353.56. We deducted home market indirect selling expenses, including inventory carrying costs, product liability expenses, salesmen's travel expenses, and other indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56. We deducted home market packing costs from the foreign market value and added U.S. packing costs.

For sales that could not be matched contemporaneously, we calculated a weighted-average foreign market value for each product based on all reported sales during the review period.

B. Hitachi Metals Techno, Ltd.

United States Price

As provided for in section 772(b) of the Act, we used purchase price to represent the United States price for certain sales by Hitachi because the merchandise was sold to unrelated parties prior to importation into the United States. For all other sales, where the merchandise was sold to unrelated purchasers after importation into the United States, we used ESP, as provided for in section 772(c) of the Act.

We calculated the purchase price and ESP based on packed, C.I.F., duty paid, delivered prices to unrelated purchasers in the United States. For purchase price and ESP transactions, we made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. freight and U.S. brokerage. We recalculated the above expenses, using data submitted by respondent as the best information available because respondent did not provide sufficient information to support its allocation methodology.

For ESP transactions, in accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit expenses and indirect selling expenses, including bad debt expenses, mailing expenses, indirect advertising expenses, and other indirect selling expenses. We recalculated indirect selling expenses, including bad debt expenses and other indirect selling expenses as best information available because respondent did not provide sufficient information to support its allocation methodology. In accordance with section 772(e)(1) of the Act, we also deducted commissions.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed prices to related and unrelated customers in Japan. We used sales to related parties only when it was shown that the sales were at prices reflective of arm's length transactions.

We made circumstance of sales adjustments for differences in credit terms in accordance with 19 CFR 353.56. We used the interest rate claimed on home market credit for calculating credit on purchase price sales. We have disallowed a circumstance of sale adjustment for interest expense because it appears the respondent has double-counted this category.

For comparisons involving purchase price sales, we added U.S. commissions to the foreign market value and subtracted home market indirect selling expenses up to the amount of the U.S. commission.

For comparisons involving ESP sales, we deducted home market indirect selling expenses, including indirect advertising and salesmen's salaries and expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56.

For sales that could not be matched contemporaneously, we calculated a weighted-average foreign market value for each product based on all reported sales during the review period.

In instances where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, we used the best information available because respondent did not provide us with the information necessary to calculate a margin. For some sales there were no matches provided, either identical or similar, and for other sales, respondent provided similar matches but failed to provide difference in merchandise adjustment information.

As the best information available, the Department used the weighted-average margin calculated on the identical comparison sales.

C. Takasago RK Excel Co., Ltd.

Because of the magnitude of the omissions and deficiencies in Takasago's responses, the Department used the best information available in accordance with section 776(c) of the Act. The deficiencies, as outlined below, effectively preclude our ability to calculate a margin using Takasago's data.

Takasago failed to: (1) Submit the required sales data in computerized format; (2) provide sales data in a format that would enable the Department to make price to price comparisons; and (3) provide the cost data necessary to calculate difference in merchandise adjustments.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

D. Pulton Chain Co., Ltd.

The Department used the best information available in accordance with section 776(c) of the Act. The deficiencies in Pulton's responses, as outlined below, effectively preclude our ability to calculate a margin using Pulton's data.

Pulton failed to: (1) Submit computer diskettes that the Department's data processing equipment was able to utilize because the diskettes were incorrectly formatted so the Department was unable to access the individual data files; and (2) provide complete data necessary to properly match U.S. sales with home market merchandise in time for use in the preliminary determination.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

E. Izumi Chain Manufacturing Co., Ltd.

Because of the magnitude of the omissions and deficiencies in Izumi's responses, the Department used the best information available in accordance with section 776(c) of the Act. The deficiencies, as outlined below, effectively preclude our ability to calculate a margin using Izumi's data.

Izumi failed to: (1) Provide the Department with convincing evidence to support its claim that its home market sales to a related party were at prices reflective of arm's length transactions; (2) properly match its U.S. sales with the most similar home market merchandise in accordance with the Department's requirements; (3) provide information that would allow the Department to select the most similar home market product; and (4) provide the information necessary to calculate the differences in merchandise associated with any new matches.

As the best information available, the Department used the highest rate calculated for a respondent in this administrative review.

Currency Conversion

In accordance with 19 CFR 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining foreign market value. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margins to be:

Manufacturer/Exporter	Margin percent
Sugiyama Chain Co., Ltd.	1.36
Hitachi Metals Techno, Ltd.	17.04
I&OC of Japan Co., Ltd.	1.36
Takasago RK Excel Co., Ltd.	17.04
Pulton Chain Co., Inc.	17.04
Izumi Chain Co., Ltd.	17.04

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of roller chain, other than bicycle from Japan entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the latest rate applicable for each of those firms (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1988 and who is unrelated to any reviewed firm, or previously reviewed firm, will be 17.04 percent.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 23, 1990, and rebuttal briefs no later than July 30, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Any hearing, if requested, will be held August 6, 1990, at 1:30 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 18, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-14816 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Correction of Notice of Prospective Grant to Exclusive Patent License

This is a correction to a notice appearing in the Tuesday, May 29, 1990, **Federal Register**, Vol. 55, No. 103, page 21768, related to the contemplated grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial No. 7-305,286, "Breath Sampler" to SKC, Inc., having a place of business at Eighty Four, PA. That notice, which provides an abstract describing the invention, omitted mention of a continuation-in-part, S.N. 7-463,574, also entitled "Breath Sampler," filed January 11, 1990. The patent rights in both these inventions have been assigned to the United States of America.

A copy of either of the instant patent applications may be purchased from the NTIS Sales Desk by telephoning 1-800-336-4700 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the comtemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-14800 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-04-M

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Modification No. 2 to Permit No. 691; Southwest Fisheries Science Center

On April 20, 1990, notice was published in the **Federal Register** (55 FR 14993) that an application for modification #2 had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, to expand the number of turtles taken, in addition to olive ridley (*Lepidochelys olivacea*), to include all other turtle species encountered in the Eastern Tropical Pacific. The additional types and number of species to be taken are: (1) 5 hawksbill (*Eretmochelys imbricata*), (2) 5 leatherback (*Dermochelys coriacea*), (3) 15 green/black (*Chelonia mydas/Chelonia mydas agassizi*), and (4) 15 loggerhead (*Caretta caretta*). The modified limit of the olive ridley is 80 individuals.

The additional species may be captured, measured, tagged, photographed, stomach and blood sampled and released. Stomach and blood samples removed from these additional species, and salvaged individuals may be taken and imported. The applicant proposes to modify the take by using satellite telemetry to track sea turtle movements. A maximum of five satellite tags will be used for the satellite tracking component of his project. The satellite tracking is an enhancement to the current tagging program.

Notice is hereby given that on June 13, 1990, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a modification for the above taking, subject to certain conditions set forth therein.

Issuance of this modification, as required by the Endangered Species Act of 1973, is based on the finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the modification; and (3) will be consistent with the

purposes and policies set forth in section 2 of the Act. This modification was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The original Permit and modifications #1 & #2 are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: June 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-14821 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of hearing.

SUMMARY: The Commission on Agricultural Workers will hold its first hearing on July 20–21 in Hillsboro, Oregon. The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304, is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor. The Commission is interested in hearing testimony on these issues with specific reference to Washington, Idaho and Oregon. The hearing will be open to the public.

DATES: 2 p.m. July 20, 1990 and 9 a.m. July 21, 1990.

ADDRESSES: Washington Public Services Building, 155 North First Avenue, Hillsboro, OR 97124.

FOR FURTHER INFORMATION CONTACT: Richard Peterson, Telephone: (202) 673–5348.

Dated: June 21, 1990.

Richard E. Peterson,

Acting Executive Director.

[FR Doc. 90-14818 Filed 6-26-90; 8:45 am]

BILLING CODE 6820-02-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 21, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 369–S and 645/646 are being increased for swing and carryforward. The limits for Categories 313 and 334/335 are being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the *CORRELATION:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989; and 54 FR 36368, published on September 1, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Commissioner:

This directive amends, but does not cancel, the directives issued to you on June 23, 1989 and August 28, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on June 21, 1990, you are directed to adjust the limits established in the directives of June 23, 1989 and August 28, 1989 for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjusted 12-mo limit [1]
313	7,669,852 square meters.
334/335	104,142 dozen.
369–S [2]	553,222 kilograms.
645/646	498,210 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception ot the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14875 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-DR-M

Extension of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

June 21, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715. For information on

categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to continue the restraints on Categories 336/636 and 342/642 for an additional twelve-month period, beginning June 28, 1990 and extending through June 27, 1991.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 41862, published on October 12, 1989.

Dated: June 22, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

June 21, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 28, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period beginning on June 28, 1990 and extending through June 27, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	48,501 dozen.
342/642	96,788 dozen.

Imports charged to these category limits for the period June 28, 1989 through June 27, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14876 Filed 6-26-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, Department of Defense.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202–274–7325.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board:

Mr. John van Santen, Assistant Director, Resources Defense Contract Audit Agency Chairperson.

Mr. William Sharkey, Assistant Director, Policy and Plans, Defense Contract Audit Agency member.

Mr. Roy Heidemann, Assistant Director, Operations Defense Contract Audit Agency member.

Regional Performance Review Board:

Mr. Joel Valenzuela, Regional Director, Central Defense Contract Audit Agency Chairperson.

Mr. William H. Kraft, Jr., Regional Director, Mid-Atlantic Defense Contract Audit Agency member.

Mr. Charles T. Cherry, Deputy Regional Director, Eastern Defense Contract Audit Agency member.

Dated: June 21, 1990.

Linda M. Bynum,

Alternate OSD, Federal Register Liaison Officer, Department of Defense

[FR Doc. 90-14834 Filed 6-26-90; 8:45 am]

BILLING CODE 3810-01-M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a reduction of a currently approved information collection pertaining to Integrity of Unit Prices.

ADDRESSES:

Send comments to Ms. Eyvete Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 501–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR 15.812–1(c) and the clause at FAR 52.215–28, Integrity of Unit Prices, require offerors and contractors under

Federal contracts to identify in their proposals those supplies which they will not manufacture or to which they will not
are required by section 501 of Pub L 98–577 (for the civilian agencies) and section 927 of Pub L 99–500 (for DoD and NASA). The proposed rule will eliminate reporting requirements on contracts with civilian agencies for commercial items.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,822; responses per respondent, 95; total annual responses, 743,090; hours per response, .084; and total response burden hours, 62,470. This represents a 2% change from the current burden approved by OMB under control number 9000–0080.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Plese cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: June 19, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–14872 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection system concerning Facilities Capital Cost of Money Computation.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Olson, Office of Federal Acquisition Policy, (202) 501–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR part 30 incorporates the Cost Accounting Standards (CAS) and the pertinent rules and regulations of the CAS Board with the administrative policies and procedures presently contained there. Public Law 97–379 (50 U.S.C. app. 2168) requires certain contractors and subcontractors to comply with Cost Accounting Standards and to disclose in writing and follow consistently those cost accounting practices. In addition, those contractors are required to compute Capital Cost of Money under Cost Accounting Standard 30.414. The information is used by contracting officers to ensure that the contractor does follow consistently the accounting practices that the contractor discloses and the contractor computes the Capital Cost of Money using the latest indirect rates published by the Secretary of the Treasury.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,540; respones per respondent, 2.97; total annual responses, 7,540; hours per response, 2.2; and total response burden hours, 16,600.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0093, Facilities Capital Cost of Money Computation.

Dated: July 20, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–14873 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection requirement concerning Computer Generation of Forms by the Public.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Mrs. Victoria Moss, Office of Federal Acquisition Policy, (202) 501–0168 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

This rule allows computer generation of forms prescribed by the FAR and by FAR supplements. The rule will ultimately affect several existing OMB clearances and will require reestimation of the burden associated with those clearances. It is anticipated that this rule will reduce the burden on the public associated with acquisition procedures. This rule affects all firms which do business or seek to do business with the government. Use of computer generated forms is optional. No penalties or incentives are associated with use of the forms.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1*; responses per respondent, *1*; total annual responses, *1*; hours per response, *1*; and total response burden hours, *1*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0104, Computer Generation of Forms by the Public.

Dated: June 20, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–14879 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1991 for the Strengthening Institutions Program and the Endowment Challenge Grant Program

Purpose: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

Deadline for Transmittal of Applications: August 27, 1990.

Applications Available: July 13, 1990.

Eligibility Information: Under section 312 of the Higher Education Act of 1965, as amended (HEA), an institution of higher education qualifies as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs if, among other requirements, it has a high enrollment of needy students, and its Educational and General (E&G) expenditures are low per full-time equivalent (FTE) undergraduate student, in comparison with the average E&G expenditures per FTE student of institutions that offer similar instruction. The complete eligibility requirements are found in 34 CFR 607.2 through 607.4 of the Strengthening Institutions Program regulations.

Enrollment of Needy Students: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—

(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under the second criterion, an applicant's Pell grant percentage must be *more than* the median for its category provided on the table in this notice.

E&G Expenditures Per FTE Students: An applicant should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of institution contained in the table in this notice. If the applicant's average E&G expenditure for 1988–89 is *less than* the average for its category, the applicant meets this eligibility requirement.

The applicant's E&G expenditures are the total amount expended by the institution during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE for the 1988–89 base year.

	Median Pell grant percentage	Average E&G per FTE student
2-year Public Institutions	25.11	5,090
2-year Non-Profit Private Institutions	21.62	6,472
4-year Public Institutions	26.20	9,120
4-year Non-Profit Private Institutions	26.76	11,478

Waiver Information: Applicants unable to meet the high needy student enrollment requirement and/or the low E&G expenditure requirement may apply to the Secretary for waiver of these requirements under various options described in 34 CFR 607.3(b) and 34 CFR 607.4(c) and (d) respectively.

For the purpose of 34 CFR 607.3(b)(2), under which an applicant must demonstrate that at least 30 percent of the students it served in base year 1988–89 were from low-income families, "low-income" is defined as an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census. The following table sets forth the low-income levels for various sizes of families.

For the purposes of this waiver provision, low-income families are identified according to the following:

Size of Family [1] *and Gross Annual Family Income Must be Less Than* [2]

1	$8,655
2	11,595
3	14,535
4	17,475
5	20,415
6	23,355
7	26,295
8	29,235

Source: U.S. Department of Health and Human Services as published in the Federal Register of February 12, 1988, Vol. 53, page 4213.

[1] For all families with more than 8 members, add $2,880 for each additional member.

[2] Add 15 percent for Hawaii and 25 percent for Alaska to the figures in Family income column.

In reference to the waiver option specified in section 607.3(b)(4) of the regulation, information about "metropolitan statistical areas" may be obtained by contacting: National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, or call (703) 487–4650. Title *Metropolitan Statistical Areas*, 1989 #PB89–192548.

Applicable Regulations:

Regulations applicable to the eligibility process include: a) the Strengthening Institutions Programs, 34 CFR Part 607; b) the Endowment Challenge Grant Program Regulations, 34 CFR Part 628; and c) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77 and 85.

For Applications or Information Contact: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB#3, Washington, DC 20202–5335, Telephone: (202) 708–8839.

Authority: 20 U.S.C. 1057 and 1058a.

Dated: June 21, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–14858 Filed 6–26–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent, Environmental Impact Statement, Plutonium Recovery Modification Project, Rocky Flats Plant, CO

AGENCY: Department of Energy.

ACTION: Extension of public scoping period.

SUMMARY: The Department of Energy (DOE) has extended the time period during which it will receive public comments on the scope of the Environmental Impact Statement (EIS) for the proposed Plutonium Recovery Modification Project (PRMP) at the Rocky Flats Plant (RFP) to July 13, 1990.

DATES: Written comments or suggestions may be sent to Ms. Beth Brainard at the address indicated below. Comments should be postmarked by July 13, 1990, to assure consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES AND FURTHER INFORMATION: Persons requesting additional information regarding the PRMP or wishing a copy of the Department's

Notice of Intent (NOI) to prepare the PRMP EIS should contact.

Ms. Beth Brainard, Office of Public Affairs, Attn: PRMP, U.S. Department of Energy, Rocky Flats Plant, P.O. Box 928, Golden, Colorado 80402-9028, 1-800-446-7840.

For general information on the DOE National Environmental Policy Act (NEPA) process, please contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy (EH-25), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION: On May 30, 1990, the DOE published a Notice of Intent in the **Federal Register** (55 FR 21919) regarding its intent to prepare an EIS for the proposed construction and operation of the PRMP at the Rocky Flats Plant near Golden, Colorado. The NOI announced the time and locations of three public meetings to discuss and receive public comments regarding the scope of the PRMP EIS. These meetings were held in Denver, Boulder, and Westminster, Colorado, on June 12, 18, and 20, 1990, respectively. The NOI indicated that written comments regarding the PRMP EIS should be postmarked by June 29, 1990. To ensure that all interested parties have adequate time to prepare written comments, the DOE has extended the scoping period to July 13, 1990. Comments should be postmarked by this date to assure consideration. Comments postmarked after July 13, will be considered to the extent practicable.

Issued at Washington, DC, this 22 day of June 1990.

Peter N. Brush

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-14921 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Financial Assistance Solicitation Available Notice (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Cancellation of notice of the availability of a financial assistance solicitation.

SUMMARY: The DOE, Morgantown Energy Technology Center hereby cancels the notice published in the May 9, 1990, issue of the **Federal Register** (55 FR 19296), to identify the availability of a Program Research and Development Announcement (PRDA) No. DE-RA21-90MC27211 for the solicitation of applications in support of research and development entitled "Process Development Unit-Scale Development of Coal Mild Gasification."

FOR FURTHER INFORMATION CONTACT:

D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505. Telephone: (304) 291-4241, PRDA No. DE-RA21-90MC27211.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-14924 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office, Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office (SAN).

ACTION: Notice of intent to award a grant on the basis of noncompetitive financial assistance.

SUMMARY: The Dept. of Energy, San Francisco Operations office intends to enter into a four year, cost shared grant with the Houston Community College System (HCCS), to assist their Summer and Transfer Achievement Readiness Program (STAR). The purpose of this prototype program is to encourage underrepresented minority students to pursue energy-related careers (*e.g.*, math, science, engineering, and environmental science) by enhancing the educational pipeline for minorities from high schools, community colleges to four year institutions. Features of the program include student and faculty academic and hands-on research and job experience summer programs, enhanced transfer opportunities via interinstitutional matriculation agreements between high schools, community colleges and four year institutions, academic counseling and other student support mechanisms, e.g. parent involvement with students. The DOE desires to enhance the public benefits to be derived by providing financial assistance and knows of no other entity which is conducting or is planning to conduct this activity. The project is expected to have a four (4) year life including four (4) separately funded one (1) year budget periods. Congress has appropriated $188,500 in FY90 funds for the first year of this effort. Additional funding will be provided for each respective budget period. Total estimated cost for the project is $999,000 which includes a $366,000 awardee share and $633,000 government share. The period of performance is expected to start June 1990, and expire four years thereafter.

Grant No. DE-FG03-90SF18827

FOR FURTHER INFORMATION CONTACT:

Olga R. Perez, Contracting Officer, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, CM Division, Oakland, CA 94612.

Issued in Oakland, CA, June 15, 1990.

Joann P. van Guillory,

Deputy Director, Contracts Management Division.

[FR Doc. 90-14922 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office, Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office.

ACTION: Notice of intent to award a grant on the basis of noncompetitive financial assistance.

SUMMARY: The Dept. of Energy intends to enter into a three year, cost shared grant with the National Hispanic University to provide a comprehensive bilingual science education program and to incorporate a school/home support system for students, teachers and parents of the target school. The NHU will train teachers and parents on the use of an academic support system for students, teachers, and parents utilizing bilingual science materials. The project is expected to have a three (3) year life including three (3) separately funded one (1) year budget periods. Congress has appropriated $78K in FY90 funds for the first year of this effort. DOE support for this work will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct this activity. Additional funding will be provided for each respective budget period. Total estimated cost for the project is $317K which includes a $40K awardee share and $277K government share. The period of performance is expected to start June 1990, and expire three years thereafter.

Grant Number: DE-FG03-90SF10150

FOR FURTHER INFORMATION CONTACT:

Olga Perez, Contracting Officer, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA June 15, 1990.

Joann P. van Guillory,

Deputy Director, Contracts Management Division.

[FR Doc. 90-14923 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-571-000, et al.]

Southwestern Electric Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Co.

[Docket No. ER89-571-000]

June 20, 1990.

Take notice that on May 31, 1990, Southwestern Electric Power Company (SWEPCO) tendered for filing amended transmission cost of service formula rate sheets to replace the transmission rate sheets currently on file as part of the Agreement for the Purchase and Sale of Electric Power and Energy between SWEPCO and the City of Hope, Arkansas.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket No. ER89-613-002]

June 21, 1990.

Take notice that on June 14, 1990, New England Power Company (NEP) tendered for filing an amendment to NEP's Rate Schedule FERC No. 329 designated as Supplement No. 6. NEP states that this amendment is filed pursuant to the Commission order issued in this proceeding on April 20, 1990, which approved an uncontested settlement filed by NEP on December 28, 1989.

Comment date: July 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Co.

[Docket No. ER90-456-000]

June 21, 1990.

Take notice that on Illinois Power Company (the Company) on June 15, 1990, tendered for filing proposed changes in the following rate schedules:

Rate Schedule FERC No. 113, applicable to the Soyland Power Cooperative, Inc.

The proposed changes would decrease revenues from jurisdictional sales and service by approximately $3,488,000 based on the twelve month period ending December 31, 1962.

The Power Coordination Agreement between the parties provided that the Parties would renegotiate the terms and payments for Soyland's right to the output from a portion of IP's fossil-fueled generation capacity for the period January 1, 1993 through December 31, 2004. The Parties recently concluded negotiations and have filed the FERC approval Amendment No. 3 to the Power Coordination Agreement effective April 1, 1990.

Copies of this filing were served upon Soyland Power Cooperatives, Inc. and the Illinois Commerce Commission, Springfield, Illinois.

Comment date: July 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

[Docket No. ER-89-612-001]

June 21, 1990.

Take notice that on June 4, 1990, New England Power Company tendered for filing its Refund Report in the above referenced docket.

Comment date: July 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Catalyst Old River Hydroelectric Limited Partnership

[Docket Nos. EL90-34-000 and EC90-14-000]

June 21, 1990.

Take notice that on June 15, 1990, Catalyst Old River Hydroelectric Limited Partnership tendered for filing an application with the Federal Energy Regulatory Commission (Commission) pursuant to rules 204 and 207 of the Commission's Rules of Practice and Procedure, seeking and order (i) disclaiming jurisdiction, under section 201 of the Federal Power Act, 16 U.S.C. 824(b) over the Owner Trustee and Owner Participants in the proposed sale and leaseback; (ii) approving, under section 203 of the Federal Power Act, 16 U.S.C. 824b, the proposed transfers of jurisdictional facilities; (iii) waiving the Commission's filing requirements to the extent necessary to entertain this application; (iv) confirming that the proposed leveraged lease will have no effect on the filed rate schedules and (v) declaring that no approval is necessary under section 204 of the Federal Power Act, 16 U.S.C. 824c, or in the alternative, granting that approval.

Comment date: July 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14940 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-153-000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP90-1532-000]

June 20, 1990.

Take notice that on June 12, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-1532-000, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act, for permission and approval to abandon a meter station and related service under its blanket certificate issued in Docket No. CP82-433, at the Uravan School in Montrose County, Colorado, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that it is requesting to abandon the meter station because the Uravan school no longer exists and the meter station has not been used for over five years.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-1559-000]

Tennessee Gas Pipeline Co.

[Docket No. CP90-1560-000]

Tennessee Gas Pipeline Co.

[Docket No. CP90-1561-000]

June 19, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-435-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on the file with the Commission and open to public inspection. [1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No. (date filed)	Shipper name (type)	Peak day; average day; annual Dth	Receipt [2] points	Delivery points	Contract date; rate schedule; service type	Related docket, start up date
CP90-1559-000, (6-15-90).	Centran Corporation (Marketer)	50,000; 37,500; 18,250,000 [3]	Various	Various	4-11-90; IT-1; Interruptible.	ST90-2931-000, 4-11-90.
CP90-1560-000, (16-15-90).	Superior Natural Gas Corporation [4] (Marketer).	50,000; 50,000; 18,250,000	LA	LA, TN, [5] MS, KY, TX, IN, OH, AR, PA, WV, NY.	4-24-90; IT; Interruptible.	ST90-3275-000, 5-10-90.
CP90-1561-000, (6-15-90).	Honda of America Manufacturing, Inc. (End-User).	2,000; 2,000; 730,000	OLA, LA	WV [6]	5-1-90; FT-A; Firm	ST90-3241-000, 5-1-90.

[1] Offshore Louisiana is shown as OLA.
[2] Northern's quantities are shown in MMBtu.
[3] Tennessee shows these as ultimate points of delivery.
[4] Superior is shipping for itself and as agent for Walter Oil & Gas Corporation.
[5] Tennessee states that the ultimate point of delivery is in Ohio.

3. Granite State Gas Transmission, Inc.

[Docket No. CP90-1558-000]

June 20, 1990.

Take notice that on June 15, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP90-1558-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to add a new delivery point under its blanket certificate issued in Docket No. CP82-515-000, for deliveries of natural gas to its affiliated distribution customer, Northern Utilities, Inc. (Northern), all as more fully set forth in the request on file with the Commission and open to public inspection.

Granite proposes to establish a new off-system delivery point for deliveries to Northern at Salem, New Hampshire at an interconnection with the facilities of Tennessee Gas Pipeline Company (Tennessee) to serve Northern's new franchise areas of Salem and Pelham, New Hampshire. The meter station and related facilities will be constructed by Granite State and Tennessee at an estimated cost of $647,200. Granite State indicated that it will reimburse Tennessee for these costs.

Granite State further state that the total volume which it is authorized to deliver to Northern will not exceed the volumes previously authorized and that deliveries made through the new delivery point will be made without detriment or disadvantage to Granite State's other customer requirements.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Colorado Interstate Gas Co.

[Docket No. CP90-1543-000]

June 20, 1990.

Take notice that on June 14, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-1543-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to abandon by sale to the City of Colorado Springs, Colorado (City) approximately 3 miles of 20-inch sales lateral pipeline located in El Paso County, Colorado, under CIG's blanket authorization issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that pursuant to a Purchase and Sale Agreement dated March 30, 1990, CIG has agreed to sell and the City has agreed to purchase the subject pipeline facilities. CIG states that the subject facilities were constructed and operated pursuant to the certificate authorization issued in Docket No. CP69-33. CIG notes that the proposed abandonment involves only the sale of facilities and that no service obligation to the City is either reduced or terminated as a result of the proposed abandonment.

CIG states that under the March 30, 1990, agreement, it will sell the facilities to the City for the City's use in delivering gas purchased from CIG for resale in El Paso County, Colorado. According to CIG, the facilities are located in Sections 4, 5, and 6, Township 15 South, Range 65 West, and Section 1, Township 15 South, Range 66 West, El Paso County, Colorado.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Washington Gas Light Co.

[Docket No. CP90-1497-000]

June 20, 1990.

Take notice that on May 30, 1990, Washington Gas Light Company (Washington), 1100 H Street NW., Washington, DC 20080, filed in Docket No. CP90-1497-000 a petition for waiver of the filing requirements of §§ 260.1, 260.2, and 260.7, Annual Report for Major Natural Gas Companies (Form No. 2), Annual Report for Non-Major Natural Gas Companies (Form No. 2-A) and Interstate Pipelines Annual Report of Gas Supply (Form No. 15), respectively, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Washington states that it is a natural gas distributor providing retail and transportation services to customers in the District of Columbia and neighboring portions of Virginia and Maryland and that such service is regulated by the State Corporation Commission of Virginia and the Public Service Commissions of Maryland and the District of Columbia.

Washington further states that it transports the natural gas it receives from its suppliers across the boundaries of two states and the District of Columbia. Washington states that it has been granted a section 7(f) service area determination by the Commission and that the Commission, in granting Washington a blanket certificate pursuant to § 284.224 of the Commission's Regulations, found Washington to be, for all practical purposes, a local distribution company for purposes of Section 311 of the Natural Gas Policy Act.

Washington asserts that for these reasons it is a local distribution company and requests waiver of the filing requirements for Form 2, Form 2-A and Form 15.

Comment date: July 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. High Island Offshore System

[Docket Nos. CP90-1552-000,[1] CP90-1553-000, CP90-1554-000, CP90-1555-000, and CP90-1556-000]

June 20, 1990.

Take notice that High Island Offshore System (Applicant) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.[2]

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-1552-000 (6-15-90).	High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243.	Hadson Gas Systems, Inc.	200,000, 200,000, 73,000,000	Off. TX, Off. LA	Off. LA, Off. TX	4-1-90, IT	RM88-14-001 and RM88-15-000, ST90-2705-000.
CP90-1553-000 (6-15-90).	High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243.	Coastal Gas Marketing Company.	1,225,000, 1,225,000, 447,125,000	Off. TX, Off. LA	Off. LA, Off. TX	4-1-90, IT	RM88-14-001 and RM88-15-000, ST90-2730-000.
CP90-1554-000 (6-15-90).	High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243.	Sun Operating Limited Partnership.	13,000, 13,000, 4,745,000	Off. TX	Off. LA	4-10-90, FT	RM88-14-001 and RM88-15-000, ST90-2734-000.
CP90-1555-000 (6-15-90).	High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243.	Excel Gas Marketing, Inc.	870,000, 870,000, 317,550,000	Off. TX, Off. LA	Off. LA, Off. TX	4-10-90, IT	RM88-14-001 and RM88-15-000, ST90-2708-000.
CP90-1556-000 (6-15-90).	High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243.	Superior Natural Gas Corporation.	80,000, 80,000, 29,200,000	Off. TX, Off. LA	Off. LA, Off. TX	4-10-90, FT	RM88-14-001 and RM88-15-000, ST90-2703-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The RM docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

[1] These prior notice requests are not consolidated.

[2] These prior notice requests are not consolidated.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate parties to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14647 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR90-105-001]

Columbia Gas Transmission Corp.; Compliance Filing

June 20, 1990.

On June 15, 1990, Columbia Gas Transmission Corporation (Columbia) submitted a filing in response to the Commission's May 31, 1990 suspension order issued in the captioned proceedings.

Columbia states that the filing complies with Ordering Paragraph D(4) of the suspension order which requires Columbia to file, within fifteen days from the issuance of the suspension order, the necessary schedules and workpapers that support the base period costs and adjustments associated with the Commonwealth Gas Pipeline Corporation merger costs in accordance with § 154.63 of the Commission's Regulations. Columbia requests additional time in which to comply with the provisions of Ordering Paragraphs D(6) and D(7) until October 1, 1990, or fifteen days after the Commission's order on rehearing of the suspension order, whichever is earlier. Columbia also requests that the paper copy of the filing be considered as the official filing and that it be granted a waiver of the subscription requirement under § 385.2005 of the Commission's Rules of Practice and Procedure for the accuracy of the magnetic tape.

Columbia also states that copies of the filing were served upon the parties to the proceeding, Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14648 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-107-002]

Columbia Gulf Transmission Co.; Compliance Filing

June 20, 1990.

Take notice that on June 25, 1990, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing copies of workpapers which show the allocation factors and how Columbia Gulf allocates its total system costs to each zone. Also, Columbia Gulf submitted the detail of each zone's cost of service, in compliance with Ordering Paragraph (D)(5) of the Commission's suspension order issued May 31, 1990.

Columbia Gulf also requested additional time to comply with the provisions of Ordering Paragraph (D)(7) until October 1, 1990, or fifteen days after the Commission's order on rehearing of the suspension order, whichever is earlier. Since the effectiveness of the rates and tariff sheets have been suspended until November 1, 1990, no useful purpose is gained by making the required filings any earlier than October 1, 1990, which is thirty days prior to the November 1, 1990 effective date of the proposed rates in this proceeding.

Columbia Gulf states that copies of this filing were served upon all Columbia Gulf's jurisdictional customers, interested state commissions and to each of the parties set forth on the Official Service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 90-14649 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-184-002, TA90-1-23-000, TP90-1-23-000, TM90-1-23-000, TQ90-1-23-000, TP90-3-23-000, TP90-3-23-000, TQ90-3-23-000, TP90-4-23-000, and TP90-5-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 20, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 15, 1990 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1989; February 1, 1990; March 1, 1990; May 1, 1990; and June 1, 1990, respectively.

ESNG states that such tariff sheets are being filed to revise ESNG's sales, storage, and transportation rates to reflect the cost allocation and rate design methodology approved for ESNG by the Commission in its Order Approving Settlement issued on May 3, 1990 in Docket No. RP89-1184-000, *et al.* Such order approved ESNG's Stipulation and Agreement (S & A) as filed on December 22, 1989 and amended on January 22, 1990 pursuant to rule 602 of the Commission's Rules of Practice and Procedures. In this regard, the instant filing is submitted in accordance with article VII of the S & A, whereby within thirty (30) days after the date upon which the order approving the settlement becomes final ESNG shall file revised tariff sheets refecting the settlement rates to be effective as of November 1, 1989, as adjusted to reflect any rate change made by ESNG subsequent to that date.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 90-14650 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-29-000]

Transcontinental Gas Pipe Line Corp.; In FERC Gas Tariff

June 21, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 18, 1990, certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of this filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule CSS and transportation services purchased from National Fuel under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS and (2) storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2. This tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS and section 28 of the General Terms and Conditions of Volume No. 1 of its FERC Gas Tariff.

Included in appendices B through K attached to the filing are explanations of each of the tracking rate changes, the proposed effective date of such changes and details regarding the computation of the revised LSS and S-2 rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS and S-2 rate changes proposed therein to subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14651 Filed 6-26-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No 90-18-NG]

Semco Energy Service, Inc.; Order Granting Authorization To Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Semco Energy Services, Inc. (Semco), authorization to import natural gas from Canada. The order issued in FE Docket No. 90-18-NG authorizes Semco to import up to 800 Bcf of domestic gas over a two-year term beginning on July 1, 1990 and ending June 30, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC., June 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14652 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-19-NG]

TXG Gas Marketing Co.; Order Granting Authorization To Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting a blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting TXG Gas Marketing Company (TXG) blanket authorization to import natural gas from and export natural gas to Canada and Mexico, up to an aggregate volume of 73 Bcf over a term of two years, commencing on the date of first import or export.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-14620 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $5,377,578 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Thomas P. Reidy, Inc. (Case No. KEF-0137). The fund will be available to customers who purchased refined petroleum products from Reidy during the period June 13, 1973 through January 27, 1981.

DATES AND ADDRESSES: Applications for Refund of a portion of the consent order fund must be filed in duplicate no later than May 31, 1991 and should be addressed to: Reidy Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0137.

FOR FURTHER INFORMATION CONTACT:

Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205-282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the DOE and Thomas P. Reidy, Inc. The consent order settled possible violations of the Federal petroleum price and allocation regulations with respect to the firm's operations during the period January 1, 1973 through January 27, 1981. On February 28, 1990, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 55 FR 8185 (March 7, 1990).

As the Decision and Order indicates, Applications for Refund may now be filed. Applications will be accepted provided that they are filed no later than May 31, 1991. Applications will be accepted from customers who purchased refined petroleum products during the period June 13, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: June 20, 1990

George B. Breznay,

Director, Office of Hearings and Appeals

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY.

IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

Name of Case: Thomas P. Reidy, Inc.

Date of Filing: June 27, 1989.

Case Number: KEF-0137.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, subpart V; *see also Office of Enforcement,* 9 DOE ¶ 82,553 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). On June 27, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Thomas P. Reidy, Inc. (Reidy) under the terms of a consent order between the DOE and Reidy. In its Petition, the ERA requests that the OHA establish procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Reidy consent order.

I. Background

Reidy was a bulk reseller and independent wholesaler marketer of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR parts 210, 211, and 212, and predecessor regulations in 6 CFR part 150. During the price control period, the ERA conducted an extensive audit of Reidy's operations and alleged in several administrative proceedings, that Reidy had violated certain applicable DOE price and allocation regulations in its sale of refined petroleum products. On April 1, 1988, the OHA issued a Remedial Order which found that Reidy had violated the DOE price regulations pertaining to reseller-retailers. *Thomas P. Reidy, Inc.,* 17 DOE ¶ 83,009 (1988) (*Reidy*). Subsequently, settlement discussions were held and on January 13, 1989, the ERA and Reidy entered into a consent order (No. 720H08015Z) that resolved all regulatory issues pertaining to Reidy's refined product operations during the period from January 1, 1973 through January 27, 1981 (the consent order period). This consent order was adopted as final on March 14, 1989. *See* FR 10575 (March 14, 1989).

Pursuant to the consent order, Reidy remitted $5,200,000 to the DOE for distribution through subpart V. The firm was also required to assign to the consent order fund a refund of $177,587 which had been approved for Reidy by this Office in another proceeding but was held in escrow pending resolution of the Reidy enforcement proceeding.[1] The consent order fund is being held in an interest-bearing escrow account maintained at the Department of Treasury pending a determination regarding its proper distribution.

On February 28, 1990, we issued a Proposed Decision and Order (PDO) setting forth a tentative plan for the distribution of the Reidy consent order fund. A copy of the PDO was published in the Federal Register on March 7, 1990 and comments were solicited. See 55 FR 8185 (March 7, 1990). No comments were received.

[1] Reidy was required by the terms of the consent order to assign the refund granted to it in *Gulf Oil Corp./Thomas P. Reidy, Inc.,* 15 DOE ¶ 85,184 (1986). *See Gulf Oil Corp./ Thomas P. Reidy, Inc.,* 15 DOE ¶ 85,059 (1988).

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Reidy consent order fund and have determined that such a proceeding is appropriate. In this Decision and Order, we will adopt final refund procedures and will set forth the items that must be included in a refund application.

III. Final Refund Procedures

Since we have received no adverse comments regarding the proposed refund procedures, we have determined that those procedures are the most equitable and efficacious means of distributing the Reidy consent order funds. However, as discussed below, we have decided to slightly modify these procedures by increasing the small claims presumption threshold and by making a concomitant change in the medium range presumption of injury. Along with these modifications, we are adopting the proposed refund procedures outlined in the PDO.

As we indicated in the PDO, the Reidy consent order resolved alleged regulatory violations involving Reidy's sale of various petroleum products. We will implement a two-stage refund refund process by which firms and individuals who purchased petroleum products from Reidy during the consent order period may submit Applications for Refunds in the initial stage. From our experience with subpart V proceedings, we expect that potential applicants will fall into three categories of Reidy purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities, and cooperatives; and (iii) retailers, resellers and refiners that resold Reidy products (hereinafter collectively referred to as "resellers").

Each claimant will be required to submit a schedule of its monthly purchases of Reidy refined petroleum products during the consent order period. If a product was not purchased directly from Reidy, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Reidy.

However, we are excluding from refund consideration certain sales of refined petroleum products made by Reidy during the consent order period. In *Reidy,* the OHA found that Reidy had made voluntary refunds to Torco Oil Company (Torco) for overcharges in its January 1974 sale to Torco of No. 6 low sulphur residual fuel oil and in its December 1973 sale to Torco of No. 6 high sulphur residual fuel oil. *Reidy,* 17 DOE at 88,107. Reidy also made a voluntary refund to four subsidiaries of Tenneco, Inc. (Tenneco) for overcharges in Reidy's sale to them of No. 2 fuel oil in November 1973.[2] *Id.* Since restitution has already been made for these transactions, Torco and Tenneco will not be eligible for a refund from the consent order found for these purchases.

A reseller claimant, except one that chooses to utilize the injury presumptions adopted below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, this type of claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[3] These banks must be presented for each product on a monthly basis from November 1973 or the first month in which the firm purchased from Reidy, whichever is later, through the date on which the product was decontrolled.[4] Second, because a showing of banked costs alone is not sufficient to establish injury, the claimant must also provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./Hutchens Oil Co.,* 11 DOE ¶ 86,070 at 88,105 (1983). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Reidy. *See National Helium Corp./ Atlantic Richfield Co.,* 11 DOE ¶ 86,237 (1984), *aff'd sub nom. Atlantic Richfield Co.* v. *DOE,* 618 F. Supp. 1199 (D. Del. 1985).

1. Presumptions for Refund Claims

The PDO outlined various presumptions which would allow claimants to participate in the refund process without incurring inordinate expense, and would insure that refund claims are evaluated in the most efficient manner possible. We have decided to adopt the presumptions we proposed with the exception of the small claim presumption threshold and the medium range presumption refund amount.

First, we will adopt the volumetric presumption detailed in the PDO. This presumption states that the alleged overcharges were dispersed equally in all of Reid's sales of petroleum products during the consent order period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. Under this approach, a claimant's allocable share of the consent order fund is equal to the number of gallons of products purchased times the per gallon refund amount.[5] The PDO

[2] Those subsidiaries are: Walker Manufacturing Company, Packaging Corporation of America, J.I. Case Company, and Tenneco Chemicals Company.

[3] Claimants who previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.,* 18 DOE ¶ 85,098, at 88,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. *See Standard Oil (Indiana)/Surburban Propane Gas Corp.,* 13 DOE ¶ 85,050 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to allow approximations of those banks prepared by the applicant. *See e.g. Gulf Oil Corp./Sturdy Oil Co.,* 16 DOE ¶ 85,187 (1988).

[4] The calculation of cost banks was available to retailers and most resellers until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank data subsequent to those dates. However, for each month from those dates through January 1981, retailers and resellers will have to show that their gross margin was less than the applicable fixed margin specified in 10 C.F.R. 212.83.

[5] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, any purchaser may file a refund application based upon a claim that a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service,* 12 DOE ¶ 85,048 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (i) it was "overcharged" by a specific amount, (ii) it sustained a disproportionate share of Reidy's alleged overcharges, and (iii) that it was injured by those overcharges. *See MCO Holdings, Inc., MGPC, Inc./ Little America Refining Co.,* 19 DOE ¶ 85,099 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.,* 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.,* 18 DOE ¶ 85,187 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refund amount, we will prorate the alleged overcharge amounts by the ratio of the Reidy settlement amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./Whitco, Inc.,* 18 DOE ¶ 85,218 (1988) (*Amtel/Whitco*).

established the volumetric factor at $0.002706, and we will adopt this figure.[6] As in prior refund proceedings, we will establish a minimum refund amount of $15.00.[7]

a. End-users

We will also adopt the presumption that an end-user or ultimate consumer of Reidy products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. These applicants will only need to document their purchase volumes from Reidy during the consent order period in order to make the requisite showing that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives

We have determined that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *e.g.*, a public utility, or by the terms of the cooperative agreement, needs only to submit documentation of petroleum product purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or cooperative whose allocable share is greater than $10,000 will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund.[8]

c. Refiners, Resellers and Retailers Seeking Refunds of $10,000 or Less

In the PDO we proposed using a small claims presumption for resellers whose allocable share is $5,000 or less. This was consistent with the $5,000 small claims threshold used in many prior proceedings. Since the issuance of the PDO, we have implemented the Texaco special refund proceeding. *See Texaco Inc.*, 20 DOE ¶ 85,147 (1990) (*Texaco*). In *Texaco*, we found that because the volumetric refund amount was large ($0.0011 per gallon), many applicants who purchased relatively small volumes would be unable to receive full volumetric refunds under the small claims presumption. *Id.* at 88,302 n.5. Consequently, we raised the small claims threshold in that proceeding from $5,000 to $10,000. The same considerations that were present in *Texaco* apply to this proceeding given the large volumetric amount involved (approximately $0.0027 per gallon). Thus, we are raising the small claims threshold in this proceeding to $10,000. We will adopt a small claims presumption whereby a reseller whose allocable share is $10,000 or less, i.e., who did not purchase more than 3,695,492 gallons of eligible products from Reidy during the consent order period, will not be required to submit evidence of injury. Instead, these claimants must only document their relevant purchases from Reidy.

d. Medium-Range Refiner, Reseller, and Retailer Claimants

In the PDO we proposed that in lieu of making a detailed showing of injury a reseller claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. Since we have modified the small claims presumption refund amount to $10,000, we will modify the medium-range presumption of injury to reflect the higher small claims presumption threshold. Consequently, under the medium-range presumption, in lieu of making a detailed showing of injury a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[9] An applicant who elects the medium range presumption will only be required to provide documentation of its purchase volumes of Reidy refined petroleum products during the consent order period in order to receive a refund.[10]

e. Spot Purchasers

We have adopted a rebuttable presumption that a reseller that made only irregular or sporadic, i.e., spot, purchases from Reidy did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See, e.g., Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Reidy.[11]

2. Allocation Claims

We will also adopt the procedures, outlined in the PDO, for resolving claims based upon Reidy's alleged failure to furnish petroluem products that it was obliged to supply unde the DOE allocation regulations at 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,606 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), *Action for review pending*, No. CA3–89–2983G (N.D. Tex. filed Nov. 22, 1989) (*Marathon-PFI*). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violations. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Reidy may have had to the alleged allocation violation. *See Marathon/RFI.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Reidy. In deterimining the amount of the allocation refund, we will utilize any information that may be available regarding the portion of the Reidy consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Reidy consent order represents a negotiated compromise of the issues involved in the enforcement proceedings against Reidy and the consent order amount is less than Reidy's potential liability in those proceedings, we will pro rate those allocation refunds that would otherwise be dispropritionately large in relation to the consent order fund. *Cf. Amtel/Whitco.*

3. Distribution of Product Funds Remaining after First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, title III, reprinted in Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. These responsibilities have been delegated to the OHA, and any funds in the Reidy escrow account that the OHA determines will not be needed to effect direct restitution to injured Reidy customers will be distributed in accordance with the provisions of PODRA.

IV. Refund Application Requirements

We have adopted the procedures described above for the distribution of the Reidy consent order fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased refined petroleum products from Reidy during the consent order period. There is no official application form that must be used. Applications for Refund should be written or typed on business letterhead or personal stationery. All Applications for Refund should contain the following information:

(1) A conspicuous reference to "Reidy Refund Proceeding—Case No. KEF–0137" and the name and address of the applicant during the period for which the claim is filed, as well as the name of the person to whom the refund check is to made out and the address to which the check should be sent. The application should also contain the current name, mailing address and telephone number of the applicant, if it is different from the above.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the application.

(3) The use(s) of the Reidy product(s) by the applicant, e.g., whether the applicant was a refiner, petroleum jobber, gas station, consumer, public utility, or cooperative.

(4) A monthly schedule of the applicant's purchases of each refined petroleum product that it purchased from Reidy from June 13, 1973 through the date of decontrol of that product (see footnote 6). The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by Reidy.

(6) If the applicant is a refiner, reseller, or retailer whose volumetric share exceeds $10,000, it must indicate whether it elects to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000. If it does not elect to use the presumption, it must submit a detailed showing that it was injured by the alleged overcharges. *See supra* Part III.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other refund application in the Reidy proceeding. If duplicate applications are filed for the same purchases, both may be denied. *See Texaco Inc.-Riggs Texaco Service*, 20 DOE ¶ 85,269 (1990).

(8) If the applicant is or was entirely or partly owned by Reidy, it should explain the nature of the affiliation. Affiliates or subsidiaries of Reidy are presumptively held not to be injured since their receipt of a refund would allow the consent order firm to benefit from this proceeding. *See e.g., Marathon Petroleum Co./EMRO Propane Co.*, 18 DOE ¶ 85,288 at 88,528 (1987). This presumption applies both to firms affiliated with Reidy during the consent order peirod but no longer affiliated with the firm and firms that become affiliated with Reidy after the consent order period.

(9) A statement indicating whether the applicant owned the business that purchased the products from Reidy during the entire portion of the period for which it requests a refund. If not, it should indicate the name and address of the firm that made those purchases, the date of the purchase/sale of the business and an explanation of why the applicant believes it is entitled to a refund. [12]

(10) A statement of whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act of 1970. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If these actions are still in progress, the applicant should briefly describe the actions and their current status. The applicant must inform the OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

(11) The Application should also contain the following statement signed on or after the date of this Decision and Order by the individual applicant or a responsible official of the business or organization applying for the refund:

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[6] We derived this figure by dividing the fund ($8,377,576) by 1,987,805,140, the approximate number of gallons of refined products subject to price controls sold by Reidy less the 8,982,512 gallons for which Reidy made voluntary refunds during the consent order period. Although the Reidy consent order period begins January 1, 1973, refund applications may only be based used upon purchases of refined products between June 13, 1973 and the day preceding the relevant decontrol date for each product as summerized below:

Residual Fuel—June 1, 1975

No. 1 and No. 2 Heating Oil, Diesel Fuel and Kerosene—July 1, 1976

Butane and Natural Gasoline—January 1, 1980

Motor Gasoline and Propane—January 28, 1981

[7] In accordance with this requirement, applicants claiming volumetric refunds must have purchased at least 5,543 gallons of refined products from Reidy during the consent order period to be eligible for a refund.

[8] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Total Petroleum/Farmers Petroleum Cooperative*, 19 DOE ¶ 85,215 (1989).

[9] That is, claimants who purchased between 3,695,492 gallons and 49,193,844 gallons of Reidy refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. claimants who purchased more than 49,193,844 gallons may elect to limit their claim to $50,000.

[10] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges or is eligible for a refund of less than the applicable presumption-level refund may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Reidy. *See Exxon*, 17 DOE at 88,180 n.10.

[11] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) They made spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. *See, e.g., Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,495 (1986); *Savage Gas Co./BGL Supply, Inc.*, 19 DOE ¶ 85,522 at 88,141 n.2 (1988).

[12] The OHA has previously held that the party that actually purchased the products from the consent order firm was in all likelihood the party injured by an alleged overcharge and thus the proper recipient of a Subpart V refund, unless the purchaser was a corporation whose stock was sold or the right to a refund was otherwise explicitly transferred. *See, e.g., Gulf Oil Corp./Strahm Propane, Inc.*, 16 DOE ¶ 85,214 (1987); *Eastern of New Jersey/Rahala Chemical Co.*, 16 DOE ¶ 85,888 (1987).

I swear [or affirm] that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a copy of this entire application which will be placed in the OHA Public Reference Room.

All Applications for Refund should be sent to:

Reidy Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All Applications for Refund should be filed in duplicate (the original and one complete copy) and should be postmarked no late than May 31, 1991. [10]

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Thomas P. Reidy, Inc. pursuant to the consent order (No. 720H06015Z) executed on January 13, 1989 may now be filed.

(2) All Applications must be filed no later than May 31, 1991.

Dated: June 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-14827 Filed 6-26-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3790-4]

Public Water Supervision Program: Program Revision for the State of Massachusetts

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts is revising it's approved State Public Water Supply Supervision Primacy Program. Massachusetts has adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 18, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 27, 1990, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 27, 1990, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become effective July 27, 1990.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Massachusetts Department of Environmental Protection, Division of Water Supply, One Winter Street, Boston, MA 02108.
and
Regional Administrator, Environmental Protection Agency—Region I, Water Supply Section or Water Supply Branch, J.F. Kennedy Federal Building, Boston, MA 02203-2211.

FOR FURTHER INFORMATION CONTACT: J. Kevin Reilly, U.S. EPA—Region I, Water Supply Section WSS-2113, J.F. Kennedy Federal Building, Boston, MA 02203-2211, Telephone: (617) 565-3619, (FTS) 835-3619.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Julie Belaga,

Regional Administrator.

[FR Doc. 90-14286 Filed 6-26-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3791-8]

Public Water System Supervision Program: Program Revision for the State of Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Minnesota is revising its approved State Public Water System Supervision Primacy Program. Minnesota has adopted: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690), and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted within 30 days of the date of this Notice to the Regional Administrator, at the address shown below. If requests which indicate sufficient interest and/or significance are received by the end of this Notice period, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective 30 days from this Notice date.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Water Supply and Well Management section Minnesota Department of Health, 925 SE. Delaware Street, P.O. Box 59040, Minneapolis, Minnesota 55459-0040.
State Docket Officer: Mr. Richard Clark., Phone: (612) 627-5160, and;
Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604-1586.

FOR FURTHER INFORMATION CONTACT: William D. Spaulding, Region V, Drinking Water Section at the Chicago address given above, telephone 312/886-0262, (FTS) 886-0262.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 19, 1990.

Valdas V. Adamkus,

Regional Administrator, EPA, Region V.

[FR Doc. 90-14900 Filed 6-26-90; 8:45 am]

BILLING CODE 6560-50-M

[10] Any applicant who believes that this Application for Refund contains confidential information must indicate so on the first page of the Application and submit two additional copies of the Application with the confidential information deleted, together with a statement indicating why the information is alleged to be confidential. An applicant may request that confidential information be withheld from disclosure, but the OHA retains the right to make its own determination with regard to any claim of confidentiality. *See* 10 C.F.R. 205.9(f)(2). In view of the length of time that has elapsed since the end of the Reidy consent order period, it will be difficult for an applicant to establish that the information that it submits is exempt from public disclosure under Exemption 4 of the Freedom of Information Act. *See Vinson & Elkins*, 9 DOE ¶ 80,130 (1982).

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder Licenses; Applicants; Eden Air Freight, Inc., et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Eden Air Freight, Inc., 1821 McGaw Ave., Irvine, CA 92714. *Officers:* Lawrence L. Rodberg, President/CEO/Director. Larry P. Rodberg, Vice Pres./Dir. of Operations & Administration. David F. Kratochvil, Vice President of Sales.
Fast Cargo U.S. Inc., 166-01 Rockaway Blvd., Jamaica, NY 11434. *Officers:* Jannette Taylor, President. Lawrence M. Marvin, Vice President. Steven Farella, Vice President.
Columbia Shipping Inc. (West), 570 North Oak Street, Inglewood, CA 90302. *Officers:* Ronald F. McDonald, President. Lawrence Bauer, Secretary/Stockholder. Guy Nishida, Vice President. Phillip Harrison, Vice President.
International Trade and Logistic Management Services, Inc. dba I.T.A.L.M.S., 301 Moon Clinton Road, Coraopolis, PA 15108. *Officers:* Alessandra Busatta in Gruelle, President. Durard Timothy Gruelle, Secretary/Treasurer.
Coastal Forwarding, 701 Parkway 575, Woodstock, GA 30188. *Officer:* Rita R. Fredy, Sole Proprietor.
TCX International Inc., 3000 NW. 74th Ave., Miami, FL 33122. *Officers:* Julio Arias, President/Director. Jay B. Miranda, V. President/Director/Secretary, Assoc. Maritime Consultants, S.A., Stockholder.

By the Federal Maritime Commission.

Dated: June 21, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-14823 Filed 6-26-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System; Agency Forms Under Review

June 21, 1990.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before July 13, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. *Report title:* Agreement of Domestic and Foreign Nonmember Banks.
Agency form number: FR T-1, T-2.
OMB Docket number: 7100-0191.
Frequency: On occasion.
Reporters: Domestic and foreign nonmember banks.
Annual reporting hours: 4.
Estimated average hours per response: 0.5.
Number of respondents: 8.
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. 78h,w] and is not given confidential treatment.

On a one-time basis, domestic and foreign nonmember banks that wish to extend credit to broker-dealers using exchange-traded securities as collateral must file this report, thereby agreeing to comply with all statutes and regulations applicable to member banks concerning such extensions of credit.

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. *Report title:* Uniform Application for Municipal Securities. Principal of Municipal Securities Representative.

Associated with a Bank Municipal Securities Dealer.

Agency form number: FR MSD–4.
OMB Docket number: 7100-0100.
Frequency: On occasion.
Reporters: State member banks who engage in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives.
Annual reporting hours: 369.
Estimated average hours per response: 1.
Number of respondents: 360.
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. 78c(a)(34)(A), 78o–4, 78o–4(b)(2)(A), 78o–4(c)(5), 78q, and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with an MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions involve the addition of certain phrases to the form and of a sentence to the instructions.

2. *Report title:* Uniform Termination Notice for Municipal. Securities Principal or Municipal Securities. Representative Associated with a Bank Municipal. Securities Dealer.
Agency form number: FR MSD–5.
OMB Docket number: 7100-0101.
Frequency: On occasion.
Reporters: State member banks who engage in activities as a municipal securities dealer.
Annual reporting hours: 94.
Estimated average hours per response: 0.25.
Number of respondents: 377.
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. 78c(a)(34)(A), 78o–4, 78o–4(b)(2)(A), 78o–4(c)(5), 78q, and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on an interagency computer system of records. The proposed revisions involve the addition of certain phrases to the form and of a sentence and a Privacy Act notice to the instructions.

Board of Governors of the Federal Reserve System, June 21, 1990.
William W. Wiles,
Secretary of the Board.
[FR Doc. 90–14685 Filed 6–26–90; 8:45 am]
BILLING CODE 6210–01–M

George Gale Foster Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 19, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *George Gale Foster Corporation,* Poughkeepsie, New York; to become a bank holding company by acquiring 51 percent of the voting shares of Fishkill National Corporation, Beacon, New York, and thereby indirectly acquire Fishkill National Bank, Beacon, New York.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Havana Bancshares, Inc., Springfield, Illinois, and thereby indirectly acquire State Bank of Havana, Havana, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sand Springs Bancshares, Inc.,* Tulsa, Oklahoma; to become a bank holding company by acquiring Bank of Oklahoma Sand Springs, Sand Springs, Oklahoma, which will be renamed Sand Springs Bank.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Chico Bancorp, Inc.,* Chico, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, of Chico, Chico, Texas.

Board of Governors of the Federal Reserve System, June 21, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–14684 Filed 6–26–90; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control

[Program Announcement Number 033]

Availability of Fiscal Year 1990 Funds for Chronic Disease Prevention and Control Program in Hispanic Communities

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1990 for a cooperative agreement for chronic disease prevention and control programs, activities, and strategies in Hispanic communities.

Authority

This program is authorized by section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants for this program are national, nonprofit agencies and organizations serving Hispanic communities, that have broad experience and expertise in activities to plan, develop, and disseminate chronic disease prevention and control programs. Applicants must demonstrate experience in either providing health care services or health education services to Hispanics. Limited competition is justified because of: (1) The highly technical and specific nature of the tasks to be implemented, and (2) the need for broad implementation of the findings which are national in scope. Applicants must show that their organization is truly national; i.e., that it has a national membership and addresses problems and issues related to the specific field of chronic disease prevention and health promotion among a national audience.

Availability of Funds

Approximately $100,000 is available in Fiscal Year 1990 to fund one award. It is expected that the award will be made on or about September 1, 1990, for a 12-month budget within a 1- to 2-year project period. Funding estimates may vary and are subject to change. A continuation award within the approved project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this program is to provide assistance to health care professionals and other experts in the provision of health care to Hispanics to: (1) Documents gaps and needs in data that describe the health status of Hispanic populations; (2) document the effectiveness and efficacy of existing chronic disease prevention and control programs in Hispanic populations; and (3) produce and disseminate a document that synthesizes the key elements of successful and replicable strategies and activities for Hispanic populations. Because the health states and needs of Hispanic sub-population groups (Mexican-Americans, Puerto Ricans, Cuban-American and other Latinos) may vary significantly, it is critically important that this program identify and present methods that will produce sub-population groups specific information and recommendations.

Cooperative Activities

Recipient Activities

Applicants' specific methods for accomplishing these activities may vary, however, these activities must be included by each applicant:

a. Convene a meeting(s) of health care professionals and other experts providing health care to Hispanics to evaluate the quality of existing data for Hispanic populations and to identify and document specific data gaps for each of the Hispanic sub-population groups.

b. Convene a meeting(s) of health care professionals and other experts providing health care to Hispanics to catalog and assesses currently existing chronic disease prevention and control programs and activities.

c. Develop and disseminate a document which describes the salient features of chronic disease prevention and control programs for Hispanic populations that are effective. Appropriateness for replication in other sites is critical element.

Center for Disease Control Activities

In addition to financial assistance provided, CDC will collaborate with the recipient by:

a. Participating in the development and implementation of the meetings convened by the recipient and provide assistance to assure that the health status and needs for each of the major Hispanic sub-population groups are addressed.

b. Providing guidance and consultation in the collection and analysis of data. CDC will have substantive involvement in the interpretation and report writing stages.

c. Providing guidance and consultation in the evaluation of existing chronic disease prevention and control programs and activities. CDC will search existing in-house databases and will involve its national network in the search for data sources specific to Hispanic populations.

d. Providing guidance and consultation in establishing criteria for the identification of effective programs.

Evaluation Criteria

Applications will be reviewed, ranked with other applications, and evaluated based on the following criteria:

1. Evidence that the applicant's understanding of the problem and purpose of the cooperative agreement is consistent with the stated programmatic interests of CDC. This description must include evidence of the applicant's understanding of the cultural and health differences among the Hispanic sub-population groups. (30 points)

2. Evidence that the objectives are consistent, time-phased and reassurable with the stated purpose of the cooperative agreement. (20 points)

3. Evidence of experience and expertise in the delivery of similar programs and activities to the target population and the ability to provide the supervisory capability, staffing, and other resources necessary to perform and manage the program. (25 points)

4. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project. (25 points)

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, MS–E14, Atlanta, Georgia 30305 on or before August 3, 1990.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Linda Long, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6511.

Announcement Number 033, "COOPERATIVE AGREEMENT FOR CHRONIC DISEASE PREVENTION AND CONTROL PROGRAM IN HISPANIC COMMUNITIES" must be referenced in all requests for information pertaining to these projects.

Technical Assistance may be obtained from Charles Nelson, Division of Chronic Disease Control and Community Intervention, Mailstop F45, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–4921 or FTS 236–4921.

Dated: June 21, 1990.

Signed by:

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-14887 Filed 6-26-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90F-0204]

Pennwalt Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pennwalt Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(vinylidene fluoride) homopolymer and an increase in the weight-percent of vinylidene fluoride in vinylidene fluoride-hexafluoropropylene copolymers, as adjuvants in the production of olefin polymers for food-contact use.

FOR FURTHER INFORMATION CONTACT:

Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4169) has been filed by Pennwalt Corp., Three Parkway, Philadelphia, PA 19102-1389. The petition proposed to amend § 177.1520 Olefin polymers (21 CFR 177.1520) to provide for the safe use of poly(vinylidene fluoride) homopolymer and an increase in the weight-percent of vinylidene fluoride in vinylidene fluoride-hexafluoropropylene copolymers, as adjuvants in the production of olefin polymers for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 20, 1990.

Douglas L. Archer,

Acting Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-14037 Filed 6-26-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0168]

Toyobo Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Toyobo Co., Ltd., has filed a petition proposing that the food additive regulations be amended to expand the conditions of use of hexanedioic acid polymer with 1,3-benzenedimethanamine as a modifier for polyethylene phthalate polymers in contact with food.

FOR FURTHER INFORMATION CONTACT:

Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0B4204) has been filed by Toyobo Co., Ltd., Toyobo Research Center, 1-1, 2-Chome Katata, Otsu, Shiga 520-02, Japan, proposing that § 177.1630 Polyethylene phthalate polymers (21 CFR 177.1630) be amended to expand the conditions of use of hexanedioic acid polymer with 1,3-benzenedimethanamine as a modifier for polyethylene phthalate polymers in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 20, 1990.

Douglas L. Archer,

Acting Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-14038 Filed 6-26-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. July 23, 1990, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearings, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates date on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and address of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Exosurf®, pediatric sterile powder, NDA 20-044 (colfosceril palmitate), Burroughs Wellcome Co., and (2) Survanta®, NDA 20-032 (beractant), Ross Laboratories.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represent a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committee shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page.

The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10 (a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated June 21, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14866 Filed 6-26-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Establishment; Genome Research Review Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776] and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Acting Director, National Institues of Health (NIH), announces the establishment of the Genome Research Review Committee.

This Committee shall advise the Director, NIH, regarding applications for grants-in-aid for research and research training relevant to characterization of the genome of the human and of model organisms. The committee will provide a primary review of grant applications, cooperative agreements, and contract proposals for special research programs, including program projects and centers, institutional fellowships, conference proposals, and special developmental award programs in the aforementioned areas.

The members of this committee shall consist of outstanding authorities in the various scientific fields which come within the jurisdiction of the committee.

Duration of the committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: June 20, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-14843 Filed 6-26-90; 8:45 am]

BILLING CODE 4140-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1990:

Name: National Advisory Council on Health Professions Education.

Date and Time: July 19-20, 1990, 9 a.m.

Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed on July 19, all day.

Open on July 20, all day.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover orientation for new members, welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, private foundation presentations and presentations on the mission activities and functions of the Agency for Health Care Policy and Research and the Office of Minority Health. The meeting will be closed on July 19 all day for the review of applications for financial assistance for Grants for Allied Health Special Projects, Health Education and Training Centers, Model Education Projects for Health Professions, Interdisciplinary Training for Health Care for Rural Areas and AIDS Regional Education and Training Centers. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administration, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Ms. Wilma J. Johnson, Executive Secretary, National Advisory Council on Health Professions Education, room 8C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: June 21, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-14802 Filed 6-26-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Research Working Group of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Working Group of the National Deafness and Other Communication Disorders Advisory Council on July 20, 1990. The meeting will take place from 10 a.m. to adjournment at 5 p.m. in Conference Room 4, Building 31A, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting which will be open to the public, is being held to discuss the FY 1992 initiatives for the National Institute on Deafness and Other Communication Disorders. Attendance by the public will be limited to space available.

Ms. Monica Davies, Research Working Group Coordinator, room 1B62, Building 31, NIH Campus, Bethesda, Maryland 20892, (301) 496-7243, will provide on request an agenda and roster of participants. Summaries of the meeting may also be obtained by contacting her office.

Dated: June 21, 1990.

Betty J. Beveridge,

NIH Committee Management Office.

[FR Doc. 90-14840 Filed 6-26-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-43-7122-10-U058; CA 26008]

Realty Action; Noncompetitive Sale of Public Lands in Trinity County; CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action; Noncompetitive sale of public lands in Trinity County; California

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32 N., R. 9 W.,
Sec. 32: Lot 8.
Containing 9.46 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Lloyd and Jane Remly. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

DATES: Until August 13, 1990, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this action is available for review at the office listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Cock, Realty Specialist, Redding Resource Area, at the above address.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain a reservation to the United States for ditches and canals.

Mark T. Morse,

Area Manager.

[FR Doc. 90-14870 Filed 6-26-90; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Primula Maguirei for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the draft recovery plan for *Primula maguirei* (Maguire primrose), a species of primrose from Logan Canyon in northern Utah. This threatened species occurs on dolomitic limestone cliffs and boulders in the lower portions of Logan Canyon, Utah. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 13, 1990, to ensure they receive consideration by the Service.

ADDRESSES: Person wishing to review the draft recovery plan may obtain a copy by contacting: Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2060 Administration Bldg., 1745 W. 1700 S., Salt Lake City, Utah 84104, 801/524-4430 or (FTS) 588-4430. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the Salt Lake City address and telephone numbers given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

Primula maguirei was listed under the Act as a threatened species on August 21, 1985, (50 FR 33734) due to current and potential threats to the species' population and habitat from overcollecting and from habitat destruction, primarily as a result of highway construction and improvement. Initial recovery efforts will focus on protecting the species' population and habitat from habitat-destroying activities through section 7 and section 9 of the Act. The species' entire habitat is on land under the jurisdiction of the U.S. Forest Service. Additional recovery efforts will focus on *P. maguirei* population inventory and minimum viable population studies. Given the species' vulnerability and lack of suitable habitat, it is doubtful that delisting of the species will occur in the foreseeable future.

Public Comments Solicited

The Service solicits written comments on the Maguire Primrose Recovery Plan described above. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 21, 1990.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 90-14866 Filed 6-26-90; 8:45 am]

BILLING CODE 4310-55-M

Release of Review Draft of Long-Range Plan

AGENCY: Department of the Interior.

ACTION: Notice of release of review draft.

SUMMARY: This notice announces release to agencies, interested groups and the general public, of a review draft of a long-range plan (Plan) for implementing the Klamath River Basin Conservation Area Restoration Program, a 20-year program to restore anadromous fish populations and habitats of the Klamath River basin, California and Oregon. The Plan will be distributed in two forms: complete Plan documents and Environmental Assessments (EA's) will be distributed to agencies, Tribes, libraries, and interested groups; a summary Plan document will be distributed to a list of individuals who have expressed an interest in the Restoration Program. Those additional persons wishing to review the Plan and EA may obtain a summary of the Plan, and the EA, from the address indicated below under **FOR FURTHER INFORMATION CONTACT**, or may review the complete Plan and EA at the locations indicated below under **ADDRESSES**.

DATES: The draft Plan is expected to be available for comment by June 11, 1990. Comments will be accepted through August 10, 1990. Written comments may be sent to the address indicated below under **FOR FURTHER INFORMATION CONTACT**. Two public meetings will be scheduled late in the comment period to receive additional comments. Members of the Klamath River Basin Fisheries Task Force, and advisory committee providing guidance on conduct of the Restoration Program, will attend the public meetings to hear comments. Dates and locations of those meetings will be provided in a later notice.

ADDRESSES: Copies of the complete Plan document will be available for review at the following locations, during normal business hours:

Libraries: Siskiyou County Public Library, 719 4th Street, Yreka, CA; Trinity County Public Library, 229 Main, Weaverville, CA; Humboldt County Public Library, 421 "I" Street, Eureka, CA; Del Norte County Public Library, 190 Price Mall, Crescent City, CA; Klamath County Public Library, Klamath Falls, OR; Happy Camp Branch Library, 143 Buckhorn Road, Happy Camp, CA; Orleans Elementary School Library, Orleans, CA; Weitchpec Store, Weitchpec, CA; Humboldt State University Library, Arcata, CA; Southern Oregon State College Library, Ashland, OR;

Federal Offices: U.S. Fish & Wildlife Service, Klamath Field Office, 1030 South Main, Yreka, CA; U.S. Fish & Wildlife Service, Trinity River Field Office #3 Horseshoe Square, Weaverville, CA; U.S. Fish & Wildlife Service, Arcata Fisheries Assistance Office, 1125 16th Street, room 209, Arcata, CA; Six River National Forest, 500 5th Street, Eureka, CA; Gasquet Ranger District, Gasquet CA; Orleans Ranger District, Orleans, CA; Lower Trinity Ranger District, Willow Creek, CA; Mad River Ranger District, Bridgeville, CA; Klamath National Forest Headquarters, 1312 Fairlane Road, Yreka, CA; Oak Knoll Ranger District, 22541 Highway 96, Klamath River, CA; Happy Camp Ranger District, Happy Camp, CA; Salmon River Ranger District, Fort Jones, CA; Goosenest Ranger District, Orleans, CA; Klamath National Wildlife Refuge, Tulelake, CA; U.S. Fish & Wildlife Service, Regional Office, 1002 NE Holladay Street, Portland, OR;

Other Government Offices: California Department of Fish & Game, 601 Locust Street, Redding, CA; Hoopa Valley Business Council, Hoopa, CA; Yurok Transition Team, 517 Third Street, #18, Eureka, CA; Klamath Tribal Office, Old Williamson Business Park, Hwy 97, Chiloquin, OR; Karuk Tribal Office, 746 Indian Creek Road, Happy Camp, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, U.S. Fish & Wildlife Service, Klamath Field Office, P.O. Box 1006 (1030 South Main), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For further information on the Klamath River Basin Conservation Area Restoration Program, see 16 U.S.C. 460ss-ss6 (the "Klamath Act").

Dated: June 6, 1990.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-14805 Filed 6-26-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Pacific Regional Technical Working Group Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Recruitment of two discretionary members for the Pacific Regional Technical Working Group.

The Pacific Outer Continental Shelf (OCS) Region is accepting nominations to fill two discretionary member vacancies on the Pacific Regional Technical Working Group (RTWG) Committee. One is desired with expertise in the environmental area and one is desired with expertise in the petroleum industry.

Nomination packages should consist of a letter explaining the nominee's qualifications and how the individual would contribute to the effectiveness of the RTWG Committee, and a current resume or biographical profile.

The deadline for receipt of nominations is July 25, 1990.

Nomination packages should be submitted to RTWG Coordinator, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Lorraine H. Lawrence, RTWG Coordinator at the above address; telephone (213) 894-3389, (FTS 796-3389).

The RTWGs are part of the OCS Advisory Board and were established to advise the Minerals Management Service Director on technical matters of regional concern regarding offshore prelease and postlease sales activities. The Pacific RTWG membership consists of representatives from Federal Agencies, the coastal states of California, Washington, and Oregon, the petroleum industry, and other private interests. The RTWG discretionary members serve a 2-year term. The RTWG committee meets twice a year. Members serve without compensation.

Per diem and travel expenses are reimbursed for attending meetings, reflecting the provisions of the Federal Travel Regulations.

Appointments will be made by the Secretary of the Interior with the objective of achieving a balance of viewpoint and a range of technical expertise of regional OCS activities.

Dated: June 20, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90-14844 Filed 6-26-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-281]

Certain Recombinant Erythropoietin; Notice of Commission Order Dismissing Complaint on the Merits for Failure to State a Proper Claim Under Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (Commission) has dismissed Amgen, Inc.'s (Amgen) complaint in the above captioned case on the merits for failure to state a proper claim under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337.

ADDRESSES: Copies of the Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Commission instituted an investigation under section 337 based on a complaint filed by Amgen of Thousand Oaks, California. 53 FR 3948. The notice of investigation named Chugai Pharmaceuticals of Japan and Chugai U.S.A. of New York, New York (collectively, Chugai) as respondents. Amgen's complaint alleged that Chugai was violating section 337 by importing recombinant erythropoietin (rEPO) into the United States, which rEPO was manufactured abroad by use of host cells that fell within the claims of Amgen's U.S. Letters Patent 4,703,008 (the '008 patent).

On April 10, 1989, the Commission dismissed Amgen's complaint for lack of subject matter jurisdiction and terminated the investigation. Amgen appealed the Commission's decision to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On April 27, 1990, the Federal Circuit vacated the Commission's decision and remanded the case to the Commission, instructing the Commission to dismiss Amgen's complaint on the merits for failure to state a proper claim under section 337.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

By order of the Commission.

Issued: June 19, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-14828 Filed 6-26-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-313]

Certain Process, Apparatus, and Components Thereof, For the Production of Spunbond Nonwoven Fabric, and Fabric Made Therefrom; Notice of Decision Not To Review an Initial Determination Granting a Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a motion for leave to amend the complaint in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 252-1102. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone (202) 252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 252-1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on April 30, 1990. The notice of investigation was published in the **Federal Register** on May 9, 1990 (55 FR 19369). On May 11, 1990, complainant Kimberly-Clark Corp. filed a motion (Motion No. 313-1) for leave to amend its complaint. The amendment corrects certain errors made in Confidential Exhibit 17 relating to complainant's sales of various products containing spunbond nonwoven fabric. On May 21, 1990, the Commission investigative attorney filed a response indicating no opposition to the motion. Respondents took no position on the motion. On May 31, 1990, the ALJ issued an ID (Order No. 4) granting complainant's motion. No petitions for review or agency comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

By order of the Commission.

Issued: June 20, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-14829 Filed 6-26-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub 363X)]

CSX Transportation, Inc.—Abandonment Exemption—In Cumberland County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 577 feet of track between valuation stations 4717+98 and 4712+18, at Fort Junction, just past the point of switch to Fort Bragg, near Fayetteville, in Cumberland County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 27, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and train use/rail banking statements under 49 CFR 1152.29 must be filed by July 9, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 2, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 14, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14730 Filed 6-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31700]

Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Prefiling notice and procedural schedule.

SUMMARY: On June 8, 1990, Canadian Pacific Limited (CP) and D&H Corporation (D&H Corp.) and Francis P. Dicello, Trustee in Reorganization of the Delaware & Hudson Railway Company (Trustee) jointly notified the Commission pursuant to 49 CFR 1180.4(b)(1) that they intend to file applications under 49 U.S.C. 11343, *et seq.* for D&H Corp. to acquire from Delaware & Hudson Railway Company (D&H): (1) Substantially all of D&H's rail assets, properties and business; and (2) through assignment, various trackage rights over lines of other rail carriers. The application is expected to be filed July 16, 1990.

The Commission has agreed to accommodate the Bankruptcy's Court Order dated June 8, 1990 (as amended on June 12, 1990), and complete the proceeding within 90 days after the application is filed.

DATES: The Commission is establishing the following schedule and procedures:

June 29, 1990: Notices of intent to participate must be filed and served on applicants.

July 6, 1990: The Commission will prepare and serve the service list.

July 16, 1990: The applications are due to be filed: copies of applications must be served on all parties.

August 13, 1990: Verified comments on the application must be filed.

August 27, 1990: Replies to comments are due.

Dates for any needed further procedures, including a discovery conference and/or oral argument, will be set at a later time.

ADDRESSES: Send an original and 15 copies of all documents to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31700, Interstate Commerce Commission, Washington, DC 20423

Also send one copy of all filings to the Attorney General of the United States, the Secretary, United States Department of Transportation, and each of applicants' representatives:

Attorney General of the United States, 555 4th Street, NW. room 9104, Washington, DC 20530

Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590

Applicants' representatives:

Charles H. White, Jr., Hazel, Thomas, Fiske, Weiner, Beckhorn & Hanes, 2001 Pennsylvania Avenue, NW, Washington, DC 20006

Terence M. Hynes, Sidney & Austin, 1722 Eye Street, NW., Washington, DC 20006

Katharine F. Braid, Canadian Pacific Limited, 40 University Avenue, Suite 918, Toronto, Ontario M5J 1T1

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: On June 20, 1988, D&H filed a petition for reorganization under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware (court). Case No. 88-432, *In re Delaware & Hudson Railroad Company*.

On May 15, 1990, The Trustee and CP entered into a letter agreement providing for CP's purchase of substantially all of D&H's rail assets, properties and business, including D&H's stock interest in the Albany Port Railroad Corporation, Albany and Vermont Railroad Company, Saratoga and Schenectady Railroad Company, Wilkes-Barre Connecting Railroad Company, and Northern Coal and Iron Company.

D&H Corp. will also acquire, through assignment, D&H's trackage rights over certain lines of: (1) Consolidated Rail Corporation; (2) Boston and Maine Corporation; (3) Buffalo, Rochester and Pittsburgh Railway Company; (4) CSX Transportation, Inc., (5) National Railroad Passenger Corporation; (6) Wilkes-Barre Connecting Railroad; and (7) "any other line or facility which forms a constituent part of D&H's rail system and with respect to which D&H has trackage rights."

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[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

The parties expect to complete an Asset Purchase Agreement by July 13, 1990.

Applicants' notice identifies the transaction as "significant" under 49 CFR 1180.2(b), since it involves CP, a class I railroad, and D&H, a class I carrier, and involves a "major market extension."

The acquisition is governed by 49 U.S.C. 11344(d), which states:

> (d) In a proceeding under this section which does not involve the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall approve such an application unless it finds that—
>
> (1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
>
> (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Our assessment of competitive harm under section 11344(d) requires a showing that any adverse competitive impact be both "likely" and "substantial." Such adverse impacts might be higher rail rates or deteriorated rail service levels as a result of the transaction.

D&H filed for reorganization in 1986, and its operations have been performed under directed service for quite some time. D&H's financial status, the interests of the Trustee, the bankruptcy court, the U.S. Government, and the prospective purchaser, as well as the public interest all strongly support an expedited decision.

To accommodate the 90-day schedule, we are establishing an expedited procedural schedule for developing the record.[1] Discovery will be permitted if necessary, and a discovery conference may be scheduled. The parties should make supporting work papers available for inspection and negotiate confidentiality agreements where necessary, similar to the terms proposed by the Applicants.[2] We encourage any necessary discovery to begin immediately and be conducted amicably. We caution that discovery must be limited to the applications before us and the relevant statutory criteria. Abuse of discovery and delay of the process will not be countenanced, and we do not intend to extend filing dates.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14916 Filed 6-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub 153X)]

Illinois Central Railroad Co.—Abandonment Exemption—In Macon County, IL.

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 10.5-mile line of railroad between milepost 755.20, at Forsyth, and milepost 765.70, at Maroa, in Macon County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 27, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 9, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 17, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 20160 Governors Highway, Olympia Fields, IL 60461.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 2, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 18, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14741 Filed 6-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 81X)]

Southern Railway Co.—Discontinuance of Trackage Rights Operations Between Greenwood and Piedmont, South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is exempting from the prior approval requirements of 49 U.S.C. 10903-10904 Southern Railway Company's discontinuance of trackage rights operations over a 40.08-mile line owned by CSX Transportation, Inc. (CSX), from Milepost AKL-4.86 near Greenwood, South Carolina to Milepost AKL-44.94 near Piedmont, South Carolina, subject to employee protective conditions.

DATES: This exemption will be effective on July 27, 1990. Petitions to stay must be filed by July 12, 1990. Petitions for reconsideration must be filed by July 23, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 81X) to:

(1) Office of the Secretary: Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Virginia K. Young, Solicitor, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in persons from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14917 Filed 6-26-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] Applicants' proposed schedule, set forth in their June 8th petition for waiver and clarification, is not adopted. The waiver requests will be addressed in a subsequent decision.

[2] We will adopt the protective order proposed by the Applicants in their motion filed June 8, 1990.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 3 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices

Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices announces the availability of up to $750,000 for conducting public education programs concerning the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provision of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b. It is anticipated that a number of grants will be awarded, ranging in size from $40,000 to $100,000.

DATES: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Juan Maldonado, Senior Trial Attorney, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Avenue NW., Suite 800, P.O. Box 65490, Washington, DC 20035-5490. Tels. (202) 653-8121, 1-800-255-7688 (toll-free), (202) 296-0168 (TDD for the hearing impaired), or 1-800-237-2515 (toll-free TDD for the hearing impaired.

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") of the Department of Justice ("DOJ") announces the availability of funds to conduct public education programs concerning the anti-discrimination provision of the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. 1324b. A number of projects will be funded for selected applicants who propose novel and effective ways of disseminating information to employers and to members of the protected class or to fill a particularized need not currently being met.

Background

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986, Public Law No. 99-603. IRCA makes it unlawful for employers to hire aliens not authorized to work in the United States and requires employers to verify the identity and work authorization of all new employees. Employers who run afoul of the law are subject to fines and criminal prosecution. During Congressional debate of IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals who looked or sounded foreign. Responding to that concern, Congress enacted section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits discrimination in hiring, firing, recruitment or referral for a fee by employers against work authorized aliens who are intending citizens. An intending citizen is a permanent resident, temporary resident under the amnesty program, refugee or asylee who intends to become a citizen. Section 102 also prohibits national origin discrimination against all work authorized individuals with respect to hiring, firing, recruitment and referral for a fee. This prohibition applies to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964.

Congress created the OSC to enforce section 102. OSC is responsible for investigating discrimination charges received and, when appropriate, filing complaints with a specially designated administrative tribunal. OSC also initiates independent investigations of possible section 102 violations.

While OSC has established a record vigorous enforcement, studies by the U.S. General Accounting Office and others have shown that there is an extensive lack of knowledge about the antidiscrimination provision. Enforcement of the antidiscrimination provision cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Congress has reacted to this concern by appropriating funds earmarked for public education and outreach concerning the antidiscrimination provision. The Conference Report accompanying the FY 1990 appropriation for the Department of Justice specifies that "(funds) be available for use by the Office of Special Counsel for publicizing both the obligations of employers and the rights of job applicants under section 102 of the Immigration Reform and Control Act of 1986." H.R. Conf. Rep. No. 299, 101st Cong., 1st Sess. 24-25 (1989).

Additionally, the House Appropriations Committee strongly supported increased public education efforts through the use, to the maximum extent possible, of existing community groups and networks, qualified designated entities, and local ethnic organizations to extend the scope and range of the educational campaign. H.R. Comm. on Approp. Rep. No. 144, 101st Cong., 1st Sess. 38.

Purpose

OSC seeks to educate potential victims of discrimination and employers about the antidiscrimination provision of IRCA.

BEST COPY AVAILABLE

Program Description

The program is designed to develop and implement novel and cost effective approaches in disseminating information about the protection afforded by IRCA's antidiscrimination provision. The campaign should focus on educating potential victims of employment discrimination; however, proposals designed to educate employers about their responsibilities under IRCA will also be favorably considered. Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to either (1) work authorized aliens who are intending citizens, since this group is especially vulnerable to employment discrimination, or (2) employers. The proposals should define the characteristics of the work authorized alien population group(s) targeted for the educational campaign, by determining such factors as location (both city and state), nationality, citizenship status, main language used and, where available, any other additional information such as education and occupation.

The proposals should also detail the reasons for targeting each group by describing particular needs or other factors to support the selection. In defining the targeted population and supporting the reasons for the selection, applicants may use studies or surveys conducted in the area, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise creative means of information dissemination which are specifically designed to effectively reach the targeted population. OSC's experience in public education suggests that some of the traditional tools of public communication may be less than optimal for disseminating information to members of the protected class, especially members of national or linguistic groups that have limited community-based support and communication networks.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively achieve the overall objective of innovative and cost effective dissemination of credible information to members of the targeted groups. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

A key element of the campaign is dissemination of accurate information about the OSC and its mission. Accordingly, any educational materials developed by a grantee must be reviewed by OSC for legal accuracy prior to production. Additionally, all information distributed to potential victims of discrimination should include mention of the OSC as a source of assistance, information and action. The information should also include the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is to determine what public education strategies are most effective in disseminating information about the antidiscrimination provision. To be effective in planning future public education efforts, OSC needs to know what works and what does not. It is therefore essential that each proposal set forth reliable criteria to evaluate the effectiveness of the campaign at the conclusion of the period of performance.

Each proposal must explain the methods the applicant intends to use to measure the effectiveness of the campaign, and how the proposed evaluation criteria will indicate to what degree the campaign succeeded in meeting its goals. The proposal should also indicate the projected date for the delivery of the final evaluation at the conclusion of the period of performance.

Selection Criteria

Prospective applicants are advised that the final selection of grantees for award is to be made by the Special Counsel for Immigration Related Unfair Employment Practices after careful evaluation of each proposal by a panel of specialists within DOJ. Each panelist will evaluate the proposals for acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the Special Counsel.

It is also anticipated that OSC will seek information from sources with particular or specialized knowledge in evaluating proposals, including the agencies that are members of the IRCA Antidiscrimination Outreach Task Force—the Department of Labor, the Equal Employment Opportunity Commission, the Small Business Administration and the Immigration and Naturalization Service.

Applicants should be aware that some states are conducting IRCA antidiscrimination outeach and education programs with funds made available under the Immigrant Nurses Relief Act of 1989, Pub. L. 101–238. Care should be taken not to unnecessarily duplicate specific efforts under those programs. OSC will take steps to coordinate these efforts and expects that, to the extent practicable, grantees will do so as well.

In determining which applications to fund, OSC will consider the following:

1. Program Design (60 points)

Proposals will be evaluated on the degree to which they reflect sound program design and innovative, cost effective strategies for dissemination of information to the targeted population. Areas that will be closely examined include the following:

a. Evidence of an in-depth knowledge of the goals and objectives of the project. (10 points)

b. The applicant's selection and definition of the target population(s) for the campaign, and the factors, including special needs, that support the selection. (15 points)

c. The design of an innovative, cost effective campaign strategy to disseminate information to members of the targeted groups, and the rationale supporting the choice of strategy. (20 points)

d. The methods proposed by the applicant to measure the effectiveness of the campaign, and how the proposed evaluation criteria will indicate to what degree the campaign succeeds in meeting its goals. (15 points)

2. Administrative Capability (15 points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (5 points)

3. Staff Capability (15 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (10 points)

4. Previous Experience (20 points)

The applications will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to not-for-profit organizations, including community-based organizations, qualified designated entities and local ethnic and immigrants' rights advocacy organizations.

Grant Period and Award Amount

The period of performance will be twelve months from the date of grant award. A total of $750,000 is available; it is anticipated that a number of grants will be awarded, ranging in size from $40,000 to $100,000.

Application Deadline

All applications must be received by the close of business (5 p.m. EDT) on August 13, 1990, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Avenue NW., Suite 800, P.O. Box 65490, Washington, DC 20035–5490.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Federal Assistance application on the current Standard Form 424 (Revision 1988).
2. OJP Form 4061/3 (Certification Regarding Drug-Free Workplace Requirements).
3. OJP Form 4061/2 (Certification Regarding Debarment, Suspension and Other Responsibility Matters).
4. An abstract of the full proposal, not to exceed one page.
5. A program narrative of not more than twenty (20) double-spaced typed pages which include the following:

a. A clear statement which describes the approach and strategy to be utilized to complete the tasks identified in the program description;
b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetable for completion;
c. The proposed staffing plan;
d. Description of the proposed program design.
e. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the Federal cognizant agency must accompany the budget.
7. Copies of resumes for the professional staff proposed in the budget.
8. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, 1100 Connecticut Ave. NW., Suite 800, P.O. Box 65490, Washington, DC 20035–5490. Tels. (202) 653–8121, 1–800–255–7688 (toll-free), (202) 296–0168 (TDD for the hearing impaired), or 1–800–237–2515 (toll-free TDD for the hearing impaired.

Dated: June 19, 1990.

Approved: June 19, 1990.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 90–14610 Filed 6–26–90; 8:45 am]

BILLING CODE 6410–01–M

THE LIBRARY OF CONGRESS

National Film Preservation Board; Meeting

July 20, 1990, Washington, DC.

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of meeting.

This notice is issued pursuant to Public Law 100–446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Washington, DC in the office of the Librarian of Congress on July 20, 1990 at 1 p.m. At the request of the National Film Preservation Board, this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone (202) 707–6350.

Dated: June 21, 1990.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 90–14630 Filed 6–26–90; 8:45 am]

BILLING CODE 1410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–43)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: July 24, 1990, 1 p.m. to 5 p.m.; and July 25, 1990, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8700.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 21 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

July 24, 1990

1 p.m.—Introductory Remarks.
1:15 p.m.—NASA Education Programs.
3 p.m.—Committee and Task Force Reports.

5 p.m.—Adjourn.
July 25, 1990
8:30 a.m.—Summation and Recommendations.
Noon—Adjourn.

Dated: June 20, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-14874 Filed 6-26-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Proposed Information Collection Requests

AGENCY: White House Conference on Library and Information Services (WHCLIS).

ACTION: Notice of proposed information collection requests.

SUMMARY: The Executive Director, WHCLIS invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 15, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs. Attention: Joseph Lackey, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to Linda Resnik, White House Conference on Library and Information Services, 1111 18th Street NW., suite 302, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, (202) 254-5100.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform statutory obligations.

The Executive Director, WHCLIS, publishes this notice containing a proposed information collection request prior to submission of this request to OMB. The proposed information collection contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected Public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Linda Resnik at the address specified above.

White House Conference on Library and Information Services

Type of Review: New.
Title: Delegate certification form and instructions.
Frequency: One time.
Affected Public: Individuals.
Reporting Burden:
Responses: 912.
Burden Hours: 228.
Recordkeeping Burden:
Recordkeeping: 0.
Burden Hours: 0.
Abstract: This certification form will be used by individuals to establish their qualifications in one of the four delegate categories set forth in Public Law 100-382 and allow them participation at the White House Conference on Library and Information Services, July 9-13, 1991, in Washington, DC, as a delegate or alternate delegate.

Linda Resnik,

Executive Director for the White House Conference on Library and Information Services.

[FR Doc. 90-14880 Filed 6-26-90; 8:45 am]

BILLING CODE 7405-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Geosciences has determined that the establishment of the Continental Dynamics Proposal Review Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Continental Dynamics Proposal Review Panel.

Purpose: Primarily, to advise on the merit of proposals for research and research-related purposes submitted to NSF for financial support.

Balanced Membership Plan: The Panel roster will consist of about 10 members. Effort will be made to maintain a balanced membership across a number of key dimensions e.g., geographic regions, private industry, the Federal Government, and universities. First and foremost will be scientific balance across the research areas subsumed by the program. Although substantial scientific accomplishment is a prerequisite, efforts will be made to involve appropriate minority and female scientists and engineers from predominantly undergraduate institutions in the peer review process.

Responsible NSF Official: Dr. Leonard Johnson, Program Director for Continental Dynamics, Division of Earth Sciences, National Science Foundation, Room 602, 1800 G Street, NW, Washington, DC 20550. (202) 357-7355.

Dated: June 22, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-14906 Filed 6-26-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 1, 1990 through June 15, 1990. The last biweekly notice was published on June 13, 1990 (55 FR 23992).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 27, 1990 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: March 21, 1990

Description of amendment request: The amendment proposes revision of the Technical Specifications (TS) for the Emergency Diesel Generator (EDG) Fuel Oil System, TS 3/4 8.1, to allow use of a grade No. 2-D fuel oil which is less susceptible to degradation during long term storage conditions. The amendment also proposes to upgrade the EDG surveillance TS for sampling and analysis of the fuel oil to utilize improved methodologies.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensees have provided the following analysis of no significant hazards considerations using the Commission's standards.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to [the Perry Nuclear Power Plant Unit No. 1] PNPP's Technical Specifications [TS] are limited to the Emergency Diesel Generator [EDG] Fuel Oil System. The accidents evaluated in Chapter 15 of the USAR involve equipment and systems which are physically isolated from the EDG building and equipment such that the probability of occurrence of an accident evaluated previously is not affected by changes or failures of the EDG's and their associated Fuel Oil Systems. Furthermore, the safety function of the EDG's is to mitigate Chapter 15 accidents/transients which have been initiated by other causes and not to prevent the occurrence of any initiating event. Although station blackout is not currently discussed in the [Updated Safety Analysis Report] USAR, the changes described do not affect the reliability or redundancy of the onsite power supply, and therefore do not contribute to the probability of occurrence of a station blackout. Hence, these changes will not affect the probability of occurrence of an accident evaluated previously in the USAR.

This change maintains the reliability of the Emergency Diesel Generators. As discussed below for each of these changes, this amendment will have no adverse effect on the overall reliability of the onsite power supply. The response of the Emergency Diesel Generators and the onsite power supply to plant accident conditions evaluated previously is not affected by this change since function, performance, and redundancy have not been compromised. The accidents would be mitigated as evaluated previously and the consequences would be unchanged. Categorically, the response of the Emergency Diesel Generators and the onsite power supply to equipment malfunctions is not affected by this change, and the resultant consequences would be unchanged, also.

In order to preclude the diesel generator fuel oil quality problems experienced at PNPP on January 11, 1989 (LER 89-001), July 21, 1989 and March 10, 1990, these Technical Specification changes are required to accommodate the use of "straight run" fuel oil which is less susceptible to degradation during long term storage. These changes address the differences between the refiner's specification for straight run fuel oil and the site's current specifications. These changes do not negatively affect those properties of fuel oil which significantly influence EDG performance. Consequently, EDG reliability is not affected by these changes. The effect of any change in BTU/gallon of fuel oil delivered to PNPP's EDGs as a result of the proposed change in minimum allowable density has been calculated and demonstrated to be negligible and will not limit the EDGs from attaining 110% rated load. Any reduction in fuel economy as a consequence of operating with a lower density fuel oil has been compensated for by a conservative increase in the minimum fuel oil inventory required to be maintained in the fuel storage system to mitigate a design basis event with a seven day duration for all EDGs in accordance with the requirements of Regulatory Guide 1.137, Revision 1, and ANSI N195-1976. This change of fuel oil refining process will have no deleterious effects on the EDGs and will result in a significant improvement in the stability/reliability of the EDG fuel oil. Hence, the change in PNPP's fuel oil specification will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to PNPP's Technical Specification Surveillance requirements for sampling and testing of EDG fuel oil will not involve a significant increase in the probability or consequences of an accident previously evaluated in that the proposed changes involve replacing fuel oil tests currently specified with tests which are either more effective or equally effective in detecting unsatisfactory fuel oil. The proposed change involves replacing the requirement for testing stored fuel oil in accordance with ASTM D2274-70 (accelerated oxidation stability test) every 92 days with a requirement to test for actual particulate concentrations in accordance with ASTM D2276-88 every 31 days. The proposed test, ASTM D2276-88, addresses the actual condition of the fuel oil that will be pumped to the diesel generators in terms of particulate (solid) matter which could impair diesel generator operation or result in diesel generator unavailability. The current surveillance requirement, ASTM D2274-70, is oriented to predicting the tendency of fuel oil to oxidize and form particulates during long term storage. ASTM D2274-70 is not an appropriate test for determining actual particulate contamination of fuel in storage. In addition, ASTM D2274-70 test results may not accurately correlate with actual fuel condition because test results tend to vary depending on factors such as storage conditions and fuel composition. Also, the proposed ASTM D2276-88 tests would be performed every 31 days as opposed to every 92 days for ASTM D2274-70. The more frequent testing for actual particulates in the stored fuel oil would provide better data on fuel condition at the time of test as well as the tendency for formation of particulate under site storage conditions. The proposed tests would therefore be more conservative in establishing adequacy of stored fuel than the present requirements.

The change to replace the Water and Sediment test by centrifuge on new fuel oil per the test method specified in ASTM D975-77 (ASTM D1796) with the Clear and Bright test per ASTM D4176-86 is a conservative change in that the Clear and Bright test is more sensitive in determining the presence of water and sediment in fuel oil than the Water and Sediment test by centrifuge.

Requiring performance of the Flash Point test for new fuel oil prior to adding new fuel to the storage tank to detect possible contamination of the new fuel is a conservative change. The Flash Point test provides an additional indication that new fuel oil is within specification limits. Requiring performance of the Flash Point test prior to acceptance of new fuel oil will reduce the possibility of adding "bad fuel" to the fuel oil already in storage.

Adding optional methods of verifying fuel gravity by (1) testing for Specific Gravity, and (2) by testing for either API Gravity or Specific Gravity and comparing results with the supplier's certification will not affect the reliability of the emergency diesel generators. The Specific Gravity test method is a method specifically approved by Regulatory Guide 1.137 Revision 1, and is therefore acceptable for use in determining fuel oil gravity. Testing new fuel oil prior to addition to the storage tank by either the API Gravity or Specific Gravity methods and comparing with the supplier's certification is justified in that any contamination of fuel oil during transportation would be indicated by changes in appearance, flashpoint or gravity/viscosity. Any contamination which would alter the fuel oil appearance will be detected by the Clear and Bright test discussed above. Incorrect flash point will also be detected prior to addition of new fuel to the storage tank as described above. With tests for appearance and flash point as additional indicators, a verification of fuel oil Specific or API gravity by testing and comparing to the supplier's certification will provide the necessary assurance that the new fuel is within specification limits. Since comparative gravity, as proposed, can detect contamination by a variety of petroleum products including "Jet A type" jetfuel, and since the other types of contamination are also detected by tests other than viscosity, testing for viscosity is not required if gravity is determined using this alternate method (i.e., by testing and comparing with the supplier's certification). Therefore, the proposed new fuel oil surveillance program will not adversely affect the operation of the EDGs.

Under PNPP's proposed fuel oil surveillance program, the fuel oil properties which, if not within specification, would have the most detrimental and immediate impact on diesel generator operation (water and sediment, flash point, viscosity/gravity) are checked for conformance to applicable ASTM limits immediately prior to accepting the new fuel. The remaining fuel oil properties (the "other properties" of proposed TS 4.8.1.1.2.d.2) are those which might impact diesel generator performance only on a long term basis. Therefore, the proposal to extend the time limit for obtaining test results for these remaining fuel oil properties from 14 days to 31 days would not adversely affect diesel generator reliability.

The change to remove the requirement to perform ASTM D975 testing every 92 days for fuel already in storage is based upon the rationale that the majority of fuel oil properties tested by ASTM D975 (flash point, certain number, viscosity, cloud point) do not change during storage. If these properties are within specification when the fuel oil is placed in storage, they will remain within specification unless other non-specification petroleum products are added to the storage tanks. The addition of non-specification petroleum products is precluded by PNPP's proposed new fuel oil surveillance program detailed above. Over prolonged periods, stored fuel oil can oxidize and form particulates which in significant concentrations, could impair diesel generator performance. Particulate concentrations and bacteria concentrations are the only characteristics that will change in stored fuel oil. Particulate concentrations will be monitored every 31 days in accordance with ASTE D2276-88 as discussed above. Bacteria growth is currently prevented and will continue to be prevented by periodic removal of water from the storage tanks as required by existing Technical Specifications 4.8.1.1.2.c and 4.8.1.1.2.d. Considering that the fuel oil properties will not change in storage, and that fuel oil conditions which could affect diesel generator operation will be closely monitored, further testing of stored fuel oil in accordance with ASTM D975 every 92 days will not provide any additional data nor improve diesel generator reliability.

Replacement of the Saybolt Universal Viscosity test method currently specified with the Kinematic Viscosity test method does not affect the reliability of the fuel oil or the operation of the diesel generator because the Kinematic Viscosity test method is the specified method for determination of viscosity in ASTM D975. The acceptance criteria for viscosity remains the same although expressed in units Kinematic (centistokes) rather than in units Seybolt (SUS) as currently presented.

The change to update PNPP's Technical Specification to allow use of current ASTM standards, specifically, ASTM D4057-88 in lieu of ASTM D270-75 and ASTM D975-89 in lieu of ASTM D975-77 will not affect the quality of the fuel oil or the reliability of the diesel generators in that the replacement standards are substantially equivalent to those replaced. The methods for sampling fuel oil provided in ASTM D4057-88 are equally effective as those provided in ASTM D270-75 (which has been withdrawn by ASTM). There has been no change in properties required to be tested or in acceptance criteria between the 1977 and 1989 editions of ASTM D975. While ASTM D975-89 does provide for alternative methods of testing for sulfur content (ASTM D1552, D2622 and D4294), CEI believes that the results obtained by use of the alternative methods will be equivalent to the method currently specified in D975-77 (ASTM D129).

Proposed surveillance requirements 4.8.1.1.2.d.2 and 4.8.1.1.2.e verify the quality of new fuel oil added to the storage tanks (4.8.1.1.2.d.2) and the quality of fuel oil in the storage tanks on a periodic basis (4.8.1.1.2.e). In accordance with Regulatory Guide 1.137 Revision 1, Regulatory Position C.2.a, the fuel oil may be replaced in a short period of time (about a week) when the fuel oil does not meet the specification requirements. The intent of the surveillance requirements is to ensure the fuel oil satisfies the quality specifications. Therefore, Action (j) has been added to allow up to 7 days to correct the out-of-specification condition whether this involves replacing the fuel oil or another suitable method.

Based on the above discussion of the changes being evaluated, it is evident that the previously evaluated performance capabilities of the EDGs and their associated Fuel Oil Systems have not been compromised, and will likely be improved. These changes therefore do not adversely affect the reliability of the emergency diesel generators to respond to mitigate transients/accidents.

The scope of the changes described above have no effect on the EDG Control System. These changes have no impact on the seismic or environmental qualification of equipment. This change creates no cross-ties between safety-related divisional power supplies or interconnections between Divisional Diesel Generators. Therefore, this change maintains the independence and redundancy of the onsite safety related power supply. Following approval of the proposed changes to PNPP's Technical Specification the original design requirements of the emergency diesel generator system will continue to be met, and safety related systems which require power supply from the diesel generators will be capable of performing their original design functions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change in the design of any plant system or component nor do they involve a change in the operation of any plant system or component. The proposed changes do not reduce the level of diesel generator operability nor do they function as initiating events of any accident. Based on the above arguments that performance, function, and redundancy of the original design remain unchanged, this change creates no new potential for an event of such significance to be considered a design basis accident. Furthermore since no new types of equipment have been introduced and the new fuel oil will have no adverse effect on existing equipment, no potential for a different type of malfunction is created by this change.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the bases to Technical Specification Section 3/4.8 refers to the reliability of the onsite power supply. This proposed amendment to PNPP Technical Specifications does not adversely

affect the reliability of the onsite power supply. Nor does the proposed change affect any of the plant setpoints or margins to the accident analysis limits. The changes in the fuel oil sampling and testing requirements do not affect the capability of the diesels to perform their function. The purpose of the change is to increase the reliability of PNPP's emergency diesel generators. Hence, this change does not reduce the margin of safety of the Technical Specifications' bases.

Based on the previous discussions, the licensees concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis. The staff, therefore, proposes to determine that the licensees' request does not involve a significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: March 30, 1990

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.8.1.1.2.e.14.b to add a control room "pull-to-lockout" feature to the list of Division 3 Emergency Diesel Generator (EDG) lockout features requiring verification by that TS. The change will require verification that the newly installed lockout feature prevents Division 3 EDG starting only when required.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensees have provided the following analysis of no significant hazards considerations using the Commission's standards.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated in the Perry Nuclear Power Plant's (PNPP), Updated Safety Analysis Report (USAR) is unchanged with respect to the above described design change to PNPP's Div. 3 EDG. This change (addition of the control room switch "pull-to-lock" lockout feature) is limited in scope to the Div. 3 EDG control system which by itself cannot cause a design basis accident.

The addition of the Div. 3 EDG auto/emergency start lockout feature to prevent an auto/emergency start only when required, results in no significant increase in the probability of a malfunction within the start circuit. Compared to the original design, the modified circuit provides additional personnel safety. Prior to this design change, placing the Div. 3 EDG control switch in the "pull-to-lock" position initiated a "HPCS Out-of-Service" annunciation, but did not prevent the diesel engine from receiving an auto/emergency start signal. This change renders the control switch "pull-to-lock" position functional, corrects the misleading "HPCS Out-Of-Service" annunciation, and provides for additional personnel safety by preventing automatic engine starts when the EDG is locked out during performance of maintenance or repair work. The contacts added by this change are contained in existing safety related equipment (i.e., the engine control switch and control room panel) which is identical to other safety-related equipment comprising the emergency diesel generator start circuits. Also, the pull-to-lock feature is administratively controlled by procedure and, as described above, is annunciated as "HPCS Out of Service" in the Control Room when the Div. 3 EDG control switch is in "pull-to-lock" position. Hence, the reliability of the component added by this change is similar to that of the original design. The above arguments demonstrate that the reliability of the Div. 3 EDG, including its supporting subsystems, is not adversely affected by the design change described above. Therefore, the probability of occurrence of an accident previously evaluated is not increased as a result of this change.

This design change does not compromise the redundancy or independence of safety-related electrical divisions of emergency diesel generators within the plant. The "pull-to-lock" auto/emergency start lockout feature is designed for use only during performance of Div. 3 EDG maintenance activities where personnel safety is a concern. As described above, the "pull-to-lock" feature is administratively controlled by procedure and is annunciated as "HPCS Out-of-Service" in the control room when the Div. 3 EDG control room control switch is in the "pull-to-lock" position. These administrative controls assure that the Div. 3 EDG is not rendered inoperable by inadvertent lockout when relied upon to perform its design function. Performance of the periodic surveillance proposed by this revision to TS Surveillance Requirement 4.8.1.1.2.e.14.b will provide additional assurance that the lockout feature will operate as designed, and prevent Div. 3 diesel engine starting only when required. Thus, it is concluded that the previously evaluated levels of reliability and redundancy are maintained, and the consequences of an accident previously evaluated remain unchanged.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new possibility for an accident is created by this change as it is limited in scope to the Div. 3 EDG auto/emergency start circuit which by itself cannot cause a design basis accident. The physical installation of these contacts and their associated wiring is in accordance with the original installation requirements. This change creates no reduction of system or component performance levels compared to the original design. Since no new component type is introduced by this change, no new potentials for equipment malfunctions are introduced by this design change.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The margin of safety, as defined in the bases of Technical Specification Section 3/4-8, refers to the reliability of the on-site power supplies. As demonstrated in Items 1 and 2 above, reliability of the Div. 3 EDG is not compromised by this design change. Hence, the margin of safety defined in the bases for the Technical Specification is not effected.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis. The staff, therefore, proposes to determine that the licensees' request does not involve a significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 16, 1990

Description of amendments request: The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle County Station Units 1 and 2 Technical Specifications (TS) to clarify the testing requirements for laboratory testing of the Standby Gas Treatment System and Control Room charcoal adsorption beds. The current TS reference is Regulatory Guide 1.52, Revision 2, March 1978. The industry standard has been revised, therefore LaSalle is proposing to amend the TS by referring to the laboratory testing protocols of the ASTM standard (D3803). LaSalle is also proposing that the acceptance criteria be modified to meet or be more conservative than Generic Letter 83-13 requirements.

This amendment request also proposes to delete references to the auxiliary electric equipment room (AEER) emergency filtration system and the control room supply recirculating charcoal filter, "odor eater." The licensee states that since the AEER is not required to be occupied for safe plant operation, except in the case of a remote shutdown, habitability requirements to the General Design Criteria (GDC 19) are not applicable to the AEER. Also, since the current calculated design basis post-accident radiological doses show that they are all within applicable regulatory criteria when the recirculating charcoal filter is not considered in the calculation it is proposed to delete references of this filter from the TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in this request for a license amendment. The licensee states that operation of the LaSalle County Station Units 1 and 2, in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the station currently uses ASTM D3803-79 which is referenced in ANSI N510-1980 and is the current industry standard. Although the proposed Technical Specification penetration acceptance criterion is less conservative than the present values, this will be addressed by station procedures which will increase the testing frequency as the penetration values increase.

The deletion of auxiliary electric equipment room (AEER) from the title "control room and auxiliary electric equipment room emergency filtration system" is not removing equipment but only clarifying the nomenclature.

Also analyses has shown that the control room recirculating charcoal filter is not required, therefore, removal of the references to this filter would not increase the probability or consequences of a previously evaluated event.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because these filtration systems are intended to mitigate the consequences of an accident and cannot, by themselves, initiate an accident. The licensee states that no new accidents are postulated to occur as a result of this proposal.

(3) Involve a significant reduction in the margin of safety because the proposed amendment explicitly states the acceptance criteria will help ensure that the requirements are met. Although the assumed analytical values for the charcoal bed efficiencies will still result in a dose below the units established in 10 CFR 50, Appendix A, GDC-19, the decrease in margin of safety from the relaxation of the acceptance criteria will be offset in part by the establishment of proceduralized controls. The action levels established require increased testing frequencies and actions to help ensure that the Technical Specification and the analytical limits are not exceeded.

The removal of AEER is only an editorial change so it will not reduce the margin of safety. Also, the control room recirculating charcoal filter is not addressed in the Technical Specification bases and it has been shown by analysis to be unnecessary, therefore, the removal of any references to this filter does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael L Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Acting Project Director: Richard F. Dudley.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 18, 1990

Description of amendments request: The proposed amendment to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle County Station, Units 1 and 2 Technical Specifications (TS) to revise the "single largest load reject" test value discrepancy between the TS and the UFSAR by using the more conservative UFSAR valve. Also, to clarify the requirements for the automatic bypassing of the diesel generator trips on an ECCS actuation signal for Division 3 the licensee is proposing to reword the requirement so that it is consistent with the LaSalle Station design and the Branch Technical Position BTP ISCB-17 and Position 7 of the Regulatory Guide 1.9.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in this request for a license amendment. The licensee states that operation of the LaSalle County Station, Units 1 and 2, in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because it will ensure that the technical specification load reject test valve is equal to or greater than the maximum load requirement for the HPCS pump which is the single largest Division 3 load. This enhancement will help to assure the reliability and availability to the ESF Division 3 diesel generators under all operating conditions. Also, this

amendment clarifies the intent of the technical specification requirements and does not involve any changes to the operation of the facility as described in the UFSAR.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposal does not involve any modifications to the facility or changes to the operation of the facility as described in the UFSAR, therefore, it cannot create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety because the change raises the Division 3 test load requirement for initiation of the "single largest load reject" surveillance test to the more conservative UFSAR value. This change does not alter the technical specification acceptance criteria for the test. Also this proposed amendment is an administrative change which does not modify the intent of the technical specification, therefore, the margin of safety is not decreased.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Acting Project Director: Richard F. Dudley.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 23, 1990

Description of amendments request: The proposed amendments would add the Technical Specifications for some of the accident monitoring instrumentation covered by NUREG-0737, Regulatory Guide 1.97 and Generic Letter 83-37. The following instrumentation will be added in the Technical Specifications for Zion: Core Exit Thermocouples, Containment Water Level Wide Range, Containment Water Level Narrow Range, Reactor Coolant Inventory Tracking System, and Condensate Storage Tank Level. In addition, the amendments will make some administrative changes and revise a few other Technical Specifications to make them consistent with the guidance provided by the staff.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92. The proposed changes have been broken down into five distinct categories, based on the changes made. The licensee provided the following discussion regarding all of these changes.

[A] ADMINISTRATIVE CHANGES

The following changes have been categorized as administrative in nature. These changes do not involve a change in intent, requirement or regulation. As such, this No Significant Hazards Considerations will address these items:

- Page number changes and additions,
- Title changes relocations, and additions,
- Location and wording of notes associated with the PORVs and PORV Block Valves,
- Clarified proper mode to eliminate ambiguity
- Changes in terminology,
- Generation of new table to be used for reference purposes,
- Addition of notes clarifying current exemptions to performing periodic surveillances,
- Changes providing reference to base documents and revision numbers,
- Deletion of surveillance frequency notation addressed appropriately elsewhere in the Technical Specifications,
- Reformating of pages,
- Equipment identification changes that are typographical in nature, and
- Inclusion of reporting requirements into the administrative section of the Technical Specifications, required to be performed under an action statement.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The proposed changes to the Technical Specification listed above have been determined to be administrative in nature. The proposed amendment to the Technical Specifications does not change or alter any current operator actions, or requirements for the mitigation of any previously evaluated accident. These changes have no impact on assumed margins or actions during an evaluated accident. Plant response to previously evaluated accidents will not be altered as a result of these changes. As such, the probability and consequences associated with evaluated accidents have remained unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These proposed changes will not impose or result in plant operation that differ from any existing requirements. No new equipment is being introduced as a result of these changes. As such, the possibility of a new or different kind of accident from any accident previously evaluated will not occur as a result of these changes.

The proposed changes do not involve a significant reduction in a margin of safety. These changes do not alter the manner in which equipment required for safe operation of the plant is operated. There are no setpoint, or operational limitations being altered or changed as a result of these revisions. As such, these changes have no significant effect on the margin of safety.

[B] ADDITION OR CHANGES OF INSTRUMENTATION

The following changes involve the addition of instrumentation as a result of the guidance given in, Generic Letter 83-37 regarding "NUREG 0737 Technical Specifications", and NRC Memorandum D.M. Crutchfield to T.M. Novak regarding relief and safety valve position indication. In addition, instrumentation has been added and/or changed to assure that all Type A variables are addressed, and reference the appropriate qualified instrumentation. As such, this No Significant Hazards Considerations will address the following items:

- Containment Pressure (Wide Range) changing from narrow range to wide range. In addition, the total number of instrument channels has been changed from 4 to 2 to address the appropriate number of qualified instruments,
- Changing of the Pressurizer Safety Valve Position Indicator to include both a Technical Specification for the primary and the backup indicators,
- Revision of the RCS Subcooling Monitor, to delete previously approved manual calculations in lieu of utilization of installed instrumentation, and
- The addition of the following instrumentation into the Technical Specifications:

Core Exit Thermocouples, Containment Water Level Wide Range, Containment Water Level Narrow Range, Reactor Coolant Inventory Tracking System, and Condensate Storage Tank Level.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The purpose of the Accident Monitoring Instrumentation is to provide sufficient information to perform required manual actions, and to monitor and assess plant status and behavior during and following an accident. The instrumentation referenced in the Technical Specifications to perform these functions must be capable of providing this information under assumed accident conditions. Therefore, there must both be an adequate number of parameters monitored, and these parameters must be monitored by appropriately qualified instrumentation. The probability for an evaluated accident is independent of the number and type of instruments designated for monitoring purposes. The probability for an accident is linked to the precursor events leading to an accident. None of the accident monitoring instrument changes addressed here are linked in any fashion to these precursor events.

As such, the probability for previously evaluated events have remained unchanged. The consequences of evaluated events are lessened by assuring that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not approve or result in plant operation that could create a new or different kind of accident. The addition of these instruments to the technical specifications will provide assurance in regards to their availability, through the establishment of Limiting Conditions for Operation, Remedial Actions, and appropriate Surveillance Requirements. The accident monitoring instrumentation is directly tied to accident mitigation, through the accomplishment of manual actions and assessment. Through proper decision making the possibility of different type of accident or accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The inclusion of these instruments into the Technical Specification will provide assurance that an adequate number of the appropriate instruments are available to monitor required plant parameters in the event of an accident. By referencing instrumentation that is appropriately qualified for the expected condition, assurance is gained that these parameters will be available if required. By reducing the total number of channels for the Containment Wide Range Pressure Instruments from 4 to 2 the appropriately qualified instruments are reference. However, the margin of safety has remained unchanged by virtue of the required number of channels remaining the same. For the instrumentation being added, these changes will enhance the safety of the plant through the establishment of minimum acceptable levels of performance and availability for these instruments in the Technical Specifications. Through the establishment of these minimum levels, information required for appropriate decision making during and following an accident can be assured. Surveillance requirements are being specified for the purpose of determining operability. The remedial actions associated with the added Specifications will require the plant to be placed into a shutdown condition, after providing an appropriate time frame to restore the inoperable instrument(s) to operable status. As such, these proposed changes to the Technical Specifications will result in an increase in the current margin of safety.

[C] ACTION AND PROGRAMATIC CHANGES

The following assessment involves the revision of the action statements associated with the accident radiation monitoring instruments. This assessment also addresses the addition of programatic control to assure these monitoring capabilities. As such, this No Significant Hazards Considerations will address the following items:

- Addition of action statement 4 regarding the actions associated with the Steam Generator Atmospheric Relief and Safety Valve Radiation Monitors, and the Vent Stack Noble Gas Radiation Monitors,
- Addition of action statement 31 regarding the actions associated with the Containment High Range Radiation Monitors, and
- The addition of the requirement to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The radiation monitor action statement changes and programs being added to the administrative section of the Technical Specifications of themselves have no impact on the probability of any events that are inputs to evaluated accidents. As such, the probability for evaluated events has remained the same. The changes made are providing assurance to the availability of these monitors or alternative methods of providing comparable information during and following an accident. Through assuring the availability of these parameters and programs, the consequences of evaluated accidents remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes address the revisions to programs and action statements. There is no new equipment being proposed for installation that could present the possibility for a new or different type of accident, as a result of these changes. Plant operations will not be altered in any fashion that could create the possibility for a new or different type of accident. Through assuring the availability of these parameters during an accident, proper decision making can be assured. As such, these changes will not create the possibility for a new or different type of accident. In addition, the potential for accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. The proposed actions will result in the establishment of alternate methods of monitoring the effluent release paths for the Steam Generator Atmospheric Relief and Safety Valves, and Vent Stack within 72 hour instead of 30 days as addressed in the current Technical Specifications. The reduction in these time frames will provide for an increase in the readiness to monitor these parameters in the unlikely event of an accident. The administrative changes being added to the Technical Specifications involve the addition of the requirements to have Post Accident sampling programs capable of obtaining and analyzing reactor coolant and containment atmosphere, and collect and analyze or measure radioactive iodines and particulates in plant gaseous effluents samples under accident conditions. These programs include; the training of personnel, procedures for sampling and analysis, and provisions for maintenance of sampling and analysis equipment. These changes provide assurance that these capabilities and programs will be established and maintained. The results of these changes are viewed as an improvement in the plants overall ability to assess accident conditions, and the potential for or quantification of releases. As such these changes do not result in a significant reduction in the margin of safety.

[D] CHANGES TO REQUIRED NUMBER OF INSTRUMENTS

The following assessment involves changes to the required number of instruments, and parameters that must be monitored. As such, this No Significant Hazards Considerations will address the following items:

- Changes to the required and minimum operable number of instruments for the Steam Generator Wide Range Level Indicators,
- Changes to the required and minimum operable number of instruments for the Auxiliary Feedwater Flow Rate Monitoring instruments,
- The deletion the PZR PORV acoustic monitors form the Technical Specifications, and
- Revision of the PZR PORV Block Valve Position Indicator, increasing the minimum operable channels from 0 to 1.

The proposed changes do not result in a significant increase in the probability or consequences of accidents previously evaluated. The above noted instruments provide monitoring capabilities of parameters important for the proper assessment of plant status. These proposed changes are not linked to increasing the probability of any accident. These changes do not alter any of the assumed initial conditions for evaluated accidents at the Zion Station. As such the probability for an evaluated accident has remained unchanged. The consequence of evaluated accidents will remain the same. In the case of the Steam Generator Wide Range Level, and the Auxiliary Feedwater Flow monitoring instruments, the required number of instruments have become more restrictive. For the PZR PORV Block Valve Position Indicator, the minimum operable number has become more restrictive. The proposed change will relax the minimum operable number of channels required for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Monitoring instruments based on the more restrictive limits imposed on the required number of channels. In addition, the Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instruments. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1,

and are powered from redundant safety related power supplies. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments. In reference to the PORV position indicator, the safety related limit switch position indicators will still be retained in the Technical Specifications.

These indicators on their own are sufficient to provide valve status indication in the Control Room. In this fashion, the consequences of previously evaluated accidents will remain unchanged. Based on the diversity available for monitoring the parameter associated with the Steam Generator Wide Range Level and the Auxiliary Feedwater Flow Rate indicator, in addition to the safety related limit switches associated with the PZR PORV Position indication, sufficient monitoring capability will be maintained. As such, the consequences of evaluated events will remain the same through the assurance that the minimum number of parameters required to perform required manual actions, and monitor and assess plant status following an accident are available.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not impose or result in plant operation that will challenge the integrity of any fission product barriers. Post accident monitoring instrumentation is directly tied to accident mitigation in regards to assessment and decision making process. The number and type of instruments specified in the Technical Specifications, of [their] own will not result in the possibility of a different type of accident. All of these items as proposed, will still have adequate indication available through either safety related or diverse indication. Through the assurance that the required parameters necessary for appropriate decision making during and following an accident are available, it can be determined that the possibility of a different type of accident or an accident conditions propagating in a differing manner will be prevented.

The proposed change does not involve a significant reduction in a margin of safety. These changes will enhance the safety of the plant through the establishment of more restrictive minimum acceptable levels of performance and availability for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments in the Technical Specifications. The current Technical Specifications do not invoke any required remedial actions until at least 3 instruments fail. In the event of 3 failures, a 7 day action statement would be entered. In the event of all 4 instruments failing, a 48 hour action statement time clock is entered. The proposed changes would invoke a 7 day time clock based on a single failure, and the 48 hour time clock would be eliminated. The Steam Generator Narrow Range Level instruments provide redundant indication of heat sink status for both the Steam Generator Wide Range Level instruments, and the Auxiliary Feedwater Flow Rate instruments. As such, there is redundancy available for monitoring these parameters. The Steam Generator Narrow Range Level instruments have a required number of 2, and a minimum number of 1. In this fashion, it can be shown that there is sufficient redundancy available to justify a 7 day action statement alone for the Steam Generator Wide Range Level and Auxiliary Feedwater Flow Rate instruments.

Based on the diversity available for monitoring this parameter, it can be concluded that sufficient monitoring capability will be maintained. As such based on the redundancy in indication and the lower threshold for action statement entry, it has been concluded that the overall margin of safety has been enhanced. In regards to the PZR PORV Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of either a stem mounted limit switch, or an acoustical monitor. If both of these indicators were inoperable, operations could continue for a period of time not to exceed 48 hours. If, the required number of channels or minimum operable channels are not restored within these time frames, the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continued for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch alone. If, the required number of channels (same as the minimum operable number) are not restored within this time frame the unit will be placed in Mode 4 within the next 12 hours. In the event that the acoustical monitor is inoperable, the actions required will remain[ed] the same. As such, it can be concluded that the restoration time frame for an inoperable limit switch is the same in the proposed change, is the same as the current Technical Specifications assuming loss of the acoustical monitor. Regarding the PZR PORV Block Valve Position Indicators, valve position indication will be available from the safety related limit switches associated with these valves. Based on the current Technical Specifications, operations could continue for a period of 7 days based on the inoperability of a stem mounted limit switch. If, the required number of channels [channels] is not restored within this time frame the unit will be placed in Mode 4 within the next 12 hours. The proposed changes will allow operations to continued for a period of time not to exceed 48 hours based on the inoperability of the stem mounted limit switch. If the required number of channels (same as the minimum operable number) are not restored within this time frame, the unit will be placed in Mode 4 within the next 12 hours. In this fashion, the margin of safety will remain the same.

[E] MODE OF APPLICABILITY CHANGE

The following No Significant Hazards Considerations addresses the addition of Mode 7 as a required mode for the accident monitoring instrumentation.

The Mode of Applicability for Specification 3.8.9, Accident Monitoring Instrumentation has been revised to include Mode 7. Generic Letter 83-37 was written to address the Modes of Applicability as defined in the Standardized Technical Specifications. Mode 7 in the Zion Station Technical Specifications is defined as; less than or equal to 5% power with reactivity and temperature stated per the specific test. This mode is synonymous with Mode 2, incorporating specified tests from the Special Test Exemptions in the Standard Technical Specifications. This change will require the Accident Monitoring Instruments to be operable in Modes 1, 2, 3, and 7.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. Mode 7 at the Zion Station is Low Power Physics Testing. Low Power Physic Testing involves operation at power levels not to exceed 5% of rated thermal power. In order to establish these conditions, the plant must transition Mode 3. In transitioning Mode 3 the plant is in a condition where the accident monitoring instruments are required to be operable. The probability for a previously evaluated accident has remained unchanged. The addition of this mode has no effect on an events or conditions that are precursors to any evaluated accidents. By assuring the operability of these instruments, in all appropriate modes, the consequences of previously evaluated accidents will remain the same.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not approve or result in the installation of new equipment. The proposed changes will not impose or result in plant operation that will deviate from current practices. In order to establish Mode 7, the plant must first enter Mode 3. The Accident Monitoring Instruments are currently required operable in Mode 3. As such, this change does not result in operations different from current. As such, the proposed change will not create the possibility for a new or different kind of accident from those previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. This proposed change will result in the accident monitoring instruments specified in table 3.8.9, being required to be operable in Mode 7. The inclusion of this mode provides assurance that these instruments would be maintained operable during low power physics testing. As such, the margin of safety will not be significantly reduced.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Acting Project Director: Richard F. Dudley

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: August 4, 1988 as supplemented August 18, 1989

Description of amendment request: Amend the Technical Specification to include Single Recirculation Loop operation at Fermi-2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility in accordance with 10 CFR 50.92(c) would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the requirements of 10 CFR 50.92 and has determined the following:

1. The changes act to prohibit operations which have been found to carry a significant potential for the formation of core thermal-hydraulic instabilities. As such, operation in compliance with the proposed provisions does not affect any initiating mechanism for previously evaluated accidents or the response of the plant to a previously evaluated accident. The ACTION requirements are those which effectively terminate the potential for thermal-hydraulic instability. The ACTIONS taken lead to placing the plant in a safer condition and are not themselves associated with an initiating factor for a previously evaluated accident. Therefore, the change does not represent a significant increase in the probability or consequences of any previously evaluated accident.

2. As discussed in 1 above, the change acts to restrict operations previously allowed. The change also provides remedial ACTIONs which act to place the plant in a safer condition. The ACTIONs called for are within the analyzed domain of plant operations. As such, the change does not create any new accident mode or involve any modification in the plant design. Therefore, the change does not create the possibility of a new or different kind of accident.

3. The changes act to increase the margin of safety by prohibiting operations with a significant potential for core thermal-hydraulic instability and providing effective remedial ACTIONs which promptly terminate the potential for instability.

On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert C. Pierson

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: April 23, 1990

Description of amendment request: The proposed amendments would modify Table 3.3-5, Engineered Safety Features Response Times and Table 3.6-1, Containment Penetrations, and would delete Specification 3/4.6.5, Subatmospheric Pressure Control System. The proposed amendments would modify certain engineered safety features response times for operational simplification and clarity, eliminate a redundant specification, improve consistency within the Technical Specifications (TSs) and between the TSs and the Updated Final Safety Analysis Report, incorporate the results of previously reviewed modifications, and add, modify, or delete for clarity or consistency certain notations to Table 3.6-1.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because no facility operating limits are affected. The proposed changes merely correct, clarify, or improve consistency of the TSs, and are administrative in nature.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes do not introduce a new mode of facility operation or involve any physical modification to equipment or features affecting the operational characteristics of the facility.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect any facility operating limits, the manner by which the facility is operated, or involve equipment or features which affect the operational characteristics of the facility.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 23, 1990

Description of amendment request: Requests extension of the unit operating license to April 19, 2014 to reflect a 40 year period from issuance of the full-power license.

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation has requested extension of the expiration date for Three Mile Island Unit 1 operating license from the present date of May 18, 2008, to April 19, 2014. The current expiration date is based upon the construction permit (CP) issuance date of May 18, 1968. At the time the full-power operating license (OL) was issued on April 19, 1974, it was NRC practice to specify an expiration date of 40 years from CP issuance. This resulted in an effective OL duration of 34 years. NRC regulations (10 CFR 50.51) specifies that such licenses be issued for a period of time not to exceed 40 years. It has been the NRC's practice for the past several years to extend these licenses, if requested and justified by the licensee, to a full 40 years of duration. GPU Nuclear Corporation has provided such

a request on the basis that the plant was designed for a 40-year operating lifetime and the environmental assessment supporting the license assumed 40 years of plant operation.

GPU Nuclear Corporation has determined that this proposed extension of the OL expiration date poses no significant hazards considerations as defined in 10 CFR 50.92. That determination was as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the expiration date of the current license. Therefore, this change is unrelated to the possibility of increasing the consequences of previously analyzed accidents. This change will not increase the probability of previously analyzed accidents because the plant is designed and constructed for 40 years of operation.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the expiration date of the current license. The plant is designed and constructed for 40 years of operation. Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed revision to the Facility Operating License does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the expiration date of the current license. The safety analyses described in the FSAR are based on a 40-year operating life. Therefore, the overall margin of safety for the plant is maintained.

The NRC staff has reviewed the GPU Nuclear Corporation determination and agrees with their analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 14, 1990

Description of amendment request: The proposed amendment would modify the "Minimum Temperature vs. Reactor Pressure Curves" contained in Section 3/4.4.6 of the Technical Specifications (TS) and the associated Bases. Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and Its Impact on Plant Operations," dated July 12, 1988, informed all licensees that the methods described in Revision 2 to Regulatory Guide 1.99 should be used to predict the effect of neutron radiation on reactor vessel materials as required by Paragraph V.A. of Appendix G to 10 CFR Part 50, unless the use of other methods can be justified. The May 14, 1990, amendment request is in response to Generic Letter 88-11. The proposed changes to the TSs are divided into two basic areas: (1) pressure-temperature curves, and (2) neutron fluence as a function of service life.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

Operation of RBS [River Bend Station] in accordance with the changes proposed in this amendment involves no significant hazards based upon the evaluations given below.

a. Changes made through this request are in accordance with the applicable design, material, and construction standards. These revisions are the result of changes in calculational methodology for shift in all-ductility transition reference temperature promulgated by issuance of Revision 2 of Regulatory Guide 1.99. The changes, recognizing the use of revised and slightly less conservative load factors, result in more conservative limits for temperature and pressure for all operational conditions (hydrostatic and leak testing, non-nuclear heatup/cooldown and low level physics testing, and core critical operations). Consequently, no significant increase in the probability or the consequences of an accident previously evaluated results from these changes.

b. No structures, systems, or components are added or deleted by these changes; thus the possibility of additional single failures resulting in a new or different kind of accident from that previously evaluated is not introduced as a result of these changes. The changes provide more conservative limits for temperature and pressure at higher system pressures and no limits are removed or made less conservative. Therefore, these changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. A larger shift in RT-NDT results from application of the Regulatory Guide 1.99, Rev. 2 methodology. Consequently, the revised pressure-temperature curves to be used for RBS Tech. Spec. 3/4.4.6 are more conservative. Thus, additional margin is provided to assure that when the reactor pressure vessel is stressed under operating, maintenance, testing and postulated accident conditions, the reactor coolant pressure boundary behaves in a nonbrittle manner and the probability of rapidly propagating fracture is minimized. Therefore, these changes would not involve a significant reduction in margin of safety.

The proposed amendment will not increase the possibility or the consequences of a previously evaluated event and will not [create] a new or different kind of accident from any previously evaluated. Also, the results of this proposed change are clearly within all acceptance criteria with respect to system components and design requirements. The ability of the reactor pressure vessel to perform as described in the USAR is maintained and therefore, the proposed change does not involve a significant reduction in margin of safety... GSU proposes that no significant hazards are involved for these changes.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Christopher I. Grimes

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 6, 1990

Description of amendment request: The proposed amendment would add an additional smoke detector to Technical Specification Table 3/4.3.7.8-1 due to the proposed addition of a suspended ceiling to the control rod drive maintenance rebuild facility.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The change made in this request is in accordance with the applicable design, material, and construction standards and regulatory requirements. The revision is the result of adding an additional fire detector below the planned suspended ceiling in a room which presently has one fire detector located in the ceiling of that room. The change results in more conservative limits (two detectors required as opposed to one) for fire detection in this room. Consequently, no significant increase in the probability or the consequences of an accident previously evaluated results from this change.

2. Since this change simply adds an additional detector (identical in all respects to the existing detector) below a planned suspended ceiling in a room which presently has a detector located in the ceiling of that room, the possibility of a new or different kind of accident from that previously evaluated is not introduced as a result of this change. This change provides more conservative limits for fire detection and no limits are removed or made less conservative. Therefore, this change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The larger number of fire detectors in the same area equates to each detector protecting an area with less volume. Consequently, the revised number of detectors to be used for RBS TS 3/4.3.7.8 is more conservative. Thus, additional margin is provided to assure that when a fire does occur, it will be detected early. Therefore, this change would not involve a significant reduction in margin of safety.

The proposed amendment will not increase the possibility or the consequences of a previously evaluated event and will not create a new or different kind of accident from any previously evaluated. Also, this proposed change is clearly within all acceptance criteria with respect to system components and design requirements. The ability of the fire detection system to perform as described in the USAR is maintained and therefore, the proposed change does not involve a significant reduction in margin of safety. GSU proposes that no significant hazards are involved for these changes. The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, NW., Washington, DC 20005

NRC Project Director: Christopher I. Grimes

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: April 25, 1990

Description of amendment request: As stated in the Bases for Technical Specification 3/4.7.4, snubbers are required to be operable to ensure that the structural integrity of the reactor coolant system and all other safety-related systems is maintained during and following a seismic or other event initiating dynamic loads.

Surveillance Requirements 4.7.4.e, f, g and h provide requirements for functional testing of snubbers. The specified functional testing sample plans require a random sample of each type of snubber to be functionally tested during each reactor shutdown. If failures are experienced, additional samples must be functionally tested. This proposed change would revise the subsequent additional sample size for functional testing required by Surveillance Requirement 4.7.4.e, Sample Plan 1, from 10% to 5%.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards:

(1) The proposed change to the subsequent additional functional test sample size for Surveillance Requirement 4.7.4.e, Sample Plan 1, provides an equal basis for all three specified sample plans. This proposed change is consistent with the ASME OM-4 Standard which has been incorporated into the 1989 Edition of the ASME Code, Section XI. Additionally, if a failure to lock up or move is determined to be caused by manufacturer or design deficiency, functional testing of all snubbers of the same type that may be subject to the same defect will continue to be required by Surveillance Requirement 4.7.4.g, irrespective of the subsequent additional sample size. Therefore, these proposed changes will not significantly increase the probability or the consequences of any accident previously evaluated.

(2) These proposed changes do not result in any change to the plant or its operation. The scope of snubbers to be functionally tested per these surveillance requirements has not been reduced. Therefore, these proposed changes cannot create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed change to the subsequent additional functional test sample size for Surveillance Requirement 4.7.4.e, Sample Plan 1, provides an equal basis for all three specified sample plans. This proposed change is consistent with the ASME OM-4 Standard which has been incorporated into the 1989 Edition of the ASME Code, Section XI. Additionally, if a failure to lock up or move is determined to be caused by manufacturer or design deficiency, functional testing of all snubbers of the same type that may be subject to the same defect will continue to be required by Surveillance Requirement 4.7.4.g, irrespective of the subsequent additional sample size. Therefore, this proposed change will not result in a significant reduction in the margin of safety.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200

Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: April 25, 1990

Description of amendment request: The telescoping mast currently installed on the Clinton Power Station Refuel Platform main hoist consists of three open frame type triangular sections. In order to reduce the possibility of grappling the wrong fuel bundle as a result of mast bowing and to reduce the potential for contamination of the operators due to water dripping from the open frame mast, the current mast will be replaced with a solid cylindrical telescoping mast. As a result of the additional weight of the new mast, the main hoist overload cutoff setpoint and both of the main hoist loaded interlock setpoints specified in Technical Specification 3/4.9.6.1, Refueling Platform, must be revised. The licensee therefore proposes to change the main hoist overload cutoff setpoint specified in Surveillance Requirement 4.9.6.1.a from 1200 27 50 pounds to 1600 27 50 pounds and the main hoist loaded interlock setpoints specified in Surveillance Requirement 4.9.6.1.f from 485 27 50 pounds and in Surveillance Requirement 4.9.6.1.h from 550 27 50 pounds to 700 27 50 pounds (for both).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards:

(1) As discussed in Updated Safety Analysis Report Section 15.7.4, a Fuel Handling Accident (FHA) is postulated to occur as a consequence of a failure of the fuel assembly lifting mechanism which results in the dropping of a raised fuel assembly onto fuel bundles either loaded in the core or stored in spent fuel storage racks. In Chapter 15 of the USAR, two different FHAs are considered: (1) a postulated FHA in the containment in which a fuel bundle is dropped onto irradiated fuel loaded in the core, and (2) a postulated FHA in the fuel building in which the bundle is dropped onto irradiated fuel stored in the spent fuel storage racks. As documented in the USAR, the postulated fuel building FHA results in higher offsite radiological releases than the postulated containment FHA. However, because the NF600 refueling mast will not be used in the fuel building, the current fuel building FHA analysis is not changed.

This proposed change does not result in a change to any of the assumptions of the postulated containment FHA. The refueling platform main hoist incorporates redundant lifting features (e.g., dual cables) so that no single component failure will result in a fuel bundle drop. The design of the grapple is not being changed as a result of this proposed change. The new mast is similar in design and function to the currently installed mast. The new mast is designed to match or exceed all aspects of the currently installed mast. Additionally, interlocks on the platform prevent unsafe operation over the reactor vessel during control rod movements, prevent collision with the auxiliary platform, limit travel of the fuel grapple, and interlock grapple hook engagement with hoist power. The proposed main hoist overload cutoff setpoint will still ensure that excessive lifting forces are not applied to a fuel bundle and the proposed main hoist loaded setpoints will still ensure that the associated interlocks are initiated when the weight of a channeled fuel bundle is applied to the grapple. Further, the maximum height from which a fuel bundle could be dropped remains unchanged as does the minimum required water level above stored irradiated fuel. Therefore, the proposed change will not increase the probability or the consequences of any accident previously evaluated.

(2) No new failure modes will be introduced as a result of this proposed change. The new mast is similar in design and function to the currently installed mast. The new mast is designed to match or exceed all aspects of the currently installed mast. Additionally, the design of the grapple is not being changed as a result of this proposed change. The proposed main hoist overload cutoff setpoint will still ensure that excessive lifting forces are not applied to a fuel bundle and the proposed main hoist loaded setpoints will still ensure that the associated interlocks are initiated when the weight of a channeled fuel bundle is applied to the grapple. Therefore, this proposed change cannot create a new or different kind of accident from any accident previously evaluated.

(3) The proposed main hoist overload cutoff and main hoist loaded interlock setpoints merely account for the increased weight of the mast. The proposed main hoist overload cutoff setpoint of 1600 27 50 pounds still ensures that excessive lifting forces are not applied to a fuel bundle. The proposed main hoist loaded interlock setpoints of 700 27 50 pounds still ensure that the associated interlocks are initiated when the weight of a channeled fuel bundle is applied to the grapple. As a result, there is no significant reduction in the margin of safety.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: September 15, 1988

Description of amendments request: These amendments would remove references to obsolete surveillance interval extensions from the plant Technical Specifications (TS). These references are no longer required and their removal would make the TS more readable.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendments against the standards of 10 CFR 50.92 and has determined the following:

Criterion 1

The changes are administrative in nature. No requirements of the present T/Ss are eliminated or reduced. The changes are intended only to streamline the T/Ss by eliminating numerous footnotes which tend to clutter the document. As such, the changes are not expected to involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

The changes will not result in a change in plant configuration or operation. Therefore, these changes are not expected to create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

The changes are administrative in nature. No requirements of the present T/Ss are eliminated or reduced. The changes are intended only to streamline the T/Ss by eliminating numerous footnotes which tend to clutter the document. As such, the changes are not expected to involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: May 11, 1990

Description of amendment request: The proposed amendment would change Technical Specification (TS) Table 3.3-2, "Reactor Trip System Response Times," by changing the required response time for the reactor trip on loss of flow from less than or equal to 0.6 seconds to less than or equal to 1.0 seconds. This change is consistent with the Unit 1 accident analysis.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92 and has determined the following:

Criterion 1

The change from a response time of 0.6 seconds to 1.0 seconds for the loss of flow reactor trips is consistent with the assumptions of the current accident analyses, as approved by the NRC via Amendment 126 to the Unit 1 T/Ss. The accident analyses demonstrated acceptable DNBR and reactor coolant system pressurization results for the applicable accidents. It can be reasonably concluded, therefore, that the change will not involve a signifcant increase in the consequences of a previously analyzed accident. The proposed T/S change will not require any physical modifications to the plant nor any changes in plant operating configuration. The required time response of the loss-of-flow trips is a factor in the results of the appropriate accident analyses, but is not an initiating event. Therefore, we believe the change will not involve a significant increase in the probability of a previously analyzed accident.

Criterion 2

As discussed in Criterion 1, above, the proposed T/S change involves no physical changes to the plant nor any changes in plant operating configuration. Therefore, we believe the change will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

The proposed change is consistent with the assumptions of the current accident analyses. (These analyses were approved via Amendment 126 to our Unit 1 license and will be incorporated into our next annual FSAR update.) These analyses demonstrated acceptable DNBR and reactor coolant system pressurization results, and were approved by the NRC in support of Amendment 126 to the Unit 1 T/Ss. Therefore, we believe the change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of amendment request: May 14, 1990

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3/4.7.1.5, "Steam Generator Stop Valves," to require full valve closure within eight seconds. The TS currently requires full valve closure within five seconds. Additionally, TS Table 3.3-5, "Engineered Safety Features Response Times," Items 5.b, 6.b, and 7.c would be changed to reflect the increased time allowed for steam generator stop valve closure.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92 and has determined the following:

Criterion 1

Based on the safety analyses performed by Westinghouse for the steam line break core response, steam line break mass/energy releases for inside containment integrity, steam line break mass/energy releases outside containment, feedline break, SGTR, and LOCA, we believe that the proposed T/S change to increase the steam line break isolation response time and the steam generator stop valve closure time by three seconds will not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

The three-second increase for the steam line isolation response time will not change the design or operation of the plant. Therefore we believe that this change will not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

Based on the safety analyses performed by Westinghouse for the steam line break core response, steam line break mass/energy releases for inside containment integrity, steam line break mass/energy releases outside containment, feedline break, SGTR, and LOCA, we believe that the proposed T/S change increasing the steam line break isolation response time and the steam generator stop valve closure time by three seconds will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determined that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 10, 1990

Brief description of amendment: The amendment changes Technical Specification 5.6.1(a) to allow enrichments up to 4.5 weight percent U-235 to be stored in the new fuel storage racks and Technical Specification 5.3.1 to allow 4.5 weight percent U-235 to be the maximum fuel enrichment in the reactor core.

Date of issuance: June 13, 1990

Effective date: June 13, 1990

Amendment No.: 146

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 2, 1990 (55 FR 18411) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thomas Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 1, 1990

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Limerick Generating Station (LGS), Unit 1 to reflect two fire protection modifications which the licensee has committed to perform during the upcoming refueling outage. There are two proposed TS changes. The first proposed TS change reflects a proposed modification to replace the existing suppression pool water temperature indication (actually the water temperature at the suction of the 'A' Residual Heat Removal pump) at the Remote Shutdown Panel (RSP) with direct temperature indication of the suppression pool water. The second proposed TS change reflects a proposed modification to provide for the control of emergency power to the Reactor Core Isolation Cooling (RCIC) System steam supply line inboard containment isolation valve from the RSP. These modifications are proposed to be performed during the next (third) refueling outage for LGS, Unit 1, currently scheduled to begin in September 1990, based on commitments in Licensee Event Report (LER) Nos. 1-89-002, "Unavailability of the Reactor Core Isolation Cooling System Due to Insufficient Protection of Various Control and Power Cables from Postulated Fire Damage," Rev. 01, dated March 31, 1989, and 1-89-023, "Lack of Protected Suppression Pool Level and Temperature Indication in the Event of a Fire," dated May 5, 1989. For plants licensed after January 1, 1979 (such as LGS, Unit 1), the requirements of 10 CFR 50.48 and 10 CFR 50, Appendix R are invoked by the Standard Review Plan (NUREG-0800), Section 9.5.1, dated July 1981 and its associated attachment, Branch Technical Position (BTP) CMEB 9.5-1.

The remote shutdown system instrumentation and controls located on the RSP were designed in accordance with General Design Criterion (GDC) 19 of 10 CFR 50, Appendix A to ensure that sufficient capability is available to permit shutdown and maintenance of the safe hot shutdown condition of the unit from locations outside of the main control room (MCR) in the event MCR habitability is lost. The remote shutdown system instrumentation and controls are also used to satisfy the alternative shutdown requirements of BTP CMEB 9.5-1 for shutdown from outside of the MCR in the event of a fire. TS Table 3.3.7-4-1, "Remote Shutdown System Instrumentation and Controls," TS page 3/4 3-77, currently indicates that the suppression pool water temperature indication at the RSP is actually indication of the water temperature at the suction of the 'A' Residual Heat Removal (RHR) pump (i.e., when the RHR pump is aligned for suppression pool cooling).

In LER No. 1-89-023 for LGS, Unit 1, dated May 5, 1989, the licensee reported that this indication of suppression pool water temperature may be lost in the event of a fire for which shutdown from the RSP is required since the 'A' RHR pump suction water temperature indicator, TI-51-104A, is powered from a non-Class 1E electrical power source and its associated cabling is not protected from fire damage. In LER 1-89-023, the licensee committed to perform a modification during the third refueling outage to provide suppression pool water temperature indication at the RSP which would be available to support safe shutdown of the plant from outside the MCR in the event of a fire. This proposed modification will replace the 'A' RHR pump suction water temperature indication at the RSP with direct temperature indication of the suppression pool water using spare resistance temperature detector (RTD) elements from the existing Suppression Pool Temperature Monitoring System (SPTMS). SPTMS provides suppression pool water temperature indication in the MCR only. This proposed modification will provide suppression pool water temperature indication which is powered from a Class 1E electrical power source and for which the associated cabling is protected from fire damage.

Once this proposed modification is complete, the TS reference "(Actually RHR Pump 'A' Suction Temperature)" for the suppression pool water temperature indication on TS Table 3.3.7.4-1 will no longer be valid. Therefore, a change is proposed to TS page 3/4 3-77 to delete this reference such that TS Table 3.3.7.4-1 will specify "Suppression Chamber Water Temperature" only.

The RCIC system is used to support certain methods of safe shutdown of the plant in the event of a fire. In LER No. 1-89-002, Rev. No. 1, for LGS, Unit 1, dated March 31, 1989, the licensee reported that a fire in certain areas of the plant could result in the unavailability of the RCIC system steam supply line inboard containment isolation valve, HV-49-1F007. This valve is controlled from the RSP in support of safe shutdown from outside the MCR in the event of a fire. Although the RSP is powered by electrical Division 1 AC power, the HV-49-1F007 valve is powered from electrical Division 3 AC power, and will automatically close upon receipt of a Division 3 isolation signal. However, Division 3 control and power cables were not protected in those fire areas for which the RCIC system is used to support safe shutdown of the plant in the event of a fire. Fire-induced damage to the Division 3 control cables could produce a false isolation signal which would cause the HV-49-1F007 valve to close. Fire-induced damage to the Division 3 power cables, from the same fire, could cause a loss of power required to reopen the valve. If, in the event of a fire, the valve closes and power is lost before the valve can be reopened, the RCIC system would be rendered inoperable. In LER 1-89-002, the licensee committed to perform a modification during the third refueling outage which would provide the capability, through a manual transfer switch located at the RSP, to power valve HV-48-1F007 from an emergency (Division 1) power source. This emergency power source would be available in the event of a fire to provide the ability to reopen the valve. As part of the proposed modification, this emergency source will be powered through a normally locked open, instantaneous magnetic circuit breaker mounted in an electrical Division 1 motor control center (MCC). Also, a second, normally closed, thermomagnetic circuit breaker will be added as a back-up breaker to provide the redundant protection specified by Regulatory Guide 1.63, "Electric Penetration Assemblies in Containment Structures for Nuclear Power Plants," for electrical cables and wiring that penetrate the primary containment. This second circuit breaker is also required to assure capability to disconnect from the Division 1 power bus for any faulted load condition.

As a result of this proposed modification, a change is proposed to TS Table 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protective Devices," TS page 3/4 8-24, to add the primary and backup circuit breakers for the Division 1 emergency power supply to the RCIC system steam supply inboard containment isolation valve, HV-49-1F007, to this table. Both breakers are identified by a single circuit breaker number, 52-21331, since both breakers are located in the same MCC cubicle. TS Table 3.8.4.1-1 currently lists the primary and back-up breakers (circuit breaker no. 52-22313) for the normal Division 3 power supply to the HV-49-1F007 valve.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; (3) Involve a significant reduction in a margin of safety.

The licensee has provided a separate analysis of no significant hazards considerations for each of the two modifications with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 for the suppression pool temperature monitoring modification is reproduced below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change reflects a proposed modification to replace the existing suppression pool water temperature indication at the RSP (i.e., the water temperature at the suction of the 'A' RHR pump) with direct temperature indication of the suppression pool water. This proposed modification will ensure the availability of suppression pool water temperature indication at the RSP to support safe shutdown of the plant from outside the MCR in the event the MCR becomes uninhabitable for any reason, including fire.

This proposed modification will use two spare RTD elements from SPTMS. Sufficient spare RTD elements are still available such that the design operation of SPTMS is unaffected by the proposed modification. The new temperature instrumentation loop will be powered from an electrical Division 1, Class 1E source. The increased loading on this power source will be negligible, and therefore, will have no effect on the ability of this Class 1E source to perform its intended function.

This proposed modification will not use any instrumentation with accuracies or response characteristics that are different than the existing temperature instrumentation. This proposed modification will meet applicable construction standards, design, and material requirements. The new temperature instrumentation loop will provide increased reliability since its design conforms to applicable criteria for physical separation, redundancy, and divisionalization. The new temperature instrumentation loop components will be environmentally qualified, qualified to Seismic Category I and Class 1E, and energized from onsite emergency power supplies in the event offsite power is lost. This proposed modification does not introduce any new failure mode and does not alter any assumptions previously made in evaluating the radiological consequences of an accident. The proposed change does not affect limiting safety system settings or operating parameters, and does not modify or add any initiating parameters that would cause a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change reflects a proposed modification to replace the existing suppression pool water temperature indication at the RSP. This proposed modification does not delete or modify remote shutdown system protection features, downgrade any support system performance necessary for reliable operation of equipment, reduce system redundancy or independence, or impose more severe testing requirements. This proposed modification has no impact on the operation of the RHR system or SPTMS. This proposed modification does not change or add any components in the remote shutdown system which could fail in a different mode than was previously evaluated. The proposed change does not involve any change to setpoints or operating parameters nor does it involve any potential initiating event that would create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change reflects a proposed modification to replace the existing suppression pool water temperature indication of the RSP. This proposed modification will use two spare RTD elements from SPTMS. Sufficient spare RTD elements will still be available in case of failure of the primary elements such that the operation of SPTMS will not be affected. Additionally, the reliability of the suppression pool water temperature indication at the RSP will be improved since the new temperature loop will be powered from a Class 1E source, its associated cabling will be protected from fire damage, and the proposed modification will provide the operator with the ability to select between two RTD elements on opposite sides of the suppression pool to give a better profile of suppression pool water temperature, rather than having only the single 'A' RHR pump suction water temperature indication. This proposed modification will not alter the intended function of the system involved, but will ensure that suppression pool water temperature indication is available at the RSP to support safe shutdown of the plant from outside the MCR in the event the MCR becomes uninhabitable for any reason, including fire. This proposed modification will not alter any limiting conditions for operation or surveillance requirements related to suppression pool water temperature. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The licensee's analysis of the proposed amendment to reflect the modification to provide for transfer at the RSP to an emergency power source for the RCIC system steam supply line inboard containment isolation valve (HV-49-1F007), in the event of a fire, against the three standards in 10 CFR 50.92 is reproduced below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed TS change reflects a modification which can only affect operation of the RCIC system steam supply line inboard containment isolation valve, its normal electrical power source (Division 3) and its emergency electrical power source (Division 1). All components are Class 1E, environmentally and seismically qualified, and installed in accordance with Class 1E and seismic requirements.

During normal operation, separation will be maintained between Division 1 and Division 3 electrical equipment by two locked open devices, a breaker in the Division 1 MCC and the breaker connected to the emergency Division 1 power source in the transfer switch; therefore, operation of the Division 1 and Division 3 electrical equipment is unaffected. The inboard and outboard isolation valves are normally open, thus, only the reactor vessel isolation function can be affected. Since the door to the terminal box containing the manual transfer switch will be locked closed with the transfer switch in the "normal" position, the probability of failure of the valve to close when required is unaffected. With the transfer switch in either position, Division 1 and Division 3 electrical equipment and the

electrical containment penetration for the power supply to the HV-49-1F007 valve will be protected by two redundant breakers.

Administrative procedures will ensure that the amount of time Division 3 cabling is exposed to Division 1 power is kept at an absolute minimum. Procedures will also limit the interconnection of Division 3 circuits with Division 1 power to the valve, the MCC, the RSP, and interconnecting wiring. Wiring and circuits in the control complex will not be involved. The proposed modification does not affect the capability of the RCIC system or the RSP to perform their intended functions. Additionally, the proposed modification does not increase the probable, consequences of a fire as previously evaluated. Therefore, the proposed change does not cause a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS change reflects a modification which maintains the design functions, the separation criteria, divisional power requirements, seismic requirements, and environmental qualification requirements of the RCIC system and the RSP except for the brief time of power transfer during a fire event or testing of the transfer switch when separation and divisional power requirements are not met. During the brief time when these requirements are not met, the protection discussed previously will be provided to ensure that a fault in the Division 3 circuitry will not affect the Division 1 power supply, and energization of the valve's Division 3 control circuitry from a Division 1 source in control panels is limited to the RSP. Thus, the normal plant operation will remain within the envelope of analyzed conditions, and the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

This proposed TS change reflects a proposed modification to provide the ability at the RSP to transfer to an emergency power source for the HV-49-1F007 valve in the event the normal power source for this valve is lost as a result of a fire. The proposed modification does not affect any limiting safety system settings or other setpoints, or instrument accuracy and drift requirements. The proposed modification maintains the seismic requirements and the environmental qualification requirements for the RCIC system and the RSP, and the intent of the separation criteria and electrical divisional power requirements. The design function of the RCIC system and the RSP will not be affected by the proposed modification. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: June 14, 1990

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to add new isolation valves to the table of primary containment isolation valves that must be operable and to delete the presently designated valves on the same lines. Limerick, Unit 1, is scheduled to shutdown for the third refueling outage on September 8, 1990. During the refueling outage, the licensee plans to install eight new check valves (four pairs of valves) on the control rod drive (CRD) supply headers to the hydraulic control units (HCUs). These new valves will constitute a new isolation boundary for the Integrated Leak Rate Test (ILRT), replacing the existing HCU isolation boundary valves. The proposed changes to the TS are to include the new valves in Table 3.6.3-1, "Part A - Primary Containment Isolation Valves" and to remove the current valve numbers for the HCU boundaries.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The piping to be included within the new isolation boundary complies with the same standards and specifications as the original boundary. The number of active components making up the boundary will be reduced from approximately 1300 to four. Therefore, there will be no increase in the probability that the isolation boundary will be breached.

The current CRD isolation boundary includes the insert and withdraw lines, the scram discharge volume and the HCUs. The relocation of the boundary will add some of the supply header piping but will not affect the existing equipment. The added piping is small diameter (2" or less) comparable to the previously analyzed scram discharge drain line. The consequences of a pipe failure inside the isolation boundary remain within the envelope analyzed in NUREG 0803. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are intended to take credit for the newly installed isolation valves on the CRD common headers. These valves and associated piping are designed and installed in compliance with all applicable criteria. In addition, they will meet all performance requirements currently existing for the approximately 1300 HCU isolation boundaries. In effect, the only change will be to reduce the testable penetrations from 1300 to four. The proposed TS changes merely substitutes one isolation boundary for another and therefore cannot create a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in items 1 and 2 above, the newly installed valves and associated piping meet all applicable design requirements. In addition, the consequences of a pipe failure inside the isolation boundary remain within the envelope analyzed in NUREG 0803. The valves will be tested to ensure compliance with existing performance requirements for isolation boundaries. Further, the performance of the CRD system is well within the system capability for normal operation, and control rod scram performance is unaffected. Therefore, the proposed changes to not involve a reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 29, 1990

Description of amendment request: The amendments would revise the Technical Specifications (TS) in accordance with the guidance specified in NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls of Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program." Generic Letter (GL) 89-01 suggests that licensees (1) implement programmatic controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls section of TS, and (2) relocate procedural details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP). In addition, the licensee is proposing that the following TS sections be relocated to the ODCM.

(1) TS Section 3/4 3.7.3, "Meteorological Monitoring Instrumentation," and

(2) TS Section 5.0 "Design Features," Subsection 5.1.3.1a and 5.1.3.1b Site Map(s), "Defining Unrestricted Areas and Site Boundary for Radioactive Gaseous and Liquid Effluents."

The relocation of the TS Sections 3/4 3.7.3, 5.1.3.1a, and 5.1.3.1b to the ODCM is beyond the scope of GL 89-01; however, these sections are closely related to effluent release sections of the RETS. Therefore, changes to these TS sections may affect the RETS and should be processed in a manner similar to the proposed changes to the RETS.

In addition, the licensee is proposing to remove the Main Condenser Offgas Pre-treatment Monitor requirement from TS Section 3/4 11.2.1 (Table 4.11.2.1.2-1) since this requirement was originally misapplied to this section.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocating the procedural details of the RETS and meteorological monitoring program/site boundary maps from TS to the ODCM or PCP, as appropriate, and replacing them with programmatic controls which satisfy the applicable regulatory requirements in the Administrative Controls section of TS, do not affect plant operations. The proposed changes do not increase or decrease the level of radiological effluent control.

The proposed change to remove the gaseous effluent requirements for the Main Condenser Offgas Pre-treatment Monitor does not affect plant operations. This requirement was misapplied and should not have been specified for this monitor since this is not a release point monitor. The proposed change does not increase or decrease the amount of radiological effluent control.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical alterations of plant configurations, changes to setpoints, or operating parameters. The proposed TS changes are consistent with all the design requirements applicable to the original design. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative changes, in which the procedural details of the RETS and meteorological monitoring program are relocated to the ODCM and PCP, as appropriate, and programmatic controls satisfying the applicable regulatory requirements, are added to the Administrative Controls section of TS. Only minor editorial changes have been made in the wording of the procedural details of RETS. These minor editorial changes do not change the meaning of the procedural details, and are consistent with wording provided in NRC GL 89-01.

The proposed change to eliminate the gaseous effluent monitoring requirement for the Main Condenser Offgas Pre-treatment Radioactivity Monitor is editorial. This requirement was misapplied, since this monitor is not a release point monitor.

The additional proposed Administrative Controls being added to TS delineate the essential aspects of the RETS being relocated to the ODCM or PCP as appropriate, such that the associated requirements and established safety margins will continued to be maintained. Therefore, the proposed changes do not involved a significant reduction in a margin safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 14, 1990

Description of amendment request: The amendments would change the Technical Specifications to remove the requirement that the Average Power Range Monitor (APRMs) have to be operable while in Operational Condition 5 (OPCON 5). By definition, Operational Condition 5 is the Refueling condition, with the reactor mode switch in the shutdown or refuel position and with the reactor coolant temperature less than 140° F. The APRMs monitor core power from about 1% of full reactor power to 125% of full reactor power. The APRMs are not necessary for maintaining the plant in a safe condition while shutdown for refueling because there are sufficient levels of protective controls designed to prevent inadvertent criticality and fuel damage. The Intermediate Range Monitors (IRMs), the Source Range Monitors (SRMs), Refueling Interlocks and plant procedures each provide protection to maintain defense-in-depth and therefore preclude the need for the APRMs to be operable when the plant is shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Not requiring APRMs to be operational in OPCON 5 will not increase the probability of inadvertent reactor criticality during refueling operations. [Refueling Interlocks] (RIs), [the Neutron Monitoring Systems] (NMSs), (SRMs, IRMs), and procedural restrictions provide assurance that inadvertent criticality does not occur due to the simultaneous withdrawal or removal of two control rods or due to the inadvertent insertion of a fuel bundle into a core location with a control blade removed.

The FSAR Section 15.4.1 discusses the potential for a control rod withdrawal error during refueling and start-up operations. The discussion concludes that the withdrawal of one control rod does not require a safety action because the total worth of one control rod is not sufficient to cause criticality. The attempted withdrawal of two control rods, assuming an operator error and a single active failure, would result in a control rod block initiated by the RIs. The safety-related IRM subsystem, which is required by TS to be operable while in OPCON 5, is designed to generate a rod block or reactor scram on high neutron flux and is therefore a backup protective system for the RIs during refueling.

The FSAR Section 15.8.2 discusses two potential transient conditions during refueling with the reactor shutdown. The first is a control rod withdrawal error during Refueling which is terminated by a control rod drive block.

The second is a manual or inadvertent reactor transient caused by multiple operator errors or equipment failures which is mitigated by a reactor scram signal. Although neither of these two events is assumed to be mitigated by the NMS, the NMS subsystems (i.e., SRMs, IRMs) are available and operable to generate a rod block or scram signal if required during refueling.

The safety-related IRM subsystem of the NMS is required by TS to be operational during OPCON 5 to support the safety design bases of the NMS and RPS. The SRM is not a safety-related subsystem but is important to plant safety and is required to be operational in OPCON 5. The SRM subsystem provides the plant operator with neutron flux levels from startup conditions to the IRM operating range. The SRMs and IRMs are designed to respond to local core conditions and would indicate and respond (control rod block or scram) to an accident condition to mitigate the transient. Thus, the APRMs are not necessary to be operable in OPCON 5. The proposed TS change will not alter the current requirements that the APRMs be operable during shutdown margin demonstrations in OPCON 5 when the mode switch is in Startup.

The proposed TS change would reduce the APRM operability requirement in OPCON 5 and would not affect the FSAR evaluation of the inadvertent criticality due to the withdrawal or removal of the highest worth control rod or due to the insertion of fuel bundles in uncontrolled cells. The FSAR concludes that the RIs and plant procedures provide assurance that inadvertent criticality does not occur during refueling

The FSAR also presented two potential transients during refueling with the reactor shutdown. One transient is terminated by a control rod block and the other by a reactor scram. Neither transient requires the NMS to mitigate the event. Removing the APRM operability requirement in OPCON 5 would not increase the consequences of either transient since the IRMs will still be operable in OPCON 5 to generate an RPS scram or control rod block if neutron flux increased to the applicable setpoint. The IRMs function as a backup protective system to RIs during refueling.

The consequences of an accident will not be increased by the proposed TS change because of the existing lines of defense which prevent an inadvertent criticality event during refueling, e.g., administrative restrictions, refueling procedures, licensed plant operators, SRMs, RIs, and IRMs. Furthermore, should the number of operable IRM or SRM channels be less than that required by TS, the TS require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Therefore, the proposed changes do not result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS will remove the APRM operability requirement while in OPCON 5 (except for shutdown margin demonstration testing); however, the SRMs and IRMs will still be required to be operable in OPCON 5. The IRMs are safety-related and are designed to detect and respond to increases in neutron flux within the local core regions. Any inadvertent increases in neutron flux during refueling would originate at a local core location, i.e., rod withdrawal error or fuel bundle insertion. TS require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the setpoint. Therefore, removing the APRM operability requirement in OPCON 5 would not affect any safety-related equipment or equipment important to safety.

The APRMs provide core power information to the control room operator and also provides trip signals to the RMCS and RPS as required. Also, the APRMs provide an input signal to the RRCS. The absence of an APRM input signal will not affect these systems during refueling operations.

Removing the APRM operability in OPCON 5 will not affect the response of safety-related equipment as previously evaluated in the FSAR. The proposed changes to the TS do not affect any safety-related equipment or equipment important to safety.

Removing the APRM operability requirement during refueling will eliminate the APRM input into the RRCS. However, the RRCS is not in service during refueling. The automatic injection mode of the SLCS is not required to be operational during refueling. SLCS can be manually operated, if required, independent of the RRCS. The proposed changes to the TS would remove the APRM operability requirement during refueling operations. TS require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the applicable setpoint.

No new types of accidents would be introduced since the SRMs and IRMs are available and required to be operable in OPCON 5. Both SRMs and IRMs would indicate and provide a rod block or scram signal, as appropriate, to an increase in neutron flux to mitigate a transient event. Furthermore, should the number of operable IRM or SRM channels be less than that required by TS, the TS require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Finally, the APRMs do not have functions which can cause an accident condition.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

For the reasons discussed in items 1 and 2 above and because the TS Bases do not discuss or require APRM operability during OPCON 5, Refueling, the proposed TS changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 21, 1990

Description of amendment request: Public Service Electric and Gas Company has proposed to revise the Salem 1 and 2 Technical Specifications, Section 3.3.1, Table 3.3-1, Table Notation triple pound symbol, to specify the surveillance results that require reporting under 10 CFR 50.73. This change replaces the "immediate" NRC notification requirement for reactor trip breakers (RTB) and reactor trip bypass breakers (RTBB) that exceed any procedural acceptance criteria or trip forces that exceed the recommended upper limit with a requirement to submit a written report within 30 days in accordance with 10 CFR 50.73. Also, the conditions required to be reported have been defined as:

1. A RTB or RTBB trip failure during any surveillance test with less than or equal to 300 grams of weight added to the breaker trip, or

2. A RTB or RTBB time response failure that results in the overall reactor trip system time response exceeding the Technical Specification limit.

This amendment request is a complete revision of the December 27, 1989 request. The proposed determination that the December 27, 1989 request involved no significant hazards consideration was published in the **Federal Register** (55 FR 6117) on February 21, 1990. The May 21, 1990 request supersedes the December 27, 1989 request in its entirety.

Basis for proposed no significant hazards consideration determination: Following the Salem ATWS events of February 22 and 25, 1983, PSE&G implemented extensive revisions to the maintenance and surveillance procedures associated with the reactor trip and reactor trip bypass breakers. Since many of these procedural changes were prototypical in nature, they were broad in scope and contained very conservative test and acceptance criteria. Additionally, because of the safety significance of these events, the NRC imposed conservative reportability requirements to ensure timely notification of hardware related deficiencies. These additional reporting requirements were subsequently incorporated into the Salem Unit 1 and 2 Technical Specifications.

Generic Letter 83-28 established industry wide required actions based on the generic implications of the Salem ATWS events. These actions addressed issues related to reactor trip system reliability and general management capability. The generic letter did not impose additional reporting requirements beyond those already in existence.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect the present level of breaker surveillance testing or maintenance. Breakers failing to satisfy the specified surveillance acceptance criteria will require appropriate action as indicated in the Technical Specifications.

Therefore, it may be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not adversely affect the design or operation of any system or component important to satisfy. No physical plant modifications or new operational configurations will result from this change.

Therefore, it may be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The present margin of safety is maintained, since breaker maintenance and surveillance testing is unaffected. The proposed change only affects the reporting of failures, by replacing the Technical Specification immediate notification requirement with the normal NRC reporting mechanisms specified in 20 CFR 50.73.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 5, 1990.

Description of amendment request: Proposed Change No. 220, which was submitted by Amendment Application No. 183, proposes to delete License Condition 3.L and convert its requirements into Technical Specifications (TS). The following changes are proposed by the licensee:

License Condition 3.L(1)

This license condition limits the total connected loads on each diesel engine to 6,000 KW (maximum) and limits the number of engine starts-stops between diesel crankshaft inspections to fifty (maximum).

The proposed change transfers some of these requirements to Technical Specification (TS) 3.7, "Auxiliary Electrical Supply," and the remainder to TS 4.4, "Emergency Power System Periodic Testing." The proposed change permits starts-stops associated with engine operation at 200 rpm or less to be excluded from the fifty starts-stops limit.

License Condition 3.L(2)

This license condition requires that a diesel maintenance and surveillance program as previously described in Amendment No. 123 be implemented.

The proposed change transfers this requirement to TS 4.4 and deletes the existing diesel inspection requirement in TS 4.4, which is superceded [sic] by the newer requirement.

License Condition 3.L(3)

This license condition incorporates by reference the recommendation made by the TDI diesel generator owners group to perform a major overhaul on each diesel engine once every ten years.

The proposed change transfers the owners group recommendation to TS 4.4.

License Condition 3.L(4)

This license condition requires that oil holes in main journals 8 through 12 on each diesel crankshaft be inspected for cracks at each plant refueling. It requires inspection of additional critical areas at each major engine overhaul. It requires that if cracks are found,

the engine be considered inoperable and the NRC be notified.

The proposed change transfers these requirements to TS 4.4.

License Condition 3.L(5)

This license condition requires both cylinder blocks on each engine to be periodically inspected for cracks. It provides additional inspection requirements for the right cylinder block of diesel engine no. 1 that has a degraded microstructure. It specifies that if certain types of cracks are found, the engine be considered inoperable and the NRC be notified.

The proposed change transfers these requirements to TS 4.4.

License Condition 3.L(6)

This license condition specifies that all diesel starts for testing and surveillance be slow starts, i.e., taking more than 24 seconds, except where a fast start is required either by the plant TS or for specific maintenance purposes.

The proposed change transfers this requirement to TS 4.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. *Question:* Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The function of the emergency diesel generators is to provide A.C. power for accident mitigation if offsite power to the plant is lost. An improvement in the reliability of these diesels is therefore beneficial to the plant and will not increase the probability or consequences of an accident previously evaluated. The purpose of the six diesel license conditions was to improve and maintain the reliability of the diesels by ensuring that certain operational restrictions and maintenance and surveillance recommendations which were the result of the owners group effort are implemented. The proposed change will ensure that this continues to be the case.

License Condition 3.L(1) was imposed by the NRC on a temporary basis. Its purpose was to ensure the interim reliability of the diesel crankshafts while the NRC was completing its review of the owners group crack propagation analysis for the crankshafts. Since then, the NRC has completed its review and documented the remaining diesel reliability issues in a safety evaluation... [dated November 21, 1989 - TD1 Diesel Crankshaft Cracking Problem].

The safety evaluation leads to the following conclusions:

(1) Operation of the diesels up to 6,000 KW is acceptable for the long term.

(2) A crankshaft inspection interval of fifty start-stop cycles is acceptable for the long term, if SCE demonstrates that the eddy current testing (ECT) technique can detect 10 mil deep cracks.

Recent experimental results have shown that ECT is capable of detecting 5 mil deep cracks. For details regarding this experiment, see Attachment 3 to this proposed change.

(3) Engine start-stop cycles with engine speed less than 200 rpm need not be counted toward meeting license condition 3.L(1). If SCE demonstrates that the stresses induced in the crankshaft at startup and coastdown are less than the 6,000 KW steady state values.

The required analysis has been completed. Attachment 3 to this proposed change presents a summary of the results.

The crankshaft stresses during idle speed startup (0-150 rpm), idle speed operation (150-200 rpm), and coastdown from idle speed were analyzed. These stresses were compared with the crankshaft stresses previously calculated by FaAA... for full load (6,000 KW) steady state operation ["Evaluation of Transient Conditions on Emergency Diesel Generator Crankshafts at San Onofre Nuclear Generating Station Unit 1," FaAA-84-12-14, Rev.1.0, April 1985]. In all cases, the full load stresses were found to be higher.

(4) Since crankshaft cracks as deep as 1/4 inch were reported previously, it is possible that oil impurities, which result from engine operation or oil manufacture, may have contributed to crack initiation and propagation. SCE should therefore review and make appropriate revisions to its diesel oil maintenance procedures.

The diesel oil sampling, testing and analysis procedure has been reviewed. No evidence was found to indicate that the diesel oil used by San Onofre Unit 1 accelerates stress corrosion cracking or bulk corrosion processes. A review of the oil sampling and analysis methods shows that the total base number and water content of the oil are within acceptable limits. The crankshaft material has the recommended hardness value and yield strength to resist corrosion in a sulfide bearing environment. Key oil parameters are trended. No changes to the procedures are considered necessary. For additional details regarding the review, see Attachment 4 to this proposed change.

Based on the above information, the requirements of license condition 3.L(1), as modified by this proposed change for long term application, are acceptable and will not adversely impact diesel reliability nor increase the probability or consequences of an accident previously evaluated.

License Condition 3.L(2) requires the implementation of a comprehensive diesel engine maintenance and surveillance program. The proposed change makes this requirement a part of the Technical Specifications. With this change, the diesel inspection requirement found in existing Technical Specification 4.4.F will become superfluous and will be deleted. This entire change is considered administrative and will not increase the probability or consequences of an accident previously evaluated.

The proposed changes relating to license conditions 3.L(3) through 3.L(6) are also administrative and will not increase the probability or consequences of an accident previously evaluated.

2. *Question:* Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes do not affect plant equipment or plant operations other than the diesels and their operation. The proposed changes are designed to improve and maintain diesel reliability. They do not include any changes that go beyond the issues covered in the NRC's safety evaluation... [dated November 21, 1989]. Based on this information the proposed change will not create the possibility of a new or a different kind of accident from any accident previously evaluated.

3. *Question:* Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed changes affect only the diesels and their operation. They are designed to improve and maintain the reliability of the diesels. They do not introduce any new safety issues. As such, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: John T. Larkins (Acting)

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: April 19, 1990 (TS 279)

Description of amendment requests: This amendment revises Browns Ferry Technical Specifications - Liquid Radwaste Effluent Flow Measurement. This amendment removes reference to fixed in-line rotometer which is no longer used to monitor the liquid radwaste effluent flow rate as noted in Table 3.2.D of BFN Technical Specifications for Units 1, 2 and 3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) Involve a significant reduction in a margin of safety. 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The new instrumentation provides improved performance of the monitoring loop and does not affect the function, operation, or qualification of any components associated with the radwaste system. There are no accidents previously evaluated which would be initiated by a failure of a component associated with this monitoring loop.

2. The proposed amendment does not create the possibility of a new or different kind of accident previously evaluated. The upgrading of the existing non-safety related flow measuring instrumentation has no impact on any safety-related components of the radwaste system or its associated equipment.

3. The proposed amendment does not involve any significant reduction in a margin of safety. The upgrading of these non-safety related components will not cause the acceptance limit for any accident analysis to be exceeded, nor does it change any margin of safety. This change will have no effect on the concentrations or flow rates of radioactive effluents and will enhance TVA's ability to monitor flow rates to ensure compliance with 10 CFR 20.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: May 18, 1990 (TS 280)

Description of amendment requests: BFN Units 1, 2 and 3 technical specifications (TSs) are being changed to: (1) revise Table 3.2.B and Limiting Conditions for Operation (LCO) 3.5.E.1, 3.5.F.1, 3.5.G.1, and 3.6.D.1 to clarify equipment operability requirements when the reactor is in the cold shutdown condition or during performance of inservice hydrostatic or leakage tests; (2) revise the maximum operating power level allowed with an inoperable Recirculation Pump Trip (RPT) system(s) from 85 percent to 30 percent power; and (3) correct two typographical errors in Table 3.2.B.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) Involve a significant reduction in a margin of safety. 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Change 1 clarifies equipment operability requirements with the reactor in the cold shutdown condition or during performance of inservice hydrostatic and leakage tests. With the reactor in the cold shutdown condition, primary system energy is minimal and the controls rods are inserted. Reactor pressure is normally atmospheric except during performance of inservice hydrostatic tests, inservice leakage tests, and Integrated Leak Rate Tests (ILRT). This change would inhibit the drywell high pressure instruments which function to detect primary system leaks. With minimal system energy and no steam generation, this function is not required. The High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems are not required because there is no steam supply to operate them and Residual Heat Removal (RHR) and Core Spray are operable and capable of providing makeup in case of leaks to protect the fuel from being uncovered. The Automatic Depressurization System (ADS) and relief valves are not required because alternate means of overpressurization protection are provided in the tests. The RHR crosstie is not required because there is no high energy potential to breach the torus in the cold shutdown condition. The change is consistent with industry practice and the GE BWR Standard TSs (NUREG 0123).

Change 2 is a more conservative requirement. The RPT system provides an automatic trip of both recirculation pumps after a turbine trip or a generator load reject. This reduction in flow increases the core voids and provides immediate negative reactivity to reduce the severity of the transient. There are two RPT systems. If both RPT systems are inoperable or if one RPT system is inoperable for more than 72 hours, reactor power shall be less than 30 percent within four hours (vs. the current 85 percent). The proposed value of 30 percent power is consistent with the BFN RPT analysis and the BFN Updated Final Safety Analysis Report. Therefore, this change involves no significant increase in the probability or consequences of an accident previously analyzed.

Change 3 is an administrative change that corrects typographical errors.

2. The proposed change does [changes do] not create the possibility of a new or different kind of accident from an accident previously evaluated. Change 1 does not involve changes in plant hardware or method of operation from that currently practiced. The changes are clarifications to TSs to facilitate performance of required TS testing with the reactor in the cold shutdown condition. The methods of performance are consistent with industry practice.

Change 2 will ensure that when both RPT systems are inoperable or when one RPT system is inoperable more than 72 hours, reactor power is dropped to a level consistent with the analysis performed for the RPT installation.

Change 3 corrects two typographical errors so the TSs will be more consistent.

3. The proposed changes do not involve a significant reduction in the margin of safety. Change 1 clarifies equipment operability requirements with the reactor in the cold shutdown condition or during performance of inservice hydrostatic and leakage tests. Sufficient safety equipment is still available to ensure the fuel remains covered, even in the event of leaks. It does not reduce the equipment available to mitigate an accident and as such does not reduce the margin of safety.

Change 2 is more conservative than the current TS. When the RPT system is inoperable the maximum allowed reactor power will be reduced. This is consistent with the analysis performed for the RPT installation and the FSAR and does not reduce the margin of safety.

Change 3 is an administrative change which does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 21, 1990 (TS 90-14)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes revise valve nomenclature in TS Table 3.6-2, Containment Isolation Valves. The nomenclature of 14 sampling valves in the TS table would be changed from flow control valve (FCV) to flow solenoid valve (FSV). The Unit 1 valves were changed in the recently completed Unit 1 Cycle 4 refueling outage. The Unit 2 valves will be replaced in the upcoming Unit 2 Cycle 4 refueling outage scheduled to begin in October 1990.

Basis for proposed no significant hazards consideration determination: In its submittal, TVA provided the following to support the proposed changes to the TSs:

...The change in valves is associated with plant modifications that support TVA's commitment for upgrading SQN Units 1 and 2 to meet the guidelines of NRC Regulatory Guide (RG) 1.97, "Instrumentation for Light Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident."...

The 14 air-operated FCVs as listed in SQN TS Table 3.6-2 are being replaced with FSVs. SQN's current FCVs have limit switches that are not environmentally qualifiable. The valve stroke is too small (3/8 inch) to have functional and environmentally-qualified limit switches. Therefore, these valves will be replaced with FSVs that are totally enclosed and have reed switches internal to the valve. This changeout at SQN is required as part of TVA's commitment for complying with RG 1.97 (refer to License Condition 2.C.(24) of the SQN Unit 1 Facility Operating License DPR-77 and License Condition 2.C.(14) of the SQN Unit 2 Facility Operating License DPR-79).

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specifications (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed change to TS Table 3.6-2 does not change the containment isolation function for these valves. The valve changeout from air-operated FCVs to solenoid-operated FSVs was evaluated under TVA's 10 CFR 50.59 process. TVA's evaluation determined that an underviewed safety question does not exist. This changeout is required to support TVA's commitment for Regulatory Guide 1.97 compliance. The installation of FSVs with totally enclosed reed switches provides environmental qualification of these valves resulting in improved reliability for CIV position indication during and following an accident. The closure times for the FSV design also provides improved isolation response times. In addition, 10 CFR 50, Appendix J leak-rate criteria for the FSVs will not be compromised by this change. Consequently, TVA's proposed TS change does not increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

TVA's proposed change does not introduce the possibility for a new or different kind of accident from those previously analyzed. The proposed TS change was evaluated under the 10 CFR 50.59 process. [The function of these containment isolation valves is not being changed.] TVA's evaluation determined that there is not impact to SQN's containment integrity or containment isolation time. No new failure modes are introduced in the system and/or components, therefore no new unanalyzed accident scenarios are created by this change.

(3) Involve a significant reduction in a margin of safety.

The proposed change from FCV to FSV in Table 3.6-2 will not affect the containment isolation function for these valves. The change in valve design from air operated to solenoid operated provides an environmentally qualifiable valve, resulting in improved CIV position indication postaccident. This valve changeout will not impact the 5- and 10-second maximum isolation time requirement in TS Table 3.6-2. Therefore the proposed change does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment requests: May 21, 1990 (TS 90-09)

Description of amendment request: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Unit 2, Technical Specifications (TSs) on containment Type A or integrated leak rate tests (CILRTs). The proposed change is to add a footnote to Surveillance Requirement (SR) 4.6.1.2(b) regarding accelerated CILRT test schedules. The two tests performed on Unit 2 during the Unit 2 Cycle 2 refueling outage (November 1984) and the Unit 2 Cycle 3 refueling outage (March 1989) were classified as failed tests. In accordance with SR 4.6.1.2(b), these two consecutive failures require an accelerated test frequency. TVA's proposed TS change requests an exemption from the accelerated test frequency in SR 4.6.1.2.b for the Unit 2 Cycle 2 and Cycle 3 test failures. Without this change, the accelerated test frequency would require a Unit 2 CILRT in the upcoming Cycle 4 refueling outage which is scheduled to begin in October 1990.

Basis for proposed no significant hazards consideration determination: In its submittal, TVA provided the following information to support its proposed change to Unit 2 TSs:

TVA has evaluated the Type A test results in conjunction with the particular conditions that caused each of the Unit 2 CILRT failures and has determined that the increased surveillance frequency would be inappropriate. The leakage test results from each of the Unit 2 failures were below the maximum analyzed leakage limit (1.0 La). It should be noted that SQN's TSs contain a conservative leakage limit of 0.75 La. Test results, along with problem identification, have demonstrated that a general containment leakage problem does not exist. The particular conditions that caused each of the Unit 2 CILRT failures were positively identified. TVA has implemented a corrective action plan that directly addresses the cause of the CILRT failures to preclude recurrence. A detailed description of TVA's corrective action plan is provided in the justification for change provided below [submittal]. Based on the improvements now contained in TVA's CILRT program coupled with the fact that the failed test leakage was below the maximum analyzed leakage, TVA has determined that increasing the frequency of the Type A test in accordance with SR 4.6.1.2(b) would not provide a corresponding increase in the level of confidence for demonstrating Unit 2 containment integrity.

In addition to the above, TVA has evaluated the hardships and impact of performing an increased frequency CILRT during the Unit 2 Cycle 4 refueling outage. TVA estimates the cost for setup, testing, and recovery to be approximately $280,000. This does not include replacement power cost associated with the 3- to 4-day additional downtime. Current estimates of the replacement power cost during the fall and winter months (Unit 2 Cycle 4 refueling outage [is] scheduled from October to December 1990) would be approximately $1 million. Consequently, based on monetary options, TVA considers the request for relief from the TS SR to be economically prudent.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested change does not require a physical modification to any plant system and does not affect any accident analysis. The exemption from the accelerated Type A test frequency is based on the fact that the measured as-found leakage rates for both Unit 2 CILRTs were below the safety analysis limit of 1.0 La. The implementation of TVA's corrective action plan is intended to correct the root causes of the problems that resulted in the Unit 2 Type A test failures. TVA's corrective action plan focuses attention on the root causes of Unit 2 leakage problems and is considered to be more appropriate than performance of two consecutive successful Type A leakage tests (i.e., increased frequency). A general containment leakage problem does not exist. [The maximum allowed containment leakage limit in the TSs is not being changed]. Therefore, the requested change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

No physical modification is being made to any plant system as a result of this change. The proposed exemption from the increased frequency requirement for Type A tests does not alter any accident analysis or any assumptions used to support the accident analysis. TVA has implemented a corrective action plan that is intended to prevent recurrence of previously identified leakage problems that were encountered during the last two Type A tests on Unit 2. Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety.

The margin of safety provided by the allowable containment leakage limit (0.75 La) currently contained in TSs remains unchanged. The as-left [CILRT] leakage value will still meet this limit. The nature of the problems encountered during the previous two Type A tests of SQN Unit 2 indicates that a general containment leakage problem does not exist. TVA's corrective action plan directly addresses the identified problem areas to prevent recurrence. Therefore, there is no significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-336 and 50-338, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of amendment request: May 16, 1990

Description of amendment request: The proposed changes would update the high range effluent monitor alarm setpoints in Table 3.3-6 of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) Technical Specifications (TS). The high range effluent monitors and associated TS were formulated in response to NUREG-0737 accident monitoring requirements. The purpose of the "Hi" and "Hi Hi" alarms was to alert the control room operators of the impending need to declare a site area or general emergency. The criteria for declaring a site area or general emergency are specified in the NA-1&2 Emergency Plan Implementing Procedures (EPIPs), which have been revised since the original setpoint calculations were completed. These EPIPs contain conservative assumptions to be used for setpoint calculations such as worst-case dispersion factors. The proposed changes in ventilation and process vent setpoints, Hi and Hi Hi, represent substantial reductions (factors on the order of 1000) from the currently approved setpoint values specified in the NA-1&2 TS. Because the TS action statement allows a more conservative setpoint, NA-1&2 have been operating with lower setpoints based on the EPIPs. These setpoints were calculated with the use of the Xe-133 dose conversion factor specified in Regulatory Guide 1.109. Also, the ventilation vent and process vent monitors have been modified to multiply the concentration by the flow rate. Releases would therefore be reported in 10^{-6} curies per second (micro Ci/sec), a more relevant measure than the currently specified 10^{-6} curies per cubic centimeter (micro Ci/cc).

The auxiliary feedwater pump turbine exhaust monitor and the main steam monitor setpoints would also be revised due to changes in the EPIPs. These monitors would be needed if the secondary system was severely contaminated and the turbine-powered auxiliary feedwater pump or the main steam safety relief valves were used. The Hi setpoints are based on the site area emergency criteria specified in the NA-1&2 EPIP 4.07 and the Hi Hi setpoints based on general emergency criteria. The setpoints were calculated using the Xe-133 dose conversion factor specified in Regulatory Guide 1.109 and dispersion factors from EPIP 4.10. Flow rates for main steam and auxiliary feedwater pump turbine exhaust remain unchanged from the original calculation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change request against the standards provided above and has determined that this change will not:

(1) Involve a significant increase in the probability or consequence of an accident or

malfunction of equipment important to safety as previously evaluated in the [Updated] Final Safety Analysis Report. The change[s] only [affect] the setpoints of the high range effluent monitors and will therefore not alter the probability of any accident. The use of setpoints based on current Emergency Plan Implementing Procedures [should] improve operator awareness and therefore will not increase the consequences of an accident.

(2) create the possibility of a new or different kind of accident or a malfunction of a different type than any previously evaluated in the [updated] Final Safety Analysis Report. The only safety function these systems provide is to provide information on releases. They therefore cannot create a new or different accident.

(3) involve a reduction in a margin of safety. The revision will provide the operator with more meaningful indication and will therefore not involve a reduction in a safety margin.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 15, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) 3.3.c.2, 3.6.b.1, 3.6.b.2, and 3.12.b to change the action statements for the containment cooling, shield building ventilation, auxiliary building ventilation and control room postaccident recirculation systems.

The proposed change to the containment cooling specification incorporates the results of reanalyses of the control room operator dose and offsite dose consequences following a design basis accident. The new analyses take some credit for the containment spray system to remove radioiodine from the containment atmosphere, whereas the previous analyses took no credit for this attribute in dose calculation assessments. The existing specification allows both trains of containment spray to be inoperable for up to 72 hours. The proposed change stipulates that one train of containment spray remains operable during power operation. The proposed action statements for the containment cooling system specifications are similar to standard TS for Westinghouse plants.

The proposed change to the shield building ventilation, auxiliary building ventilation and control room postaccident recirculation system specifications removes the requirement to demonstrate the opposite train operable when one of the two trains is made, or found to be inoperable. The licensee states that past performance of these systems has demonstrated that routine surveillance assures system operability; and that testing the opposite train for proof of operability unnecessarily challenges the equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has addressed these standards as provided in the following discussion.

(1) The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed change of TS 3.3.c.2 concerns the containment spray system which is not a precursor to an accident analyzed in the Updated Safety Analysis Report (USAR), therefore, the proposed change would not increase the probability of occurrence of an accident. The resultant doses are less than those originally approved for Kewaunee and less than the 10 CFR Part 100 offsite limits, and within the GDC 19 guidelines for control room operators. On this basis, the proposed change will not result in an increase in the consequences of an accident.

The proposed change of TS 3.6.b.1, 3.6.b.2, and 3.12.b concerns the shield building ventilation (SBV) system, auxiliary building special ventilation (ABSV) system, and control room postaccident recirculation (CRPR) system which are not precursors to analyzed accidents; therefore, the proposed change will not increase the probability of an accident. Routine surveillance testing confirms system operability. Deleting unnecessary challenges to safeguards equipment will not increase the consequences of an accident.

(2) The amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated, since the proposed change is the result of a reanalyses of the control room operator and offsite dose consequences. No system or plant modifications are involved; therefore, the proposed change will not create the possibility of a new or different kind of accident.

(3) The amendment would not involve a significant reduction in a margin of safety, since the proposed action statements associated with TS 3.3.c.2 stipulate that one train of containment spray shall remain operable during power operation. Stipulating one train of containment spray remains operable during power operation assures conformance to the USAR and control room habitability assumption and represents an overall increase in safety. The proposed change is an additional restriction in Technical Specifications, and therefore, will not result in a decrease in the margin of safety.

The proposed change of TS 3.6.b.1, 3.6.b.2, and 3.12.b will eliminate unnecessary challenges to safeguards equipment. Deleting this additional testing requirement is consistent with Westinghouse Standard Technical Specifications which have this type of requirement only for the emergency power system. Since operability of the SBV, ABSV, and CRPR systems is demonstrated by surveillance procedures, removing this requirement from the action statements will not result in a decrease in a margin of safety.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The Commission's staff has reviewed the licensee's submittal and agrees with the licensee's conclusions for the three standards. Accordingly, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P.O. Box 2193, Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: April 19, 1990 as supplemented June 7, 1990

Description of amendment request: The proposed amendment would modify the Technical Specification Surveillance Requirement to bring the High Pressure Safety Injection (HPSI) and LPSI pump surveillance frequency requirements in line with the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (PWRs) contained in NUREG-0452, Revision 4, while providing for re-establishment of ASME XI inservice testing reference values as provided for in the code. NUREG-0452 requires surveillance of these pumps only when they are being tested to meet the inservice testing required by Section XI of the ASME Boiler and Pressure Vessel Code in effect for each specific plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

This change is requested in order to revise the HPSI and LPSI pump surveillance requirements in Section 4.5.2a of the YNPS Technical Specifications. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change only revises the surveillance requirements for these pumps. The purpose of these surveillance requirements is to prove that the pumps are operable. The revised surveillance requirements will continue to demonstrate pump operability.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Verification of pump operability is maintained while requiring no system configuration changes in order to perform surveillance testing, which adversely affect system functional performance.

3. Involve a significant reduction in a margin of safety. Verification of pump operability is maintained. The Inservice Testing Program at YNPS will continue to ensure that pump operational readiness criteria are consistent with the requirements of ASME XI. System performance surveillance will continue to be conducted in accordance with plant Technical Specifications.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's no significant hazards analysis. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02111

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 25, 1990

Brief description of amendment request: The amendment adds a clarifying note regarding frequency of the nuclear source range instrumentation Logic Channel Testing in Table 4.1-1 of the Technical Specifications. The amendment also corrects a typographical error and renumbers a subsequent note in Table 4.1-1.

Date of publication of individual notice in Federal Register: June 5, 1990 (55 FR 22975)

Expiration date of individual notice: Comment period expired June 20, 1990; notice period expires July 5, 1990 (original notice erroneously stated that the notice period ended June 20, 1990).

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and

(3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: March 8, 1990

Brief description of amendments: These amendments remove the 3.25 limit on the combined time interval for three consecutive surveillance intervals in Technical Specification 4.0.2 and the associated Bases. The limit of 25 percent extension for individual surveillance intervals is retained.

Date of issuance: June 11, 1990

Effective date: 45 days from the date of issuance

Amendment Nos.: 45, 35, and 22

Facility Operating License Nos. NPF-41, NPF-41 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: April 4, 1990 (55 FR 12589) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: June 30, 1988, as supplemented November 27, 1989, February 1, 1990 and April 20, 1990.

Brief description of amendment: This amendment incorporates changes to the methodology for predicting reactor vessel material embrittlement for the Shearon Harris Nuclear Power Plant, Unit 1, (Harris) Technical Specifications (TS). The revisions affect the pressure-temperature limitations on the Reactor Coolant System (RCS), the heatup and cooldown rates for the RCS, and the associated Low Temperature Overpressure Protection System (LTOP) set points. In addition, the new methodology requires related changes in: (1) recalculated limiting material reference temperature (RT sub-NDT), (2) modified LTOP enable temperature, (3) the selection of instrumentation for monitoring RCS average temperature, and (4) revisions to the TS Bases. Some administrative changes are made such as: (1) rewording to clarify certain specifications, (2) deleting redundant surveillances, and (3) removing the reference to criticality limits in TS 3.4.9.1, 3.4.9.2 and Figure 3.4-3.

Date of issuance: May 31, 1990

Effective date: May 31, 1990

Amendment No. 19

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 4, 1989 (54 FR 40924) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 28, 1988, as revised February 15, 1990.

Brief description of amendments: The amendments modified the Technical Specifications by revising the administrative control requirements for the McGuire Safety Review Group (MSRG).

Date of issuance: June 6, 1990

Effective date: June 6, 1990

Amendment Nos.: 110 and 92

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 8, 1989 (54 FR 6193). Since the date of the initial notice, the licensee revised the application by letter dated February 15, 1990. The revision provided increased specificity with respect to the qualifications of the MSRG and did not alter the Commission's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 13, 1990

Brief description of amendment: This amendment changes the Technical Specifications to allow elimination of the automatic simultaneous operation of the motor-driven emergency feedwater pump and the low pressure injection system when offsite power is not available, and changes response times for the low pressure and high pressure injection systems.

Date of issuance: June 4, 1990

Effective date: June 4, 1990

Amendment No.: 130

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 4, 1990 (55 FR 12591) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendments: December 5, 1989

Brief description of amendment: This amendment incorporates revised pressure/temperature limits and the results of a revised low temperature overpressure protection analysis into the Technical Specifications for St. Lucie Unit 1.

Date of Issuance: June 11, 1990

Effective Date: June 11, 1990

Amendment No.: 104

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 27, 1989 (54 FR 53204) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: December 15, 1989, modified by letter dated April 24, 1990

Brief description of amendment: This amendment changes the St. Lucie Plant, Unit 1 Technical Specifications (TS) to enhance diesel generator reliability. It also makes St. Lucie Unit 1 TS for "Electrical Power Systems, A.C. Sources" similar to St. Lucie Unit 2 TS.

Date of Issuance: June 7, 1990

Effective Date: June 7, 1990

Amendment No.: 103

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 10, 1990 (55 FR 933) The April 24, 1990 letter added two tests to the proposed Technical Specification changes and also provided clarifying information. This additional information did not alter the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 29, 1988.

Brief description of amendments: These amendments raise the trip set points and increase the span of allowable values for the 4KV Bus Loss of Voltage and 4KV Bus Degraded Voltage actuation relays.

Date of issuance: May 25, 1990

Effective date: May 25, 1990

Amendments Nos.: 137 and 124

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 21, 1990 (55 FR 10536). The Commission's related evaluation of the amendments is contained in a Safety evaluation dated May 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 29, 1989

Brief description of amendments: These amendments allow an extended surveillance interval of 18 months for the visual inspection of the ice condenser's lower support structures and turning vanes, and for the testing of the lower inlet doors of the ice condenser.

Date of issuance: May 29, 1990

Effective date: May 29, 1990

Amendments Nos.: 138 and 125

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 21, 1990 (55 FR 10538). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: February 6, 1990

Brief description of amendments: This amendment revises Technical Specifications (TS) by implementing a Core Operating Limits Report (COLR) in accordance with Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications." Generic Letter 88-16 allows cycle-specific parameters, such as moderator temperature coefficient and the heat flux hot channel factor, to be removed from the TS and maintained in a COLR. NRC will be informed of changes to the operating limits. Changes to the operating limits will be made using NRC approved methodologies for the D. C. Cook Nuclear Plant.

Date of issuance: May 23, 1990

Effective date: As of the beginning of Cycle 8

Amendments Nos.: 122

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 21, 1990 (55 FR 10538). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 21 and March 15, 1990

Brief description of amendment: The amendment modifies the Technical Specifications (TS) as follows: (1) The cycle-specific operating limits are removed from a number of TS and incorporated in the Core Operating Limits Report (COLR) as defined in TS 1.42 and the reporting requirements associated with the COLR are also established; (2) an editorial change to TS 4.6.2.1 and 4.6.2.2 is made to improve readability, and (3) a change to TS 3/4.9.1 is made to correctly describe a method for immobilizing a manual valve.

Date of issuance: June 13, 1990

Effective date: June 13, 1990

Amendment No.: 80

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14513) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 23, 1990

Brief description of amendment: The amendment adds a new Technical Specification Section 3/4.7.11 "Ultimate Heat Sink" by a requirement to maintain an average water temperature less than or equal to 75 degrees F at the intake structure except when the reactor is in the cold shutdown or refueling condition.

Date of issuance: June 12, 1990

Effective date: June 12, 1990

Amendment No.: 145

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14512) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 28, 1990

Brief description of amendment: Revises Appendix A Technical Specifications to eliminate requirement for automatic isolation function of wide range gas monitors.

Date of issuance: June 5, 1990

Effective date: June 5, 1990

Amendment No.: 74

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14514)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: April 18, 1988, as supplemented by letter dated December 21, 1989 (Reference LAR 88-05).

Brief description of amendments: The amendments revised Technical Specification (TS) Sections 3.0.4, 4.0.3, and 4.0.4, and the associated TS Bases sections, which define the applicability of limiting conditions for operation and surveillance requirements. The amendments also delete the exceptions to TS 3.0.4 in a number of TS. The TS changes are in accordance with the recommendations of Generic Letter (GL) 87-09 to provide greater operational flexibility and preclude unnecessary plant shutdowns and to allow passage through or to operational modes as required to comply with Action Requirements.

Date of issuance: June 11, 1990

Effective date: June 11, 1990

Amendment Nos.: 55 and 54

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: May 3, 1989 (54 FR 18968). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: March 20, 1990

Brief description of amendment: This amendment made several administrative changes to the Limerick, Unit 1 Technical Specifications to eliminate differences between the Unit 1 and Unit 2 Technical Specifications.

Date of issuance: May 30, 1990

Effective date: May 30, 1990

Amendment No. 48

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14514) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 8, 1990 as supplemented on April 26, 1990. The supplemental letter proposed editorial and administrative revisions to the TS changes proposed in the original submittal. The staff has determined that these additional changes do not affect the proposed no significant hazards determination.

Brief description of amendments: These amendments changed the Technical Specifications to remove cycle specific parameter limits in accordance with the guidance provided in NRC Generic Letter 88-16 and to make miscellaneous administrative changes.

Date of issuance: May 21, 1990

Effective date: May 21, 1990

Amendments Nos.: 154 and 155

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14517) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 21, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 23, 1990

Brief description of amendment: The amendment revises Technical Specifications Table 4.1-3, "Frequencies for Equipment Tests." The change would revise testing to specify control rod movement of at least 10 steps to assure control rod movement. A two week surveillance interval is also changed to 31 days.

Date of issuance: June 5, 1990

Effective date: June 5, 1990, to be implemented within 30 days

Amendment No.: 99

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 2, 1990 (55 FR 18413) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 12, 1990, superseded April 20, 1990.

Brief description of amendment: This amendment removes the cycle-specific parameter limits from the Technical Specifications and places them in the Core Operating Limits Report in accordance with guidance contained in Generic Letter 88-16.

Date of issuance: May 31, 1990

Effective date: May 31, 1990

Amendment No.: 182

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: March 27, 1990 (55 FR 6234) and renoticed April 30, 1990 (55 FR 18042) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: April 4, 1990, and supplemented by letters dated April 12, 1990, April 20, 1990 and May 7, 1990. The May 7, 1990 letter provided information concerning the schedule for resolution of the main steam isolation valve slow closure time and did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.

Brief description of amendment: This amendment increased the allowable closure time of the main steam isolation valves from 5 seconds to 8 seconds until restart from the sixth refueling outage. The amendment for Unit 1 was processed as an emergency technical specification change in accordance with 50.91(a)(5).

Date of issuance: May 30, 1990

Effective date: May 30, 1990

Amendment No. 91

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 25, 1990 (55 FR 17683) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: January 8, 1990 and supplemented March 12, March 19 and May 2, 1990.

Brief description of amendments: The amendments revised San Onofre Units 2 and 3 Technical Specification 3/4.3.1, "Reactor Protective Instrumentation," to increase the interval for refueling interval surveillance tests which are currently performed every 18 months, to each refueling, nominally 24 months and maximum 30 months. As the result of modifying the surveillance interval, changes were made to the Reactor Protective Instrumentation setpoints in Technical Specification 2.2.1, Table 2.2-1; the High Logarithmic Power Level response time in Technical Specification 3/4.3.1, Table 3.3-2; and the calibration tolerance in Technical Specification 3/4.3.1, Table 4.3-1.

Additionally, the amendments revised San Onofre Units 2 and 3 Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation," to increase the interval for surveillance tests, which are currently performed every 18 months, to each refueling, nominally 24 months and maximum 30 months. As the result of modifying the surveillance interval, changes were made to the ESFAS instrumentation setpoints in Technical Specification 3/4.3.2, Table 3.3-4.

Finally, the amendments revised San Onofre Units 2 and 3 Technical Specification 3/4.3.3.5, "Remote Shutdown Instrumentation," to increase the interval for refueling interval surveillance tests which are currently performed every 18 months, to each refueling, nominally 24 months and maximum 30 months.

Date of issuance: June 8, 1990

Effective date: June 8, 1990

Amendment Nos.: 85 and 78

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: February 7, 1990 (55 FR 4275, 55 FR 4276 and 55 FR 4277). The staff requested additional information to supplement the original applications. This information did not affect the proposed no significant hazards consideration determination as previously noticed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: December 1, 1988

Brief description of amendment: The amendment revised the Technical Specifications to reduce the reactor protection system reactor coolant low pressure trip setpoint from greater than or equal to 1963.4 psig to greater than or equal to 1900 psig and correspondingly modified the reactor protection system variable low pressure setpoint.

Date of issuance: June 4, 1990

Effective date: 60 days after issuance

Amendment No. 149

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 1990 (55 FR 14515) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 28, 1990

Brief description of amendment: The proposed change revises the Technical Specification to add hafnium as an additional absorber material in the control blades.

Date of issuance: June 5, 1990

Effective date: June 5, 1990

Amendment No. 123

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10546) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 9, 1990

Brief description of amendment: The amendment revises the Technical Specifications to add feedwater check valves to the Type C leakage test program. The revision also removes the requirement for leakage rate testing of two valves which are now outside the containment boundary.

Date of issuance: June 4, 1990

Effective date: At the time of shutdown for the 1990 scheduled refueling outage.

Amendment No. 122

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18415). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 30, 1988, as supplemented August 18, 1989.

Brief description of amendments: The amendments increase the allowable enrichment of fuel assemblies irradiated at NA-1&2 to 4.3 weight percent U-235.

Date of issuance: June 6, 1990

Effective date: June 6, 1990

Amendment Nos.: 127 & 111

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46163) The August 18, 1989 letter provided supplemental information which did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated May 30, 1989 and a Safety Evaluation dated June 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50-397,Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: October 27, 1989 and April 5, 1990

Brief description of amendment: This amendment revises Technical Specification Section 3/4.4.6, Reactor Coolant System Pressure/Temperature Limits by revising the curves which set forth the pressure/temperature limit lines. Specifically Figure 3.4.6.1 will be inserted in the technical specifications. Existing Figure 3.4.6.1-1 and Figure 3.4.6.1-2 will be removed. Existing Figure 3.4.6.1-1 had set limits applicable during the early life of the plant and was no longer applicable. References to the two figures in the index, in specification 3/4.4.6 and in the bases section 3/4.4.6 have been revised to refer to the single new figure. The bases have also been revised to reflect that nickel rather than phosphorous is the metal reported with reactor vessel toughness test results.

Date of issuance: June 14, 1990

Effective date: June 14, 1990

Amendment No.: 87

Facility Operating License No. NPF-21: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53213) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397,Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: February 5, 1990

Brief description of amendment: This amendment revises Technical Specification Section 3/4.8.1.1, "A.C. Sources," by revising surveillance requirements applicable to the emergency diesel generators. Changes are made to the specification of diesel generator testing frequency in accordance with the test schedule considerations set forth in Generic Letter 84-14.

Date of issuance: May 31, 1990

Effective date: May 31, 1990

Amendment No.: 85

Facility Operating License No. NPF-21: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10548) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: February 27, 1990 and supplemented by letter dated April 13, 1990. The April 13, 1990 submittal did not substantially change the action noticed or affect the initial proposed no significant hazards determination.

Brief description of amendment: The amendment revises safety limits to be applicable during the sixth cycle of power operation. Specifically the amendment revises the index of the Technical specifications (TS) to include reference to four curves which are being added to the TS. The new curves provide limits for the maximum average planar heat generation rate (MALPHGR) and linear heat generation rate (LHGR) for two new types of lead fuel assemblies to be inserted into the core. The amendment revises the definition of critical power ratio (CPR) given in TS 2.0. The revision makes the definition more general to include CPRs calculated for the new fuel designs in the lead fuel assemblies.

The amendment revises TS 3/4.2.1, "Average Linear Heat Generation Rate," to make the limiting conditions for operation, action statements, and surveillance requirements apply to the new fuel designs in the new lead fuel assemblies. Two new figures are added to TS 3/4.2.1 to set forth the MAPHLGR limits for the new lead fuel assemblies.

The amendment revises TS 3/4.2.3, "Minimum Critical Power Ratio," to incorporate new limits specific to cycle six.

The amendment revises TS 3/4.2.4, "Linear Heat Generation Rate," by rewording the limiting condition of operation to show how it applies to all fuel types in the core. Two new figures are added to give LHGR limits for the two new types of lead fuel assemblies.

TS 5.3.2 is revised to provide for the use of lead fuel assemblies.

Bases sections are revised to show the bases for the technical specifications as revised.

Date of issuance: May 31, 1990

Effective date: May 31, 1990

Amendment No.: 84

Facility Operating License No. NPF-21: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12803) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: March 30, 1990

Brief description of amendment: This amendment revised Technical Specification 3/4.8.1, "A.C. Sources," by replacing the surveillance requirements applicable to the fuel oil for the emergency diesel generators. Specifically, surveillance requirements 4.8.1.1.2.b, c, and d was replaced. The new tests should enhance the Supply System's ability to detect unsatisfactory fuel oil. This amendment permanently resolves the concern over fuel oil particulate testing that was addressed on a temporary basis by license amendment 76 issued by the NRC on February 22, 1990.

Date of issuance: June 4, 1990

Effective date: June 4, 1990

Amendment No.: 86

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18419) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 21st day of June, 1990.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 90-14733 Filed 6-26-90; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, Corn Belt Power Cooperative, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of section III. A.6(b) of appendix J to 10 CFR part 50 to Iowa Electric Light and Power (the licensee) for the Duane Arnold Energy Center located at the licensee's site in Linn County, Iowa.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time relief from the schedular requirements of 10 CFR part 50, appendix J, secton III.A.6(b) to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. This increased test frequency is required as a result of Type A test failures in 1985 and 1987, although the most recent test in 1988 was passed. The requested exemption would allow the licensee to resume its normal retest schedule in accordance with section III.D. of appendix J.

The proposed action is in accordance with the licensee's request for exemption dated April 2, 1990.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type A test during the upcoming refueling outage and would enable the Duane Arnold Energy Center to resume the normal retest schedule specified in section III. D. of 10 CFR part 50, appendix J. The proposed exemption is needed to avoid unnecessary pressurization of the containment to perform a Type A test, as other measures proposed or implemented by the licensee will more effectively focus corrective actions on the previously identified sources of significant containment leakage. For the last three Type A tests conducted by the licensee, leakage from the main steam isolation valves (MSIVs) and feedwater check valves has been the major contributor to the total measured containment leakage rate. The licensee has developed extensive corrective action plans to improve the performance of these valves and will substantially modify the MSIVs during the next refueling outage. Therefore, the licensee has requested a one-time exemption from the schedular requirements of section III.A.6(b) of appendix J to 10 CFR part 50.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. Although two of the last three Type A tests were failures due to excessive leakage from specific valves, the last three Type A tests have demonstrated that there has been no significant degradation of containment integrity over the operating cycle. The licensee has implemented extensive corrective action plans to reduce the leakage from the identified valves. The proposed exemption will not negatively impact containment integrity and will not significantly change the risk from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impacts. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because it has been concluded that there are no measurable impacts associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increased radiation exposures without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Duane Arnold Energy Center, dated March 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption from 10 CFR part 50, appendix J, dated April 2, 1990, which is available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC., and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Rockville , Maryland, this 21st day of June 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14914 Filed 6–26–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on July 10, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, July 10, 1990—8:30 a.m. until the conclusion of business.

The subcommittee will review the NRC staff's proposal for the completeness of designs of the Evolutionary Light Water Reactors and Passive Plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, NUMARC, and EPRI regarding this issue.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat EL-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 20, 1990.

Richard P. Savio,

Assistant Executive Director for Nuclear Reactors and Nuclear Waste.

[FR Doc. 90–14912 Filed 6–26–90; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board

[Docket No. 030–20567; ASLBP No. 90–603–02–EA; Order Suspending License EA 89–257]

In the Matter of American Radiolabeled Chemicals, Inc., Before Administrative Judges: John H. Frye, III, Chairman, Gustave A. Linenberger, Frank F. Hooper

June 20, 1990.

Please take notice that a prehearing conference in the above captioned matter will take place at 1:30 p.m. Wednesday, July 18, 1990, in the NRC Hearing room, Fifth Floor, 4350 East-West Highway, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

John H. Frye, III,

Chairman, Administrative Judge.

[FR Doc. 90–14913 Filed 6–26–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (licensees) for an amendment to Facility Operating License No. NPF–58 issued to the licensees for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on December 11, 1987 (52 FR 47064).

The purpose of the licensees' amendment request was to revise the leakage limits for allowable leakage past the main steam isolation valves (MSIVs) and to delete the MSIV leakage control system (LCS). The staff denied the portion of the amendment request related to deletion of the MSIV LCS by letter dated March 18, 1988. The remaining portion of the amendment request would revise the allowable leakage limits for the MSIVs from twenty-five (25) standard cubic feet per hour (SCFH) for any one main steam line to one hundred (100) SCFH for all (four) main steam lines.

The NRC staff has advised the licensees that the proposed amendment is denied since the licensees have failed to provide sufficient information in response to the Commission's request for additional technical information to support the application.

The licensees were notified of the Commission's denial of the proposed change by a letter dated June 20, 1990.

By July 27, 1990, the licensees may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) The application for amendment dated September 18, 1987, and (2) the Commission's letter to the licensees dated June 20, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 20th day of June 1990.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14910 Filed 6–26–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses.

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an amendment application dated January 9, 1989, filed by Commonwealth Edision Company (the licensee). The application requested amendments to Facility Operating License Nos. DPR–29 and DPR–30 for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would have retyped the Operating Licenses for both units to improve legibility. The Commission issued a "Notice of Consideration of Issuance of Amendments to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing," which was published in the **Federal Register** February 22, 1989 (54 FR 7628).

By telephone call on May 30, 1990, the licensee withdrew the application for the proposed amendment, stating that some of the historical information will be eliminated in the retyped versions, and that the original licenses are sufficiently legible for their purpose. The Commission has considered the licensee's request and has determined that permission to withdraw the January 9, 1989 application for amendment should be granted.

For further details with respect to this action, see the application for amendment dated January 9, 1989. The above document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Henepin Avenue, Dixon, Illinois 61021.

Dated: Rockville, Maryland this 7th day of June 1990.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14907 Filed 6–26–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co.; Quad Cities Nuclear Power Station, Units 1 and 2, Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. The request for amendment was submitted by letter dated November 30, 1989.

The proposed amendment would extend the expiration date of these licenses to December 14, 2012, which is forty years from the date of issuance. These licenses currently expire February 15, 2007, which is forty years from issuance of the construction permits.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 27, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard F. Dudley, Jr.: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 30, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 7th day of June 1990.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-14008 Filed 6-26-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-05804, License No. 24-00188-02, EA 90-009]

St. Louis Testing Laboratories, Inc. St. Louis, Missouri; Order Imposing Civil Monetary Penalty

I

St. Louis Testing Laboratories, Inc. (Licensee) is the holder of Byproduct Material License No. 24-00188-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 19, 1985. The license authorizes the Licensee to perform industrial radiography in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 20 and 21, 1989, and January 17, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 6, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice on April 4 and April 25, 1990. In its responses, the Licensee denied Violation I.A. and part 2 of Violation I.D. In addition, the Licensee protested the imposition of the civil penalty and requested remission.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $3,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant

General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of NRC requirements as described in Violation I.A and part 2 of Violation 1.D set forth in the Notice referenced in section II above, which the licensee denied, and

(b) Whether on the basis of those violations, and the additional violations set forth in the Notice of Violation, which the licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Dated at Rockville, Maryland, this 20th day of June 1990.

APPENDIX

Evaluations and Conclusions

On March 6, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. St. Louis Testing Laboratories, Inc. responded to the Notice in letters dated April 4, and April 25, 1990. In its response, the licensee denied Violation I.A and part 2 of Violation I.D. In addition, the licensee protested imposition of the penalty and requested remission of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Violation I.A.

Statement of Violation

10 CFR 20.101(b) provides, in part, that a licensee may permit an individual in a restricted area to receive a total occupational dose to the whole body greater than that permitted under paragraph (a) of 10 CFR 20.101 provided that during any calendar quarter the total occupational dose to the whole body shall not exceed 3 rems.

Contrary to the above, a radiographer employed by the licensee received a whole body occupational dose of 4.02 rems while performing radiography in a restricted area during the first calendar quarter of 1989.

Summary of Licensee's Response to Violation I.A.

The licensee denies this violation but agrees that the radiographer was exposed to an iridium-192 source. The licensee states that based upon its calculations, the dose received by the radiographer was within the 10 CFR part 20 limits. The licensee further states that the dose received by the badge and the dose received by the individual can vary, and that the licensee's calculations are more reliable than the badge readings.

NRC Evaluation of Licensee's Response

While the calculations conducted by the licensee and used to evaluate this exposure appear to indicate that neither the hands nor the head area were exposed in excess of the 10 CFR part 20 limit (18.75 rems and 3 rems, respectively), there are numerous unknowns involved in those calculations, including the licensee's assumption that the source was fully collimated by a tungsten collimator. Further, the licensee's calculations did not address the potential exposure to a part of the body other than the hands or head (i.e., chest area). According to the radiographer's statements to the inspector during the inspection, both the film badge and the dosimeter were worn in the chest pocket of his shirt. NRC must assume that any exposure to these devices was also received by the chest of the individual wearing the devices. The dosimeter (500 millirem) was off-scale and the film badge reports indicate 3.77 rems for that period and 4.02 rems for the quarter. The Commission considers a non-extremity, non-skin exposure to a significant volume (greater than or equal to one cubic centimeter) of tissue in excess of 3 rems in a calendar quarter to be a whole body exposure pursuant to 10 CFR 20.101. Thus, the NRC concludes that the radiographer received a 4.02 rem whole body exposure, which is in excess of the 3 rem limit allowed in 10 CFR 20.101(b), and that the violation occurred as stated in the Notice.

Violation I.B.

Statement of Violation

10 CFR 34.43(b) requires that the licensee ensure that a survey with a calibrated and operable radiation survey instrument is made after each exposure to determine that the sealed source has been returned to its shielded position.

Contrary to the above, on April 8, 1989, a radiographer failed to perform a survey with a calibrated survey instrument after each exposure to determine that the sealed source had been returned to its shielded position.

Summary of Licensee's Response to Violation I.B.

The licensee did not dispute this violation.

Violation I.C.

Statement of Violation

10 CFR 34.33(d) requires that if an individual's pocket dosimeter is discharged beyond its range, his film badge or TLD shall be immediately sent for processing.

Contrary to the above, on April 8, 1989, an individual's pocket dosimeter was discharged beyond its range and his film badge was not sent for processing until April 10, 1989.

Summary of Licensee's Response to Violation I.C.

The licensee does not deny this violation and does agree that the badge was not sent in immediately as required. However, the licensee further states that since the incident occurred on a weekend (Saturday), the badge was sent as soon as it could have been (Monday) and in that respect was sent immediately.

NRC Evaluation of Licensee's Response

The NRC staff does not agree with the licensee's opinion that Monday was the soonest that the badge could be sent for processing. The film badge vendor provides emergency processing of badges on the weekend upon request. In addition, the U.S. Postal Service Express Mail provides service between St. Louis and Chicago (the film badge vendor is located in a Chicago suburb) seven days a week including holidays. The inspector was able to identify several courier companies which would have accepted the badge on Saturday and delivered the badge early Monday morning. Had the licensee wanted to send the badge for processing on Saturday, numerous options were available for delivery to the film badge vendor. It is also noted in the inspection report that the badges were not sent in Monday until after the individual had completed additional radiographic work for that day. Further, when the badges were sent, they were sent via normal mail with no request for emergency processing. The NRC concludes that a

violation of 10 CFR 34.33(d) did occur as stated in the Notice.

Violation I.D.

Statement of Violation

10 CFR 20.403(b)(1) requires that each licensee, within 24 hours of discovery of the event, report any event involving licensed material possessed by the licensee that may have caused or threatens to cause exposure of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or any exposure of the feet, ankles, hands, or forearms to 75 rems or more of radiation. Reports required by this section must be made to the NRC in accordance with 10 CFR 20.403(d)(2).

10 CFR 20.201(b) requires that each licensee make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in 10 CFR part 20, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "Survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above: 1. On April 8-9, 1989, the licensee failed to make an adequate survey to ensure compliance with 10 CFR 20.403(b)(1) after an individual was exposed to a 91 curie iridium-192 source. Specifically, the licensee failed to evaluate the dose received by a radiographer after it was determined that the radiographer's 500 millirem dosimeter had gone off-scale.

2. On April 8, 1989, a radiographer entered an area containing an exposed 91 curie iridium-192 sealed source which, according to the information available at that time, may have caused a personnel radiation exposure in excess of that specified in 10 CFR 20.403(b)(1), and the licensee failed to report this event to NRC.

Summary of Licensee's Response to Part 1. of Violation I.D.

The licensee does not dispute part 1. of this violation.

Summary of Licensee's Response to part 2. of Violation I.D.

The licensee agrees that the incident was not reported to the NRC, but denies that this constitutes a violation. The licensee indicates that a report of the incident was not made at the time because the facts which the licensee believed to be true did not clearly reflect a reportable situation. The licensee further cites the erroneous initial reading of the film badge as support for having to rely on its own survey information in evaluating the incident, and states that its own survey information showed that the radiographer did not receive a dose above the authorized level.

NRC Evaluation of Licensee's Response

The initial reading of the film badge by the vendor was reported to the licensee as "faultily manufactured", indicating that the badge could not be read; however, the badge was not sent for processing until the Monday following the incident and therefore, the erroneous initial reading of the film badge could not have affected the licensee's decision regarding the reporting of the incident to NRC within the initial 24 hours. [In December 1989 the vendor, at the NRC's request, re-evaluated the badge and was able to determine an exposure of 3.77 rem.]

10 CFR 20.403(b)(1) requires that the licensee report any event that "*may have caused* or threatens to cause" exposure in excess of the limits stated therein [emphasis added]. Based on the information available to the licensee, within the initial 24 hours that the regulation allows for reporting, the licensee could not conclusively rule out the possibility that an exposure to the whole body of 5 rems or more had occurred. Therefore, in accordance with the regulation, the report was required. Specifically, as they were known at that time, the facts were that a radiographer had walked into a room where a 91 curie iridium-192 source was exposed and had worked in close proximity to the exposed source while he changed a film and prepared to do another radiograph before he realized that the source was fully exposed, and that the radiation exposure reading on his 500 millirem dosimeter was off-scale. Further, the calculations referenced by the licensee as the basis for not reporting the event did not address any areas of the body other than the head and hands. According to the film badge reading, the chest area of the body received exposure in excess of 3 rems. Depending upon the position of the radiographer at the time of this event, a portion of the body could have received an exposure greater than the 5 rems whole body referenced in the regulation. Also, the licensee's calculations were not conducted until several days after the incident had occurred and therefore, could not have been of any benefit to the licensee in determining whether or not this was a 24 hour reportable event. Based upon the significant potential for an exposure to the whole body in excess of 5 rems, the NRC conclusion is that part 2 of the violation occurred as set forth in the Notice.

Violation I.E.1.

Statement of Violation

License Condition No. 22 (Amendment No. 25) requires the licensee to conduct its program in accordance with statements, representations, and procedures contained in the application dated September 6, 1978, and letters dated June 26, 1984, April 2, 1985, with revised attachments, and April 15, 1989, with enclosed manuals.

Attachment 2 of the application dated September 6, 1978, states in Item 6(f) that the attached Radiographic Training Program will be followed in training radiographers and radiographer's assistants. The Radiographic Training Program states that any new equipment will be shown and demonstrated by the Radiation Safety Officer (RSO) or his assistant to all radiographers prior to their using the equipment. The use, application, safety precautions, and all pertinent information will be thoroughly explained. In addition, a semiannual refresher course will be given to all radiographers.

The letter dated April 15, 1988, (with enclosed manuals) states in an enclosed letter dated February 16, 1988, that the Amersham/TechOps "Operation and Maintenance Manual" for the Model 660 gamma radiography systems has been incorporated into the licensee's Operating and Emergency Procedures. The Amersham/TechOps "Operation and Maintenance Manual," Page 15, Item 7 states that to return the source to the exposure device (shielded position) after the desired exposure time has elapsed, the crank should be turned rapidly in the "RETRACT" (clockwise) direction until the crank will no longer move.

Contrary to the above: a. A radiographer who was involved in an overexposure incident with a TechOps Model 660 exposure device on April 8, 1989, had not been given a demonstration of this equipment by the RSO or his assistant prior to using it when it was new and had not received instruction in the use, application, and safety precautions for this equipment. In addition, semiannual refresher training had not been provided for eight radiographers during the period July 1988 through December 21, 1989.

b. On April 8, 1989, the radiographer attempted to retract the radiography source into a Model 660 exposure device by trying to turn the crank in the counterclockwise direction. This caused the source to remain in the fully exposed position.

Summary of Licensee's Response to part a. of Violation I.E.1

The licensee did not dispute part a. of this violation.

Summary of Licensee's Response to part b. of Violation I.E.1

The licensee agrees that the radiographer failed to follow the manufacturer's instructions. However, the licensee does not believe that the reason the radiographer did not follow the instructions was because the radiographer had not been trained properly. The licensee contends that the radiographer had used the equipment on numerous occasions and knew how to properly use the equipment and that the radiographer was just careless and inattentive of his work.

NRC Evaluation of Licensee's Response

The NRC agrees with the licensee that the radiographer was careless. However, for whatever the reason, the individual did fail to follow the manufacturer's instructions in operation of the equipment which constitutes a violation as described above. The NRC concludes that this violation occurred as stated in the Notice.

Violation I.E.2.

Statement of Violation

License Condition No. 22 (Amendment No. 25) requires the licensee to conduct its program in accordance with statements, representations, and procedures contained in the application dated September 6, 1978, and letters dated June 26, 1984, April 2, 1985, with revised attachments, and April 15, 1989, with enclosed manuals.

Attachment 2 of the application dated September 6, 1978, states in Item 6(d) that the Radiographer's manual will be followed for personnel monitoring procedures. Section 3.5 of this manual requires that any time a person's pocket dosimeter is discharged beyond its range, the individual is to immediately cease radiographer operations.

Contrary to the above, on April 8, 1989, a radiographer's dosimeter was discharged beyond its range and the individual failed to cease radiographer operations immediately. Instead, the individual completed radiographer work on April 8, 1989, and performed additional radiographer work on April 10, 1989, before he was removed from radiographer operations.

Summary of Licensee's Response to Violation I.E.2.

The licensee does not dispute this violation.

Violation II (Violation not assessed a Civil Penalty)

Statement of Violation

License Condition No. 22 (Amendment No. 25) requires the licensee to conduct its program in accordance with statements, representations, and procedures contained in the application dated September 6, 1978, and letters dated June 26, 1984, April 2, 1985, with revised attachments, and April 15, 1989, with enclosed manuals.

The letter dated June 26, 1984, specifies that a designated individual will function as the Radiation Safety Officer (RSO) for the licensed program.

Contrary to the above, from December 1 through 5, 1989, an individual other than the designated individual authorized by the NRC functioned as the RSO for the licensed program.

Summary of Licensee's Response to Violation II

The licensee responded to this violation in a separate letter dated April 25, 1990. In that letter, the licensee did not dispute the violation.

Summary of Licensee's Request for Remission of the Civil Penalty

In addition to the arguments set forth above, the licensee concluded its response with a general statement indicating that in the future it will report to the NRC each event and let the NRC decide if it is reportable or not. The licensee further stated that the reporting requirements of 10 CFR part 20 are vague and require the licensee to make a judgment call regarding certain issues. The licensee also indicates that no attempt was made on its part to hide any actions from the NRC, and that it used its best judgment as required by the regulation. Finally, the licensee states that it is "disheartened" with a system that encourages an employee to intentionally create conditions detrimental to fellow workers and members of the public and does not hold that individual accountable and provides that individual protection.

Note: It apears that the licensee is referring to the former Radiation Safety Officer (RSO) employed at the facility until December 1989. The licensee further states that, in participating in allegations to NRC, it was almost as if the employee had reported himself to the NRC, and that this constitutes a strong reason for mitigation.

NRC Evaluation of Licensee's Request for Remission

The regulations in 10 CFR part 20 require licensees to report, within the first 24 hours, any incident that my have caused an exposure in excess of the regulatory limits. It is clear that certain events which meet specific criteria, as outlined in 10 CFR part 20, must be reported to the NRC. If the event does not clearly meet those criteria, and if it is not possible to conclusively rule out such an overexposure within the first 24 hours, then a conservative approach must be taken by the licensee by reporting the event. Moreover, although the NRC may provide some guidance on the reportability of a particular event, the decision to report an event is the responsibility of the licensee.

Regarding the licensee's statement that it did not try to hide anything from the NRC, this was never alleged by the Commission. Furthermore, this issue had no bearing on the proposed imposition of the civil penalty.

Regarding the licensee's statements on individual accountability, Section V.E. of the Enforcement policy provides for enforcement action against individuals in some circumstances; however, the Commission also holds its licensees accountable for the actions of their employees. NRC expects adequate management oversight of a licensee's program to determine whether individuals given responsibility for management of the program (i.e., the RSO) are conducting it in compliance with NRC rules and regulations and license conditions.

Concerning the licensee's argument that mitigation is appropriate because the employee's participation in allegations to the NRC were almost as if he had reported himself to the NRC, the Enforcement Policy does allow mitigation where the licensee self-identifies a violation, takes immediate action to correct the problem, and, if required, makes a prompt and complete report to the NRC. Since that did not occur in this case, mitigation based on this factor is not appropriate.

Conclusion

After reviewing the licensee's response to the violations and request for remission of the civil penalty, the NRC has determined that the violations occurred as stated and that the licensee has not provided any basis for reduction or remission of the civil penalty. Therefore, the proposed civil penalty in the amount of $5,000 should be imposed.

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[Docket No. 030-29799 License No. 34-24871-01 EA 90-001]

Order Imposing Civil Monetary Penalty; Testmaster Inspection Co. Perrysburgh, OH

I

Testmaster Inspection Company (Licensee) is the holder of Byproduct Material License No. 34-24871-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 8, 1987. The license authorizes the Licensee to perform industrial radiography in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on December 7-27, 1989. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 13, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated March 7, 1990. In its responses, the Licensee admits the violation occurred, but requests mitigation of the proposed civil penalty.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occured as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $3,750 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasury of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 20th day of June 1990.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support.

APPENDIX

Evaluations and Conclusions

On February 13, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Testmaster Inspection Company responded to the Notice in two letters, both dated March 7, 1990. In its response, the licensee admitted the violations occurred, but requested mitigation of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violations

I. Violations Assessed a Civil Penalty

A. 10 CFR 34.43(b) requires the licensee to ensure that a survey with a calibrated and operable radiation survey instrument is make after each exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed. If the radiographic exposure device has a source guide tube, the survey must include the guide tube.

Contrary to the above:

1. On December 6, 1989, an individual failed to survey a radiographic exposuyre device after each radiographic exposure. As a result, the indivídual locked the exposure device without realizing that the source had remained in an exposed position.

2. On three occasions on December 7, 1989, an assistant radiographer failed to survey the circumference of the exposure device and the source guide tube after each radiographic exposure.

B. License Condition No. 18 requires that the licensee conduct its program in accordance with the statements, representations and procedures contained in the application dated March 6, 1987 and other referenced documents.

The application dated March 6, 1987 gives detailed instructions for safely operating a crank out type device (radiographic exposure device). Section 10.31(11) states: "at end of exposure, retract source into the exposure device by reversing the cranking action."

Contrary to the above, on December 6, 1989, an individual failed to retract the source into the exposure device at the end of an exposure.

C. License Condition No. 18 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the letter dated May 15, 1987 (identified as a letter dated May 18, 1987 on the license based on a receipt date stamp), and other referenced documents.

Paragraph 5.1.5 of the May 15, 1987 (date stamped May 18, 1987) letter requires, in part, that if an individual's pocket dosimeter goes off scale and if the source is in the exposed position, the Radiation Safety Officer or Assistant Officer shall be notified immediately for instructions pertaining to the conditions of the dosimeter and the source.

Contrary to the above, on December 6, 1989, the radiographer's and radiographer assistant's dosimeters were off scale, the source was in an exposed position, and neither the Radiation Safety Officer nor the Assistant Officer were notified immediately for instructions pertaining to the conditions of the dosimeters and the sources.

Collectively, these violations have been classified as a Severity Level III problem (Supplement VI)

Cumulative Civil Penalty-$3,750 (assessed equally among the three violations)

II. Violation Not Assessed A Civil Penalty

10 CFR 34.31(c) requires that records of field examinations of a radiographer's assistant be maintained for three years.

Contrary to the above, as of the date of the inspection, records of the field examination for a radiographer's assistant given on November 9, 1989, were not maintained.

This is a Severity Level IV violation (Supplement VI)

Summary of Licensee's Response. The licensee admitted that the violations in Section I of the Notice occurred as stated. It further stated that it makes continuous efforts to make radiographers and radiographer's assistants aware of the need for safe operation and compliance with procedures. It has established an incentive plan to emphasize the need for commitment to these objectives on the part of these individuals. The licensee stated that it achieved compliance with Violations I.A., I.B., and I.C. as of March 7, 1990.

The licensee also admitted the violation in Section II of the Notice occurred as stated. The licensee's president stated the violation occurred because he was not aware that records of field examinatins must be kept on file. The licensee submitted a form which will be used to document the results of these field examinations.

NRC Evaluation Of Licensee's Response. The licensee admitted the violations in Section I and the violation in Section II occurred as stated in the Notice. The effectiveness of the licensee's corrective action program, which requires that licensee personnel comply with procedures, will be reviewed during the next inspection.

Summary of Licensee's Request for Mitigation. The licensee provided four reasons why the civil penalty should not be imposed. These reasons are as follows:

1. The licensee reported the violation to the NRC as soon as it was identified.

2. The licensee recognized the need for stricter adherence to procedures, and implemented an incentive program.

3. The licensee has had a good performance record since obtaining its license and strives to comply with all regulations.

4. The licensee believes that imposition of a penalty of the amount proposed would be a detriment to a small company such as Testmaster Inspection.

NRC Evaluation of Licensee's Request for Mitigation. The NRC considered the licensee's prompt reporting when the amount of the proposed civil penalty was being determined. The NRC Enforcement Policy allows up to 50 percent mitigation for identification and prompt reporting. However, as explained in the February 13, 1990 letter, transmitting the Notice of Violation, in this case only 25 percent mitigation was allowed because the licensee discovered the problem, not by aggressive self-evaluation, but by an event which was self-disclosing.

Although the licensee states that it recognized the need for stricter compliance with procedures, its short term corrective actions were poor in that, the day after the December 6, 1989 event, another individual was observed making three radiographic exposures without surveying the circumference of the exposure device or the guide tube. Also, licensee management did not take steps to immediately inform other radiography personnel of the event and did not take steps to ensure that these individuals understood the importance of adequate surveys. As a result of the licensee's poor short term corrective action, the base civil penalty was escalated 50 percent.

The NRC agrees with the licensee's assertion that it had good past performance and, in recognition of this past performance the base civil penalty was mitigated by 100 percent. However, the base civil penalty was escalated by 50 percent because the licensee had prior notice of similar problems when it received NRC Information Notice 88-66, "Industrial Radiography Inspection and Enforcement." This Notice addressed failure to survey exposure devices to ensure that the radiography source was secured in a safe position.

In its response the licensee asserts that the imposition of a civil penalty would be a detriment to a small company. The NRC Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty and that the imposition of a civil penalty should not result in the termination of the licensee's business or a financial burden of such magnitude that a licensee is unable to safely conduct licensed activities. However, in its response, the licensee did not provide specific information or records which would enable the NRC to evaluate the licensee's financial status. Therefore, the licensee has not provided any basis for mitigation of the civil penalty based on financial hardship.

NRC Conclusion. The NRC has concluded that the violations occurred as stated and a sufficient basis for mitigation of the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty of $3,750 should be imposed.

[FR Doc. 90-14811 Filed 6-26-90; 8:45 am]

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[Docket No. 50-271]

Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR-28 Vermont Yankee Nuclear Power Corp., for the Vermont Yankee Nuclear Power Station

Introduction

The Vermont Yankee Nuclear Power Station (VYNPS or the plant) is currently licensed for operation for 40 years commencing with the issuance of the construction permit. The license expires on December 11, 2007. By letter dated April 27, 1989, and as supplemented on June 23, 1989, Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) requested that the license expiration date for the plant be extended to March 21, 2012 or 40 years after the date of the issuance of the "low-power" operating license. The currently effective Facility Operating License (DPR-28 Admt. No. 5) was issued on February 28, 1973 and authorizes operation at full power, not to exceed 1593 megawatts thermal.

Need for the Proposed Action

The granting of this request would allow the licensee to operate the plant for approximately four years and three months beyond the current license expiration date, thus recapturing the construction period. This extension would also permit the plant to operate for the full forty year design basis lifetime, consistent with previously stated Commission policy (Memorandum dated August 16, 1962, from William J. Dircks, Executive Director for Operations, to the Commissioners) and as evidenced by the issuance of over 30 similar extensions to other licensees.

Environmental Impacts of the Proposed Action

The anticipated impact of the plant on the environment was evaluated in the Staff's Final Environmental Statement (FES) dated July 1972. Since that time its impact on the environment has been observed and recorded. In order to arrive at a finding on the acceptability of the plant's impact on the environment the following considerations will be evaluated in this assessment:

1. Radiological Impacts of the Hypothetical Design Basis Accident
2. Radiological Impacts of Annual Releases
3. Environmental Impact of Uranium Fuel Cycle
4. Non-Radiological Impacts
5. Plant Modifications
6. Conclusion on Environmental Impacts

Each of these considerations is sequentially discussed below.

1. Radiological Impacts of the Hypothetical Design Basis Accident (DBA)

The offsite exposure from releases due to postulated accidents has been analyzed by the licensee in the VYNPS Final Safety Analysis Report (FSAR). The results of these analyses were within the bounds of 10 CFR part 100 and thus acceptable. This type of analysis is a function of four parameters: (1) The types of accidents postulated, (2) the radioactivity release calculated for each accident, (3) the assumed meteorological conditions, and (4) population distribution versus distance from the plant. The staff has concluded that neither the types of accidents nor the calculated radioactivity releases will change through the proposed amendment term. Furthermore, the site meteorology as defined in the FSAR is essentially a constant and consideration herein is therefore unwarranted. Thus, the one parameter that is dependent on the proposed license amendment is the population size and distribution, as it could vary with time. The population size and distribution within a 50-mile radius of the plant has been studied four times between 1969 and 1980. The 1980 study projected population changes through the year 2012. There are no significant land use changes expected during the amendment term that could affect offset dose calculations. The results of the 1980 study and those of the other studies are presented in Figure 1, *Summary of Population Projections for Vermont Yankee* derived from the licensee's April 27, 1989 letter.

None of the projected changes in population between the years 2007 and 2012, the added term of the proposed license amendment, will significantly impact any accident analysis previously calculated. Furthermore, the current exclusion area boundary, low population zone and nearest population center distance are not likely to be significantly changed through the amendment term from those originally and currently used by the VYNPS. Accordingly, we conclude that the proposed license amendment will not significantly change previous conclusions on the potential environmental effects of offsite releases from postulated accidents.

The staff stated in their proposed no significant hazards consideration determination (54 FR 31120) dated July 26, 1989, that the change in expiration date to March 21, 2012 is consistent with current NRC policy and the originally engineered design life of the plant, i.e. 40-years of operation. Age related degradation was the only mechanism we identified in the above mentioned determination that could impact the probability or consequences of a previously evaluated accident. However, due to design conservatism, maintenance and surveillance programs, inspection programs and the Plant Technical Specifications, the proposed additional four years and three months of operation will have no significant impact on safety. That is, regardless of the age of the facility, the above mentioned programs and Technical Specifications ensure that components, systems and structures will be refurbished or replaced to maintain their requisite safety function.

2. Radiological Impacts of Annual Releases

a. Onsite Doses

The VYNPS occupational (onsite) exposure trend and comparative magnitude with the industry's average boiling water reactor (BWR) site, based on average annual exposures in terms of person-rem per five-year period, is shown in Figure 2, *Vermont Yankee* versus *BWR Industry—Five-Year Occupational Exposure Averages*, taken from the licensee's April 27, 1989 letter. The data in Figure 2, in regards to both total dose and average dose per worker, indicate that the licensee has implemented a very successful program under 10 CFR Part 50, Appendix I "As Low as Reasonably Achievable" (ALARA) guidelines. Given the licensee's continued implementation of its ALARA program and the plant's historically stable occupational exposure, we conclude that the average of the 1987 and 1988 exposures of about 220 person-rem, cumulative, will serve as an upper limit in future years of normal operation, i.e. non-reload years and years without major maintenance such as fuel pool modifications. During the proposed amendment term, it is assumed that the VYNPS will continue to operate with an approximately 18-month long fuel cycle. This would result in a maximum of four refueling outages during the proposed amendment term. Using annual exposures of 700 and 220 person-rem for years with and without typical refueling outages, respectively, it is estimated that the total occupational exposure during the proposed amendment term will be about 3,000 person-rem. This averages to about 600 person-rem per year. This projection is consistent with the plant's recent five-year average occupational exposure level of 534 person-rem per year. All other BWR plants had a five-year average of 691 person-rem per year in this same time period. The expected exposures for the plant are in accordance with 10 CFR Part 20 and Regulatory Guide 8.8.

b. Offsite Doses

Appendix I guidelines on ALARA were briefly discussed above in regard to on-site doses; however, these guidelines also apply to releases that could cause offsite doses. In addition, routine releases to the environment are governed by 10 CFR 20.1(c), which states that such releases should be as low as reasonably achievable. Appendix I is more explicit in that it esablishes radioactive design/dose objectives for liquid and gaseous offsite releases including iodine/particulate radionuclides. Figure 3, *Summary of OffSite Appendix I Radiation Exposure Limits and Actual Performance Data* (as millirem) provides a comparison of Appendix I limits with consolidated plant operating data. This figure is derived from the licensee's letter of April 27, 1989. A review of the values in Figure 3 indicates that the actual performance of the plant to control and limit liquid gaseous radioactive releases has been well within the Appendix I radiation exposure limit objectives. There have been no radioactive liquid releases in nine of the past twelve years and none in the past seven years. The plant has demonstrated its ability to hold up, process and reuse waste water to a degree that has not necessitated the routine release of significant radioactive liquid wastes. The licensee has demonstrated, see Figure 3, that the gaseous Radwaste System is capable of limiting releases associated with both routine operations and special occurrences, such as reloads, to a fraction of ALARA design objectives.

Based on the continued operation of the plant's existing liquid and gaseous radwaste systems, we conclude that the anticipated offsite doses during the period covered by the proposed license amendment would remain a fraction of 10 CFR Part 50, Appendix I limits.

The volume of solid waste at the VYNPS has been below that generated at the average BWR. In addition, the licensee has committed to further reduce the amount generated in future years.

The staff concludes that the releases from the plant, both onsite and offsite, have remained within the bounds of the FES and have complied with the applicable portions of 10 CFR Parts 20 and 50 as discussed above. As a consquence, we would expect releases during the proposed license extension period to remain within these bounds.

3. Environmental Impact of the Uranium Fuel Cycle

The VYNPS reactor contains 368 fuel bundles. Until recently, the plant has operated in a twelve to fourteen month fuel cycle. However, due to improved fuel designs, the plant is currently in an eighteen month fuel cycle. This has reduced the demand for fissile uranium.

The additional period of reactor opeation requested by the licensee will increase the need for fissile uranium over the plant's operating lifetime. The licensee assumes that operation will continue utilizing an eighteen month fuel cycle. There will be a cumulative increase in the use of uranium due to the lengthened period of operation. This cumulative increase will have an insignificant environmental impact. The total number of fuel assemblies that will be used and that will need to be stored if the amendment request is granted is 3,545. The number predicted in the FES in 1972 for 40 years of operation was 3,500 fuel assemblies. Thus, the prediction made in the FES and the current prediction are substantially similar as regards uranium use and the need for storage or disposal of spent fuel.

The environmental impacts, both radiological and non-radiological, attributable to transportation of fuel and waste to and from plant sites, with respect to normal conditions of transport and possible accidents in transport have been assessed in several generic environmental impact statements. These assessments represent the contribution of such transportation to annual environmental costs including dose per reactor year to exposed transportation workers and to the general public. These annual environmental costs, which are displayed in Table S-4 of the Commission's regulations, 10 CFR 51.52, would not be changed by the extended period of operation.

Based on the above, the staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of the VYNPS.

4. Non-Radiological Impacts

The major non-radiological impact of the plant on the environment is through the operation of the plant's cooling systems. There are three modes of operation of the Condenser Cooling System. This is the system that transports waste heat from the condensers to the heat sink. There are two heat sink paths at VYNPS, first to the Connecticut River then indirectly to the atmosphere or directly to the atmosphere. The three modes of operation are: open, closed and hybrid cycle. The open cycle uses the river for waste heat discharge, the closed cycle uses mechanical draft cooling towers and transports heat directly to the atmosphere and the hybrid cycle is a combination of the open and closed cycles. The use of the open cycle is the normal mode of operation. However, occasionally, the requirements of the National Pollution Discharge Elimination System (NPDES) permit enforce use of the other two modes in order to reduce thermal effects on the Connecticut River. This permit is issued by the State of Vermont and is renewed on a five-year cycle.

The NPDES permit requirements serve to protect fish, organisms in the river and migratory wildlife that use the river from the impacts of plant operations. In addition, the permit insures satisfaction of the pertinent requirements of the federal Clean Water Act and the State of Vermont water quality standards. The impacts of the plant on the river and the environment have been within the predictions of the FES, have remained stable during plant operation and the licensee is required to continue to monitor the non-radiological impacts by the terms of the Operating License requirements and the NPDES permit.

Other non-radiologial impacts of the proposed license extension involve the following factors:

a. Short-Term Use Versus Long-Term Productivity

The plant has maintained an average capacity factor of about 70% since start of commercial operation. The average for all U.S. nuclear plants is 60%. The plant has maintained an excellent safety record during this period and the NRC systematic assessment of licensee performance (SALP) gave the VYNPS a high rating. We stated in our March 7, 1990 Final SALP Report, covering the most current interval, in regards to license performance, "During the assessment period, few challenges to personnel and safety systems occurred, and the plant experienced a low transient rate. Overall performance was indicative of a management involvement in plant operations that was comprehensive and strongly oriented toward nuclear safety. Technical competence and management strengths were most notable in the functional areas of plant operations, maintenance and surveillance, engineering and technical support, and emergency preparedness." The staff expects that the level of performance noted above will continue during the remaining license period and during the requested extension period.

b. Irreversible and Irretrievable Commitment of Resources

The FES stated in its dicussion of this factor, in regard to the initial plant construction as well as projected operation, "These commitments are small compared with the need for production of essential electrical energy for this area." While the population in the immediate plant vicinity has not experienced growth, the service area demand has increased since issuance of the operating license. While there have been modifications to the plant since the original license was issued, these have involved only readily available construction materials, not materials in short supply. The staff has not determined the need for any significant resource commitments necessary as a result of the proposed license extension.

c. Historic Preservation

Through the requirements of Section 106 of the National Historic Preservation Act, the staff has an obligation to make a determination as to the impact of the proposed license extension on any significant nearby historical or archeological sites. The FES contained a Section entitled, *Historic Significance* that dealt with this issue in depth. The Governor Hunt house, located at the site boundary, is the only nearby identified historical site. The Vermont Archeological Society and excavations for site construction did not identify any archeological materials nor fossils of any significance. The licensee in their letter of April 27, 1989 identified the Governor Hunt house as the only nearby historic property. The licensee has restored this property and has pledged to maintain it. In addition, the licensee investigated other historic sites in the three state area for any signs of deterioration caused by plant operation; no evidence of such deterioration was discovered. Based on the above, the staff has determined that the proposed license extension would have no adverse affect on any historic property.

5. Plant Modifications

Many modifications and design changes have taken place at the plant since original construction. Those that involve an unreviewed safety question or require a change to the Technical Specifications are submitted to the NRC for prior review and approval. This review includes a determination of the environmental effects of the proposed change. As provided by our regulations, other changes may be implemented by the licensee without prior NRC approval. The licensee must first perform a safety evaluation for any such changes, subject to NRC inspection and audit. The licensee also submits such changes to the staff in an Annual Report, which is reviewed by the staff. A complete detailed description of all the changes including a summary of the safety evaluation is included in the annual update of the Final Safety Analysis Report (FSAR). The staff reviews the FSAR updates to verify that the changes did not require prior NRC review and approval. In general, these changes improve plant reliability and do not adversely impact the environment. While it is recognized that the requested license extension will possibly result in further routine design changes and modifications similar in nature to those already conducted, it is not anticipated that these would have any adverse impact on the environment.

6. Conclusion on Environmental Impacts

Based on the above, we conclude that the proposed extension will not have any significant impact on the environment.

Alternatives to the Proposed Action

One alternative to the proposed license extension would be to deny the application. This would require the plant to shut down upon expiration of the current operating license. Another alternative, presented by the licensee in their April 27, 1989 submittal and derived from a study performed by the Amos Tuck Business School at Dartmouth College, would be the construction of an oil-fired plant to replace the electrical generation of the VYNPS. The licensee performed an analysis of the costs of power generation and the environmental impacts of such an oil-fired plant. During the period of the license extension, the licensee stated that VYNPS would provide power to the public for about $443 million less than the alternative. The alternate plant would have many, real, adverse environmental impacts that would contribute to the amount of acid rain in the Northeast region of the United States and to global warming. The staff examined the licensee's cost analysis and concluded that it is reasonable. Based on the above considerations, the staff concludes that continued operation of the plant for the license extension period remains the most economical and environmentally attractive alternative.

Alternative use of Resources

This action does not involve the use of resources not previously considered in the FES in relation to the operation of the plant.

Agencies and Persons Consulted

The Commission made a proposed determination that the amendment involves no significant hazards consideration which was published in the Federal Register (54 FR 31120) on July 26, 1989. The State of Vermont has intervened in the issuance of this proposed license amendment; the action has resulted in ongoing contacts between the staff and the State.

Basis and Conclusion for Not Preparing an Environmental Impact Statement

The conclusions of the July 1972 Final Environmental Statement remain valid and operation of the plant has demonstrated that its impact on the environment has been within the bounds predicted by the FES. The staff has reviewed the proposed license amendment relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed license amendment will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

Dated at Rockville, Maryland this 21st day of June 1990.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

FIGURE 1.—SUMMARY OF POPULATION PROJECTIONS FOR VERMONT YANKEE

Area (mile)	Original FSAR (1968) 2000	Revised FSAR (1982) 2000	Current 2007	ER (1971) 2010	Current 2012	Difference between (as percent)			
						Current 2012 and orig. FSAR 2000	Current 2012 and rev. FSAR 2000	Current 2012 and ER 2010	Current 2012 and 2007
*0–5	12,566	10,076	11,112	11,770	11,823	−5.9	+17.3	+0.4	+6.3
5–10	35,811	33,184	27,704	22,130	28,566	−20.2	−13.8	+29.0	+3.0
0–10	48,377	43,240	38,816	33,900	40,379	−16.5	−6.6	+19.1	+4.0
10–50	N/A	1,781,410	1,440,243	1,672,200	1,467,232	N/A	−12.2	−16.8	+1.9
0–50	N/A	1,824,650	1,479,058	1,706,100	1,507,611	N/A	−11.6	−16.4	+1.9

* Reflects Low Population Zone.

FIGURE 2.—VERMONT YANKEE VS BWR INDUSTRY FIVE-YEAR OCCUPATIONAL EXPOSURE AVERAGES

Five-year interval	Total dose (person rem)		Average dose per worker (rem)	
	Vermont Yankee	BWRs	Vermont Yankee	BWRs
1974–1978	275	699	0.45	1.95
1975–1979	486	867	0.80	0.91
1976–1980	703	815	0.70	0.87
1977–1981	787	891	0.79	0.85
1978–1982	756	806	0.71	0.80

FIGURE 2.—VERMONT YANKEE VS BWR INDUSTRY FIVE-YEAR OCCUPATIONAL EXPOSURE AVERAGES—Continued

Five-year interval	Total dose (person rem)		Average dose per worker (rem)	
	Vermont Yankee	BWRs	Vermont Yankee	BWRs
1979–1983	984	969	0.76	0.80
1980–1984	880	1,067	0.76	0.80
1981–1985	823	936	[b] 0.66	[c]
1982–1986	914	[c] 915	[b] 0.57	[c]
1983–1987	994	[c] 817	[b] 0.51	[c]
1984–1988	534	[c] 691	[b] 0.36	[c]

Source: "Occupational Radiation Exposure at Commercial Nuclear Power Reactors," NUREG-0713, Volume 6, 1984.
[a] INPO performance indicators for the U.S. Nuclear Utility Industry.
[b] Plant records.
[c] Not available.

FIGURE 3.—SUMMARY OF OFF-SITE APPENDIX I RADIATION EXPOSURE LIMITS AND ACTUAL PERFORMANCE DATA

[as mrem]

Parameter	Appendix I limits	1976 Vermont Yankee radwaste system design review limit	Maximum dose received from plant since 1976
Liquid	≤3	2.2×10^{-3}	5.0×10^{-4}
Gaseous	≤15	1.2	0.32
Iodine and Particulates	≤15	3.8	0.32

[FR Doc. 90-14909 Filed 6-26-90; 8:45 am]

BILLING CODE 7590-01-M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting.

DATES: Thursday, July 12, 1990, 2 p.m.–3 p.m.

ADDRESSES: General Services Administration Auditorium, 1st Floor, 18th and F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Diane M. Casey, Vice President, Office of Public Affairs, Oversight Board, 1777 F St. NW., Washington, DC 20232, (202) 786–9672.

SUPPLEMENTARY INFORMATION:

Discussion Agenda

* Enforcement efforts taken to fight fraud in thrift institutions.

* Other issues to be determined immediately following the open meeting the Board will meet in closed session.

Dated: June 20, 1990.

Diane M. Casey, V.P.,

Office of Public Affairs.

[FR Doc. 90-14856 Filed 6-26-90; 8:45 am]

BILLING CODE 3223-01-M

Regions 1 and 4 Advisory Board Meetings

AGENCY: Oversight Board.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is for Regional Advisory Board meetings for Regions 1 and 4. The meetings are open to the public.

DATES: The meetings are scheduled as follows: 1. July 13, 1990, 9 a.m. to 3 p.m., New York, NY, Region 1 Advisory Board 2. July 17, 1990, 9 a.m. to 3 p.m., Dallas, TX, Region 4 Advisory Board

ADDRESSES: The meetings will be held at the following locations:

1. New York-Federal Reserve Bank of New York, 59 Maiden Lane, 15th Floor Conference room, New York, NY.
2. Dallas-Southern Methodist University, Cox School of Business, Georges Auditorium in the Arthur Anderson Gallery, 6212 Bishop Street, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Office of Advisory Board Affairs, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards. Announcement on the establishment of the advisory boards was published in the Federal Register, Vol. 54, p. 48172, dated November 21, 1989.

The advisory boards are to provide information and recommendations on the policies and programs for the sale or other disposition of real property assets of depository institutions, the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before August 9, 1989, the date of the enactment of the ACT, and for which the Resolution Trust Corporation (RTC), has been appointed as the conservator or receiver since January 1, 1989 and for three years from the date of enactment of the Act.

Purpose

The purpose of the regional advisory boards are to provide advice to the RTC. This is the first of a series of meetings to be held throughout the country.

Agenda

A detailed agenda will be available at the meeting. Discussions will center around the activities of that particular region as related to the disposition of affordable housing and appraisal policies and marketing efforts. In addition, there will be briefings on RTC activity and policy updates pertaining to that region.

Statements

Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 15 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to five minutes.

All meetings are open to the public. Seating is available on a first come basis.

Dated: June 21, 1990.

Diane M. Casey,

Vice President, Office of Public Affairs.

[FR Doc. 90-14857 Filed 6-26-90; 8:45 am]

BILLING CODE 3223-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors (NACS) Meeting

The purpose of the National Advisory Committee on Semiconductors, is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on July 12, 1990 at 1555 Wilson Blvd., Suite 700, Arlington, Virginia. The proposed agenda is:

(1) Briefing of the Committee on its organization and administration.

(2) Briefing of the Committee by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed studies regarding semiconductors.

(3) Discussion of Working Group Actions.

A portion of the July 12th sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of advanced security arrangements, persons wishing to attend the open portion of the meeting should contact Mrs. Hazel Houston, at (703) 528-6222, prior to July 11, 1990. Mrs. Houston is also available to provide specific information regarding time, place and agenda for the open session.

Dated: June 22, 1990.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90-14970 Filed 6-25-90; 9:14 am]

BILLING CODE 3170-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Medicare Prospective Payment System

[RFP 91-91-ProPAC]

Research Support Services.

Category: H (Expert and Consultant Services).

The Prospective Payment Assessment Commission (ProPAC) is seeking an contractor to perform background research and empirical analysis tasks to support its evaluation and monitoring of Medicare's prospective payment system (PPS) for inpatient hospital care. One contractor is being sought to provide these services for a period of one year with options to extend the contract for up to two additional years. Work will be completed on a task order basis under a fixed-price requirements type contract. The contractor selected will have a demonstrated knowledge of Medicare, PPS, and other health care financing and delivery issues and experience managing this type of project. The contractor will also have statistical and economic analysis skills. The contractor shall have expertise in a variety of topics related to the health care industry, including issue related to payments for a provision of services, as well as effects on beneficiaries. RFP-03-91-ProPAC will be issued on or about July 2, 1990. Interested sources must submit a written request for a copy of this RFP.

Donald A. Young,

Executive Director.

[FR Doc. 90-14809 Filed 6-26-90; 8:45 am]

BILLING CODE 8820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28126; File No. SR-BSE-90-08]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Fees for Fingerprint Processing and Access Card

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 13, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to amend its plan for fingerprinting pursuant to rule 17f-2(c) under the *Act* and to add access card/lamination and photo processing to its fees that are passed-through to its floor members. The Exchange proposes to (1) increase its fingerprint processing fees from $17.00 to $23.00 per fingerprint card processed, and (2) to pass through to the floor members, as separate charges on their monthly billings, the current $7.50 access card fee and the $6.00 lamination and photo fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Effective March 1, 1990, the Federal Bureau of Investigation increased its processing charge for user-fee applicant fingerprint cards from $14.00 to $23.00 per fingerprint card submitted. The Exchange states that this $6.00 increase requires an equivalent increase in the BSE's charge for the fingerprint cards from $17.00 to $23.00. The BSE's current $3.00 charge per fingerprint card for Exchange processing will, however, remain constant.[1]

[1] Pursuant to rule 17f-2(c) under the Act, the Exchange filed a plan with the Commission allowing the BSE to act as a processor of fingerprints for its members and others.

In addition, the Exchange incurs a $7.50 processing charge per access card, and a $6.00 charge for lamination and photo processing which it does not currently charge to BSE floor members. The Exchange, therefore, proposes to pass through these fees to the floor members as separate charges on their monthly billings.

According to the Exchange, the statutory basis for the proposed rule change is section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among BSE members and issuers and other persons using its facilities. In addition, the Exchange believes that the proposed changes are consistent with section 6(b)(5) of the Act in that it enables the Exchange to recover its costs with respect to the processing of fingerprint cards and access cards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and paragraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-90-08 and should be submitted by July 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14825 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28123; File No. SR-MSE-90-4]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Listing Guidelines Applicable to Index Warrants

On March 13, 1990, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4 thereunder,[2] a proposed rule change to allow the MSE to list and trade warrants based upon foreign and domestic stock market indexes.

The proposed rule change was published in Securities Exchange Act Release No. 27868 (April 2, 1990), 55 FR 12977. No comments were received on the proposed rule change.[3]

The Exchange proposes to adopt rule 8 under article XXVIII of its rules for the purpose of providing listing guidelines applicable to index warrants traded on the MSE. The proposed warrants will be cash-settled, unsecured obligations of the issuer with a term of at least one year. Only index warrants based on established domestic and foreign market indexes will be accepted for listing. The Exchange plans to list both American-style warrants (*i.e.*, exercisable throughout their life) and European-style warrants (*i.e.*, exercisable only upon their expiration date). Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value, while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the money" at the end of the stated term will expire worthless.

The MSE will consider listing stock index warrants on a case-by-case basis. Because the warrants will represent unsecured obligations of their issuer, only warrants issued by companies that exceed the Exchange's financial listing criteria and that have assets in excess of $100 million will be eligible for listing. The Exchange proposes to require a minimum public distribution of one million warrants together with a minimum of 400 public holders, and an aggregate market value of $4 million. In addition, warrants which have been approved for trading on another national securities exchange that satisfy the proposed guidelines will be eligible for listing.

The Exchange also proposes to amend rule 3 of article XLVIII to apply the options suitability standard to index warrant recommendations made by members and member organizations. The suitability standard will require that the member or member organization have reasonable grounds to believe that the recommended index warrant transaction is suitable for the customer and that the customer is able to evaluate and bear the risks of the proposed transaction. The Exchange will recommend that index warrants be sold only to options-approved accounts.

Finally, the Exchange also proposes to amend rule 6 of article XLVIII so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP shall review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transaction, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19-4 (1989).

[3] The MSE also proposed to trade index warrants based on the Nikkei stock index that satisfy the proposed guidelines. The Commission is still considering this part of the MSE proposal and the Exchange consented to this deferral.

Index warrants represent another of the innovative methods of raising capital recently developed by business enterprises. Whereas corporations once raised capital solely through simple debt or equity offerings with the occasional sale of convertible debt or preferred stock, today a wide range of financing alternatives, such as commodity- or stock-index-linked debt, foreign currency denominated debt, and currency warrants are available. Index warrants are yet another example of this phenomenon. These innovative financing techniques not only allow business entities to raise capital more easily and less expensively, but also provide investors with an opportunity to obtain differential rates of return on a small capital outlay if the underlying stock index moves in a favorable direction within a specified time period.[4]

Because index warrants are derivative in nature and closely resemble index options, the Commission has several specific concerns regarding these instruments. In particular, index warrants raise customer suitability, disclosure, and secondary market trading issues that must be addressed adequately. In this regard, the MSE has proposed safeguards that are designed to meet these investor protection concerns, including the application of options suitability standards to index warrant recommendations and the requirement that discretionary orders in index warrants be approved on the day entered by a SROP or a ROP.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[5] More specifically, the Commission believes that index warrants are an innovative financing technique designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in return for assuming some overall market volatility risk. Purchasers of the warrants can use them to hedge against or speculate on stock market fluctuations.

The Commission believes that the MSE has designed reasonable rules and procedures to address the special concerns attendant to the secondary trading of index warrants. By imposing special suitability, disclosure, and compliance requirements on index warrants, the MSE has addressed potential public customer problems that could arise from the derivative nature of these products. The Commission believes further that it is appropriate to apply options suitability and risk disclosure standards to index warrants. More specifically, index warrants possess the same basic risks as index options. Consequently, disclosure of these risks should be similar to that required for options trading. Similarly, applying existing options suitability procedures to index warrants should ensure that only customers with an understanding of options and the financial capacity to bear the risks attendant to options trading will be trading index warrants on their broker's recommendations. Moreover, a SROP or ROP will be required to review any discretionary index warrant transaction on the day the transaction is executed. As with index options, this procedure will ensure that appropriate supervisory personnel at member firms review these transactions promptly. In addition, the MSE will recommend that index warrants be sold only to options-approved accounts. Finally, the listing standards for index warrants should ensure that only substantial companies capable of meeting their warrant obligations issue the index warrants.

Although the proposed rule change provides a structure for listing index warrants, the MSE will be required to submit, as separate 19(b)(2) rule changes for Commission approval, each specific stock index that it proposes to trade warrants on. The rule change will provide the Commission with an opportunity to determine, among other things, if a particular index raises the potential for manipulation or other trading abuse concerns.[6] In addition, the Commission is examining the experience with stock index warrants currently trading on the American Stock Exchange, and may in the future recommend modifications to the standards contained in this filing for a specific stock index warrant.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the portion of the proposed rule change (SR-MSE-90-4) that establishes a regulatory framework to permit the trading of index warrants based on both domestic and foreign market indexes be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: June 19, 1990

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14826 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28134; File No. SR-PSE-90-31]

Self-Regulatory Organizations: Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Disclosure of Financial Arrangements of Market Makers and Trading Rules Applicable to Financially Affiliated Market Makers

On November 17, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that, that among other things, (1) Requires market makers to disclose to the Exchange financial arrangements by which they extend credit to other market makers, and (2) amends the trading rules applicable to market makers that have financing arrangements between themselves and market makers that are joint account participants.

The proposed rule change was published in Securities Exchange Act Release No. 27553 (December 20, 1989), 54 FR 53402. No comments were received on the proposed rule change.

The PSE proposes to amend its rules relating to disclosure of financial arrangements of market makers and its trading rules applicable to two groups of financially-affiliated market makers: (1) Market makers that have financing arrangements between themselves and (2) market makers that are joint account participants. In addition, the Exchange proposes to revise and redesignate, without substantively changing, except to the extent noted below, PSE rules governing joint accounts and market maker orders executed by floor brokers.

Currently, market makers that receive financing are required to disclose their financing arrangements to the Exchange. The Exchange proposes to amend section 62 of rule VI to require that market makers who extend credit to other market makers must also disclose such financial arrangements to the Exchange.[3] The Exchange believes that requiring both creditor and debtor market makers to disclose financing arrangements will enhance the Exchange's awareness of existing financial arrangements between market makers. The Exchange believes that the identification of market makers that have financial arrangements between themselves will enhance the Exchange's enforcement capabilities with regard to the trading practices of financially affiliated market makers and will increase the financial risk monitoring ability of the Exchange.

The Exchange also proposes to amend its rules to clarify the PSE's policy with regard to the concurrent representation of orders by market makers that have financing arrangements between themselves. Specifically, the PSE proposes that market makers with financial arrangements between themselves may not concurrently, either by themselves or via a floor broker, bid, offer, purchase, sell, or enter orders in the same options series. Such market makers, however, would be permitted to trade concurrently in a trading crowd, in options overlying the same security, provided it was a different options series. The Exchange believes that this arrangement will prevent financially affiliated market makers from dominating a particular transaction or trading with each other. The arrangement, however, does permit both market makers to participate in transactions in the same options class, and accordingly, the Exchange believes that the liquidity of the trading crowd would not be compromised.

Additionally, the PSE proposal provides that the primary appointment of a market maker may not include trading posts that constitute the primary appointment of any market maker with whom he has an existing financial arrangement.

The Exchange also proposes similar restrictions for joint account participants. Specifically, the Exchange proposes to delete the portion of existing PSE Rule VI, Section 81 that pertains to joint accounts and establish a new provision, Rule VI, Section 80 that deals solely with joint accounts. The PSE proposal for joint account participants places the same restrictions on market makers who belong to joint accounts as the PSE is proposing for market makers that have financial arrangements between themselves. Specifically, such joint account participants: (1) May not trade concurrently in a trading crowd, either by themselves or via a floor broker, in the same options series; and (2) may not include in their primary appointment trading posts which constitute the primary appointment of any market maker with whom they have a joint account. The remainder of the provisions in proposed rule VI, section 80 restates language proposed to be deleted from rule VI, section 81, commentaries .02-.13 dealing with joint accounts.

Finally, the Exchange proposes to establish a new rule VI, section 91 entitled "Market Maker Orders Executed by Floor Brokers." This new rule revises and replaces Options Floor Procedure Advice B-6 as part of the Exchange's ongoing endeavor to place the substance of the Floor Procedure Advices in the appropriate section of the PSE Rules. The new rule, among other things, precludes a market maker and any order on his behalf represented by a floor broker from being concurrently represented at a trading post. Additionally, the rule provides instructions on how market maker order tickets should be prepared and the procedures for the execution of such market maker orders by floor brokers in the trading crowd.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder. Specifically, the Commission finds that requiring full disclosure by market makers of financing arrangements between themselves and restricting the activities of financially-affiliated market makers is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principals of trade. By requiring all market makers to disclose their financial arrangements with other market makers, the Commission believes the Exchange will be better able to identify and deter potential trading abuses among affiliated market makers. In addition, the Exchange's ability to monitor the financial condition of its market makers will be enhanced.

The Commission also believes that it is appropriate for the Exchange to amend its rules to clarify the trading rules regarding the concurrent representation of orders by financially affiliated market makers, be they joint account participants or parties to a financing agreement. The Commission believes that the Exchange, in designing the proposed trading restrictions, has appropriately balanced the objective of deterring fraudulent and manipulative conduct with the desire to allow market makers to participate freely in trading crowds to provide maximum market depth and liquidity. In addition, the Commission believes that prohibiting affiliated market makers from having the same option class as their primary appointment is an additional measure to prevent collusive trading. The Commission does not believe the proposal is too restrictive on the trading activities of financially-related market makers because the proposal will permit affiliated market makers to participate in the same trading crowd as long as they do not trade in the same options series. Accordingly, the Commission believes that market makers will continue to respond to trading conditions in all options classes on the Exchange floor, and, accordingly, the proposal should not impact the liquidity of the Exchange. Moreover, the Commission believes that the imposition of restrictions on financially-affiliated market participants that are intended to preclude collusive trading activity increases public confidence in the markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PSE-90-31) hereby is approved.

Dated: June 19, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14827 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

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[4] Of course, if the underlying stock index moves in the wrong direction or fails to move in the right direction within the specified time period, the warrant will expire worthless and the investor will have lost his entire investment.

[5] 15 U.S.C. 78f(f)(b)(5) (1982).

[6] In this connection, the Commission notes that for warrants based on a foreign stock index, adequate surveillance sharing agreements between the MSE and foreign market(s) where the index's component stocks are traded would be a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Exchange proposes that each market maker that participates in a financing arrangement must inform the Exchange of the name of the creditor or debtor and the terms of such arrangement. Additionally, the proposal requires that the Exchange be informed immediately of any intention of any party to terminate or change any such arrangement, or to issue a margin call. Moreover, market makers shall be required to submit monthly reports on Exchange forms of any use or extension of credit.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-17543; No. 811-5081]

Bradford Linked Life Variable Account

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order pursuant to section 8(f) of the Investment Company Act of 1940 (the "1940 Act") declaring that Applicant has ceased to be an investment company.

Applicant: Bradford Linked Life Variable Account.

Relevant 1940 Act Sections: Section 8f and rule 8(f)-1 thereunder

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on January 29, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on July 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Bradford Linked Life Variable Account, c/o Bradford National Life Insurance Company, One Lexington Green, 3191 Nicholasville Road, Lexington, Kentucky 40503.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa (202) 272-2622, or Special Counsel Heidi Stam (202) 272-2060, (Office of Insurance Products, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant, a unit investment trust registered under the 1940 Act, is a separate account of Bradford National Life Insurance Company. A registration statement on Form S-6 was filed on March 26, 1987 (File No. 33-12907) for individual flexible premium variable life insurance policies. The registration statement was never declared effective and therefore no public offering was commenced.

2. The Applicant has never had any assets nor has it ever had any securityholders.

3. The Applicant never incurred any debts or other liabilities.

4. The Applicant is not a party to any litigation or administrative proceeding.

5. The Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14829 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17544; No. 811-3233]

Bradford Variable Account I

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order pursuant to section 8(f) of the Investment Company Act of 1940 (the "1940 Act") declaring that Applicant has ceased to be an investment company.

Applicant: Bradford Variable Account I.

Relevant 1940 Act Sections: Section 8(f) and rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dats: The application was filed on January 29, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on July 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Bradford Variable Account I, c/o Bradford National Life Insurance Company, One Lexington Green, 3191 Nicholasville Road, Lexington, Kentucky 40503.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa (202) 272-2622, or Special Counsel Heidi Stam (202) 272-2060, (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant, a non-diversified investment company registered under the 1940 Act, is a separate account of Bradford National Life Insurance Company. A registration statement on Form N-1 was filed on May 21, 1981 (File No. 2-72428) for individual flexible purchase payment deferred variable annuity contracts. The registration statement was never declared effective and therefore no public offering was commenced.

2. The Applicant has never had any assets nor has it ever had any securityholders.

3. The Applicant never incurred any debts or other liabilities.

4. The Applicant is not a party to any litigation or administrative proceeding.

5. The Applicant is not now engaged, or does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14828 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17542; 811-4174]

Challenger Income Shares, Inc.; Application for Deregistration

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("Act").

Applicant: Challenger Income Shares, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application on Form N-8F was filed on February 28, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, c/o ABD Securities Corporation, One Battery Park Plaza, New York, New York 10004, with a copy to Matthew G. Maloney, Esq., Dickstein, Shapiro & Morin, 2101 L Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511 or Max Berueffy, Branch Chief, (202) 272-3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a diversified open-end management company organized under the laws of the state of Maryland in 1984. Applicant registered with the SEC by filing a Notification of Registration on December 14, 1984. On February 21, 1985, Applicant filed a Registration Statement pursuant to section 8(b) of the Act.

2. On October 13, 1989, Applicant's Board of Directors adopted a Plan of Liquidation and Dissolution ("Plan"). Proxy materials relating to the Plan were distributed to stockholders on November 15, 1989. On December 1, 1989 Applicant held a Special Meeting of Stockholders at which the stockholders voted unanimously to approve the Plan.

3. As of December 15, 1989, Applicant had 2,826,224.208 shares outstanding with a net asset value per share of $10.12 for a total asset value of $28,610,659.40. Pursuant to the Plan, Applicant liquidated its securities and on December 18, 1989 distributed to its shareholders of record $10.11 per share in cash. On February 21, 1990, Applicant distributed to its shareholders of record as of December 18, 1989 $0.004 per share in cash, which amount represented all the remaining assets of the Applicant.

4. Applicant incurred $19,272 in expenses in connection with the liquidation. These expenses included legal, accounting and tax advice, the costs of preparing, printing and mailing proxy materials and the costs of filings with federal and state regulatory agencies. All these expenses were borne by the Applicant.

5. As of the time of filing of this application, Applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. On February 28, 1990, Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14831 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17540; File No. 812-7516]

First Investors Life Insurance Company, et al.

June 19, 1990.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: First Investors Life Insurance Company ("First Investors Life"), First Investors Life Variable Annuity Fund C ("Separate Account C"), First Investors Corporation ("FIC"), and First Investors Management Company, Inc. ("FIMCO").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of Separate Account C pursuant to certain variable annuity contracts.

Filing Date: The Application was filed on May 4, 1990 and amended on June 11, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission no later than 5:30 p.m. on July 16, 1990. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit or, in the case of attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Richard H. Gaebler, Esq., President, First Investors Life Insurance Company, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney, at (202) 272-3045, or Heidi Stam, Assistant Chief, Office of Insurance Products and Legal Compliance, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. First Investors Life, a wholly-owned subsidiary of First Investors Consolidated Corporation, is a stock life insurance company organized under the laws of the State of New York in 1962. First Investors Life established Separate Account C on December 21, 1989. Separate Account C funds flexible purchase payment deferred annuity contracts and single purchase payment immediate annuity contracts (collectively, the "Contracts").

2. FIC, a wholly-owned subsidiary of First Investors Consolidated Corporation is a broker-dealer registered under the Securities Exchange Act of 1934. FIC will be the principal underwriter of the Contracts.

3. FIMCO, an investment adviser registered under the Investment Advisers Act of 1940 and a broker-dealer registered under the Securities Exchange Act of 1934, is the investment

adviser to First Investors Life Series Fund ("Life Series"), the various series of which are the funding vehicle for the corresponding series of Separate Account C. All of FIMCO's common stock is owned by First Investors Consolidated Corporation.

4. Separate Account C will be divided, initially, into seven subaccounts, each of which will invest in a separate series of Life Series. Life Series is a no-load, open-end, diversified, series management investment company registered under the 1940 Act.

5. The initial purchase payment for any Contract providing for the payment of a deferred benefit will be at least $2,000. The minimum purchase payment for a Contract providing for the payment of an immediate benefit will be $3,000. Subsequent purchase payments under a Deferred Variable Annuity must be at least $200.

6. An annual administrative charge of $7.50 will be deducted annually by First Investors Life from the accumulated value of single payment contracts which have an accumulated value of less than $1,500 due to a partial surrender. This administrative charge, which is the only such charge, is for the purpose of compensating First Investors Life for expenses involved in administering small accounts. The Applicants will rely on Rule 26a–1 under the 1940 Act for the necessary exemptive relief to charge the administrative charge.

7. First Investors Life or FIC, as the Underwriter, makes a deduction of sales charges from the purchase payment, ranging from 7.25 percent of the purchase payment for investments or less than $25,000 to 1.50 percent of the purchase payment for investments of $1 million or more.

8. In addition to the administrative charge and the sales charge, a risk charge (the "Risk Charge") will be assessed daily against Separate Account C at an annual rate of 1.0 percent (approximately 0.60 percent for mortality risk and approximately 0.40 percent for expense risks). The Risk Charge is guaranteed and may not be increased by First Investors Life. Applicants state that the mortality component (approximately .60 percent) of the Risk Charge is intended to compensate First Investors Life for assuming the risk that its actuarial estimate of mortality rates may prove erroneous, i.e., the risk that a beneficiary may receive annuity benefits for a period longer than those reflected in the Contract's guaranteed annuity rates or may die at a time when the death benefit guaranteed by the Contract is higher than the accumulation value of the participant's Contract. The expense component (approximately .40 percent of the Risk Charge) is intended to compensate First Investors Life for assuming the risk that administrative charges, which are guaranteed not to increase, may prove insufficient to cover expenses actually incurred.

9. Applicants represent that the level of the Risk Charge is reasonable in relation to the risks assumed by Applicants under the Contracts and within the range of industry practice for comparable annuity contracts. This representation is based upon First Investors Life's analysis of publicly available information about such contracts, taking into consideration the particular annuity features of comparable contracts, including such factors as current charge levels, charge level guarantees or annuity rate guarantees, the manner in which the charges are imposed, and the markets in which the contracts are offered. Applicants state that First Investors Life has incorporated the identity of the products analyzed and its analysis, including its methodology and results, into a memorandum which it will maintain and make available to the Commission or its staff upon request.

10. Applicants represent that the sales charge assessed in connection with sales of the Contracts may be insufficient to cover all costs of distributing the Contracts. Applicant state that if the actual amounts derived from the sales charge prove insufficient to cover the actual costs of distributing the Contracts, the deficiency will be met from the general corporate funds of First Investors Life or of FIC, including amounts derived from risk charges not otherwise applied to the expenses the risk charges were designed to defray.

11. Applicants represent that First Investors Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the separate account and the owners of the Contracts, and state that the basis for this conclusion has been incorporated in a memorandum which First Investors Life will maintain and make available to the Commission or its staff upon request.

12. Applicants represent that the assets of Separate Account C will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to rule 12b-1 under the 1940 Act, to have such plan formulated and approved by its board of directors (or board of Trustees), the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14630 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17541; No. 811-5080]

Whitehall Linked Life Series Fund Co.

June 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Whitehall Linked Life Series Fund Co.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 23, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification or the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Whitehall Limited Life Series Fund Co., c/o Bradford National Life Insurance Company, One Lexington Green, 3191 Nicholasville Road, Lexington, KY 40503.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney (202) 272–3045, or Heidi Stam, Assistant Chief (202) 272–2060 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. On March 28, 1987, Applicant filed Form N–8A to register under the 1940 Act as a management investment company. On the same date, the Applicant also filed a registration statement on Form N–1A. The registration statement was never declared effective.

2. Applicant never made a public offering of its securities, and does not propose to make a public offering or to engage in business of any kind other than to effect a winding-up of its affairs.

3. As of May 23, 1990, the Applicant has no assets, has not transferred any assets to another entity, has no outstanding debts or liabilities, and is not a party to any litigation or administrative proceeding.

4. There have been no securityholders of Applicant at any time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14632 Filed 6-26-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 162—Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the Special Committee 162, Aviation Systems Design Guidelines for Open Systems Interconnection (OSI) Meeting to be held July 16–18 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks, (2) approval of minutes of the eleventh meeting held April 25–27, (3) reports of working group activities, (4) presentation of AMTS proposal by Upper Layer Working Group, (5) reports of related activities being conducted by other organizations, (6) working groups meeting in separate sessions, (7) other business, and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 20.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-14681 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the Special Committee 165, Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services Meeting to be held July 23–25 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC, commencing at 9:30 a.m. (The meeting on July 25 is scheduled to end at noon.)

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of the fourth meeting; (3) working group reports: (a) Equipment Standards Working Group report, (b) Operation and Implementation Working Group report, and (c) Service Performance Criteria Working Group report; (4) review of second draft to the AMSS MOPS; (5) review first draft of Service Performance Criteria Working Group report; (6) working group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 20.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-14682 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, U.S.C., appendix I), notice is hereby given for the Executive Committee Meeting to be held July 19 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions, (2) approval of May 24 Executive Committee Meeting minutes, (3) executive director's report, (4) special committee activities report for May–June, (5) report of the Fiscal and Management Subcommittee, (6) consideration for approval of special committee reports, (7) consideration of proposals to establish new special committees, (8) other business, (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 20.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-14683 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Fond Du Lac County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fond du Lac County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve United States Highway (USH) 151 from a point near the intersection of USH 151 and County Trunk Highway D, southwest of the City of Fond du Lac, to a point near the intersection of USH 151 and State Trunk Highway 149, northeast of the City of Fond du Lac, a distance of about 10 miles.

Improvements to the USH 151 corridor are considering necessary to provide for existing and projected traffic demand, to reduce congestion in the City of Fond du Lac, and to reduce accidents. Alternatives to be considered include: (1) Taking no action, (2) improvements on the existing alignment, and (3) improvements on new location. Studies will also include design variations of roadway grade, grade-separation structures and at-grade intersections with local roads.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings will be held in the project vicinity during 1990 and 1991. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is not scheduled at this time.

To ensure that a full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 15, 1990.

James K. St. John,

Division Administrator, Madison, Wisconsin.

[FR Doc. 90-14868 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Marin County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Marin County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812–1915, Telephone (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to repair a 600-foot section of State Route 1 (PM 9.2) between Muir Beach and Stinson Beach along the Pacific Coast in Marin County. The proposed project is to reestablish the now closed roadway linking the San Francisco Bay Area with the semi-rural recreational area of west Marin consisting of the Point Reyes National Seashore, the Golden Gate National Recreation Area, the Gulf of the Farallones National Marine Sanctuary, and Mount Temalpais State Park.

In addition to the No-Build Alternative, the following alternatives are being considered:

1. Relocate roadway onto stable material by realigning the road approximately 250 feet inland and disposing of nearly 500,000 cubic yards of cut material by the following disposal methods or combination thereof:

a. End-dumping into the ocean;

b. Haul material to some off-site landfill disposal area;

c. Haul and deposit material at an upland parkland disposal site, and

d. Place Lone Tree Creek into a culvert, and deposit material into the old creek area.

2. Construct an interim project to relocate the road inland enough to provide for a two-lane travelway.

3. Construct a side-hill viaduct or other engineered structure.

4. Construct a coastal highway bypass on a new alignment.

5. Relinquish the portion of State Route 1 from Muir Beach to Stinson Beach and adopt the current detour, Panoramic Highway, into the State Highway System.

The proposed scoping process includes the distribution of a Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the Notice of Intent in the Federal Register, and scoping meetings to be held during the first two weeks of August 1990. The exact date, time, and place of these meetings will be published in advance in local newspapers.

Other public meetings will also be held during the course of the environmental studies to inform and receive input from the public. A draft environmental impact statement will be circulated for public and agency review and comment followed by a formal public hearing. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all signficant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided in this document.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovermental consultation of Federal Programs and activities apply to this program)

Issued on June 19, 1990.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 90-14867 Filed 6-26-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 21, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8752.

Type of Review: New Collection.
Title: Required Payment or Refund Under Section 7519.
Description: This form is used to verify that partnerships and S corporations that have made a section 444 election have correctly reported the payment required under section 7519.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 55,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—5 hours, 1 minute
Learning about the law or the form—1 hour, 5 minutes
Preparing, copying, assembling, and sending the form to IRS—1 hour, 14 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 403,700 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 90-14877 Filed 6-26-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

June 21, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Corporate Tax Gap Focus Group Interviews.
Description: These focus groups are being conducted to assist the Service in determining the magnitude of the corporate tax gap. The data collection will be considered in determining more effective methods in conducting corporate exams.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: One-time focus groups.
Estimated Total Reporting Burden: 153 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 90-14878 Filed 6-26-90; 8:45 am]

BILLING CODE 4830-01-M

Internal Revenue Service

Privacy Act; Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service's computer matching programs. In accordance with various provisions of section 6103 of the Internal Revenue Code of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The matching programs substantially prevent or reduce fraud and abuse in certain government programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match.

EFFECTIVE DATE: July 27, 1990.

ADDRESSES: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John Fuhrman, Chief, FOI/Privacy Section, Internal Revenue Service, (202) 566–3359.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(3)

Upon written request, the Service may disclose to the head of a Federal agency, which makes, guarantees, or insures certain Federal loans, whether an applicant for such a loan has a tax delinquent account.

The disclosure of a Tax Delinquent Account Status Indicator under IRC 6103(l)(3) is made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question. The information provided is extracted monthly from the Internal Revenue Service Individual Master File (Treas./IRS System 24.030 (IMF)) located at the Internal Revenue Service, Martinsburg Computing Center (MCC), in Martinsburg, West Virginia. The IMF contains tax accounts of individuals.

There are currently no (l)(3) matching agreements in effect.

Matches Conducted Pursuant to IRC 6103(l)(7)

The Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs to provide:

(a) Aid to Families with Dependent Children;

(b) Medical assistance;

(c) Supplemental Security Income benefits;

(d) Social security benefits;

(e) Unemployment compensation;

(f) Food Stamps; or

(g) State administered supplementary payments.

Information is disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest processing year. This file contains information returns filed by payers of income such as interest and dividends reported on Forms 1099–INT and 1099–DIV.

Federal agencies participating in (l)(7) matches are the Social Security

Administration and Health Care Financing Administration.

Matches Conducted Pursuant to IRC 6103(l)(12)

The Service shall, upon written request from the Commissioner of Social Security (SSA), disclose to SSA available filing status and taxpayer identity information from the IMF (Treas./IRS System 24.030) relating to whether any medicare beneficiary identified by SSA was a married individual for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN, but only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan. This section provides further for the redisclosure of certain taxpayer identity information by SSA to Health Care Financing Administration (HCFA) upon the written request of the Administrator of HCFA. With respect to the information redisclosed by the Commissioner of SSA, the Administrator of HCFA may further disclose said information to certain qualified employers and group health plans.

The information provided is extracted monthly from the IMF.

The Federal agencies participating in (l)(12) computer matches are SSA and HCFA.

Matches Conducted Pursuant to IRC 6103(m)(2)

The Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31 of the United States Code. This section also provides for the redisclosure of a taxpayer's mailing address to a consumer reporting agency, but only to allow for the preparation of a commercial credit report on the taxpayer for use by the requesting Federal agency in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

The information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

Federal agencies participating in (m)(2) matches are:

Army & Air Force Exchange Service (AAFES)
Army Finance & Accounting Center (AFAC)
Equal Employment Opportunity Commission (EEOC)
Health Resources & Services Administration (HRSA)
Health Care Financing Administration (HCFA)
Housing & Urban Development (HUD)
Marine Corps Finance Center (MCFC)
National Institute of Health (NIH)
Navy Finance Center (NFC)
Navy Resale & Services Support Office (NRSSO)
Public Health Service (PHS)
Railroad Retirement Board (RRB)
Social Security Administration (SSA)
U.S. Army Community & Family Support Center (ACFSC)
U.S. Coast Guard (USCG)
Department of Education (ED)
Department of Health & Human Services (HHS)
Department of Justice—Civil Division (DOJ)
Department of State (DOS)
Department of Veterans Affairs (VA)

Matches Conducted Pursuant to IRC 6103(m)(4)

Upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Higher Education Act of Migration and Refugee Assistance Act for purposes of locating such taxpayer to collect the loan. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

The information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

The U.S. Department of Education participates in (m)(4) computer matches.

Matches Conducted Under IRC 6103(m)(5)

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Public Health Service Act for pusposes of locating such taxpayer to collect the loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any school with which the Secretary has an agreement under the Public Health Service Act, or any eligible lender participating under such Act.

Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under the Public Health Service Act for the purposes of collecting such loans.

The information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

The Department of Health & Human Services participates in (m)(5) computer matches.

Approval of the IRS computer matching programs was granted by the Treasury Data Integrity Board on June 7, 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 90-14804 Filed 6-26-90; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[AC-35]

Albany First Federal Savings and Loan Association, Albany GA; Final Action Approval of Conversion Application

Date: June 20, 1990.

Notice is hereby given that on June 20, 1990, the Director of the Office approved the application of Albany First Federal Savings and Loan Association, Albany, Georgia, for permission to convert to the federal stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of the conversion stock by SunTrust Banks, Inc., Atlanta, Georgia, and its wholly-owned subsidiary, Trust Company of Georgia, Atlanta, Georgia.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14839 Filed 6-26-90; 8:45 am]

BILLING CODE 6720-01-M

[No: 90-1160]

Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 18, 1990.

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of application.

SUMMARY: The Midwest Stock Exchange, Inc. has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, application ("Application") with the Office of Thrift Supervision ("Office") for unlisted trading privileges in the following securities.

American Savings Bank, FSB, New York, New York (OTS No. 7776), $1.8125 Cumulative Convertible, Exchangeable Preferred Stock, No Par Value.

—

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

COMMENTS: Any interested person may inspect the Application at the Office, and, on or before July 12, 1990, submit to the Corporate and Securities Division, Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Application is consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Office will approve the Application after the date mentioned above if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to the Application is consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Senior Counsel for Special Transactions and Compliance, Corporate and Securities Division, Chief Counsel, at (202) 906-6415 or at the above address.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14837 Filed 6-26-90; 8:45 am]

BILLING CODE 6720-01-M

[No: 90-1160]

Approval of Application for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

June 11, 1990.

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of approval of application.

SUMMARY: The Midwest Stock Exchange, Inc. filed with the Office of Thrift Supervision ("Office") (formerly the Federal Home Loan Bank Board ("Board")) an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges:

Crossland Savings Bank, FSB, Brooklyn, New York, OTS No. 7812, $1.825 Cumulative Convertible, Preferred Series A, No Par Value.

American Savings Bank, FSB, New York, New York, OTS No. 7776, Common Stock, No Par Value.

Northeast Savings, F.A., Hartford, CT, OTS No. 3231, $2.25 Cumulative Convertible A, Preferred Stock, $.01 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on August 11, 1989, and interested persons were invited to submit written data, views and arguments within 15 days. *See* Board Resolution No. 89-2219, dated August 4, 1989. 54 FR 33076, August 11, 1989. The Office received no comments with respect to the Application. Notice is hereby given that, pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in these securities was approved, on June 11, 1990.

SUPPLEMENTARY INFORMATION: The Office finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange, Inc. is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act. 17 CFR 240Aa3-1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange, Inc. are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Office received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act and pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in the above named securities was approved, on June 11, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-14835 Filed 6-26-90; 8:45 am]

BILLING CODE 6720-01-M

[No: 90-1159]

Approval of Application for Unlisted Trading Privileges; Philadelphia Stock Exchange

June 8, 1990.

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of approval of application.

SUMMARY: The Philadelphia Stock Exchange filed with the Office of Thrift Supervision ("Office") (formerly the Federal Home Loan Bank Board ("Board")) and application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges: Crossland Savings Bank, FSB, Brooklyn, New York (OTS No. 7812), Common Stock, $1.00 Par Value.

Notice of the Application and opportunity for hearing was published in the **Federal Register** on August 11, 1989, and interested persons were invited to submit written data, views and

arguments within 15 days. *See* Board Resolution No. 89–2218, dated August 4, 1989. 54 FR 33077, August 11, 1989. The Office received no comments with respect to the Application. Notice is hereby given that, pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in these securities was approved on June 8, 1990.

SUPPLEMENTARY INFORMATION: The Office finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act. 17 CFR 240Aa3–1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Office received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act and pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in the above named securities was approved on June 8, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–14836 Filed 6–26–90; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 124
Wednesday, June 27, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

Meeting

TIME AND DATE: 10:00 a.m., Monday, July 2, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

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Wednesday
June 27, 1990

Part II

Department of Health and Human Services

Food and Drug Administration

Department of Commerce

National Oceanic and Atmospheric Administration

21 CFR Part 197
50 CFR Ch. II

Voluntary Seafood and Fish and Fish Products Inspection Program; Invitation to Participate in a Pilot Study; Proposed Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 197

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

[Docket No. 90N-0080]

Seafood Inspection

AGENCIES: Food and Drug Administration, HHS; and National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Food and Drug Administration (FDA) and National Marine Fisheries Service (NMFS) are jointly issuing this advance notice of proposed rulemaking (ANPRM) announcing their intent to establish a voluntary, fee-of-service inspection program for fish and fish products to be operated by both agencies. The proposed new program is intended to enhance existing Federal seafood inspection programs operated by FDA and NMFS. The new program is intended to address both safety and marketing and would provide an opportunity to extend the voluntary use of Hazard Analysis Critical Control Point (HACCP) principles more broadly in the fish and seafood industries.

The agencies request public comment on the outline of the program presented in this document and on various aspects of the program that would require regulations to implement.

DATES: Comments by August 13, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, and rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Generic model HACCP plans, which have been developed by industry under the congressionally-mandated Model Seafood Surveillance Project (MSSP) and are discussed in section C(2), may be obtained at no charge from the National Seafood Inspection Laboratory, P.O. Drawer 1207, Pascagoula, MS 39567.

FOR FURTHER INFORMATION CONTACT:

Richard Cano, Office of Trade and Industry Services, National Marine Fisheries Service, 1335 East—West Highway, Silver Spring, MD 20910, 301-427-2355

or

George Hoskin, Center for Food Safety and Applied Nutrition (HFF-400), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-245-1231.

SUPPLEMENTARY INFORMATION: Seafood safety is regulated at the Federal level primarily by FDA, which operates a comprehensive, mandatory program under the authorities of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and the Public Health Service (PHS) Act. The FD&C Act charges FDA with assuring that foods, including seafood, are safe, wholesome, and not misbranded or deceptively packaged. FDA's authority under the PHS Act relates to the control of the spread of communicable diseases from one state, territory, or possession to another or from outside the United States into this country.

Under these authorities, FDA conducts mandatory inspections of processors, shippers, packers/repackers, labelers/relabelers, warehouses, and importers of fish and fish products. Some of this work is carried out by the states, under contracts with FDA. In addition, although subject to FDA regulation, the many hundreds of thousands of retail outlets and restaurants selling seafood products are inspected by the state and local health departments with technical assistance and training from FDA through its Retail Food Protection Program. FDA's program also includes sample analyses of both domestic and imported products, research into rapid detection methodologies for potential hazards and other matters affecting the regulation of seafood, substantial interaction with states, other Federal agencies, and foreign countries, enforcement activities, and education and information-sharing activities.

NMFS operates a voluntary, fee-for-service seafood inspection program under the authorities of the Agriculture Marketing Act of 1946 and the Fish and Wildlife Act of 1956. A memorandum of understanding (MOU) exists between NMFS and FDA relating to this program. Under that MOU, NMFS ensures that industry participant's operations and products meet the requirements of the FD&C Act, as well as NMFS's own quality and identity requirements. The program includes inspection, grading, and certification services, as well as the use of official marks that indicate that specific products have been Federally inspected. The program encompasses approximately 12 percent of seafood consumed in this country and approximately 9 percent of edible fishery exports. FDA takes the NMFS program into account when it targets inspection under its mandatory program.

The proposed program announced in this notice is included as part of the President's fiscal year 1991 budget as a voluntary, fee-for-service inspection program that is to be operated jointly by FDA and NMFS. As currently viewed by the agencies, the key differences between this new initiative and the current NMFS program, aside from joint operation, are that: (1) It will provide an additional incentive for firms to voluntarily implement HACCP principles across a broad array of fish and seafood products, and (2) it aims to cover imports as well as domestic and exported products. Like the current NMFS program, this new program would include the award of a mark for participants signifying that the participant is meeting the requirements of the program. This new program would be based in part on section 702A of the FD&C Act, which authorizes the display of such a mark under a voluntary inspection program supported by user fees.

The current NMFS program would continue to provide grading and related services. Ultimately, continuation of the other aspects of the current NMFS program would depend upon such factors as the extent to which participants opt to switch to the new HACCP-based program.

A. HACCP

The HACCP concept of identifying and monitoring potential hazards during processing has matured to the point where it can be formally implemented beyond its current application by regulation to the prevention of botulism in low-acid canned foods, a number of which are seafoods. HACCP principles may find useful application at many stages in the chain from harvest to market. The HACCP system is an approach to controlling consumer product hazards relating to safety, but may also be extended to economic fraud and wholesomeness as well. It is a two-step system. First, the range of hazards and concerns must be identified and evaluated, second, it involves: (1) Defining each operational step of a processing operation, (2) identifying the critical control points in the process to control the identified hazards to acceptable levels, (3) defining preventive measures to control the hazards, (4) detailing the procedures—either by observation or measurement—

that can be used to monitor the critical control points, and (5) defining the minimum records necessary to verify that the hazards are being controlled.

HACCP has proven itself since the early 1970's principally in the low-acid canned food industry and recently has been the subject of considerable analysis and endorsement by the National Academy of Sciences, the National Advisory Committee on Microbiological Criteria for Foods, including its Seafood Working Group, and others. In 1986, Congress directed NMFS to design an improved surveillance and certification system for fishery products base upon the HACCP concept. This study, known as the Model Seafood Surveillance Project (MSSP), will be completed this year with a report to Congress scheduled for December 1990. Preliminary results from that study are being used in the development of this proposed program through the use of generic model HACCP plans that were developed for various types of fishery products. These model plans could be used by firms as guides in developing their own company-specific HACCP-based plans.

B. The Proposed FDA-NMFS Program

FDA and NMFS expect that this joint voluntary HAACP-based, fee-for-service inspection program will lead to more cost-effectivo regulation of the seafood industry and will increase the industry's awareness of the benefits of the HACCP system. The agencies believe that such a program will enable them to focus more effectively on the prevention of economic hazards, such as additive abuse, short weight, species substitution, and overbreeding. At the same time, it will help reassure consumers about the safety and wholesomeness of fish and seafood products.

It is important to note, however, that the program is not intended to be a self-certification program. Although HACCP involves substantial self-monitoring by the industry, the program is intended to rely ultimately on routine regulatory monitoring inspections by NMFS and periodic verification inspections by FDA. By means of these inspections, FDA and NMFS intend to review the data being produced through industry self-monitoring to determine whether each HACCP-based system that may be established by a participant is in compliance with that participant's HACCP-based plan and to check for overall sanitation, compliance with current good manufacturing practices, labeling, and other requirements.

The agencies contemplate that the regulations for this program would provide for a voluntary, contractual program. They would address such issues as what the parties agree to do, the terms of a contract, and the rights of termination. The agencies' current thinking is that each contract should specify those records relating to a participant's HACCP-based plan that the parties agree will be subject to access by the agencies. The proposed regulations are also likely to address eligibility factors, the application process, and the development and submission of an HACCP-based plan by an applicant, as well as what factors an applicant's HACCP-based plan must adequately address, the significance of the mark and how it will be awarded, and the fee structure.

C. Request for Comments

In the development of this program, FDA and NMFS intend to take full advantage of the generic HACCP models that have been developed primarily by the industry under the MSSP. To further aid in the development of this program, the agencies are soliciting comments and advice from the public on several specific areas, as set out below. Comments and advice are encouraged on any other aspect of the program as well.

The agencies intend to take these comments into account in drafting a notice of proposed rulemaking.

1. Eligibility

What factors should be taken into account in establishing criteria for eligibility under this program?

It is worth noting in this regard that the agencies are considering making the low-acid canned food industry eligible to participate in this program with regard to fish and fish products even though that industry is already operating under an HACCP-based system. That system was established to control the occurrence of botulism. HACCP could be applied to other types of control points in that sector of the industry as well, making it eligible for the new inspection mark.

Should eligibility encompass fish and fish products intended for food for animals as well as for humans?

2. MSSP Generic Model HACCP Plans

Among the work products of the MSSP mentioned above are generic model HACCP plans for specific commodities or operations. The generic model plans address, among other things, the critical control points normally associated with a commodity or operation, the hazards associated with the critical control points, activities that could be undertaken to assure that the identified hazards do not occur, and the types of records that must be maintained in order to record the effective monitoring of critical control points. Generic model plans have already been drafted or are under development for: breaded shrimp, cooked shrimp, raw shrimp, breaded fish and specialty items (includes breaded molluscan shellfish, stuffed products, entree items, and surimi analog products), blue crab, raw fish, import products, scallops, smoked fish, west coast crab, molluscan shellfish, crawfish, vessels, lobsters, and aquaculture products. Those generic model plans already drafted may be obtained from the National Seafood Inspection Laboratory (address above). Interested parties may also submit comments on these generic model plans.

Because the generic model plans were developed by the industry under the MSSP for other purposes, i.e., as part of a congressionally-mandated project to design a mandatory inspection system using the HACCP concept, they constitute unofficial guidance for the development of plant-specific HACCP-based plans, and they may not be directly applicable to the voluntary program described here. FDA and NMFS intend to evaluate them for applicability to this program and modify them as necessary.

The agencies currently believe, however, that program applicants may find the generic models useful for developing their own HACCP-based plans. (For this reason, the agencies are encouraging firms with products for which generic model plans already exist to volunteer for a pilot test for this program targeted for later this year, although the pilot is not intended to be limited solely to such firms. A notice inviting volunteers for the pilot is being published separately.) However, applicants may develop their own HACCP-based plans independent of these generic models. Review and approval of an applicant's plan by the agencies is likely to be one condition for acceptance into the program. The generic models should provide guidance on critical control points, actions that could be undertaken to control hazards, and necessary records.

(a) Because the MSSP generic model plans were developed for different purposes as described above, to what extent should FDA and NMFS modify the generic plans to accommodate this alternative application? What other guidance should NMFS and FDA provide applicants for the development of their plant-specific HACCP-based plans?

8. Delisting

If a firm is consistently unsuccessful in meeting the conditions of the program, it becomes questionable whether the firm should be permitted to continue to participate. What should be the criteria for delisting and reinstatement?

9. Training

An HACCP-based program must involve the training of key people involved in food processing, as well as the training of regulatory personnel.

(a) For industry personnel, what specifically should be included in the curriculum? Should there be different levels of training?

(b) Should the program require that each participating firm have at least one person who is certified in HACCP by virtue of appropriate training?

(c) Should training for industry personnel be undertaken wholly or in part by the private sector?

(d) Should the Federal program develop specific training and testing criteria, certify that training, or require private instructors to receive some Federal training?

10. Imports

The United States is currently the second largest importer of fish and fishery products in the world.

Therefore, FDA and NMFS believe that this program should be structured to the extent possible to include imported fish and fish products. It is not currently contemplated that a mark could be awarded under this program solely on the basis of end product testing of imports because verified sanitary control up to the end product stage, based on the requirements of this program, would be lacking. Consequently, inspection of foreign suppliers would be necessary. The agencies' current view is that foreign suppliers that participate in the program would be subject to the same HACCP-based planning and self-monitoring requirements as domestic participants.

(a) Should the program negotiate MOU's with foreign countries that have sufficient regulatory mechanisms in place to conduct these inspections on the program's behalf? Under such a MOU, should the foreign country conduct both the monitoring and verification inspections?

(b) Should the frequency rate of inspection for foreign suppliers be the same as the rate for domestic processors?

(c) Should the mark be the same?

(d) From whom should the program collect fees?

i. The importer?

ii. The foreign firm?

iii. The foreign country (assuming the existence of an MOU)?

(e) Should imports from program participants be limited to certain U.S. ports to facilitate entry?

11. Exports

The United States is currently the largest exporter of fishery products in the world. Therefore, the structure of this program should adequately address the needs of U.S. exporters to assure foreign governments and consumers that U.S. fishery products are safe, wholesome, and in compliance with recognized, established criteria for their respective countries.

The use of scientifically-based regulations and inspection procedures continue to be important topics of discussion in international bodies such as the General Agreement on Tariffs and Trade (a forum that addresses international trade disputes) and CODEX Alimentarius (a joint commission of the Food and Agriculture Organization for the purpose of establishing international standards for trade.) The value of a HACCP-based inspection program has already been established for low-acid canned foods and an extension of that type of program to other forms of seafood should help maintain the U.S. position in international trade.

This premise has been recognized in the meetings of the Technical Working Group on Fish and Fishery Product Inspection under the Canada-U.S. Free Trade Agreement. The Canadian delegation has proposed the formal recognition of the FDA–NMFS HACCP-based inspection program by the Canadian inspection service upon its implementation. Also, the FDA–NMFS program is one of several topics for discussion at the June 1990 bilateral consultations between the United States and the European Community in Brussels, Belgium.

The agencies are operating under the premise that exports from a plant participating in this program ought to be subject to the same requirements as products for the domestic market. Is this a valid premise? What effects, positive or negative, could it have on trade? What features directed toward exports should the program include?

Interested persons may, on or before August 13, 1990, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This ANPRM will be followed by a notice of proposed rulemaking that will propose, among other things, to remove the existing FDA regulations at 21 CFR part 127 relating to the inspection of canned oysters and processed shrimp under section 702A of the FD&C Act. As noted above, section 702A of the FD&C Act authorizes the Secretary of Health and Human Services to establish a voluntary, fee-for-service seafood inspection program involving the display of a mark for compliance with the statute and applicable regulations.

The original version of section 702A of the FD&C Act was enacted in 1934 (as section 10A of the Food and Drugs Act of 1906) to establish an inspection service that would alleviate problems with decomposition of shrimp then being experienced in the Gulf of Mexico area. Regulations under then-section 10A were issued in 1939 for the inspection of canned shrimp. The program was extended by regulation in 1944 to canned oysters. In their present form, the successors to these regulations require the assignment of inspectors to participating establishments for specified periods of time on a continuous basis and contain a number of other detailed requirements. These regulations have been unused since 1957, however, when the voluntary inspection service under section 702A was discontinued. The current FDA mandatory inspection program for seafood operates under other provisions of law, and a successor fee-for-service program operated by NMFS continues to function successfully, based in part on an MOU with FDA.

Now that FDA and NMFS intend to rely in part on section 702A of the FD&C Act as a basis for the new fee-for-service program that is the subject of this ANPRM, FDA intends to repeal the existing but unused regulations for shrimp and oysters, and the agencies intend to replace them with regulations that will implement a voluntary HACCP-based program based on current theory and experience, as described previously in this notice.

(b) Should the above list of generic model plans serve to define, in whole or in part, eligibility into the program?

(c) If eligibility should be broader and include commodities or operations not listed above, what additional commodities/operations should be included? How should generic model HACCP plans for these additional commodities/operations be developed? Should eligibility be delayed until such generic model HACCP plans are prepared?

(d) Should eligibility be phased in on a commodity/operation basis? If so, which commodities or operations should be eligible first?

3. HACCP-Based Plans

The agencies intend to require each participant in this program to have an approved HACCP-based plan. The agencies further intend to provide that all products produced in the facility to which the plan applies must be covered by the plan. (For example, an HACCP-based plan could not cover just one production line out of four in a facility but would have to cover all four lines.)

In order to be approved, it is likely that HACCP-based plans would have to adequately address a number of factors. Those factors currently under consideration include current good manufacturing practices, training of personnel, the safety and suitability of ingredients, necessary structures, equipment and procedures, production and process controls, control of containers, maintenance of records, sanitation, and product testing by the firm. Comments on how any or all of these factors should be specifically addressed in an HACCP-based plan are encouraged. Should any other factors, such as recall procedures, be included? Do small businesses face problems that would require special consideration as they develop specific HACCP-based plans? Should the agencies provide technical assistance to small businesses in developing these plans?

4. The Mark

The agencies intend to allow those who meet the requirements of this program to display a mark on the labeling of their products. It is expected that the mark will signify that the facility is a member in good standing in this program, has a Federally approved HACCP-based plan, and is appropriately monitoring critical control points as evidenced by the results of Federal regulatory monitoring and verification inspections.

Competent application of HACCP principles may enhance the safety of fish and seafood products, which are already much safer than other foods that provide similar nutritional value. Nevertheless, HACCP is not intended to guarantee and cannot provide a risk-free product. It must be understood that the Government intends to reserve the right to act against a product bearing a mark if that product is later found to violate applicable Federal laws. Compliance with this program can, however, attest to the overall marketability of the product, including general freedom from species substitution, overbreading, and other forms of economic deceptions, as well as provide an additional assurance of the product's underlying safety and quality. With these principles in mind:

(a) How can the mark be designed to communicate the message that products bearing it have satisfied program requirements, without inadvertently creating misperceptions, in particular misperceptions about relative risk, relating to products sold without the mark?

(b) What should be the statement and configuration of the mark? For bulk fresh product, for example, how should the mark be displayed?

(c) Should the mark signify compliance with minimum sanitary and product wholesomeness criteria or some higher level acceptability? For example, should the mark be permitted on products containing a minimum unavoidable amount of decomposition, as currently reflected by FDA's defect action level for decomposition, when current good manufacturing practices are followed, or should the mark be allowed only on products that exceed minimum quality, *e.g.*, that contain no decomposed material as determined by a specified analytical and sampling plan? Higher minimum quality levels above current good manufacturing practices are achievable but could possibly require greater effort and cost.

i. If the mark were to signify that the product was free of decomposition, what percentage of a lot should be sampled to assure that the lot is free of decomposed products?

ii. Should the mark be permitted when source material has to be reworked in order to bring it or the final product into compliance with a no decomposition requirement?

(c) How should this mark relate to established U.S. marks (*e.g.*, Packed Under Federal Inspection, Grade A)?

(d) Should the agencies require that this mark be displayed on products originating from participating facilities, or should display be at the option of the firm?

(e) If retailers are eligible for this program, should they be held to the same standard as processors with regard to source material? For processors, the agencies contemplate that the door to the plant is, figuratively, a critical control point for source materials. The agencies intend that materials should either come from a source that is in the FDA/NMFS HACCP-based program or that is adequately controlled (*e.g.*, sampled) if the source is other than in this program. Also, for retailers, could the mark be in the form of a sign posted in the store? (See also question 9(c) on imports.)

5. Fees

Fees under the current NMFS voluntary program are based on an hourly rate and are set at a level intended to recover costs to NMFS. FDA and NMFS intend to establish a fee schedule for this program that is economically sound, avoids unfair cross-subsidization across participant firms and industries, and provides efficient incentives for participants to comply with program requirements. What factors should be used in deciding upon the fee structure for this new program? Should fees be limited to recovering costs to FDA and NMFS of inspection and sample analyses only, or should they include costs incurred by those agencies associated with informing consumers about the meaning of the mark? What alternative fee structures are available that would accomplish the goals outlined above?

6. Inspection Intervals

The seafood industry is far from uniform and is characterized by a great variety of processing and other operations. To what extent should inspection rates vary based on the complexity of the operation, the numbers and types of critical control points, and the success that the firm is having in operating under an HACCP-based plan?

7. Sampling and Analysis

The agencies invite comment on the extent to which participants in the program should be expected to have their own source materials, in-process materials, and end products analyzed for defects. The laboratories used, whether in-house or contract, would be expected to use methodologies that are consistent with, or at least as sensitive as, those used by the agencies, in order to facilitate the interpretation of the data, among other things. Should Federal inspection of contract laboratories be a part of the verification procedures of the joint FDA–NMFS program?

Authority: This ANPRM is issued under secs. 402, 403, 404, 701, 702A, 704, and 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 343, 344, 371, 372a, 374, and 381), title II of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), sec. 6(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742e), and Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Dated: June 15, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 90-14800 Filed 6-21-90; 4:12 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0088]

Voluntary Fish and Fish Products Inspection Program; Invitation To Participate in a Pilot Study

AGENCIES: Food and Drug Administration, HHS.

ACTION: Notice; invitation to industry to participate in a pilot study of the voluntary fishery products inspection program.

SUMMARY: The Food and Drug Administration (FDA) and the National Marine Fisheries Service (NMFS) intend to conduct a joint, fee-for-service inspection program that will enhance the existing programs for seafood now being operated by the two agencies. These programs relate to the safety, wholesomeness, and proper labeling of fish and fish products. The planned joint program will be based on Hazard Analysis and Critical Control Point (HACCP) principles, and participation will be voluntary. The two agencies are soliciting participants for a 2-month pilot study presently scheduled to begin October 1, 1990.

DATES: Letters of inquiry from volunteers must be submitted by July 27, 1990.

ADDRESSES: Letters of inquiry to the Division of Microbiology (HFF–232), Food and Drug Administration, Rm. 3824, 200 C St. SW., Washington, DC 20204. The generic model plans already drafted, as discussed below, may be obtained from the National Seafood Inspection Laboratory, P.O. Drawer 1207, Pascagoula, MS 39567.

FOR FURTHER INFORMATION CONTACT: John E. Kvenberg, Center for Food Safety and Applied Nutrition (HFF–232), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–245–1221.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register** an advance notice of proposed rulemaking (ANPRM) is being published jointly by FDA and NMFS announcing their intent to establish a voluntary, fee-for-service inspection program for fish and fishery products to be operated by both agencies. Prior to starting the joint inspection program, the two agencies will conduct a pilot study. The pilot study is intended to measure the ability of industry to implement operation of an HACCP-based system in the production and distribution of seafood under an approved plan. The pilot study will enable FDA/NMFS to develop systems to monitor and verify that the HACCP-based plans are operating effectively.

Individual HACCP-based plans will be developed by the industry participants and may be either independently drafted or patterned from existing seafood commodity models developed under the Model Seafood Surveillance Project (MSSP). The MSSP models were developed by industry participants in cooperation with NMFS. (See the ANPRM for a detailed discussion of these model plans and their applicability to this program.) Critical controls for safety, hygiene, and economic fraud must be addressed in the HACCP-based plans developed for this pilot study.

Volunteers for participation in the pilot study are sought from individual firms involved in various aspects of the harvest, production, distribution, and retail sale of seafood in the continental United States. Also, because of the significance of imported seafood in the United States marketplace, participation by foreign firms and firms involved with imported seafood products is also sought to the extent that such participation is practicable.

Selection of firms for the pilot study will be made by the Commissioner of Food and Drugs and the Administrator of the National Oceanic and Atmospheric Administration. Factors to be used in selection will include: (1) Geographical location, national representation is desirable; (2) size of firm, both large and small volume operations are sought; and (3) type of commodity, those covered by completed MSSP models are desirable.

Ideally, the pilot study should include cooked, raw, and breaded products as well as products that represent a substantial volume of sales in the United States. Currently, MSSP model plans have been completed for cooked shrimp, raw shrimp, breaded shrimp, breaded fish, specialty items (i.e., fish entrees), blue crab, and raw fish. With the exception of blue crab, these MSSP model plans reflect the criteria for commodity types stated above.

Previous experience in HACCP-based operations or participation in the MSSP model development program are not necessary for participation in the pilot study. In fact, it is desirable to include firms with varying degrees of prior HACCP experience.

Selected firms must each agree to designate one or two individuals to be responsible for the development and implementation of an HACCP-based plan designed specifically for the selected firm. These individuals will be expected to participate in a 2-day training course prior to their independent development and implementation of the HACCP-based plan for that firm. The industry training course will be held on or about August 7 and 8, 1990 in Chicago, IL. Transportation and other expenses for industry trainees must be paid by the individuals attending or by their sponsor firms.

Selected firms must agree to allow inspection and record review of critical control point data identified in the HACCP-based plans that are developed by the participants and accepted by the agencies. Specific records that will be maintained and made available for review will be agreed to by the parties in advance as part of the application process.

In order for this test of an HACCP-based system to be manageable yet sufficiently comprehensive, the agencies reserve the option of conducting more than one pilot, possibly sequentially, each one focusing on different types of products or processes. The agencies will decide whether and how to exercise this option based in part on the response to this notice.

For further details refer to the ANPRM published elsewhere in this issue of the **Federal Register.**

Interested persons are invited to submit a letter of inquiry to the Division of Microbiology (address above). Letters must be submitted by July 27, 1990.

Dated: June 21, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-14801 Filed 6-21-90; 4:14 pm]

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Wednesday
June 27, 1990

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 13 et al.
Federal Acquisition Regulation (FAR); Certification Challenge to BAA, TAA, Balance of Payments Program Certificate; Government Credit Cards; Thresholds and Clauses; and Transfer of Government Property; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

Federal Acquisition Regulation (FAR); Certification Challenge to BAA, TAA, Balance of Payments Program Certificate

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) 25.405 to add procedural guidance currently at 25.407(b) and to address challenges to the certification in the provision at 52.225–8.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–31 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–31.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule implements in the FAR the procedures currently being followed by some individual agencies.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: June 18, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 25 be amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.405 is amended by adding paragraph (f) to read as follows:

§ 25.405 Procedures.

* * * * *

(f) The contracting officer shall rely on the offeror's certification at 52.225–8, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate as submitted. However, should an offeror challenge the certification the challenge to the certification shall be referred to the Treasury Department, Office of Regulation and Ruling, Washington, DC, 20229.

§ 25.407 [Amended]

3. Section 25.407 is amended by removing existing paragraph (b); by redesignating existing paragraph (a) as introductory text to the section; and by redesignating existing paragraphs (a) (1), (2) and (3) as new (a), (b), and (c) respectively.

[FR Doc. 90–14807 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Part 13

Federal Acquisition Regulation (FAR); Government Credit Cards

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) to add subpart 13.6 to provide general policy guidelines, and prescribe agency responsibilities and conditions for use of Government credit cards in the place of certain purchase orders and imprest funds draw-downs. The use of credit cards is expected to reduce administrative costs and expand the number of vendors available to supply goods and services to the Government.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–32 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–32.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Commerce successfully accomplished a pilot study to test the effectiveness of using a commercial credit card for certain small purchases. This study found that the credit card could replace purchase orders and imprest fund draw-downs for small purchases, thereby reducing administrative costs and expanding the number of vendors available to supply goods and services to the Government.

As a result of this successful test, OMB tasked GSA to establish a Federal Supply Schedule contract to make commercial credit card services available Governmentwide. This case provides guidelines in the FAR to enable contracting officers to effectively use this payment method. A new subpart is established to provide a general policy statement and to prescribe agency responsibilities and conditions to ensure that proper fiscal control is maintained in their use.

B. Regulatory Flexibility Act

The proposed rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administrator. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–32) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 13

Government procurement.

Dated: June 18, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 13 be amended as set forth below:

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority citation for 48 CFR part 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Subpart 13.6, consisting of sections 13.601 through 13.604, is added to read as follows:

Subpart 13.6—Government Credit Cards

Sec.
13.601 General.
13.602 Agency responsibilities.
13.603 Conditions for use.
13.604 Limitations.

Subpart 13.6—Government Credit Cards

13.601 General.

(a) A Government credit card is a method of paying for the purchase of supplies and services within the small purchase limitation in 13.000.

(b) All purchases that are paid for using Government credit cards are subject to all applicable provisions of this Part 13 and agency regulations, and must be authorized and documented accordingly.

(c) Government credit cards generally may be used to pay for over-the-counter or telephone purchases when the supplies or services are available immediately and a single delivery and payment will be made. For transactions of $2,000 or less completed over-the-counter or by telephone using a Government credit card, no written confirmation of the transaction is required. Unless otherwise specified in agency regulations, for transactions over $2,000 completed over-the-counter or by telephone using a Government credit card, a written confirmation of the transaction is required.

(d) Government credit cards may be used to pay for orders against established contracts and agreements (*e.g.*, federal supply schedules, blanket purchase agreements, and indefinite delivery-type contracts) if authorized by the terms of the contract or agreement.

(e) When a written order is used to purchase supplies or services and a Government credit card is used for payment, the order shall be marked "Payment will be made by Government Credit Card."

13.602 Agency responsibilities.

(a) Each agency using Government credit cards shall establish procedures for the use and control of the credit cards that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4–4500), and the terms and conditions of the GSA contract which provides for Government use of commercial credit cards services. As a minimum, these procedures shall—

(1) Establish approved uses, restrictions, and spending limits;

(2) Establish methods for designating personnel authorized to use a credit card and provide for periodic review to determine if each card is still needed;

(3) Establish procedures to review validate monthly statements of account;

(4) Establish controls to prevent unauthorized use of cards and to limit the potential for fraud;

(5) Establish steps to be followed if a card is lost, stolen, or canceled, or if a cardholder is terminated, transfers, or retires;

(6) Establish procedures regarding unacceptable supplies to:

(i) Refuse delivery;

(ii) Return promptly, if received; or,

(iii) Adjust the monthly accounting statement accordingly.

(b) Each agency using the Government credit card(s) on a regular basis for payment of single purchases exceeding $2,000 must perform the cost and benefit analysis required by the TFM 4–4500. The analysis should cover the procurement process from receipt of requisition through payment.

13.603 Conditions for use.

Agencies may only use Government credit cards when:

(a) The procedures required by 13.602 are in place; and

(b) Cardholders, approving officials, and finance office personnel have been trained in credit card program procedures and applicable purchasing procedures, including requirements for documentation of the purchase, receipt, and acceptance of the supplies or services.

13.604 Limitations.

Government credit cards shall not be used for items prohibited by the GSA contract providing for use of Government credit cards, or agency procedures.

[FR Doc. 90–14808 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Thresholds and Clauses

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 27.204, to raise the threshold from $5,000 to $25,000 in Alternate III of the clause at 52.227–3, and to remove the clause at 52.227–8.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–33 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–33.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have agreed to increase the threshold at FAR 52.227–3, Alternate III, which applies only to subcontracts for communications services when the services are not regulated and are not priced by a

regulatory body. The proposed rule raises the existing threshold of $5,000, established in 1971, to $25,000. The Councils have further determined to delete FAR 52.227–6 as unnecessary because the requirements are covered adequately by FAR 52.227–6.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because these entities do not hold a vast majority of contracts subject to the requirements which are being changed. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are solicited from small businesses and other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–33) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 27 and 52

Government procurement.

Dated: June 18, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 27 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 27 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 27—PATENTS, DATA, AND COPYRIGHTS

2. Section 27.204–1 is amended by revising in paragraph (b), the first two sentences, and in paragraph (c), the first sentence, to read as follows:

27.204–1 General.

* * * * *

(b) Any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see § 15.804) should contain an provision requesting information relating to any proposed charge for royalties. If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. * * *

(c) The contracting officer, when considering the approval of a subcontract, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) of this subsection. * * *

* * * * *

27.204–2 [Amended]

3. Section 27.204–2 is amended by removing the words "If it is expected that work may be performed in the United States, its possessions, or Puerto Rico, the" and inserting in their place "The".

27.204–4 [Removed and Reserved]

4. Section 27.204–4 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.227–3 [Amended]

5. In section 52.227–3, Alternate III of the clause is amended by removing the date "(APR 1984)" and inserting in its place "(JUN 1990)"; by removing the figure "$5,000" and inserting in its place "$25,000"; and by removing the derivation line following the Alternate.

52.227–6 [Removed and Reserved]

6. Section 52.227–6 is removed and reserved.

[FR Doc. 90–14609 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 45

Federal Acquisition Regulation (FAR); Transfer of Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to revise Federal Acquisition Regulation (FAR) 45.508–1 to ensure that Government property is transferred and documented properly upon termination or completion of a contract.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–34 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–34.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*; therefore, a Regulatory Flexibility Analysis has not been performed. However, comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 601 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–34) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: June 18, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.508–1 is amended in paragraph (a) by removing the words "paragraph (b) below" and inserting in their place "paragraph (c) of this subsection"; by redesignating existing paragraphs (b) and (c) as new (c) and (d); and by adding new paragraph (b) to read as follows:

45.508–1 Inventories upon termination or completion.

* * * * *

(b) In all instances, transfers of Government property to another Government contract must be based upon known requirements under the gaining contract and documented in the contract schedule and by a modification executed by the contracting officer. The justification upon which the transfer is based will specify the consideration the Government will receive for transfer of the property.

* * * * *

[FR Doc. 90–14610 Filed 6–26–90; 8:45 am]

BILLING CODE 6820–34–M

federal register

Wednesday
June 27, 1990

Part IV

Department of Health and Human Services

National Institutes of Health

Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee Meetings and Recombinant DNA Research: Proposed Actions Under Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee; Meetings

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on July 30, 1990, followed by a meeting of the Recombinant DNA Advisory Committee on July 31, 1990. Both meetings will be held at the National Institutes of Health (NIH), Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. These meetings will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

Proposed Major Actions to the NIH Guidelines

Three Additions to appendix D of the NIH Guidelines Regarding Human Gene Therapy Protocols;

Three Additions to Appendix D of the NIH Guidelines Regarding Human Gene Transfer Clinical Protocols;

Addition to the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects to Expedite Minor Modification on Approved Protocols; and

Other Matters To Be Considered by the Committees

Attendance by the public will be limited to space available. Members of the public wishing to speak at these meetings may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at these meetings, rosters of committee members, and substantive program information. A summary of the meetings will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: June 21, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-14842 Filed 6-26-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning this proposal. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on July 31, 1990. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES Comments received by July 23, 1990, will be reproduced and distributed to the RAC for consideration at its July 31, 1990, meeting.

ADDRESS: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by fax to 301-496-9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Blaese, Anderson, Culver

A continued discussion of the human gene therapy protocol by Drs. R. Michael Blaese, W. French Anderson, and Kenneth W. Culver of the National Institutes of Health which is entitled, "Treatment of Severe Combined Immunodeficiency Disease (SCID) Due to Adenosine Deaminase ADA Deficiency with Autologous Lymphocytes Transduced with a Human ADA Gene." During the Human Gene Therapy Subcommittee on June 1, conditional approval was given. The Human Gene Therapy Subcommittee will meet on July 30 to review more documentation and vote of formal recommendation for approval to the Recombinant DNA Advisory Committee. If recommendation for approval is given, the Recombinant DNA Advisory Committee will consider this protocol on July 31.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Rosenberg

In a letter dated June 13, 1990, Dr. Steven A Rosenberg of the National Institutes of Health indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "Gene Therapy of Patients with Advanced Cancer using Tumor Infiltrating Lymphocytes Transduced with the Gene Coding for Tumor Necrosis Factor."

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Freeman Abraham, Dipersio

Drs. Scott A. Freeman, George N. Abraham, and John Dipersio of the University of Rochester indicated their intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "Gene Therapy for Cancer Treatment (I)."

IV. Addition to the "Points to Consider" Document to Expedite Minor Modification on Approved Protocols

During the June 1 meeting, the Human Gene Therapy Subcommittee recommended a procedure for expediting reviews on approved human gene therapy protocols. The following policy is proposed for discussion, approval, and addition to the document entitled, "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects." The proposal is as follows:

A minor change in a protocol approved by the Human Gene Therapy Subcommittee, that is, a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects, may be approved by the Chair of the Subcommittee if the change has also been approved by the relevant IRB and by the relevant Institutional Biosafety Committee. The Chair will report on any such approvals at the next regularly scheduled meeeting of the Subcommittee.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Clinical Protocol-Drs. Brenner, Ihle, Mirro

In a letter dated June 22, 1990, Drs. M. K. Brenner, J. Ihle, J. Mirro of the St. Jude Children's Research Hosptial indicated their intention to submit a human gene transfer clinical protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and Relapse of Malignant Disease Following Autologous Bone Marrow Transplantation."

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Clinical Protocol/Dr. Cornetta

In a letter dated June 22, 1990, Dr. Cornetta of the University of Wisconsin indicated his intention to submit a human gene transfer clinical protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia: Understanding Disease Recurrence."

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Clinical Protocol/Dr. Lotze

In a letter dated June 22, 1990, Dr. M. T. Lotze of the Pittsburgh Cancer Institute, University of Pittsburgh indicated his intention to submit a human gene transfer clinical protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "The Treatment of Patients with Advanced Cancer Using Interleukin 2, Interleukin 4 and Tumor Infiltrating Lymphocytes."

Additional documentation supporting these requests will be distributed at the meeting. This material also is available upon request from the Office of Recombinant DNA Activities.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow NIH Guidelines. In lieu of the individual program listing, the NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: July 14, 1990.

Jay Moskowitz,

Associate Director, Office of Science Policy and Legislation, National Institutes of Health.

[FR Doc. 90-14841 Filed 6-26-90; 8:45 am]

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federal register

Wednesday
June 27, 1990

Part V

Office of Personnel Management

Proposed Demonstration Project—A Public Sector Skill-Based Compensation System in a Participatory Work Environment; Notice

BEST COPY AVAILABLE

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project—A Public Sector Skill-Based Compensation System in a Participatory Work Environment

AGENCY: Office of Personnel Management.

ACTION: Final notice of proposed demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether a specified change in policies or procedures would result in improved Federal personnel management. The proposed demonstration project was published in the Federal Register on April 5, 1989. This is the final demonstration project plan approved by the Office of Personnel Management.

DATES: *Approval Date:* The demonstration project was approved by the Office of Personnel Management on June 21, 1990.

Implementation Date: The demonstration project may be implemented no sooner than the expiration of the 90-day Congressional Review Period. OPM, in consultation with DLA, will make the final determination as to when the Defense Depot Ogden, Utah is fully prepared for project implementation.

FOR FURTHER INFORMATION CONTACT: In Ogden, Utah: Fred Case, (801) 399–7776; In Washington, DC: Les Bodian, (202) 606–1025.

SUPPLEMENTARY INFORMATION: *On the Proposed demonstration project:* The Defense Logistics Agency (DLA) submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled, "A Public Sector Skill-Based Compensation Program in a Participatory Work Environment."

The purpose of the project is to demonstrate that a skill-based compensation system, combined with structural changes and training to promote participatory work practices, can enhance the effectiveness of a public sector organization. Reduced costs, increased organizational flexibility, and improved quality are also expected to result.

To accomplish this purpose, the following changes to current personnel management policies and procedures are proposed:

1. An organizational structure based on multi-skilled work teams, in which each member acquires all the skills necessary for accomplishment of the team's mission.

2. A simplified compensation system consisting of five pay bands which will cover positions previously classified under both the General Schedule and the Federal Wage System with increases to base pay based on the acquisition of required team skills and knowledges.

3. A revised performance evaluation system that employs fewer summary performance levels, includes ratings of team performance, and bases individual ratings, in part, on peer input.

4. A formal job knowledge certification program.

5. An alternative disciplinary procedure for minor offenses under which managers may substitute non-punitive "letters of discipline" for formal disciplinary procedures.

The demonstration will cover all employees (approximately 1,600) at the Defense Depot, Ogden, Utah (DDOU). The project will run for 5 years from the date of implementation.

A proposed demonstration project plan was published on April 5, 1989, in the Federal Register (Vol. 54, No. 64 FR 13777). On the same date, copies of the proposed plan were transmitted to both Houses of Congress as required by 5 U.S.C. 4703(b)(4). The public comment period began on April 5, 1989. A public hearing was held on the proposed demonstration project plan on May 11, 1989, at Ogden, Utah.

Summary of Comments and Responses: Fourteen individuals spoke at the public hearing held by OPM on May 11, 1989, in Ogden, Utah, and OPM received 34 letters offering comment. One letter was from the national office of the American Federation of Government Employees (AFGE), two were from U.S. Senators, and the rest were from DDOU employees. Responses to the proposal at the hearing and in the letters included expressions of support for the program, criticisms, and suggestions for improving the program design. The following table summarizes the nature of the comments:

Type of Comment	Hearing speakers	Letters to OPM
Support for the project	2	1
Concern about employee input into decisions concerning the project/communication of project information	6	31
Concern about/recommendations regarding project features	6	27
Concern about inclusion in the project	6	35
Total responses	14	34

Supportive comments expressed expectations that the project would improve the efficiency of DDOU and that it would increase job satisfaction among the Depot's employees. Statements of support also referred to the record of participative work environment (PWE) initiatives in the private sector and expressed the opinion that such experiments as that proposed for the Depot are important to the accumulation of knowledge about personnel management issues within the Federal government.

Comments expressing criticism of the proposal or suggesting modifications to it comprised the majority of the comments received by OPM. Critical comments and suggested project modifications can be categorized according to the following issues:

Employee Input Into Decisions Concerning the Project

1. Concern was raised that management was not being open with employees about the details of the program. Employees commented that the Federal Register notice outlining the original proposal was difficult to understand for many DDOU employees. They also expressed concern that information on the specific layout of teams, team descriptions, and which current positions will be subsumed into each team, was not circulated to employees. Respondents pointed out that turnout at the May 11, hearing was discouraged by the fact that the hearing was held during the working day and that workers had to take annual leave or leave without pay to attend unless they were pre-registered to speak.

OPM, DLA, and DDOU recognize that the Federal Register notice cannot provide employees with all the information they need about the project. Additional employee orientation sessions will be held by DDOU management prior to project implementation. Articles in the DDOU newspaper will be published prior to and during implementation further explaining the project, and DDOU management will hold "brown bag" lunches to address employee questions, including those about team structuring and coverage. As part of project implementation, DDOU will provide each employee with a project handbook clarifying the project details published in the Federal Register.

Although the basic framework for the project team structure was developed before the hearing was held, information on the layout of specific teams had not yet been fully developed. OPM will ensure that such information will be shared with employees when it is completed, that opportunity for employee feedback to DDOU management will be provided, and that required consultation with AFGE will be conducted prior to project implementation.

The purpose of the May 11, 1989, public hearing was to give concerned employees and others the opportunity to make their concerns known to OPM, DLA, AFGE Local 2721, and DDOU management. Employees who wished to present their views at the hearing were provided official time to do so. The purpose of the hearing was not to provide employees with additional information on the project, so DDOU management elected to provide official time only for those planning to comment. Additional opportunity was given to employees to express their comments in writing directly to OPM.

In addition to the hearing and written comments, other efforts are being made by OPM, DDOU, and DLA to solicit employee input into this project. Since the hearing, an evaluation team from the Navy Personnel Research and Development Center (NPRDC) has conducted group interviews with employees to solicit their opinions about the project. More interviews will be held and an employee attitude survey will be administered by the evaluation team to all DDOU employees prior to project implementation. Results of the survey and interviews will be presented to DDOU in order to identify further information needs.

2. Several individuals felt that management was attempting to force participation in the program. Some workers said they were told that the Depot might close if the proposal were not implemented. Although employees may choose whether or not to be included in the Skill-Based Pay (SBP) part of the program, some thought the project was structured to put those who choose not to participate at a disadvantage, through the denial of step increases. AFGE recommended that employees should not be given the option to refrain from participating in the SBP part of the demonstration. Some employees expressed concern that they would not have any choice regarding assignment to a particular team. Many employees felt that the decision to implement the proposal should be made by a majority vote of the employees.

DLA has no intention to close DDOU if the project is not implemented. Such an idea has never been a consideration.

Neither OPM nor DLA intend to force participation in the Skill-Based Pay (SBP) portion of the project. An employee's right to refrain from participating remains in the revised project plan. The language has been made more specific, however, to allow employees 90 days following implementation to make that decision.

The work organization of DDOU will be restructured into teams and a new compensation system (CS) will be implemented. Except for 11 work units listed in the revised project plan (see Table 8), all employees will be assigned to teams. They will still have the option, however, of choosing whether or not to participate in learning and performing all the skills on the new team under the SBP system. Anyone choosing not to participate in SBP will be placed on a team and permitted to perform the same duties they are currently performing. Team members will be compensated through the project pay system, which will not include step increases, but rather, will provide for pay increases based on acquisition of required skills and knowledge. The project was structured to ensure a significant opportunity for the vast majority to enhance their skills and pay.

Although assignment to specific teams will be a management decision, implementing regulations are being negotiated that will provide employees with a mechanism for resolving concerns regarding their assignment to teams.

A number of management initiatives are being undertaken in DLA to lead the way into the 1990's. These include total quality management (TQM), gainsharing, team structuring, and various personnel management changes. As management initiatives, they are not subject to a majority vote; however, as moves toward greater employee involvement and participation, their success depends on acceptance by and involvement of the work force. Such is the case for this demonstration project. While implementation will not be based on a majority vote, input from employees and the union has and will continue to influence project decisions.

3. Several employees indicated that they did not consider AFGE Local 2721 to represent their interests.

The employees of DDOU constitute a "bargaining unit" under Federal labor relations law, for which AFGE has been granted the power of "exclusive representation." Further representation is provided by the DLA Council of AFGE Locals, which has a master agreement with DLA providing representation for employees at all of DLA's depot facilities. AFGE national headquarters is also committed to seeing that employee interests are represented in the development of this project.

Organization Structure

1. Concern was expressed that the changeover to a team organizational structure would have adverse effects on productivity because (1) reducing individual responsibility would encourage employees to decrease work effort; and (2) the SBP/PWE initiatives might result in the extensive delegation of duties to workers with little experience. Respondents also felt that differences among workers in personality and level of commitment to the job would pose problems for communication, decision-making, and division of labor within teams.

One of the basic premises of the project is to demonstrate that the team structure increases productivity through increased organizational flexibility. Individual accountability should result from increased employee participation and ownership. Since this is an important hypothesis underlying this demonstration project, DDOU's success in achieving this objective will be closely monitored. Increased assumption of duties by team members will be a gradual process and dependent upon appropriate training and team development.

To avoid some of these concerns, project implementation will include formal training for all employees in group dynamics, problem solving, and communications. The project plan has been revised to more clearly indicate the coverage and timing of project-related training.

2. Several employees felt that the new team settings and the certification process would render employees more vulnerable to harm from fellow employees, as such settings would allow team members (and especially the team leader) to act arbitrarily.

The intent of this project is to form cohesive teams in which all members work harmoniously to achieve common goals. PWE concepts such as greater employee involvement and peer input are intended to provide team members greater protection from arbitrary decisions than is afforded in today's work environment. Features such as observation of demonstrated proficiency by the team leader and at least one certified team member have been included in the program to ensure that arbitrary certification decisions are not made.

3. AFGE suggested that team size should be limited to 20 to maintain the effectiveness of aspects of PWE such as peer review and the revised performance evaluation system.

Given the diversity of functions supporting DDOU's mission, DDOU management considered it impractical to establish a maximum team size. However, DDOU, in consultation with AFGE, is structuring teams in recognition of the importance of a manageable size that facilitates good communication and group dynamics. Although final team structures have not yet been established, nearly all the proposed teams are under AFGE's proposed limit of 20.

4. Several employees proposed that the members of each team should choose their team leader.

This recommendation has been addressed in the revised project plan as a possible future team responsibility as teams mature and develop.

5. Two employees expressed concern over the mixing of WG and GS work on the same teams.

With the increased reliance on mechanization and automation, DLA finds the dichotomy between WG and GS in its supply and distribution functions is becoming

more and more artificial. Private sector organizations implementing SBP programs have successfully done away with the traditional pay system distinctions. The demonstration project will be testing the hypothesis that mixing WG and GS work on the same teams will have positive outcomes for the workers and the organization.

Classification

1. AFGE recommended that classification appeals regarding the levels of difficulty should be accepted in cases where the majority of the team feels one is warranted and should not require unanimous team backing to be considered.

The project plan has been changed in response to this recommendation to indicate that classification appeals will be accepted when the majority of the team concurs.

2. AFGE recommended adding a sixth pay band to provide pay rate ranges above the current maximum of GS-11, Step 10.

The project plan provides for the possibility of adding of more pay bands should additional ranges be required; however, such a project modification would require OPM approval and publication of a project amendment in the Federal Register.

Compensation

1. Concern was expressed that a pay system that does not reward length of service would be unfair to older employees. Because there would be no wage increases for an employee at the top level of a pay band (except through promotion to a higher band), employees would lack something to look forward to and would have little incentive to improve productivity or to stay at the Depot.

The pay bands and the pay levels within these bands have been designed to provide a positive incentive for employees to learn the multiple skills on a team, and thereby to earn higher levels of pay. For the majority of positions at DDOU, the incentives for learning new skills exceed those available under the current system.

In almost all cases, employees whose current pay rate would exceed the top of a proposed pay band are already at the top step of their grades. As an incentive to participate in SBP, these employees will be offered at one time bonus of 10 percent of their annual base salary for successful certification in all team job functions.

2. AFGE recommended that employees at trainee level positions in bands 4 and 5 should be paid trainee wages for no longer than 12 months before moving to pay level 1.

Past experience at DDOU under the current system for training inexperienced employees for these positions indicates that 24 months is a reasonable time to learn the requisite skills for entry into these two pay bands. The description of trainee level positions in the "Hiring" section of the project plan has been reworded to clarify this issue.

3. Concern was expressed that "grandfathered" employees would actually lose pay in real terms under the project provisions giving them only 50% of future comparability increases.

The "Grandfathered/Saved Pay" section in the project plan has been revised to provide modified saved pay provisions for grandfathered employees. These employees will receive the full comparability increase given General Schedule employees until termination of the project, when current saved pay provisions will apply.

4. Two respondents recommended that time spent by employees in training courses should be considered part of paid work.

All formal training which is required by the project will be considered part of paid work and will be accomplished during duty hours.

5. Commentars felt that arrangements should be made for employees at certain positions within the Depot to receive special compensation for job-related risks.

Under the project, current Federal Wage System employees who are assigned to teams with work assignments that expose them to unusually severe hazards or working conditions that currently qualify for "environmental differential" under 5 CFR 532.511 will be eligible to receive a 25% "hazard pay differential" for all hours in a pay status, as is currently the case for General Schedule employees under 5 CFR 550, subpart I. The project plan has been amended to state this more clearly.

Performance Evaluation

1. Respondents pointed out that the new evaluation system still allows room for bias, favoritism, and enmities to come into play. They suggested that fellow employees could be just as influenced by these non-performance factors as managers.

The demonstration project will be testing the hypothesis that these concerns are not warranted. The use of peer appraisals is expected to reduce the potential for bias and favoritism in performance evaluations. The project evaluation will be closely monitoring employee perceptions of the fairness of the new evaluation system.

2. AFGE recommended deleting two items from the Team Participation Performance Standards for evaluations of individual employee performance: (1) "Constructive participation in group meetings" and (2) the "initiative to perform additional team functions not specifically assigned." The union considered both items, as stated in the original project plan, potentially unfair to certain employees.

As a result of this recommendation, the criterion "constructive participation in group meetings" has been changed to "constructive participation in meeting team requirements." "Initiative to perform additional team functions not specifically assigned" has been deleted. Corresponding changes have been made in the project plan.

3. Several suggestions were offered by AFGE regarding the mechanics of evaluation: (a) Peer evaluations should be constructed on a strictly confidential basis; (b) the team leader should be evaluated by all team members as well as by supervisory personnel; and, (c) the evaluation of supervisors should include an assessment of group development, group evaluations of the supervisor, and supervisor peer appraisals.

Several changes to the project plan have been made in response to these suggestions. Peer evaluations will now be confidential. Managers will consider input to a team leader's appraisal by team members as well as peers. Also, team leader performance standards will now include an assessment of team performance.

Incentives/Recognition

1. One employee recommended that individual rewards should be de-emphasized to cultivate a work environment more conducive to cooperative teamwork. Individual rewards might encourage employees to pay excessive attention to individual performance at the expense of team performance. AFGE recommended not linking individual rewards with team performance. They expressed the view that individual rewards should be based purely on individual performance, regardless of the performance of the team as a whole.

The primary incentive award system under the project will be a gainsharing program based on the performance of the entire depot. Individual top performers whose teams are rated fully successful may receive additional paid leave under an incentive leave program for exceptional employees.

2. AFGE recommended deleting from the proposal the option of allowing employees to decline gainsharing bonuses.

Details of the gainsharing program are outlined in the 1990 Success Share Program regulations (DLAR 7070.3) as negotiated between DLA Headquarters and the DLA Council of AFGE locals. Consistent with these regulations, the option of allowing employees to decline gainsharing bonuses has been deleted.

Training/Job Knowledge Certification

1. Several respondents expressed concern that grandfathered employees will not be given enough time to be certified in the required skills. Under the proposal, they would have only 1 year to be certified in all of a team's skills.

Based on this comment, the project plan has been modified to show that grandfathered employees will have to meet the same maximum time gate requirements (30 months) as other team members for certification in the team's required skills.

2. A recommendation was made that employees shouldn't have to undergo certification for skills that their present job already requires them to know.

The certification process, which is being instituted at all DLA depots, requires employees to be certified in all skills, including their present skills. This is to ensure that procedures are understood, and that proper training is received. The primary difference between certification under the demonstration project and certification at other depots will be the linkage under SBP between certification and base pay increases.

3. AFGE recommended allowing more flexibility on maximum time limits for skill acquisition on different teams and at different levels since the amount of time needed could be expected to vary. There were also several suggestions that maximum time limits on skill acquisition should be stretched from what they are in the current proposal. One commenter suggested allowing employees 3 months leeway for each skill level for which he or she attempts to complete training, so that the maximum time an employee would have to become certified for all team skills would be raised from 30 to 45 months.

No change has been made to the project plan. DDOU will assign duties to teams so that all necessary skills can be learned in 30 months. The skills assigned to a team will be adjusted by DDOU if experience shows the skills originally assigned cannot be learned in 30 months. The minimum and maximum time limits for skill acquisition and certification were developed by DDOU based on considerable research and contact with employers in the private sector using skill-based pay. Although there will be obvious differences in levels of difficulty between the duties assigned to different teams, these will be compensated for by the differing pay bands.

4. AFGE suggested that management should establish a program to ensure that employees can obtain the basic reading and study skills necessary to complete training successfully.

As is true under the current system, employees under the demonstration project who require basic reading or writing skills will be able to receive this training by contacting DDOU's Employee Assistance or Career Development Offices.

Inclusion in the Project

1. Several employees and AFGE recommended not assigning to teams or including in the SBP program positions that they felt were too highly specialized. Such positions included electronics mechanic, high voltage electrician, operations room positions in DDOU's Office of Telecommunications and Information Systems, and general commodities inspector. Other reasons for excluding particular positions from the project included: The high cost of security clearances; a required skill mix that would take more than three years to master; the impossibility of valid skills certifications because these positions require continual adaptation to new developments; the likelihood that standardized training and certification would de-emphasize the importance of worker ingenuity; and, probable retention problems among skilled personnel because of decreased promotional opportunities.

The project plan has been amended to show which organizations will be excluded from the skill-based pay portion of the demonstration project (under III. Methodology, A. Organizational Structure). In all, 92 current positions in 11 work units will not be part of the SBP program. Some highly specialized positions will be excluded from the SBP compensation system because they do not properly fit on teams. These jobs will remain under the current system. Other positions will be administratively excluded for various reasons, including several of those cited in the comments.

2. Several employees expressed the opinion that those near retirement would have little incentive to participate. These employees felt that the project would be unfair to older employees who have worked hard for many years to attain responsibilities and compensation levels that others will be able to reach in 3 years or less. Employees near retirement may not want to learn a completely new set of rules, and are concerned that they may be forced out to cut costs. Such employees would be unlikely to gain from the gainsharing initiative because the demonstration project would not be expected to pay for itself for three years. They would not have time to benefit much from pay gains for learning skills and would thus have little incentive to undergo training. A suggestion was offered that DLA allow for early retirement with a bonus for those near retirement to provide a way to opt out.

Although there may be no significant financial reward for participation on the part of these employees, other incentives may be available. One goal of the project is to improve employees' satisfaction with their work through enhanced participation, learning a variety of skills, enhancing qualifications, and participation in the management of their work. Employees who opt *not* to participate at the time of implementation may reverse their decisions and choose to participate in the SBP program any time during the first 90 days of the project.

With regard to gainsharing, DLA recognizes additional development and implementation costs for the first three years. These increased costs should not preclude the depot from paying gainsharing awards for productivity improvement. However, the initial start-up costs make a bonus less likely during the first two years of the project. To increase the likelihood of gainsharing payouts in the early years of the project, some of the additional start-up costs will be amortized by DLA over a longer period of time.

There is no provision in the law authorizing personnel demonstration projects allowing changes in the retirement system. Under current requirements, implementation of the demonstration project at DDOU will not constitute justification for early retirement.

3. Many of the comments received were from WG-7 inspectors. Among other concerns, these employees expressed the opinion that there was no incentive to participate for those who are already doing the highest level work in their anticipated team and who are already at or near the highest pay level in their anticipated pay band.

This group of employees does not expect to gain financially, although there may be a small increase to the top of the anticipated pay band. However, they can benefit financially through the gainsharing program. Additionally, each member will have the opportunity to participate in a new way of organizing and performing work and to apply for promotion to positions on teams at higher pay bands.

In addition to the comments listed under the categories above, there were other questions and concerns expressed which the revised project plan answers.

D. Other Demonstration Project Changes

In addition to the modifications cited above, several editorial changes and clarifications have been made to the project plan. Major changes are listed below. Please refer to the actual text of the project plan for additional specific changes.

(1) Under "Classification," the description of the Master Classification Standard has been changed. The Standard will encompass only one factor (as opposed to two in the original project plan). The factor addresses the knowledges and skills required for a team. This technical change was made to create an alternative to traditional classification that is more consistent with the Skill-Based Pay program.

(2) The assessment period for individual performance evaluation has been changed to 12 months (as opposed to 6 months in the original project plan) based on performance standards in effect at least 90 days. The rating of Fully Successful will be presumptive

and automatic, requiring no further action by the team leader.

(3) The evaluation plan has been revised to reflect input from the Navy Personnel Research and Development Center (NPRDC), the external evaluation team.

Constance Berry Newman,

Director, U.S. Office of Personnel Management

The demonstration project plan as approved by the Office of Personnel Management reads as follows:

A Public Sector Skill-Based Compensation Program in a Participatory Work Environment

A Proposal for an Office of Personnel Management Demonstration Project

Submitted By Defense Depot, Ogden, UT, A Primary Level Field Activity of the Defense Logistics Agency Department of Defense

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I. Executive Summary

Purpose

This project was developed by the Defense Logistics Agency (DLA) in response to Executive Order 12552 "Productivity Improvement for the Federal Government" (February 25, 1986) and House Appropriations Committee Report 99-332, both of which call for new ways to increase quality, timeliness, and productivity. The demonstration project will test the effectiveness of a Skill-Based Pay (SBP) compensation system, combined with other organizational structure and personnel system changes designed to bring about a more participatory work environment (PWE) in a Federal installation. Private sector organizations have used SBP systems and PWE concepts successfully in a variety of settings to achieve greater workforce flexibility, leaner staffing, higher quality output, greater long term productivity, and enhanced employee motivation and commitment.

Participating Organization

Defense Depot Ogden, Utah (DDOU) will be the test site for this demonstration project, which is projected to run for 5 years. DDOU is one of six DLA sites performing similar functions.

Types and Numbers of Participating Employees

The demonstration will cover all employees at DDOU, which (as of September, 1989) includes 558 non-supervisory General Schedule (GS) employees, 89 supervisory GS and Performance Management and Recognition (PMRS) employees, 932 non-supervisory Federal Wage System (FWS) employees, and 58 Wage Supervisors, for a total of 1637 eligible employees.

Labor Participation

Employees at DDOU are represented by the American Federation of Government Employees (AFGE) under a master contract between DLA and the DLA Council of AFGE locals, which gives the Council exclusive recognition for employees at all of DLA's depot facilities. AFGE Local 2721, whose local agreement supplements the master contract, has been involved in the development of the project since its inception. The president of AFGE Local 2721 is a member of the project steering committee.

Methodology

Under the demonstration project, DDOU will implement a system of interrelated organizational structure and personnel system changes. Specific interventions will include:

(a) Restructuring the workforce into teams of multi-skilled individuals, such that each team is responsible for a total product, service, or process; all team members will have equal opportunity to learn and perform all the job skills necessary to achieve the team's objectives.

(b) Classifying positions at the team, rather than the individual, level based on a simplified system that integrates work previously classified under both the General Schedule and the Federal Wage System; work performed by teams will be classified based on the knowledges and skills required.

(c) Establishing a skill-based compensation system consisting of five pay bands; advances within a pay band will be based on the acquisition of necessary skills and knowledge, meeting appropriate minimum time requirements, and having a Fully Successful or higher performance rating.

(d) Implementing a performance evaluation system that uses three summary performance levels and incorporates subordinate and peer input; the system will provide for ratings of both team and individual performance.

(e) Using an incentive/recognition program that includes productivity gainsharing for all employees and the option of paid leave in lieu of monetary incentives.

(f) Establishing a formal job knowledge certification program.

(g) Creating an alternative disciplinary procedure for minor offenses under which managers may substitute non-punitive "letters of discipline" for formal disciplinary procedures.

Training and Implementation

This project will represent a significant change in management and employee practices, and adequate training will be essential to successfully transform programs and attitudes. Training will be provided to all employees in project concepts and changes, group dynamics, team building, problem solving, and communications. Team leaders and managers will receive additional training in leadership skills.

Employee Protection

The project will provide for full employee protection on enty into and exit from the demonstration system. In no case will an individual's current salary be reduced as a result of these changes.

Evaluation

A comprehensive and methodologically rigorous evaluation will be conducted by an external evaluator with Office of Personnel Management (OPM) oversight. The objectives of the evaluation will be to assess project outcomes and determine the applicability of project changes to other Federal installations.

Benefits of the Proposed Project

The project is expected to demonstrate that an SBP system can be successfully implemented in a Federal installation in a way that increases employee involvement in work-related decisions, enhances the flexibility of the workforce, improves quality and on-time performance, and reduces operating costs.

This demonstration project responds to the goals of 1986 Executive Order 12552 on Productivity Improvement. It also answers the request contained in House Appropriations Committee Report 99/332 to study and propose test plans to alleviate productivity losses resulting from classification and compensation constraints.

B. Problems with the Existing System

Classification

The complexity of the current Federal classification system has a negative impact upon management's success in developing a productive and efficient work force. It contains numerous classifications by occupation and grade level within both the General Schedule (GS) and Federal Wage System (FWS) pay systems. These classifications encourage narrow job designs which limit the types and numbers of skills an employee acquires and uses. This classification system serves to restrict management's capability to meet fluctuations in workload or changing mission requirements, even though mixed work is not prohibited under the current system.

Besides being complex, the current classification system is time-consuming to administer. It is perceived as delaying recruitment and transfer actions, which reduces productivity and management effectiveness.

This project will employ a simple and flexible classification/compensation system based on broad groupings of GS and FWS skills and knowledge. This system will encourage the assigning of a wider variety of work to each employee. Each employee will have the opportunity to acquire a variety of skills, thus promoting a flexible, multi-skilled work force. This concept, coupled with a team organization structure, will minimize the need for supervisory layering and will result in a leaner work force.

Staffing

The current system for promoting employees is time consuming. Once a position becomes vacant within the organization, a domino effect in competitive actions is created when filling behind it.

Under the demonstration project, broad pay bands will cover work previously assigned to more than one grade level under current systems. Advancement from one pay level to another within the pay bands will be based on acquiring relevant skills and demonstrating performance rather than competitive selection. Employees will compete only for promotions to higher pay-banded teams or to team leader positions.

Performance Evaluation

Although a study conducted by the Merit Systems Protection Board (MSPB) in 1988 on the effectiveness of performance management in the Federal government concluded that the program was basically sound in concept, some problems have diminished its effectiveness. Among these are the lack of good performance feedback; the perception that good performance has no real impact on pay decisions; and perceptions of inequity and favoritism. Moreover, the inflated distribution of performance ratings in many Federal agencies suggests the presence of bias in the assignment of ratings.

An intent of this project is to increase the meaningfulness of performance evaluation. The project's performance appraisal system will allow for peer input. The quality of performance will be assessed at both the individual level and the team level. Employee's base pay increases will be based on both the skills they have acquired *and* the quality of their performance.

Organization

Many public sector organizations are hierarchically arranged with a functional and highly specialized structure in which the work force labors in distinct, often narrowly defined, jobs. In applying this division of labor principle, work has been traditionally divided into "thinking" and "sweating" jobs. Consequently, organizations are structured and jobs are designed in ways which discourage a majority of employees from using their creativity and problem-solving abilities to serve the organization.

The proposed team structure is expected to be more efficient and adaptable than the current system of individual jobs and the fragmented "assembly line" approach. The project's skill-based compensation system and participatory work practices, accompanied by changes in organizational structure, are also expected to promote job enrichment, work force development, and creative problem-solving.

C. Purpose

This project will demonstrate how a participatory work environment with a skill-based compensation system can enhance the effectiveness of public sector organizations by creating a more interactive and knowledgeable work force. To accomplish the stated purpose of the demonstration project, the

following specific objectives must be achieved:

- Increase employee involvement in day-to-day decision processes.
- Improve the flexibility of the work force to respond to workload changes,
- Improve product/service quality and timeliness, and
- Reduce the overall cost of Depot operations.

D. Changes Required

In order to accomplish this purpose, changes are proposed that include:

- Participatory Work Environment.
- Multi-Skilled Work Teams.
- Skill-Based Pay.
- Work force Certification Program.
- Job Series and Grade Consolidation.
- Pay Banding.
- Gainsharing.
- Incentive Leave.
- Revised Performance Evaluation.
- Alternative Disciplinary Procedures.
- Streamlined Organizational Structure.

Anticipated effects of these changes include:

- Broadened skill levels.
- Increased employee involvement.
- Enhanced job-related attitudes.
- Increased workforce flexibility.
- Increased timeliness and quality.
- Increased productivity.
- Decreased productivity losses due to disciplinary actions.
- Reduction of staffing levels through attrition.

E. Participating Organization

The project will be conducted at the Defense Depot Ogden, Utah for a period of 5 years. Approximately 1600 employees in a broad range of technical, professional and nonprofessional series will be involved. The skill-based pay provisions of the project will only apply to full-time permanent and part-time permanent employees. Temporary, term, and non-appropriated fund employees will not participate in the skill-based pay portion of the project.

As one of six major distribution depots within the Defense Logistics Agency, the mission of Defense Depot Ogden is to provide effective and economical support of assigned common supplies and services to the Military Departments and other DoD components. DDOU also supports Federal civilian agencies as provided for in inter-agency support agreements, and three major tenant activities: The DLA Systems Automation Center, the Defense Reutilization and Marketing Region and the Army's Continental Communications Support Center. Current mission workload of 300,000 average annual receipts and 3.1 million average annual issues is supported by an 835,000 line-item inventory valued in excess of $1.2 billion.

F. Participating Employees

All employees at DDOU will be involved in some aspect of the demonstration project. Every position will be considered for possible inclusion in a team structure under the Skill-Based Pay concept. The entire work force is expected to contribute and benefit from the participatory work environment initiatives. Table 1 is a listing of the number of employees, by series, currently employed by DDOU.

TABLE 1—NUMBERS AND TYPES OF EMPLOYEES CURRENTLY EMPLOYED AT DDOU

[As of September, 1989]

Series	Titles	Number of Employees
0018	Safety and Occupational Health Management	3
0019	Safety Technician	2
0028	Environmental Protection Specialist	1
0080	Security Administration	3
0081	Fire Protection and Prevention	13
0083	Police	34
0099	Computer Clerk (Trainee)	3
0188	Recreation Specialist	1
0189	Recreation Aid and Assistant	4
0201	Personnel Management	3
0203	Personnel Clerical	8
0204	Military Personnel Technician	2
0212	Personnel Staffing	7
0221	Position Classification	7
0230	Employee Relations	3
0235	Employee Development	2
0260	Equal Employment Opportunity	2
0301	Miscellaneous Administration	4
0303	Miscellaneous Clerk and Assistant	10
0305	Mail/File	3
0318	Secretary	41
0322	Clerk Typist	27
0332	Computer Operation	19
0334	Computer Specialist	17
0335	Computer Clerk and Assistant	10
0340	Program Manager	1
0342	Support Services Administration	1
0343	Management Analyst	25
0344	Management Clerical and Assistance	13
0345	Program Analysis	8
0350	Duplicating Equipment Operator	1
0356	Data Transcriber	8
0382	Telephone Operator	5
0391	Communications Management	1
0392	General Communications Equipment	3
0393	Communications Specialist	1
0394	Communications Clerical	1
0501	MWR Financial Administrator	1
0503	Financial Clerical & Assistance	1
0505	Financial Management	1
0510	Accounting	3
0511	Auditing	8
0525	Accounting Technician	6
0530	Cash Processing	3
0540	Voucher Examining	6
0544	Payroll	6
0560	Budget Analysis	3
0690	Industrial Hygiene	1
0698	Health Technician	1
0801	General Engineer	7
0802	Engineering Technician	3
0810	Engineering Drafting	3
0855	Electronic Engineer	1
0856	Electronics Technician	6
0895	Industrial Engineering Technician	2
0899	Engineering and Architectural Trainee	2
0905	General Attorney	1
0986	Legal Clerk & Technician	1
1020	Illustrator	1
1035	Public Affairs	2
1087	Editorial Clerk	1
1102	Contracting	10
1105	Purchasing	1
1106	Procurement Clerical & Assistant	5
1152	Production Control	13
1411	Library Technician	1
1601	General Facilities & Equipment	2
1670	Equipment Specialist	3
1750	Instructional Systems Specialist	2
1910	Quality Assurance	26
2001	General Supply	4
2003	Supply Program Management	7
2005	Supply Clerical & Technician	110
2030	Distribution Facilities & Storage Management	24
2032	Packaging	3
2101	Transportation	1
2130	Traffic Management	4
2131	Freight Rate	14
2132	Travel Clerk	1
2134	Shipment Clerical & Assistance	25
2135	Transportation Loss and Damage Claims	6
2151	Dispatching	3
2502	Telephone Mechanic	3
2604	Electronics Mechanic	3
2606	Electronic Industrial Control Mechanic	9
2805	Electrician	8
2810	Electrician (High Voltage)	1
2854	Electrical Equipment Repairer	6
3105	Fabric Worker	6
3106	Upholstery Worker	1
3111	Sewing Machine Operator	2
3341	Scale Worker/Mechanic	1
3414	Mechanic	1
3502	Laborer	70
3546	Railroad Repairer	1
3566	Custodial Worker	22
3810	Insulator	1
3703	Welder	1
3725	Battery Repairer	1
3806	Sheet Metal Mechanic	3
3809	Mobile Equipment Metal Mechanic	1
4102	Painter	9
4104	Sign Painter	1
4204	Pipefitter	7
4206	Plumber/Plumbing Worker	2
4602	Stocker and Bracer	6
4604	Wood Worker	10
4605	Wood Crafter	1
4607	Carpentry Worker/Carpenter	7
4608	Office Appliance Repairer	2
4616	Safety Equipment Repairer	1
4650	Bearing Reconditioning Inspector	1
5003	Gardener	1
5025	Pest Controller	2

TABLE 1—NUMBERS AND TYPES OF EMPLOYEES CURRENTLY EMPLOYED AT DDOU—Continued

[As of September, 1989]

Series	Titles	Number of Employees
5210	Rigging Worker	3
5301	Miscellaneous Industrial Equipment	1
5306	Air Conditioning Equipment Mechanic	2
5352	Industrial Equipment Repairer/Mechanic	38
5402	Boiler Tender	10
5413	Fuel Distribution System Worker	2
5423	Sandblaster	2
5435	Carton and Bag Maker Machine Operator	2
5439	Test Equipment Operator	3
5703	Motor Vehicle Operator	26
5704	Fork Lift Operator	9
5705	Tractor Operator	4
5716	Engineering Equipment Operator	5
5725	Crane Operator	2
5803	Heavy Mobile Equipment Mechanic	1
5806	Mobile Equipment Servicer	1
5823	Automotive Worker	11
5878	Electromotive Equipment Worker	2
6901	General Commodities Inspector	52
6904	Tools and Parts Attendant	4
6907	Warehouse Worker	329
6912	Material Sorter and Classifier	47
7002	Packer	341
7004	Preservation Packer	8
Total		1,637

G. Labor Participation

Employees at DDOU are represented by the American Federation of Government Employees (AFGE) under a master contract between DLA and the DLA Council of AFGE locals, which gives the Council exclusive recognition for employees at all of DLA's depot facilities. AFGE Local 2721, whose local agreement supplements the master contract, has been involved in the development of the project since its inception. The president of AFGE Local 2721 is a member of the project steering committee. AFGE represents all depot employees except professional employees, management officials, supervisors, employees engaged in Federal personnel work in other than a purely clerical capacity, and temporary employees.

III. Methodology

1. Organization Structure

Under the demonstration project, *teams* will be the basic units of the organizational structure. Each team will consist of a group of employees with common objectives who have the opportunity to learn and perform all job requirements of the team. There are several reasons why this approach fits well with SBP/PWE. First, the team approach provides an opportunity for employees to acquire more skills since the skills are grouped together on a functioning team. Second, teams provide a way of organizing work in a meaningful fashion by simplifying the handling of an entire process or whole unit of work. And third, teams are a way of institutionalizing participatory work practices and the exchange of information.

Team Structuring

Teams will be formed by combining functions so that a team can influence and be responsible for a total product, service or process. Teams will consist of groups of employees responsible for achieving the objectives assigned to the team. Each team will have an entry level requiring basic qualifications. Teams will be structured so that team members can learn job knowledge requirements within 36 months. Some functions such as those requiring highly specialized skills/knowledge will continue to be performed and compensated under the current system. Although excepted appointing authorities will not automatically limit participation in multi-skilled teams, the specialized requirements inherent in the coverage of the authority (*e.g.*, attorneys, experts and consultants) must be considered to ensure no work is assigned that is clearly outside this coverage.

The transition from the traditional organization structure to a multi-skilled team structure will require analysis of the work processes/products. Examining the work flow and mixing compatible skills to provide adequate flexibility in shifting the work force to workload demands will increase productivity through improved effectiveness and efficiency. Team size may vary but should not be so large that it is unmanageable. Group interaction and the communication process must not be adversely affected by team size (*e.g.*, either too large or too small). Teams will consist of employees with multiple skills, organized to promote the goals of the team, satisfy the needs of individual members, and create team synergism. Team structuring will consider elements integral to team work to include work processes, skill mix, work flow, and the sharing of a common function/product/service. Tables 2 through 4 show examples of skill mixes that will achieve these objectives.

Table 2.—WAREHOUSE TEAM TBC8 1

Current series	Current title	Number of team members
	Team Leader	1
WG-6907	Warehouse Workers	4
WG-7002	Packers	6
GS-2005	Supply Clerk (Inv/Loc Audit).	1
Total		12

Critical Job Functions:

*Select stock from bin areas, checking location, stock number, quantity, units of issue, unit pack.

*Selects proper location and stows stock, checking shelf life, security items, condition code, completes documentation.

*Operates a forklift and/or assorted mechanical handling equipment (MHE) to unload, move, stack, palletize and arrange materials.

*Periodically checks stock to determine if packaging, protection, etc. is correct.

*Periodically conducts physical inventory and location audits, checking, retrieval stock number (NSN), labels, amount, etc.

*Packs, repacks, and unpacks a variety of tools, parts, equipment and other items. Packing medical material for freight, parcel post shipments.

*Packing process completed and documentation entered into computer.

*Labels locations by attaching preprinted labels to locations.

*Checks NSN on label against NSN on material on location, requests corrections as required.

*Develops graphs and charts through tracking statistics, to identify trends that determine if the team is operating within designated parameters.

*Performs surveillance inspection.

GS Pay Band—3

TABLE 3.—RECEIVING PPPP&M TEAM 1

Current series	No. of team, current title	Members
	Team Leader	1
WG-7002	Packer	8
WG-7004	Preservation Packager	3
WG-4102	Painting Worker	1
WG-4104	Wood Worker	1
WG-6907	Warehouse Worker	1
Total		16

Critical Job Functions:

*Operates a forklift and/or assorted MHE to unload, move, stack, palletize and arrange materials.

*Packs, repacks and unpacks a variety of tools, parts, equipment and other items. Packs medical material for freight and parcel post shipments.

*Applies preservatives to a variety of items for shipment or storage, by dipping, brushing, spraying and immersing in vats.

*Types stock labels, stencils, and similar documents either on a typewriter or computer equipment.

*Lays out, makes and repairs boxes, crates, pallets, and other wooden items.

*Paints and preserves wood and metal items using spray guns, brushes and rollers.

*Orders supplies and equipment and maintains storage area.

*Coordinates, processes, follows up on all personnel actions within the organization.

*Performs distribution control of automated data processing (ADP) input/output listings. Maintains/consolidates time and attendance records. Provides mail service and distribution, including correspondence control. Obtains duplicating, printing and graphic aid service. Maintains reference library of required publications and process requests for publications and forms. Gathers data and consolidates various statistical reports into a daily workload and production summary reports. Controls suspense for the team. Maintains supporting technical and administrative data. Performs typing tasks, mailing of documents, maintains microfiche libraries, and performs microfilming/microfiche of documents.

*Selects proper location and stows stock, checking shelf life, security items, condition code, completes documentation.
*Develops graphs and charts through tracking statistics, to identify trends that determine if the team is operating within designated parameters.
*CS Pay Band—3.

TABLE 4.— RECEIPT ADMINISTRATION TEAM

Current series	Current title	Number of team members
	Team Leader	1
GS-0318	Secretary (Typing)	3
GS-2005	Supply Clerk	4
GS-0322	Clerk Typist	8
Total		16

*Critical Job Functions:
*Coordinates, processes, follows up on all personnel actions within the organizations. Performs distribution control of automated data processing (ADP) input/output listings. Maintains/consolidates time and attendance records. Provides some mail service and distribution, including correspondence control. Obtains duplicating, printing and graphic aid service. Maintains reference library of required publications and process requests for publications and forms. Gathers data and consolidates various statistical reports into a daily workload and production summary reports. Controls suspense for the organization. Maintains supporting technical and administrative data. Typing, mailing of documents, maintains microfiche libraries. Microfilming/microfiche of documents.
*Receives and segregates incoming mail; prepares outgoing mail.
*Maintains records and files to include suspense files.
*Maintains follow-up suspense file and initiates follow-up on orders, documents receipts of supplies and equipment.
*Develops and maintains records.
*Receives and initiates correspondence by screening material, establish suspense controls, typing, proofreading, as to format and procedure.
*Receives, controls and processes due-in and receipt documentation for the major commodity managers.
CS Pay Band—2.

The number of skills assigned to teams will correlate with the number of skills an employee can reasonably learn. This consideration is based on the fact that pay levels will be linked to the number of skills an employee learns and the requirement to remain reasonably proficient in acquired skills.

Effort will be made to reach a balance so that the number of job knowledges/skills does not exceed an employee's ability to learn these knowledges/skills within 36 months. Every effort will be made to maximize the team concept. Skill-based pay teams will not be formed just for the sake of creating teams. The guidelines that were established in structuring teams must apply, i.e., team size, ability to master and be certified in multiple team functions within a 36 month period, exclusion of specialized skills, etc. Table 5 shows the organizations that will not participate in the skill-based pay portion of the demonstration project because they do not conform to the above guidelines.

In addition, because of the tremendous workload anticipated for project start-up, the Office of Civilian Personnel will not move into the SBP team structure until one year after project implementation.

TABLE 5.—ORGANIZATIONS TO BE EXCLUDED FROM THE SKILL-BASED PAY PORTION OF THE DEMONSTRATION PROJECT

Organization	Number of employees
Public Affairs Office	4
Internal Review Office	6
Equal Employment Office	2
Safety & Health Office	6
Office of Counsel	2
Security Operations Division	7
Custodial Branch	21
Comm. & Family Activities Div	12
Administrative Services Division	11
AIS Management Division	10
Technology Division	9
Total	92

Skill Groupings

There are three basic types of skill groupings around which an SBP/PWE system can be organized. Under the demonstration project, any combination or number of the different skill groupings may exist on the same team.

1. Horizontal—skills upstream or downstream within a functional process or other skills horizontal to the tasks individuals already perform, *e.g.*, receiving and warehousing in a distribution process.

2. Vertical—skills above or below a functional process, or other skills vertically upward or downward, *e.g.*, a skilled employee could take on data entry skills (downward) or management skills (upward).

3. Depth—increased knowledge and skill within a job category or field, *e.g.*, skilled trades employees when individuals learn skills that allow them to perform their jobs in greater depth.

Degrees of Team Participation

The order in which job knowledges are learned may be structured or unstructured. A structured order of learning is referred to as "sequential" and is required when the acquisition of a new skill is dependent on the satisfactory acquisition of some previous skill(s). This is similar to the traditional apprentice, journeyman, master concept. Unstructured or non-sequenced skills simply means that they can be acquired in any order. The majority of teams are expected to have non-sequenced job knowledges. Table 6 shows the conceptual evolution of team participation. As terms develop, increased responsibility and team participation are demonstrated.

Team Responsibilities

Teams will become responsible for establishing team goals, evaluating team performance, and sharing information. As teams mature and develop, they will become more self-managing and progress to autonomous work teams in which members make most personnel and work-related decisions. As the project progresses, team members will participate in decision making, interviews and recommendations for selection, peer appraisals, equipment recommendations, work methods analysis, and day-to-day problem resolution.

TABLE 6.—DEGREE OF PARTICIPATION

Traditional Structure.	Supervisor makes individual decisions and assigns work. Employees perform.
Initial Work Team....	Team leader manages operation of work team. Team members share in work related decisions.
Autonomous Work Team.	Team leader/members share in personnel and work related decisions (PWE).

Team Leaders

Effective team leaders will be vital to the success of the teams. Team leaders will receive extensive training in team leader development, group dynamics, team building, and other interpersonal skills as identified in the Training Section of this plan. The team leader will be a working team member who provides leadership and cooperation to other team members. This leader will oversee team member development and obtain required training for team members. It will be up to the team leader to see that the group process is effective and that the work is accomplished through group processes. Team leaders will also assure that skills and individual rotation requirements are met. Team leaders will initially be selected by management from the current supervisory work force and will be considered "supervisors" in OPM's Central Personnel Data File (CPDF). As teams mature and develop, and as vacancies occur, management may change this designation, and appropriate pay adjustments may be made to reflect the different status.

Facilitators

As current supervisors assume new roles as team leaders, assistance and support will be required in performing their duties. A team of facilitators will provide this by interrelating with the team leader and team members. Facilitators will be competitively selected from the current work force through the use of assessment centers. Facilitators will receive intensive interpersonal and facilitator skills training. Responsibilities will include coaching team members in techniques of participative management, and evaluating and monitoring team development. Facilitators will assist teams in the following areas:

1. Monitoring team meetings,
2. Providing orientation and awareness training,
3. Evaluating and monitoring team progress,
4. Obtaining logistics support (meeting rooms, materials, etc.),
5. Assisting in obtaining technical resources as required,
6. Coordinating activities and events, and,
7. Apprising management and union of progress.

Work Facilitators

In addition, selected first-line supervisors from the existing workforce will serve as "work facilitators." These individuals will assist teams in the following tasks:

1. Solving work flow problems,
2. Monitoring work in progress,
3. Obtaining technical resources when needed,
4. Developing performance measures and goals,
5. Redesigning work methods,
6. Serving as an on-call expert to solve immediate problems,
7. Eliminating cross functional barriers,
8. Seeking ways to improve effectiveness and efficiency, and
9. Training and certification.

Management Role

SBP/PWE requires managers to help employees work together as self-managing teams to surpass prior mission accomplishments. The manager must be a catalyst, a source of advice and guidance, and a communicator. While an SBP/PWE management style incorporates elements of "traditional" management practices, the concepts ask more of the SBP/PWE manager. Successful managers under this project will have to generate and apply mission improvement ideas creatively and get the work done while promoting an environment that enables individuals to make contributions and, at the same time, realize their personal goals.

The SBP/PWE manager will need to facilitate work team operations by assuring the effectiveness of functional and management support systems and by counseling work team leaders on realizing team potential and individual employee growth. The SBP/PWE manager will be responsible for establishing goals and objectives which apply activity and agency program guidance. He/she will be expected to translate agency/activity goals and policy to the teams while simultaneously communicating team improvement ideas to other managers. The manager will also need to establish and maintain a viable dialogue with teams and other managers.

B. Classification

Under the new SBP/PWE system, the allocation of work to a specific team will be based on its contribution to a common product or service. Each work team may perform several kinds of work related to a given product, process, or service, and employees may be required to perform any or all of a wide variety of tasks encompassing work currently classified as either FWS or GS.

The SBP system will involve a simpler classification system under which teams, not positions, will be classified. Because a single team may be responsible for work that was traditionally classified under both blue and white collar systems, a single classification system will be used for all teams. Skill levels under the new system will focus on those key features of team functions which are common to both blue collar and white collar occupations. Because team descriptions will include a broader range of work than current individual position descriptions, fewer distinctions among skill levels will be necessary.

Classification Standards

The present system of classification standards for both Wage System and General Schedule positions will be replaced by a highly streamlined system under the demonstration project. Knowledges and skills required by the team will be evaluated using skill levels and a conversion table. Because project employees will work as participative members of multi-skilled teams, sharing in work-related decisions unencumbered by rigidly defined roles and work methods, this one factor is considered adequate to describe the differences among the broad classification levels. For demonstration purposes, the standard used to classify team descriptions will be referred to as the Master Standard.

Team Descriptions

When teams are formed, individual position descriptions will be replaced by team descriptions. Every member of a team will have the same team description in lieu of an individual position description. Team descriptions will identify the knowledges and skills required to perform the duties and responsibilities assigned to the team.

In some instances, work teams may perform work that requires highly specialized qualifications such as formal training or apprenticeship periods. Such requirements will be clearly identified in the team description under Conditions of Employment.

Classification of Team Descriptions

Each team description will be evaluated using the Master Standard. The Master Standard combines the ranges of job skills and knowledges traditionally covered by grades 1 through 11 of the General Schedule (GS) and grades 1 through 11 of the Federal Ware System (FWS). The Master Standard describes five skill levels. Each skill/knowledge described in the team description will be evaluated against the Master Standard and will be assigned an appropriate skill level.

Appeal Procedures

Appeals regarding the level of difficulty assigned by the DDOU Office of Civilian Personnel will be forwarded to Headquarters DLA, Office of Civilian Personnel, Position Classification and Personnel Management Evaluation Division (DLA-KM) for resolution. Prior to filing an appeal with DLA-KM, in informal effort must be made to resolve the appeal at the local level. Appeals will be accepted only if they are based on a majority team decision.

Classification Review

To assure that team descriptions accurately describe the work actually performed, and to verify that descriptions have been properly assigned to the proper pay bands, the Office of Civilian Personnel will conduct an annual audit of 30% of the positions engaged in the project.

Reclassification Actions

Skills or job knowledge mixes can be changed by planned management action or technological changes. The assignment of a team to one of the five pay bands may change as functions are either added or deleted as a result of reorganization, new mission requirements, modernization, etc.

If reclassification results in assignment to a higher pay band, team

members will not receive the pay increase until they have been certified as acquiring all newly identified skills. If reclassification results in assignment of a lower pay band, pay retention will apply to those employees whose pay exceeds the newly assigned pay band.

C. Compensation

A new SBP Compensation System designed for the demonstration project will apply to all employees assigned to teams. The system has been designed to achieve the following objectives:

- Provide a positive incentive to acquire the additional job knowledges, skills and abilities necessary to perform all functions required of a work team;
- Replace current pay grades with fewer, broader pay bands; and
- Combine current hourly and salaried pay systems into a single salaried system.

Pay Bands

A pay structure will be established consisting of five pay bands. Pay bands under the new system will be broad in order to support the concept of broad classification levels. The five pay bands will cover all depot employees who are assigned to multi-skilled work teams, eliminating the distinction between an hourly pay system for trades, crafts, or laboring positions and a salary system for professional, administrative, technical, or clerical positions. Pay bands will be designated as CS–1 through CS–5. Additional pay bands may be added CS–5 at a later date on an as-needed basis, however, such a project modification would require OPM approval and publication of a project amendment in the **Federal Register**.

Assignment to Pay Bands

Assignment of each team to one of the five pay bands under SBP will be accomplished using the following procedure:

1. Assign skill level to each skill/knowledge described in the team description *e.g.*, level 1, 2, 3 etc.
2. Calculate the "average" skill level for each team description.
3. Using the conversion table (Table 7), convert the "average" skill level to the appropriate Pay Band.

TABLE 7.—PAY BAND CONVERSION TABLE

Point range	Pay band
1.0 to 1.49	CS–1
1.5 to 2.49	CS–2
2.5 to 3.49	CS–3
3.5 to 4.49	CS–4
4.5 +	CS–5

Levels Within Pay Bands

All pay bands will consist of four pay *levels*, corresponding to 4 levels of skill acquisition, and four "time gates" for pay progression. Level I will be for new employees who meet only the minimum qualifications for the team but are not certified in any of the team-specific skills. Level II will be for team members who have mastered 25% of the team's skills and passed a minimum 6-month time gate; Level III will be for team members who have mastered 60% of the team's skills and passed a minimum 18 month time gate; and Level IV will be for members who have attained all of the team's required skills and passed a minimum 36-month time gate. The range of pay (from Level I to Level μIV) will be approxmiately 40% for all pay bands except CS–1, which will have a range of about 100%. Levels II and III for all pay bands will be set as follows:

Level II = Level I + $\frac{3}{8}$ × (Level IV–Level I)
Level III = Level I + $\frac{1}{8}$ × (Level IV–Level I)

Pay Level I of pay band CS–1 will be set at the current GS–01 step 1 pay rate, representing the rate paid for the lowest entry-level work under either the GS or FWS pay systems. Level IV of Pay band I will be set at a rate corresponding to WG–01 step 5. Level I of the CS–2 pay band will be set at 4% above the maximum rate (Level IV) of the CS–1 band. Level IV will be set at a rate corresponding to WG–04 step 5. The CS–3 band will have a Level I rate set at 4% above the maximum rate of CS–2 and a Level IV set at a rate corresponding to GS–07 step 10. The CS–4 band will have a Level I rate set at 4% above the maximum rate of CS–3 and a Level IV set at a rate corresponding to GS–09 step 10. The CS–5 band will have a Level I rate set at 4% above the maximum rate of CS–4 and a Level IV set at a rate corresponding to GS–11 step 10.

Using current pay rates for GS and FWS employees, the application of the above procedures results in the SBP Compensation System Pay Schedule represented in table 8. Pay levels T1 and T2 are for trainee positions and are further explained under the Hiring section.

TABLE 8.—SBP COMPENSATION PAY SCHEDULE [1]

	T1 (35%)	T2 (15%)	Level I	Level II	Level III	Level IV	Team leader
CS–1			5.07	5.59	6.64	8.20	9.84
CS–2			8.53	8.84	9.46	10.39	12.47
CS–3			10.81	11.11	11.70	12.58	15.10
CS–4	8.50	11.12	13.08	13.47	14.24	15.39	16.47
CS–5	10.41	13.61	16.01	16.45	17.32	18.62	22.34

[1] Dollars per hour as of January, 1990.

Movement Within Pay Bands

Progression through each level of a particular pay band will be function of performance, time, and successful certification of job knowledge requirements (Table 9). Advancement to the next pay level will require successful certification of a specific percentage of the team job knowledge requirements and a minimum amount of time on the term. The amount of time at each successive pay level will be determined by minimum and maximum "time gates". Minimum time gates are viewed as necessary to assure a reasonable return to the activity for the investment in training. Maximum time gates are viewed as necessary to ensure satisfactory progress toward learning the required job knowledges.

Assuming the ability to learn all job knowledges, an employee will reach maximum pay after 36 months. The only increase in base pay beyond this point will be the full comparability increase for the General Schedule.

TABLE 9.—PROGRESSION REQUIREMENTS

Pay level	Time gate progression requirements		Team job knowledge requirement (percent)
	Minimum (months)	Maximum (months)	
I (Entry)	0	0	0
II	6	9	25
III	18	21	60
IV	36	36	100

Team Leader Pay Rates

Compensation for team leaders under SBP will be set at 20 percent above the Level IV of the pay band to which the team leader is assigned. This approach to compensating leaders will prevent pay inversion and ensure that team leaders are equitably compensated for the additional knowledge and responsibilities required for team leadership.

Non-team Member Compensation

Pay for employees not assigned to a multi-skilled work team will continue to be provided for in accordance with the provisions of their current applicable pay system.

Premium Pay Entitlements

The compensation entitlement for all premium pay will be provided to all project employees as applicable under the current General Schedule (GS) guidelines to individual team members. For example, under the project, current Federal Wage System employees who are assigned to teams with work assignments that expose them to unusually severe hazards or working conditions that currently qualify for "environmental differential" under 5 CFR 532.511 will be eligible to receive a 25% "hazard pay differential" for all hours in a pay status, as is currently the case for General Schedule employees under 5 CFR part 550, subpart I.

Fair Labor Standards Act

All the current provisions of the Fair Labor Standards Act (FLSA) will continue to be applied under the demonstration project.

D. Hiring

Proposed changes to the hiring process under the demonstration project address two important issues: (1) The hiring process in a participatory work environment should provide a mechanism for team members to contribute to the selection process, and (2) it should also provide more latitude to the team leader/manager in support of the concept of evolving team autonomy.

Hiring From Outside

The ability to make quality selections is critical to SBP/PWE, because employees must learn a range of skills while participating effectively on teams. Corporations, companies, and plants that have implemented SBP and related innovations have found that the quality of new hires is essential to long-term success. It is essential that new hires fully understand and accept SBP/PWE employment conditions and the expectations of both the employer and the team.

The ability to learn and perform a repertoire of skills while operating effectively in a participatory team environment is a necessary quality for SBP/PWE employees. Although this quality is not intended to be part of the basic examination process, it will be an additional factor to be considered in making final selections. The current examining process OPM employs will remain unchanged by DDOU, and no special examination for the project is envisioned.

OPM X–118 qualification requirements will continue to be used. The staffing plan for the project will identify an entry position for each team that can be directly correlated with an occupational series and grade under the current FWS or GS classification systems. For that occupational series and grade, the applicable X–118 or X–118C standard will be used to determine applicant qualifications. DDOU will work with OPM to develop innovative approaches to recruiting from outside the Federal service for the new SBP/PWE environment.

Because integrated recruitment, examination, and selection are seen as key to effective SBP/PWE implementation, delegated examining authority will be requested by the project test site. The request for delegated examining authority will be limited to the team entry level. Delegated examining authority for team entry levels would permit a unified approach to the process of examination and selection in this new environment. This would not only assist in ensuring applicant availability, but would also place responsibility for success of the entire demonstration project at the project activity.

Regardless of the examining authority, all veteran preference requirements will continue to apply in accordance with current statute and regulation. When applicants are referred to the manager, he/she, in conjunction with the team leader, will determine which of the referred applicants will be interviewed.

Having identified the interviewees, the manager and team leader will conduct interviews in the presence of at least two team members. After each interview, team members present will be given an opportunity to provide their comments for consideration by the team leader and manager. The interview process will include a tour of the worksite and an orientation concerning the concepts of SBP/PWE. Upon completion of all interviews, the team leader will make a selection subject to review and approval by the manager.

Hiring From Within

1. Selection of Team Members

(a) Promotion. Under the demonstration project, promotion will be defined as movement from one position or pay band to a position or pay band offering a greater basic salary potential.

The majority of team vacancies will be filled at the entry level and all movement from one team to another team with a higher pay band will be effected through merit promotion procedures. Promotion opportunity announcements will reflect that any such movement will imply a full acceptance of SBP/PWE.

Advancement through all skills on the new team will be a condition of employment. As with outside hiring, evidence of the ability to learn and perform a variety of skills while operating effectively in a PWE setting will be considered.

To provide career paths and upward mobility, trainee positions may be established for employees who do not meet the normal qualification requirements for teams at pay bands CS–4 and CS–5. The starting pay level for trainee positions will be 35 percent below the team entry level (Pay Level T1), and selectees must spend 24 months in training before progressing to the team entry level. At completion of 12 months training and a favorable team leader recommendation based on team input, the employee will receive a pay adjustment to 15 percent below the entry level (Pay Level T2). Upon successful completion of the training program, the employee will advance to Level I and can begin the formal process of certification in the team job knowledges. Saved pay will apply to trainee positions in the same manner that it currently applies to career intern and upward mobility positions.

Qualification requirements for both team entry levels and trainee positions will be keyed to the current X–118 OPM Handbook to the maximum extent possible. Modifications may be developed as necessary. Time-in-grade restrictions will not apply.

Employees will be able to apply for a position on a team with a higher pay band at any time as long as they meet minimum qualification requirements. Promotion from a lower pay band will normally be to Level I of the higher pay band.

Crediting plans and rating and ranking of candidates will be accomplished by appropriate team subject matter experts in accordance with the current Merit Promotion

Program. Selection procedures will then follow those established for outside recruitment.

(b) Reassignment. Under the demonstration project, reassignment will be defined as movement from a position or pay band to a position or pay band with the same basic salary potential.

Moving an employee from one team to another within the same pay band and with identical skills may occur at any time. This might result from an employee's request or at management's discretion because of work load changes or other related issues.

Moving an employee from one team to another with the same pay band but different skills may be effected without financial penalty to an employee in two situations:

(1) At the employee's request, when the employee has at least a Fully Successful performance rating, is at Pay Level IV, and has been certified in all team skills on the currently assigned team for at least 6 months. Team leader support will be required from both the losing and gaining team. A vacancy must exist or a member of the gaining team must request a similar transfer. Maximum time gate requirements of the new team will apply. The horizontal integration of skills between teams resulting from this kind of move may prove very beneficial to activity flexibility and employee job enrichment.

(2) Following a management directed move because of the need to reallocate team resources or to establish new teams. Maximum time gate requirements of the new team will apply.

In other instances, such as a voluntary request, salary on the new team with the same pay band but different skills will be set at whatever level is supported by formal skill certification for the new team. Non-competitive movement must be preceded by a determination that entry level qualification requirements are met in accordance with X–118 and X–118C.

(c) Changes to Lower Levels. Under the demonstration project, a change to lower level will be defined as movement from one position or pay band to a position or pay band offering a lesser basic salary potential.

Moving an employee from one team to another team with a lower pay band and different skills may be effected without financial penalty to an employee in one situation—following a management directed move because of the need to reallocate team resources or to establish new teams. In this situation, normal pay retention and revised RIF provisions will apply.

Pay setting for voluntary requests will be based on the formal certification process unless the employee has been certified in all team skills on the currently assigned team for 6 months and is already at Pay Level IV. In this case, movement may be effected to the lower pay banded team at Pay Level IV, but without pay retention.

2. Selection of Team Leaders

Team leaders must be completely knowledgeable regarding all of the team skills and work processes. Accordingly, those selected for team leader positions will be subject to the existing probationary period for new supervisors, and one condition for competing this probationary period will be the requirement to become certified in all skills on the team within 12 months. Team leaders who come from the existing supervisory work force and have already completed a one-year supervisory probationary period will not be subject to another probationary period. However, performance-based action will be warranted if satisfactory progress toward developing team leader skills is not achieved.

Qualification requirements for team leaders will be based on experience related to the major function(s) of the team and on demonstrated ability to lead and work with groups.

Selection for team leader vacancies will be made by the responsible manager with input from team members. As teams move toward greater autonomy and the team leader role changes, selection of the team leader may become a team responsibility subject to manager review.

The non-competitive movement of team leaders will be consistent with the same principles as movement of team members. Movement from one team to another team with the same pay band and identical skills may occur at any time. Movement to another team with the same pay band but with different skills may occur whenever the team leader has been certified in all skills on the currently assigned team for at least 6 months or following a management directed move. Movement to a lower pay band may occur voluntarily (without pay retention) following certification in all skills on the currently assigned team for at least 6 months. Qualification requirements must be met for non-competitive movement. If such a movement is management directed, normal pay retention and revised RIF provisions will apply.

3. Selection of Managers

The flattening of the organizational structure will virtually eliminate hierarchical levels between team leaders and organizational managers. This should lead to a larger competitive base from which to select future managers. Team leaders who have developed good leadership skills and have, through competitive or noncompetitive actions, served as a team leader on multiple teams should be better able to compete for managerial vacancies.

The qualification process for managers will remain the same. Selection procedures may require the use of assessment center technology. A long term objective of the project is to organize managers into business teams with qualification requirements reflecting the new concepts of operation and pay banding based on the new Compensation Schedule.

E. Performance Evaluation

Performance evaluation is an important feedback mechanism for letting employees know how well they are meeting organizational expectations. The appraisal system to be used during the demonstration project will be used to answer these kinds of questions:

- Does the individual's performance merit progression to the next pay level?
- Does the individual deserve recognition?
- Does the individual need additional training?
- Does the individual's work measure up to expectations?

The demonstration project's new performance appraisal system, as described in this section, will apply to all Depot employees except managers. All managers will be appraised and recognized under the current Performance Management and Recognition System (PMRS), as it is applied to GM employees throughout DLA.

Performance Standards

A set of performance standards will be developed for each team description and will be applied to each individual assigned to a team. The standards will specifically address two elements of performance: (1) Operational and (2) team participation. Performance standards will also be developed for non-team members, team leaders, and teams.

All employees will not fit into a team structure. Employees who are not team members will have performance standards structured around the critical elements of their positions. In addition, their performance standards will include critical elements related to the quality and timeliness of product(s) and/or service(s) they provide to teams. The system will accommodate input from the team leaders of the teams supported by these individuals during the evaluation period.

1. Operational Performance Standards

The mission of the test site dictates that performance goals be clearly defined and communicated throughout the organization. Performance monitoring under the demonstration project will be continual and, in most operations, supported by objectively established measurement standards. The majority of these performance measurements will be the same as those currently used for operational performance, *e.g.*, on-time receipt processing, on-time shipping, material denial, and customer complaints.

In many mission support operations, performance measurements are not as clearly defined and are often dependent on the requirements of the "customers." In these areas, performance measurement will be tied to operation objectives developed to support the customer. In either situation, operational performance evaluation factors will be developed to describe what is expected. These factors should be attainable, skill-relevant, pay-level-relevant, specific, realistic, and observable.

2. Team Participation Performance Standards

Each individual employee's contribution to the performance of the team will be considered as critical. The team participation portion of the appraisal will consist of factors, such as:

- Maintenance of an orderly work environment,
- Constructive participation in meeting team requirements, and
- Individual efforts which improve group performance.

Team participation evaluation factors, to the extent possible, will be uniformly applied to all teams covered by the project. Using peer input and common evaluation factors when possible should help reduce current employee perceptions that performance appraisals are inconsistent and unfair.

3. Team Leader Performance Standards

The leader of each team, in addition to being evaluated on operational performance, will also be evaluated on individual evaluation factors assessing ability to effect the team process and build team competence and autonomy. The factors will include:

- Facilitating team member interaction,
- Leading team meetings,
- Working with groups to develop performance measures and goals,
- Providing continuous feedback on performance, and
- Facilitating interaction among teams.

4. Team Performance Standards

Performance evaluation factors for the teams will reflect common elements, such as meeting unit cost goals, safety and quality. Additional elements will be developed to assess the unique multi-skilled operations of the teams.

Mechanics of Evaluations

A menu of critical element and performance standards addressing all skill-relevant evaluation factors will be developed for each team. This menu will accommodate the multi-skilled environment and the fact that skills can be acquired by the individual in either a sequenced or an unsequenced manner.

The development of the critical elements will be a team leader responsibility with team member participation. Performance will be evaluated based on criticality of assigned tasks during the rating period. Each critical element related to assigned task(s) will be evaluated using only three levels of performance: Exceptional, Fully Successful and Unacceptable. Performance standards will be written only at the Fully Successful level and may be modified during the performance period to accommodate changes in work load, resource allocations, etc. To be rated on a critical element within a team performance plan, the employee will have to have been performing under that critical element for a minimum of 90 calendar days.

1. Individual Evaluation

The performance of employees will be assessed every 12 months. Although the final evaluation will be completed by the team leader, the process will involve active participation of the team members. Each team member will complete a confidential performance evaluation for all other team members. Peer input will be provided to the team leader for consideration during discussions with individual employees.

A summary rating will be determined for each employee based on the following definitions:

- *Exceptional:* no more than one critical element rated Fully Acceptable and no critical element rated Unacceptable
- *Fully Acceptable:* any other combination of ratings with no critical element rated Unacceptable
- *Unacceptable:* one or more critical element rated Unacceptable

Summary ratings of Fully Successful will be presumptive and automatic, requiring no further action by the team leader. Only summary ratings of Exceptional and Unacceptable will require documentation. It will be the responsibility of the team leader, based in part on input from the team members, to identify those individuals that have Exceptional or Unacceptable performance.

If an individual has an Exceptional rating, and the team is rated Satisfactory (see Team Evaluation, below), the individual will be eligible for recognition. Individuals receiving an Unacceptable rating will not be eligible to move to a higher pay level until their performance is at least Fully Successful.

Individuals identified as having unacceptable performance will be provided with an opportunity to demonstrate acceptable performance as required by 5 U.S.C. 4302(b)(6) and 5 CFR part 432. All current requirements in 5 CFR part 432 for reduction in grade or removal based on unacceptable performance will be followed.

2. Team Leader Evaluation

The team leader evaluation will be completed by the manager. The process will be identical to that of the individual evaluation. Input will include that of team members and other team leaders. Input from other leaders will be mandatory for a team where interaction is critical and input will be optional for all other team leaders.

3. Team Evaluation

Management will evaluate team performance at least every 12 months using a two-level system, Satisfactory or Unsatisfactory. This evaluation will be based on team performance standards which will cover both work performance and participation in team processes.

4. Manager Evaluation

The process for evaluating a manager's performance will be consistent with current PMRS concepts, with one additional enhancement. The process will provide for input from other managers as well as team leaders directly affected by the manager being evaluated.

Review and Management Process

All reviews of other than Fully Successful performance appraisals will be done by the next level of management. The Office of Civilian Personnel will be responsible for assisting and advising teams in the performance appraisal system, evaluation techniques, dispute resolution, etc.

F. Incentive/Recognition

In developing the incentive/recognition program, specific minimum objectives were established: (1) The program should be fair and based on achieving clear and measurable objectives, and (2) the individual, the team, and the activity must all be considered in developing a balanced and comprehensive incentive/recognition program. The following program, which will be applicable to all activity employees, should provide a mechanism to recognize individual performance without disrupting team efforts and provides the incentive for a total commitment to the activity. With the exception of the Employee Suggestion Program and certain honorary awards, the current performance award incentive/recognition system will no longer be applicable.

Individual Incentives

All employees rated Exceptional under the project will be eligible for an additional time off award if team performance has been evaluated as Satisfactory. During each annual performance appraisal cycle, employees who receive an Exceptional performance rating in teams rated Satisfactory will automatically receive 4 days of paid incentive leave. The additional time off must be scheduled during the 12-month period following the award. It will be the team leader's responsibility to assure that appraisal at the Exceptional level is fully justifiable and warranted.

Authorization for performance-based discretionary time off for an entire team will be provided for at the manager level. Extended lunch periods or partial days off may be forms of rewarding special achievements or outstanding production-related situations attained by a team.

Individual Incentives for Managers

The current PMRS incentive program for managers will be expanded to include all depot managers. The mechanisms for rating and distributing the PMRS performance award pool will remain the same.

Management of Incentives

The incentive/recognition program is designed not only to enhance cooperation between teams, but to encourage individual teams to take maximum advantage of the tools provided to contribute to the overall success of the activity. Team productivity will be tracked and measured to the maximum extent practical. Productivity measures are a valuable feedback mechanism to a team that is motivated to do their best to support the activity.

All aspects of the demonstration project's incentive/recognition program will be operative during the first year of the demonstration project. The effectiveness of the incentive/recognition program will be evaluated as the project evolves and may be adjusted accordingly.

Gainsharing System

The gainsharing program to be used in conjunction with the demonstration project will be based on the Agency-wide "Success Share" program negotiated between DLA and the AFGE Council of DLA Locals. The Success Share program will be conducted under the authority of title 5, U.S.C. and two Comptroller General decisions, *i.e.*, no waivers of law or regulation will be required. A full description of the program is contained in DLA Regulation number 7070.3, "Success Share Program," dated January 3, 1990.

The "Success Share" program is a productivity gainsharing system designed to reward all employees at an activity for reducing the cost of doing business while maintaining a high quality of service to customers.

The Success Share system is based on the concept of unit cost. Unit cost is part of a workload-driven resourcing system in which all of the costs incurred at a depot are associated with some output measure. If the depot successfully accomplishes its mission at a cost below the resources allocated for the fiscal year and within acceptable quality parameters, the difference will be shared equally (adjusted for the Quality Level Factor, described below) between DLA and depot employees.

The Quality Level Factor (QLF) is a depot-wide performance evaluation indicator used in Success Share calculations to ensure that quality is not sacrificed for increased production. The QLF is based on such indicators as on-time shipping, on-time receipt processing, material denial, and customer complaints. For a given level of cost savings, a QLF above a pre-established DLA goal will result an increased Success Share award pool for employees, and a QLF below a pre-established DLA goal will result in a decreased award pool for employees.

The Success Share award pool will be one-half of the total dollar productivity gain (as adjusted by the QLF). Individual awards will be based on an hourly award rate determined by dividing the Success Share award pool by the total number of productive hours worked by all eligible employees. (Productive hours are defined as all regular hours worked, excluding overtime. Productive hours include training time but do not include leave.) All employees will have the same hourly award rate; grade or rate of pay will not be a factor. Individual Success Share award amounts will be calculated by multiplying the hourly award rate by the number of productive hours worked by the employee.

Employees will have the option of electing to receive their Success Share awards in cash, leave, or a combination of the two. Leave earned under the Success Share program will be referred to as "incentive leave." The amount of Success Share incentive leave available to an employee will be computed by dividing the employee's award amount by his or her individual rate of pay. Success Share incentive leave will normally be used during the leave (calendar) year following the fiscal year in which it will have been earned.

G. Job Knowledge Certification

The job knowledge training and certification program will provide the mechanism for employees to learn additional skills. Documentation of this accomplishment will be placed in an employee's Official Personnel Folder (OPF). It will be a comprehensive program designed to qualify employees to perform every job function within their assigned team.

Complete training packages will be developed and continually maintained for each job knowledge/function required by a team. These packages will identify and explain all aspects of the specific function to be learned and provide the method to certify that an acceptable level of knowledge of the function has been achieved. The certification process will involve training and demonstrated proficiency.

The certification will be administered by either the team leader or a qualified instructor. Demonstrated proficiency will be witnessed by the team leader and by at least one team member who has previously been certified in the particular function being performed or by another subject matter expert.

Certification in current job skills using certification check lists began at DDOU in February, 1990. Certification for movement within pay bands will begin 90 days after project implementation when all training modules will be completed, except those for Stock Maintenance Division, Directorate of Distribution. A formal on-the-job training program for the Stock Maintenance Division will be used for certification until training modules are completed.

When workload or demand require certification scheduling, it will be provided in accordance with seniority based on service computation date.

Failure to meet certification within maximum time requirements will necessitate appropriate action based on individual performance related criteria.

For all new employees and team leaders entering a team, a condition of employment will exist that requires he/she learn all the job knowledges and be certified within the time frames specified. It will be the responsibility of management to assure that training programs are developed for all required team skills/knowledges and that all team members are afforded equal opportunity to obtain such training in a timely manner.

Team leaders will be responsible to insure and document that all team members rotate in each of the certified job functions for a sufficient period of time to maintain proficiency every 12 months. Facilitators will assist team leaders in this process. Classifiers, during their scheduled audits, will also verify that required rotation is being accomplished through reviewing team leader documentation and interviewing team members. This requirement for job rotation will allow members to maintain proficiency in the job functions, and in most instances will preclude any additional training requirement.

IV. Personnel Subsystem Administration

A. Letters of Discipline

The present system for disciplinary actions is based on the Agency "Table of Penalties", which lists most offenses and provides for a range of penalties which depend on the nature of the offense and the number of times it has been committed. For minor offenses, such as AWOL, penalties are progressive if behavior is not corrected. These penalties range from a reprimand, through a series of suspensions, culminating in removal. These actions often detract from productivity and do not fit well in a participatory team environment.

Under the demonstration project, when it has been determined that an employee has committed an offense for which formal disciplinary action is appropriate, a letter of discipline may be issued under the terms of this SBP/PWE process in lieu of a letter of reprimand or a suspension from duty and pay of not more than 14 calendar days.

The use of letters of discipline under this process will be considered an adjunct to the regular, formal disciplinary procedures outlined in DLAR 1406.1. In those circumstances where it is determined that it is not appropriate to substitute a letter of discipline for a formal disciplinary action, a regular formal disciplinary action will be taken according to DLAR 1406.1. Substitution of a letter of discipline for formal discipline, such as a reprimand or suspension, will in all cases be at the discretion of the agency.

In situations where reprimands and suspensions are replaced by letters of discipline for repetitive offenses, the letters will specify the degree of seriousness and at what point another incident might result in proposed removal. Current procedures for emergency suspensions in the event of criminal activity will be retained.

Letters of discipline will cite the specific charge(s) and a reasonable account of the offense(s) including such facts as time, date, names, place, and circumstances. As appropriate, letters of discipline will include a statement of any past disciplinary actions taken which were considered as supporting the severity of the penalty the letter of discipline is being taken in lieu of. Employees will have the right to formally question a letter of discipline taken under terms of this process using the regular grievance process (either the negotiated grievance procedure or the agency procedure, whichever is applicable). Therefore, letters of discipline must inform employees that they have the right to seek formal reconsideration of the letter of discipline by citing the appropriate grievance procedure in the letter. On receipt of a letter of discipline, the employee will be asked to acknowledge receipt. This copy of the letter will become the Official Personnel Folder (OPF) copy.

Letters of discipline will be filed in the employee's OPF as a temporary (left side) document for a period not to exceed 2 years. At the expiration of the 2-year period or sooner if so determined by the issuing supervisor or based on the outcome of the employee's grievance, the letter of discipline and supporting documents will be purged from the OPF.

These modified disciplinary procedures are intended to be easily understood by the work force and easily applicable in a consistent manner.

B. Reduction in Force (RIF)

Competitive areas will be limited to functional areas (Distribution, Installation Services, etc.) grouping employees on the basis of team skills to determine competitive levels, and ranking on the basis of veterans preference, performance appraisal, tenure, and service computation date.

Competitive levels will be based on team skills rather than classification series and grades of positions. Positions on teams with substantially the same skills in the same pay bands will be in the same competitive level. However, when the required skills are not substantially the same between teams in the same pay band, these positions will be in different competitive levels.

Since grades will not be a factor in the RIF procedure, adverse impact on employees will be determined by where an employee is placed in the compensation schedule. RIF placement of employees, e.g., bumping and retreating from one team to a lower pay banded team, from team leader to team member, from manager to team leader or member are considered as downgrades of more than two grades for purposes of determining eligibility for discontinued service retirement. There will be no limit on bumping or retreating. As referred to in the Classification Section of this plan, pay retention will be applied as appropriate, but current provisions for grade retention are not meaningful and will not be applied. Additional retention credit for performance will follow the procedures outlined in 5 CFR 351.504, as modified by DLA for the level three-level rating system.

C. Appeals and Grievance Procedures

This project will not waive any existing appeal or grievance procedures. Negotiated grievance procedures will apply for bargaining unit employees and the existing administrative grievance procedures will apply for employees not covered by negotiated procedures. No provisions of this project waive a right or remedy available to an employee under Equal Employment Opportunity (EEO) laws. Classification appeals procedures will be modified to adapt them to the team environment (See appeal procedures under Classification Section).

V. Project Costs

The costs associated with the project will be borne by DLA and the participating activity. Major costs to date have been for project development, and future costs will be for training, implementation and evaluation. Increased costs will occur at the beginning of the project; cost neutrality is anticipated by the end of the third year and cost savings at the beginning of the fourth year.

The demonstration project will have increased costs in its development, formulation, and implementation. It is

important to the success of this project to have a clear, distinct separation of the routine activity costs from the additional costs resulting from the project. The design, implementation, and operation of a skill-based compensation system requires resourcing the same types of costs as other traditional pay systems. However, cost increases are sometimes incurred by activities using SBP plans in three main areas: Training, wages, and one-time overhead costs. Job rotation opportunities to develop employee skills will result in increased training costs.

Under SBP systems, basic labor costs are generally higher than under traditional compensation systems. The pay of employees increases as they learn new skills. Therefore, the wages of an employee with a short length of service may be higher than those of someone with comparable service at another activity using traditional pay systems. The majority of private SBP plans reported paying wages higher than the prevailing rate. Although the basic labor costs per hour are higher under SBP plans, the overall depot operating costs will be lower through decreased staffing requirements. Therefore, this project is projected to be cost neutral.

Increases in overhead costs will arise from SBP/PWE plan development, implementation, maintenance, administration, and evaluation. Some administrative overhead costs may be offset by decreases in turnover and absenteeism and, in some cases, reduced support personnel. Project development costs from 3rd Quarter FY 87 through 1st Quarter FY 90 are as follows:

Personnel Costs	$1,127,413
Non Personnel Costs	401,835
Training	136,954
Travel	46,835
Total	1,713,037

The anticipated operating budget for the remainder of FY 90 is $575,000.

VI. Project Administration

A. Training

This demonstration project will represent a significant change in the management practices in both the product and service arenas at the test activity. Many traditional programs and attitudes will require change. In preparation for the major environmental change proposed by the demonstration project, all depot employees were offered Pacific Institutes' 32-hour course entitled "Investment In Excellence". Fourteen hundred (1400) employees have been trained.

Also to facilitate the change to their new roles as team leaders, all depot supervisors have attended a one-day symposium conducted by Pacific Institute on "The Change Process." One hundred and forty five (145) supervisors received an additional 40-hour course offered by Zenger Miller entitled "Group Action". Approximately 3,200 hours of training has been given to supervisors and employees on the concepts of Total Quality Management.

To complete the transition to a PWE, a great deal of additional training will be necessary in all phases of the project to provide managers and employees with the necessary knowledge to successfully participate in the evolution from current structured roles to the proposed environment. Table 10 outlines the courses identified to effect this change.

TABLE 10. TRAINING MODEL

Course	Participants	Schedule	Source
Project concepts	All employees	I−1 month	Proj team.
Team leader dev	Supervisors	I−1 month	Contractor.
Group dynamics	All employees	I+3months	Contractor.
Problem solving	All employees	I+6months	In-houses.
Communications	All employees	I+6months	In-houses.
Goal setting	All		

I = Implementation date.

The courses identified in Table 10 are interactive and represent various aspects of a PWE. The following summarizes the course contents:

Project Concepts. Training for all employees will include the following: Description of the project plan, how personnel enter and exit the plan, pay banding and the pay adjustment process, team/individual performance evaluation, incentives, measurement and evaluation of the plan, and skills certification.

Team Leader Development. Training will include the project personnel management initiatives, human relations, leadership skills and appraising performance.

Group dynamics. Training will include working effectively, enhancing listening skills, and promoting effective interaction within groups.

Team Building. This will include training individuals to be energetic team players without sacrificing individual pride and determination. It also includes providing direction without being authoritarian.

Problem Solving. Training will include a look at various systematic problem solving approaches and their applications.

Communications. Training will include examination of the communication process, including barriers, feedback, and communication levels.

Goal Setting. Training will include establishing meaningful goals and evaluating progress towards accomplishment of those goals.

Instructor Training

Some of the courses will be contracted for, while others will be accomplished by certified instructors at the activity. The number of certified instructors at the activity will be expanded to meet these additional training requirements. This will be accomplished by giving instructor training to subject matter experts, thereby minimizing the cost of training. To accommodate the anticipated training workload, an additional 112 subject matter experts have been trained and certified as instructors.

Facilitator Training

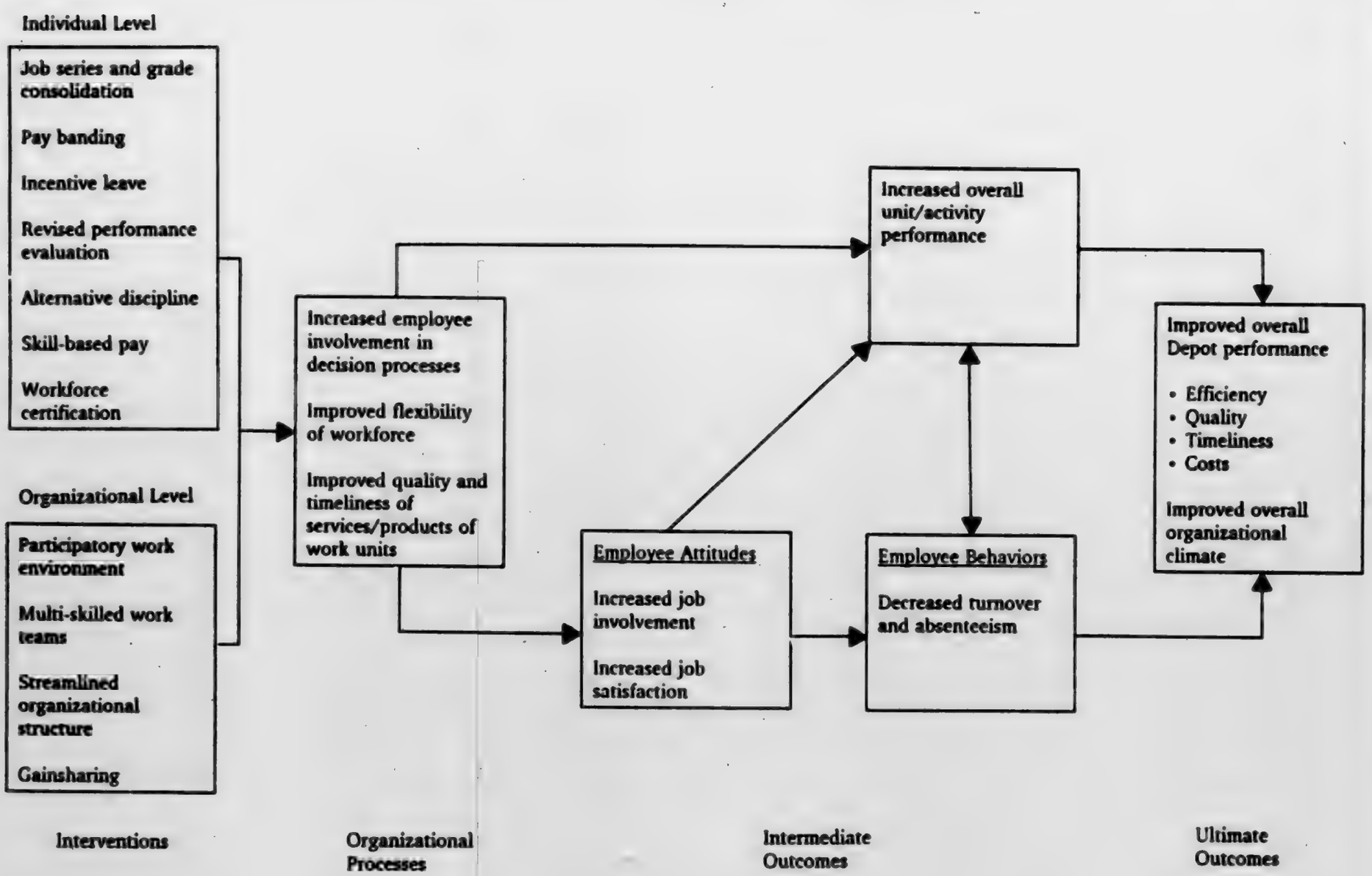
To ensure the smooth transition from traditional roles to those of managers, team leaders and team members, some facilitators will be required. These facilitators will be trained in interpersonal skills to provide encouragement and coaching for the team and team leaders.

B. Project Evaluation Plan

A comprehensive and methodologically rigorous evaluation of this project will be conducted to assess its success in meeting its stated objectives, to determine the effectiveness of individual interventions, to document any unanticipated consequences, and to determine the applicability of project changes to other Federal installations. The evaluation will be conducted by the Navy Personnel Research and Development Center with OPM oversight as provided for in 5 U.S.C. 4703(h).

In order to portray the complex and integrative nature of the interventions and their effects on the overall organization, a model is presented in Figure 1 which describes the relationships among the specific interventions and their expected effects. On the far left side of Figure 1 are the 11 interventions that have been proposed. The interventions have been categorized into two major groups—those dealing with organizational level changes and those that primarily involve changes at the individual level. Combined, these two types of interventions have an effect on organizational processes (*e.g.*, day-to-day operations). For example, process outcomes would include increased flexibility of the scheduling of members of teams and increased employee involvement in decision-making. These changes in organizational processes, in turn, would lead to changes in intended intermediate outcomes. Intermediate outcomes are those that result from the combined effects of various changes and improvements in processes. Intermediate outcomes could take the form of changes in employee behavior and/or attitudes (*e.g.*, increased job satisfaction, decreased absenteeism) and changes in performance indicators at suborganizational levels (*e.g.*, improved fill time for supply requisitions). These various effects combine to produce changes in overall organizational performance, such as increased efficiency, timeliness, and quality of service (*e.g.*, line items shipped on time, customer satisfaction). The model serves to depict the various levels at which the interventions could have an impact and, thus, identifies the levels at which the impact of the interventions should be evaluated. Further, it suggests a sequential relationship among the effects and helps identify at what point in time effects would be anticipated at the various levels (*e.g.*, if few improvements in processes and intermediate outcomes are documented, improvements in ultimate outcomes as the result of the project will not be expected). This model will serve to guide the collection and analysis of data at various levels of organizational impact for the evaluation of the demonstration project.

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In addition to examining the intended effects of the interventions, several other aspects of the demonstration project will be assessed. Whereas many effects of organizational change can be anticipated, change is also accompanied by unintended consequences, both positive and negative (*e.g.*, increased stress on individuals, decreased productivity resulting from training requirements, employees' inability to acquire skills, improved physical work environment through employee action, *etc.*). Information obtained in the assessment will serve to document these unplanned effects of the change. In some cases organizational indicators not expected to be directly impacted by the changes (*e.g.*, workload) will be identified at the beginning of the project and monitored to see whether they affect or are affected by the intervention. Other unintended consequences will be identified as the project progresses and subsequently monitored and documented.

Evaluation Phases

The project evaluation will be conducted in three phases, each with a slightly different focus. This corresponds to the measures dictated by the model that will be taken over the course of the demonstration project evaluation. Information relevant to the three phases of the evaluation—implementation evaluation, experimental evaluation, and summative evaluation—will be obtained. Reports on all evaluation phases will be submitted to DLA HQ, project officials at DDOU, and to OPM.

Implementation Evaluation. The implementation evaluation will be conducted to determine the extent to which the interventions were implemented in the organization as designed. This evaluation phase will focus on the time period between the development of the project plan and the time at which the changes are considered operational in the organization. Information collected in the implementation evaluation will serve to document how and to what extent the implementation has taken place and will provide the site with feedback as to how the implementation effort can be improved or enhanced. The implementation evaluation is a critical part of the evaluation plan in that it documents the intervention that was actually put in place when the proposed change was introduced into a dynamic organizational setting. From that it is possible to (1) identify what specifically led to the measured outcomes, and (2) prescribe optimal implementation approaches to potential future users.

The implementation evaluation also will include an assessment of the organization in which the demonstration project is conducted. The organizational assessment is designed to depict the environment in which the change is introduced to determine whether there are characteristics of that particular environment that predispose it to a more or less successful adoption of the change. Such aspects of the organization as organizational climate (*e.g.*, resistance to innovation, work-group cooperation), employee satisfaction, and employee commitment will be measured. A similar assessment will be conducted at the comparison site to determine whether differences in data collected at the two sites are, at least in part, due to differences between the sites rather than to the intervention.

Information for the implementation evaluation will be collected through examination of project-related documents (e.g., training materials, directives), ongoing contact with key players in the participating organizations, on-site interviews with project participants, observations, exit interviews with employees leaving the Depot, and other data collection methods. The implementation evaluation will address such issues as:

- The timing of various aspects of project implementation,
- The degree to which project elements are implemented as designed,
- What training/orientation is delivered to facilitate implementation,
- What new organizational structures and operating procedures/guidelines are developed to manage the project implementation,
- The degree to which individuals in the organization possess capabilities necessary to carry out the implementation, including (1) their personal understanding of the changes and their part in them, (2) the requisite skills and knowledges required for the change, and (3) their perceived ability to carry out the change,
- The degree to which individuals in the organization are committed to implementing and testing the project initiatives, their perceptions of the need for the change, their personal responsibility for the change, and their intention to carry out the change,
- The similarity of test and comparison sites,
- The extent to which "unrelated" events occurring at the same time may confound project results, and
- What unintended consequences of project initiatives may be observed.

The implementation evaluation will be presented in a report compiled shortly after the project has been deemed operational however, the monitoring and documentation of project implementation will continue throughout the life of the project in order to provide a qualitative context in which to understand and interpret other evaluation findings.

Experimental Evaluation. Although data collection for this phase must begin prior to project implementation to provide an adequate baseline for future comparisons, the primary focus of this evaluation phase will be on the period after the project is considered to be operational. Data collection initiated prior to implementation will continue on a periodic basis. Reports analyzing the effects of the various interventions will be issued by NPRDC on at least an annual basis.

Summative Evaluation. Upon conclusion of the demonstration period, an overall assessment of the combined effects of project interventions will be made. Impact of specific system changes will be discussed separately and in combination. The effect of each intervention and the project as a whole in meeting stated objectives will be assessed. Both positive and negative unanticipated outcomes will be discussed, as well as any unanticipated events that may have influenced project outcomes. The final report will also address the generalizability of project results to other Federal installations.

Evaluation Design

A "quasi-experimental" interrupted time series design with a nonequivalent comparison group will be used. *Baseline data* will be collected on a variety of the factors identified (*e.g.*, organizational performance measures, employee attitude measures) during the period of time prior to the implementation of the change. Measures of the same factors will be taken at routine intervals throughout the course of the experiment. Data will be collected from both the test site and one or more *comparison sites* not implementing the project interventions. Trends over this period of time at the test site in Ogden, Utah (DDOU) will be compared with trends at the comparison site. This design, combined with ongoing implementation monitoring, will provide a reasonable basis for making causal attributions regarding project results to the demonstration project interventions.

DLA's Defense Depot Memphis, Tennessee (DDMT) has been selected as the comparison site for this experiment. DDMT is one of five other DLA sites throughout the country currently performing functions similar to those at DDOU. Three major factors on which the two sites are considered similar are organizational structure, mission, and recent association with innovative personnel programs.

Of the five other DLA sites, DDMT is one of two "stand-alone" depots. Like DDOU, the stand-alone depots are not co-located with other installations, and all overhead services, such as personnel, are provided by the organization and follow the same configuration. Other depots in the system are co-located and overhead services are located outside their organization (*e.g.*, Defense Depot Mechanicsburg, Pennsylvania, which is on a Navy installation and for which the Navy provides all overhead services). DLA has eliminated Defense Depot Tracy, California, the remaining stand-alone depot, from consideration as a comparison site because of the major changes expected to result from DoD's recently announced consolidation prototype for San Francisco Bay Area depot management. Under the consolidation prototype, Tracy will become the administrative center for five Bay Area distribution facilities.

DDOU and DDMT perform the same essential functions of receiving, storing, and issuing DLA and other DoD component-managed materials, (including hazardous materials not handled by other depots), with some variation in commodities handled (*e.g.*, only DDOU assembles Deployable Medical Systems).

Like DDOU, DDMT is experimenting with innovative personnel systems. Both DDOU and DDMT have been actively involved in DoD's Model Installations Program (MIP). DDMT has also been involved in the DoD Experimental Personnel Office (EXPO) program and is currently developing self-managing work teams, an attempt to achieve many of the same objectives sought by this demonstration project, but within the bounds of current law and regulation.

An assessment of the test and comparison organizations to be performed by the external evaluator during the implementation phase of this evaluation will serve to identify and control for differences between the experimental and comparison sites.

Because all six such DLA organizations provide routine reports of organizational performance to DLA Headquarters, the other four depots will also serve as partial comparison sites. This will provide a broader base of comparison to help determine whether trends in measures of overall Depot functioning are common to the non-experimental sites in the Depot system or are unique to DDOU.

Project Objectives

Assessment of the results of this demonstration project will ultimately rest upon its success or failure in meeting its stated objectives. Four main objectives have been set by DLA for this project. This section discusses each objective, its relationship to the project interventions, and the types of data that will be collected to assess whether or not the objective has been met.

Objective 1: Increase employee involvement in day-to-day decision processes. The introduction of PWE concepts, along with corresponding changes in organizational structure, are intended to increase employee participation in work-related decisions. As part of the project, team leaders will be taught to encourage participation, and team members will be expected to participate in interviews and recommendations for selection, peer appraisals, work methods analysis, equipment recommendations and day-to-day problem resolution. Revised classification will support a more participative structure, as all members of a team will be classified at the same level. Changes to the performance evaluation and incentive awards systems will also encourage individual employees to see a greater link between their actions and group and organizational performance.

Increased employee involvement is expected in turn to improve the quality of worklife, as perceived by employees. This should include increases in employee satisfaction levels and greater commitment to the organization.

In order to track progress toward this objective, an attitude survey will be administered prior to project implementation and annually thereafter to depot employees. In addition to perceptions regarding employees' involvement, the instrument will cover a wide range of issues such as job satisfaction, pay equity, organizational climate, commitment, authority relationships, and attitudes regarding personnel procedures and policies.

Changes in the quality of worklife will also be measured using non-survey techniques including exit interviews, examination of personnel records, and analysis of computerized personnel data. Such measures will include absence and turnover rates, reasons for leaving, grievance activities, and adverse actions.

Objective 2: Improve the flexibility of the work force to respond to workload changes. Under a team-based organizational structure, employees will learn and perform all of the job skills related to a product or service. Having employees with multiple skills in an environment where broadened classification expands the range of possible assignments will mean that work assignments within teams will be able to be varied quickly to meet workload fluctations. The Workforce Certification Program will provide managers with an ongoing inventory of available skills that will aid in planning large scale workload changes.

Perceived changes in organizational flexibility will be measured through the annual attitude survey and through interviews with team leaders and managers. Actual production data will be used to assess depot reponses to workload changes occurring during the project.

Objective 3: Improve product/service quality and timeliness. The introduction of PWE practices is expected to contribute to increases in quality and timeliness. The test site already has a number of quality initiatives in place. Project orientation and training will continue to stress the importance of quality and of employee involvement in team efforts to improve quality. As project employees and teams become more self-managing, they are expected to take more pride in the quality and timeliness of their work. Quality considerations will also be included in team performance appraisals and computation of productivity gainsharing bonuses.

The test site currently has many goal-oriented activity performance and quality measures. Analysis of these measures will focus on DLA and DoD directed indicators. This will ensure that comparable measures will be available at both test and comparison sites. These measures cover such depot supply functions as effectiveness of processing receipts, accuracy of stock selection for shipment, transportation functions, inventory accuracy, and customer complaints. Safety measures will also be analyzed.

Objective 4: Reduce the overall cost of Depot operations. While the introduction of a skill-based compensation system will result in higher operating costs during the initial phases of the project, the institutionalization of the SBP/PWE concepts is expected to ultimately result in increased efficiency and productivity with a corresponding decrease in resource requirements. Leaner staffing, achieved through natural attrition over several years, will enable the test site to accomplish the same workload at reduced cost. Although increased costs will occur at the beginning of the project, cost neutrality is anticipated by the end of the third year, and cost savings are expected at the beginning of the fourth year.

Currently, DLA Depots employ a unit cost method to depict operational costs which allows tracking of costs at the cost center level. Cost savings analysis will examine all aspects of operations including non-labor costs *e.g.*, the cost of supplies, equipment, service, and related support. Costs will not be analyzed independently, *i.e.*, changes in cost will be considered along with changes in efficiency (the number of actual hours required to accomplish the workload) and changes in wage rates.

Quality measures will also be included in the cost savings analysis. The inclusion of these measures will ensure that observed declines in cost which may be gained at the expense of quality and timeliness are not erroneously attributed to increase in productivity. Data will be collected from existing systems and will be analyzed quarterly, at a minimum.

Evaluation Approach

In order to evaluate the impact of the interventions as depicted in Figure 1, a multi-method measurement approach will be employed, using such techniques as interviews, questionnaries, and analysis of work and production measures. Table 11 presents each intervention along with its expected effects, the measures that will be used to assess those effects, and the data sources that will be used to provide the necessary information. During the baseline data collection period, the appropriateness of these measures as well as the need for additional measures will be determined. The collection, consolidation, and storage of data will involve the participation of DDOU, DDMT, DLA Headquarters, and NPRDC.

TABLE 11—PROJECT INTERVENTIONS, EXPECTED EFFECTS, AND MEASURES

Intervention	Expected effects	Measures	Data sources
Participatory Work Environment (Includes (1) replacement of supervisors with team leaders, (2) management and employee training in PWE concepts/skills, and (3) creation of participatory work teams).	Increased employee involvement	Opportunity for participation	Attitude survey. Interviews/observations.
		Impact of participation	Attitude survey. Interviews/observations.
	Enhanced job-related attitudes	Job satisfaction	Attitude survey.
		Job enrichment	Attitude survey.
		Organizational commitment	Attitude survey.
		Turnover intent	Attitude survey.
	Increased cooperation within and across work groups.	Group functioning	Attitude survey.
		Organizational integration	Attitude survey.
	Improved timeliness and quality	Timeliness rates	Production data—Mechanization of Warehouse and Shipping Procedures (MOWASP).
		Quality measures	Quality assurance data (from Quality Directorate).
		Customer Satisfaction	Customer complaint system.
	Increased productivity	Earned hours/worked hours	Production data—Labor and Performance Effective Report (LAPER).
		Unit cost	DLA Unit Cost Program.
Multi-skilled work teams	Increased workforce flexibility	Response to workload changes	LAPER.
		Perceived organizational flexibility	Attitude survey. Interviews.
	No decline in safety	Safety measures	Personnel Office/Safety Office measures.
Workforce Certification Program (WCP) (Includes (1) training packages for each function, (2) demonstrated proficiency, and (3) periodic recertification).	Broadened skill levels	Skill base of workforce	WCP data
	Enhanced job-related attitudes	Job enrichment	Attitude survey.
		Satisfaction with job enhancement opportunities.	Attitude survey.
Skill-Based Pay	Broadened skill levels	Skill base of workforce	WCP data.
	Enhanced job-related attitudes	Pay satisfaction	Attitude survey.
		Perceived pay equity	Attitude survey.
Job series and grade consolidation	Simplified job classification process	Number of classification actions	Personnel records.
		Number of promotions, reassignments, details.	Personnel records.
		Number of personnel staff supporting classification function (by grade/pay band).	Personnel Office data. Interviews.
	Increased workforce flexibility	Response to workload changes	LAPER.
		Perceived organizational flexibility	Attitude survey. Interviews.
Pay Banding	Increased pay satisfaction	Pay satisfaction	Attitude survey.
		Perceived pay equity	Attitude survey.
Gainsharing	Increased pay satisfaction	Pay satisfaction	Attitude survey.
		Perceived pay equity	Attitude survey.

TABLE 11—PROJECT INTERVENTIONS, EXPECTED EFFECTS, AND MEASURES—Continued

Intervention	Expected effects	Measure	Data sources
	Increased identification with overall mission of organization.	Organizational commitment	Attitude survey.
	Increased link between organizational performance and reward.	Perceived link between organizational performance and reward. Actual link between organizational performance and reward.	Attitude survey. Success Share data. LAPER.
Incentive leave	Enhanced job-related attitudes	Job satisfaction Perceived fairness of reward system Perceived value of rewards	Attitude survey. Attitude survey. Attitude survey
Revised performance evaluation system.	Increased link between performance and recognition.	Perceived link between performance and recognition.	Attitude survey.
	Increased employee involvement	Opportunity for participation Impact of participation	Attitude survey. Interviews/observations. Attitude survey. Interviews/observations.
Alternative disciplinary procedures	Decreased productivity losses due to disciplinary actions.	Manhours lost to disciplinary actions Perceived productivity losses due to disciplinary actions.	Personnel Office Data. Attitude survey.
	Enhanced job-related attitudes	Perceptions of disciplinary system Perceived supervisor/employee relations.	Attitude survey. Attitude survey.
Streamlined organizational structure	Increased productivity	Earned hours/worked hours Unit cost	LAPER. DLA unit cost program.
	Increased workforce flexibility	Responses to workload changes Perceived organizational flexibility	LAPER. Attitude survey. Interviews.
	Improved timeliness	Timeliness rates	MOWASP.
	Reduction of staffing levels through attrition.	Staffing levels Overall payroll costs	Workforce data. Workforce data.
Combined Effects of Project Interventions.	Improved overall organizational performance.	Overall depot efficiency	DLA unit cost Program. LAPER.
		Quality measures	Quality Assurance data. Customer complaint system.
		Timeliness rates	MOWASP.
		Total Depot costs	DLA unit cost program.
	Improved overall organizational climate	Organizational Climate	Attitude survey.

C. Entry/Exit

Current Employees

A "full employee protection" approach will be used to enter the SBP plan without a loss of pay. Employees placed on teams will be converted from the current wage and general schedule grade and step into the CS compensation schedule at the same dollar salary they hold in the current compensation system. If current pay exceeds the top of the CS pay band, employees will be "grandfathered" into the new system. Other employees entering the new compensation schedule at their current salary will have their pay set at some point between two pay levels, or, in rare instances, it may fit exactly at one of the new pay levels. If pay falls between two pay levels, employees may advance at any time after entry on the team to the next higher pay level as soon as they are certified for all the skills required at that level. Although no minimum time gate will apply in this situation, the maximum time gate will apply. If pay is initially set at an exact pay level, the normal minimum and maximum time gates will apply for advancement to the next level, just as they apply for all subsequent advancement of employees between levels who achieve the next, or target level.

Employees who are placed on a team but choose not to participate in SBP will continue normal duties, will not be subject to rotation, and will not lose status or be subject to adverse actions because of this choice. An employee not participating in SBP will be transferred into the new compensation schedule at their exact current rate of pay. Future increases will be based on full comparability increases for the General Schedule. These employees will be required, however, to be certified in those job knowledges needed to accomplish their normal duties. A decision on whether to participate in SBP must be made within 90 days of the SBP implementation date.

As conditions of employment, employees participating in SBP will be required to be certified in all of the team skills within time limits and will be required to maintain proficiency through rotation.

Employees competing for positions at other activities during the course of the project may request a statement of comparison between the SBP pay levels to corresponding wage and general schedule positions and grades. These statements may then be submitted with applications. Eligibility for job positions outside DDOU will be determined by the outside activity from employee application information as is currently the case.

Grandfathering/Saved Pay

Employees assigned to teams whose current pay rate exceeds the maximum of a pay band at the time the SBP demonstration project is implemented will be covered by modified saved pay provisions for the duration of the project. They will receive the full annual comparability increase granted to General Schedule employees to insure no loss of pay as a result of the demonstration project. If the project is terminated, current saved pay provisions will apply whenever appropriate. These "grandfathered" employees will have the option of participating in the SBP aspects of the demonstration project or continuing to specialize in their current jobs. As an incentive to participate in SBP, grandfathered employees will be offered a one-time bonus of 10% of their annual base salary, to be paid at the time they complete their 100% certification. This single cash payment is contingent on successful certification of all team job functions within a 36-month period. A decision on whether to participate in SBP must be made within 90 days of the SBP implementation date.

Employees who elect to participate in SBP but fail to complete certification requirements within the maximum time gate (39 months) will lose all bonus entitlements and the appropriate performance based corrective action will be initiated. These employees will be given an opportunity period as required by 5 U.S.C. 4302(b)(6). All other current requirements for reduction in grade or removal based on unacceptable performance will be followed.

Team Members Not Electing to Participate in SBP Compensation

Employees who are assigned to multi-skilled work teams, but who do not elect to participate in SBP, will have their pay set at their current level, with full comparability increases for the General Schedule. Step increases will no longer be applicable.

Current Supervisors

Although the team leader will initially be appointed from the current supervisory work force, he/she will also be required to be certified in the job knowledges of the team within a 12-month period. The demonstrations of proficiency will be performed and witnessed by a subject matter expert and at least one team member certified in a particular skill. The sequence of administering the training and proficiency demonstrations are the same as for team members.

Team leaders whose current pay rate exceeds the 20% above level IV of their pay band will be covered by modified saved pay provisions. They will receive the full annual comparability increase for the duration of the project to insure no loss of pay as a result of the demonstration project.

New Hires

Newly hired personnel from outside the Federal service will be brought in at team entry level. Hires from other Federal agencies may be brought in at any dollar salary or team pay level within the appropriate pay band dependent upon their qualifications and the activity's staffing needs. During the initial phases of the project, however, most newly hired individuals will be employed at the entry level of the team, or at the trainee level for pay bands CS-4 and CS-5. Mastery and certification of the job knowledge on that team will be a condition of employment.

Table 12 briefly summarizes the pay setting conditions under the demonstration project.

TABLE 12. PAY SETTING SUMMARY

Team Leaders	20% above Level IV of assigned pay band.
Trainees	35% & 15% below Level 1 of assigned pay band.
New Hires (from outside Federal Service).	Level 1 of pay band.
New Hires (current Federal employees)	Pay rate individually based on existing dollar salary, highest previous rate, or team pay level dependent upon their qualifications and activity staffing needs.
Current Employees—Dependent upon current pay: 1—Exceed level IV—grandfathered. 2—May match pay Level I, II, III, or IV. 3—Between levels until certified to next higher pay level.	

Termination of the Project

All positions will be reclassified in accordance with nondemonstration criteria to determine the traditional series, pay plan and grade level. Employee placement rights will then be considered as outlined below:

1. An employee's new grade level will not be lower than his/her grade at project entry.

2. If an employee is converted to a grade whose maximum rate falls below his or her current salary, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR part 536, but receive the lower grade designation.

3. If an employee's salary falls between the two steps, salary will be set at the higher rate, except for employees placed in a PMRS position (who will continue to receive their current rate of pay). The placement authority will be 5 CFR 335.102.

4. Realignment placement, if necessary, will be based on RIF procedures.

Exit from the Project

An OPM-approved information sheet describing the demonstration project, the positions/series included in the team(s) to which the employee was assigned, and the formula for converting SBP pay bands/salaries into GS or FWS grades will be inserted on the right side of the Official Personnel Folder of each employee who exits from the SBP plan for any reason. Grade/pay determinations for former SBP employees will be the responsibility of their subsequent employers.

VII. Authority Requirements

Authorities for a number of plan elements are not included in present Civil Services laws and regulations. They are needed to implement the SBP/PWE plan, and include the following provisions:

1. The establishment of a CS (compensation schedule) wage system with multiple pay bands to compensate different levels of multi-skilled work teams, each with a broad range of work skills.

2. A classification system based on skill levels within teams which encompasses a broad range of skills and which are described by a team position description.

3. A formal skill acquisition certification program as a basis for promotions within pay bands.

4. A performance appraisal system that encompasses three summary rating levels, and that incorporates a peer review input process.

5. The use of excused absence as an individual incentive award for Exceptional performance not to exceed 32 hours per year per individual. (This is currently authorized for DLA under Pub. L. 100-463 § 8087.)

6. Expansion of the Performance Management and Recognition System to include all managers above team leader level.

7. A modification of competitive areas in reduction-in-force situations to coincide with functional areas and acquired skills.

VIII. Waivers of Law and Regulation

Provisions of civil service laws or regulations that must be waived to implement this demonstration project are included as Table 13. The project is in accordance with 5 U.S.C. 4703(c) and is consistent with all merit system principles. All waivers are made *only* to the extent that project provisions as outlined in this plan conflict with existing laws or regulations.

TABLE 13. PROVISIONS OF LAWS OR REGULATIONS THAT REQUIRE WAIVERS

Title 5, United States Code
Section 5101 (1)(B) and (2)
Classification (grouping of positions by classes and grade)
Section 5102
Classification, Definitions—e.g., classification, grade, etc.
Section 5104
Basis for grading positions [1]
Section 5105(c)
Standards for classification of positions [1]
Section 5106 (a) and (b)
Basis for classifying positions [1]
Section 5107
Classification of positions [1]
Section 5110
Review of classification of positions [1]
Section 5111
Revocation and restoration of authority to classify positions [1]
Section 5331 through 5336
General Schedule pay rates and step increases [1]
Section 5342(a)(2)
Definition of "prevailing rate employee" [1]
Section 5343
Prevailing rate determinations; wage schedules; night differentials [1]
Section 5346
Job grading system [1]
Section 5361
Grade and pay retention, Definitions [1]
Section 5362
Grade retention following a change of positions or reclassification [1]
Section 5402(a)
Performance management and recognition system, Coverage
Section 5544
Wage-board overtime and Sunday rates; computation
Section 7503
Suspension for 14 days or less; cause and procedure

Title 5, Code of Federal Regulation
Section 300.601
Time in grade restrictions, applicability [1]
Section 315.902
Probation on initial appointment to a supervisory position, Definition of "supervisory position," as applied to team leader positions
Section 351.402(b)
Reduction in force, Competitive area
Section 351.403(a)
Reduction in force, Competitive Level
Section 351.504
Retention standing, Credit for performance
Section 351.701
Retention standing, Bump and retreat rights
Section 430.204(h)
Performance appraisal systems for General Schedule and prevailing rate employees [1]
Part 511, Subpart B
Coverage of the general schedule [1]
Part 511, Subpart F
Classification Appeals [1]
Part 511, Subpart G
Effective dates of position classification actions or decisions [1]
Part 531
Pay under the General Schedule [1]
Part 532
Prevailing rate system [1]
Part 536, except section 536.104
Grade retention [1]
Section 540.102
Performance Management and Recognition System, Definitions
Section 752.203
Suspension for 14 days or less, Procedures

[1] Only as applied to employees assigned to teams.

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Part VI

Federal Election Commission

11 CFR Parts 100, 104, 114, and 116
Debts Owed by Candidates and Political Committees; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 114, and 116

[Notice 1990—10]

Debts Owed by Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; Transmittal of Regulations to Congress.

SUMMARY: The Commission has deleted its regulations at 11 CFR 114.10 and has prepared new 11 CFR part 116 concerning the extension of credit and settlement of debts owed by candidates and political committees. These regulations implement sections 433, 434, 439a, 441a, 441b and 451 of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 *et seq.* In addition, the Commission has made several corresponding amendments to 11 CFR 100.7(a), 104.3(d) and 104.11(b) to bring those provisions into conformity with new 11 CFR part 116. Finally, the Commission is preparing a new form to facilitate the submission of debt settlements, which will be transmitted to Congress at a later date. Further information on these revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of new regulations at 11 CFR part 116, which concern debts owed by candidates and political committees. The new rules replace current § 114.10, which is being removed from 11 CFR. In addition, the Commission is publishing conforming amendments to §§ 100.7, 104.3 and 104.11 to reflect the new provisions in part 116 of the regulations.

On December 6, 1988 the Commission issued a Notice of Proposed Rulemaking (NPRM) is which is sought comments on proposed revisions to these regulations 53 FR 50193. Seven written comments were received in response to the Notice. A public hearing was held on February 15 and 16, 1989 at which four witnesses presented testimony on the issues raised in the rulemaking.

Section 438(d) of title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 22, 1990.

Explanation and Justification

The Commission has extensively revised and reorganized its regulations regarding debts owed by candidates and political committees to ensure that the creation and settlement of such debts do not result in excessive or prohibited contributions to the debtor committees, and to promote the timely public disclosure of such transactions. During the course of this rulemaking, the Commission has re-examined several fundamental issues regarding debts owed by political committees, such as which types of committees should be permitted to seek debt settlement, whether debt settlements should be reviewed as agreements are reached or only after all creditors have ratified settlements, the scope of the Commission's review of debt settlements, and the relationship between the Commission's procedures and the procedures established by Congress in the Federal Bankruptcy Code.

The principal areas in which new 11 CFR part 116 differs from the previous language of 11 CFR 114.10 are as follows:

(1) Under the new rules, ongoing committees will no longer be permitted to settle debts (*see* 11 CFR 116.2).

(2) New procedures are included regarding situations in which either the political committee's creditors have gone out of business (*see* 11 CFR 116.9) or the political committee is essentially defunct (*see* 11 CFR 116.8).

(3) Special provisions have been added regarding authorized committees (including authorized committees of publicly-funded Presidential candidates) that wish to settle debts, terminate, or assign debts to other committees authorized by the same candidate (*see* 11 CFR 116.2(c)).

(4) New provisions have been added which address debts owed to unincorporated commercial vendors (*see* 11 CFR 116.3 and 116.4), committee employees (*see* 11 CFR 116.6), or other individuals who have advanced funds to or on behalf of a political committee (*see* 11 CFR 116.5).

(5) A more complete explanation of the procedures for submitting debt settlements for Commission review and a more detailed list of the information that must be provided have been added. (*see* 11 CFR 116.7).

(6) The treatment and reporting of disputed debts is clarified (*see* 11 CFR 116.10).

After considering the public comments and testimony regarding the Commission's role in bankruptcy proceedings under chapters 7 and 11 of the Federal Bankruptcy Code (11 U.S.C. Ch. 7 and 11), the Commission has decided to add a provision regarding the submission of debt settlement plans by terminating committees that have obtained releases from debts subject to chapter 7 bankruptcies. However, the new rules do not specifically address chapter 11 proceedings. Nevertheless, as explained more fully below, the promulgation of the new debt settlement rules may affect such proceedings.

The Commission has also decided to continue the current approach of permitting committees to file debt settlement requests as they reach agreements with creditors. Thus, the Commission is not adopting the previous proposals that would have required committees to present all their debt settlements at one time in a single unified plan for Commission review.

The Commission also notes that federal tax questions may arise concerning the proper treatment of bad debts owed to taxpayers by political parties or political committees. The reader should consult section 271 of the Internal Revenue Code regarding such matters. 26 U.S.C. 271.

Section 116.1 Definitions

New § 116.1 sets out definitions for the terms "terminating committee," "ongoing committee," "commercial vendor," "disputed debt," "extension of credit," and "creditor."

The previously proposed definition of "terminating committee" in paragraph (a) has been reworked to exclude committees that are continuing to make or accept contributions or expenditures for purposes other than winding down and paying outstanding bills. This is consistent with § 116.7(e)(6), which requires committees to demonstrate that they qualify as terminating committees. They should do so when they file their first debt settlement plan. The classification of a political committee as a terminating committee is of significance because only terminating committees are permitted to settle debts. While the new rules do not require terminating committees to terminate

within any set amount of time after they have settled all their outstanding debts, the Commission anticipates that most committees will file a termination report shortly after the Commission has concluded its debt settlement reviews. Failure to do so may raise questions about the committee's *bona fide* intent to terminate.

A definition of "commercial vendor" has been included in § 116.1(c) to clarify that debts owed to commercial vendors may be settled under these rules only if the vendor's usual and normal business involves providing goods or services of the type provided to the candidate or political committee. The Commission has modified the definition that appeared in the NPRM by deleting the language indicating that the provision of such goods or services must be "for profit." Transactions involving nonprofit entities and transactions between political committees will be addressed on a case-by-case basis. *See, e.g.* Advisory Opinion ("AO") 1989–4.

The Commission has also added a definition of "extension of credit." *See* 11 CFR 116.1(e). This term includes unintended credit which results when payment is due upon delivery but the political committee simply does not pay, as well as situations where the committee's creditor either decides in advance to provide goods or services on credit, or decides on or after the due date to allow more time for payment.

Finally, a new definition of "creditor" has been added to ensure that the term is correctly read to include both commercial vendors and other entities or persons, including individuals, to whom a debt is owed. *See* 11 CFR 116.1(f).

Section 116.2 Debts Owed by Terminating Committees, Ongoing Committees and Authorized Committees

The previous debt settlement regulations at 11 CFR 114.10 did not expressly limit debt settlements to political committees that are in the process of winding down their activities and preparing to terminate, although the vast majority of those seeking debt settlement are in that posture. Thus, questions arose as to the appropriateness of permitting ongoing committees, including party committees, separate segregated funds and nonconnected committees, to settle their debts for less than the full amount owed, particularly since these committees may have the ability and intention to continue soliciting funds for political purposes. Consequently, the NPRM sought comments on proposed regulatory language limiting debt settlements to political committees in the process of termination, and prohibiting ongoing committees from settling their previous debts.

The Commission heard testimony from one commenter who favored continuing to allow ongoing committees to seek debt settlements. The commenter stated that fairness to creditors would be promoted if the creditors could accept a generous settlement immediately, rather than being forced to wait substantially longer with little assurance that complete payment would be forthcoming. The commenter also pointed out that ongoing committees may have little choice other than to continue to support candidates and carry on normal operations while they are negotiating timetables for payment of previous debts.

The Commission has now decided to adopt the proposed language prohibiting ongoing committees from settling debts for less than the full amount owed. As the comment indicates, these committees have the intention to continue to solicit funds and to engage in election-related activities. Consequently, the settlement of an ongoing committee's debts cannot be considered to be commercially reasonable given that the committee is continuing to receive funds that could be used to pay its past debts. Moreover, by freeing additional funds for future electoral activity, such a practice could result in indirect corporate subsidization of a political committee's speech, and amplification of such speech beyond the committee's ordinary capacity. *Cf. FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 257–58 (1986) (individual contributions to political committees "reflect popular support for the political positions of the committee," while "corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide unfair advantage in the political marketplace"). Permitting settlement of an ongoing committee's debts is also inconsistent with section 433(d)(2) of the Act. That section contemplates the orderly application of a political committee's assets to reduce its outstanding debts only in the situation where the committee is insolvent and preparing to terminate.

Please note that under the new rules, "ongoing committee" includes party committees, separate segregated funds and nonconnected committees while such committees continue to engage in political activities. However, if a party committee, separate segregated fund or nonconnected committee decides to end its election-related activities, it may settle debts once it has qualified as a terminating committee.

Although the Commission has concluded that it is inappropriate to permit ongoing committees to settle debts, the Commission is adopting provisions that give ongoing committees the necessary flexibility to resolve certain concerns. Thus, ongoing committees may continue to resolve *bona fide* disputes with creditors regarding debts under new § 116.10. Ongoing committees, as well as terminating committees, will also be able to resolve difficulties created when their creditors have gone out of business. *See* 11 CFR 116.9. The Commission has also encountered the opposite situation, where the creditor is unable to locate the committee, or the committee is essentially defunct. Under certain limited conditions, the creditor may seek Commission approval of a complete forgiveness of the remaining debt. *See* 11 CFR 116.8.

The NPRM observed that there have been debt settlement requests in which different creditors were offered and accepted very different terms and payments from the same political committee. Thus, the NPRM sought suggestions as to whether the Commission should encourage political committees to pay each creditor approximately the same percentage for each outstanding debt. It also presented the possibility of establishing mandatory or suggested priorities for the settlement of debts owed to different categories of creditors and possibly requiring committees to adhere to the priorities set out in Federal Bankruptcy Code. *See* 11 U.S.C. 507. The Commission noted that section 433(d)(2) of the FECA refers to the Commission's authority to establish procedures to determine the insolvency of political committees, to liquidate the assets of insolvent committees for the reduction of outstanding debts, and to terminate insolvent committees after liquidation.

The commenters and witnesses at the hearing strongly opposed the creation of such priorities and pointed out several difficulties that the Commission could expect to encounter if it sought to oversee the liquidation of insolvent committees. It was also suggested that the Commission lacks the practical experience needed to resolve issues traditionally handled by the bankruptcy courts.

The Commission has now decided not to establish mandatory or suggested priorities for payment of creditors and not to implement new insolvency rules or procedures. Instead, the Commission will use its limited resources to ensure

that debt settlements presented to the Commission do not conceal transactions involving the making and acceptance of prohibited or excessive contributions.

The NPRM also sought comments on the related question of the Commission's role when an insolvent political committee files a petition under chapter 7 or chapter 11 of the Federal Bankruptcy Code. *See* 11 U.S.C. 301. In the past, the Commission has concluded that where candidates first sought release from dischargeable debts under chapter 7, the debts were settled for purposes of Commission review. *E.g.* Debt Settlement Request 87–11. The Commission received comments and testimony to the effect that the Commission should petition Congress to amend the Bankruptcy Code to permit the Commission to be notified, and if appropriate, to become a party in interest in bankruptcy cases involving political committees so that it could ensure compliance with the FECA. The comments preferred to let bankruptcy courts handle the liquidation or reorganization of a political committee's assets to the alternative of Commission supervision of insolvency proceedings for indebted committees. After further consideration, the Commission has decided that it should add language to the new rules to clarify how a release from dischargeable debts under chapter 7 affects the subsequent filing of a debt settlement plan by a terminating committee. *See* discussion below of new 11 CFR 116.7(g).

The reorganization of a political committee under chapter 11 presents many of the same concerns as are raised by the settlement of an ongoing committee's debts. As one federal bankruptcy court has acknowledged, such chapter 11 reorganizations implicate important policy considerations, such as the potential for the debtor committees to "deceiv[e] new donors by failing to inform them of the pending petition" for reorganization, as well as the "unfair advantage of chapter 11 political committees allowed to compromise debts while others may pay in full, and the potential for indirect corporate subsidization of a political committee's speech." *In Re: Fund for a Conservative Majority*, 100 Bankr. 307, 309 (Bankr. E.D. Va. 1989). The court concluded that some of the Commission's concerns in this area could be addressed by providing the Commission with an opportunity to review the reorganization plan submitted by the debtor committee. Unfortunately, the types of information needed to determine whether FECA violations have occurred may not be available in a committee's reorganization plan. While the new part 116 regulations prohibit ongoing committees from settling debts absent special circumstances, the new rules do not specifically address chapter 11 reorganizations involving political committees. Nevertheless, the Commission may seek to participate in bankruptcy cases presenting FECA questions and will continue to examine chapter 11 reorganizations of ongoing committees for evidence of FECA violations.

The NPRM also contained draft language that would have required terminating committees to submit all debt settlements as part of a single unified debt settlement package. This was intended to facilitate a more orderly review by the Commission of debt settlements and to enable the Commission to ascertain how the terminating committee plans to dispose of its remaining debts. This is a concern in situations where the committee had substantially more debts and obligations than cash on hand, and only limited fundraising prospects.

One commenter expressed the concern that the proposal for submission of all debt settlements in a single document would substantially delay creditors who reach settlements quickly from receiving any payments for lengthy periods of time while the political committee is negotiating agreements with all its other creditors.

In light of this concern, the Commission has revised §§ 116.2(a) and 116.7 so that the submission of all debt settlements in a single unified plan is not required. Thus, terminating committees may submit debt settlement plans in which agreements have been reached with some creditors but not others. However, the debtor committees will be required to include in their submissions summaries of their overall financial situation, including their plans for settling or resolving all remaining debts. This information is needed to enable the Commission to evaluate the commercial reasonableness of the debt settlements presented. In many cases, this approach will ensure that the details of a committee's earlier debt settlements will be placed on the public record more quickly than if the settlements were delayed until every creditor has signed an agreement to settle. Further information on submitting debt settlement plans and the scope of Commission review are explained below in 11 CFR 116.7.

New § 116.2(c)(1) prohibits authorized committees from settling debts if the candidate has another authorized committee with permissible funds available to pay part or all of the amount owed. This language also prohibits authorized committees from terminating if they have funds or assets to pay the outstanding debts of another authorized committee that cannot meet its own obligations.

The Commission received no public comments on proposed language in another section that expressly stated that the availability of funds to transfer from one authorized committee to another is a factor the Commission would consider in reviewing debt settlements. Such language has now been deleted since new § 116.2(c)(1) addresses this situation. Another comment expressed concern that new part 116 could well permit candidates to eliminate their previous campaign debts and then form new committees that would receive substantial extensions of credit from the same incorporated vendors, thereby allowing these candidates to put impermissible corporate contributions behind them. The language in new § 116.2(c) should alleviate such concerns. Moreover, the debt settlement review procedures set out in new § 116.7 will enable the Commission to question whether vendors have engaged in this type of activity with selected candidates, and to initiate enforcement actions in appropriate cases.

The new language in § 116.2(c)(1) regarding authorized committees parallels the provisions prohibiting ongoing committees from settling debts. The Commission notes that many candidates form a new principal campaign committee for each election cycle rather than simply rolling over their previous committee. Thus, a series of principal campaign committees is in many respects equivalent to an ongoing committee. The Commission has determined that the reasons for not permitting ongoing committees to settle debts should also prevent principal campaign committees from settling debts in situations where the candidate has another campaign committee capable of paying the amount owed.

For the same reasons, paragraph (c)(2) has been added to prohibit transfers of funds between a candidate's authorized committees for different elections if the transferor committee has net debts outstanding.

New paragraph (c)(3) has been added to assist authorized committees that would like to terminate but are unable to do so because they have outstanding debts which they are unable to pay. It permits indebted authorized committees to assign their debts to other authorized committees of the same candidate and then terminate. Such assignments may not be made until after the election has been held, to prevent the formation of a new committee solely for the purpose of avoiding payment of debts. However, if either committee is an authorized committee of a Presidential candidate receiving public funding, the assignment may not take place until after the audit, repayment and enforcement processes have ended. The original committee must notify the creditors of the debt assignment. The authorized committee receiving the assigned debts must accept the obligation to pay the amount owed and must assume the reporting responsibilities for the assigned debts. This committee should report financial activity related to such debts and contributions received for their payment on a separate FEC Schedule A and Schedule D, but should include these figures in the totals reported on the committee's summary page. The Commission notes that contributions designated to pay the previous debts would be subject to the contribution limits for the previous election, rather than the upcoming election, under the net debts outstanding rules set forth in 11 CFR 110.1(b)(3). Thus, a separate schedule will assist the committee and the Commission in tracking these separate limits.

The concept of assigning debts is based in part on proposed activity approved by the Commission in AOs 1980–43 and 1977–52. One witness indicated that this approach would serve a useful disclosure function. Another commenter expressed the concern that the ability of the creditors of the committee accepting the assigned debts to obtain payment could be jeopardized by the committee's increased indebtedness. In practice, the Commission has not encountered such difficulties in the time since this approach was originally approved in AOs 1977–5? and 1980–43.

Another issue on which the NPRM sought comments was whether publicly-funded committees of Presidential candidates should be permitted to settle debts, and if so, whether higher standards should be used to evaluate their debt settlements. The NPRM also questioned whether such settlements should be submitted for Commission review as soon as practical, or whether the campaign committees should be permitted to wait until the Commission's audit process has been completed.

The Commission heard testimony from one commenter who proposed an alternative approach under which the contribution limits would be removed for Presidential candidates who are defeated and do not run again for President in the succeeding election. This would enable such indebtsd Presidential committees to seek additional contributions from those who have already given the maximum amount permitted under the Act. However, another commenter opposed this suggestion and argued that it would encourage more liberal campaign spending rather than responsibility and accountability. The Commission is not adopting the proposal regarding waiving the contribution limitations because this would be contrary to the plain wording of the statute as well as some of the basic principles underlying the FECA and the public financing statutes.

The Commission has now concluded that debts owed by publicly-funded Presidential committees should not be treated differently than debts owed by authorized committees of nonpresidential candidates. Thus, new § 116.2(c) of the Commission's regulations allows publicly-funded Presidential committees to settle debts if no other committee authorized by the same candidate has permissible funds available to pay the amounts outstanding. The indebted Presidential campaign committee is subject to the same requirements and procedures as other political committees eligible to settle debts. Furthermore, the original amounts of their debts will continue to be counted against their spending limits under 11 CFR 9035.1(a)(2). Under current 11 CFR 9038.2(b)(1)(v), the settlement of debts also reduces the indebted Presidential campaign committee's remaining entitlement to matching funds on its statement of net outstanding campaign obligations, which could affect the committee's repayment obligations. The new provisions in § 116.2(c) will not change this.

The Commission notes that questions were raised in Advisory Opinion 1988–5 as to whether a current publicly-funded Presidential committee may contribute or transfer funds to another publicly-funded committee of the same candidate for a previous election cycle to pay debts from the earlier campaign. The opinion concluded that such transfers or contributions are not qualified campaign expenses under 11 CFR 9034.4 and are not includable in the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5. However, such payments could be made from excess campaign funds once the audit process is concluded and any repayment or possible penalty obligations have been satisfied. Nothing in new 11 CFR part 116 would alter this conclusion.

Section 116.3 Extensions of Credit by Commercial Vendors

This new section generally follows previous § 114.10 by setting forth the standards for the extension of credit by corporations in the ordinary course of their business as commercial vendors. As under the previous rules, the failure to meet these standards results in an impermissible corporate contribution. New § 116.3 also adds corresponding standards for unincorporated commercial vendors who extend credit to candidates or political committees. An unincorporated vendor's failure to comply with these standards results in the making of a contribution subject to the dollar limits set forth in 11 CFR 110.1.

Paragraph (c) of § 116.3 lists the factors the Commission will consider in determining whether credit was extended in the ordinary course of business. These factors are intended to provide guidance so that commercial vendors and political committees may avoid situations resulting in the making or acceptance of excessive or prohibited contributions. The factors need not be accorded equal weight and in some cases a single factor may not be dispositive. In determining whether the ordinary course of business standard has been met, the Commission will also consider compliance or noncompliance with regulations issued by other Federal agencies.

One comment suggested that, instead of relying on these factors, the Commission adopt a presumption that a commercial vendor's credit arrangements reflect sound business judgment and that the presumption may be overcome with compelling evidence of a noncommercial motivation. The Commission has decided not to adopt this approach because it would provide committees and their creditors with little, if any, guidance as to what types of evidence would be evaluated or would be considered compelling.

Another witness at the public hearing suggested that it would be preferable for the Commission to rely upon judicial interpretations of the Federal Bankruptcy Code and the Internal Revenue Code regarding the meaning of "ordinary course of business," as well as the meaning of "commercially reasonable," a term which is used in § 116.4. Although the Commission will take these judicial interpretations into account in an appropriate case, these terms must be interpreted in light of the special focus of the FECA.

Section 116.4 Forgiveness or Settlement of Debts Owed to Commercial Vendors

Section 116.4 addresses the forgiveness or settlement of a political committee's debts owed to both incorporated and unincorporated commercial vendors. Previously, § 114.10 covered debts owed to corporations, but did not address debts owed to unincorporated commercial vendors. The forgiveness or settlement of such debts will result in the making of a prohibited corporate contribution or possibly an excessive contribution by an unincorporated vendor unless the debt settlement is commercially reasonable or unless the amount is not treated as a contribution under 11 CFR 100.7(b). In determining whether a debt settlement is commercially reasonable, the Commission will evaluate both the political committee's efforts to satisfy the debt and the creditor's efforts to obtain payment. However, the rules do not require the creditor or the debtor to undertake particular activities that are not likely to result in the reduction of the debt. For example, the commercial vendor is not required to go beyond its usual efforts to collect debts of similar amount from non-political entities.

One commenter questioned the validity of comparisons to non-political debtors and suggested instead that the Commission should focus on whether the vendor's actions were motivated by commercial or political considerations. The Commission recognizes that there are significant differences between political committees and other entities seeking to do business on credit, but believes that the standard suggested by the commenter is too subjective. Thus, reliance upon the "ordinary course of business" and "commercially reasonable" standards found in both the new rules and the previous regulations provides clearer guidelines for determining whether a commercial vendor's actions comply with the FECA than would be provided if the commenter's suggestion were adopted.

The Commission has revised the language of the previously proposed rules to clarify the political committee's obligations to make reasonable efforts to pay the debt and to comply with the debt settlement procedures specified in 11 CFR 116.7 and 116.8, including Commission review. *See* 11 CFR 116.4(c). Paragraph (d)(2) of § 116.4 lists the types of actions that the debtor committee may undertake to satisfy the reasonable efforts requirement.

Although the proposed rules had stated that a debt settlement would be considered commercially reasonable if the initial extension of credit was made in accordance with regulations issued by other agencies pursuant to 2 U.S.C. 451, this language has now been deleted to avoid creating the appearance that noncompliance with rules regarding such matters as reporting requirements of other agencies would automatically be viewed as not commercially reasonable. Nonetheless, regulations issued under section 451 may be used by the Commission as guidance in determining whether the activity in question was commercially reasonable under the FECA.

New paragraph (e) indicates that the Commission's regulations are not intended to force a commercial vendor to forgive or settle a political debt if the vendor does not wish to do so. This is consistent with the previous Commission practice of examining debt settlement statements for indications that creditors have agreed to the terms of the settlements. *See* Federal Election Commission Directive No. 3, Agenda Document #82–110 (effective July 22, 1982). Please note that a sentence has been deleted from the previously published version of paragraph (e) which merely restated the idea that committees and their vendors could agree to debt settlement or debt forgiveness.

In 11 CFR 116.4, new paragraph (f) has been added to clarify that the reporting obligations continue until the debt is paid, or until Commission review of the settlement or forgiveness is completed. This language parallels the corresponding reporting provisions in §§ 116.5 and 116.6, and is consistent with the continuous reporting requirements set out at current 11 CFR 104.11.

Section 116.5 Advances by Committee Staff and Other Individuals

New § 116.5 has been prepared to clarify the Commission's treatment of payments by individuals, including campaign staff, from personal funds and personal credit cards to purchase various goods or services for political committees with the expectation of subsequent reimbursement. The Commission has encountered situations, for example, where individuals have used, or sought to use, personal funds to purchase airfare, rental cars, meals, lodging, postage, office supplies, messenger services and a variety of other election-related items on behalf of political committees. *See, e.g.*, MUR 1349 and AO 1984–37. Although many campaign workers may only be able to advance relatively small amounts, individuals with sizable resources may have the ability to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. The Commission is concerned that this could occur during critical periods in a campaign when a candidate's authorized committee may be experiencing financial difficulties.

Under current § 100.7(b)(8), payments for personal transportation expenses incurred by individuals while traveling on behalf of candidates or political party committees are not contributions if they do not exceed $1000 per candidate per election or $2000 per year for the political committees of a political party. Personal funds used by volunteers for usual and normal subsistence expenses incidental to volunteer activity are also not considered contributions under 11 CFR 100.7(b)(8). However, payments by individuals for travel expenses that do not fall within these two exemptions are contributions under FECA.

The Commission has now decided to add new § 116.5 to clarify that payments by individuals using personal funds or personal credit cards to obtain goods or services for or on behalf of a political committee are contributions to that committee unless they fall within one of the exemptions set forth in § 100.7(b), as outlined above. In addition, this new provision sets out a limited exception for an individual's personal tranportation expenses, and for usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. These exemptions only apply, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days for credit card transactions or thirty days in other cases. On the other hand, an in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long reimbursement, if any, takes.

The purpose of this provision is to provide flexibility in situations where individuals may find it necessary to pay personal travel and subsistence expenses. The Commission recognizes that campaign committees may not want to provide credit cards to their field workers. This regulation is also consistent with the treatment of credit card transactions in the public financing regulations. *See* 11 CFR 9035.2(a)(2).

One commenter testified that campaign staff should be able to make advances of up to $500 for legitimate campaign expenses beyond the personal travel and subsistence expenses, provided the campaign reimburses the staff member within thirty or sixty days after receipt of a request for reimbursement. If such a request is not forthcoming, the campaign should seek it. The commenter argued that the expenses in question are usually for caterers, hotel rooms, and rental cars, not the staff's personal transportation or subsistence and, therefore, the commenter believed the proposed approach was simply too restrictive.

The Commission has decided not to adopt the commenter's suggested approach because it is inconsistent with the limited nature of the exemption from the definition of contribution in section 431(8)(B)(iv) of the FECA. Thus, under the final rules, advances made by individual staff members for expenses other than personal transportation or subsistence expenses are treated as in-kind contributions subject to the applicable contribution limits. Consequently, reimbursements for these nonexempt expenses are treated as refunds of the staff members' contributions.

Another commenter urged the Commission is extend this provision to committees other than campaign committees and party committees. The Commission believes that limiting this provision to candidates' committees and party committees parallels the transportation and subsistence exemption in section 431(8)(B)(iv) of the FECA. The Commission notes, however, that individuals may advance funds to separate segregated funds, and other unauthorized committees to the extent permitted by the contribution limits of the Act. *See* AO 1984–37 n. 2.

Paragraphs (b) and (d) of the new rule indicate that an unreimbursed payment must be treated as a debt and reported as such until the debt has been paid or settled or forgiven and the Commission's review of the debt settlement or forgiveness has been completed. The Commission wishes to emphasize that this rule does not require individual creditors to settle or forgive debts if they do not wish to do so.

A new "scope" paragraph has also been added to the final version of this regulation to clarify that individuals who are acting as commercial vendors are covered by the commercial vendor provisions of §§ 116.3 and 116.4. Thus, they are not covered by § 116.5, which is intended to apply to individuals extending credit or using credit cards in their personal capacities. The subsequent paragraphs of § 116.5 have been renumbered accordingly.

Finally, the Commission notes that individuals may also lend funds directly to political committees. Under both the old and new regulations, such loans are contributions until repaid, and if not repaid, such loans are contributions to the extent forgiven by the lender. 11 CFR 100.7(a)(1)(i)(B). Under new part 116 of the regulations, such personal loans must also be treated as outstanding debts, and if settled, the settlements are subject to Commission review under 11 CFR 116.7. Please note that the Commission's treatment of bank loans is discussed below in the Explanation and Justification for § 116.7.

Section 116.6 Salary Payments Owed to Employees

New § 116.6 addresses several situations which have arisen concerning unpaid salaries owed to committee staff. For example, a political committee and its campaign workers may agree that salary will be paid only as funds are available. In other cases, the committee may wish to treat the individuals as volunteers retroactively. Under section 431(8) of the Act and 11 CFR 100.7(b)(3), the value of services provided by a volunteer is not a contribution.

The language of new § 116.6 permits committees to treat the unpaid amount either as a debt owed to the employee or as volunteer services under 11 CFR 100.7(b)(3), provided the employee agrees in writing to be considered a volunteer. This decision may be made at any time, thereby allowing committees and their staffs to set up arrangements in which the staff members are paid up until the point at which the compaign is low on funding. If, on the other hand, the committee and the employee agree that the unpaid salary is to be treated as a debt, the amount owed is reportable as a debt under 11 CFR 104.3 and 104.11 and must be addressed in a debt settlement plan filed under 11 CFR 116.7. The new rules do not treat unpaid salary obligations as contributions, although the NPRM sought comments on situations in which it might be advisable to do so.

The Commission received one comment on § 116.6. The commenter stated that the Commission should avoid becoming involved in contractual disputes between committees and their employees, and supported the language in paragraph (a) which states that unpaid salaries shall not be treated as contributions. The commenter also questioned whether paragraph (b) would permit the settlement of such debts owed to employees, but would prohibit the complete forgiveness of these obligations. The new rules do permit such employees to forgive in full these unpaid amounts. Commission review of such forgiveness is not needed because the amounts would not be potential contributions, and a complete forgiveness would not adversely affect the committee's funds available to pay other creditors. The Commission notes that although an employee of a committee may become a volunteer, an individual who is an independent contractor, such as a consultant, may not convert to volunteer status. Such person is selling his or her services as a commercial vendor, and is therefore subject to the requirements of §§ 116.3 and 116.4. Consequently, an individual who is an independent contractor may agree to the settlement of a debt arising from the committee's failure to pay his or her fee, provided that such settlement is commercially reasonable and the settlement otherwise satisfies the Commission's debt settlement standards.

Section 116.7 Debt Settlement Plans Filed by Terminating Committees; Commission Review

New § 116.7 contains guidelines concerning the submission of debt settlement plans by terminating committees and explains the Commission's review procedures. For the reasons stated above, these rules differ from previous § 114.10 in that ongoing committees may no longer settle debts or file debt settlement requests. Another change is that the new regulations no longer provide for the filing of debt settlements by creditors. However, creditors wishing to write off bad debts should refer to new § 116.8, below.

New § 116.7 continues to permit terminating committees to file debt settlements once they have reached agreements with some of their creditors. Thus, the Commission has decided not to adopt the proposal published in the NPRM that would have required committees to postpone the filing of a debt settlement plan until they have reached agreements with every creditor. That approach would have enabled a single creditor to refuse to settle, thereby adversely affecting the ability of other creditors to be paid. However, the new rules encourage terminating committees to include as many proposed settlement agreements as possible in a debt settlement plan. In an appropriate case, the Commission may require the submission of additional debt settlement agreements before reviewing a terminating committee's debt settlement plan. This may be necessary to permit the Commission to conduct a realistic evaluation of the debt settlement plan.

The new rules do not establish a deadline for submitting a debt settlement for review once an agreement with a creditor has been reached. However, under new § 116.7(a), the terminating committee must postpone payment of the amount agreed to in the settlement with the creditor until the settlement has been submitted as part of a debt settlement plan and the Commission has completed its review of that plan. Please note that terminating committees are not required to settle all their debts or terminate within any prescribed amount of time. One commenter found the lack of a timetable to be troubling. Unfortunately, the establishment of an overall time limit is not feasible because different committees and different creditors may need different amounts of time to reach settlements.

The language of § 116.7(a) has been reworded from the proposals published in the NPRM to clarify that all debts and obligations must be paid, settled, forgiven, extinguished, or otherwise discharged, or become unpayable, prior to the political committee's termination.

Paragraphs (b) and (c) of § 116.7 indicate which types of debts may be settled subject to Commission review, which types may be settled but are not subject to review, and which debts may not be settled. New paragraph (b) has been added to explain that debts owed to commercial vendors, committee staff, employees, and debts arising from loans made by political committees and individuals, including candidates, may be settled and that the Commission will review such settlements. Under paragraph (c), publicly-funded Presidential candidates may not settle repayment obligations arising under 26 U.S.C. chapters 95 and 96. In addition, disputed debts are specifically excluded from the Commission's debt settlement process. This is based on current Commission policy and FEC Directive Number 3. Other debts or obligations owed to the United States government are not specifically mentioned in paragraph (b) or (c) because they may be governed by other applicable laws. Obligations to pay civil penalties are also omitted from these two paragraphs.

At the time the Commission issued the NPRM, it indicated that the revised debt settlement rules would not apply to bank loans, since the Commission does not generally consider bank loans in the debt settlement process, and does not intend to change its approach. Further guidance on this may be provided in a separate rulemaking regarding the bank loan rules at 11 CFR 100.7(b)(11) and 100.8(b)(12). *See* NPRM, 54 FR 31286 (July 27, 1989).

The reporting provisions of this section have been removed from draft paragraph (a) and placed in a separate paragraph (d) for the convenience of the reader.

Paragraph (e) sets forth a list of the information to be provided when the terminating committee submits a debt settlement plan for Commission review. From now on, the indebted committee will be required to include a signed statement from each creditor included in the plan evidencing agreement to the terms of the settlement of the debt owed to that creditor.

The wording of paragraph (e)(4) has been amended from the language presented in the NPRM to indicate that if the debt settlement plan does not provide for the settlement of all debts, the terminating committee must state how it intends to resolve all remaining debts and obligations, regardless of whether such debts may be settled. The purposes of this provision are to aid the Commission's evaluation of the debt settlements presented thus far in light of the terminating committee's overall financial picture, and to indicate how the terminating committee intends to complete its financial activities.

New paragraph (f) of § 116.7 sets out the factors the Commisson may consider in reviewing debt settlement plans. Most of these factors have been drawn from FEC Directive Number 3. They are now listed in the new rule to enable political committees and their creditors to better understand how the Commission evaluates debt settlement requests.

The Commission received one comment expressing concern that the Commission's review would be based on intuitive judgments rather than fixed standards. The Commission believes that it is impractical to establish fixed standards, given the potential for varying circumstances in debt settlement requests. However, the inclusion of these factors will offer sufficient guidance regarding the Commission's process. The commenter also stated that settlement agreements should become effective when made, and should not be delayed until completion of the Commission's review process. This concern may be alleviated, to some extent, by the Commission's decision to return to the current procedure of reviewing debt settlements as they are presented to the Commission, rather than waiting until all settlements have been reached.

New paragraph (g) has been added to this section to clarify the Commission's treatment of debts and obligations that are released through Bankruptcy Court decrees pursuant to 11 U.S.C. chapter 7. The terminating committee should attach a copy of the court order to its debt settlement plan, along with a list specifying which debts are covered by the order. For each debt covered, the terminating committee need not provide the signed affidavit from the creditor or the information regarding the initial extension of credit, subsequent efforts to collect, settlement terms, or the committee's ability to pay. However, the terminating committee is required to demonstrate that it qualifies as a terminating committee, and it must list in the debt settlement plan all debts not released, as well as the disposition of any residual funds or assets. Although a political committee may not be eligible for a chapter 7 discharge, the Commission will treat the debts as settled for FECA purposes if the candidate received a discharge under chapter 7 that applies to those debts.

116.8 Creditor Forgiveness of Debts Owed by Ongoing Committees; Commission Review

Section 116.8 establishes conditions under which creditors may forgive the outstanding balances of debts owed by committees not intending to terminate. For the reasons stated above, part 116 does not permit ongoing committees to settle debts with creditors if those committees have the ability and the intention to continue fundraising for election-related purposes. Consequently, new § 116.8 only allows creditors to forgive ongoing committees' debts if the creditors cannot locate the ongoing committees or if the ongoing committees meet certain conditions demonstrating that they are essentially defunct and clearly unable to pay their bills. An additional requirement has been added to those set out in the proposed rule: that the ongoing committee's disbursements not exceed $1000 during the previous twenty-four month period. Without this restriction, ongoing committees would be able to pay part of their debts and settle the rest simply by having the creditor declare that it has "forgiven" the outstanding balance. This section also establishes review procedures so that the Commission may ascertain whether the creditor's actions are commercially reasonable or whether the foregiveness would result in an apparent violation of the Act or the regulations.

Section 116.9 Creditors That Cannot be Found or That Are Out of Business

During the course of this rulemaking, the Commission determined that it is advisable to address the situation where either an ongoing or a terminating committee cannot locate a creditor or the creditor has gone out of business. Consequently, new § 116.9 has now been added to permit committees in such circumstances to request that the debt be determined to be "unpayable" for purposes of the Act. Such a determination does not mean that the debt has been extinguished or is no longer owed. The political committee must demonstrate that it made the necessary efforts to reach the creditor. Once the Commission determines that a debt is "unpayable," the political committee may so indicate on its next due report, and then omit the debt from subsequent reports until there is a change in the status of the debt. Political committees with "unpayable" debts may terminate under 11 CFR 102.3.

Section 116.10 Disputed Debts

New § 116.10 has been added to the regulations to clarify the reporting of disputed debts, and to indicate what information concerning disputed debts should be included in a terminating committee's debt settlement plan.

The Commission has now revised the proposals presented in the NPRM in two respects. First, the final rule does not require the committee to report the fair market value of what was provided, since that may be in dispute. Secondly, paragraph (b) has been rewritten to more clearly state what information must be disclosed in the debt settlement plan regarding the disputed debt. The Commission received one comment on this new provision, which supported the draft rule.

Conforming Amendments

The Commission has determined that conforming amendments to §§ 100.7, 104.3, and 104.11 of the regulations are needed to clarify those provisions, and to make them consistent with the language of new part 116. One public comment was received, which supported the proposed changes to § 104.11.

The Notice of Proposed Rulemaking also suggested revising the definition of excess campaign funds in § 113.1(e) to prevent campaign committees from declaring excess campaign funds until after the campaign has ended and the committee has determined that it is not in a net debt situation. This proposal was intended to ensure that campaign funds would be used to pay for goods and services provided to the campaign rather than for a variety of political or nonpolitical purposes unrelated to the campaign. One comment opposed this revision in the absence of evidence that it is a common problem. The Commission has now concluded that the proposed language is not needed because the new requirements set out in § 116.2(c) adequately address these concerns.

Section 100.7 Contribution (2 U.S.C. 431(8))

The language of 11 CFR 100.7(a)(4) has been revised to clarify when the extension of credit, or the failure to attempt to collect the amount owed, or the settlement of a debt will result in a contribution by the creditor. The revised language more closely parallels the requirements set out in new 11 CFR part 116. In addition, new cross-references to 11 CFR 116.3 and 116.4 have been included to replace the current cross-references to 11 CFR 114.10.

Section 104.3 Contents of Reports (2 U.S.C. 434(b))

There are no substantive changes in this section. However, in paragraph (d), the cross-reference to previous § 114.10 has been revised to refer to new § 116.7.

Section 104.11 Continuous Reporting of Debts and Obligations

The Notice of Proposed Rulemaking sought comments on possible conforming amendments to 11 CFR 104.11(b), which concerns continuous reporting of debts and obligations. The Commission has now decided to make several changes to this regulation. First, the new language clarifies that debts exceeding $500 should be reported as of the date the debts are incurred. The current language says "as of the time of the transaction." Second, as the NPRM indicated, for amounts exceeding $500, disclosure is currently required for "any loan, debt or obligation," whereas for smaller amounts committees must disclose any "debt, obligation or other promise to make an expenditure." The revised language makes these two provisions consistent, since in practice the Commission has not drawn distinctions between these two categories. The revisions also clarify that periodic administrative costs incurred for rent and staff salaries need not be reported as debts if payment is not due before the end of the reporting period. However, if payment is not made on the due date, the amount outstanding must be reported as a debt. Finally, new language is also included which follows the current policy that if the exact amount of a debt is not known, the committee should report an estimated amount on schedule D, and then either amend the report or include the correct figure in a subsequent report when the exact amount has been determined. *See* AO 1980-38.

List of Subjects

11 CFR Part 100

Elections, Political committees and parties.

11 CFR Part 104

Political candidates, Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. 11 CFR part 100 is amended by revising § 100.7(a)(4) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

(a) * * *

(4) The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. If a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result. (*See* 11 CFR 116.3 and 116.4.) If a debt owed by a political committee is forgiven or settled for less than the amount owed, a contribution results unless such debt is settled in accordance with the standards set forth at 11 CFR 116.3 and 116.4.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), and 438(b).

4. 11 CFR part 104 is amended by revising § 104.3(d) to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b)).

* * * * *

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Loans obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. *See* 11 CFR 116.7.

* * * * *

5. 11 CFR part 104 is amended by revising § 104.11(b) to read as follows:

§ 104.11 Continuous reporting of debts and obligations.

* * * * *

(b) A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is $500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over $500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. *See* 11 CFR 116.6. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

6. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

§ 114.10 [Removed and reserved]

7. 11 CFR part 114 is amended by removing and reserving § 114.10.

8. 11 CFR part 116 is added to read as follows:

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

Sec.
116.1 Definitions.
116.2 Debts owed by terminating committees, ongoing committees, and authorized committees.
116.3 Extensions of credit by commercial vendors.
116.4 Forgiveness or settlement of debts owed to commercial vendors.
116.5 Advances by committee staff and other individuals.
116.6 Salary payments owed to employees.
116.7 Debt settlement plans filed by terminating committees; Commission review.
116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.
116.9 Creditors that cannot be found or that are out of business.
116.10 Disputed debts.

Authority: 2 U.S.C. 433(d), 434(b)(8), 438(a)(8), 441a, 441b, and 451.

§ 116.1 Definitions.

(a) *Terminating committee.* For purposes of this part, "terminating committee" means any political committee that is winding down its political activities in preparation for filing a termination report, and that would be able to terminate under 11 CFR 102.3 except that it has outstanding debts or obligations. A political committee will be considered to be winding down its political activities if it has ceased to make or accept contributions and expenditures, other than contributions accepted for debt retirement purposes and expenditures representing payments of debts or obligations previously incurred or payments for the costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act, if applicable, and other necessary administrative costs associated with winding down a campaign or winding down committee activities, including office space rental, staff salaries and office supplies.

(b) *Ongoing committee.* For purposes of this part, "ongoing committee" means any political committee that has not terminated and does not qualify as a terminating committee.

(c) *Commercial vendor.* For purposes of this part, "commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of these goods or services.

(d) *Disputed debt.* For purposes of this part, "disputed debt" means an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee.

(e) *Extension of credit.* For purposes of this part, "extension of credit" includes but is not limited to:

(1) Any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee;

(2) Any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and

(3) The failure of the political committee to make full payment to the creditor by a previously agreed to due date.

(f) *Creditor.* For purposes of this part, "creditor" means any person or entity to whom a debt is owed.

§ 116.2 Debts owed by terminating committees, ongoing committees, and authorized committees.

(a) *Terminating committees.* A terminating committee may settle outstanding debts provided that the terminating committee files a debt settlement plan and the requirements of 11 CFR 116.7 are satisfied. The Commission will review each debt settlement plan filed to determine whether or not the terminating committee appears to have complied with the requirements set forth in this part, and whether or not the proposed debt settlement plan would result in an apparent violation of the Act or the Commission's regulations.

(b) *Ongoing committees.* Ongoing committees shall not settle any outstanding debts for less than the entire amount owed, but may request a Commission determination that such debts are not payable under 11 CFR 116.9, and may resolve disputed debts under 11 CFR 116.10. Creditors may forgive debts owed by ongoing committees under the limited circumstances provided in 11 CFR 116.8.

(c) *Authorized committees.*

(1) An authorized committee shall not settle any outstanding debts for less than the entire amount owed if any other authorized committee of the same candidate has permissible funds available to pay part or all of the amount outstanding. Except as provided in paragraph (c)(3), of this section, an authorized committee shall not terminate under 11 CFR 102.3 if—

(i) It has any outstanding debts or obligations; or

(ii) It has any funds or assets available to pay part or all of the outstanding debts or obligations owed by another authorized committee of the same candidate and that other authorized committee is unable to pay such debts or obligations.

(2) No transfers of funds may be made from a candidate's authorized committee to another authorized committee of the same candidate if the transferor committee has net debts outstanding at the time of the transfer under the formula described in 11 CFR 110.1(b)(3)(ii).

(3) An authorized committee that qualifies as a terminating committee may assign debts to another authorized committee of the same candidate to the extent permitted under applicable state law provided that the authorized committee assigning the debts has no cash on hand or assets available to pay any part of the outstanding debts, and provided that the authorized committee assigning the debts was not organized to further the candidate's campaign in an election not yet held. If a Presidential candidate elects to receive federal funds pursuant to 11 CFR part 9001 *et seq.* or 11 CFR part 9031 *et seq.*, the authorized committee(s) of the Presidential candidate shall not assign debts or receive assigned debts until after the authorized committee(s) or the Presidential candidate has made all required repayments pursuant to 11 CFR parts 9007 and 9038 and has paid all civil penalties pursuant to 2 U.S.C. 437g. An authorized committee that has assigned all its outstanding debts may terminate if—

(i) The authorized committee that has assigned the debts otherwise qualifies for termination under 11 CFR 102.3; and

(ii) The authorized committee that received the assigned debts notifies the Commission in writing that it has assumed the obligation to pay the entire amount owed and that it has assumed the obligation to report the debts, and any contributions received for retirement of the assigned debts, in accordance with 11 CFR part 104. The assigned debts shall be disclosed on a separate schedule of debts and obligations attached to the authorized committee's reports. Contributions received for retirement of the assigned debts shall be disclosed on a separate schedule of receipts attached to the authorized committee's reports. *See* 11 CFR 110.1 (b)(3) and (b)(4) and 110.2 (b)(3) and (b)(4). The authorized committee that has assigned the debts shall notify each creditor in writing of the assignment no later than thirty days before the assignment takes effect and shall include the name and address of the authorized committee that will receive the assigned debts.

§ 116.3 Extensions of credit by commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(b) *Incorporated vendor.* A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

(c) *Ordinary course of business.* In determining whether credit was extended in the ordinary course of business, the Commission will consider—

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

(d) *Extension of credit by regulated industries.* The Commission may rely on the regulations prescribed by the Federal Communications Commission, the Interstate Commerce Commission, and the Department of Transportation on behalf of the Civil Aeronautics Board, issued pursuant to 2 U.S.C. 451 and any other regulations prescribed by other Federal agencies to determine whether extensions of credit by the entities regulated by those Federal agencies were made in the ordinary course of business.

§ 116.4 Forgiveness or settlement of debts owed to commercial vendors.

(a) *Unincorporated vendor.* A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(b) *Incorporated vendor.* A corporation may not forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The corporation has treated the debt in a commercially reasonable manner and the requirements of 11 CFR 116.7 or 116.8, as appropriate, are satisfied.

(c) *Reasonable efforts by a political committee.* A debt or obligation owed by a candidate or a political committee may be totally forgiven (*see* 11 CFR 116.8), or settled (*see* 11 CFR 116.7), provided that—

(1) The amount forgiven is exempted from the definition of contribution in 11 CFR 100.7(b); or

(2) The candidate and the political committee have undertaken all reasonable efforts to satisfy the outstanding debt and the requirements of 11 CFR 116.7 or 116.8, as appropriate, including the submission of the information specified in those sections and Commission review, are satisfied.

(d) *Commercially reasonable.* The Commission will determine that a debt settlement between a political committee and a commercial vendor is commercially reasonable if—

(1) The initial extension of credit was made in accordance with 11 CFR 116.3;

(2) The candidate or political committee has undertaken all reasonable efforts to satisfy the outstanding debt. Such efforts may include, but are not limited to, the following—

(i) Engaging in fundraising efforts;

(ii) Reducing overhead and administrative costs; and

(iii) Liquidating assets; and

(3) The commercial vendor has pursued its remedies as vigorously as it would pursue its remedies against a nonpolitical debtor in similar circumstances. Such remedies may include, but are not limited to, the following—

(i) Oral and written requests for payment;

(ii) Withholding delivery of additional goods or services until overdue debts are satisfied;

(iii) Imposition of additional charges or penalties for late payment;

(iv) Referral of overdue debts to a commercial debt collection service; and

(v) Litigation.

(e) *Settlement or forgiveness not required.* The provisions of this part shall not be construed to require a commercial vendor to forgive or settle the debt for less than the entire amount owed.

(f) *Reporting.* The political committee shall continue to report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

§ 116.5 Advances by committee staff and other individuals.

(a) *Scope.* This section applies to individuals who are not acting as commercial vendors. Individuals who are acting as commercial vendors shall follow the requirements of 11 CFR 116.3 and 116.4.

(b) *Treatment as contributions.* The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless—

(1) The payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and

(2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(c) *Treatment as debts.* A political committee shall treat the obligation arising from a payment described in paragraph (b) of this section as an outstanding debt until reimbursed.

(d) *Settlement or forgiveness of the debt.* The individual and the political committee may agree to the total forgiveness of the debt (*See* 11 CFR 116.8) or a settlement of the debt for less than the entire amount owed (*See* 11 CFR 116.7), provided that the requirements of 11 CFR 116.7 or 116.8, as appropriate, including the submission of the information specified in these sections and Commission review, are satisfied. The provisions of this part shall not be construed to require the individual to forgive or settle the debt for less than the entire amount owed.

(e) *Reporting.* The political committee shall continue to report the obligation arising from the payment as a debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

§ 116.6 Salary payments owed to employees.

(a) *Treatment as debts or volunteer services.* If a political committee does not pay an employee for services rendered to the political committee in accordance with an employment contract or a formal or informal agreement to do so, the unpaid amount either may be treated as a debt owed by the political committee to the employee or, provided that the employee signs a written statement agreeing to be considered a volunteer, converted to a volunteer services arrangement under 11 CFR 100.7(b)(3). The unpaid amount shall not be treated as a contribution under 11 CFR 100.7.

(b) *Settlement or forgiveness of the debt.* If the unpaid amount is treated as a debt, the employee and the political committee may agree to a settlement of the debt for less than the entire amount owed pursuant to 11 CFR 116.7. The provisions of this part shall not be construed to require the employee to settle the debt for less than the entire amount owed.

(c) *Reporting.* If the unpaid amount is treated as a debt, the political committee shall continue to report the debt in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the employee agrees to be considered a volunteer, or until the political committee pays the debt, whichever occurs first.

§ 116.7 Debt settlement plans filed by terminating committees; Commission review.

(a) *Procedures for filing debt settlement plans.* Every terminating committee as defined in 11 CFR 116.1(a) shall file at least one debt settlement plan with the Commission prior to filing its termination report under 11 CFR 102.3. The terminating committee shall file a debt settlement plan after the creditors included in the debt settlement plan have agreed to the settlement or forgiveness of the particular debt(s) owed to each of them. The terminating committee shall not make any payments to the creditors included in the debt settlement plan until completion of Commission review. The Commission encourages terminating committees to include as many debt settlement agreements as possible in a debt settlement plan. The terminating committee shall not file its termination report under 11 CFR 102.3 and shall not terminate until each debt or obligation owed either:

(1) Has been paid in full;

(2) Has been settled and the requirements of this section, including Commission review, have been satisfied;

(3) Has been forgiven by the creditor and the requirements of 11 CFR 116.8, including Commission review, have been satisfied;

(4) Has been determined not to be payable pursuant to 11 CFR 116.9; or

(5) Has been otherwise extinguished or discharged.

(b) *Debts subject to settlement.* Debts and obligations subject to the debt settlement and Commission review requirements and procedures set forth in this section include:

(1) Amounts owed to commercial vendors (*See* 11 CFR 116.3 and 116.4);

(2) Debts arising from advances by committee staff and other individuals (*See* 11 CFR 116.5);

(3) Salary owed to committee employees (*See* 11 CFR 116.6); and

(4) Debts arising from loans from political committees or individuals, including candidates, to the extent permitted under 11 CFR part 110.

(c) *Debts that shall not be settled; Disputed debts.*

(1) Debts and obligations that shall not be forgiven or settled for less than the entire amount owed include repayment obligations pursuant to 11 CFR 9007.2, 9008.10, 9008.11, 9038.2 or 9038.3 of funds received from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account.

(2) Disputed debts are not subject to the debt settlement and Commission review requirements and procedures. (*See* CFR 116.10).

(d) *Reporting.* The terminating committee shall continue to report each outstanding debt or obligation included in a debt settlement plan in accordance with 11 CFR 104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan pursuant to paragraph (f) of this section. The terminating committee shall continue to report all remaining debts and obligations not included in the debt settlement plan in accordance with 11 CFR 104.3 and 104.11.

(e) *Contents of debt settlement plans.*

(1) The debt settlement plan shall provide the following information on each debt covered by the plan—

(i) The terms of the initial extension of credit and a description of the terms under which the creditor has extended credit to nonpolitical debtors of similar risk and size of obligation;

(ii) A description of the efforts made by the candidate or the terminating committee to satisfy the debt;

(iii) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(iv) The terms of the debt settlement and a comparison to the terms of the creditor's other debt settlements involving nonpolitical debtors in similar circumstances, if any.

(2) Each debt settlement plan filed under this section shall include a signed statement from each creditor covered indicating agreement to the terms of the settlement of the debt owed to that creditor.

(3) The debt settlement plan shall include a statement as to whether the terminating committee has sufficient cash on hand to pay the total amount indicated in the debt settlement plan, and if not, a statement as to what steps the terminating committee will take to obtain the funds needed to make the payments.

(4) If a debt settlement plan does not include settlements for all of the terminating committee's outstanding debts and obligations, the debt settlement plan shall include a separate list of all of the terminating committee's remaining debts and obligations, including debts that are not subject to debt settlement as set forth in paragraph (c) of this section. The debt settlement plan shall indicate—

(i) Whether the terminating committee intends to pay the entire amount still owed on each remaining debt or obligation or to settle such debts and obligations, and if settlement is contemplated, the terms that were or will be offered to the creditor(s); and

(ii) Whether the terminating committee has sufficient cash on hand to pay such remaining debts and obligations, or to pay a lesser portion of such amounts, and if not, what steps the terminating committee will take to obtain the funds needed to make such payments.

(5) If the terminating committee expects to have residual funds or assets after disposing of all its outstanding debts and obligations, the debt settlement plan shall include a statement as to the purpose for which such residual funds or assets will be used. *See* 11 CFR 110.1(b)(3)(iii) regarding contributions received to pay net debts outstanding owed by authorized committees.

(6) The political committee filing the debt settlement plan shall demonstrate in the debt settlement plan that such political committee qualifies as a terminating committee under 11 CFR 116.1(a) and shall state when the political committee expects to file a termination report under 11 CFR 102.3.

(7) Upon the Commission's request, the candidate, the terminating committee or the creditor shall provide such additional information as the Commission may require to review the debt settlement plan. The Commission may also require the submission of additional debt settlement agreements prior to Commission review of the debt settlement plan.

(f) *Commission review of debt settlement plans.* In reviewing the debt settlement plan, the Commission will consider—

(1) The information provided by the terminating committee and the creditors under this section;

(2) The amount of each debt that remains unpaid and the length of time each debt has been overdue;

(3) The amount and percentage of each debt that would be forgiven under the plan;

(4) The total amount of debts and obligations owed by the terminating committee to all creditors, compared to the total amount of cash on hand and other amounts available to pay those debts and obligations;

(5) The year to date expenditures and receipts of the terminating committee; and

(6) Whether the total percentage that was or will be repaid on any loans made by the candidate to the terminating committee is comparable to the total percentage that was or will be paid to other creditors.

(g) *Debts dischargeable in bankruptcy.* If a terminating committee is released from debts or obligations pursuant to a discharge under 11 U.S.C. chapter 7, the terminating committee's debt settlement plan shall include a copy of the order issued by the Bankruptcy Court of the United States so indicating, and a list of all debts and obligations from which the terminating committee is released, in lieu of the information specified in paragraphs (e)(1), (e)(2), and (e)(3) of this section.

§ 116.8 Creditor forgiveness of debts owed by ongoing committees; Commission review.

(a) *General requirements.* A creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR 116.3 or 116.5, as appropriate, regarding extensions of credit by commercial vendors and advances by committee staff and other individuals, and the debt has been outstanding for at least twenty-four months, and—

(1) The creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or

(2) The ongoing committee—

(i) Does not have sufficient cash on hand to pay the creditor;

(ii) Has receipts of less than $1000 during the previous twenty-four months;

(iii) Has disbursements of less than $1000 during the previous twenty-four months; and

(iv) Owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

(b) *Procedures for forgiving debts.* A creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent. The letter shall demonstrate that the requirements set forth in paragraph (a) of this section are satisfied. The letter shall provide the following information—

(1) The terms of the initial extension of credit and a description of the terms under which the creditor has extended credit to nonpolitical debtors of similar risk and size of obligation;

(2) A description of the efforts made by the candidate or the ongoing committee to satisfy the debt;

(3) A description of the remedies pursued by the creditor to obtain payment of the debt and a comparison to the remedies customarily pursued by the creditor in similar circumstances involving nonpolitical debtors; and

(4) An indication that the creditor has forgiven other debts involving nonpolitical debtors in similar circumstances, if any.

(c) *Commission review.* Upon the Commission's request, the ongoing committee or the creditor shall provide such additional information as the Commission may require to review the creditor's request. The Commission will review each request to forgive a debt to determine whether the candidate, the ongoing committee, and the creditor have complied with the requirements of 11 CFR part 116, and whether or not the forgiveness of the debt would result in an apparent violation of the Act or the Commission's regulations.

§ 116.9 Creditors that cannot be found or that are out of business.

(a) *General requirements.* A political committee may request that the Commission determine that a debt owed to a creditor is not payable for purposes of the Act if the debt has been outstanding for at least twenty-four months, and the requirements of paragraph (b) or (c) of this section, as appropriate, have been satisfied, and—

(1) The creditor has gone out of business and no other entity has a right to be paid the amount owed; or

(2) The political committee has exercised reasonable diligence in attempting to locate the creditor and has been unable to do so. "Reasonable diligence in attempting to locate the creditor" means the political committee has attempted to ascertain the current address and telephone number, and has attempted to contact the creditor by registered or certified mail, and either in person or by telephone.

(b) *Terminating committees.* If the political committee making the request is a terminating committee, the terminating committee shall include the request in a debt settlement plan filed with the Commission, and shall demonstrate that the requirements of 11 CFR 116.3, 116.5 or 116.6, as appropriate, and 116.9(a) are satisfied. The terminating committee shall continue to disclose the debt on its schedules of outstanding debts and obligations until the Commission has completed its review of the debt settlement plan pursuant to 11 CFR 116.7(f) and has determined that the debt is not payable for purposes of the Act.

(c) *Ongoing committees.* If the political committee making the request is an ongoing committee, the ongoing committee shall make the request in writing and shall demonstrate that the requirements of 11 CFR 116.3, 116.5 or 116.6, as appropriate, and 116.9(a) are satisfied. The Commission will review the request to determine whether the ongoing committee and the creditor have complied with the requirements of 11 CFR part 116, and to determine whether reporting the debt as not payable would result in an apparent violation of the Act or the Commission's regulations. The ongoing committee shall continue to disclose the debt on its schedules of outstanding debts and obligations until the Commission has completed its review of the request and has determined that the debt is not payable for purposes of the Act.

(d) *Reporting.* Upon notification that the Commission has determined that the debt is not payable for purposes of the Act, the political committee may list the debt as not payable on the next due report. Notwithstanding 11 CFR 104.11, the debt does not have to be included in subsequent reports unless the status of the debt changes. The presence of a debt that the Commission has determined is not payable shall not bar the political committee from terminating its registration pursuant to 11 CFR 102.3.

§ 116.10 Disputed debts.

(a) *Reporting disputed debts.* A political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. (*See also* 11 CFR 9035.1(a)(2) regarding the effect of disputed debts on a candidate's expenditure limitations under 11 CFR part 9035.)

(b) *Disputed debts owed by terminating committees.* If a terminating committee and a creditor have been unable to resolve a disputed debt, and the terminating committee files a debt settlement plan covering other debts or other creditors, the terminating committee shall include in the debt settlement plan a brief description as to the nature of the dispute and the status of the terminating committee's efforts to resolve the dispute. The debt settlement plan need not include a signed affidavit from the creditor involved in the dispute pursuant to 11 CFR 116.7(c)(2).

Dated: June 22, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

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Part VII

Federal Election Commission

11 CFR Parts 106, 9003, 9007, 9033, 9035, and 9038

Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetize Media; Final Rule; Transmittal of Regulations to Congress

BEST COPY AVAILABLE

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038

[Notice 1990-9]

Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations concerning the production of computerized information maintained or used by publicly-funded Presidential primary and general election campaign committees. The Commission has also prepared a document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR) that sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the mandatory audits of these publicly-funded campaign committees. The CMMR is available on request from the Commission's Public Records Office or the Audit Division. The Commission will issue a separate notice detailing revisions to other rules governing Presidential primary and general election candidates at a later date. Further information is provided in the supplementary information which follows.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of new regulations at 11 CFR 9003.6 and 9033.12, and revised regulations at 11 CFR 106.2(c), 9003.3(a), 9007.1(b), 9035.1(c) and 9038.1(b) which govern the production of computerized magnetic media, including magnetic tape and magnetic diskettes, by the authorized committees of Presidential primary and general election candidates.

On April 4, 1990 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 55 FR 12499. One written comment was received in response to the Notice.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c), require that any rule or regulation prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 22, 1990.

Explanation and Justification

The current primary and general election regulations covering candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) require that publicly-funded campaigns which maintain computerized financial records provide computer tapes containing this information to the Commission for use during the Commission's mandatory audit of these committees. During the 1988 election cycle, the Commission encountered difficulty in obtaining computer tapes that were uniformly formatted, thereby necessitating considerable resources for reformatting. This delayed the completion of certain audits and entailed additional expense.

Given the amount of time and the costs involved in producing compatible computer tapes, the Commission has prepared new §§ 9003.6 and 9033.12, and revisions to 11 CFR 106.2, 9003.3, 9007.1, 9035.1, and 9038.1 to clarify three aspects of this process. First, the new language provides a list of the types of computerized information the audited committees must produce. The changes in the rules also ensure that committees will understand that they must provide these materials in a prescribed format. Finally, the rules clarify that in the future the costs of production will be borne by the audited committee, not the Commission. The Commission has also developed new technical standards which are set forth in a document entitled "Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding" (CMMR). These standards cover both magnetic tapes and magnetic diskettes. The Commission received one comment on these proposals from the Internal Revenue Service, which found no conflict with the Internal Revenue Code or the regulations thereunder.

The Commission intends to amend the regulations regarding candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) when other aspects of the Presidential primary and general election regulations are addressed in a Notice of Proposed Rulemaking. Similarly, when the Commission revises the rules governing presidential nominating conventions at 11 CFR part 9008, it will include parallel provisions requiring the production of computerized magnetic media by publicly-funded convention committees. Thus, the technical standards set out in the CMMR will also apply to these convention committees.

The following discussion of the new and revised sections follows the chronological order of the sections as they appear in 11 CFR, beginning with the allocation provision for primary candidates (§ 100.2). This is followed by the general election provisions (§§ 9003.3, 9003.6, and 9007.1), and then the rest of the primary election provisions (§§ 9033.12, 9035.1, and 9038.1). The discussion of the general election rules is very similar to the discussion of the primary rules because parallel changes have been made in the primary and general election regulations.

Section 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds

Paragraph (c)(5)(i) of this section has been revised to clarify that exempt compliance costs may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9033.12.

Section 9003.3 Allowable contributions

The Commission has revised paragraphs (a)(2), (b)(6) and (c)(3) of § 9003.3 to indicate that exempt compliance costs for general election candidates may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9003.6.

Section 9003.6 Production of computer information

New § 9003.6 has been added to the regulations to indicate the types of computerized financial data the Commission will request when it audits publicly-funded Presidential campaign committees of general election candidates that maintain or use computerized financial records. This new section also indicates that such computerized information shall be provided at the committee's expense and must conform to uniform format specifications set forth in a new document entitled "Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding" (CMMR).

Paragraph (a) of this section lists examples of the types of computerized information that authorized committees would be required to supply if they maintain or use computerized information containing certain categories of data. A committee will be considered to use such information even if another person or entity maintains such information on the committee's behalf. The list has been drawn from the Commission's experience as to the types of data authorized committees of publicly-funded presidential campaign committees have tended to maintain or use in the past. However, if a presidential campaign committee does not wish to computerize part or all of its financial records, the new rules do not require it to do so.

New paragraph (b) of this section states that the costs of producing the computerized information are to be borne solely by the committee to be audited. The previous rules did not address the treatment of such costs. These costs include the costs associated with converting data to meet the proposed technical requirements, providing formats/layouts, user guides, technical manuals and other information for processing and analyzing the computerized information provided, and making personnel familiar with the materials provided and the operation of the computer system's software available to answer questions from the Commission's staff. If committees select their computer systems with the Commission's technical standards in mind, the marginal cost of meeting these standards should be significantly less than the costs of converting their data from a format that was chosen without considering the prescribed technical standards.

Paragraph (b) of new § 9003.6 also indicates that the computerized magnetic media must meet certain technical specifications established by the Commission. The new technical standards are included in the CMMR, which is available upon request from the Commission's Public Records Office or the Audit Division. These standards include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank account and check files. The technical standards found in the CMMR will also be published as a supplement to the Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding to ensure distribution to the committees affected by the technical specifications. The Commission encourages committees to provide samples of their magnetic tape or magnetic diskettes so that the Commission may determine whether the samples comply with the specifications established.

Paragraph (c) of new § 9003.6 requires the production of technical manuals and other materials if needed to understand the computerized magnetic tapes or magnetic diskettes provided. However, as in the past, the rules do not require production of copyrighted computer software. Upon request, the authorized committee will also be expected to make available personnel familiar with the computerized information and the operation of the computer software.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees will be expected to present this financial information to the Commission in the format specified in the CMMR.

Section 9007.1 Audits

Paragraph (b)(1) of § 9007.1 has been revised to establish time frames under which publicly-funded presidential campaign committees of general election candidates must produce computerized magnetic tapes or magnetic diskettes which meet the technical specifications set out in the new CMMR, if the committees maintain or use computerized financial records. New § 9003.6 lists the types of computerized financial data that must be provided to the Commission if maintained or used by the committee. The Commission generally will request such computerized information prior to the commencement of audit fieldwork. The audited committee will be given 15 days to produce the materials requested. Once the Commission has obtained the computerized magnetic media meeting the technical specifications, the committee will be given at least two weeks notice of the start of audit fieldwork. This is intended to ensure adequate time for Commission staff to review the files in preparation for fieldwork. During or after fieldwork, the Commission may request additional computerized materials. The new rules allow 15 days for the production of the additional information. These time frames take into account the fact that the authorized committee will know well in advance the technical specifications and format requirements it must meet to ensure compatibility. The Commission believes that production of computer information and materials prior to fieldwork may reduce the overall time needed to conduct fieldwork and complete the audit process.

Section 9033.12 Production of computerized information

New § 9033.12 has been added to the regulations to indicate the types of computerized financial data the Commission will request when it audits authorized committees of publicly-funded Presidential primary election candidates that maintain or use computerized financial records. This new section also indicates that such computerized information shall be provided at the committee's expense and must conform to uniform format specifications set forth in a new document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR).

Paragraph (a) of this section lists examples of the types of computerized information that authorized committees would be required to supply if they maintain or use computerized information containing certain categories of data. A committee will be considered to use such information even if another person or entity maintains such information on the committee's behalf. The list has been drawn from the Commission's experience as to the types of data authorized committees of publicly-funded presidential candidates have tended to maintain or use in the past. However, if a presidential campaign committee does not wish to computerize part or all of its financial records, the new rules do not require it to do so.

New paragraph (b) of this section states that the costs of producing the computerized information are to be

borne solely by the committee to be audited. The previous rules did not address the treatment of such costs. These costs include the costs associated with converting data to meet the proposed technical requirements, providing formats/layouts, user guides, technical manuals and other information for processing and analyzing the computerized information provided, and making personnel familiar with the materials provided and the operation of the computer system's software available to answer questions from the Commission's staff. If committees select their computer systems with the Commission's technical standards in mind, the marginal cost of meeting these standards should be significantly less than the costs of converting their data from a format that was chosen without considering the prescribed technical standards.

Paragraph (b) of new § 9033.12 also indicates that the computerized magnetic media must meet certain technical specifications established by the Commission. The new technical standards are included in the CMMR, which is available upon request from the Commission's Public Records Office or the Audit Division. These standards include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank account and check files. The technical standards found in the CMMR will also be published as a supplement to the Commission's Guideline for Presentation in Good Order to ensure distribution to the committees affected by the technical specifications. The Commission encourages committees to provide samples of their magnetic tape or magnetic diskettes so that the Commission may determine whether the samples comply with the specifications established.

Paragraph (c) of new § 9033.12 requires the production of technical manuals and other materials if needed to understand the computerized magnetic tapes or magnetic diskettes provided. However, as in the past, the rules do not require production of copyrighted computer software. Upon request, the authorized committee will also be expected to make available personnel familiar with the computerized information and the operation of the computer software.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees will be expected to present this financial information to the Commission in the format specified in the CMMR.

Section 9035.1 Campaign expenditure limitation

The Commission has revised 11 CFR 9035.1(c)(1) to indicate that exempt compliance costs for Presidential primary election candidates may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9033.12.

Section 9038.1 Audit

Paragraph (b)(1) of § 9038.1 has been revised to establish time frames under which publicly-funded presidential campaign committees of primary election candidates that maintain or use computerized financial records must produce computerized magnetic tapes or magnetic diskettes which meet the technical specifications set out in the new CMMR. New § 9033.12 lists the types of computerized financial data that must be provided to the Commission if maintained or used by the committee. The Commission generally will request such computerized information prior to the commencement of audit fieldwork. The audited committee will be given 15 days to produce the materials requested. Once the Commission has obtained the computerized magnetic media meeting the technical specifications, the committee will be given at least two weeks notice of the start of audit fieldwork. This is intended to ensure adequate time for Commission staff to review the files in preparation for fieldwork. During or after fieldwork, the Commission may request additional computerized materials. The new rules allow 15 days for the production of the additional information. These time frames take into account the fact that the authorized committee will know well in advance the technical specifications and format requirements it must meet to ensure compatibility. The Commission believes that production of computer information and materials prior to fieldwork may reduce the overall time needed to conduct fieldwork and complete and audit process.

List of Subjects

11 CFR Part 106

Campaign funds, Political candidates, Political committees and parties.

11 CFR Part 9003

Compaign funds, Elections, Political candidates.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Part 9033

Campaign funds, Elections, Political candidates.

11 CFR Part 9035

Campaign funds, Elections, Political candidates.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds, Political candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these proposed rules. Further, any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, subchapters A, E and F, chapter I of title 11 of the Code of Federal Regulations are amended as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. The authority citation for part 106 is revised to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. Section 106.2 is amended by revising paragraph (c)(5)(i) to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.

• • • • • •

(c) • • •

(5) • • •

(i) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

• • • • •

PART 9003—ELIGIBILITY FOR PAYMENTS

3. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

4. In § 9003.3, paragraph (a)(2)(i)(E) is revised, paragraph (a)(2)(i)(F) is redesignated as paragraph (a)(2)(i)(G), new paragraph (a)(2)(i)(F) is added, paragraphs (a)(2)(iii), (b)(6) and (c)(3)(iv) are revised, and paragraph (c)(3)(v) is added to read as follows:

§ 9003.3 Allowable contributions.

(a) • • •

(2) *Uses.* (i) • • •

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund.

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software; and

• • • • •

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (F) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.3(a)(2)(i)(G) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

• • • • •

(b) • • •

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

• • • • •

(c) • • •

(3) • • •

(iv) To defray the costs of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

• • • • •

5. Section 9003.6 is added to read as follows:

§ 9003.6 Production of computer information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3(b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested.

Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

8. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

7. Section 9007.1 is amended by revising paragraph (b)(1) to read as follows:

§ 9007.1 Audits.

* * * * *

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.6, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.6(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

* * * * *

PART 9033—ELIGIBILITY FOR PAYMENTS

8. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9033 and 9039(b).

9. New § 9033.12 is added to read as follows:

§ 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance cost, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

PART 9035—EXPENDITURE LIMITATIONS

10. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

11. Section 9035.1 is amended by revising paragraph (c)(1) to read as follows:

§ 9035.1 Campaign expenditure limitation.

* * * * *

(c) * * *

(1) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and in the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include

those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

12. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

13. Section 9038.1 is amended by revising paragraph (b)(1) introductory text to read as follows:

§ 9038.1 Audit.

* * * * *

(b) *Conduct of fieldwork.* (1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign, obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

* * * * *

Dated: June 22, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-14920 Filed 6-26-90; 8:45 am]

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June 27, 1990

Part VIII

Department of Health and Human Services

Office of Human Development Services

Availability of FY 1990 Funds and Request for Applications; Head Start Family Service Center Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13906-905]

Availability of FY 1990 Funds and Request for Applications; Head Start Family Service Center Demonstration Projects

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS).

ACTION: Announcement of the availability of financial assistance and request for applications for Head Start Family Service Center Demonstration Projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces the availability of funds for competing Head Start Family Service Center Demonstration Projects.

The purpose of these projects is to demonstrate how Head Start programs can more effectively address the complex and inter-related problems which limit the capacity of many Head Start families to achieve self-sufficiency.

DATES: The closing date for receipt of applications is August 27, 1990.

ADDRESSES: Address applications to:.

OHDS/Grants and Contracts Management Division, Department of Health and Human Services, room 341.F2 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Attn: William J. McCarron, HDS 90–ACYF–HS–Family Service Center.

FOR FURTHER INFORMATION CONTACT: Jim O'Brien (202) 245–0573 or Marlys Gustafson (202) 245–0579, Program Support Division, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013.

SUPPLEMENTARY INFORMATION:.

Part I. General Information

A. Description of the Head Start Program

Project Head Start began as a demonstration program providing comprehensive development services for low-income preschool children. Since its inception in 1965, Head Start has provided educational, social, medical, dental, nutrition and mental health services for over eleven million children and their families across the nation. The involvement of parents is an important aspect of every Head Start program.

Head Start is now a $1.4 billion program serving nearly half a million low-income children and their families in over 2,000 communities across the United States each year. Now celebrating a quarter century of services, Head Start is helping to break the cycle of poverty through family-oriented, comprehensive, and community-based programs which address development goals for children, employment and self-sufficiency goals for adults, and support for parents in their work and child-rearing roles.

Launched by the Office of Economic Opportunity, Head Start is now administered by the Administration for Children, Youth and Families (ACYF) in the Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS). Operating grants are awarded by DHHS/OHDS Headquarters and Regional Offices. Locally, the program is administered by nearly 1,300 community-based non-profit grantee organizations and school systems.

The Head Start program is based on the premise that all children share certain needs, and that children of low-income families in particular can benefit from a comprehensive developmental program to meet those needs. Further, the program emphasizes that the child's entire family, which is perceived as being the principal influence on the child's development, must be a direct participant in the program. Grantees are allowed latitude in developing creative program designs so long as they adhere to the basic goals, objectives and standards of a comprehensive child development program and applicable law and regulations.

Purpose of this announcement: The projects to be funded under this announcement are intended to demonstrate how Head Start can work with other community agencies and organizations, both public and private, to effectively deal with the problems of substance abuse, illiteracy and unemployment among Head Start families. Anticipated results of these demonstrations include the design and testing of innovative approaches to identifying these problems; the motivation of family members to take constructive steps to help themselves; linking families with appropriate community services; and conducting follow-up activities to help support families as they work toward solving problems. Also anticipated is the development by local Head Start programs of new partnerships with other organizations—including the business and educational sectors—for the purposes of joint planning and action, coordination, and the targeting of resources on behalf of families with substance abuse, literacy or employability problems.

In funding projects under this announcement, ACYF intends to develop imaginative approaches to meeting family needs which are successful and well documented and which can be replicated by other Head Start programs across the country.

The purpose of the financial assistance to be made available under this announcement is to stimulate the development of practices or approaches that result in replicable strategies for more effectively supporting the attainment of self-sufficiency by Head Start families through collaborative efforts between Head Start programs and existing community programs which focus efforts upon the following critical problems:

- Reducing and preventing substance abuse;
- Improving the literacy skills of parents; and
- Increasing the employability of parents.

The grants to be awarded under this announcement are not to be used to supplant funding from other sources.

B. Problems To Be Addressed

Over the past several years there has been increasing public recognition of a set of often inter-related problems which significantly threaten the capacity of families to be self-sufficient. These problems include substance abuse, adult illiteracy, and chronic unemployment/underemployment. Chidren from low-income families which experience these problems are themselves at heightened risk of educational failure and social dysfunction as a result of these parental problems.

Programs such as Head Start, which have a goal of improving the developmental status of young children, are reporting increased difficulty in fulfilling their mission because of the disabling influences of these problems upon the families served. Head Start has acted on the principles that the child's development is best addressed through the family. The pervasiveness of the problems cited above challenges Head Start to demonstrate strategies which are more responsive to the present realities for its families.

Typically, Head Start programs assist parents experiencing the problems of substance abuse, illiteracy, or unemployment by referring them to a community resource which addresses the area of need. Information gathered from Head Start grantees indicates that this approach is insufficient for an increasing number of families. To effectively fulfill its goal of promoting family self-sufficiency, Head Start programs must develop more intensive and proactive approaches to supporting families. A case-management approach may be required to identify specific needs and existing strengths of an individual family and to address existing barriers to the family's attainment of self-sufficiency. In addition, more active and collaborative relationships with community resources may be needed to ensure that their services are accessible to Head Start families.

1. Substance Abuse

Substance abuse has been identified by many Head Start programs as a significant obstacle in their efforts to help families become more self-sufficient and to effectively foster their child's development. It is estimated that at least 20 percent of the families in Head Start are affected by substance abuse problems.

In a recently completed study by the HHS Office of Inspector General, 116 randomly selected Head Start grantees identified substance abuse as one of the most common problems of dysfunctional families served by Head Start programs in both rural and urban areas.

Head Start program directors, social service staff, and teaching staff have described the negative impacts of substance abuse that they have witnessed:

- Increased family instability which reduces meaningful parent participation in the program, disrupts the child's attendance, and creates an environment for the child which is often chaotic and frightening.
- Increased stress and frustration on the part of service providers in dealing with families involved in substance abuse.
- An increase in the number of children who are born with medical/developmental problems associated with maternal substance abuse.
- Increased involvement of Head Start family members in criminal drug-related activities, often leading to family violence, parental incarceration, and the placement of children in foster care or with extended families.
- Neighborhoods in which Head Start programs are located, and in which their families live, that are so disrupted by drug-related crime that families and staff report a pervasive sense of fear.

2. Literacy Skills of Parents

There is a significant need for literacy development in Head Start families. Approximately half of all Head Start parents do not have a high school degree or General Education Development (GED) certificate. Reports from Head Start grantees which are involved in literacy programs for Head Start parents suggest that a large number of these parents have literacy skills which are below the level which would permit them to succeed in GED programs.

Low literacy skills and low levels of educational attainment reduce the employment prospects for Head Start parents and also impede their participation in the community at large, the Head Start program, and in the many situations in which the parent must act on the child's behalf (in obtaining appropriate health, social and educational services, for example).

Head Start recognizes the benefit of addressing the literacy skills of the parent when attempting to support the family in achieving greater self-sufficiency. Parents with functional literacy skills are better able to promote their children's attainment of literacy. A focus upon this problem is needed to interrupt the intergenerational cycle of illiteracy affecting many Head Start families.

3. Employability of Parents

There is increasing effort, primarily through welfare reform, to assist low-income parents in achieving greater economic well-being. A large proportion of Head Start parents would benefit from improved access to appropriate training and employment opportunities. Employment is critical to a family's ability to acquire the means to support the full development of their children.

Limited job skills and/or experience and unemployment affect a significant proportion of Head Start parents. Approximately 47 percent of Head Start families receive AFDC payments and 47 percent of the heads of households are unemployed. Unless these problems are addressed, it is unlikely that these families will enter the economic mainstream.

A major issue for Head Start is coordination with the States around the implementation of the Family Support Act of 1988, which was enacted to increase the employability of welfare recipients and to help them achieve self-sufficiency. This legislation includes a new Job Opportunity and Basic Skills Training (JOBS) program which must be implemented by the States over the next two years. Many Head Start parents will be required to participate in JOBS training and employment activities geared toward economic self-sufficiency.

A key provision of JOBS is the requirement for child care to support parent training and employment. States are specifically required by the JOBS legislation to coordinate with Head Start to insure that quality child care is available to JOBS participants and to families receiving transitional child care benefits, many of whom are eligible for Head Start services.

All of these problem areas are inter-related and complex and are likely to take different forms in different families. Taken individually, these problems can significantly limit the families' prospects for self-sufficiency and their capacity to fully meet the developmental needs of young children. When these problems occur in combination, as is often the case, effectively addressing them requires a more proactive and persistent response than is often undertaken by a Head Start program using existing Head Start models and practices of social services and parent involvement. Demonstrations are needed to explore how systemic changes in Head Start social services and parent involvement practices, combined with collaborative efforts involving other community-based agencies, can more effectively support Head Start families in achieving self-sufficiency.

C. Need for Coordination

Head Start programs can capitalize on their family-centered approach and their emphasis on parent involvement by collaborating with existing family service organizations in efforts designed to increase their effectiveness in helping multi-problem, low-income families. The advantages to such agencies of working through Head Start include recognition as a well-established community program, the opportunity it offers for parents to participate in training while their children are in Head Start, and the fact that Head Start personnel have a relationship based on trust with the families and other resource persons in the community.

Part II. Responsibilities of the Grantee

A. Roles of the Grantee

A principal role for the Head Start Family Service Center Demonstration Project grantees will be to demonstrate a model for Head Start family support which can effectively collaborate with community organizations to address significant problems impacting on the self-sufficiency of Head Start families. Collaboration between the Head Start program, State welfare agencies, substance abuse treatment and prevention programs, adult literacy and basic education programs, job training programs, and other programs is sought to improve Head Start's capacity to put in place more effective systems for addressing the identified priority problems of substance abuse, illiteracy, and unemployment/underemployment.

Head Start Family Service Center Demonstration Project grantees will be expected to engage in a variety of activities to address these problems. Suggested activities include, but are not limited to:

- Demonstrating practices which, by supporting the family, increase the likelihood that the problems of Head Start families in the three areas of focus will be reduced and/or ameliorated.
- Demonstrating a comprehensive family-centered approach which increases the effective utilization of community services to address priority needs.

All Head Start Family Service Center Demonstration Project grants will be administered by the Head Start Bureau in the Administration for Children, Youth, and Families (ACYF).

Gratees will be required to attend one two-day meeting in Washington, D.C. each year of the grant period for information-sharing with other grantees and the national Head Start office.

B. Specific Priorities

Grantees must propose a comprehensive model for Head Start family service and support which will have the capacity to address the needs of families in each of the three problem areas of chronic unemployment/underemployment, substance abuse, and adult illiteracy. The proposed model must be responsive to the individual needs of the families served and must effectively utilize and complement existing community services addressing these problems.

1. Increasing the Employability of Head Start Parents

To address the objective of increasing parents' employability, grantees must facilitate and enhance the coordination of the Head Start program with States' implementation of the Family Support Act of 1988 and with the State and local government agencies responsible for the management and administration of job training programs under the Job Training Partnership Act (JTPA). This coordination should occur through a variety of activities including, but not limited to:

- The development of partnerships with family assistance agencies, training institutions, and employers to provide appropriate training and employment opportunities for Head Start parents and to promote supportive programs which increase the likelihood that they will move along the continuum of education, training, part-time employment, and full-time employment. Coordination with the local Private Industry Councils (PICs) to promote the involvement of Head Start parents in local job training and employment programs is recommended. The PICs serve as key mechanisms for bringing representatives from various segments of the private sector into the active management of job training programs.
- The development of partnerships which provide supportive services, including full-day child-care, for Head Start parents who are engaged in employment programs such as JOBS. Partnerships might also address family support through counseling, organizing peer support groups, and job readiness training programs.

2. Reducing and Preventing Substance Abuse

Grantees may address substance abuse issues through a variety of activities, including, but not limited to:

- Providing a program of staff training and parent education/involvement on substance abuse prevention;
- Developing model approaches of coordination between Head Start and other community services for children who are drug-affected or drug-exposed and their families; and
- Developing or replicating approaches which Head Start grantees can use to support children and families of an adult in treatment for substance abuse.

The development of curricula for preschool children and families on substance abuse prevention will not be supported by this grant.

3. Improving the Literacy Skills of Parents

Head Start Family Service Center Demonstration Projects can support improvements in parents' literacy skills through a variety of activities, including, but not limited to:

- Building effective partnerships with public and private organizations addressing literacy (e.g., adult basic education, volunteer literacy programs, libraries, vocational training programs, family literacy programs, and public school programs) to improve the utilization of these resources by Head Start families; and
- Demonstrating to organizations addressing literacy that Head Start programs can be valued partners. Head Start programs have a history of innovation in working with low-income families who are most likely to need literacy development. Head Start's experience in promoting parent involvement and improving families' self-sufficiency can augment the effectiveness of a literacy project.

C. Preparing Project Proposals

A proposed project should reflect Head Start's philosophy and program goals, with clearly articulated objectives and activities which specifically address the needs of Head Start families.

Applicants must propose activities which would significantly impact on the three issues of focus described in this announcement. Applicants are especially reminded of Head Start's fundamental principle of serving the whole family as the key strategy for improving the developmental, social and economic conditions for disadvantaged children.

Applicants are expected to take a long-range, systemic, comprehensive and multi-disciplinary view in proposing the activities that would be carried out. Proposals must demonstrate familiarity with programs serving low-income children and their families, local needs and resources, successful collaborative efforts, and barriers to coordination. Applicants must articulate major issues facing Head Start families within their communities and discuss how the proposed project would support the program's goals and priorities for Head Start families.

Applicants must describe the expected impact of the project on families served in terms of specific and measurable outcomes. Significant partnerships with relevant public and private organizations, including those in the corporate sector, are strongly encouraged. A community-based advisory group would be a valuable asset in planning the demonstration proposal and in building community partnerships and information-sharing networks to support project implementation.

Applicants must describe the impact that the support activities will have upon increasing the effectiveness of existing community service programs in addressing the needs of Head Start families in each of the three areas of focus. An important expected outcome of project activities should be the sustained participation of Head Start parents in programs which address these priority areas.

The proposal must also describe plans for obtaining non-ACYF funding sources to address the project objectives after Federal funding of the demonstration ceases.

The proposal must clearly set forth the goals and specific objectives of the project. The application should also describe current activities and long-range goals for increasing the capacity of grantees to address the complex needs of Head Start parents and for the ongoing coordination of Head Start with other relevant programs and activities. Applicants are encouraged to propose the use of "state-of-the-art" technology to demonstrate effective and efficient approaches and methods.

The project objectives must be supported by a sound approach which details the magnitude and scope of activities to be undertaken and how they would be carried out to achieve expected results. The proposal should include a detailed management plan for the work to be completed during each budget period which (a) Clearly addresses project goals; (b) links objectives and activities; and (c) can be accomplished within the proposed project period and budget. The management plan is expected to include charts showing timelines and levels of effort for each objective and activity as well as the specific staff who would be carrying out the work. The proposal should discuss relevant technical and operational issues, anticipate possible barriers to the achievement of project goals, and present a strategy for overcoming these barriers.

Applicants must demonstrate sufficient agency resources and staff competence to assure that project activities can be successfully carried out. Cooperating organizations or agencies, their contributions, and their strengths should be described. Letters of commitment should be included whenever possible. In addition, position descriptions and resumes of key personnel, including those of consultants and cooperating organizations, should be included in the proposal. Position descriptions should specifically describe the job as it relates to the proposed project, and resumes must indicate how the proposed staff are qualified to carry out the project activities. The project director is expected to demonstrate strong management experience and relevant technical expertise. Key individuals must be knowledgeable about the Head Start program and family support practice and theory.

The proposal must include a line-item budget for each budget period requested. The budget narrative should fully explain and justify the line items in the budget categories in Section B of the Form 242 Budget Information section. Sufficient detail should be included to facilitate the determination of the allowability and relevance of proposed costs to the project. The budget must be commensurate with the scope of the project and reasonable in relation to the work proposed.

Project proposals must discuss how how a Head Start program can, by application of current knowledge and best practices, reduce the incidence and negative effects of the three problems of focus on the families served by the project. There is also a need to determine, by sound program design and evaluation, the critical components and features of Family Service Center Demonstration practices which are most effective and replicable in a Head Start setting.

Applicants must provide a design for a high quality comprehensive evaluation of their project and must utilize a third party to conduct the evaluation. The evaluation design must be able to provide formative and summative information on the implementation of, and specific outcomes attributable to, the demonstration project.

The applicant is encouraged to consider linking with a college or university for the design and implementation of the evaluation plan. Applicants must include letters of commitment from and the vitae of proposed evaluators. The level of effort and corresponding budgeted expenditure for evaulation activities should be clearly identified.

In addition, successful applicants must agree to cooperate with any future evaluation of the Family Service Center Demonstration Projects if the Office of Human Development Services determines later that such an evaluation is desired.

The service models developed by these projects will enable ACYF to disseminate information and provide training/technical assistance to help other Head Start programs in their efforts to enhance family self-sufficiency. Each project should document its procedures and products in a manner which permits dissemination and replication, through the Head Start Bureau, of successful practices.

The applicant must propose a range of clearly described activities which explain how the Head Start families to be supported by the project will be identified, the anticipated number of families to participate and for how long, how the level of support will be tailored to fit the individual circumstances of families and communities, and how families' progress toward specific objectives will be monitored and evaluated. A plan for supporting some families for periods of time during which their child is no longer receiving Head Start services may be proposed. Such a plan, however, should specify the circumstances under which such extended support would be provided.

The application must include a description of the proposed roles of the applicant and the community-based collaborators in addressing identified needs. Persons should include support for the transition of the family from Head Start programs which are a part of the demonstration project to programs in the community at large.

Head Start training and technical assistance projects are not eligible to apply under this announcement. This includes projects which provide training and/or technical assistance (T/TA) to local Head Start programs ("third party T/TA"). However, the purchase of T/TA by a Head Start Family Service Center Demonstration Project grantee for its own or for its members' use (as in the case of a consortium) is acceptable when such T/TA is necessary to carry out project objectives.

ACYF will not fund core administrative functions or other activities that essentially support the applicant's ongoing administrative functions.

Part III. Evaluation Criteria

In considering how the applicant will carry out the responsibilities described in Part II of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

1. Objectives and Need for Assistance (15 points)

How the applicant:

- Identifies any relevant economic, social, financial, institutional, or other problems requiring a solution; and demonstrates the need for the assistance and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used. Any relevant data based on planning studies should be included or footnoted.
- Identifies the precise location of the project and the area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (15 points)

How the applicant identifies the results and benefits to be derived which are consistent with the objectives of the proposal and indicates the anticipated contribution to policy or practice. Proposed project costs must be reasonable in view of the expected results.

3. Approach (40 points)

How the applicant:

- Outlines a plan of action pertaining to the scope of work, and details how the proposed work will be accomplished for the project;
- Cites factors which might accelerate or decelerate the work and the reasons for taking this approach as opposed to others;
- Describes any unusual features of the project;
- Provides projections of the accomplishments to be achieved;
- Lists the activities to be carried out in chronological order to show a reasonable

schedule of accomplishments and their target dates;

- Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and success of the project;
- Describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved;
- Lists each organization, cooperater, consultant, or other key individual who will work on the project along with a short description of the nature of their effort or contribution.

4. Staff Background and Organization's Experience (30 points)

How the applicant:

- Identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project;
- Describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

Part IV. Eligibility, Funding, and Project Period

A. Eligible Applicants

Head Start grantees are eligible to compete for funding under this program announcement. Although private social service agencies, corporations, and other groups with interest and experience in addressing the problem areas of focus are not eligible applicants, Head Start grantees are encouraged to form joint-venture projects and to establish funding relationships with other partners in order to more comprehensively address the objectives of this announcement.

B. Available Funds

Approximately $2,500,000 of financial assistance is available in fiscal year 1990 under this program announcement. Approximately 15 grants will be funded under section 649 of the Head Start Act (42 U.S.C. 9844). Funding levels from $125,000 to $225,000 per project per year are anticipated and will be awarded for no more than three years.

Project budgets should include travel and per diem for the project director to attend one two-day national meeting of all Head Start Family Service Center Demonstration projects in Washington, DC during each year of the project and travel and per diem for the third party evaluator to attend this meeting in the first year of the project.

C. Project Period

Applicants may apply for a project of up to 36 months duration and are encouraged to develop multi-year projects. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake a more complex and in-depth project than can be completed in one year. Applicants should note that a multi-year project is a single project that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three-year period.

Funding after the first budget period of a multi-year project is non-competitive. The budget period for each multi-year project will be 12 months. The non-competitive funding for the second and third years will depend on the grantee's satisfactory progress in achieving the objectives of the project according to the approved application, the availability of Federal funds, and compliance with applicable statutory, regulatory, and grant requirements.

D. Grantee Share of Project

Grantees must provide a non-Federal match, which may be cash or in-kind contributions, representing 25% of the Federal funds requested. Thus, for every four dollars of Federal funds requested, at least one dollar of non-Federal matching funds is required. For example, a project requesting $150,000 in Federal funds must provide a non-Federal match of at least $37,500. Applicants are urged to contribute non-Federal resources to the project which exceed the minimum requirements. Applicants are especially encouraged to form significant public/private funding partnerships which demonstrate a strong, multi-faceted commitment to the challenge of coordination within the community.

Part V. The Application Process

A. Availability of Forms

All of the forms and instructions needed for submitting an application under this announcement are included in Appendix II. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

(1) *Standard Form 424*: Application for Federal Assistance;

(2) *Standard Form 424A*: Budget Information;

(3) Assurances

(a) Standard Form 424B: Non-Construction Programs;

(b) Drug-Free Workplace Certification (this form does not have to be returned);

(c) Debarment Certification (this form does not have to be returned); and

(d) Lobbying Certification.

(4) *Program Narrative:* A narrative description of the project, organized under the headings which address the four evaluation criteria identified in Part III: (A) Objectives and Need for Assistance; (B) Results or Benefits Expected; (C) Approach; and (D) Staff Background and Organization's Experience.

The program narrative must be typed, double-spaced, on 8½ x 11 inch bond paper. All pages of the narrative (including charts, tables, and maps) must be sequentially numbered, beginning with the "Objective and Need for Assistance" section as page number one. The program narrative must not exceed 25 double-spaced pages.

(5) *Project Abstract:* A brief (approximately 100 word) description of the project, typed on 8½ x 11 inch bond paper.

(6) *Appendices/Attachments:* Letters of support, exhibits, and other supporting documents must not exceed twenty pages.

B. Application Submission

Each application must be signed by an official authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

One signed original and two copies of the application, including all attachments, are required. Completed applications must be sent to:

OHDS/Grants and Contracts Management Division, Room 341.F2, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201.
Attn: William J. McCarron, HDS 90-ACYF-HS—Family Service Center.

Hand delivered applications will be accepted at the OHDS Grants and Contracts Management Division office during normal working hours of 8:30 a.m. to 5:30 p.m. Monday through Friday.

C. Closing Date for the Submission of Applications

The closing date for receipt of applications under this announcement is August 27, 1990.

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement; or

b. Sent on or before the deadline date and received in time for the independent review under Chapter 1-62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

3. *Extension of Deadline.* The Administration for Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Screening of Applications

All applications will be initially screened to determine conformance with the following requirements:

(1) Deadline for submittal;

(2) Appropriate number of pages;

(3) Signature of authorizing official; and

(4) Federal funding requests not exceeding the established limitations.

These preliminary screening requirements will be rigorously enforced. Applications which do not meet these requirements will not be considered in the competition and the applicant will be so informed.

E. Application Consideration

Each application will be reviewed and scored against the criteria outlined in part III of this announcement and its responsiveness to the minimum requirements identified in part II. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about issues relating to Head Start and efforts designed to promote the attainment of family self-sufficiency.

The results of the competitive review will be the primary factor taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with OHDS Regional Officials, will recommend to the Commissioner of ACYF programs to be funded. The Commissioner of ACYF will make the final selections. Applications may be funded in whole or in part. Consideration will also be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected, and that a variety of project designs and models are represented.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period, and the amount of the non-Federal matching share. Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration for Children, Youth and Families.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Waiver of Executive Order 12372 Requirements for a 60-Day Comment Period for the States' Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Nebraska, Minnesota, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Point of Contact (SPOCs). Applicants from these nine areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. OHDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

HDS must obligate the funds for these awards by September 30, 1990. Therefore, the required 60-day comment period for State process review and recommendation has been reduced and will end on September 25, 1990, in order for HDS to receive, consider, and accommodate SPOC input.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 345-F Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. A list of the Single Points of Contact for each State and Territory is included in appendix I of this announcement.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: May 23, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 31, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Appendix I—State Single Points of Contact

Alabama

Mrs. Moncell Thornell,
State Single Point of Contact,
Alabama Department of Economic & Community Affairs,
3465 Norman Bridge Road,
Post Office Box 250347,
Montgomery, Alabama 36125-0347,
Telephone (205) 284-8905.

Arizona

Ms. Janice Dunn,
Arizona State Clearinghouse,

3800 N. Central Avenue,
Fourteenth Floor,
Phoenix, Arizona 85012,
Telephone (602) 280-1315.

Arkansas

Mr. Joseph Gillesbia,
Manager, State Clearinghouse,
Office of Intergovernmental Service,
Department of Finance and Administration,
P.O. Box 3278,
Little Rock, Arkansas 72203,
Telephone (501) 371-1074.

California

Glenn Stober,
Grants Coordinator,
Office of Planning and Research,
1400 Tenth Street,
Sacramento, California 95814,
Telephone (916) 323-7480.

Colorado

State Single Point of Contact,
State Clearinghouse,
Division of Local Government,
1313 Sherman Street, Room 520,
Denver, Colorado 80203,
Telephone (303) 866-2156.

Connecticut

Under Secretary,
Attn: Intergovernmental Review coordinator
Comprehensive Planning Division,
Office of Policy and Management,
80 Washington Street,
Hartford, Connecticut 06106-4459,
Telephone (203) 566-3410.

Delaware

Francine Booth,
State Single Point of Contract,
Executive Department,
Collins Building,
Dover, Delaware 19903,
Telephone (302) 736-3326.

District of Columbia

Lovetta Davis,
State Single Point of Contact,
Executive Office of the Mayor,
Office of Intergovernmental Relations,
Room 416, District Building,
1350 Pennsylvania Avenue, NW.,
Washington, DC 20004,
Telephone (202) 727-6111

Florida

Karen McFarland,
Director, Florida State Clearinghouse,
Executive Office of the Governor,
Office of Planning and Budgeting,
The Capitol,
Tallahassee, Florida 32399-0001,
Telephone (904) 488-8114.

Georgia

Charles H. Badger,
Administrator,
Georgia State Clearinghouse,
270 Washington Street, SW.,
Atlanta, Georgia 30334,
Telephone (404) 656-3855.

Hawaii

Mr. Harold S. Masumoto,
Acting Director,
Office of State Planning,
Department of Planning and Economic Development,
Office of the Governor,
State Capitol,
Honolulu, Hawaii 96813,
Telephone (808) 548-3016 or 548-3085.

Illinois

Tom Berkshire,
State Single Point of Contact,
Office of the Governor,
State of Illinois,
Springfield, Illinois 62706,
Telephone (217) 782-8639.

Indiana

Frank Sullivan,
Budget Director,
State Budget Agency,
212 State House,
Indianapolis, Indiana 46204,
Telephone (317) 232-5610.

Iowa

Steven R. McCann,
Division for Community Progress,
Iowa Department of Economic Development,
200 East Grant Avenue,
Des Moines, Iowa 50308,
Telephone (515) 281-3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2305, Telephone (301) 225-4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7004.

Michigan

Milton Q. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111.

Please direct correspondence to: Manager Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W Jones Street, Raleigh, North Carolina 27611 Telephone (919) 733-0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224-2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770.

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-8700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907 Telephone (401) 277-2656.

Please direct correspondence and questions to: Review Coordinator Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Officer of the Governor, 1205 Pendleton Street, Room 477 Columbia, South Carolina 29201, Telephone (803) 734-0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778.

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director Office of Policy Research & Coordinator Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4978.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building 6B, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608)-266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608)-266-0267

Wyoming

Ann Redman, State Single Point of Contract, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574.

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APPENDIX II

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED / Applicant Identifier
	3. DATE RECEIVED BY STATE / State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY / Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission

Item	Entry
1	Self-explanatory
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3	State use only (if applicable).
4	If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank.
5	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12	List only the largest political entities affected (e.g., State, counties, cities)
13.	Self-explanatory
14.	List the applicant's Congressional District and any District(s) affected by the program or project
15	Amount requested or to be contributed during the first funding/budget period by each contributor Value of in-kind contributions should be included on appropriate lines as applicable If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet For multiple program funding, use totals and show breakdown using same categories as item 15
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age, (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records, (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Territories

Guam

Michael J Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marreo, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O Box 41119, San juan, Puerto Rico 00940-9985, Telephone (809) 727-4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure

Organization

Authorized Signature

Title Date

Note: If Disclosure Forms are required, please contact: Mr William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW Washington, DC 20201-0001

[FR Doc. 90-14935 Filed 6-26-90; 8:45 am]

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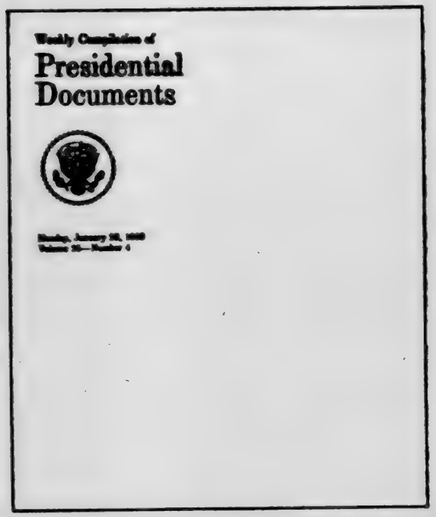
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Rules and Regulations

Federal Register
Vol. 55, No. 125
Thursday, June 28, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 752

Revocation of Schedule B (PAC) Authority 213.3202(1) and Deletion of a Related Regulation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is eliminating regulations establishing Schedule B (PAC) authority 213.3203(1) due to the revocation of this authority effective on July 1, 1990. This revocation is necessary due to the terms of the authority itself which specify that no new apointments to the GS-5 and GS-7 professional and administrative career (PAC) positions covered by the authority can transpire once competitive examinations for these same positions are implemented. Since the establishment on July 1, 1990, of the Administrative Careers With America (ACWA) registers will provide eligibles for all PAC positions not already covered by competitive examinations, the Schedule B (PAC) appointing authority is no longer needed.

OPM is also eliminating the regulation, 752.401(c)(6), which provides certain Schedule B (PAC) incumbents with appeal rights in specific adverse action situations. This deletion, which also becomes effective July 1, 1990, is necessary because beginning on this latter date, there will be no Schedule B (PAC) incumbents; rather, all will have become status quo employees.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Daley, (202) 606-0960.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. That is because these amendments are solely for the purpose of deleting outdated regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Parts 213 and 752

Administrative practice and procedures, Government employees.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR parts 213 and 752 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302. E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 98-454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

§ 213.3202 [Amended]

2. In 213.3202, pararaph (l) is removed and reserved.

PART 752—ADVERSE ACTIONS

3. The authority citation for part 752 continues to read as follows:

Authority: 5 U.S.C. 7504 and 7514; 5 U.S.C. 1302, Pub. L. 98-454; Section 752.401 also issued under 5 U.S.C. 3301 and 3302, and E.O. 10577; Section 752.605 also issued under 5 U.S.C. 1302 and 7513; Subpart F also issued under 5 U.S.C. 7543.

§ 752.401 [Amended]

4. In 752.401, paragraph (c)(6) is removed and reserved.

[FR Doc. 90-14971 Filed 6-27-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 921, 922, 923, and 924

[Docket No. FV-90-143FR]

Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates for the 1990-91 fiscal year (April 1-March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing order administrative committees established under these marketing orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. The action will enable these committees to perform their duties and the orders to operate.

EFFECTIVE DATE: April 1, 1990 through March 31, 1991 for each order.

FOR FURTHER INFORMATION CONTACT: Cary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 921 [7 CFR part 921] regulating the handling of fresh peaches grown in designated counties in Washington; 922 [7 CFR part 922] regulating the handling of apricots grown in designated counties in Washington; 923 [7 CFR part 923] regulating the handling of cherries grown in designated counties in Washington; and 924 [7 CFR part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders

are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 65 handlers of Washington peaches, 60 handlers of Washington apricots, 85 handlers of Washington cherries, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers and 375 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the U.S. Department of Agriculture (Department), require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee established under the marketing orders and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

While the action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders.

A proposed rule concerning the 1990–91 expenses and assessment rates was published in the Federal Register (55 FR 12848, April 6, 1990), with a comment period ending June 11, 1990. Comments were received from the Washington Fresh Peach Marketing Committee (WPMC), the Washington Apricot Marketing Committee (WAMC), the Washington Cherry Marketing Committee (WCMC), and the Washington-Oregon Fresh Prune Marketing Committee (WOPMC). These committees met in May and recommended lower expenditure and assessment rate levels from those contained in the proposed rule based on more recent crop, expense, and reserve level estimates.

The expenditure amounts and assessment rates contained in the proposed rule were based on the recommendations of the Stone Fruit Executive Committee (SFEC) in March, based on the best information available to it at that time. The SFEC is made up of officers of the marketing committees established under these orders, and is authorized to recommend the budgets early in the season. The final rule approves the recommended lower expenditure levels and rates of assessment.

The WPMC met May 22, 1990 and unanimously recommended 1990–91 expenditures of $18,841 and an assessment rate of $1.00 per ton of assessable peaches shipped under M.O. 921. This compares with expenditures of $18,904 and an assessment rate of $2.00 contained in the proposed rule. The lower expenditures and assessment rate recommendations take into account a larger crop and lower expenditures estimated for 1990–91, compared with the earlier estimates, and the need to lower the reserve fund. Assessment income for the 1990–91 fiscal year is estimated at $12,700, based on estimated fresh shipments of 12,700 tons of peaches. The WPMC's reserves are adequate to cover the anticipated deficit for the 1990–91 fiscal year. Budgeted expenditures were $18,615 and the assessment rate was $1.35 per ton in 1989–90.

The WAMC met May 22, 1990 and unanimously recommended 1990–91 expenditures of $8,965 and an assessment rate of $1.00 per ton of assessable apricots shipped under M.O. 922. This compares with expenditures of $7,027 and an assessment rate of $3.00 contained in the proposed rule. The lower expenditures and assessment rate recommendations take into account a larger crop and lower expenditures estimated for 1990–91, compared with the earlier estimates, and the need to lower the reserve fund. Assessment income for the 1990–91 fiscal year is estimated at $5,200, based on estimated fresh shipments of 5,200 tons of apricots. The WAMC's reserves are adequate to cover the anticipated deficit for the 1990–91 fiscal year. Budgeted expenditures were $8,942 and the assessment rate was $2.00 per ton in 1989–90.

The WCMC met May 7, 1990 and unanimously recommended 1990–91 expenditures of $94,545 and an assessment rate of $2.00 per ton of assessable cherries shipped under M.O. 923. This compares with expenditures of $99,608 and an assessment rate of $3.00 contained in the proposed rule. The lower expenditures and assessment rate recommendations take into account a larger crop and lower expenditures estimated for 1990–91, compared with the earlier estimates. Assessment income for the 1990–91 fiscal year is estimated at $100,000, based on estimated fresh shipments of 50,000 tons of cherries. The WCMC reserve fund is adequate to cover any shortfall in revenue. Budgeted expenditures were $98,503 and the assessment rate was $2.00 per ton in 1989–90.

The WOPMC met May 30, 1990 and unanimously recommended 1990–91 expenditures of $16,149 and an assessment rate of $1.50 per ton of assessable prunes shipped under M.O. 924. This compares with expenditures of $17,711 and an assessment rate of $2.00 contained in the proposed rule. The lower expenditures and assessment rate recommendations take into account a larger crop and lower expenditures estimated for 1990–91, compared with the earlier estimates. Assessment income for the 1990–91 fiscal year is estimated at $16,125, based on estimated fresh shipments of 10,750 tons of prunes. The WOPMC reserve fund is adequate to cover any shortfall in revenue. Budgeted expenditures were $17,650 and the assessment rate was $0.60 per ton in 1989–90.

The stone fruit marketing committees' 1990–91 budgets are similar in scope and size to those approved for 1989–90. These committees share a joint office and related expenses, based on an arrangement among the committees. The budgeted expenditures are for marketing order administration, which includes employees' salaries and travel, office operations, and miscellaneous costs, along with expenditures for prune research and cherry market development.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds new §§ 921.229, 922.229, 923.230, and 924.230 under these marketing orders, based on the committees' recommendations and other information.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because approval of the expenses and assessment rates must be expedited. The fiscal year for each of these marketing orders began on April 1, 1990, and the committees need sufficient funds to pay their expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 921, 922, 923 and 924 are amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: These actions will not appear in the Code of Federal Regulations.

2. A new § 921.229, is added to read as follows:

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.229 Expenses and assessment rate.

Expenses of $18,841 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

3. A new § 922.229 is added to read as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.229 Expenses and assessment rate.

Expenses of $8,965 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $1.00 per ton is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

4. A new § 923.230 is added to read as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.230 Expenses and assessment rate.

Expenses of $94,545 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

5. A new § 924.230 is added to read as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

§ 924.230 Expenses and assessment rate.

Expenses of $16,149 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $1.50 per ton of assessable prunes is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: June 22, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-15041 Filed 6-27-90; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 86-057C]

RIN 0583-AA44

Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: On March 1, 1990, the Food Safety and Inspection Service (FSIS) published a final rule (55 FR 7288) which amended the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be designated only as "spice," "natural flavor," "natural flavoring," "flavor," or "flavoring" in the list of ingredients on labels of meat and poultry products. Subsequent to publication of the final rule, it was discovered that a portion of the regulation was inadvertently omitted. This document provides notice of that fact and serves to correct the omission.

EFFECTIVE DATES: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ralph Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–6183.

SUPPLEMENTARY INFORMATION: On March 1, 1990, FSIS published a final rule (55 FR 7288) which amended the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be designated only as "spice," "natural flavor," "natural flavoring," "flavor," or "flavoring" in the list of ingredients on labels of meat and poultry products. A portion of § 381.118, paragraph (c), of the poultry products inspection regulations (9 CFR 381.118(c)) was inadvertently omitted. This portion had been part of the proposed rule. Section 381.118(c)(2)(ii) is revised as shown below.

Done at Washington, DC, June 14, 1990.
Lester M. Crawford,
Administrator, Food Safety and Inspection Service.

The following correction is made in FR Doc. 90-4640, Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors of Flavorings When Used in Meat or Poultry Products published in the Federal Register on March 1, 1990 (55 FR 7289).

1. On page 7294, in the middle column, in § 381.118, paragraph (c)(2)(ii) is revised to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(c) * * *
(2) * * *

(ii) Any ingredient not designated in paragraphs (c) (1) and (2) of this section whose function is flavoring, either in whole or in part, must be designated by its common or usual name. Those ingredients which are of livestock or poultry origin must be designated by names that include the species and livestock and poultry tissues from which the ingredients are derived.

* * * * *

[FR Doc. 90-15024 Filed 6-27-90; 8:45 am]
BILLING CODE 3410-DM-M

[Docket No. 86-037E]

9 CFR Parts 317 and 381

RIN 0583-AA44

Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the effective date of the final rule published on March 1, 1990, titled "Ingredients That May Be Designated As Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products" (55 FR 7289). The original effective date was August 28, 1990. The new effective date is March 1, 1991. In addition, FSIS is providing notice that temporary label approvals, granted by the Standards and Labeling Division in conjunction with the March 1, 1990, rule, will now expire on March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On March 1, 1990, FSIS published a final rule titled "Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products." The effective date of the rule was August 28, 1990.

The final rule amended the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be designated as natural flavors, natural flavorings, flavors or flavorings on labels of meat and poultry products. The final rule requires that when substances not permitted to be so designated are used in meat and poultry products they must be identified on the label by their common or usual name. This will inform consumers of the origin of these added substances, a special concern of many consumers for a variety of cultural, health, religious and other reasons.

As a result of the final rule, manufacturers of meat and poultry products containing these ingredients must revise their labels to identify the ingredients by their common or usual names, alter their formulations or both by the effective date of the rule. FSIS has determined that the process for developing revised labeling materials and formulations for products affected by this rule requires a more adequate lead time. To assure an orderly implementation of the new requirements, FSIS has decided to extend the effective date from August 28, 1990, to March 1, 1991.

In anticipation of the August 28, 1990, effective date, the Standards and Labeling Division has granted temporary label approvals under §§ 317.4(d) and 381.132(b) of the regulations. These temporary approvals were granted for labels which comply with current regulations but which would not comply with the regulations when the final rule issued on March 1, 1990, is effective. These temporary approvals are automatically extended until March 1, 1991, the new effective date of the rule.

FSIS continues to encourage manufacturers to voluntarily revise their labels as soon as possible and provide full disclosure of ingredients prior to the effective date of the regulation when disclosure will be mandatory.

Done at Washington, DC, on June 25, 1990.
Ronald J. Prusha,
Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 90-15023 Filed 6-27-90; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-38-AD; Amendment 39-6642]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Model III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which requires repetitive X-ray inspections to detect cracks in the wing spar box lower skin panels between Ribs 42 and 43, followed by an ultrasonic inspection to evaluate the extent of damage, and repair, if necessary. This amendment is prompted by fatigue testing by the manufacturer during which the wing spar box ruptured between Ribs 42 and 43. This condition, if not corrected, could result in reduced structural integrity of the wings.

EFFECTIVE DATE: August 3, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which would require repetitive X-ray inspections to detect cracks in the wing spar box lower skin panels between Ribs 42 and 43, followed by an ultrasonic inspection to evaluate the extent of damage, and repair, if necessary, was published in the Federal Register on April 10, 1990 (55 FR 13284).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for alternate means of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. This change will neither increase the burden on any operator, nor increase the scope of the rule.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 168 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,600.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale (Formerly Sud-Service/Sud Aviation)

Applies to all Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To identify and repair fatigue cracks in the wing spar box, which could result in reduced structural integrity of the wings, accomplish the following:

A. Perform an initial X-ray inspection on the left and right wing lower surface stiffeners located at the ends of the internal and external scalloped doublers between the rear and center spars of Ribs 42 and 43 (defined in the service bulletin as the "critical zone"), in accordance with Aerospatiale Service Bulletin 57-67, dated July 31, 1986, prior to the accumulation of 40,000 landings or within 1,000 landings after the effective date of this AD, whichever occurs later.

B. If no cracks are found as a result of the X-ray inspection required by paragraph A., above, repeat the inspection at intervals not to exceed 2,500 landings.

C. If cracks are suspected as a result of the X-ray inspection required by paragraph A., above, evaluate the extent of the damage by performing an ultrasonic inspection on the left and right wing lower surface stiffeners located at the ends of the internal and external scalloped doublers at the rear spar of Rib 43 (defined in the service bulletin as the "critical zone"), in accordance with Aerospatiale Service Bulletin 57-67, dated July 31, 1986.

1. If no cracks are found, repeat the X-ray inspection at intervals not to exceed 2,500 landings.

2. If cracks are found, accomplish the requirements of paragraph D., below.

D. If cracks are found, prior to further flight, perform an X-ray inspection of the expanded area to include splices at Ribs 45, 47, 50, and 51 (defined in the service bulletin as Zones B, C, D, E, F, and G), and the lower surface stiffeners between the front and center spars and between Ribs 42 and 43 (defined in the service bulletin as Zone A), in accordance with Aerospatiale Service Bulletin 57-67, dated July 31, 1986. Repair cracks prior to further flight, as follows:

1. If the cracks found are less than 8 mm in length, repair in accordance with Aerospatiale Service Bulletin 57-67, dated July 31, 1986. Repeat the X-ray inspection required by paragraph A., above, at intervals not to exceed 2,500 landings.

2. If the cracks found are equal to or greater than 8 mm in length, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. Repeat the X-ray inspection required by paragraph A., above, at intervals approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. If no cracks are found, repeat the X-ray inspection required by paragraph A., above, at intervals not to exceed 5,000 landings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 3, 1990.

Issued in Seattle, Washington, on June 18, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15052 Filed 6-27-90; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-09-AD; Amendment 39-6639]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment amends Airworthiness Directive (AD) 89-19-04, applicable to certain Beech 200 and 300 series airplanes, which currently requires repetitive inspections and repair, as required, of wing fuel bay

upper skin panels manufactured with an aluminum honeycomb core. This amendment will exclude those skin panels which have incorporated, either by manufacture or modification, the new, improved Nomex honeycomb core. Also, certain military versions of the 200 Series are removed from the effectivity for civil registered airplanes. These actions, while still insuring the structural integrity of affected airplanes, provide for the correct applicability of the AD as well as a means whereby the repetitive inspections may be terminated with the appropriate airplane modifications.

DATES: *Effective:* July 9, 1990. Comments for inclusion in the Rules Docket must be received on or before August 13, 1990. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040, Revision III, dated April 1990, and Beech Service Instructions No. C-12-0094, Revision III, dated April 1990, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-09-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: AD 89-19-04, Amendment No. 39-6316 (54 FR 36282), requires repetitive inspections of the wing fuel bay upper skin panels for debonding, and repair or replacement as necessary on certain Beech 200 and 300 series airplanes. If no debonding is detected, the AD requires sealing of all blind rivets by Beech Kit No. 101-4048-1S, and continuing inspections. If debonding is detected, the AD requires either replacement or repair of the panel, followed by continued inspections. These repairs and replacements do not provide an ending action to the inspections because the panels involved utilize aluminum honeycomb core, which is susceptible to corrosion and leads to debonding. Beech has developed an approved skin panel design based on a Nomex honeycomb core, which resists corrosive attack by water. The improved design is being installed on currently manufactured airplanes, and is provided as a partial panel repair by Beech Kit Nos. 101-4045-3S (LH) and 101-4045-4S (RH) in Service Bulletin 2040, Revision III, dated April 1990. The FAA has determined that the installation of these improved skin panels and repair kits is a proper terminating action for the repetitive inspections, currently required by AD 89-19-04.

In addition, temporary Repair Procedure No. SRV.001, which was described in Revision II to the service bulletin, is also presented in Figure 1 of Revision III to the service bulletin. However, it is no longer identified as SRV.001. This repair method is specified for use for up to one year from the time of modification in cases where immediate panel replacement is not feasible or desirable. However, a panel which has been previously rebonded using Kit No. 101-4032-1S or -3S may not be repaired again using the temporary repair method because these rebonding kits are no longer available, but some rebonded panels remain in service.

The following replacement or repair panels, which are based on aluminum honeycomb core, are no longer available and are being excluded from the revised AD:

Description	Number	Wing
Kit	101-4045-1S	Left.
Repair Procedure	SRV.002	Left.
Repair Procedure	SRV.016	Right.
Complete Panel	101-120106-603	Left.
Complete Panel	101-120106-604	Right.

Since the condition described herein provides a terminating action to the currently required repetitive inspections that will insure the structural integrity of the affected airplanes, AD 89-19-04 is being amended to eliminate replacement and repair panels based on aluminum honeycomb core and introduce improved panels based on Nomex honeycomb core. The applicability of the AD is being amended to exclude airplanes which were manufactured with these improved panels. In addition, the Models A200, A200C and A200CT have been removed from the applicability of the AD because these are covered by Military Service Instructions C-12-0094, Rev. III, dated April 1990, and none of these airplanes are ever expected to be civil registered.

Some minor editorial changes have been made which have no effect on the intent of the AD. The Beech Service Bulletin reference is changed to No. 2040, Revision III, dated April 1990. This revision to the AD will have a relieving effect on the total cost to the public, because it excludes from compliance those airplanes which have installed, at manufacture or by modification, the improved skin panels. Therefore, the economic impact is negligible.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report summarizing each FAA-public contact concerned with the substance of this AD, will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This amendment provides a procedure by which the safety of the subject airplanes would be enhanced by an improvement in structural integrity and a consequent relief from repetitive inspections. Accordingly, the FAA has determined that notice thereof would be contrary to the public interest under section 553(b)(3)(B) of the Administrative Procedure Act (APA), in that it would delay the availability of this relief. Further, because this amendment relieves a restriction, this amendment may be made effective in less than 30 days, pursuant to section 553(d)(1) of the APA.

If it is determined that this regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising and reissuing AD 89-19-04, Amendment 39-6316 to read as follows:

Beech: Applies to Models 200 and B200 (Serials BB-2 through BB-1362); 200C and B200C (Serials BL-1 through BL-135); 200CT and B200CT (Serials BN-1 through BN-4); 200T and B200T (Serials BT-1 through BT-33); and 300 (Serials FA-2 through FA-206 and FF-1 through FF-19) airplanes equipped with wing fuel bay upper skin panels made with bonded (aluminum honeycomb sandwich) construction, certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished per AD 89-19-04. To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, check the airplane records or inspect the wing fuel bay upper skin panels (hereafter called "skin panels") for possible bonded (honeycomb sandwich) construction. Airplanes with serial numbers BB-2 through BB-613, BT-1 through BT-17, BT-19 and BL-1 through BL-6 were manufactured with a skin-and-stringer construction and are not affected by this AD unless bonded wing fuel bay upper skin panels were installed after manufacture. If the airplane has bonded skin panels, accomplish the following in accordance with Beech Service Bulletin No. 2040, Revision III, dated April 1990 (for civil registered airplanes), or Beech Service Instructions No. C-12-0094, Revision III, dated April 1990 (for military airplanes), as applicable:

(1) If the skin panels are bonded and have blind rivets as shown in the shaded portions of Figure 2 in the service bulletin, inspect the skin panels for debonding within the next 150 hours time-in-service (TIS) or 6 calendar months, whichever occurs first.

(i) If the skin panel has been previously repaired, per Beech Kit No. 101-4032-1S or 101-4032-3S,

(A) and there is debonding, prior to further flight install an approved partial replacement panel per paragraph (a)(3) of this AD.

(B) and there is no debonding, prior to further flight reseal the blind rivets per instructions in Beech Kit 101-4048-1S and reinspect the skin panel for debonding within 6 calendar months, again within another 12 calendar months, and at 18 calendar months or 600 hour TIS intervals thereafter, whichever occurs first.

(ii) If the skin panel has not been previously repaired,

(A) and there is debonding, either:

(1) prior to further flight install an approved partial replacement panel per Paragraph (a)(3) of this AD, or

(2) prior to further flight install a temporary repair per Figure 1 of Beech Service Bulletin No. 2040, Revision III, dated April 1990, which can be used for no longer than 12 calendar months from the time of repair, at which time install an approved partial replacement panel per Paragraph (a)(3) of this AD.

(B) and there is no debonding, prior to further flight reseal the blind rivets per instructions in Beech Kit No. 101-4048-1S and reinspect the skin panel for debonding within 6 calendar months, again within another 12 calendar months, and at 18 calendar months or 600 hour TIS intervals thereafter, whichever occurs first.

(2) If the skin panels are bonded and do not have blind rivets as shown in the shaded portion of Figure 2 in the service bulletin, inspect the skin panels for debonding within the next 600 hours TIS or 18 calendar months, whichever occurs first.

Note 1: The following airplanes were manufactured with bonded skin panels without rivets: Models B200 (above Serial Number BB-1238), B200C (above Serial Numbers BL-127), B200CT (above Serial Numbers BN-4), B200T (above Serial Numbers BT-30), 300 (above Serial Numbers FA-81 and all FF-serial numbers).

(i) If there is debonding, either:

(A) prior to further flight install an approved partial replacement panel per Paragraph (a)(3) of this AD, or

(B) prior to further flight install a temporary repair per Figure 1 of Beech Service Bulletin No. 2040, Revision III, dated April 1990, which can be used for no longer than 12 calendar months from the time of repair, at which time install an approved partial replacement panel per Paragraph (a)(3) of this AD.

(ii) If there is no debonding, reinspect for debonding at 18 calender month intervals thereafter.

(3) Approved partial replacement skin panels are defined by Kit Nos. 101-4045-3S (LH) and 101-4045-4S (RH). Compliance with this AD is no longer required for any skin panel modified by one of these kits.

Note 2: These panels are bonded with Nomex honeycomb core and do not have rivets.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c)An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office, at the above address.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment amends AD 89-19-04, Amendment 39-6316, which superseded AD 87-15-05R1, Amendment 39-5847. This amendment becomes effective on July 9, 1990. Issued in Kansas City, Missouri, on June 11, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15081 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-208-AD; Amendment 39-6643]

Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, which currently requires the inspection of the left and right outboard flap inboard track forward support fitting attach bolts and the replacement of all titanium bolts with steel parts. This amendment requires the inspection of the associated nuts and replacement, if necessary, with the proper steel nuts. This amendment is prompted by a report that titanium bolts with aluminum nuts instead of steel bolts and nuts may have been used to attach the outboard flap inboard track forward support fitting to the wing structure. This condition, if not

corrected, could result in separation of the outboard flap from the airplane, which could adversely affect controllability.

EFFECTIVE DATE: August 6, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Airframe Branch, ANM-120S; telephone (206) 431-1928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding Telegraphic AD T89-18-51, issued August 25, 1989, applicable to Boeing Model 737-300 and 737-400 series airplanes, to require an inspection of the bolts and nuts, and replacement, if necessary, with the proper steel parts, was published in the Federal Register on November 3, 1989 (54 FR 46401).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer commented that there are substitute bolts, other than the specific part numbered bolt called out in Telegraphic AD T89-18-51, that can also be used to comply with the AD. The FAA concurs and this point in the final rule has been clarified accordingly.

The manufacturer also commented that, since the outboard flap inboard track forward support fitting attachment nuts do not have an identifying part number, purely visual inspection is sufficient to determine the nut type. However, since such an inspection would require removal of the sealant capping the nut, with the corresponding risk of damage to the surrounding structure, the commenter suggested that operators may prefer to carry out a non-Destructive Test (NDT) inspection of the nut as an optional procedure. The FAA concurs and the final rule has been revised accordingly.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator requested that the compliance time be extended because accomplishment of the proposed requirements on its fleet will require more manhours than what was specified in the economic impact analysis in the preamble to the Notice. The FAA does not concur. The breakdown of manhour requirements as specified in the proposal is the best estimate to date, based on fleet experience, and is used to determine the total cost impact of the AD on the U.S. operators. The compliance time determined by the FAA is not based on any individual operators' scheduling convenience, but on the safety impact to the flying public.

This same member also stated that, at the conclusion of the bolt inspection (as required by AD T89-18-51), the possibility of finding an aluminum nut on any of the existing steel bolts would be remote; hence, an extended compliance time would be justified. The FAA does not concur. Immediate inspection of the nuts was not required by AD T89-18-51 because the possibility of finding an aluminum nut on a steel bolt was sufficiently remote and the proposed compliance time for inspection of the nut was sufficiently long so that notice and public comment were not impracticable. However, because such a combination could exist, and due to the severity of the consequences, the proposed compliance time is considered warranted and justified.

Another commenter stated that the required inspections were labor-intensive and time-consuming due to tank sealant cure times; therefore, adjustments should be made to extend the compliance times. The FAA does not concur. Since the final rule has been revised to add the NDT inspection option as a method of compliance, time-consuming tank sealant cure times can be avoided.

Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 737-57A1202, Revision 1, dated April 26, 1990, which specifies acceptable optional bolts that may be installed and procedures to inspect for steel attach nuts using eddy current techniques. The AD has been revised to include Revision 1 as additional service information which may be used in complying with this AD. Revision 1 also includes eight additional airplanes on which the nuts were not inspected before the airplanes left the factory. The FAA intends to propose further rulemaking action to include these eight airplanes in the applicability of this AD.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 763 Model 737-300 and 737-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 57 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $798,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Telegraphic AD T89-18-51, issued August 25, 1989, with the following new airworthiness directive:

Boeing: Applies to Model 737-300 and -400 series airplanes, line numbers 1001 through 1762, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of the outboard flap from the airplane, accomplish the following:

A. Within the next 30 days after August 25, 1989 (the issuance date of Telegraphic AD T89-18-51), inspect the bolts used to secure the track forward support fitting of the inboard tracks to determine the bolt head designation.

B. If a bolt other than A388 CRES steel, Boeing part number BAC830LE8, BAC830LE7, BAC830US8, BAC830US7, is installed, replace it with a proper bolt and nut prior to next flight, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

C. Within the next 1,800 cycles or 6 months after the effective date of this amendment, whichever occurs first, visually or eddy current inspect the nuts used to secure track forward support fitting of the inboard track to determine nut material, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990, as appropriate.

Note: Inspection of the nuts must be accomplished even if the part numbers of the bolts were previously determined to be correct.

D. If a nut other than A286 CRES steel, Boeing part number BACN10HR, is installed, replace it with a proper nut, prior to further flight, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Telegraphic AD T89-18-51, issued August 25, 1989.

This amendment becomes effective August 6, 1990.

Issued in Seattle, Washington, on June 18, 1990.

Leroy A. Keith,
Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15063 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-13-AD; Amdt. 39-6644]

Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 and 737-400 series airplanes, which requires replacement of the rudder trim control knob and modification to the cockpit center console to raise the rear guard rail. This amendment is prompted by several reports of inadvertent rudder trim actuation. This condition, if not corrected, could lead to a takeoff with an improperly trimmed rudder, which would unacceptably increase the level of pilot effort required to maintain the correct heading during takeoff, and may result in a rejected takeoff.

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Perini, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1944. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the rudder trim control knob and modification of the cockpit center console to raise the rear guard rail, was published in the Federal Register on February 16, 1990 (55 FR 5521).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received.

The Air Transport Association (ATA) of America provided comments from several of its member operators who expressed concern that the proposed compliance time of 6 months is insufficient. ATA proposed a compliance time of 18 months based on retrofit kit availability in the fourth quarter of 1990. However, the Boeing Commercial Airplane Group (BCAG) proposed a 10-month compliance time based on its "best effort" retrofit kit availability schedule beginning in July of 1990. The FAA has reviewed the manufacturer's schedule in conjunction with the data provided by ATA and, as a result, has determined that the compliance time may be extended from 6 months to 12 months, without undue degradation of safety. The final rule has been revised accordingly.

BCAG and ATA questioned the addressed unsafe condition, and commented that there is no reduction in takeoff "controllability" with an improperly trimmed rudder. The amount of rudder pedal force required to achieve full rudder in opposition to full rudder trim is only slightly increased over normal pedal forces. The FAA concurs with their clarification, and has revised the unsafe condition addressed by this AD action. Nevertheless, the FAA has determined that an unsafe condition exists because the increased pedal forces may result in unnecessary rejected takeoffs.

The Air Line Pilots Association (ALPA) and the National Transportation Safety Board (NTSB) commented that they support the proposed AD. They also indicated support for additional AD's which they believe should be issued for "binding" rudder trim switches and "sticky" rudder trim indicators on these and other airplane models. The FAA is currently working with BCAG concerning these other reported rudder trim system deficiencies, and may consider further rulemaking to address these items. Rulemaking action is currently underway to add the Model 737-500 to the applicability of this AD; this model had not been certificated at the time the NPRM for this action was issued.

ALPA commented that a rudder "trim-in-motion" alert be required to address the issue of inadvertent trim. Also, ALPA suggested that the rudder trim position be monitored by the airplane's takeoff warning system. The FAA disagrees. With full rudder trim, a safe takeoff can still be accomplished, and this has been demonstrated to the FAA.

One operator, Royal Dutch Airlines, commented that the rudder trim control

knob on its Model 737 airplanes is located in the center console, which is different from the usual aft location on the center console. As a result, this commenter felt that raising the center console rear guard rail is not necessary for its airplanes. The FAA agrees. The final rule has been revised to require modification of the console rear guard rail only on airplanes with the aft located rudder trim control knob.

After careful review of the available data, including the comments noted, the FAA has determined that air safety and the public interest require adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 670 Model 737–300 and 737–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 378 airplanes of U.S. registry will be affected by this AD, that it will take an average of 10.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. It is estimated that modification parts will cost $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $309,960.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 737–300 and 737–400 series airplanes, certification in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent inadvertent rudder trim resulting in unacceptably increasing the level of pilot effort required to maintain the correct heading during takeoff, which may result in a rejected takeoff, accomplish the following:

A. Replace the rudder trim control knob with a smooth rounded fluted knob approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

B. If the rudder trim control knob is located near the rear of the cockpit center console, add a guard rail with a height of approximately 1.5 inches to the rear of the cockpit center console if no rail is currently installed, or, if a rail is currently installed, raise the cockpit center console rear rail to a height of approximately 1.5 inches, in accordance with procedures approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective August 6, 1990.

Issued in Seattle, Washington, on June 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–15084 Filed 6–27–90; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions; Singapore International Monetary Exchange Limited

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Three-Month Euroyen Interest Rate futures contract traded on the Singapore International Monetary Exchange Limited ("SIMEX") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on July 20, 1988, 53 FR 28826 (July 29, 1988), authorizing certain option products traded on SIMEX to be offered or sold in the United States.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: David A. Nastz, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the Three-Month Euroyen Interest Rate Futures Contract Traded on the Singapore International Monetary Exchange Limited to be Offered or Sold in the United States Thirty Days after Publication of this Notice in the **Federal Register**.

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the Singapore International Monetary Exchange Limited ("SIMEX") to be offered or sold in the United States. 53 FR 28826 (July 29, 1988). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any SIMEX option product in the United States shall be made until thirty days after publication in the Federal Register of notice specifying the particular option(s) to be offered or sold pursuant to this Order. * * *.

By letter dated June 5, 1990, SIMEX represented that it would be introducing an option contract based on the Three-Month Euroyen Interest Rate futures contract. SIMEX has requested that the Commission supplement its Initial Order authorizing options on Eurodollar futures, Japanese Yen futures and Deutschemark futures by also authorizing SIMEX's option contract on the Three-Month Euroyen Interest Rate futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988, and subject to the terms and conditions specified therein, the Commission hereby authorized SIMEX's option contract on the Three-Month Euroyen Interest Rate futures contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the Federal Register.

Contract Specifications

Options on the Three-Month Euroyen Interest Rate Futures Contract

Ticker Symbol: Calls: CEY. Puts: PEY.
Contract Months: March, June, September, and December. Contracts listed on a one-year cycle.
Trading Hours: Singapore 8 a.m. to 5 p.m. (Same as Euroyen Futures).
Minimum Price Fluctuation: 0.01 SIMEX Index point or a value of ¥2,500 per tick except that trades may occur at a price of ¥100 if such trades result in the liquidation of positions for both parties to the trade.
Strike Price:
Stated in terms of the SIMEX Index for the Euroyen futures contract at intervals of 0.25.
At the commencement of trading in a contract month, the Exchange shall list put and call options at the exercise price that is nearest the previous day's settlement price of the underlying futures contract. In addition, all eligible exercise prices in a range of 0.75 SIMEX Index points above and below the exercise price that is nearest that futures prices shall be listed for trading.
Thereafter, the Exchange shall add for trading all eligible exercise prices in a range of 0.75 SIMEX Index points above and 0.75 SIMEX Index points below the exercise price nearest the previous day's settlement price. No new options shall be listed, however, if less than 10 calendar days remain to the termination of trading.
Daily Price Limit: None.
Last Trading Day: Trading shall terminate at 10 a.m. (11: a.m. Tokyo time) on the 2nd business day immediately preceding the 3rd Wednesday of the contract month. (Same as Euroyen futures).
Exercise Procedure:
An option may be exercised by the buyer on any business day that the option is traded. To exercise an option, the Clearing Member representing the buyer shall present an Option Exercise Notice to the Clearing House by 7:30 p.m. on the day of exercise.
An option that is in-the-money and has not been liquidated or exercised prior to the termination of trading shall, in the absence of contrary instructions delivered to the Clearing House by 7:30 p.m. on the last day of trading by the Clearing Member representing the option buyer, be exercised automatically.
Assignment Procedure:
Option Exercise Notices accepted by the Clearing House shall be assigned through a process of random selection to Clearing Members with open short positions in the same series. A Clearing Member to which an Option Exercise Notice is assigned shall be notified thereof as soon as practicable after such notice is assigned by the Clearing House, but not later than 45 minutes before the opening of trading in the underlying futures contract on the following business day.
The Clearing Member assigned an Option Exercise Notice shall be assigned a short position in the underlying futures contract if a call is exercised or a long position if a put is exercised. The Clearing Member representing the option buyer shall be assigned a long position in the underlying futures contract if a call is exercised and a short position if a put is exercised.
All such futures positions shall be assigned at a price equal to the exercise price of the option and shall be marked to market on the trading day following acceptance by the Clearing House of the Option Exercise Notice.
Position Limits:
No person shall own or control at any time any options positions (after offsetting any net outright futures positions) that exceeds 1,000 futures equivalent contracts net on the same side of the market in all contract months combined.
The futures equivalent of an option contract is 1 time the previous business day's SIMEX risk factor for the option series. A long call option, a short put option, and a long underlying futures contract are on the same side of the market; similarly, a short call option, a long put option, and a short underlying futures contract are on the same side of the market.
Higher position limits may be granted for bonafide hedging transactions upon written application to the Exchange.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

Amendment of Appendix B

Accordingly, 17 CFR part 30 is amended as set forth below:

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

APPENDIX B—OPTION CONTRACTS PERMITTED TO BE OFFERED AND SOLD IN THE UNITED STATES PURSUANT TO 30.3(a)

Exchange	Type of contract	FR date and citation
Singapore International Monetary Exchange Limited.	Option Contract on Three Month Euroyen Interest Rate Futures Contract.	_____, 1990; ___ FR ___

Issued in Washington, DC, on June 22, 1990.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 90–14948 Filed 6–27–90; 8:45 am]

BILLING CODE 6351–01–M

[1] Commission rule 30.3(a), 52 FR 28980, 28998 (August 5, 1987), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

RAILROAD RETIREMENT BOARD

20 CFR Chapter II

Organization, Functions, and Authority Delegations: Research and Employment Accounts Bureau

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends 20 CFR chapter II to remove the title "Bureau of Compensation and Certification" wherever it appears and to substitute in its place the title "Bureau of Research and Employment Accounts", and to remove the title "Director of Compensation and Certification" wherever it appears and to substitute in its place the title "Director of Research and Employment Accounts". This action is being taken as a result of a Board reorganization which merged the former Bureau of Compensation and Certification with the Bureau of Research and Analysis to form the Bureau of Research and Employment Accounts. The position of Director of Compensation and Certification was abolished. Additional nomenclature changes are also made by this regulation. The correction of these titles is necessary to eliminate any confusion which might arise if the obsolete titles were left unchanged.

EFFECTIVE DATE: This final rule is effective June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: As the result of a Board reorganization, the Board's former Bureau of Compensation and Certification was merged with the Bureau of Research and Analysis with the result that a new Bureau of Research and Employment Accounts was formed which will take over the duties previously performed by the merged bureaus. This rule simply effects appropriate nomenclature changes to reflect this reorganization. In addition, this regulation removes the obsolete titles in part 200 of the Board's regulations and replaces them with the correct titles.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). For purposes of the collection of information within the meaning of the Paperwork Reduction Act of 1980, this nomenclature change will have no legal effect.

Under the authority provided in 45 U.S.C. 231f(b)(5) and 362(b), chapter II, title 20 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

§ 200.2 [Amended]

1. Section 200.2(c) is amended by removing the titles "Bureau of Data Processing and Accounts" and "Director of Data Processing and Accounts" and by substituting therefor the titles "Bureau of Research and Employment Accounts" and "Director of Research and Employment Accounts" respectively.

PART 209—[AMENDED]

§ 209.12 [Amended]

2. Section 209.12(b) is amended by removing "Bureau of Research, Division of Labor Studies" and by substituting therefor "Bureau of Research and Employment Accounts".

CHAPTER II—[AMENDED]

3. The title "Bureau of Compensation and Certification" is removed wherever it appears and the title "Bureau of Research and Employment Accounts" is substituted therefor.

4. The title "Director of Compensation and Certification" (and "Director of the Bureau of Compensation and Certification") is removed wherever it appears and the title "Director of Research and Employment Accounts" is substituted therefor.

Dated: June 20, 1990.
For the Board.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 90-14999 Filed 6-27-90; 8:45 am]
BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 90M-0075]

Listing of Color Additives Subject to Certification; D&C Violet No. 2; Technical Amendment; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 2, 1990, for the final rule that amended the color additive regulations to correct a typographical error in the listing for D&C Violet No. 2.

DATES: Effective date confirmed: May 2, 1990.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 1990 (55 FR 12171), FDA amended 21 CFR 74.1602 by correcting the spelling of the word "polyglactin".

FDA gave interested persons until May 2, 1990, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of April 2, 1990, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.61), notice is given that no objections or requests for a hearing were filed in response to the April 2, 1990, final rule. Accordingly, the amendments promulgated thereby became effective May 2, 1990.

Dated: June 20, 1990.

Douglas L. Archer,
Acting Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-14975 Filed 6-27-90; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Altrenogest Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Roussel-UCLAF. The original NADA provides for use of altrenogest solution to suppress estrus in mares. The supplemental NADA provides for: (1) Addition to the product's labeling of contraindication statements advising against use of the drug in mares having a history of uterine inflammation, and (2) deletion of the contraindication for use in pregnant mares. The regulations are also being amended to designate the correct dosage.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Roussel-UCLAF, Division Agro-Veterinaire, 163 Avenue Gambetta, 75020 Paris, France, is the sponsor of NADA 131–310 which provides for use of altrenogest solution to suppress estrus in mares. The firm has filed a supplemental NADA providing for addition to the product's labeling of contraindication statements that advise against use of the drug in mares having a previous or current history of uterine inflammation. The new statements are replacing the existing one that warns against use of the drug in pregnant mares (appears on labeling but not in 21 CFR 520.48). The supplement is approved and 21 CFR 520.48(c)(3) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Section 520.48(c)(1) is amended to correct an error in the existing dosage. It is incorrectly designated as "1 milliliter per 100 pounds body weight (0.05 milligram per kilogram body weight)." It should be "1 milliliter per 110 pounds" body weight (0.044 milligram per kilogram body weight)." The section is amended accordingly.

Approval of this supplement does not qualify for a 3-year exclusivity period because deletion of the contraindication recommending against use in pregnant mares does not expand the product's conditions of use. Addition of the contraindication against use in mares with a history of uterine inflammation does not qualify for exclusivity because the agency has determined that public policy requires that such warnings should appear on all generic copies and because in this case the sponsor did not submit new clinical or field investigations.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.48 is amended in paragraph (c)(1) by removing "100" and "0.05" and replacing it with "110" and "0.044", respectively, and in paragraph (c)(3) by adding the following two sentences after the second sentence to read as follows:

§ 520.48 Altrenogest solution.

* * * * *

(c) * * *

(3) * * * The drug is contraindicated for use in mares having a previous or current history of uterine inflammation (i.e., acute, subacute, or chronic endometritis). Natural or synthetic gestagen therapy may exacerbate existing low-grade or smoldering uterine inflammation into a fulminating uterine infection in some instances. * * *

Dated: June 20, 1990.

Robert C. Livingston,
Acting Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 90-14976 Filed 6-27-90; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Access to Employee Exposure and Medical Records; Clarification

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; clarification.

SUMMARY: This notice clarifies the effectiveness of regulations at 29 CFR 1910.20(g), Access for Employee Exposure and Medical Records, to indicate that all recordkeeping provisions had been approved by the Office of Management and Budget prior to December, 1988.

DATES: The information collection requirements in 29 CFR 1910.20(g) were approved by the Office of Management and Budget and § 1910.20(g) was effective on December 13, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Department of Labor, OSHA Office of Public Affairs, 200 Constitution Ave., NW., room N3641, Washington, DC 20210 (202–523–8151).

SUPPLEMENTARY INFORMATION: OSHA published a final rule entitled Access to Employee Exposure and Medical Records (Access) on September 29, 1988 (53 FR 38140). That rule contained recordkeeping requirements in paragraphs (d), (e), (f)(2), (f)(8), (f)(12), (g) and (h) which, prior to their becoming effective, had received approval by the Office of Management and Budget in accordance with The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR part 1320. Clearance and approval for all paragraphs cited above in the Access rule which contain recordkeeping provisions was granted by OMB in November, 1988 under OMB clearance number 1218–0065. OSHA published notice of OMB clearance on December 13, 1988 (53 FR 49981). The December 13, 1988 notice, however, inadvertantly omitted citation to paragraph (g) as having been cleared by OMB.

As a result of the error with respect to paragraph (g) in the December 3, 1988 notice of OMB clearance, the Office of the Federal Register assumed that approval of paragraph (g) of 29 CFR 1910.20 had been excepted by OMB and, therefore, was not yet in effect. This assumption resulted in the Office of the Federal Register including the following note at the end of 29 CFR 1910.20 in the July 1, 1989 revision to the CFR:

Effective Date Note: At 53 FR 38163, Sept. 29, 1988, 29 CFR 1910.20 was revised, effective November 28, 1988, except for the recordkeeping requirements in paragraphs (d), (e), (f)(8), (f)(12), (g) and (h) which were to become effective upon approval by the Office of Management and Budget. Each of these paragraphs, except paragraph (g), were subsequently approved by the Office of Management and Budget and became effective December 13, 1988. (See 53 FR 49981, December 13, 1988.) Paragraph (g) will

become effective upon approval by the Office of Management and Budget.

As discussed above, however, paragraph (g) was not excepted from clearance by OMB but was erroneously omitted from mention in the December 13, 1988 notice of OMB approval. Thus, this notice clarifies that 29 CFR 1910.20(g) was included in the OMB approval and is in effect.

Signed at Washington, DC, this 20th day of June 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-14886 Filed 6-27-90; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2618

Allocation of Assets in Non-Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; revision of authority citation.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Non-Multiemployer Plans, 29 CFR part 2618, by revising the authority citation to reflect current statutory provisions.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8824 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Non-Multiemployer Plans, 29 CFR part 2618, by revising the authority citation to reflect current statutory provisions, and by removing the separate authority citation for subpart C of part 2618.

These amendments serve only to reflect properly the statutory authority for part 2618, and thus impose no new requirements on, nor require any action by, the public. Therefore, the PBGC finds that notice of and public comment on these amendments is unnecessary. For these same reasons, the PBGC finds that good cause exists for making these amendments effective immediately.

E.O. 12291 and Regulatory Flexibility Act

The PBGC has determined that these amendments do not constitute a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

PART 2618—ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

In consideration of the foregoing, part 2618 of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2618 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1344 (1988).

2. The authority citation for subpart C of part 2618 is removed.

Issued in Washington, DC, this 25th day of June, 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90-15050 Filed 6-27-90; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-31]

Special Local Regulations for Marine Events; 4th of July Festival Fireworks Display; Patuxent River, Solomons Island, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 4th of July Festival Fireworks Display. The fireworks will be launched from the shore approximately 300 yards southeast from the Thomas Johnson Memorial (State Route 4) Highway Bridge, Solomons Island, Maryland with the shells bursting over the Patuxent River. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. The main shipping channel will not be closed and commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0531 is added to read as follows:

§ 100.35-0531 Patuxent River, Solomons Island, Maryland.

(a) *Definitions.*—(1) *Regulated area.* The waters of the Patuxent River bounded by a line beginning at a point on the Thomas Johnson Memorial (State Route 4) Highway Bridge at latitude 38°19'37.0" North, longitude 76°28'16.0" West, thence northeast along the bridge to the shoreline, following the shoreline southeast to a point at latitude 38°19'34.0" North, longitude 76°27'56.0" West, thence southwest to latitude 38°19'31.0" North, longitude 76°28'03.0" West, thence northwest back to the point of beginning.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective from 5 p.m. to 11 p.m., July 3, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 5 p.m. to 11 p.m., July 7, 1990.

Dated: June 20, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14888 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 90-04]

Special Local Regulations: Fleur De Lis Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for mile 603.0 to 604.0 of the Ohio River. The "Fleur De Lis Regatta" an approved marine event, will be held on July 7 through 8, 1990 at Louisville, Kentucky. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 11 a.m. to 8 p.m. on July 7 and 8, 1990.

FOR FURTHER INFORMATION CONTACT: LTJG Eric J. Bernholz, Chief, Boating Affairs Branch, Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398, (314) 425-5971.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable for this event. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG Eric J. Bernholz, project officer, Second Coast Guard District Boating Safety Division, and LT M. A SUIRE, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulations

These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35 for the purpose of promoting the safety of life and property on the Ohio River between miles 603.0 and 604.0 during the "Fleur De Lis Regatta" on July 7 through 8, 1990. This event will consist of hydroplane racing, which could pose hazards to navigation in the area. These regulations are necessary for the promotion of safety of life and property in the area during this event. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is temporary. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, the impact of these regulations is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 USC 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

These rules are necessary to ensure the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0304 is added, to read as follows:

§ 100.35-0304 Fleur de lis regatta.

(a) *Regulated Area.* The area between mile 603.0 and 604.0 of the Ohio River is designated the regatta area.

(b) *Special Local Regulations.* (1) The Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander.

The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels granted permission to transit the regulated are to do so at "no wake" speed. The above restrictions shall not apply to event participants or patrol vessels performing assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective from 11 a.m. to 5 p.m. on July 7 and 8, 1990 (local time). These times represent a guidelines for possible intermittent river closures not to exceed three (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

Dated: June 14, 1990.

W.J. Ecker,

Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 90-14990 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-34]

Special Local Regulations for Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.504.

SUMMARY: This notice implements 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event to be held on July 21, 1990 in the ship channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations in 33 CFR 100.504 are effective from 5 p.m. to 11 p.m., July 21, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Ocean City, New Jersey, submitted an application on January 23, 1990 to hold the Night in Venice Boat Parade. The event will consist of approximately 125 vessels ranging from 12 to 55 feet in length. The parade will start at Ship Channel Buoy 4 (LLNR 1160), cruise down the channel through Great Bay Waterway to Daybeacon 28 (LLNR 33805), and return to Great Egg Waterway Buoy 2 (LLNR 33800). Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: June 21, 1990.

P. A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-14987 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-90-03]

Special Local Regulations: Ultra Can-Am Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Ultra Can-Am Challenge. This event will be held on the Buffalo River entrance, Buffalo Outer Harbor and Lake Erie on 30 June 1990 from 9 a.m. (e.d.s.t.) until 2 p.m. (e.d.s.t.). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 9 a.m. (e.d.s.t.) and terminate at 2 p.m. (e.d.s.t.) on 30 June 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 13 April 1990, the Coast Guard published a Notice of Proposed Rule Making in the Federal Register for these regulations (55 FR 13916). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Ultra Can-Am Challenge will be conducted on the Buffalo Outer Harbor and Buffalo River entrance, Lake Erie, Buffalo, NY, on 30 June 1990. This event will have an estimated 50 offshore power boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station Buffalo, NY). Vessel traffic will periodically be permitted to transit through the regulated area. Commercial vessels over 1,000 gross tons will receive priority passage through the regulated area between heats and during breaks, as activity permits.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—[AMENDED]

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0903 to read as follows:

§ 100.35-0903 Ultra Can-Am Challenge, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area.* That portion of Lake Erie, Outer Buffalo Harbor and Buffalo River entrance enclosed by a line running from the South Pier Light (LLN 2040), west to a point at 042 degrees 50 minutes North, 078 degrees 55 minutes 48 seconds West, then north to the Crib Light (LLN 2515), then east to the North Breakwater South End Light (LLN 2520), then east to shore, and then south along the shore to the South Pier Light (LLN 2040).

(b) *Special Local Regulations.* (1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 a.m. (e.d.s.t.) until 2 p.m. (e.d.s.t.) on 30 June 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bear steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective from 9 a.m. (e.d.s.t.) until 2 p.m. (e.d.s.t.) on 30 June 1990.

Dated: June 15, 1990.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 90-14988 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-90-15]

Special Local Regulations: Miller-Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Miller-Nautica Powerboat Classic (formerly Plate Presents Powerboat Racing). This event will be held on the Cuyahoga River, Cleveland, OH, on 18 and 19 August 1990, from 11 a.m. (e.d.s.t.) until 6 p.m. (e.d.s.t.), each day. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 10 a.m. (e.d.s.t.) until 6 p.m. (e.d.s.t.), each day, on the 18th and 19th of August 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until 17 May 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Miller-Nautica Powerboat Classic will be conducted on the Cuyahoga River, Cleveland, OH, from the mouth of the Old River to the Bascule Bridge, Cuyahoga River, on 18 and 19 August 1990. This event will have an estimated 40 outboard tunnel boats which could pose hazards to navigation in the area.

In order to provide for the safety of life and property, the Coast Guard will restrict vessel traffic prior to and during this event within this section of the Cuyahoga River. Areas designated in the application shall be fenced for spectator safety. Spectators shall be prohibited from areas where retaining walls or bulkheads do not exist. Spectators shall be prohibited from the waterfront of the Settlers' Landing Park. Local authorities have been consulted and have agreed that the above steps will be appropriate to insure spectator safety. Racing shall be suspended and race course buoys shall be removed to provide for the passage of commercial vessels on the days of racing. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Cleveland Harbor, OH).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entitites.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0915 to read as follows:

§ 100.35-0915 Miller-Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH.

(a) *Regulated Area.* That portion of the Cuyahoga River, Cleveland, OH, from the mouth of the Old River, southeastward to the Bascule Bridge (north of the Detroit Superior Bridge) Cuyahoga River, Cleveland, OH.

(b) *Special Local Regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 10 a.m. (e.d.s.t.) until 6:00 p.m. (e.d.s.t.), each day, on 18 and 19 August 1990. However, racing shall be suspended and race course buoys shall be removed to provide for the passage of commercial vessels, during certain periods, on the days of racing.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bear steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective at 10 a.m. (e.d.s.t) until 6 p.m. (e.d.s.t.), each day, on the 16th and 19th of August 1990.

Dated: June 15, 1990.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 90-14907 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-38]

Special Local Regulations for Marine Events; Philadelphia Freedom Festival; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.509.

SUMMARY: This notice implements 33 CFR 100.509 for the fireworks portion of the Philadelphia Freedom Festival. The display will be launched from barges anchored off pier 30S, Delaware River, Philadelphia, Pennsylvania on July 7, 1990. The regulations in 33 CFR 100.509 are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.509 are effective from 8 p.m. to Midnight, July 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Philadelphia submitted an application dated June 11, 1990 to hold a fireworks display in conjunction with the Philadelphia Freedom Festival to be held on July 7, 1990. The display will be launched from barges anchored off Pier 30S, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: June 20, 1990.

F.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-14908 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-39]

Special Local Regulations for Marine Events; 4th of July Celebration Fireworks Display; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the 4th of July Celebration Fireworks Display at Town Point Park, Norfolk, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 8 p.m. to 10:30 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application dated January 18, 1990 to hold the 4th of July Celebration Fireworks Display at Town Point Park, Norfolk, Virginia. The fireworks display will be launched from the Banana Landmass, Town Point Park, Norfolk, Virginia, but will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: June 20, 1990.

F.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-14909 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COD1-90-084]

Safety Zone Regulations: Navesink River, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Navesink River, New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9:30 p.m. local time on 3 July 1990. It terminates at 11:30 p.m. local time on 3 July 1990.

FOR FURTHER INFORMATION CONTACT: QM2 J.W. Mills of Caption of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. This action has been analyzed in accordance with the principle and criteria of E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, Project Officer for the Captain of the Port, New York, and LT R.E. Kerroch, Project Attorney, First Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-(g), 6.04-1, 6.04-6 and 160.5.

2. Part 165 as amended by adding § 165.T1084 to read as follows:

§ 165.T1084 Safety Zone: Navesink River, Red Bank, New Jersey.

(a) *Location.* The following area has been declared a safety zone: that portion of the Navesink River west of Marine Park and east of the Cooper's Bridge.

(b) *Effective date.* This regulation becomes effective at 9:30 p.m. local time on 3 July 1990. It terminates at 11:30 p.m. local time on 3 July 1990.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: June 18, 1990.

R.C. North,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 90-14910 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3699/R1060; FRL-3765-2]

Pesticide Tolerances for Clofentezine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on peaches and nectarines at 1.0 ppm each. This regulation to establish maximum permissible levels for residues of the insecticide was requested pursuant to a petition by Nor-Am Chemical Co.

DATES: This regulation becomes effective June 28, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3699/R1060], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., Sw., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Jr., Product Manager (PM) 12, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 22, 1989 (54 FR 7507), EPA issued a proposed rule that gave notice that the Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, and submitted a pesticide petition (9F3699) proposing to establish tolerances for residues of the pesticide chemical clofentezine ([3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine]) in or on peaches and nectarines at 1.0 ppm each.

A conditional registration for use of clofentezine on peaches and nectarines is being issued concurrently with this tolerance. This conditional registration will automatically expire on September 1, 1990. The Agency has determined that avian reproduction studies (71-4) are required because of the growing number of pending uses for clofentezine and because the criteria for requiring these studies have been exceeded. These studies are expected to be submitted shortly to the Agency for review. EPA is establishing tolerances for this pesticide on peaches and nectarines with an expiration date of September 1, 1991.

The toxicological data considered in support of the tolerance include a 1-year dog feeding study with no-observed-effect level (NOEL) of 50 ppm (1.25 mg/kg/day) (effects observed at 1,000 and 20,000 ppm included elevated serum cholesterol and triglyceride levels); a mouse oncogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a multi-generation rat study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT)); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a developmental NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) and also has a NOEL of 1,000 mg/kg/day for maternal toxicity (reduced body weight gain and food consumption) and developmental toxicity (reduced litter and fetal body weights); and a 2-year rat chronic feeding/oncogenicity study which showed an increase in the incidence of centrilobular hepatocyte hypertrophy and showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day) (HDT). Gene mutation, chromosomal aberrations, and diet DNA damage tests were negative for genetic toxicity.

The registrant (Nor-Am) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumor associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Considerations," prepared by the Technical Panel of the Agency's Risk Assessment Forum (December 15, 1987). While this document is still undergoing Agency review, and the assessment procedures set forth therein have not been adopted by the Agency, the draft does provide a useful framework in which to consider the issue. Although the additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity, the Agency believes that additional data are necessary to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the above document. Based on the rat chronic feeding/oncogenicity study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the evidence classification, which in this case shows clofentezine to be a "possible human carcinogen." The classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency believes a quantitative risk assessment based on the thyroid incidence is not appropriate for the following reasons:

1. The increased tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.
2. The increased incidence was observed only in male rats.
3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited control group data (7.5 to 15 percent) from two other studies.
4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.
5. The mouse was negative for carcinogenic effects at all dose levels, i.e., 50, 500, 5,000 ppm (equivalent to 7.5, 75, 750 mg/kg/day, respectively).
6. There are no close structural analogs with carcinogenic concerns identified.
7. Clofentezine is not mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also reviewed the weight-of-the evidence consideration and classification of the oncogenic potential of clofentezine. Their review included the additional thyroid studies submitted by Nor-Am that were available at that time. The SAP concluded that thyroid tumors in male rats from the chronic feeding/oncogenicity study with clofentezine did not provide adequate evidence of a potential carcinogenic hazard to humans, and that the carcinogenic potential of clofentezine belongs in Group D (not classifiable as to human carcinogenicity).

The Panel's interpretation was based on observed increases in thyroid-stimulating hormone (TSH) levels and the incidence of thyroid follicular cell hyperplasia which may be responses to decreases in blood levels of the circulating thyroid hormones (triiodothyroxine (T_3) and tetra-iodothyroxine (T_4)) observed in clofentezine-treated rats. This sequence of reduced circulating thyroid hormones and increased TSH levels and follicular cell hyperplasia is known to lead to thyroid tumors in rats, and the Panel noted, "Exposure to agents that cause this sequence in rats has not resulted in increased TSH, hyperplasia and thyroid tumors in humans." Therefore, the Panel concluded that there was inadequate data for suggesting human carcinogenicity or a quantitative risk assessment.

Nor-Am has since submitted additional thyroid studies intended to show the mechanism of clofentezine's thyroid tumor induction. The Agency has reviewed these data, but as previously stated, the Agency continues to believe that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D." However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

Based on the 1-year dog feeding study with a NOEL of 1.25 mg/kg/day and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.013 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 0.5 percent of the ADI. The current action will contribute 0.000229 mg/kg/day of residue to the human diet utilizing an additional 1.8 percent of the ADI. This results in a total utilization of 2.3 percent of the ADI.

The nature of the residue is understood. An adequate analytical method, high performance liquid chromatography (HPLC), is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol., II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460.

Based on the above information and data, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below, with an expiration date of September 1, 1991. After receipt and evaluation of the avian reproduction studies, the Agency will consider establishing permanent tolerances without an expiration date for residues of this chemical.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.446, to read as follows:

§ 180.446 Clofentezine; tolerance for residues.

Tolearances are established as follows for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on the following raw agricultural commodities:

Commodities	Parts per million
Peaches	1.0
Nectarines	1.0

These tolerances expire on September 1, 1991.

[FR Doc. 90-15084 Filed 6-27-90; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Parts 180 and 185

[OPP-300220; FRL-3769-2]

Various Pesticide Tolerances; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document amends various sections in 40 CFR parts 180 and 185 for tolerances and exemptions from tolerances for pesticide chemicals in or on various raw agricultural commodities and foods. These are technical amendments that merely clarify or correct previously issued regulations appearing in the Code of Federal Regulations (CFR). These amendments impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Critchlow, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: This document amends pesticide tolerance regulations in Title 40 of the Code of Federal Regulations (CFR), parts 180 and 185, in §§ 180.204, 180.213a, 180.226, 180.230, 180.235, 180.288, 180.317, 180.324, 180.332, 180.361, 180.379, 180.380, 180.382, 180.387, 180.417, 180.422, 180.1055, 180.1068, 180.1079, 185.1250, 185.2500, and 185.4000

No new regulatory requirements are being added. The changes being made are merely technical amendments that correct typographical errors, cross-references, or other obvious errors; therefore, advance notice and public comment are not necessary prerequisites for the issuance of this document, and it is effective upon publication in the **Federal Register**.

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: June 14, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to chapter I of

title 40 of the Code of Federal Regulations:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.204 [Amended]

b. In § 180.204 Dimethoate including its oxygen analog; tolerances for residues, in paragraph (a) in the introductory text, in the oxygen analog change "(*O,O*-dimethyl)" to read "(*O,O*-dimethyl)" and change "*N*-methylcarbamoylmethyl" to read "*N*-methylcarbamoylmethyl."

§ 180.213a [Amended]

c. In § 180.213a Simazine; tolerances for residues, in the first chemical expression in the text change "(2-chloro-4,6-bis(ethylamino)-triazine" to read "(2-chloro-4,6-bis(ethylamino)-*s*-triazine."

§ 180.226 [Amended]

d. In § 180.226 Diquat; tolerances for residues, in paragraph (b) in the introductory text change "pyrazidinium" to read "pyrazinedium."

§ 180.230 [Amended]

e. In § 180.230 Diphenamid; tolerances for residues, in the introductory text change "matabolite" to read "metabolite."

§ 180.235 [Amended]

f. In § 180.235 2,2-Dichlorovinyl dimethyl phosphate; tolerances for residues, in paragraph (b) change "21 CFR 561.180" to read "21 CFR 556.180."

§ 180.269 [Amended]

g. In § 180.269 Aldicarb; tolerances for residues, in the introductory text in the first metabolite, change "propionaldehyde" to read "propionaldehyde."

§ 180.317 [Amended]

h. In § 180.317 3,5 Dichloro-N-(1,1-dimethyl-3-propynyl)benzamide; tolerances for residues, in the table in paragraph (b) change "Peas, dried (winter)" to read "Peas, dried (winter)."

§ 180.324 [Amended]

i. In § 180.324 Bromoxynil; tolerances for residues, in paragraph (b), in the introductory text, change "bytyric" to read "butyric."

§ 180.332 [Amended]

j. In § 180.332 4-Amino-6-(1,1-dimethyl ethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one; tolerances for residues, change "-6(4*H*)-" to "-5(4*H*)-" in the chemical name in the text of the regulation.

§ 180.361 [Amended]

k. In § 180.361 Pendimethalin; tolerances for residues, in paragraph (a) in the metabolite name change "ethypropyl" to "ethylpropyl" and in paragraph (c) in the metabolite name change "aminol" to "amino."

§ 180.379 [Amended]

l. In § 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate; tolerances for residues, change "(methylethyl)" to "(1-methylethyl)" in the heading and in the introductory texts of paragraphs (a) and (b).

§ 180.380 [Amended]

m. In § 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues, in paragraph (b) change "ethnyl" to "ethenyl."

§ 180.382 [Amended]

n. In § 180.382 Triforine; tolerances for residues, in paragraph (b) in the introductory text, change "piperperazinedityibis" to read "piperazinedityibis."

§ 180.387 [Amended]

o. In § 180.387 1-Methyl 2-[[ethoxy-[(1-methylethyl)phosphinothioyl]oxy]benzoate, change "1-methyl" in the heading to read "1-Methyl" and in the introductory text, in the second metabolite, change "1-methylethy" to read "1-methylethyl" and change "phospinoyl" to read "phosphinoyl."

§ 180.417 [Amended]

p. In § 180.417 Triclopyr; tolerances for residues, in paragraph (a) in the first chemical expression change "3,5-trichloro-2-pyridnyl" to read "3,5,6-trichloro-2-pyridinyl."

§ 180.422 [Amended]

q. In § 180.422 Tralomethrin; tolerances for residues, change "tetrabromethyl" to read "tetrabromoethyl" in the chemical name in the text.

§ 180.1055 [Amended]

r. In § 180.1055 (E,Z)-3,13-octadecadien-1-ol acetate and (Z,Z)-3,13-octadecadien-1-ol acetate; exemption from the requirement of a tolerance, in the second chemical name in the text change "(*Z,Z*)-3,13-octadecadien acetate" to read "(*Z,Z*)-3,13-octadecadien-1-ol acetate."

§ 180.1066 [Amended]

s. In § 180.1066 O,O-Diethyl-O-phenylphosphorothioate; exemption from the requirement of a tolerance, change "proply" to read "propyl" in the text in the two places it appears.

§ 180.1079 [Amended]

t. In § 180.1079 1-(3-Methoxy-4,8-dimethylnonyl)-4-(methylethyl)benzene; exemptions from the requirement of a tolerance, in the heading and in the text change "methylethyl" to read "(1-methylethyl)."

PART 185—[AMENDED]

2. In part 185:

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.1250 [Amended]

b. In § 185.1250 Cyfluthrin, in paragraphs (a), (b), and (c), change "dimethylcyclcopropanecarboxylate" to read "dimethylcyclopropanecarbexylate."

§ 185.2500 [Amended]

c. In § 185.2500 Diquat, in paragraph (b) in the introductory text change "pyrazidilinium" to read "pyrazinedium."

§ 185.4000 [Amended]

d. In § 185.4000 Metalaxyl, in paragraph (d), change "(methyoxyacetyl)" to read "(methoxyacetyl)."

[FR Doc. 90-15068 Filed 6-27-90; 8:45 am]
BILLING CODE 6560-50-D

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40 CFR Part 185

[FAP0H5564/R1065; FRL-3800-6]

Pesticide Tolerances for Cyano(3-Phenoxyphenyl) Methyl 4-Chloro-Alpha-(1-Methylethyl)Benzeneacetate (Fenvalerate) and Its S,S Isomer (Esfenvalerate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends a food additive regulation to permit residues of the insecticide esfenvalerate [(S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)-benzeneacetate], the S,S isomer of fenvalerate, in or on foods processed in food-handling establishments where the insecticide is used for pest control purposes. This regulation to establish the maximum permissible level for residues of the insecticide esfenvalerate in or on food commodities was

requested by the McLaughlin Gormley King Co.

EFFECTIVE DATE: Effective on June 28, 1990.

ADDRESSES: Written objections, identified by the document control number, [FAP0H5564/R1065], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 22, 1989 (54 FR 7597), which announced that McLaughlin Gormley King Co., 8810 Tenth Ave. North, Minneapolis, MN 55427, had filed a food and feed additive petition (FAP 8H5564), proposing that 40 CFR 185.1300 and 186.1300 be amended by establishing a regulation to permit the residues of all isomers of the insecticide cyano (3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate and an isomer, (S)-cyano(3-phenoxyphenyl)-(S)-4-chloro-alpha-(1-methylethyl)-benzeneacetate, with a tolerance limitation of 0.05 part per million (ppm) in or on all food and feed items (other than those already covered by a higher tolerance as a result of use on growing crops) in food and feed-handling establishments where food, food products, feed, and feed products are held, processed, or prepared. The notice also announced a change in the application rates and formulation for fenvalerate by increasing the application rate for a contact spray treatment from the existing 0.2 percent a.i. solution at 1 gallon/1,000 ft^3 to 1 percent a.i. solution at 1 gallon/1,000 ft^3 and adding a pressurized (aerosol) spot crack and crevice formulation at 1.0 percent a.i. solution.

The food/feed additive petition was subsequently amended on October 9, 1989, by deleting the proposal for feed additive tolerances under 40 CFR 186.1300, reverting back to the current application rates and formulation for fenvalerate and limiting the amendment to the S,S isomer only (esfenvalerate).

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. An acute oral rat toxicity study with median lethal dose (LD_{50}) of 1 to 3 grams (g)/kilogram (kg) of body weight (bwt) (water vehicle) and 450 milligrams (mg)/kg bwt (dimethylsulfoxide (DMSO) vehicle);

2. A 13-week rat feeding study with a systemic NOEL of 2.5 mg/kg/day (50 ppm).

3. A 12-month dog feeding study with a no-observed-effect level (NOEL) > 200 ppm (5.3 mg/kg/day), highest dose tested (HDT).

4. A 20-month feeding/carcinogenicity (mouse) study with a systemic NOEL of 30 (ppm) (4.5 mg/kg/day). No carcinogenic effects observed under the conditions of the study at any dose levels.

5. A 24-month mouse feeding/carcinogenic study with a systemic NOEL for males of 10 ppm (1.5 mg/kg/day) and a systemic NOEL for females of 50 ppm (7.5 mg/kg/day) (no carcinogenic effects observed under the conditions of the study at any dosage levels).

6. A 24-month rat feeding/carcinogenic study with a systemic NOEL of 250 ppm (12.5 mg/kg/day) (HDT) (no carcinogenic effects under the conditions of the study at dosage levels of 1, 5, 25, and 250 ppm).

7. A three-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg/day) (HDT).

8. Developmental toxicology studies (in mice and rabbits, both negative, at the highest doses of 50 mg/kg/ bwt/day).

9. A mouse dominant-lethal study which was negative at 100 mg/kg bwt, the highest level fed.

10. A mouse host-mediated bioassay negative at 50 mg/kg bwt, which was the highest level fed.

11. An Ames test *in vitro* which was negative.

12. A bone marrow cytogenic study in the Chinese hamster which was negative at 25 mg/kg bwt.

The acceptable daily intake (ADI), based on a NOEL of 2.5 mg/kg/bwt/day for a 13-week rat-feeding study and a safety factor of 100, is 0.025 mg/kg bwt/day. The theoretical maximum residue contribution from the established tolerances is 0.009760 mg/kg bwt/day, which represents 21.7 percent of the ADI. Approval of the [(S)-cyano(2-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate tolerances for food-handling establishments where food products are processed or prepared would not change this percentage, since the numbers used to calculate the ADI for fenvalerate also covered all isomers of fenvalerate, including esfenvalerate.

The metabolism of the chemical in plants for this food-handling establishment use is adequately understood. An analytical method (gas liquid chromatography with an electron-capture detector) is available for enforcement. The methodology is being made available to anyone who is interested in pesticide enforcement when requested from: By mail: Information Services Branch, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460. Office location and telephone number: Rm. 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–1262.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*) Accordingly, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 185

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

Dated: May 9, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

2. Section 185.1300 is revised to read as follows:

§ 185.1300 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate and its S,S isomer.

(a) A food additive tolerance of 0.05 part per million is established for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate and an isomer, (S)-cyano(3-phenoxyphenyl)methyl-(S)-4-chloro-alpha-(1-methylethyl)-benzeneacetate, as follows:

(1) In or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed, or prepared.

(2) Application of cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate shall be limited to space treatment with a maximum of 0.5 fluid ounce of a 0.05-percent active ingredient solution per 1,000 cubic feet of space, or as a contact spray applied as a coarse wet spray at a maximum of 1 gallon of a 0.2-percent active ingredient solution per 1,000 square feet of surface. Food must be removed or covered during treatment. Spray should not be applied directly to surfaces or utensils that may come into contact with food. Food-contact surfaces and equipment should be throroughly cleaned with an effective cleaning compound and rinsed with potable water before using.

(3) Application of (S)-cyano(3-phenoxyphenyl) methyl-(S)-4-chloro-alpha-(1-methylethyl)benzeneacetate shall be limited to space treatment with a maximum of 1.0 fluid ounce of a 0.25-percent active ingredient solution per 1,000 cubic feet of space, or as a contact spray applied as a coarse wet spray at a maximum of 1 gallon of a 0.05-percent active ingredient solution per 1,000 square feet of surface, or as a pressurized spot/crack and crevice spray of a 0.25-percent solution. Food must be removed or covered during treatment. Spray should not be applied directly to surfaces or utensils that may come into contact with food. Food-contact surfaces and equipment should be throroughly cleaned with an effective cleaning compound and rinsed with potable water before using.

(4) To assure safe use of the additive, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) [Reserved]

[FR Doc. 90-15065 Filed 6-27-90; 8:45 am]

BILLING CODE 6560-50-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-68

RIN 3090-AE00

Government-Wide Requirements for Drug-Free Workplace (Grants); Correction

AGENCY: General Services Administration.

ACTION: Final Rule: Correction.

SUMMARY: This document corrects an amendatory instruction and a heading that were incorrectly designated in the subpart being revised. The subpart designation was incorrectly shown as subpart F. It should be subpart 105-68.6.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad (202) 501-1224.

In FR Doc. 90-11569 beginning on page 21679 in the issue of Friday, May 25, 1990, making the following correction:

PART 105-68—[CORRECTED]

On page 21701, amendatory instruction 2. which appears at the bottom of the first column and the subpart heading which appears at the top of the second column are corrected to read as set forth below:

2. Subpart 105-68.6 and Appendix C to part 105-68 are revised to read as set forth at the end of the common preamble.

Subpart 105-68.6—Drug-Free Workplace Requirements (Grants)

Dated: June 22, 1990.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy.

[FR Doc. 90-14983 Filed 6-27-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3200

RIN 1004-AB63

[AA-816-00-4119-02; Circ. No. 2628]

Geothermal Resources Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The interim rule amending 43 CFR part 3200, which was published at 54 FR 13884-13887 on April 6, 1989, is adopted as a final rule without change. The rule implements the Geothermal Steam Act Amendments of 1988 (Pub. L. 100-443) (Act) which provide geothermal operators new opportunities to obtain lease term extensions or to have leases continue in effect.

EFFECTIVE DATES: April 6, 1989.

ADDRESSES: Suggestions or inquiries should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Hoops, (702) 326-6368.

SUPPLEMENTARY INFORMATION: An interim rule amending the regulations at 43 CFR part 3200 was published in the Federal Register on April 6, 1989, with a 60-day comment period. Only one public comment was received. The comment concerned § 3203.1-4(c)(2)(i-iii) which requires operators to choose, prior to obtaining a lease extension, whether to make annual payments in lieu of commercial production or to make significant expenditures toward development of their leases. According to this provision, once an operator chooses one of the options the operator must hold to that option for the period of extension. The party commenting requested that the rule be revised to allow operators to change options during the period of lease extension, i.e., to make payments in some years while making significant expenditures in others. Congress made it clear in the House of Representatives Report 100-864 that it did not intend operators to have the opportunity to change options once a lease extension had been granted. Therefore, the provision has not been revised.

Although the new definition of "produced or utilized in commercial quantities" could be interpreted to mean that lessees would have to pay minimum royalties for producible leases that had not actually commenced production, the regulations at 43 CFR 3203.3-5(c) clearly provide that leases cannot be placed on minimum royalty status until the year beginning on or after actual commencement of production.

With regard to section 28 of the Act, which pertains to the approval of waivers, exceptions, or modifications to lease stipulations, it is Bureau policy that any change or variance to lease stipulations is an action requiring compliance with whatever laws are applicable and that no such modification will be approved if it would have a significant adverse effect on any listed thermal feature in a unit of the National Park System.

With respect to geothermal development in proximity to National Park System units, the Bureau has entered into an agreement with the National Park Service, the U.S. Geological Survey, and the U.S. Forest Service which identifies roles and responsibilities of each agency, and establishes procedures to ensure compliance with the Act.

Regarding a geothermal area of general public interest, a study of the Corwin Spring Known Geothermal Resource Area (north of Yellowstone National Park), as required under section 6 of the Act, will be carried out by the U.S. Geological Survey in consultation with the National Park Service. If the study concludes that geothermal activities would adversely affect Yellowstone National Park, measures will be taken to protect the thermal features of the park including, if necessary, purchase of private lease rights and/or withdrawal of Federal lands. At present, there are no geothermal leases in the Corwin Spring area, nor are any lease applications pending.

The principal authors of this final rule are Doug Koza of the Bureau's Washington Office, Richard Hoops of the Nevada State Office, and Leroy Mohorich of the Oregon State Office with assistance from Bob Kent and Mike Pool of the Washington Office.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, the final rule would not cause a taking of private property under Executive Order 12630.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004-0103.

List of Subjects in 43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, and Surety bonds.

Under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1027), part 3200, Group 3200, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL [AMENDED]

The interim rule amending 43 CFR part 3200, which was published at 54 FR 13884-13887 on April 6, 1989, is adopted as a final rule without change.

Dated: May 24, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-15002 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6678]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial

flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Region III—Regular Program Conversions				
Pennsylvania:				
Brockway, Borough of, Jefferson County	420509	Jan. 17, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	July 3, 1990	July 3, 1990.
Clinton, Township of, Wyoming County	422197	Apr. 13, 1978, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Clover, Township of, Jefferson County	422442	May 18, 1978, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Coal, Township of, Northumberland County.	421936	Aug. 12, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Falls, Township of, Wyoming County	422198	Dec. 27, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Longswamp, Township of, Berks County	421380	Nov. 24, 1975, Emerg. July 3, 1990, Reg. July 3, 1990 Susp.	Do	Do.
Mahoopany, Township of, Wyoming County.	422201	Aug. 21, 1975, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Monroe, Township of, Wyoming County	421186	Nov. 5, 1975, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Nesquehoning, Borough of, Carbon County.	420252	Apr. 16, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Newton, Township of, Lackawanna County.	421756	July 2, 1979, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Summerville, Borough of, Jefferson County.	420514	Apr. 11, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Washington, Township of, Wyoming County.	422207	Aug. 27, 1979, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Windham, Township of, Bradford County	421409	Mar. 22, 1976, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Winslow, Township of, Jefferson County	421215	Dec. 30, 1976, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Region IV				
Mississippi:				
Jefferson County, Unincorporated Areas	280214	May 9, 1974, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Region VII				
Kansas:				
Medicine Lodge, City of, Barber County	200015	July 16, 1975, Emerg. July 3, 1990, Reg. July 3, 1990, Susp.	Do	Do.
Region I—Regular Program Conversions				
Maine:				
Alfred, Town of, York County	230191	July 23, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	July 16, 1990	July 16, 1990.
Cushing, Town of, Knox County	230224	May 7, 1976, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Friendship, Town of, Knox County	230225	Sept. 13, 1978, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Leeds, Town of, Androscoggin County	230003	June 11, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
South Bristol, Town of, Lincoln County	230220	Aug. 12, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Woolwich, Town of, Sagadahoc County	230210	Apr. 19, 1978, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date[1]
Connecticut:				
Middletown, City of, Middlesex County	090088	Aug. 16, 1974, Emerg. Dec. 16, 1980, Reg. July 16, 1990, Susp.	Do	Do.
Region II				
New York:				
Jeffersonville, Village of, Sullivan County	361474	June 19, 1975, Emerg. Mar. 23, 1984, Reg. July 16, 1990, Susp.	Do	Do.
Region III				
Pennsylvania:				
Greenfield, Township of, Lackawanna County.	422456	Dec. 27, 1979, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Quincy, Township of, Franklin County	421955	Sept. 27, 1982, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
St. Thomas, Township of, Franklin County.	421958	Aug. 15, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Steuben, Township of, Crawford County	421571	Apr. 7, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Topton, Borough of, Berks County	420154	July 25, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Vernon, Township of, Crawford County	421575	July 24, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Wayne, Township of, Crawford County	421576	Aug. 21, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Wilmot, Township of, Bradford County	421124	Mar. 23, 1976, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Wyalusing, Borough of, Bradford County	420180	Aug. 7, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Wyalusing, Township of, Bradford County	421126	Mar. 9, 1976, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Region IV				
Georgia:				
Meriwether County, Unincorporated Areas	130473	June 25, 1986, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Mississippi:				
Clay County, Unincorporated Areas	280036	Jan. 18, 1978, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Wilkinson County, Unincorporated Areas	280202	Feb. 15, 1974, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Region VI				
New Mexico:				
Estancia, Town of, Torrance County	350082	May 9, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Region VII				
Iowa:				
Bremer County, Unincorporated Areas	190547	Aug. 12, 1980, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Denver, City of, Bremer County	190026	May 27, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Janesville, City of, Bremer and Black Hawk Counties.	190023	May 28, 1982, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Sumner, City of, Bremer County	190029	Aug. 8, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Waverly, City of, Bremer County	190030	May 2, 1975, Emerg. Mar. 2, 1981, Reg. July 16, 1990, Susp.	Do	Do.
Plainfield, City of, Bremer County	190327	June 18, 1979, Emerg. Mar. 1, 1988, Reg. July 16, 1990, Susp.	Do	Do.
Missouri:				
Warrensburg, City of, Johnson County	290194	Aug. 26, 1975, Emerg. Sept. 18, 1985, Reg. July 16, 1990, Susp.	Do	Do.
Warsaw, City of, Benton County	290030	Aug. 25, 1975, Emerg. July 16, 1990, Reg. July 16, 1990, Susp.	Do	Do.
Region IX				
Arizona:				
Prescott Valley, Town of, Yavapai County	040121	Mar. 25, 1980, Emerg. Aug. 16, 1982, Reg. July 16, 1990, Susp.	Do	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading third column: Emerg.—Emergency. Reg.—Regular. Susp—Suspension.

Issued: June 19, 1990.
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 90-15038 Filed 6-27-90; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6479]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency [FEMA].
ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the Nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Regular Program Communities				
Illinois	Joppa, Village of	Massac	170757	July 3, 1990.
Do	Old Shawneetown, Village of	Gallatin	170247	Do.
Maine	Brownfield, Town of	Oxford	230087	Do.
West Virginia	Poca, Town of	Putnam	540168	Do.
Do	Pullman, Town of	Ritchie	540253	Do.
Do	Falling Springs Corporation, (known as: Town of Renick).	Greenbrier	450243	Do.
Do	Rhodell, Town of	Raleigh	540173	Do.
Do	Rupert, Town of	Greenbrier	540044	Do.

Issued: June 18, 1990.
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 90-15039 Filed 6-27-90; 8:45 am]
BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 70345-0122]

RIN: 0648-AC25

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the previously unimplemented portions of Amendment 1 to the Fishery Management Plan for Spiny lobster in the Gulf of Mexico and South Atlantic (FMP). Measures implemented by this rule (1) Require a permit to harvest spiny lobsters in the exclusive economic zone (EEZ) in quantities in excess of the bag limits or to sell spiny lobsters in or from the EEZ, (2) require a permit to wring tails from spiny lobsters in or from the EEZ, and (3) establish a recreational bag limit for spiny lobsters harvested in the EEZ during the regular season. The intended effects of this rule are to prevent overfishing of the spiny lobster resource and to provide for more consistent state and Federal management measures.

EFFECTIVE DATE: July 30, 1990, except that § 640.4 is effective June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery is managed under the FMP and its regulations at 50 CFR part 640 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* The FMP and Amendment 1 were prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). This rule implements three measures of Amendment 1 that were approved but not implemented.

A notice of availability of Amendment 1 and request for comments was published on February 25, 1987 (52 FR 5564). A proposed rule to implement Amendment 1 was published on March 18, 1987 (52 FR 8485). A notice of availability of a minority report on Amendment 1 by some members of both Councils was published on April 3, 1987 (52 FR 10780; corrected at 52 FR 13257, April 22, 1987). Final rules to implement parts of Amendment 1 were published on June 15, 1987 (52 FR 22855; corrected at 52 FR 23450, June 22, 1987) and May 16, 1988 (53 FR 17194).

The FMP manages the spiny lobster fishery throughout the EEZ off the South Atlantic coastal states from the Virginia/North Carolina border south and through the Gulf of Mexico. The management unit for the FMP consists of the spiny lobster, *Panulirus argus*, and the slipper (Spanish) lobster, *Scyllarides nodifer*.

The preamble to the proposed rule contained information on the fishery, discussed problems in the fishery, discussed the proposed regulatory changes, and analyzed the benefits of the proposed changes. The information is not repeated here.

Implementation of Delayed Measures

The three measures of Amendment 1 that were approved by not previously implemented are:

1. The requirement for a permit to harvest spiny lobsters in the EEZ in quantities exceeding the bag limit or to sell spiny lobsters in or from the EEZ.

2. The requirement for a permit to wring tails from spiny lobsters taken in the EEZ in the commercial fishery.

3. The establishment of a recreational bag limit for spiny lobsters taken in the EEZ during the regular season.

These measures are interrelated and are dependent on the requirement for a Federal commercial permit which serves as a device to distinguish between commercial and recreational fishermen in the EEZ. To be eligible for a commercial permit, the owner or operator of a vessel must derive at least 10 percent of his or her earned income from commercial fishing during the calendar year preceding his or her application.

Florida's permitting system did not provide a capatible distinction between commercial and recreational fishermen in its waters. Therefore, NOAA did not implement these measures in either of the two previous rules to implement portions of Amendment 1. Florida has distinguished between commercial and recreational fishermen by establishing a requirement for a spiny lobster recreational license. NOAA considers the state permitting system to be sufficiently compatible with the permitting system proposed in Amendment 1. Therefore, the remaining measures of Amendment 1 may now be implemented.

The requirement for a permit to wring tails from spiny lobster limits this practice to situations where wringing tails is necessary to maintain a quality commercial product when a vessel is on a lengthy trip in the EEZ. Unrestricted, tail wringing has hampered Federal and state enforcement of the minimum size limit and the prohibition on taking spiny lobster using spears, hooks, or similar devices.

Implementing the recreational bag limit provides a much needed limitation on the recreational harvest of spiny lobster from the EEZ during the regular season. The bag limit in this rule is compatible with the existing bag limit applicable to Florida's waters, thereby, facilitating enforcement.

Changes From the Proposed Rule

In § 640.4, the paragraph on fees is removed and the heading of the section is revised accordingly. The Secretary of Commerce, under the Magnuson Act, may establish the level of fees that are authorized in an FMP or amendment. Neither the FMP nor Amendment 1 authorizes fees. The paragraph on issuance of permits is revised so permits may be issued throughout the year rather than only during June and July thus providing more flexibility for applicants and for permit issuers. Permits are for the season beginning in August, rather than for the calendar year, so that two permits will not be required during a season. An exemption from the permit requirements is added to § 640.4 to cover legally harvested lobsters or tails that are merely in transit through the EEZ.

The requirement that a permit applicant provide a copy of his state permit is removed as unnecessary for administration of the Federal permitting system. In lieu thereof, an owner and operator need report only his or her Florida saltwater products license number, if applicable. An applicant must provide a copy of the vessel's U.S. Coast Guard certificate of documentation or state registration certificate as verification of the vessel's name, official number, and length. NOAA frequently has found inaccuracies in this information on applications. The requirements to provide the vessel's tonnage and radio call sign are deleted as unnecessary. Furthermore, the approximate live well capacity will be reported only in gallons.

The provision for validity of a permit for a period not to exceed 60 days after sale of a permitted vessel is removed to preclude participation in the commercial fishery by a person who does not meet the earned income requirement for a

permit, as was intended in Amendment 1. The provision in the proposed rule authorizing the Regional Director to disregard the earned income requirement for a permit in a case of documented hardship is not included in this final rule. Such authorization is not contained in Amendment 1 and is contrary to the procedures of the Regional Director in other fisheries that have earned income requirements.

Additional documents identifying owners and operators of vessels applying for permits are required, and the permits section is reordered and reworded for clarity.

In § 640.7, for clarity, specific prohibitions are added (1) regarding purchase or sale of spiny lobsters that are smaller than the minimum size or that are taken in the EEZ by a vessel that does not have a seasonal vessel permit, (2) regarding purchase or sale of separated spiny lobster tails that are taken by a vessel that does not have a tail-separation permit, and (3) regarding possession of separated spiny lobster tails by a vessel that does not have a tail-separation permit.

The qualification that possession of separated spiny lobster tails in or from the EEZ must be incidental to a trip of 48 hours or more is added to § 640.21(d). In the proposed rule, that qualification was contained only in the section dealing with an application for a tailing permit. The addition of that qualification to § 640.21(d) clarifies the restriction on removing the tails of spiny lobsters, as was intended in Amendment 1. In support of that qualification, a definition for "trip" is added.

Comments and Responses

In its comments on the proposed rule, the U.S. Coast Guard opposed the use of a tailing permit because it would be too difficult to enforce. As noted above, under certain circumstances, the wringing of tails is necessary to maintain a quality commercial product. The validity of a tail-wringing permit is limited to these circumstances. Under the status quo, there are no limitations on tail wringing in the EEZ and Florida's prohibition on tail wringing can be enforced only when it is known that the spiny lobsters were harvested in state waters. Accordingly, NOAA concludes that, overall, enforceability will be enhanced and conservation of the resource will be aided by implementation of the tail-wringing permit.

Classification

The Regional Director, Southeast Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the spiny lobster fishery of the Gulf of Mexico and the South Atlantic and that it is consistent with the Magnuson Act and other applicable law.

The Councils prepared an environmental assessment for Amendment 1 and the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact on the environment as a result of the amendment's management measures.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a supplemental regulatory impact review for Amendment 1. A summary of the economic effect was included in the proposed rule at 52 FR 8487 (March 18, 1987) and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it will not significantly reduce harvest levels, alter current fishing practices, or impose significant new costs on the industry. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection of information has been approved by the Office of Management and Budget. OMB control number 0648-0205 applies. The public reporting burden for this collection of information is estimated to average 15 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Mike Justen, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: paperwork reduction act project 0648-0205).

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have approved coastal zone management programs. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, Mississippi, and South Carolina agreed with these determinations. The other states did not respond within the statutory time period, and, therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

The Assistant Administrator for Fisheries, NOAA, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide fishermen the maximum amount of time before the commencement of the next season to apply for and receive permits to engage in the commercial spiny lobster fishery, that it is not necessary to delay for 30 days the effective date of § 640.4 of this rule.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 22, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 640.2, a new definition for *Trip* is added in alphabetical order to read as follows:

§ 640.2 Definitions.

* * * * *

Trip means a fishing trip, regardless of number of days' duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

3. Section 640.4 is revised to read as follows:

§ 640.4 Permits.

(a) *Applicability.* (1) To sell a spiny lobster in or from the EEZ, or to be exempt from the daily catch and possession limit of spiny lobster in or from the EEZ specified in § 640.21(c)(1)(i), an owner or operator of a vessel must obtain a seasonal vessel permit.

(2) To possess a separated spiny lobster tail in or from the EEZ aboard a vessel, the owner or operator of that vessel must obtain a tail-separation permit. A tail-separation permit will not be issued to an owner or operator who does not qualify for a seasonal vessel permit.

(3) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobsters or separated tails in the EEZ incidental to such foreign harvesting is exempt from the permit requirements of paragraphs (a)(1) and (2) of this section provided a proper bill of lading or other proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

(b) *Application for permit.* (1) An application for a seasonal vessel or tail-separation permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or state registration certificate;

(ii) The vessel's name, official number, length, home port, and engine horsepower.

(iii) Name, mailing address including zip code, telephone number, and Florida saltwater products license number, if applicable, of the owner of the vessel;

(iv) Name, mailing address including zip codes, telephone number, and Florida saltwater products license number, if applicable, of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner;

(vi) Approximate live well capacity in gallons;

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(viii) A sworn statement by the applicant certifying that at least 10 percent of his or her earned income was derived from commercial fishing during the calendar year preceding the application;

(ix) Proof of certification, as required by paragraph (b)(3) of this section; and

(x) If a tail-separation permit is desired, a sworn statement by the applicant certifying that his fishing activity—

(A) Is routinely conducted in the EEZ on trips of 48 hours or more; and

(B) Necessitates the separation of carapace and tail to maintain a quality product.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(viii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise sanctioned under paragraph (g) of this section.

(4) Any change in the information specified in paragraph (b)(2) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. The permit is void if any change in the information is not reported.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(d) *Duration.* A permit remains valid for the remainder of the season for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(e) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a seasonal vessel permit must apply for a new permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(f) *Display.* A permit issued under this section must be carried on board the permitted vessel at all times and such vessel must be identified as provided for in § 640.8. The operator of a fishing vessel must present the permit for inspection upon request of an authorized officer.

(g) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

4. In § 640.7, paragraphs (i) and (j) are revised and new paragraphs (q) through (u) are added to read as follows:

§ 640.7 Prohibitions.

* * * * *

(i) Exceed the recreational daily catch and possession limit, as specified in § 640.21(c)(1).

(j) Retain a spiny lobster smaller than the minimum size, except as specified in § 640.22; or purchase, barter, trade, or sell a spiny lobster smaller than the minimum size, as specified in § 640.22(a)(1) or (2).

* * * * *

(q) Purchase, barter, trade, or sell a spiny lobster taken in the EEZ by a vessel that does not have a seasonal vessel permit, as specified in § 640.4(a)(1).

(r) Purchase, barter, trade, or sell a separated spiny lobster tail taken in the EEZ by a vessel that does not have a tail-separation permit, as specified in § 640.4(a)(2).

(s) Falsify information specified in § 640.4(b)(2) on an application for a permit; or fail to report a change in such information, as specified in § 640.4(b)(4).

(t) Fail to display a permit, as specified in § 640.4(f).

(u) Possess a separated spiny lobster tail, except as specified in § 640.21(d).

5. In § 640.21, paragraphs (c)(1) and (c)(3) are revised and new paragraph (d) is added to read as follows:

§ 640.21 Harvest limitations.

* * * * *

(c) * * *

(1) The daily catch and possession of spiny lobsters in or from the EEZ is limited to six per person:

(i) During the fishing season described at § 640.20(a), except for spiny lobsters possessed aboard a vessel with the seasonal vessel permit specified in § 640.4(a)(1); and

(ii) During the special non-trap recreational season described at § 640.20(b).

* * * * *

(3) The operator of a vessel that fishes for spiny lobster in the EEZ is responsible for the cumulative recreational catch, based on the number of persons aboard, applicable to that vessel.

* * * * *

(d) *Tail separation.* The possession of a separated spiny lobster tail is authorized only—

(1) Aboard a vessel having on board the tail-separation permit specified in § 640.4(a)(2); and

(2) When the possession is incidental to fishing in the EEZ on a trip of 48 hours or more.

6. In § 640.22, paragraph (a) is revised to read as follows:

§ 640.22 Size limitations.

(a) *Length.* Except as provided in paragraph (b) of this section, a spiny lobster—

(1) With a carapace length of 3.0 inches (7.62 centimeters) or less; or

(2) Aboard a vessel authorized under § 640.21(d) to possess a separated spiny lobster tail, with a tail length less than 5.5 inches (13.97 centimeters)—must be returned immediately to the water unharmed.

• • • • •

[FR Doc. 90-14873 Filed 6-25-90; 12:01 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of apportionment and notice of closure; request for comments.

SUMMARY: NOAA announces the apportionment of amounts of Alaskan groundfish to the domestic annual processing (DAP) portion of the domestic annual harvest (DAH), and closure of the Bering Sea and Aleutian Islands subareas to further directed fishing for Atka mackerel under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). These actions are necessary to assure maximum use of groundfish in that area and prevent the total allowable catch (TAC) for Atka mackerel in the BSAI from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving Atka mackerel stocks.

DATES: Effective from noon, Alaska local time (ALT), June 28, 1990 through December 31, 1990. Comments will be accepted through July 10, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and part 675. Initial specifications for 1990 TACs were published at 55 FR 1434 (January 16, 1990). The same notice established a 15-percent non-specific reserve, and then apportioned additional amounts from that reserve to joint venture processing (JVP) in order to provide bycatch amounts for other targeted JVP fisheries. Amounts needed to supplement DAP were retained in the reserve to be apportioned as needs arose later in the year. On June 24, 1990, 700 mt of DAP were reapportioned to JVP for arrowtooth flounder and 2,110 mt of DAP were reapportioned to JVP for Pacific cod. Reserves were reduced by 2,800 mt, thereby increasing JVP and TAC for two target species groups (300 mt being reapportioned for JVP and TAC for pollock and 2,500 mt for JVP and TAC for "other species"), to provide bycatch for a reopening of the JVP directed fisheries for yellowfin sole and "other flatfish".

Notice of Apportionment

The following action is taken by this notice to apportion groundfish from the non-specific reserve to the BSAI DAP for Atka mackerel. The current TAC for Atka mackerel is set at 17,850 metric tons (mt). The entire TAC is apportioned to DAP. In the BSAI, the estimated DAP catch of Atka mackerel through June 18 is 16,500 mt, leaving a remainder of 1,350 mt. At current catch rates, the entire apportionment of Atka mackerel will be taken soon. In order to extend the DAP fishing season and allow full commercial use of the available Atka mackerel stock, an additional 3,150 mt is apportioned from the non-specific reserve to DAP for Atka mackerel. This apportionment does not result in overfishing of Atka mackerel, as the resulting TAC amount (21,000 mt) is less than its acceptable biological catch which is 24,000 mt.

Notice of Closure to Directed Fishing

The Regional Director has determined that fisheries for Pacific Ocean perch will require up to 500 mt of Atka mackerel for bycatch. Under § 675.20(a)(8), when the Regional Director finds that the remaining amount of TAC of any target species is likely to be reached, he may establish a directed fishing allowance (DFA) for that species, considering the amount of that species which will be taken as incidental catch in directed fishing for other species in the same area. Further, if the DFA is reached or is likely to be reached, the Secretary will publish a notice prohibiting directed fishing for that species for the remainder of the fishing year.

The Regional Director has determined that the amount of Atka mackerel that will remain on June 28, 1990, about 500 mt, will be necessary for bycatch in other fisheries; therefore he is establishing a DFA of 20,500 mt for Atka mackerel, and prohibiting further directed fishing for Atka mackerel at noon, June 28, 1990. After that time, in accordance with § 675.20(h)(5), during each trip a vessel may lawfully retain Atka mackerel only in an amount less than 20 percent of the total amount of all other fish species (based on round weight equivalents) retained at the same time on the vessel during the same trip.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. Immediate effectiveness of this notice is necessary to prevent the TAC for Atka mackerel from being exceeded by the end of June, 1990. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

This action is taken under the authority of §§ 675.20(a)(8), and 675.20(h), and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 25, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS APPORTIONMENT OF TAC

[Values are in metric tons]

		Current	This action	Revised
Atka mackerel:				
TAC=17,850; ABC=24,000	DAP	17,850	+3,150	21,000
	JVP	0		0
Total (TAC=2,000,000)	DAP	1,482,910	+3,150	1,486,060
	JVP	253,982		253,982
	RESERVE	246,408	−3,150	243,258

[FR Doc. 90-15073 Filed 6-25-90; 2:00 pm]

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Proposed Rules

Federal Register
Vol. 55, No. 125
Thursday, June 28, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV 90-171 PR]

Peaches Grown in Mesa County, Colorado; Proposed 1990-91 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish a rate of assessment for the 1990-91 fiscal period for the Administrative Committee (committee), established under Marketing Order No. 919 regulating peaches grown in Mesa County, Colorado. The action proposed is needed so that the committee can pay anticipated marketing order expenses and continue to perform its duties and administer the marketing order program.

DATES: Comments must be received by July 9, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material must be submitted. A copy will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 919, both as amended (7 CFR part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 45 handlers subject to regulation under the Federal marketing order for peaches grown in Mesa County. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $3,500,000. Likewise, there are about 290 peach producers in Mesa County. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of Mesa County peach handlers and producers may be classified as small entities.

An annual budget of expenses and rate of assessment are prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Mesa County peaches. They are familar with the committee's needs and with the costs for goods, services and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input into the committee's budget recommendation.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by the expected bushels of assessable peaches shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so the committee will have funds to pay its expenses.

Because of a severe freeze, there was no assessable production from last year's Mesa County peach crop. The committee operated on a reduced budget and relied on voluntary contributions and reserve funds to pay necessary program expenses. No assessment rate was established for last year. This year, normal marketing order operations are expected to resume and a budget of $42,300 has been recommended, based on an assessment rate of 20 cents per 50-pound bushel equivalent. The assessment would apply only to interstate shipments of Mesa County peaches, estimated for the current season at approximately 150,000 bushels.

In order for the committee to maintain its operations and serve the industry during the 1990-91 crop year, the committee met on May 15, to consider proposed budgets and rates of assessment. The proposed budget of $42,300 and the proposed rate of assessment of 20 cents per 50-pound bushel included in this rulemaking were recommended by the committee in a meeting on June 5, 1990. Major proposed expenditure items for 1990-91, compared with budgeted expenses for 1989-90, are as follows:

	1989-90	1990-91
Program operations (salary, rent, etc.)	$8,751.00	$14,239.00
Committee expenses (per diem, etc.)	450.00	450.00
Compliance	1,000.00	1,000.00
Market research and development	5,224.00	8,000.00
Contingency (reserve)	11,147.00	18,611.00
Total	26,572.00	42,300.00

Proposed 1989-90 expenditures for the Program Operations and Market Research and Development categories was based on very little activity due to the total loss of the crop. The proposed increases for 1990-91 are needed because the industry expects a good harvest and thus, there will be a need for full operations and increased market development activities. The committee plans to increase its traditional market development activities, such as the distribution of T-shirts, caps, posters, mugs, etc., because of the expected good harvest.

The 1990-91 contingency reserve of $18,611 for the Colorado peach (Mesa County) marketing order was recommended, in part, to replenish the reserve fund which was drawn on during last year's crop failure. The committee intends to make funds available to meet unexpected emergencies within the industry. An example of such an emergency would be to advise consumers on food safety issues.

Expected income from 1990-91 assessments, as proposed, would be $30,000, generated by assessments on approximately 150,000 bushels. However, only about 60 percent of the crop is expected to be shipped out of the State of Colorado, and thus subject to assessments under the order. Other projected income includes a $3,000 grant from Mesa County for the 1991 mosaic tree survey, $1,000 income from interest and from the sale of market development items, and an $800 Mesa County grant to be used during the tree survey for the trapping of insects which spread mosaic disease. This proposed budget also includes a carryover net reserve of $7,500.

While this proposed action would impose additional costs on handlers, the costs would be in the form of assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of less than 30 days is deemed appropriate for this action. Because committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures must be expedited.

List of Subjects in 7 CFR Part 919

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

For the reasons set forth in the preamble, it is proposed that 7 CFR part 919 be amended as follows:

1. The authority citation for 7 CFR part 919 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 919.229 is added to read as follows:

§ 919.229 Expenses and rate of assessment.

Expenses of $42,300 are authorized to be incurred by the Administrative Committee for the fiscal period ending June 30, 1991. An assessment rate of 20 cents per 50-pound bushel equivalent is established for the fiscal year ending June 30, 1991. Unexpended funds from the prevoius fiscal period may be carried over as a reserve.

Dated: June 22, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-15040 Filed 6-27-90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0688]

Exemption From Tie-in Prohibitions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 106 of the Bank Holding Company Act Amendments of 1970 ("Section 106") (12 U.S.C. 1971, 1972(1)) prohibits a bank from extending credit, leasing or selling property, furnishing a service, or fixing or varying the consideration for any of the foregoing on the condition that the customer obtain additional credit, property, or service from the bank other than a loan, discount, deposit, or trust service (collectively, "traditional banking services"). Section 106 also prohibits a bank from conditioning either the availability of or consideration for a loan, lease, sale, or service upon the customer obtaining additional credit, property, or service from the bank's parent holding company. This proposed regulation provides an exemption that would allow a bank (including a credit card bank) to vary the consideration for obtaining a credit card from the card-issuing bank on the basis of the condition that the customer also obtain a traditional banking service from a bank or savings institution subsidiary of the card-issuing bank's parent holding company.

DATES: Comments must be submitted on or before July 30, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0688 may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provide in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Senior Attorney (202/452-3711) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division, Board of Governors; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106 generally prohibits a bank from tying reduced consideration for credit or other service to the requirement that a customer also obtain some additinal service from the bank or a holding company affiliate of the bank. Tying occurs when the customer is forced or induced to purchase a product that the customer does not want (the tied product) in order to obtain a product that the customer desires (the tying product). There is an exception to this tying prohibition that permits a bank to reduce the consideration for credit or other service if the customer obtains some other traditional banking service from that bank. This exception does not apply, however, where the credit from one bank is tied to an additional service from an affiliate. Thus, while section 106 permits a bank to tie its own traditional banking services, it does not permit the bank to tie one of its services to a traditional banking service offered by an affiliate. Section 225.4(d) of the Board's Regulation Y (12 CFR 225.4(d)) implements these anti-tying provisions.

Section 106 provides that the Board may, by regulation or order, "permit such exceptions * * * as it considers will not be contrary to the purpose of this section." The Senate banking committee's report explains that section

100 was added to the House proposal in order to prevent the anticompetitive effects of tying arrangements:

> The purpose of this provision is to prohibit anti-competitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or service they desire.[1]

The underlying Congressional concern addressed by section 106 was fair competition and its provisions were "intended to provide specific statutory assurance that the use of the economic power of a bank will not lead to a lessening of competition or unfair competitive practices."[2] The Conference Report explains that tie-ins may produce anticompetitive results because customers, forced to accept other products or services along with the product which the customer seeks, "no longer purchase a product or service on its own economic merit."[3] In this regard, section 106's prohibitions exceeded applicable antitrust standards and imposed a *per se* prohibition against tie-ins involving credit.[4]

The legislative history also indicates that the Board should exercise its exemptive authority selectively. The Senate Report states that

> The committee expects that by such regulation or order the Board will continue to allow appropriate traditional banking practices.[5] The Supplementary Views of Senator Brooke filed with the Senate Report noted that adequate discretion is vested in the Federal Reserve Board to provide exceptions where such are founded on sound economic analysis.[6]

The Board recently approved the requests by Norwest Corporation and NCNB Corporation for an exemption to permit their banks to offer a credit card at lower costs in conjunction with traditional banking services provided by their other affiliate banks.[7] In its Order, the Board permitted banks owned by Norwest and NCNB to vary the consideration (including interest rates and fees) charged in connection with extensions of credit pursuant to a credit card offered by the bank (including a credit card bank) on the basis of the condition or requirement that a customer also obtain a loan, discount, deposit, or trust service from another bank that is a subsidiary of the card-issuing bank's parent holding company, provided that the products so offered are separately available for purchase by a customer. The Board's approval was also subject to the Board's authority to terminate these exemptions in the event that facts develop in the future that indicate that the tying arrangement is resulting in anticompetitive practices and thus would be inconsistent with the purpose of section 106.

Proposal

The proposed regulation would make this exemption available to bank holding companies generally, without the need for Federal Reserve System action on individual requests. The Board believes that this amendment to Regulation Y is not contrary to the purpose of section 106, and that the exemption is consistent with the legislative authorization to permit exemptions for traditional banking services on the basis of economic analysis.

In this regard, the Board notes that subsequent Congressional actions in other contexts regarding anti-tying provisions tend to support the proposal. For example, Federal thrifts are permitted to tie traditional banking services obtained from the thrift's affiliates.[8] In the Competitive Equality Banking Act of 1987, which applied the tie-in restrictions to nonbank banks, Congress indicated that "the antitying restrictions [of section 106] would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank bank to another traditional banking service offered by an affiliate."[9] While this excerpt does not accurately reflect the terms of section 106, it lends support for the proposed rule, in the absence of any economic evidence indicating anticompetitive effects.

In analyzing potential anticompetitive effects of the proposal, it is appropriate to consider the competitiveness of the relevant credit card market. In the Board's view, unless it is likely that the seller's market power in the credit card market for the tying product is high enough to force a consumer to also purchase on uncompetitive terms a traditional banking service in the tied product market, the proposed tie-in between credit cards and traditional banking services would not appear to produce anticompetitive effects.

The relevant market for credit cards is national in scope and, with nearly 5,000 card-issuers, relatively unconcentrated.[10] In addition, under the proposed amendment, credit cards and traditional banking services will be required to be offered separately,[11] and given the competitive nature of the credit card market, the Board believes that banks will be required to offer these separately available credit cards at competitive prices.

Analysis of Proposed Amendment

The proposed amendment to Regulation Y would permit a bank owned by a bank holding company to vary the consideration (including interest rates and fees) charged in connection with extensions of credit pursuant to a credit card offered by the bank (including a credit card bank) on the basis of the condition or requirement that a customer also obtain a traditional banking service from a bank or savings institution subsidiary of the card-issuing bank's parent holding company. However, both the credit card and the traditional banking service in the tying arrangement will be required to be separately available for purchase by the customer. Moreover, the Board may modify or terminate a bank holding company's exemption in the event that the Board determines that the tying arrangement has resulted in anticompetitive practices.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

For the reasons set forth in this notice, the Board proposes to amend 12 CFR part 225 as follows:

1. The authority citation for part 225 is revised to read as follows:

> Authority: 12 U.S.C. 1817(j)(13), 1818, 1831, 1831i, 1843(c)(8), 1844(b), 1971(1), 3108, 3106, 3907, 3909 and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351).

2. In § 225.4, the heading to paragraph (d) is revised, paragraph (d) is redesignated as paragraph (d)(1), and new paragraph (d)(2) is added to read as follows:

§ 225.4 Corporate practices.

* * * * *

(d)(1) Limitation on tie-in arrangements.

* * * * *

(2) *Exemption for credit cards.* A bank owned by a bank holding company may vary the consideration (including interest rates and fees) charged in connection with extensions of credit pursuant to a credit card offered by the bank (including a credit card bank) on the basis of the condition or requirement that a customer also obtain a loan, discount, deposit, or trust service from a bank or savings institution subsidiary of the card-issuing bank's parent holding company, provided that the products offered are separately available for purchase by a customer. A bank holding company's authority under this exemption is subject to modification or termination by the Board in the event that the Board determines that anticompetitive practices have resulted from the tying arrangement.

* * * * *

Board of Governors of the Federal Reserve System, June 22, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-14977 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

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[1] S. Rep. No. 1084, 91st Cong., 2d Sess. 17 (1970) ("Senate Report"). Senator Sparkman, Chairman of the Senate banking committee, explained that although section 106 had been modified on the Senate floor to include an exemption for traditional banking products (*see* 116 Cong. Rec. 32,124-33 for debate on this amendment), this explanation should continue to be the basis for interpreting the tie-in prohibitions. 116 Cong. Rec. 42,420.

[2] Senate Report at 18.

[3] Rep. No. 91-1747, 91st Cong., 2d Sess. 18 (1970).

[4] In commenting on the effects of section 106, the Justice Department noted that "the proposed new section would go beyond [*Fortner Enterprises, Inc. v. United States Steel Corp.*, 394 U.S. 495 (1968)], which did not go so far as to hold tie-ins involving credit illegal per se." Senate Report at 48. Accordingly, it has been held that impermissible tying arrangements under section 106 are unlawful even without a showing of adverse effects on competition or the degree of bank control over the tying product. *Gage v. First Federal Savings and Loan Ass'n of Hutchinson, Kansas*, 717 F. Supp. 745 (D.Kan. 1989); *Parsons Steel, Inc. v. First Alabama Bank of Montgomery*, 679 F.2d 242 (11th Cir. 1982).

[5] Senate Report at 17.

[6] Senate Report at 48.

[7] *Norwest Corporation and NCNB Corporation*, 76 Federal Reserve Bulletin ____ (Order dated June 20, 1990).

[8] 12 U.S.C. 1464(q)(1). During the consideration of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, unsuccessful amendments to similarly exempt traditional banking services offered by subsidiaries of bank holding companies from section 106's tying prohibition were offered in both House and Senate banking committees.

[9] Conference Report, Rep. No. 261, 100th Cong., 1st Sess. 128-29 (1987).

[10] *First Chicago Corporation*, 73 Federal Reserve Bulletin 600 (1987); *RepublicBank Corporation*, 73 Federal Reserve Bulletin 810 (1987). Market data are as of December 31, 1988. The top 100 card-issuing institutions account for approximately 80 percent of total industry outstandings and Citicorp, the largest single issuer, accounts for 18 percent of all credit card balances outstanding.

[11] Under antitrust precedent, concerns over tying arrangements are substantially reduced where the buyer is free to take either product by itself even though the seller may also offer the two items as a unit at a single price. *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 9, n.4. (1958).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ASW-10]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, 369E, and 369F/FF Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), that would require a one-time inspection of main rotor transmission cover attachment bolts and retaining nuts, and their removal and replacement with airworthy parts, if necessary, on MDHC Model 369D, 369E, and 369F/FF series helicopters. The proposed AD is needed to prevent failure of main rotor transmission cover containment bolts which could result in loss of control of the helicopter.

DATES: Comments must be received on or before August 13, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, of the Regional Rules Docket, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 90-ASW-10. Comments may be inspected at the above location in Room 158 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D214, Mesa, Arizona 85205, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, ANM-143L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5347.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the FAA before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Bldg. 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 90-ASW-10. The postcard will be date/time stamped and returned to the commenter.

There have been two reports of failures of the main rotor transmission cover, part number (P/N) 369D25174, attachment bolts. A bolt failure could result in the retaining nut falling into the ring gear of the transmission with subsequent loss of power to the main rotor and an unplanned autorotation. Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require a one-time inspection and replacement of parts, as necessary, to assure certain bolts, manufactured by Air Industries are not installed on MDHC Model 369 series helicopters. The bolts at risk have been isolated to those of one manufacturer which supplied them to a distributor for subsequent sale to MDHC. The notice proposes to require that all bolts MS21250-04036, manufactured by Air Industries and installed in the main rotor transmission, P/N 369D25100, be removed from service and replaced with serviceable bolts, MS21250-04036, manufactured by

other suppliers. Some assemblies have been reported to have bolts with no threads protruding through the nut. The applicable drawing calls for a minimum of two threads protruding through the nut. The replacement bolts are longer and a NAS620C416L or NAS620C416 washer(s) would be installed under the nut if more than four threads are protruding through the nut.

The regulations proposed herein would not have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 64 helicopters and 105 transmissions, as identified by the manufacturer, with no cost to the operator because of warranty considerations. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC): Applies to all MDHC Model 369D, 369E, and 369F/FF series helicopters certificated in any category. [Docket No. 90-ASW-19]

Compliance required as indicated, unless previously accomplished.

To prevent possible failure of the main rotor transmission drive assembly, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of the AD or at the next annual inspection or the next time the transmission is removed, whichever occurs first, after the main roto transmission is removed inspect the MS21250-06036 bolts which retain the debris cover, P/N 369D25174. Remove any bolts with the head inscription shown as unacceptable in Figure 1, and replace with MS21250-06036 bolts, which have a length of 2.567 ± 0.010 inch.

Note: MDHC Service Information Notice (SIN) DN-166.1, EN-57.1, and SIN FN-43.1, dated March 14, 1990, or later revisions pertain to this subject.

(b) Inspect the thread protrusion of all bolts. Remove any bolt which does not protrude through the H14-4 nut for a length equivalent to two full threads (0.071 inch minimum), including the chamfer. Replace removed bolts with MS21250-06036 bolts. Torque the bolts to 80-70 inch pounds. Verify that the bolts protrude through the nut for a length equivalent to two full threads (0.071 inch minimum), including the chamfer. If more than four threads protrude through the nut, add AN960C416L or AN960C416 washers under the nut as required. Remove and reinstall parts in accordance with the manufacturer's instructions.

(c) Apply a white dot to the main transmission data plate to indicate that the transmission has been inspected and reworked in accordance with the manufacturer's instructions, and record compliance with this AD in the rotorcraft log book.

(d) In accordance with FAR 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, 3229 East Spring Street, Long Beach, California 90806-2425.

Issued in Fort Worth, Texas, on June 18, 1990.

James D. Erickson

Manager, Rotorcraft Directorate, Aircraft Certification Service.

BILLING CODE 4910-13-M

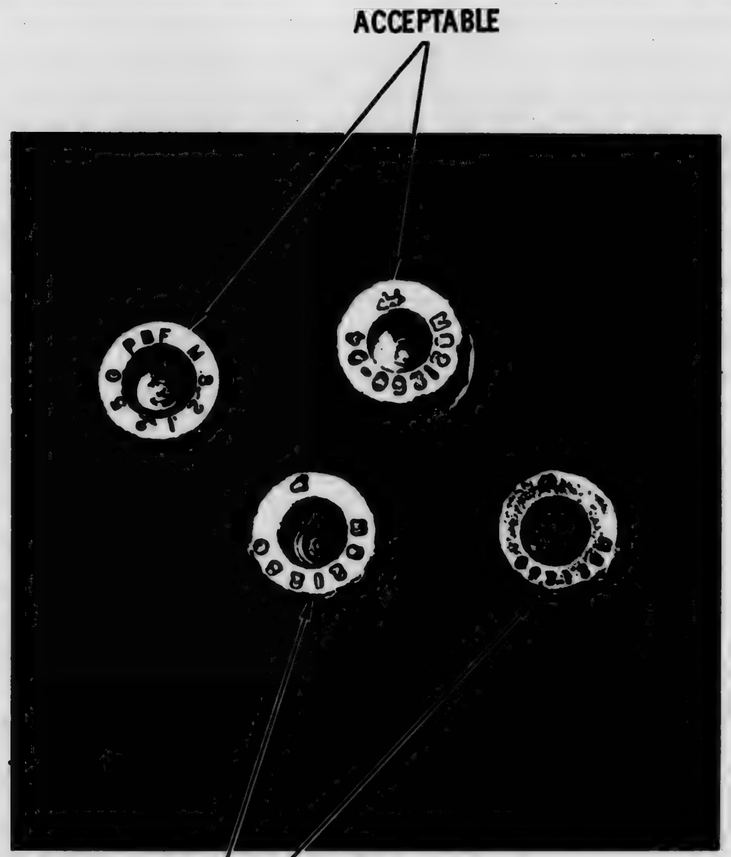


Figure 1. Inspection/Definition of Bolt Heads.

[FR Doc. 90-15058 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

The Chicago Mercantile Exchange's Petition To Amend Commission Regulation 1.39 and the Commission's Proposed Rule Amendment

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for rulemaking and notice of proposed Commission rulemaking.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a petition to amend Commission Regulation § 1.39 to eliminate possible restrictions on its proposed large order execution ("LOX") procedures. [1] The petitioner requests that the Commodity Futures Trading Commission ("Commission") amend regulation § 1.39(a) to allow a broker to expose one side, rather than both sides, of crossed orders to the pit. It also has petitioned to delete § 1.39(a)(4), which prohibits the futures commission merchant who receives an order from having any interest in the order except as a fiduciary. The Comission has determined to request comment on the proposed amendments, as well as an alternative amendment to regulation § 1.39.

DATES: Comments must be received by July 30, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Shauna L. Turnbull, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

Although this specific proposed rule has no information collection burden associated with it, it is a part of a group of rules which has a public reporting burden which is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate of no burden to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to, Office of Management and Budget, Paperwork Reduction Project (3038–0022), Washington, DC 20503.

II. The CME's Petition to Amend Commission Regulations 1.39

The CME submitted a petition to amend Commission regulation § 1.39 by letter dated March 30, 1990. The petitioner is requesting that the Commission change requirements in regulation § 1.39 that would conflict with the CME's proposed LOX procedures.

Commission regulation § 1.39 establishes procedures for executing simultaneous buying and selling orders of different principals, called crossed orders. In general, regulation § 1.39 allows a broker who holds buy and sell orders of different principals at the same time and for the same commodity to execute these orders directly between the principals at the market price. Crosses must be done in conformity with contract market rules which have been approved by the Commission. In addition, crossed orders that are conducted in a trading pit or ring first must be offered openly and competitively by open outcry. A broker must both bid and offer such a trade without the pit accepting the bid or offer before he can execute the crossed orders.

The statutory authority for regulation § 1.39 includes section 4b of the Commodity Exchange Act ("Act"). Section 4b(D) provides, in pertinent part, that:

> Nothing in this section or any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month, from executing such buying and selling orders at the market price: Provided, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange * * *

The Exchange stated that regulation § 1.39 contains requirements which "may be inconsistent with the CME's LOX rule." Under CME's proposed LOX procedures, a member who received an order or orders for 300 or more Standard & Poor's 500 Stock Index futures ("S&P 500") contracts from the "initiating customer" could solicit interest off the Exchange floor in the opposite side of the trade prior to execution of the initiating customer's order in the pit. During pre-trade negotiations, the member could negotiate the "intended execution price" and maximum quantity of the initiating customer's LOX with a futures commission merchant ("FCM") or other party, who agreed to place an order for the opposite side of the trade.

After these negotiations, a broker would execute the LOX trade in the pit by announcing the initiating customer's order in the pit and hitting existing bids or accepting offers until the intended execution price had been reached. When the broker reached the intended execution price, he would fill all bids or offers in the pit at that price. The broker then would announce his intention to "cross" the balance of the initiating customer's order with a like amount from the opposite side of the LOX. The pit would not be given an opportunity to participate in the order or orders on the opposite side of the LOX.

CME stated that regulation § 1.39 contains two provisions that may conflict with its proposed rule. Specifically, § 1.39(a)(1)(i) requires that a broker must expose both the bid and offer to the pit prior to crossing the orders or any remainder of the orders. According to CME, this subsection could conflict with the Exchange's proposal that a broker expose only the initiating customer's side of a LOX order to the market. In addition, § 1.39(a)(4) prohibits the FCM who receives an order from having any interest in the order except as a fiduciary. The Exchange stated that this subsection could prevent an FCM who received a LOX order from taking the opposite side of such order.

CME proposed that the Commission amend regulation § 1.39(a)(1)(i) by adding a subsection allowing a broker to expose either the buy or sell side of simultaneous orders to the pit until the intended "cross" price was reached. Thus, CME proposed that § 1.39(a)(1)(i) be amended to read as follows:

> (1)(i) When trading is conducted in a trading pit or ring, such orders are first offered openly and competitively by open outcry in such trading pit or ring (A) by both bidding and offering at the same price, and neither such bid nor offer is accepted, [or] (B) by bidding and offering to a point where such offer is higher than such bid by not more than the minimum permissible price fluctuation applicable to such futures contract or commodity option on such contract market, and neither such bid nor offer is accepted, [:] or (C) by bidding, if the potential cross price is above the market bid or offering, if the intended potential cross price is below the market offer, until the cross price is reached and all or some portion of the order that was originally bid or offered has not been accepted.

CME stated that its proposed procedures would give the market access to the one side of a transaction that was at a better price than the current market. It further stated that the cross would occur only if the market had not fully absorbed the order which was exposed to the floor.

The CME also proposed that the Commission eliminate regulation § 1.39(a)(4), which provides that "[n]either the futures commission merchant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary." It maintained that the elimination of § 1.39(a)(4) would not have any adverse impact on customer protection or other policy of the Commission because the Commodity Exchange Act ("Act") explicitly prohibits a broker and a firm from knowingly taking the opposite side of a customer's order without prior consent.

The Exchange included other arguments in its petition regarding legal issues that arise from both its proposed regulatory changes and LOX rule submission. CME first argued that, although the exposure of only one side of crossed orders to the market is contrary to current open outcry trading practices, it is consistent with other provisions of regulation § 1.39 which apply to board traded crosses. Regulation § 1.39(a)(1)(ii) provides in pertinent part that:

> (ii) When in nonpit trading in contracts of sale for future delivery, bids and offers are posted on a board, such member (A) pursuant to such buyng order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or (B) pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him.

The Exchange maintained that this subsection allows a broker to expose only one side of crossed orders to the market prior to the cross.

CME further maintained that its petition to amend regulation § 1.39 and LOX proposal would be consistent with section 4b of the Act and regulation § 1.38. Secifically, CME argued that the proposed LOX procedures would satisfy the "public outcry" requirement of section 4b(D). The Exchange also maintained that the section 4c(a) prohibition against cross trades is not pertinent to this matter. Finally, CME argued that the LOX procedures would not negate market risk or price competition and, therefore, would not involve prearrangement.

III. The Alternative Proposal

The Commission believes that CME's proposed large order execution rule would conflict with the requirements of regulation § 1.39(a). The Commission further believes, however, that the goal of permitting large order execution procedures consistent with Commission rules could be accomplished through the adoption of amendemnts to Commission regulation § 1.39 that are both narrower and less particularized than the petitioner's suggested amendments. As written, the Commission believes that CME's proposed amendments are overly broad. The amendments are not directed to special procedures for large orders, but, instead, would permit a member to cross any orders by exposing only one side of the trade to the market if the specified price relationship existed. There would be no standards regarding the size of such a cross and no requirements for special surveillance procedures, beyond those currently followed for such a trade. At the same time, the Commission believes that CME's proposed amendments to regulation § 1.39 may be too narrow. Since CME's proposed amendments would incorporate aspects of its specific LOX procedures in the regulation, alternative proposals for large order execution procedures that would require an exemption from regulation § 1.39 might not be accommodated by the petition and could require further amendments to the regulation.

The Commission believes that any amendment to regulation § 1.39 should be narrow enough to apply only to Commission-approved large order procedures and broad enough to encompass alternatives to the CME's proposed LOX rule. Therefore, the Commission is proposing to amend regulation § 1.39 to establish a procedure similar to that set forth in Commission regulation § 155.2(l). The proposed amendments to regulation § 1.39 would permit a contract market with proposed large order executive procedures that would not conform with the regulation to petition for an exemption from its requirements. Although the Commission has given preliminary consideration to other alternatives to these amendments which would not require such a petition, it believes that the proposed petition procedure would allow the exchanges greater flexibility in drafting large order execution procedures while retaining adequate Commission oversight. The Commission invites specific comment on the necessity for a petition procedure.

Under these proposed amendments, this petition must include an explanation of why the contract market's proposed large order execution rules do not comply with regulation § 1.39(a), as well as a description of the special surveillance program that would be followed by the Exchange in monitoring the large order execution procedures. In addition, the contract market must submit the petition together with written rules specifying large order execution procedures, which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission regulation 1.41. The Commission would consider the petition concurrently with its review of the rules and within the time period specified in section 5a(12) of the Act. In the event that these amendments are adopted as final rules, the Commission anticipates that it could take immediate action to consider exempting CME's LOX rule from regulation § 1.39(a) based upon rule submissions already received from the Exchange and a petition for exemption from the regulation. The Commission invites interested persons to comment on both the CME's suggested amendments and the Commission's alternative proposal.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The proposed amendment to regulation § 1.39 could affect contract markets. The Commission, however, previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission, therefore, need not consider the effect of a proposed amendment on contract markets for purposes of the RFA. 47 FR 18618, 18619, April 30, 1982. Moreover, the proposed amendments are permissive, rather than obligatory. They allow a contract market to petition for an exemption from existing requirements in connection with a large order execution rule submission. Large order execution procedures may result in liquidity at a lower cost for customers with large orders and could bring additional trading activity to the floor, which may lessen price moves caused by such orders. These possible benefits also may reduce economic burdens on other market participants.

[1] For a description of the LOX procedures as originally proposed see 54 F.R. 50,286 (Dec. 5, 1989). For a description of amendments to the proposed LOX rule see 55 F.R. 23,127 (June 6, 1990).

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1168 (5 U.S.C. 605(b)), and based on currently available information, the Chairman, on behalf of the Commission, certifies that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission, however, invites specific comment regarding the potential costs of this proposal for small entities and any alternative, less burdensome means to achieve the Commission's objective.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, ("Act") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. While this proposed rule has no burden, the group of rules of which this is a part has the following burden:

Average Burden Hours per Response..... 60.83
Number of Respondents..... 339
Frequency of Response..... On Occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customers, Large order execution procedures, Futures commission merchants, Members of contract markets, Cross trades, Exemptions, Petitions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4d, 4e, 5, 5a, and 8a, thereof, 7 U.S.C. 6, 6b, 6c, 6c, 6d, 6e, 7, 7a, and 12a, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23, and 24, unless otherwise stated.

2. Regulation 1.39 is proposed to be amended by redesignating paragraph (b) as paragraph (c), adding a new paragraph (b) and revising newly redesignated paragraph (c) to read as follows:

§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

* * * * *

(b) *Large Order Execution Procedures.* A member of a contract market may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with large order execution procedures established by written rules of the contract market that have been approved by the Commission; Provided, that, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by proposed contract market rules to implement the large order execution procedures. The petition shall include:

(1) An explanation of why the proposed large order execution rules do not comply with paragraph (a) of this section; and

(2) A description of a special surveillance program that would be followed by the Exchange in monitoring the large order execution procedures.

The Commission may, in its discretion and upon such terms and conditions as it deems appropriate, grant such petition for exemption upon good cause shown. The petition shall be considered concurrently with the proposed large order execution rules.

(c) *Not deemed filling orders by offset nor cross trades.* The execution of orders in compliance with the conditions set forth in this section will not be deemed to constitute the filling of orders by offset within the meaning of paragraph (D) of section 4b, nor to constitute cross trades within the meaning of paragraph (A) of section 4c, of the Act.

Any person interested in submitting written data, views, or arguments on proposed amendments to regulation § 1.39 should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 22, 1990.

Very truly yours,

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 90-14944 Filed 6-27-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-7-90]

RIN 1545-AO42

Nuclear Decommissioning Fund Qualification Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the qualification requirements of nuclear decommissioning reserve funds that combine their assets for investment purposes. Final regulations published March 3, 1988, (T.D. 8184) contain the requirement that nuclear decommissioning reserve funds invest directly in permissible assets as well as a provision that permits one or more of such funds to combine assets for investment purposes. The proposed regulations describe two types of pooling arrangements that satisfy the direct investment requirement.

DATES: Written comments and requests for a public hearing must be received by August 13, 1990. These regulations are proposed to be effective as of July 18, 1984.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-7-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) at (202) 566-3553 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules under section 468A of the Internal Revenue Code of 1986. Section 468A, relating to nuclear decommissioning costs, was added to the Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 809).

Section 468A provides special rules pursuant to which a taxpayer is allowed a deduction for the tax year in which the taxpayer makes a contribution to a Nuclear Decommissioning Reserve Fund ("Fund"), notwithstanding the fact that economic performance with respect to the nuclear decommissioning costs will occur in a later tax year.

Section 468A outlines rules governing the treatment of a Fund and contributions to a Fund. Section 468A(e)(4) provides that a Fund may be used exclusively for (A) satisfying, in whole or in part, any liability of any person that contributes to the Fund for the decommissioning of a nuclear power plant; (B) payment of administrative costs of the Fund; and (C) to the extent not currently used for the purposes set forth in paragraphs (A) and (B), making investments described in section 501(c)(21)(B)(ii).

Section 1.468A-5(a)(3)(i)(C) of the regulations describes the investments listed in section 501(c)(21)(B)(ii) of the Code as direct investments in public debt securities of the United States, obligations of a State or local government that are not in default as to principal or interest, or time or demand deposits in a bank or insured credit union. The preamble to T.D. 8184 makes it clear that the direct investment requirement was intended to prevent Funds from investing in mutual funds or annuity contracts. Section 1.468A-5(a)(1)(i) requires that each Fund must be established as a trust under State law. Section 1.468A-5(a)(1)(iii) provides that the assets of one or more qualified Funds may be pooled for investment purposes. Section 1.468A-5(a)(1)(iv) provides similar rules for the pooling of the assets for investment purposes of one or more qualified or non-qualified Funds.

The regulations under section 468A are silent as to whether the pooling of assets creates a separate taxable entity and thus violates the direct investment requirement. These proposed regulations are issued to provide guidance concerning the type of pooling arrangements that will satisfy the investment restrictions.

Explanation of Provisions

The proposed regulations apply to any pooling of the assets of one or more qualified nuclear decommissioning funds, as well as the pooling of one or more qualified nuclear decommissioning funds with one or more non-qualified nuclear decommissioning funds.

The proposed regulations provide that the pooling of assets for investment purposes in a regulated investment company as defined in section 851 or comon trust fund described in section 584 will satisfy the investment requirement if certain requirements are satisfied. These requirements include the general investment and self-dealing restrictions applicable to all qualified nuclear decommissioning reserve funds.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service.

List of Subjects 26 CFR 1.441-1 through 1.483-2

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

For reasons set out in the preamble, title 26, part 1 of the Code of Federal Regulations is proposed to be amended in part:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 1.468A-5 [Amended]

Par. 2. Section 1.468A-5 is amended as follows:

1. Paragraph (a)(1)(iii) is revised.
2. Paragraph (a)(1)(iv) is revised.
3. Paragraph (a)(3)(i)(C) is revised.
4. The revised provisions read as follows:

§ 1.468A-5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) *Qualification requirements*

(1) *In general* * * *

(iii) The assets of two or more nuclear decommissioning funds (whether or not established pursuant to a single trust agreement) can be pooled in the manner described in paragraph (a)(3)(i)(C)(*2*) of this section for the purpose of investing the assets in the property described in paragraph (a)(3)(i)(C)(*1*) of this section if and only if—

(A) The trustee of each nuclear decommissioning fund separately accounts for the contributions, earnings, expenses and distributions of each fund;

(B) The earnings and expenses are reasonably apportioned among such nuclear decommissioning funds; and

(C) The books and records of such funds enable the Internal Revenue Service to verify that the requirements of section 468A and §§ 1.468A-1 through 1.468A-8 are satisfied with respect to each nuclear decommissioning fund.

(iv) The assets of nonqualified decommissioning funds can be pooled with the assets of one or more nuclear decommissioning funds in the manner described in paragraph (a)(3)(i)(C)(*2*) of this section for the purpose of investing the assets in the property described in paragraph (a)(3)(i)(C)(*1*) of this section if and only if the requirements of paragraph (a)(1)(iii)(A) and (C) of this section are satisfied and earnings and expenses are reasonably apportioned among the pooled funds. * * *

(3) *Limitation on use of fund—(i)* * * *

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes

described in paragraph (a)(3)(i) (A) or (B) of this section, to:

(*1*) *invest directly in*—

(*i*) Public debt securities of the United States;

(*ii*) Obligations of a State of local government that are not in default as to principal or interest; or

(*iii*) Time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(7)(1982)), located in the United States; or

(*2*) invest in a regulated investment company as defined in section 851 or in a common trust fund as described in section 584 that meets the following requirements—

(*i*) The regulated investment company or common trust fund invests only in property described in paragraph (a)(3)(i)(C)(*1*) of this section;

(*ii*) The investors in the regulated investment company or common trust fund are limited to qualified or nonqualified decommissioning funds;

(*iii*) The requirements of paragraph (a)(1) (iii) or (iv) of this section are satisfied; and

(*iv*) The regulated investment company or common trust fund do not engage in any acts of self-dealing as defined in paragraph (b)(2) of this section.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-14947 Filed 6-27-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[WH-FRL-3546-6]

RIN 2040-AB 27

Revisions to the Safe Drinking Water Act Underground Injection Control Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to its Underground Injection Control (UIC) program regulations (40 CFR parts 144 and 146). The proposed amendments are mostly intended to clarify the current requirements. They identify more precisely which wells may be authorized by rule. They clarify the duration and reasons for termination of rule-authorization, the privileges or rights and obligations of owners and operators of wells authorized by rule, and some of the requirements that apply to wells authorized by rule or permit.

These clarifications to the UIC program regulations are intended to assist the regulators and the regulated community in interpreting the regulations correctly, to provide a more consistent application of the requirements and to improve EPA's ability to enforce the regulations effectively.

EPA is also proposing amendments to the noncompliance and program reporting requirements. More frequent submission of information will be required from UIC Program Directors in order to oversee the UIC program more efficiently and effectively and ensure that timely and appropriate enforcement actions are taken.

Finally, EPA is proposing one addition to the regulations to codify the statutory provision that allows the Director or the Administrator to require information on any well.

DATES: EPA will accept public comment on the proposed regulations until August 27, 1990, either in writing or at an informal public hearing to be held at the EPA Headquarters Conference room 4 South, Washington, DC on, July 17, 1990. Requests to present oral testimony at the hearing must be received on or before July 13, 1990.

ADDRESSES: Comments, requests to testify, and inquiries concerning the Public Docket should be addressed to Comment Clerk, UIC Amendments, Office of Drinking Water (WH-550E), EPA, 401 M Street, SW., Washington, DC 20460. The hearing will be held in room 4 South of the EPA, Headquarters, Waterside Mall, 401 M Steet SW., Washington, DC, beginning at 9 a.m. The docket for today's proposal will be available for public inspection in room 1140 East Tower at EPA Headquarters.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Office of Drinking Water (WH-550E), EPA Washington, DC, 20460. Phone: 202-382-5530.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency has promulgated a series of regulations under the authority of part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*). The SDWA is designed to protect the quality of drinking water in the United States and Part C of the SDWA specifically mandates regulation of underground injection of fluids through wells.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for State programs to prevent well injection which may endanger drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR parts 144 and 146, on May 19, 1980 (45 FR 39611), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146) and July 26, 1988 (53 FR 28118).

Section 1422 of the Act provides that States may apply to EPA for primary responsibility to administer the UIC program. Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribed, by regulation, a UIC program for each State. These direct implementation (DI) programs were promulgated in two phases, on May 11, 1984 (49 FR 20138) and November 15, (49 FR 45308).

The Agency has been enforcing the program now for several years and in doing so has found the need for some clarifications and addition to make the program more effective. In most cases, the amendments which EPA is proposing today do not impose any new requirements on owners and operators of injection wells. The Agency has found, however, that in some cases the language of the current regulations can lend itself to misinterpretation or differing interpretations making consistent and effective implementation of the program difficult. The amendments proposed today clarify the intent of the original regulations and add certain provisions to the regulations that should make them easier to enforce consistently.

This proposed rule would also amend the current noncompliance and program reporting regulations to require more frequent reporting of data by State and Regional Program Directors. Reporting would be on a quarterly instead of annual basis. This would bring the UIC program in line with the other Agency programs which require quarterly compliance reporting. The Agency has found that this reporting frequency is necessary in order to properly monitor compliance with its regulations. State and Regional Program Directors are currently providing the information required by the proposed regulation on a quarterly basis.

EPA does not solicit, nor will EPA respond to comments related to any language in the proposed revised sections that is unrevised, yet included solely for the purpose of clarifying for the reader the locations of actual revisions.

II. Proposed Amendments to UIC Regulations in 40 CFR Part 144

A. Amendments to Subpart A—General Provisions

Section 144.8—Noncompliance and Program Reporting by the Director.

This section outlines revised and new general requirements for noncompliance and program reporting that must be met by both primacy State and EPA Regional Program Directors.

EPA is proposing to amend the current noncompliance and program reporting regulations to reflect the general Agency policy to require quarterly reporting from Regions and States in order to monitor compliance in a more timely manner. Compliance data on Class II, III and V wells would be reported quarterly instead of once a year. This is the frequency currently required for reporting compliance data for Class I and IV wells. This revision would not change the requirements for monitoring and reporting currently imposed on owners or operators. It would affect only UIC Program Directors. The Agency believes, based on its experience with its other regulatory programs, that quarterly reporting is essential to ensure a strong oversight program. The amendments to the Safe Drinking Water Act enacted in 1986 made it clear that Congress expects the Agency to enforce the regulations promptly and to step in with a Federal enforcement action whenever States fail to act in a timely and appropriate manner. See section 1423 of the SDWA. Annual reports would be insufficient to meet this mandate.

The Agency is also proposing to make reporting more uniform across all classes of wells. The detailed noncompliance reporting format required for Class I and IV wells would be deleted. For all wells, only summary data on the number and types of violations would be required. Detailed, name specific reporting would only be required on an "exceptions" basis, that is, only for those wells which have been listed on two or more consecutive quarterly reports as not in compliance and have not been returned to compliance or subjected to a formal enforcement action.

In summary, these proposed revisions will provide EPA with increased reporting so that noncompliance by the regulated community will be monitored on an ongoing basis and updated quarterly rather than annually. EPA can then be informed more expeditiously of problems and delays in implementing and enforcing the UIC program by tracking whether Regions and States are taking timely and appropriate enforcement actions against alleged violators.

EPA is specifically requesting public comment on the proposed quarterly reporting frequency for receiving summary violation information from State and Regional Program Directors and the use of "exceptions" reporting to receive owner/operator specific noncompliance information. The Agency is soliciting suggestions on how to decrease the UIC program's reporting burden while still providing sufficient and timely information to satisfy the mandate of the SDWA.

The five revised forms that reflect the proposed revisions to this regulation, Forms 7520-1, 7520-2A, 7520-2B, 7520-3 and 7520-4 have been approved by the Office of Management and Budget (OMB) under approval number 2040-0042 and are available in the Docket for today's proposal. OMB has not yet approved the increased reporting frequency; that approval is pending completion of this proposed regulation. See section IV-B of this preamble for further information regarding the review of these reporting requirements under the Paperwork Reduction Act.

B. Amendments to Subparts B, C and D—Sections 144.11 and 144.21, 144.22, 144.24, 144.25, 144.26, 144.27, 144.28 and 144.31

In operating the UIC program since 1984, EPA has found that the regulations are not specific enough in defining (1) The meaning of authorization by rule, (2) which wells are authorized by rule, and (3) the regulatory effects of what is currently termed loss of authorization by rule. This lack of specificity has hampered Agency enforcement actions against owners and operators of wells which lost authorization to inject fluids. Therefore, EPA is proposing amendments to the regulations to clarify these concepts.

EPA is proposing amendments to §§ 144.11, 144.21, 144.22, 144.24, 144.25, 144.26, 144.27, 144.28 and 144.31 to reflect that the injection well, rather than the injection activity, or the owner or operator, is what is authorized by rule. Authorization by rule stems from the fact that a well existed when an authorized UIC program became effective in a State. The authorization remains with the well until such time as the well either no longer falls under the purview of the UIC regulations because it has been plugged and abandoned or converted so that it is no longer an injection well, or until a permit is issued transferring its status to that of a well authorized by permit. Authorization-by-rule status conveys some rights, among them the right to inject fluids in the well, and obligations—compliance with the regulations—for the owner or operator of the well. Failure to comply with the regulations subjects the owner or operator to enforcement action and may result in loss of the right to inject fluids in the well. Nonetheless, the well remains authorized by rule and the owner or operator remains subject to the UIC regulations until the well is permitted, plugged or converted. The regulations are clear that "existing wells" become authorized by rule when a UIC program becomes effective in a State. 40 CFR 144.21. However, the regulations do not clearly define "existing well." "Existing wells" are defined as injection wells "other than new wells." "New wells" are defined as "injection wells which began injection after the UIC program became effective" 40 CFR 144.3. These somewhat circular definitions have proven cumbersome and have led to questions as to which wells become authorized by rule when the program took effect. The amendments to §§ 144.21, 144.22 and 144.24 are intended to clarify this point.

The proposed amendments would clearly state that existing wells are authorized by rule if the owner or operator injected into the well within one year after the effective date of the UIC program or inventoried the well pursuant to the requirements of 40 CFR 144.26. The one-year period is calculated based on the date that a UIC program first becomes effective in a State, whether in a federally-implemented program or a federally-approved State program. Where a State assumes primacy for programs that are currently federally-implemented and the one-year period has expired, wells that were not inventoried or injected into during the first year of the federally-implemented program can no longer become authorized by rule.

Today's proposal would also clearly specify those situations where the owner or operator of a rule-authorized well would be prohibited from injecting into that well (i.e., situations formerly referred to as "loss of authorization"). The proposal would also clarify that authorization by rule for a Class I, II, III or V well expires only upon the effective date of an applicable permit, upon proper plugging and abandonment of the well and submission of a plugging report or upon proper conversion, even if the owner or operator has been previously

prohibited from injection into the well.

C. Amendments to subpart B—General Program Requirements

Section 144.17—Records.

EPA is proposing to create a new section 144.17 which would be applicable to Federal and State programs. The new section would provide the UIC Program Director and the Administrator the authority to require an owner or operator of any injection well to submit information when deemed necessary to determine compliance with part C of the SDWA or its implementing regulations, as authorized by sections 1421 and 1445(a)(1) of the SDWA. This additional information would be required only on a selective, well-by-well basis and only upon written notice by the UIC Program Director or the Administrator. For example, if the UIC Program Director has sufficient information to believe that a well never before reported by an owner or operator may be a Class V injection well subject to UIC program requirements, he may request that the owner or operator submit information necessary to determine the well's actual status.

EPA believes that this information gathering authority is a necessary addition to the regulations. Current 40 CFR 144.27 is designed to provide broad authority to the Regional Administrator to require information on wells authorized by rule. However, it does not provide authority to require information from owners or operators of wells not authorized by rule. For example, the current regulations do not appear to allow the request of information from owners or operators of facilities where the presence of an injection well is suspected, even though sections 1421 and 1445(a)(1) give the Agency the authority to do so. Also, the penalty for failing to comply with an information request under § 144.27 would be, under these proposed amendments, a prohibition on injection into the owner or operator's well or wells. This penalty may not be appropriate in all cases where an owner or operator fails to furnish requested information.

This proposed addition is not expected to have an impact on approved State programs because States with existing UIC programs did not need to incorporate the authorization by rule concept into their programs and generally had sufficiently broad authority to obtain information from all well owners and operators.

D. Amendments to subpart C—Authorization of Underground Injection by Rule

1. Sections 144.28(d) and 144.28(l)—Change of Ownership and Financial Responsibility.

Current UIC regulations contain clear requirements for transfer of ownership where a well is under a permit. See 40 CFR 144.51(K)(3). However, the rquirements for wells authorized by rule are much less explicit. Section 144.28(l) simply states that for EPA administered programs, the owner of operator shall notify the Regional Administrator within 30 days of a transfer of ownership. The regulations are unclear regarding the timing of the notice (i.e., they could be interpreted as allowing notification either before or after the transfer) and regarding which party is responsible for the notification. Therefore, EPA is proposing to clarify § 144.28(l) to make it consistent with the current permit requirements for transfers of ownership in § 144.51. The notice must be given before the transfer and is the responsibility of the owner or operator transferring the well. The notice must include a written agreement between the parties involved and contain a specific date for transfer of responsibilities, including financial responsibility. Failure to comply with § 144.28(l) would result in the prohibition against injection into the well. In implementing the UIC program, the Agency has become aware that increases of transfer of ownership or operational control of the well, the new owner or operator may not be able to dmonstrate financial responsibility at the time of transfer.

The Agency does not intend to affect the timing of such transactions. Yet, the Agency has the responsibility to insure that funds are available at all times to properly plug and abandon all injection wells and that no injection well is operated without a proper demonstration of financial responsibility. In cases of permit transfers, the Agnecy has the righ to modify, revoke or revise the permit if it is not statisfied that the well remains in compliance with all requirements. The Agency does not have such an option where the well is authorized by rule. The Agency believes that it is prudent to keep the current owner liable for financial responsibility until the new owner can make an acceptable demonstration.

The Agency is therefore proposing in § 144.28(i) to allow a new owner to demonstrate financial responsibility after transfer of ownership has taken place, as long as in the written notice the previous owner has agreed to maintain financial responsibility for the well. The agency is also proposing to clarify in § 144.28(d) that previous owners and operators are relieved of the financial responsibility requirement only upon written notice by the director. Revisions to these sections are intended to apply only to federally-implemented programs.

2. Financial Responsibility and Insolvency.

The current regulations for Class II, III and VA wells do not require notification to the Director in the vent an owner or operator files for bankruptcy, although 40 CFR 144.64(a) requires such notification by an owner or operator of a Class I well. Because of the present instability in the oil and gas industry, a number of Class II owners and operators have filed for relief from creditors under Title 11 (Bankruptcy) of the U.S.C., including national companies with large holdings. It is essential that the Agency receive timely notification in order to have both the ability to assess the necessity of making a claim in bankruptcy courts and the time to file one if necessary, or to assert priority of administrative expenses arising from UIC obligations. The Agency is therefore proposing to add § 144.28(d)(6) to parallel the current class I requirements. In addition, the Agency proposes to add §§ 144.28(d)(5) and (7) and 144.52(a)(7). These proposed provisions require an owner or operator to notify the Director in the event the owner or operator no longer meets the financial responsibility requirements, and, in the event of bankruptcy, requires an owner or operator meeting the financial responsibility requirements by means of a financial statement to furnish an alternative assurance. Again, these requirements are necessitated by the current state of the oil and gas industry. A company or individual who presently can meet the financial statement requirements may shortly no longer qualify because of changing market conditions. The proposed additions will assure that the Agency is made aware of such financial changes and require demonstration of financial responsibility by other means so that the wells will not be abandoned without funding for proper plugging. The proposed new requirement also make this obligation expressly fall upon any receivers or trustees in bankruptcy.

3. Section 144.28(f)—Operating Requirements and Section 144.51(q)—duty to Establish and Maintain Mechanical Intergrity.

EPA is proposing to amend § 144.28(f) and to add § 144.52(q) to clarify that wells must have and maintain mechanical integrity in order to be in compliance with the UIC regulations. The current regulations are clear about how often tests to demonstrate that a well has mechancial integrity must be run. They do not, however, contain specific language requiring well owners or operators to maintain mechanical integrity at all items. This obviously is an oversight, and was always the intent of the regulations. The Agency has always stressed the importance of mechanical integrity in the proper operation of injection wells in order to protect underground sources of drinking water (USDWs) from actual or potential contamination. To interpret the mechanical integrity requirements to means that as well only has to demonstrate mechanical integrity once every five years and that the integrity of the well need not be maintained during subsequent operation (as the current language might be interpreted) makes no sense in terms of protecting USDWs. Wells must be tested and demonstrated mechanical integrity once every five years and they must maintain mechanical integrity at all times. In addition, EPA proposes to clarify the authority of the Director to notify the owner or operator of a MIT failure and specify appropriate cirrective measures, as well as the obligation of the owner or operator to cease injection until a satisfactory demonstration of the lack of fluid movement into or between USDWs is made.

E. Amendments to Subpart D—Authorization by Permit

1. Sections 144.31(e) and 144.51(o)—Plugging and Abandonment Plans for Wells Under Permit.

Present subsections 144.51(n) and 144.52(a)(6) both refer to plugging and abandment plans previously submitted by the owner or operator of a well operating under permit. However, there is no specific, existing regulation requiring that a permit applicant submit a plugging and abandonment plan as part of the permit application or have it incorporated into the permit. This UIC program requirement, promulgated as final and last printed correctly in 46 FR 14201 (April 1, 1983) was erroneously deleted in printing when technical amendments were proposed in 48 FR 40136 (September 2, 1983). As a matter of practice, every application and every permit has contained such a plan. EPA proposes to correct the previous error and make explicit this current practice.

2. Section 144.52—Establishing Permit Conditions.

Section 144.52(a)(7) is proposed to be revised to clarify that the permittee, including any transferor of a permit, must demonstrate and maintain financial responsibility and resources to properly close, plug and abandon the well according to an approved plugging and abandonment plan submitted pursuant to §§ 144.51(o) and 146.10. The proposed revision further clarifies that financial responsibility must be maintained until notice is received from the Director that the new permittee has made an acceptable demonstration of financial responsibility. These proposed changes parallel the changes proposed for wells authorized by rule discussed above.

III. Amendments to the UIC Regulations in 40 CFR Part 146

A. Amendments to Subpart A—General Provisions

Section 146.8—Mechanical Integrity.

EPA is proposing two minor changes to § 146.8, which defines mechanical integrity in terms of appropriate and reliable tests. EPA proposes to clarify that it is the UIC Program Director (not the well owner or operator) who has the authority to decide which test listed for use to demonstrate mechanical integrity under subparagraphs (b) and (c) of § 146.8 will be appropriate for a particular well. This has always been the intent of the section. In addition, EPA is proposing to clarify the requirement, when using annulus pressure monitoring to demonstrate that no significant leak exists in the casing, tubing or packer, that a positive pressure must be maintained upon the annulus. Experience in EPA's direct implementation of the UIC program in Oklahoma and elsewhere has shown that unless a positive annulus pressure is continuously maintained on the annulus, the continued integrity of the well cannot be assured by monitoring.

B. Amendments to subparts B, C and D—Mid-Course Evaluation Requirements

EPA is proposing to remove the requirement that certain information for each new Class I, II and III permit be submitted at six-month intervals during the first two years of operation of a State program. An approved State or DI UIC program has been in-place in every State since December 1984. During the period since December 1984, EPA has gained valuable information from the States related to the permitting of Class I, II and III wells. The period of time specified in §§ 146.15, 146.25 and 146.35 has passed and the requirement is no longer applicable to States. Thus, the existing mid-course evaluation requirements no longer serve their intended purpose and should be removed.

IV. Regulatory Impact

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the amendments to the regulation are major and therefore subject to the requirements of a regulatory impact analyis. The proposed changes to the reporting requirements are intended to increase the frequency of reporting of noncompliance by the Program Director, either State or EPA, in order that EPA may fulfill its oversight and evaluation responsibilities. The States have voluntarily begun reporting the additional information and the cost has been incorporated into the current information collection request for the UIC program as a whole. Nearly all of the other amendments proposed today merely clarify the existing regulations, and do not impose any additional burden on the States or the regulated community. The proposed amendments, therefore, do not constitute major rulemaking. This proposal has been submitted to OMB for review as required by Executive Order 12291.

B. Paperwork Reduction Act

The information collection requirements (quarterly reporting) in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR #0370) and a copy may be obtained from Harold Woodley of EPA's Information Policy Branch; 401 M Street, SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2709. Comments on these information collections requirements may be submitted to Timothy Hunt, Office of Information and Regulatory Affairs; OMB; 725 17th Street, NW.; Washington, DC 20503.

The public reporting burden for the collection of information under the proposed revision to the UIC program regulations is estimated at an average of 10 hours per report per quarter. Program reporting information is submitted on five forms, Forms 7520-1, 7520-2A, 7520-2B, 7520-3 and 7520-4. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The final rule will respond to any OMB or public comments on the information collection requirements.

C. Impact on Small Businesses

Under the Regulatory Flexibility Act, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any proposal rule, unless the head of the agency certifies that the rule, if promulgated, will not have significant economic impact on a substantial number of small entities. These proposed regulations require no additional reporting by owners and operators and few new substantive requirements or standards. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Effect on States with Primacy

The amendments being proposed today are non-substantial or apply only to federally-implemented programs. According to the regulations at 40 CFR 145.32 for non-substantial program revisions, primacy States must assert in a letter from the State's Director or his authorized representative to the Regional Administrator that the State has incorporated the revisions and new regulatory language into its current program or that it already meets the requirements. The State must submit this document within 270 days of the effective date of the final rule. The Agency expects that most States will be able to satisfy the requirements of 40 CFR 145.32 in a letter to the Regional Administrator.

List of Subjects in 40 CFR Parts 144 and 146

Administrative practice and procedures, Reporting and record keeping requirements, Confidential business information, Underground injection.

Dated: June 18, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, parts 144 and 146 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

Subpart A—General Provisions

§ 144.3 [Amended]

2. Section 144.3 is proposed to be amended by adding new definitions for "significant noncomplier," "transferee" and "transferor" in their proper alphabetical order to read as follows:

* * * * *

Significant noncomplier means any injection well owner or operator classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

* * * * *

Transferee means the owner or operator receiving ownership and/or operational control of the well.

Transferor means the owner or operator transferring ownership and/or operational control of the well.

* * * * *

3. Section 144.8 is proposed to be revised to read as follows:

§ 144.8 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports in a manner and form prescribed by the Administrator as detailed below. When the State has primary enforcement authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA has primary enforcement authority, the Regional Administrator shall submit any reports required under this section to EPA Headquarters.

(a) *Quarterly Reports.* The Director shall submit quarterly reports which, at a minimum, include:

(1) Number of individual and area permits issued or denied, number of well records reviewed for compliance, and number of corrective actions taken in the area of review of wells.

(2) Number and type of violations, evaluations, enforcement actions and a name specific list of significant noncompliers that appear on two or more consecutive quarterly reports including the date and specific actions taken to resolve the noncompliance; and

(3) Number of field inspections, mechanical integrity tests and remedial actions taken.

(b) *Annual Reports.* The Director shall submit each Federal fiscal year a program report to the Administrator consisting, at a minimum, of the following:

(1) The quarterly report for the fourth quarter;

(2) A narrative description of the State's implementation of the program in the State;

(3) An updated inventory of rule-authorized and permitted underground injection wells in the State; and

(4) A summary report of grant utilization including estimated program activity expenditures.

(c) *Additional Information.* The Administrator may require the Director to submit limited noncompliance and program reporting information that is necessary to determine significant noncompliance with the SDWA and its supporting regulations that could not otherwise be determined from existing reports required in § 144.8 (a) or (b).

(d) *Schedule.* The State Director shall submit to the Regional Administrator all quarterly reports for an approved State program within 45 days from the date of closing of the quarters ending December 31, March 31, June 30 and September 30. The State Director shall submit to the Regional Administrator an annual report for an approved State program within 60 days from the date of closing of the Federal fiscal year ending September 30. All quarterly and annual reports shall be based on the Federal fiscal year beginning October 1 of each year.

(Approved by the Office of Management and Budget under control number 2040-0042)

Subpart B—General Program Requirements

4. Section 144.11 is proposed to be amended by revising the first sentence to read as follows:

§ 144.11 Prohibition of unauthorized injection.

Any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited. * * *

5. Section 144.17 is proposed to be added to read as follows:

§ 144.17 Records.

The Director or the Administrator may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports and conduct monitoring as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

Subpart C—Authorization of Underground Injection by Rule

6. Section 144.21 is proposed to be amended by revising and redesignating the introductory text as paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (d) and (e), revising and redesignating paragraph (a) as paragraph (b) and adding a new paragraph (c) to read as follows:

§ 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

(a) An existing Class I, II (except enhanced recovery and hydrocarbon storage) and III injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* (1) An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(i) Upon the effective date of an applicable permit denial;

(ii) Upon failure to submit a permit application in a timely manner pursuant to §§ 144.25 or 144.31;

(iii) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(iv) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27;

(v) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7);

(vi) For Class I and III wells:

(A) In States with approved programs, five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(B) In States with programs administered by EPA, one year after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(vii) For Class II wells (except enhanced recovery and hydrocarbon storage), five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision.

(2) For EPA-administered programs, in addition to the prohibitions of subparagraph (c)(1) of this section, the transferee of a well authorized by rule is prohibited from injecting into the well until the transferee receives notice from the Director that the transferee has demonstrated compliance with the financial responsibility requirements of § 144.28(d) and/or subpart F of this part.

* * * * *

7. Section 144.22 is proposed to be amended by revising paragraph (a), redesignating paragraph (b) as (d), and adding new paragraphs (b) and (c), to read as follows:

§ 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

(a) An existing Class II enhanced recovery or hydrocarbon storage injection well is authorized by rule for the life of the well or project if the owner or operator injects into the existing well within one year after the date which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* (1) An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(i) Upon the effective date of an applicable permit denial;

(ii) Upon failure to submit a permit application in a timely manner pursuant to §§ 144.25 or 144.31;

(iii) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(iv) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27; or

(v) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7).

(2) For EPA-administered programs, in addition to the prohibitions of subparagraph (c)(1) of this section, the transferee of a well authorized by rule is prohibited from injecting into the well until the transferee receives notice from the Director that the transferee has demonstrated compliance with financial responsibility requirements of § 144.28(d).

* * * * *

8. Section 144.24 is proposed to be amended by revising and redesignating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 144.24 Class V wells.

(a) A Class V injection well is authorized by rule until further requirements under future regulations become applicable.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34, or upon conversion.

(c) *Prohibition of injection.* An owner or operator of a well which is authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to §§ 144.25 or 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26; or

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27.

9. Section 144.25 is proposed to be amended by revising the first sentence in paragraphs (a) and (c), and revising the first two sentences of paragraph (b) to read as follows:

§ 144.25 Requiring a permit.

(a) The Director may require the owner or operator of any Class I, II, III or V injection well which is authorized by rule under this subpart to apply for and obtain an individual or area UIC permit. * * *

* * * * *

(b) For EPA-administered programs, the Regional Administrator may require an owner or operator of any well which is authorized by rule under this subpart to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The owner or operator of a well which is authorized by rule under this subpart is prohibited from injecting into the well upon the effective date of permit denial, or upon failure by the owner or operator to submit an application in a timely manner as specified in the notice. * * *

(c) An owner or operator of a well authorized by rule may request to be

excluded from the coverage of this subpart by applying for an individual or area UIC permit. * * *

10. Section 144.26 is proposed to be amended by revising the introductory paragraph to read as follows:

§ 144.26 Inventory requirements.

The owner or operator of an injection well which is authorized by rule under this subpart shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the time specified in paragraph (d) of this section.

* * * * *

11. Section 144.27 is proposed to be amended by removing the last sentence of paragraph (c) and adding a new paragraph (d) to read as follows:

§ 144.27 Requiring other information.

* * * * *

(d) An owner or operator of an injection well authorized by rule under this subpart is prohibited from injecting into the well upon failure of the owner or operator to timely comply with a request for information under this section. An owner or operator of a well prohibited from injection under this section shall not resume injection except under a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34.

12. Section 144.28 is proposed to be amended by revising the introductory sentence, revising paragraphs (d)(1) and (d)(2), adding new paragraphs (d)(5), (d)(6) and (d)(7); redesignating paragraphs (f) (2) and (3) as paragraphs (f) (4) and (5) and adding new paragraphs (f)(2) and (f)(3); and revising paragraph (l) to read as follows:

§ 144.28 Requirements for Class I, II, and III wells authorized by rule.

The following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d).

* * * * *

(d) *Financial responsibility.* (1) The owner, operator and/or transferor of a Class I, II or III well is required to demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director until:

(i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k);

(ii) The well has been converted in compliance with the requirements of § 144.28(j); or

(iii) The transferor has received notice from the Director that the transferee has demonstrated financial responsibility for the well.

(2) for EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State. Where the ownership or operational control of the well is transfered one year after the effective date of the UIC program, the transferee shall submit such evidence no later than the date specified in the notice required pursuant to § 144.28(l)(2).

* * * * *

(5) For EPA-administered programs, the transferee of a Class I, II or III well authorized by rule is prohibited from injecting into the well until the transferee receives notice from the Director that the transferee has demonstrated compliance with the financial responsibility requirements of this part.

(6) For EPA-administered programs, an owner or operator must notify the Regional Administrator by certified mail of the commencement of any voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code which names the owner or operator as debtor, within 10 business days after the commencement of the proceeding. Any party acting as guarantor for the owner or operator for the purpose of financial responsibility must so notify the Regional Administrator if the guarantor is named as debtor in any such proceeding.

(7) In the event of commencement of a proceeding specified in paragraph (d)(6) of this section, an owner or operator who has furnished a financial statement for the purpose of demonstrating financial responsibility under this section shall be deemed to be in violation of this paragraph until an alternative financial assurance demonstration acceptable to the Regional Administrator is provided either by the owner or operator or by its trustee in bankruptcy, receiver, or other authorized party; all parties shall be prohibited from injecting into the well until such alternate financial assurance is provided.

* * * * *

(f) * * *

(2) The owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and plugging and abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j). For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(3) When the Director determines that a Class I, II or III injection well lacks mechanical integrity pursuant to § 146.8, the Director shall give written notice of his determination to the owner or operator. The owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination unless the owner or operator demonstrates to the Director that there is no movement of fluid into or between USDWs. The Director may require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid caused by the lack of mechanical integrity into or between USDWs. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 or made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

* * * * *

(l) *Change of ownership or operational control.* For EPA-administered programs, the transferee of a Class I, II or III well authorized by rule shall notify the Regional Administrator of a transfer of ownership or operational control of the well at least 30 days in advance of the proposed transfer. The notice shall include a written agreement between the transferor and the transferee containing:

(1) A specific date for transfer of ownership or operational control of the well; and

(2) A specific date when the financial responsibility requirements of § 144.28(d) will be met by the transferee.

* * * * *

Subpart D—Authorization by Permit

13. Section 144.31 is proposed to be amended by revising paragraph (a) and paragraph (c)(2) and adding paragraph (e)(10) to read as follows:

§ 144.31 Application for a permit; authorization by permit.

(a) *Permit application.* Unless an underground injection well is authorized by rule under subpart C, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. An owner or operator of a well currently authorized by rule must apply for a permit under this section unless well authorization by rule was for the life of the well or project. Authorization by rule for a well or project for which a permit application has been submitted terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 144.34.

* * * * *

(c) * * *

(2) For new injection wells, except new wells in projects authorized under § 144.21(d) or authorized by an existing area permit under § 144.33(c), a reasonable time before construction is expected to begin.

* * * * *

(e) * * *

(10) A plugging and abandonment plan that meets the requirements of § 146.10 of this chapter and is acceptable to the Director.

* * * * *

Subpart E—Permit Conditions

14. Section 144.51 is proposed to be amended by removing paragraph (p), redesignating paragraph (q) as paragraph (p) and adding new paragraphs (q) and (r) to read as follows:

§ 144.51 Conditions applicable to all permits.

* * * * *

(q) A Class I, II or III permit shall include and a Class V permit may include, conditions which meet the applicable requirements of § 146.10 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of § 146.10, the Director shall incorporate it into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the permit. For purposes of this paragraph, temporary, intermittent cessation of injection operations is not abandonment.

* * * * *

(r) *Duty to establish and maintain mechanical integrity.* (1) The owner or operator of a Class I, II or III well permitted under this Part shall establish prior to the authorization to inject or on a schedule determined by the Director, and thereafter maintain mechanical integrity as defined in § 146.8. For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(2) When the Director determines that a Class I, II, or III well lacks mechanical integrity pursuant to § 146.8, he shall give written notice of his determination to the owner or operator. The owner or operator shall cease injection into the well within 48 hours of receipt of the Directors determination unless the owner or operator demonstrates to the Director that there is no movement of fluid into or between USDWs. The Director may require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid caused by the lack of mechanical integrity into or between USDWs. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 or has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

15. Section 144.52 is proposed to be amended by revising paragraph (a)(7) and the last two sentences of existing paragraph (a)(7) will follow the new paragraph (a)(7)(ii) to read as follows:

§ 144.52 Establishing permit conditions.

(a) * * *

* * * * *

(7) *Financial responsibility.* (i) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director until:

(A) the well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.51(o) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.51(p);

(B) the well has been converted in compliance with the requirements of § 144.51(n); or

(C) the transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

(ii) The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. * *

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

Supart A—General Provisions

2. Section 146.2 is revised to read as follows:

§ 146.2 Law authorizing these regulations.

The Safe Drinking Water Act, 42 U.S.C. 300f *et seq.* authorizes these regulations and all other UIC program regulations referenced in 40 CFR part 144. Certain regulations relating to the injection of hazardous waste are also authorized by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

3. Section 146.8 is proposed to be amended by revising paragraph (b) introductory text paragraph (b)(1) and paragraph (c) introductory text to read as follows:

§ 146.8 Mechanical integrity.

* * * * *

(b) One of the following methods, as determined by the Director, must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

(1) Monitoring of the tubing-casing annulus pressure, while maintaining a positive annulus pressure greater than atmospheric pressure at the surface, following an initial pressure test;

* * * * *

(c) One of the following methods, as determined by the Director, must be used to determine the absence of significant fluid movement pursuant to paragraph (a)(2) of this section:

* * * * *

Subpart G—Criteria and Standards Applicable To Class I Wells

§ 146.25 [Removed]

4. Section 146.25 is proposed to be removed.

Subpart C—Criteria and Standards Applicable to Class II Wells

§ 146.25 [Removed]

5. Section 146.25 is proposed to be removed.

Subpart D—Criteria and Standards Applicable to Class III Wells

§ 146.35 [Removed]

6. Section 146.35 is proposed to be removed.

[FR Doc. 90-14792 Filed 6-27-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL 3792-3]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to disapprove a revision to the Minnesota State Implementation Plan (SIP) for sulfur dioxide (SO_2). The State's control strategy consists of a modeled attainment demonstration and amended permits for Koch Refining Company, Koch Sulfuric Acid and Alum Unit, and Continental Nitrogen and Resources Corporation. USEPA has determined that the State's control strategy cannot be approved because it is based, in part on emission limitations contained in an improperly issued construction permit for Koch Refining Company.

The purpose of this notice is to discuss USEPA's evaluation of the State's control strategy and to solicit public comments on this rulemaking action.

DATES: Comments must be received by August 27, 1990.

ADDRESSES: Copies of the SIP revision are available at the following addresses: (It is recommended that you telephone the contact listed below before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 353-3849.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 9006), USEPA designated AQCR 131 (the Twin Cities Seven County Metropolitan Area of Hennepin, Ramsey, Scott, Dakota, Carver, Washington, and Anoka Counties, which included the major cities of Minneapolis and St. Paul) as nonattainment for the primary National Ambient Air Quality Standard (NAAQS) for SO_2. Part D of the Clean Air Act, which was added by the 1977 Amendments to the Act, requires the States to revise their State Implementation Plans (SIPs) to demonstrate attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. On April 8, 1981 (46 FR 20998), USEPA approved the Minnesota SO_2 Plan for AQCR 131.

On September 28, 1984, the USEPA notified the State Minnesota that the SIP for SO_2 in Dakota County was substantially inadequate. (The area where the SIP is inadequate is referred to as the Pine Bend area.) The basis for this finding was monitored violations of the SO_2 primary NAAQS in 1981 and 1982. In addition, recent dispension modeling analyses verify that the existing SIP is inadequate to address the numerous violations of the SO_2 primary NAAQS.

The USEPA further notified the State that a final revised SIP that would demonstrate attainment and maintenance of the primary NAAQS for SO_2 in Dakota County was due by September 28, 1985.

Additionally, on July 8, 1985 (50 FR 27892), USEPA promulgated a newly revised stack height regulation under section 123 of the Clean Air Act. This regulation is intended to ensure that the emissions of any air pollutant under an applicable SIP emission limitation is not affected by that portion of any stack height which exceeds Good Engineering Practice (GEP) or by any other dispersion technique. Pursuant to these regulations, all states were required to review all existing emission limitations to determine whether any of these limitations have been affective by stack height credit above GEP or by other dispersion techniques. The regulations only apply to stack heights in existence or dispersion techniques implemented on or after December 31, 1970. This requirement is applicable to several stacks in the Pine Bend area.

To meet USEPA's notice of SIP in adequacy and the revised stack height regulations of July 8, 1985 (50 FR 27892), the Minnesota Pollutant Control Agency (MPCA) on August 19, 1987, submitted a revision to its SO_2 SIP. The State's control strategy is based upon 1) a modeled attainment demonstration and 2) emission limits contained in amended consolidated construction and operating permits for Koch Refining Company, Koch Sulfuric Acid and Alum Unit, and Continental Nitrogen and Resources Corporation. (In addition, the State's control strategy and attainment demonstration for this area rely on the existing Federally approved emission limitation for the Northern State Power Inver Grove Height plant.) MPCA believes the reduced SO_2 emission limits in the four amended permits will correct the deficient SIP based on their modeling analyses. The modeling also addresses the requirements of the stack height rule. Koch Refining Company is the only facility in the Pine Bend area affected by the stack regulations.

USEPA has reviewed the State's control strategy and has determined that it cannot be approved because it is based, in part, on emission limitations contained in an improperly issued permit for Koch Refining Company (Koch). The Koch permit was initially issued on May 9, 1985, followed by amendments 1 and 2 issued on January 28, 1986, and August 20, 1987, respectively. USEPA views the permit as being invalid because the new emission units for Koch's 2-phase expansion (which began when the May 9, 1985, permit was issued) do not meet the requirements of the New Source Review regulations (40 CFR 52.24(f)(6)) and are located in an area where there is a construction ban pursuant to section 110(a)(2)(I) of the Clean Air Act. Thus, the emission limitations contained in the permit and utilized in the modeling are invalid.

The stack height credits assumed by MPCA for Koch are consistent with USEPA's stack height regulations.

The main emphasis to today's notice is USEPA's position on the State's control strategy. In addition USEPA wishes to note several other deficiencies in the State's submittal.[1]

[1] USEPA notes that all three permits contain expiration dates. The Koch permit expires May 9, 1990; Koch Sulfuric Acid and Alum Unit permit expires August 1, 1990; and continental Nitrogen permit expires July 15, 1990. The lack of provisions for enforcement beyond the expiration date leaves questions as to the future enforceability of the emission limits contained in the permit. USEPA solicits comments as to whether this should be a reason for disapproval as well.

(1) The State's control strategy for Koch consists of stack-specific emissions limits and a Total Facility Emission Limitation (TFEL). To assess compliance with the TFEL, emissions need to be determined simultaneously for each facility at the refinery. The emission calculations are dependent on the accurate measurement and reporting of certain key variables related to fuel quantity, fuel (or gas stream) quality, and flow rates. The Koch permits, however, fails to prescribe recordkeeping and reporting requirements for several variables, i.e., SRU 1,2—standard cubic feet per day (scfd) feed gas; SRU 3-5 scfd tail gas, scfd fuel gas scfd combustion air; Fluidized Catalytic Cracking Unit (FCC)—Carbon Monoxide Waste Heat Boilers—lbs/hour coke burned off).

(2) The Koch permits contains a compliance date of January 1, 1990, for the emission limits for most sources at the refinery. The permit does not contain a compliance date for the other sources at the refinery. The lack of a specific future compliance date for these sources implies that the applicable permit conditions were effective on May 9, 1985, the date the State issued the permit. USEPA has reviewed MPCA's justification for the January 1, 1990, compliance date (i.e., the only emission reductions sufficient to comply with the TFEL are for fuel oil combustion, which will take until July 1, 1990), and finds it deficient for several reasons:

(a) The 1 percent sulfur (S) oil condition should be included in the operating permit to ensure compliance with the TFEL.

(b) Specific milestones must be required for the two fuel oil control options.

(c) The inability to further reduce FCC emissions should be explained.

(d) Regardless of what adequate measures Koch chooses, such measures have to be federally enforceable (under new source review regulations) at and after the time of approval of its operating permit.

Proposed Action

Disapproval of the State's control strategy. This disapproval results in an overall disapproval of the entire Dakota County SO_2 SIP

Ramifications of An Unacceptable Dakota County SO_2 SIP

As stated above, an acceptable Dakota County SO_2 SIP was due by September 28, 1985. The SIP that was submitted by the MPCA on August 19, 1987, is being proposed for disapproval. Because an approvable SIP revision for Dakota County is long overdue, USEPA is initiating the process to promulgate a revised Federal Implementation Plan (FIP) pursuant to section 110(c)(1) of the Clean Air Act. When developed, the proposed FIP will consist of an SO_2 control strategy for Dakota County, and a description will appear in a future Federal Register notice. The public will at that time be given an opportunity to comment on the proposed FIP.

Interested parties are invited to submit comments on this proposed disapproval of Minnesota's plan. USEPA will consider all comments submitted within 60 days of publication of this notice.

Under Executive Order 12291, today's action is not "Major." It has not been submitted to the Office of Management and Budget (OMB) for review.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the attached rule will not have, if promulgated at the Federal level, a significant economic impact on a substantial number of small entities because it only affects one source (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental Protection Agency, Intergovernmental relations, Sulfur dioxide.

Authority: 42 U.S.C. 7401-7642.

Dated: April 5, 1990.

Frank M. Covington,
Acting Regional Administrator.

[FR Doc. 90-15049 Filed 6-27-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 65]

RIN 2127-AD-38

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 208, *Occupant Crash Protection*, requires vehicles to be equipped with warning light system designed to remind vehicle occupants to use safety belts. Currently, Standard No. 208 requires different warning systems for vehicles equipped with manual belts and vehicles equipped with automatic belts. For vehicles equipped with manual safety belts, the Standard requires that a warning light come on for four to eight seconds when the vehicle's ignition is turned on, regardless of belt use. For vehicles equipped with automatic safety belts, the Standard requires illumination of a warning light for at least 60 seconds when the ignition is turned on, if there are indications that the driver's safety belt is not in use, and allows the light to remain illuminated longer than that. Both systems require a four to eight second audible signal when the ignition switch is turned on and the safety belt is not in use. Thus, the requirements for the audible signal are not changed. Under the proposed amendment, manufacturers would have the option of using automatic safety belt warning systems in passenger cars equipped with manual belts. Since the automatic safety belt warning system is more stringent than the warning system for manual belts, NHTSA believes that the amendment could result in greater safety protection. This proposed amendment was requested by General Motors Corporation in a December 11, 1989 petition for rulemaking, which NHTSA granted on January 5, 1990.

DATES: Comment closing date: Comments on this notice must be received on or before August 13, 1990.

Proposed effective date: If adopted, the amendment would be effective upon publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 74-14; Notice 65 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, Office of Motor Vehicle Safety Standards, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4909).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 208, Occupant Crash Protection (49 CFR 571.208), is intended to reduce the likelihood of occupant deaths and likelihood and severity of occupant injuries in crashes. Standard No. 208 requires vehicles to be equipped with warning systems designed to remind vehicle occupants to use safety belts. Currently, Standard No. 208 requires different warning systems for vehicles equipped with manual belts and vehicles equipped with automatic belts. For vehicles equipped with manual safety belts, section S7.3 requires a warning light come on for four to eight seconds when the vehicle's ignition is turned on, regardless of belt use. However, there is no requirement that a warning light be activated after

that time, even if the driver's belt is not in use. For vehicles equipped with automatic safety belts, section S4.5.3.3(b) requires illumination of a warning light for at least 60 seconds when the ignition is turned on, if there are indications that the driver's safety belt is not in use. With automatic safety belts, manufacturers are free to have a warning light that stays on for longer than 60 seconds. The light must also be activated if the belt is nondetachable and the emergency release mechanism is in the released position. With automatic safety belts there is no requirement that a warning light come on when the vehicle's ingnition is turned on, if the driver's safety belt is in use.

On December 11, 1989, General Motors Corporation (GM) petitioned NHTSA to amend section S7.3 of Standard No. 208 to allow manufacturers to use a safety belt warning system that meets the requirements for automatic safety belts in section S4.5.3.3(b) of the Standard as an alternative to the requirements currently specified in section S7.3 for manual belt systems. GM believes that increasing the duration of the manual belt warning light beyond the eight second limitation could increase the effectiveness of the reminder.

Proposed Amendment

NHTSA granted the GM petition on January 5, 1990. NHTSA tentatively concludes that the amendment suggested by GM would be beneficial.

The proposed amendment would insert the underlined language in current section S7.3:

"A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that meets the requirements of either S4.5.3.3(b) or, at the option of the manufacturer, that activates, for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position) a continuous or flashing warning light, visible to the driver * * *."

The primary purpose of the safety belt warning light requirements in Standard No. 208 is to encourage the use of safety belts. If the proposed amendment is adopted and a manufacturer chooses the newly permitted option, there would be two differences from the warning system requirements now applicable.

First, the warning light would remain on for at least 60 seconds if the driver did not buckle his or her safety belt. NHTSA tentatively agrees with GM that increasing the duration of the manual belt warning light beyond the eight second limitation could increase the effectiveness of the reminder and thus increase use of safety belts. Second, the safety belt warning light would not come on if the driver buckled the safety belt before inserting the ignition key. NHTSA does not believe that this would have a major impact on safety belt use at other seating positions. In such a case, the driver would already have buckled his or her safety belt and thus set an example for any passengers in the vehicle.

NHTSA tentatively concludes that the proposed amendment has merit. It would not result in any additional burden to manufacturers since it would simply permit manufacturers an additional option for the manual safety belt warning system. In addition, NHTSA believes that the automatic safety belt warning system that manufacturers may use at their option is more stringent than the warning system for manual belts. Thus, the amendment could result in greater safety protection by increasing manual safety belt use.

NHTSA does not believe that the proposed amendment would raise any issues under section 125 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1410b). That section provides that no Federal Motor Vehicle Safety Standard may have the effect of requiring, or provide that a manufacturer is permitted to comply with such a Standard by means of a buzzer which operates longer than eight seconds after the ignition is turned to the "start" or "on" position and is designed to indicate that safety belts are not in use. However, section 125 does not prohibit a Standard permitting a safety belt warning light to remain illuminated for more than eight seconds. Further, the legislative history of section 125 of the Safety Act does not suggest Congressional disfavor of such an approach.

NHTSA tentatively concludes that good cause would exist to make this amendment effective immediately upon its publication in the Federal Register as a final rule. As discussed above, the amendment would not result in any additional burden to manufacturers. In addition, it could result in greater safety protection since the automatic belt warning system requirements are more stringent than the manual belt requirements.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. NHTSA believes that the impacts of this proposed amendment, if promulgated, would be minimal. The proposed amendment simply adds an option for manufacturers. It does not require a new warning system. Therefore, NHTSA did not prepare a full preliminary regulatory evaluation for this rulemaking.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed amendment would not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities.

First, few motor vehicle manufacturers affected by this rule would qualify as small entities. For those that would so qualify, the impacts would not be significant, as explained above. Second, small organizations or governmental units would not be significantly affected. Any price increases associated with this proposed amendment, if promulgated, would be minimal and would not affect the purchasing of new motor vehicles by these entities. Accordingly, no regulatory flexibility analysis has been prepared.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed amendment. The agency has determined that, if adopted as a final rule, this proposal would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Section 571.208 would be amended by revising S7.3 to read as follows:

S7.3 A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that meets the requirements of either S4.5.3.3(b) or, at the option of the manufacturer, that activates, for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position), a continuous or flashing warning light visible to the driver, displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts", when condition (a) exists, and a continuous or intermittent audible signal when condition (a) exists simultaneously with condition (b).

(a) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(b) The driver's lap belt is not in use, as determined, at the option of the manufacturer, either by the belt latch mechanism not being fastened, or by the belt not being extended at least 4 inches from its stowed position.

Issued on June 22, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-14964 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 125
Thursday, June 28, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding the Federal Communication Commission's Licensing of AT&T's Telecommunications Lines

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation is proposing to execute a Programmatic Agreement pursuant to § 800.13 of its regulations (36 CFR part 800) with the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and AT&T regarding the consideration of historic properties that could be affected by licensed AT&T construction of fiber optic and other telecommunications lines throughout the United States. The Agreement will outline a process for AT&T to identify, evaluate, and assess effects of telecommunications line construction on historic properties, in consultation with the State Historic Preservation Officer and, where appropriate, other interested parties (including Native American groups). It will also establish FCC's oversight and monitoring role for these activities under its licensing authority.

COMMENTS DUE: Copies of the draft Agreement are available for review upon request from Ronald D. Anzalone, Director, Office of Program Review and Education, Advisory Council on Historic Preservation (address below). Written comments should be submitted by July 30, 1990.

ADDRESSES: Comments should be addressed to: Director, Office of Program Review and Education, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue NW., room 809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ronald D. Anzalone, Director, Office of Program Review and Education, Advisory Council on Historic Preservation (see address above), 202–786–0505; or Holly Berland, Office of General Counsel, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, 202–254–6530.

Dated: June 25, 1990.

Robert D. Bush,
Executive Director.

[FR Doc. 90-14988 Filed 6-27-90; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 22, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- Farmers Home Administration

7 CFR 1944–E, Rural Rental Housing Loan Policies, Procedures and Authorizations
FmHA 1944–7, –33, –34, –35
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 20,935; responses 142,830 hours; Not applicable under 3504(h)
Jack Holston (202) 382–9736

Extension

- Cooperative State Research Service

Financial Report, Morrill-Nelson Funds for Food and Agricultural Higher Education
Annually
State or local governments; 73 responses; 73 hours; not applicable under 3504(h)
Louise Ebaugh (202) 447–7854

Forest Service
Visitor's Permit and Visitor Registration Card
FS 2300–30, FS 2300–32
On occasion
Individuals or households; 250,000 responses; 12,500 hours; not applicable under 3504(h)
Anne Fege (202) 447–2311

- Agricultural Stabilization and Conservation Service

Application for Payment (National Wool Act)
CCC–1155
Annually
Farms; 125,000 responses; 31,250 hours; not applicable under 3540(h)
Harry D. Millner (202) 475–3905

New Collection

- Animal and Plant Health Inspection Service

Animal Welfare—Part 3 Subparts B&C (Guinea Pigs, Hamsters, and Rabbits)
Recordkeeping: On occasion
Businesses or other for-profit; Small businesses or organizations; 2,625 responses; 288 hours; not applicable under 3504(h)
R. L. Crawford (301) 436–7833

- Food Safety Inspection Service

Imported Canadian Product: Further Implementation of the United States-Canada Free Trade Agreement
On occasion
Businesses or other for-profit; Small businesses or organizations; 34,850 responses; 2,904 hours; not applicable under 3504(h)

Roy Purdie, Jr. (202) 447–5372
Donald E. Thatcher,
Acting Departmental Clearance Officer.

[FR Doc. 90-14958 Filed 6-27-90; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Forest Plan Amendment 16—Management Indicator Species; Flathead National Forest, Flathead Lake, Lewis and Clark, Lincoln, Missoula, and Powell Counties, State of Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to amend the Flathead National Forest Land and Resource Management Plan (LRMP) to adopt standards for management of habitat for pileated woodpecker, marten, and barred owl. This EIS will tier to the LRMP and accompanying EIS of January 1986, which established these species as Management Indicator Species (MIS). The purpose of this proposal is to respond to the 8/31/88 decision of the Chief of the Forest Service to amend the LRMP to add "* * * standards that will ensure that these species will remain well distributed throughout the forest."

DATES: Written comments concerning the scope of the analysis should be received by August 13, 1990.

ADDRESSES: Send written comments to Mary Peterson, Acting Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Nancy Warren, Biologist and Management Indicator Species Interdisciplinary team member, or Mary Peterson, Acting Forest Supervisor. Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901. Phone: (406) 755–5401.

SUPPLEMENTARY INFORMATION: The Federal regulations implementing the National Forest Management Act require that fish and wildlife habitat be managed to maintain viable populations of existing native and desired non-native vertebrate species (36 CFR 219.19). To accomplish this goal, the regulations further require that National Forest Land and Resource Management Plans (LRMP) identify management indicator species whose populations changes are believed to indicate effects of management activities. LRMPs are to establish objectives for the maintenance and improvement of habitat for management indicator species to the degree consistent with overall multiple use objectives.

The LRMP for the Flathead National Forest provides the overall guidance for wildlife habitat management through its goals, objectives, standards and guidelines, and management area direction. The LRMP established Management Indicator Species (MIS) for those species groups whose habitat is most likely to be changed by forest management activities. The tree dependent group MIS is the marten; the old-growth dependent group MIS is represented by the pileated woodpecker; and the riparian tree dependent group MIS is the barred owl. The LRMP specified that these MIS species be monitored. The LRMP did not allocate land or provide habitat management standards specific to these species.

In an August 31, 1988, decision on appeals #1467 and #1513 of the Flathead National Forest LRMP, the Chief of the Forest Service directed that the Regional Forester "document additional analysis of the habitat requirements, and the distribution of habitat, for pine marten, barred owls, and pileated woodpeckers. This evaluation should lead to the development of additional standards that will ensure that these species will remain well distributed throughout the Forest." Pending completion of this assignment, the Chief directed the Regional Forester to "implement an old growth retention standard requiring 10 percent of each 3rd order watershed to be left in old growth habitat in blocks large enough to provide habitat for management indicator species and spaced to allow interaction between individuals."

The Flathead National Forest will prepare an Environmental Impact Statement on a proposal to amend the Flathead National Forest LRMP to provide standards for management of habitat for these three Management Indicator Species. The following discussion summarizes the proposed standards.

The proposed standards are designed to maintain a network of habitat for the marten and the pileated woodpecker. Because the habitat requirements of the barred owl overlap extensively with the pileated woodpecker on the Flathead National Forest, and because the pileated may better represent the old growth dependent wildlife group, deletion of the barred owl from the list of management indicator species is proposed.

Pileated Woodpecker. To maintain an adequate amount and distribution of habitat to ensure the continued viability of the pileated woodpecker, the standards propose the identification of 1,000 acre habitat acres space an average of 2 miles apart. Each of these habitat areas will include a contiguous 50 to 200 acre core nesting area and 250 to 500 acres of feeding habitat. Feeding stands should be no more than one-half mile from the core nesting area. Specific criteria are proposed for determining whether habitat is suitable for nesting and feeding by pileated woodpecker.

Marten. To maintain an adequate amount and distribution of habitat to ensure the continued viability of the marten, the proposed standards are to identify 2,000 acre habitat areas, spaced an average of 6 miles apart. Each marten habitat area will include 250 to 500 acres of old-growth habitat for denning and resting, and 250 to 500 acres of feeding habitat. Denning/resting habitat need not be contiguous acres, but stands should exceed 80 acres in size and be no more than one-half mile apart. Feeding habitat should be located within one half mile of denning/resting habitat. Specific criteria are proposed for determining whether habitat is suitable for nesting and feeding by marten. Habitat for the marten and pileated woodpecker can overlap where habitat requirements of both species are met.

As part of the preparation of the Environment Impact Statement, the Flathead National Forest will map the distribution of habitat and display effects on pileated woodpecker and marten populations for each alternative considered.

The proposed standards include direction for management of these habitats. In core nesting and denning/resting habitat, management actions will be directed towards protecting or enhancing the quality of longevity of old growth vegetation conditions. Timber harvesting may be scheduled in feeding habitat, but only if feeding habitat requirements can continue to be met within the habitat area. Commercial firewood permits will be prohibited in core areas and feeding habitat. Road construction within core areas will be avoided where possible. If catastrophic change occurs and the area can no longer meet the criteria for suitable nesting or denning/resting habitat, a substitute area will be identified.

The Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be

interested in or affected by the proposed standards. Preliminary scoping was begun with the mailing of a March 1990 draft of the proposed action (Amendment 16) to the LRMP mailing list. The Flathead National Forest received 42 two responses from individuals, timber industry organizations, and environmental organizations. The respondents raised the following issues related to the proposed action.

What are the potential impacts of the proposed standards on commercial timber production from the Flathead National Forest?

Do the proposed standards ensure that habitat for marten, pileated woodpecker, and barred owl will be well distributed throughout the Forest?

Is the size and distribution of proposed habitat areas sufficient to avoid the loss of species viability due to habitat fragmentation or isolation?

Do the proposed standards adequately address the potential effects of natural losses of habitat (such as wildlife, windthrow, and forest insects and diseases) on habitat for the three species?

The Forest Service will consider these issues during the preparation of the Environmental Impact Statement. The agency invites additional written comments and suggestions. For most effective use, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register**.

This analysis will evaluate and disclose the effects of alternative management standards to guide LRMP implementation to ensure that habitat for pileated woodpecker, barried owl, and marten will remain well distributed across the forest. The analysis will consider a range of alternatives. One of these is a "no-action" alternative, in which no change would occur in the current Flathead National Forest LRMP and interim direction provided by the Chief of the Forest Service. Other alternatives will be designed to assess the relative risk to the continued viability of these species. The Forest Supervisor will use the best scientific information available for making professional judgements on the substance of the standards and for evaluating effects of the proposed action needed to comply with 36 CFR 219.19.

The draft environmental impact statement (DEIS) is expected to be available for public review in June 1991. The comment period on the draft enviromental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. After a 45-day public comment period, the comments received will be analyzed and considered in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January 1992. If the decision does not significantly alter the multiple-use goals and objectives for long-term land and resource management for the Flathead National Forest, the Flathead National Forest Supervisor will make the decision. If the decison significantly changes the long-term relationship between levels of multiple-use goods and services originally projected by the Flathead National Forest LRMP, the amendment will be considered a significant amendment and will be the responsibility of the Regional Forester. This determination will be made as a result of the analysis conducted during preparation of the Environmental Impact Statement.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. vs. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. vs Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final enviromental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Flathead Forest Supervisor will be the Responsible Official unless the analysis shows the proposed action will result in significant impact on the environment, and/or it will result in a significant amendment to the LRMP. In the latter case the Regional Forester will be the Responsible Official.

Dated: June 22, 1990.

Mary H. Peterson,

Acting Forest Supervisor.

[FR Doc. 90-15011 Filed 6-27-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Second Broad Watershed Small Dams Alternative to Structure #11, North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Second Broad Watershed Small Dams Alternatives to Structure #11, McDowell and Rutherford Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Bobbye J. Jones, State Conservationist, Soil Conservation Service, 4405 Bland Road, suite 205, Raleigh, North Carolina 27609, telephone 919/790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed practices. The planned works of improvement include 15 small dams.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William H. Farmer, Jr., 4405 Bland Road, suite 205, Raleigh, North Carolina 27609, telephone 919/790-2888.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 22, 1990.

John J. Garrett,

Assistant State Conservationist.

[FR Doc. 90-15012 Filed 6-27-90; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled a Public Forum and regular business meetings to take place on Tuesday and Wednesday, July 10 and July 11, 1990 at the McCormick Center Hotel, Lake Shore Drive at 23rd Street, Chicago, Illinois.

DATES: The schedule of events is as follows:

Tuesday, July 10, 1990:
- 8:30-10 a.m. (Legislative (section 502) Task Force)
- 10-11:30 a.m. (Technical Programs Committee—A portion of the meeting is closed to the public)
- 1-5 p.m. (Public Forum)

Wednesday, July 11 1990:
- 8:30-9:30 a.m. (Ad Hoc Committee: Communication Barriers)
- 9:30-11:15 a.m. (Planning & Budget Committee)
- 1-1:30 p.m. (Closed Meeting with Executive Director)
- 1:30-3:30 p.m. (Business Meeting).

MATTERS TO BE CONSIDERED: Agenda items at the Wednesday business meeting include:
- Approval of the May 9, 1990 Board Meeting Minutes
- Executive Director's Report
- Complaint Status Report
- American With Disabilities Act (ADA) Update
- Task Force Reports:
  - —ADA
  - —Legislative (section 502)
  - —Facilities (Office Space)
  - —Communication Barriers
  - —Public Affairs
- Ad Hoc Committee Reports:
  - —Technical Programs: Proposed Projects for FY 1992—Transportation Focus Year #2 (discussion closed to the public).
  - —Planning and Budget: FY 1990 Budget Status Report: FY 1991 Budget Request Status Report; FY 1992 Budget Request (voting).
- New Business:
  - —Fair Housing Guidelines
  - —Assistive Listening Systems

FOR FURTHER INFORMATION CONTACT: For information regarding the business meetings, please contact Barbara A. Gilley, Executive Officer, (202) 653-7834 (voice or TDD). Persons interested in speaking at the Public Forum on Tuesday afternoon should contact Larry Allison, Special Assistant for External Affairs, (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: All meetings are open to the public except as noted. The subject matter for the Public Forum includes general accessibility issues. Interpreters (sign language and oral) and an assistive listening system are available for those individuals needing such accommodation.

Lawrence W. Roffee, Jr.,

Executive Director.

[FR Doc. 90-15025 Filed 6-27-90; 8:45 am]

BILLING CODE 6820-SF-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31-85]

Foreign-Trade Zone 35—Philadelphia, PA; Withdrawal of Request for Subzone Status for Pennsylvania Shipbuilding Company

Notice is hereby given of the withdrawal of the application submitted by the Philadelphia Port Commission, grantee of FTZ 35, requesting authority for subzone status for the shipyard of the Pennsylvania Shipbuilding Company in Chester, Pennsylvania. The application was filed on September 11, 1985 (50 FR 40044, 10/1/85).

The withdrawal is requested by the applicant because of changed conditions in the United States shipbuilding industry.

The case has been withdrawn without prejudice, and FTZ Board Docket 31-85 is closed.

Dated: June 21, 1990.

John J. Da Ponte,

Executive Secretary.

[FR Doc. 90-14951 Filed 6-27-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604, and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 99-659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-mentioned final rule, the South Atlantic Fishery Management Council (South Atlantic Council) has prepared its revised SOPP originally published in the **Federal Register**, Vol. 42, No. 169, August 23, 1977. Interested parties may obtain a copy of the South Atlantic Council's revised SOPP by contacting Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: June 22, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14974 Filed 6-27-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Request for modification to scientific research permit No. 685.

SUMMARY: Notice is hereby given that Paul Dayton and Timothy Ragen, University of California, San Diego, La Jolla, California 92093, have requested a modification to Permit No. 685, pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) to continue research activities for one additional year and to verify the first year's results. Additionally, the Permit Holders request authorization to take another 140 northern fur seal (*Callorhinus ursinus*) pups and 10 adult females for radio-tagging.

Permit No. 685, issued October 5, 1989 and published in the **Federal Register** (54 FR 43231) on October 16, 1989, authorized the taking of ten (10) northern fur seal females and ninety (90) pups of both sexes, and the incidental harassment of up to 2000 animals of both sexes and ages.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this proposed permit modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 21, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–14984 Filed 6–27–90; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Federal Telecommunication Standards

AGENCY: National Telecommunications and Information Administration, Institute for Telecommunication Sciences, Commerce.

ACTION: Notice of meeting to present test plans and schedule of testing to determine feasibility of features and functions proposed for inclusion in High Frequency (FH) radio Federal Standard (FED–STD) 1046 and Federal Standard (FED–STD) 1049, section 1.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Peach or Mr. Robert Adair, Institute for Telecommunication Sciences, Boulder, CO. telephone (303) 497–5116.

SUPPLEMENTARY INFORMATION: Verification tests are planned to assist in the development process for FED–STD 1046 and FED–STD 1049, section 1. These Federal Standards are being developed under the sponsorship of the National Communications System (NCS) Office of Technology and Standards. The purpose of the testing is to verify the design concepts in actual simulator and over-the-air operation. FED–STD 1046 will specify tools for networking of HF adaptive radios, and FED–STD 1049, Section 1 will specify methods for Link Protection (LP), a feature that provides protection of the linking process when linking two or more FED–STD 1045 adaptive radios. The test nodes included in the test will be located at various Government sites across the United States.

The briefing, provided by Government representatives, will include a summary of the test plan and a schedule of events during the test period. Industry and Government representatives are encouraged to attend.

The meeting will be held at the Department of Commerce, Institute for Telecommunication Sciences, Building 1, 325 Broadway, Boulder, CO 80303, commencing at 0900, 16 July 1990. POC for the meeting will be Liz Warren, telephone (303) 497–5116.

Dated: June 21, 1990.

Robert T. Adair,

Group Chief, Advanced Networks Analysis Group.

[FR Doc. 90–15013 Filed 6–27–90; 8:45 am]

BILLING CODE 3510-60-M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 26 July 1990 at 10 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 22 June 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90–15003 Filed 6–27–90; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Draft Environmental Impact Statement for the Fort Huachuca, Fort Devens, Fort Monmouth Base Realignment

AGENCY: DOD, U.S. Army.

SUMMARY: Fort Devens, Massachusetts, Fort Huachuca, Arizona, and Fort Monmouth, New Jersey, were recommended for realignment by the Defense Secretary's Commission on Base Realignment and Closure. The Intelligence School at Fort Devens will be relocated to Fort Huachuca and consolidated with the Intelligence School now at that location. The Headquarters, Information Systems Command (ISC) will be relocated from Fort Huachuca to Fort Devens and consolidated with other ISC activities to be relocated to Fort Devens from Fort Huachuca, Fort Monmouth, and Fort Belvoir. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned realignment activities at Fort Huachuca, Fort Devens, and Fort Monmouth. The realignment impacts at Fort Belvoir will be covered under another Environmental Impact Statement which is currently under development.

No long-term adverse environmental effects at these installations are expected, as a result of realignment implementation. Significant adverse socioeconomic effects, however, could be expected in the local communities associated with Fort Huachuca. The Department of Defense Office of Economic Adjustment is working with the local community to diversify the local economies, and will continue their work to lessen the impact. Socioeconomic impacts at Fort Devens are anticipated to be beneficial due to the transfer of higher paid civilian positions to the area. There will be adverse economic impacts to the area surrounding Fort Monmouth; however, they are not considered significant since the the strong economic base of the area can absorb the impact of losing a relatively small number of personnel positions.

Public comments may be provided to Mr. Ron Ganzfried at the Corps of Engineers, Los Angeles District (ATTN: CESPL-PD-RQ), P.O. Box 2711, Los Angeles, CA 90053–2325 or by telephone (213) 894–6079. Comments and suggestions must be received not later than July 30, 1990.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 90–15010 Filed 6–27–90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, Judge Advocate General

Government-Owned Inventions; Available for Licensing

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents or patent applications. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR, part 404.

Issued patent	Title	Issue date
4,512,371	Photofluidic Interface	04/23/85
4,644,781	Fluidic Property Measurement Device.	02/24/87
4,688,827	Photofluidic Audio Receiver.	08/25/87
4,721,362	Phase Gradient Contrast Microscope.	01/26/88
4,829,527	Wideband Electronics Frequency Tuning for Crotrons.	05/09/89
4,856,338	Technique for Null Balancing Fluidic Circuits.	08/15/89
4,864,258	RF Envelope Generator.	09/05/89
4,867,041	Vortex Amplifier Driven Actuator Spool.	09/19/89
4,875,022	High Power Microwave Expander for Producing Fast Rise Time Pulses.	10/17/89
4,888,546	Device for Measuring Seam Resistance.	12/19/89
4,891,730	Monolithic Microwave Integrated Circuit Terminal Protection Device.	01/02/90
07/296,555	Phase Contract Image Conjugation in a Hybrid Analog/Digital Design.	01/11/89
07/407,186	Spectroscopy Characterization Module.	09/14/89
07/441,781	Fluidic Sorting Device for Two or More Materials in a Fluid.	11/27/89
07/444,335	Acoustic Detecting Device.	12/01/89
07/449,208	Method for Low Frequency Attenuation in Fluidic Amplification of Acoustic Signals.	12/12/89

FOR FURTHER INFORMATION CONTACT: For more information of these licensing opportunities, contact Mr. George Gillespie in HDL's Office of Research and Technology Applications on 301–394–2952, or write to: Harry Diamond Laboratories, 2800 Powder Mill Rd., SLCHD–PO–P (ATTN: George Gillespie), Adelphi, MD 20783–1197.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–14949 Filed 6–27–90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Army, U.S. Army Laboratory Command

Patent Licenses, Exclusive; Schodowski, S.S.

ACTION: Notice of Prospective Partially Exclusive Licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective partially exclusive licenses of a dual mode quartz resonator self-temperature-sensing method.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Stern, U.S. Army Electronic Technology and Devices Laboratory, *Attn:* SLCET–DT, Fort Monmouth, NJ 07703–5302, COMM 201–544–4666.

SUPPLEMENTARY INFORMATION: The dual mode quartz resonator self-temperature-sensing method, was invented by S.S. Schodowski (U.S. Patent Application Serial Number 487, 580, Patent Number 4, 872, 765; Filing Date: April 20, 1983). Rights to this invention are owned by the United States Government as represented by the U.S. Army Electronics Technology and Devices Laboratory (USAETDL). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAETDL intends to grant partially exclusive licenses on the dual mode quartz resonator self-temperature-sensing method to Q-Tech Corporation, 10150 W. Jefferson Blvd, Culver City, CA 90232–3501, and Frequency Electronics, Inc., 55 Charles Lindberg Blvd., Mitchel Field, NJ 11553.

Pursuant to 37 CFR 404.7(a)(1)(i) any interested party may file written objections to these prospective partially exclusive license arrangements. Written objections should be directed to:

Mr. William Anderson, Intellectual Property Law Division, U.S. Army Communications-Electronics Command. *Attn:* AMSEL–LC–LS, Fort Monmouth, NJ 07703–5000.

Written objections must be filed within 60 days from the date of the publication of this notice in the **Federal Register.**

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–14950 Filed 6–27–90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Remedial Investigation/Feasibility Study—Environmental Impact Statement for the First of Five Remedial Actions at the Feed Materials Production Center Near Fernald, Ohio; Public Comment Period Extension

AGENCY: U.S. Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy (DOE) has extended to June 29, 1990, the public comment period on its notice of intent to prepare a Remedial Investigation/Feasibility Study-

Environmental Impact Statement (RI/FS-EIS) in accordance with the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for remedial actions at the "special facilities area," i.e., Operable Unit 4, Silos 1, 2 and 3 (the silos).

DATES: Written comments or suggestions postmarked by June 29, 1990, will be considered in carrying out the integrated CERCLA/NEPA process. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable.

ADDRESSES:

All comments or suggestions should be addressed to:

Bobby Davis, Environmental Manager, U.S. Department of Energy, P.O. Box 398705, Cincinnati, Ohio 45239-8705, ATTN: FMPC RI/FS-EIS, (513) 738-6156

FOR FURTHER INFORMATION CONTACT:

Regarding the NEPA process:

Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 3E-080, Washington, DC 20585, (202) 586-4600

Regarding the CERCLA process:

John Tseng, Director, Office of Environmental Guidance and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 7A-073, Washington, DC 20585 (202) 586-9024

SUPPLEMENTARY INFORMATION: On May 15, 1990, the DOE published a notice in the Federal Register (55 FR 20163) announcing its intent to prepare a RI/FS-EIS for the first of five remedial actions at the Feed Materials Production Center near Fernald, Ohio. This notice included announcement of a public comment period ending on June 22, 1990. The DOE received requests to extend the comment period by one week. In response to these requests, and to ensure that all interested parties have time to comment, the comment period has been extended to June 29, 1990. Comments should be postmarked by June 29, 1990 to assure consideration. Comments postmarked after that date will be considered to the maximum extent practicable.

Dated in Washington, DC, this 25 day of June, 1990.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-15158 Filed 6-27-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1513-000, et al.]

Mountain Fuel Supply Co., et al.; Natural Gas Certificate Filings

June 21, 1990.

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Supply Co.

[Docket No. CP90-1513-000]

Take notice that on June 11, 1990, Mountain Fuel Supply Company (Mountain Fuel), 180 East First South Street, Salt Lake City, Utah 84111, filed in Docket No. CP90-1513-000 an application pursuant to sections 7(c) and 7(f) of the Natural Gas Act for authorization to construct and operate approximately 11.0 miles of 8-inch high-pressure distribution main line and related facilities and a request for determination of a service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mountain Fuel requests authority to construct and operate the proposed distribution pipeline facilities that would extend its local distribution system from northern Utah into southeastern Idaho in order to provide natural-gas distribution service to the southeastern Idaho communities of Preston and Franklin and, potentially, additional communities in Cache County, Utah. Mountain Fuel also requests that the Commission determine a service area to include Franklin County, Idaho, and most of Cache County, Utah, and permit Mountain Fuel to enlarge or extend its facilities within the requested service area without further authorization of the Commission. Mountain Fuel also requests waiver of all regulations under the NGA and NGPA that may be applicable to Mountain Fuel as a result of extending its distribution system into southeastern Idaho.

Mountain Fuel states that installation of the proposed distribution line and determination of the requested service area will serve the public interest by making natural-gas service available to prospective customers in a sparsely populated area of southeastern Idaho that for 20 years have eagerly awaited natural-gas service. It is further stated that a recently completed survey resulted in approximately 75 percent of the prospective Idaho customers requesting natural-gas service from Mountain Fuel. Mountain Fuel explains that it is now feasible to provide service to the requested service area because of increased pipeline deliverability on Mountain Fuel's northern distribution system. It is asserted that 100 percent of the proposed pipeline route will follow an existing highway right of way and that the construction of the proposed pipeline will not result in any adverse environmental effects.

Mountain Fuel estimates that the cost to construct and operate its proposed southeastern Idaho distribution line extension is $961,750, which will be financed with internally generated funds.

In support of its request for a section 7(f) service area determination, Mountain Fuel explains that (1) No sales for resale will be made in the proposed service-area, (2) its current rates and charges are regulated by the Utah and Wyoming Public Service Commissions and in Idaho, will be regulated by the appropriate state regulatory agency, (3) it is a local distribution company and, therefore, does not own or operate an extensive transmission system, and (4) no other company has existing facilities in close proximity to the proposed service area.

Comment date: July 12, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Co. Division of Enron Corp.

[Docket Nos. RP88-259-031 and RP89-136-016]

Take notice that on June 13, 1990, ANR Pipeline Company (ANR), pursuant to rules 206 and 207 of the Commission's rules of practice and procedure, filed with the Commission a complaint and emergency petition in the above captioned proceeding to ensure that Northern Natural Gas Company (Northern) complies with the terms and conditions of the stipulation and agreement in these proceedings approved by Commission order on December 29, 1989. ANR seeks an order from the Commission directing Northern to make refunds to its customers, including ANR, by June 21, 1990.

ANR states that on June 1, 1990, Northern filed with the Commission in Docket Nos. CP89-1227-000 and RP88-259-000 a proposed stipulation and agreement on an interim gas inventory charge (IGIC). ANR states that in Northern's proposed IGIC settlement, Northern threatens to abrogate its refund obligation under the prior settlement by deferring the date and changing the method by which refunds would be made. ANR states that although it is a major firm sales customer of Northern, as well as a firm and interruptible transportation customer, it was not invited to be a party to the negotiations which lead to the IGIC settlement proposal and ANR has not agreed to that settlement.

ANR is requesting that the Commission act upon this complaint and petition as rapidly as possible, given the unreasonable time constraints which have been imposed by Northern's actions. Refunds under the stipulation and agreement in Docket Nos. RP88-259-000 and RP89-136-000 are due on June 21, 1990. ANR states that to prevent Northern from breaching the settlement agreement, the Commission should issue an order directing Northern to make refunds by that date.

Comment date: July 13, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Co., West Texas Gas, Inc.

[Docket No. CP90-1529-000]

Take notice that on June 12, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, and West Texas Gas, Inc. (WTG), 211 North Colorado, Midland, Texas 79701, jointly referred to as (Applicants), filed an application in Docket No. CP90-1529-000, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain transportation and delivery service, on an exchange basis, authorized in Docket No. CP82-279-000, between El Paso and WTG, as successor in interest to Dorchester Gas Producing Company, all as more fully set forth in the joint application on file with the Commission and open to public inspection.

Applicants state that the Commission's order at Docket No. CP82-279-000 granted permanent certificate authority to El Paso and WTG for the exchange of up to 350 Mcf of natural gas per day at existing points of interconnection located in Upton and Reagan Counties, Texas. Applicants state that this exchange service was provided in accordance with the provisions of a gas exchange agreement dated March 19, 1982, between El Paso and WTG. Applicants state that at the time the subject exchange service was certificated, the exchange arrangement served two mutually beneficial purposes. Applicants state that the exchange service represented a viable means for WTG to have a constant and reliable supply of pipeline quality natural gas available for use at its Big Lake Texon Gas Extraction Plant (Texon Plant) located in Reagan County, Texas. Additionally, the exchange service increased the reliability of the surplus residue gas supply sold by WTG to El Paso at the outlet of the Union Texas Petroleum Corporation Benedum Plant (Benedum Plant) in Upton County, Texas, for use by El Paso in meeting the requirements of system supply customers served by its interstate transmission pipeline system.

Applicants state that the exchange arrangement provide for El Paso to deliver to WTG at an existing meter station situated immediately downstream of the Texon Plant, the quantity of pipeline quality gas WTG needed from time to time, not to exceed 350 Mcf per day, for use in the operation of WTG's camp facilities and plant compressors at the Texon Plant and for other plant obligations. Applicants state that in exchange, WTG would cause concurrent delivery to El Paso, at its existing purchase meter station situated at the outlet of the Benedum Plant, of equivalent volumes of surplus residue gas on an MMBtu basis to the total volumes of pipeline quality natural gas that had been delivered by El Paso to WTG at the Texon Plant.

Applicants state that the two mutually beneficial purposes for the exchange no longer exist. El Paso has been notified by WTG that it no longer requires the exchange service because of changes in its operational requirements. Furthermore, El Paso states that it no longer requires the surplus residue gas from WTG for the pipeline's system supply, because of drastically reduced purchases of system supply by El Paso's customers. Therefore, Applicants report that the exchange service rendered in accordance with the exchange agreement between Applicants no longer is necessary and should be terminated.

Comment date: July 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-1537-000]

Take notice that on June 13, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1537-000 an application pursuant to section 7(c) of the Natural Gas Act of authorization to increase, by 1,000 Mcf of natural gas per day, the firm sales entitlements for Western Gas Utilities, Inc. (Western Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the requested increase in firm sales entitlements for Western Gas would enable Western Gas to serve new and increased requirements in the five (5) communities of Cosmos, Delano, Green Isle, Hamburg and Watertown, all located in Minnesota. It is said that the service would be provided under Northern's seasonal service demand schedule, Rate Schedule SS-1.

Northern further states that the additional sales service would be accomplished without constructing new facilities or rearranging presently authorized facilities.

Comment date: July 12, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. High Island Offshore System

[Docket No. CP90-1545-000, Docket No. CP90-1546-000, Docket No. CP90-1547-000]

Take notice that on June 15, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket Nos. CP90-1545-000, CP90-1546-000, and CP90-1547-000 requests pursuant to Sections 157.205 and 284.223 of the authorization to transport natural gas on an interruptible basis pursuant to HIOS's blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-62-000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by HIOS and is summarized in the attached appendix. It is explained that the gas would be received by HIOS at existing points located in the High Island and West Cameron Areas, offshore Texas and offshore Louisiana respectively, and redeliver the gas for the various accounts at existing interconnections located in offshore Texas and offshore Louisiana.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket Number	Shipper	Volumes—Dth peak day, average annual	Related Docket [3]	Commencement date
CP90-1545-000	Elf Exploration, Inc.	150,000 150,000 54,750,000	ST90-2709	April 1, 1990.
CP90-1546-000	Edisto Resources Corp.	71,500 71,500 26,097,500	ST90-2711	April 1, 1990.
CP90-1547-000	PSI, Inc.	1,185,250 1,185,250 432,616,250	ST90-2704	April 1, 1990.

[3] HIOS reported the 120-day transportation service in the referenced ST dockets.

6. High Island Offshore Systems

[Docket No. CP90-1548-000, Docket No. CP90-1549-000, Docket No. CP90-1550-000, Docket No. CP90-1551-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket number (date filed)	Applicant	Shipper name	Peak Day[1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets[2]
CP90-1548-000 (6-15-90)	High Island Offshore System, 500 Renaissance Center, Detroit, MI 48243.	Union Exploration Partners, Ltd.	63,544 63,544 23,193,560	TX	LA	IT, Interruptible, 4-1-90.	ST90-2710-00. RM88-14-001. RM88-15-000.
CP90-1549-000 (6-15-90)	High Island Offshore System, 500 Renaissance Center, Detroit, MI 48243.	Tenngasco Corporation.	333,509 333,509 121,727,560	TX, LA	TX, LA	IT, Interruptible, 4-1-90.	ST90-2707-000. RM88-14-001. RM88-15-000.
CP90-1550-000 (6-15-90)	High Island Offshore System, 500 Renaissance Center, Detroit, MI 48243.	Starter Gas Company.	100,000 100,000 36,500,000	TX, LA	TX, LA	IT, Interruptible, 4-1-90.	ST90-2708-000. RM88-14-001. RM88-15-000.
CP90-1551-000 (6-15-90)	High Island Offshore System, 500 Renaissance Center, Detroit, MI 48243.	Transco Energy Marketing Company.	1,598,000 1,598,000 580,350,000	TX, LA	TX, LA	IT, Interruptible, 4-1-90	ST90-2733-000 RM88-14-001 RM88-15-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it

7. Trunkline Gas Co.

[Docket Nos. CP90-1569-000, CP90-1570-000, CP90-1571-000, CP90-1572-000, CP90-1573-000, CP90-1574-000]

Take notice that on June 19, 1990, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

APPENDIX

Docket number (date filed)	Shipper name	Peak day[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related[2] docket, contract date
CP90-1569-000 (6-19-90)	Borden Chemicals and Plastics Operating L.P.	5,500 3,150 1,150,080	IL, LA, OLA, OTX, TN, TX.	IL	4-24-90, PT, Interruptible.	ST90-3136-000, 6-24-90.
CP90-1570-000 (6-19-90)	Unicorp Energy, Inc	50,000 50,000 18,250,000	IL, LA, OLA, OTX, TN, TX.	IL	5-1-90, PT, Interruptible.	ST90-3165-000, 1-3-90.
CP90-1571-000 (6-19-90)	Sabine Energy Services, Inc.	20,000 20,000 7,300,000	IL, LA, OLA, OTX, TN, TX.	IL	5-1-90, PT, Interruptible.	ST90-3166-000, 4-18-90.
CP90-1572-000 (6-19-90)	Conoco, Inc.	500 505 182,500	IL, LA, OLA, OTX, TN, TX.	IN	5-1-90, PT, Firm	ST90-3273-000, 5-1-90.
CP90-1573-000 (6-19-90)	BP Oil Company	20,000 4,000 1,460,000	IL, LA, OLA, OTX, TN, TX.	IL	5-1-90, PT, Interruptible.	ST90-3168-000, 2-1-90.
CP90-1574-000 (6-19-90)	Natural Gas Clearinghouse, Inc.	50,000 2,000 730,000	IL, LA, OLA, OTX, TN, TX.	LA	5-4-90, PT, Interruptible.	ST90-3167-000, 3-30-90.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 90-14955 Filed 6-27-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. SA90-4-000]

Brooks/Hidalgo Joint Venture; Notice of Petition for Adjustment

June 21, 1990.

Take notice that on June 1, 1990, Brooks/Hidalgo Joint Venture (Brooks/Hidalgo) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Brooks/Hidalgo to use its tariff on file with the Railroad Commission of Texas (Railroad Commission) for services performed pursuant to section 311 of the NGPA. Brooks/Hidalgo alleges that it is

necessary for the Commission to issue this adjustment to remove major uncertainties associated with Brooks/Hidalgo's performance of section 311(a)(2) transportation services.

In support of its petition Brooks/Hidalgo states that it is an intrastate pipeline company which operates in the State of Texas and is a gas utility subject to the jurisdiction of the Railroad Commission. Brooks/Hidalgo's transportation rates are subject to regulation by the Railroad Commission. Brooks/Hidalgo anticipates the commencement of section 311 services on behalf of Natural Gas Pipeline Company of America in the near future for a transportation rate not in excess of $0.15 per MMBtu.

The regulations applicable to this proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14956 Filed 6-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA90-5-000]

Panola/Rusk Gatherers; Notice of Petition for Adjustment

June 21, 1990.

Take notice that on June 7, 1990, Panola/Rusk Gatherers (Panola/Rusk) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Panola/Rusk to use its tariff on file with the Railroad Commission of Texas (Railroad Commission) for services performed pursuant to section 311 of the NGPA. Panola/Rusk alleges that it is necessary for the Commission to grant this adjustment to prevent special hardship and inequities.

In support of its petition Panola/Rusk states that it is an intrastate pipeline company which operates in the State of Texas and is a gas utility subject to the jurisdiction of the Railroad Commission. Panola/Rusk's transportation rates are subject to regulation by the Railroad Commission. Panola/Rusk intends to perform transportation services to section 311(a)(2) of the NGPA on behalf of various interstate pipeline companies and local distribution companies served by interstate pipeline companies. Panola/Rusk anticipates the commencement of such services in the near future for a transportation rate not in excess of $0.1773 per MMBtu.

The regulations applicable to this proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14957 Filed 6-27-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-50-NG]

IGI Resources, Inc; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) give notice of receipt on May 18, 1990, of an application filed by IGI Resources, Inc. (IGI), to extend its blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 50 Bcf of Canadian gas per year for two years beginning August 1, 1990, the date of IGI's present authority expires.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motion to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., July 30, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: IGI, an Idaho corporation, is currently authorized by DOE/ERA Opinion and Order 252 (Order 252) (1 ERA 70,787), issued July 11, 1988, and filed in ERA Docket No. 88-1G-NG, to import up to 100 Bcf of natural gas from Canada over a two-year term ending August 1, 1990. IGI requests authority to continue to import competitively priced natural gas from various Canadian producers and pipelines for sale on a short-term or spot basis to a wide variety of markets in the U.S. Pacific Northwest, including local distribution companies, and industrial and commerical end-users. IGI proposes to import this gas either for its own account or as agent for the accounts of others. IGI intends to use existing facilities for the transportation of the natural gas.

IGI would continue to file report with FE within 30 days after the end of each calendar quarter giving the details of individual transactions. IGI's prior quarterly reports filed with FE indicate that approximately 18,066 MMcf of natural gas were imported under Order 252 through March 31, 1990.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on these regulatory and policy considerations. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the tranactions will minimize the potential for undue long-term dependence on foreign sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environment Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGI's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1990.

Clifford P. Tomaszewski,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-15059 Filed 6-27-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 1 Through June 8, 1990

During the week of June 1 through June 8, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC.

Dated: June 22, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 25 through June 1, 1990]

Date	Name and location of applicant	Case No.	Type of submission
6/4/90	Texaco/Andy's Texaco, Spanaway, Washington	RR321-8	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 17, 1990 Decision and Order (Case Nos. RF321-3736 and RF321-4002) issued to Andy's Texaco would be modified regarding the firm's application submitted in the Texaco refund proceeding.
5/30/90	Texaco/Clark Hollis Texaco, Hardin, Kentucky	RR321-10	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 2, 1990 Decision and Order (Case Nos. RF321-118 and RF321-1675) issued to Clark Hollis Texaco would be modified regarding the firm's application submitted in the Texaco refund proceeding.
6/4/90	Texaco/Dailey Oil Company, Aiken, South Caroline	RR321-9	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The May 17, 1990 Decision and Order (Case Nos. RF321-2496 and RF321-4291) issued to Dailey Oil Company would be modified regarding the firm's application submitted in the Texaco refund proceeding.
6/4/90	Electronic Data Systems, Herndon, Virginia	LFA-0047	Appeal of an Information Request Denial. If granted: The March 19, 1990 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Electronic Data Systems would receive access to additional information from the technical and cost proposals for BPA Contract No. DE-AC79-90BP01145 with Unisys Corporation.
6/5/90	City of Bellevue, Bellevue, Washington	RR272-57	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The January 17, 1990 dismissal letter (Case No. RF272-59994) issued to the City of Bellevue would be modified regarding the firm's application submitted in the Crude Oil refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 25 through June 1, 1990]

Date	Name and location of applicant	Case No.	Type of submission
5/31/90	Franc Pajek Company, Walnut Creek, California	LFA-0050	Appeal of an Information Request Denial. If granted: The May 22, 1990 Freedom of Information Act Appeal Decision issued by the OHA would be modified and Franc Pajek Company would receive access to DOE procurement information.
5/31/90	Howard Kennedy Reed, Knoxville, Tennessee	LFA-0048	Appeal of an Information Request Denial. If granted: The May 7, 1990 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Howard Kennedy Reed would receive access to DOE information.
5/31/90	Vernon Brown, Knoxville, Tennessee	LFA-0049	Appeal of an Information Request Denial. If granted: The May 7, 1990 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Vernon Brown would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
6/4/90	Helen Hanna	RF272-78637
6/4/90	Weather Tamer, Inc	RF272-78636
6/4/90	Decker Coal Co	RC272-87
6/4/90	Kingman Truck Terminal	RF315-9988
6/4/90	Chippenham Shell	RF315-9989
10/20/88	C & J Farms	RF272-78639
6/7/90	Rainbow Shops	RF272-78640
6/1/90 thru 6/8/90.	Texaco Oil refund applications received.	RF321-6182 thru RF321-6561
6/1/90 thru 6/8/90.	Atlantic Richfield applications received.	RF304-11845 thru RF304-11875

[FR Doc. 90-15080 Filed 6-27-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of March 5 Through March 9, 1990

During the week of March 5 through March 9, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Kenneth Paul Krupp, 3/8/90, LFA-0027

Kenneth Paul Krupp filed an Appeal from a denial by the Chief of Freedom of Information and Privacy Acts, Office of Administrative Services, Headquarters of the Department of Energy, of a Request for Information that Krupp had submitted under both the Freedom of Information Act (the FOIA) and the Privacy Act. In considering the Appeal, the DOE found that the searches conducted by Administrative Services at the Office of Personnel, the Office of Safeguards and Security, the San Francisco Operations Office, and the Office of the Inspector General were adequate under both the FOIA and the Privacy Act. Accordingly, Krupp's Appeal was denied.

Lloyd R. Makey, 3/6/90, LFA-0029

Lloyd R. Makey filed an Appeal from a determination issued to him on January 19, 1990, by the Privacy Act Officer of the Idaho Operations Office of the Department of Energy. That determination denied Mr. Makey's request to amend his personal security file pursuant to the Privacy Act. In considering the Appeal, the DOE found that the Privacy Act Officer had correctly denied Mr. Makey's request on the basis that Mr. Makey had failed to establish by a preponderance of the evidence that an amendment was appropriate.

Requests for Exception

Carlson-Thaler Oil Co., Inc., 3/5/90, LEE-0008

Carlson-Thaler Oil Co., Inc., filed an Application for Exception from the Requirement of the Energy Information Administration (EIA) that the firm file Form EIA-782B, entitled "Reseller's/Retailer's Monthly Petroleum Product Sales Report." In considering the Request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, the exception request was denied.

Harvin Oil Co., Inc., 3/5/90, LEE-0007

Harvin Oil Co., Inc., filed an Application for Exception from the requirement of the Energy Information Administration (EIA) that the firm file Form EIA-782B, entitled "Reseller's/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from other similar reporting firms. Accordingly, the exception request was denied.

Implementation of Special Refund Procedures

Texaco Inc., 3/5/90, KEF-0119

A Decision and Order was issued implementing a plan for the distribution of funds received pursuant to a consent order entered into between Texaco, Inc. (Texaco) and the DOE. The DOE determined that the Texaco funds should be distributed pursuant to subpart V. In addition, the DOE determined that $120 million of the consent order fund was attributable to alleged refined product violations and should be distributed to customers that purchased Texaco refined products during the period March 6, 1973 through January 27, 1981. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Atlantic Richfield Co./John Rodger's Arco, 3/6,90, RF304-4577, RF304-7955

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. Both claims were based upon the purchase of ARCO products by John Rodger's ARCO, a retail motor gasoline sales outlet. John and Reda Rodger's had owned and operated the outlet throughout the claims period and subsequently sold John Rodger's ARCO to Mr. S. H. Chang. The DOE examined the Sales Agreement which governed the terms of the transfer of the outlet from the Rodgers to Mr. Chang and concluded that the right to seek a refund on the basis of the outlet's ARCO purchases had not been transferred in the sale. Accordingly, the Mr. Chang's application was denied, and the Rodgers application approved. The refund granted totalled $4,588, including $1,219 in accrued interest.

Clark Equipment Co., 3/9/90, RF272-6456, RD273-6456

The DOE issued a Decison and Order granting a refund in the subpart V crude oil special refund proceeding to the Clark Equipment Company (Clark), a manufacturer of heavy industrial equipment. At the same time, the DOE denied a Motion for Discovery filed in the proceeding by a consortium of 32 States and 2 Territories of the United States. During the period of price controls, Clark was an end-user of numerous refined petroleum products, including propane, diesel fuel, fuel oil, and motor gasoline. These products were used to fuel delivery fleets, sales and service representatives, to heat facilities, and to generate process heat. The States argued that the portion of Clark's claim which was based upon estimated fleet mileage should be denied because Clark's profitability increased over the price control period. OHA rejected the States' objections to Clark's refund claim, finding that Clark's estimated purchase volume totals were reasonable. OHA also noted the failure by the States to advance an estimation model which could serve as a more accurate or more reasonable methodology than that used by Clark. The Motion for Discovery was denied because granting the Motion would not materially advance the consideration of Clark's refund claim, nor would it serve to buttress the States' claim that fuel consumption and profitability are necessarily related.

Crown Central Petroleum Corp./Racetrac Petroleum, Inc., 3/8/90, RF313-314

The DOE issued a Decison and Order considering an application filed in the Crown Central Petroleum Corporation (Crown) subpart V special refund proceeding. Racetrac Petroleum, Inc. (Racetrac), a purchaser of Crown refined petroleum products, presented evidence that it experienced a competitive disadvantage in all of its purchases of Crown motor gasoline during the refund period. Therefore, according to the procedures set forth in *Crown Central Petroleum, Corp.*, 18 DOE ¶ 85,326 (1988), DOE granted a Racetrac a refund based on the full amount of those purchases. The total refund approved in this Decision was $61,305, representing $50,707 in principal and $10,598 in accrued interest.

Dorchester Gas Corp./Petroleum Trading and Transport Co., 3/9/90, RF253-4

The Department of Energy considered an Application for Refund filed by Petroleum Trading and Transport Company (PTT) in the Dorchester Gas Corporation subpart V special refund proceeding. PTT, a purchaser of Dorchester propoane during 1974 and 1975, attempted to establish injury in the amount of its full volumetric refund, i.e., $16,873. The DOE found that there was no showing that a drop in PTT's sales during the refund period bore any relationship to alleged Dorchester overcharges. Since PTT did not establish a level of injury caused by Dorchester overcharges, the DOE granted it a refund at the small claims presumptive level, $5,000. The total PTT refund, including interest, was $7,915.

Durant Community School District, 3/9/90, RC272-79

The DOE granted a Supplemental Order concerning two Applications for Refund submitted by Durant Community School District in the subpart V crude oil refund proceeding. In two individual Decisions and Orders issued by the DOE, the applicant was granted duplicate refund amounts of $134. Accordingly, the second Decision and Order, *Council Brothers, Inc., et al.*, Case No. RF272-74804, 19 DOE ¶ _____, (July 21, 1989), was rescinded with respect to the applicant's claim. In addition, the DOE ordered the applicant to remit to the DOE the $134 refund amount granted in the July 21, 1989 Decision.

Exxon Corp./East Park Exxon, 3/8/90, RF307-10112

The DOE issued a Decison and Order rescinding a refund granted to East Park Exxon in the Exxon Corporation special refund proceeding. East Park Exxon was granted a refund in a Decision and Order dated December 11, 1989, Case No. RF307-166. However, in a Decision and Order dated March 14, 1989, East Park Exxon had previously been granted a refund in the amount of $1,298 ($1,113 principal and $185 interest). Accordingly, East Park Exxon's duplicate refund was rescinded.

Exxon Corp./Propane Gas and Appliance Co., 3/5/90, RF307-8508

The DOE issued a Decison and Order concerning an Application for Refund filed by the Propane Gas and Applicance Company (Propane) in the Exxon Corporation special refund proceeding. The DOE determined that Propane was not eligible to receive a refund from the Exxon consent order fund because it was a spot purchaser and did not attempt to rebut the spot purchaser presumption of noninjury. Accordingly, Propane's application was denied.

Grover Trucking Co., 3/8/90, RR272-54

The DOE issued a Decision and Order revising an April 8, 1988 Decision and Order, *Ellie Nance*, 17 DOE ¶ 85,310 (1988), with respect to a refund granted to the Grover Trucking Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The refund was revised after the firm informed the DOE that it had incorrectly calculated the number of gallons upon which its claim was based. The supplemental refund granted in this Decision is $7,807.

Gulf Oil Corp./ Costa G. Kaldis, 3/5/90, RF300-11012

The DOE granted a Supplemental Order concerning an Application for Refund submitted by Costa G. Kaldis in the Gulf Oil Corporation special refund proceeding. The applicant had previously been granted a refund of $6,875 in *Gulf Oil Corporation/Ted Kaldis*, 20 DOE ¶ _____, Case No. RF300-6458, (February 2, 1990). Because the prior refund amount was found to be incorrect, that refund was rescinded and Costa Kaldis was granted a refund of $8,417, including accrued interest.

Gulf Oil Corp./Hind's General Gulf, 3/5/90, RF300-5

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by Hind's General Gulf (Hind's) in the Gulf Oil Corporation special refund proceeding. The applicant's original Application for Refund had been dismissed due to insufficient documentation. The Motion for Reconsideration, which included additional information regarding Hind's Gulf purchases, was approved using a presumption of injury. The refund granted in this Decision, including accrued interest, is $1,172.

Gulf Oil Corp./Memorial Drive Gulf, 3/7/90, RF300-8637

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Memorial Drive Gulf, a motor gasoline retail sales outlet operated by two partners, Messrs. J.O. Miller and D.K. Roberts, during the Gulf refund period. After his demise, Mr. Roberts' widow sold her husband's interest in the outlet to Mr. Miller. Mr. Miller filed the only

refund claim. The DOE determined that Mrs. Roberts had assigned to Mr. Miller her right to a refund based on her husband's interest in Memorial Drive Gulf. Accordingly, Mr. Miller was granted a refund on the basis of the Memorial Drive Gulf purchases under the presumption of injury adopted in the Gulf proceeding. The refund granted in this Decision, including accrued interest, is $1,362.

Gulf Oil Corp./Vails and Way Co., et al., 3/7/90, RF300-9373, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed on behalf of Wilkerson Fuel Corporation in the Gulf Oil Corporation special refund proceeding. Each of the claims was based upon purchases of Gulf products by firms that were merged into Wilkerson Fuel between 1981 and 1985. Each applicant is both a consignee and a reseller. On the basis of the applicants' purchases and the business consolidations, the DOE granted refunds totalling $10,902, including accrued interest.

Kenyon Industries, Inc., 3/8/90, RF272-478

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Kenyon Industries, Inc., based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant consumed the products in its textile finishing operations and established the volume of its claim based upon actual purchase records. The applicant was an end-user of the products it purchased and was, therefore, presumed injured. A consortium of 28 States and two Territories (the States) filed a Statement of Objections with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. Therefore, the Application for Refund was granted. The total refund amount granted is $12,678.

Mobil Oil Corp./Aromalene Oil Co., 3/9/90, RF225-10314

The DOE issued a Decision and Order denying a refund to the Aromalene Oil Company (Aromalene) in the Mobil Oil Corporation special refund proceeding. Aromalene's base period supplier, Powerline Oil Company, stopped supplying Aromalene with product in 1974, and Mobil was then ordered by the FEO to supply Aromalene with diesel fuel for resale to Salt River Project (SRP), a public utility in Arizona. Aromalene claimed that Mobil failed to meet its supply obligation because it refused to allow SRP, a dealer of record on the Los Angeles pipeline terminal, to draw product from the pipeline, but instead delivered the product itself to Phoenix at a substantial markup. Aromalene claimed to have lost SRP as a customer because of Mobil's delivery practices and requested a refund based on lost profits on the sales of Mobil product to SRP.

The DOE found that Aromalene had failed to specify what specific violation of the regulations allegedly occurred. In addition, the record of the case did not include sufficient evidence to show that Mobil's delivery practices contravened the pricing or allocation regulations. Furthermore, an examination of prior case law indicated that Aromalene had failed to meet the minimum showing that an allocation violation had likely occurred and, therefore, had failed to demonstrate that its claim was not spurious.

Murphy Oil Corp., Bemidji Blacktop, Inc., 3/9/90, RF309-626, RF309-1391

The DOE issued a Decision and Order granting one Application for Refund and denying a second in the Murphy Oil Corporation special refund proceeding. Competing claims were submitted on behalf of Bemidji Blacktop, Inc. (Blacktop), one by the former owners of Blacktop's corporate stock and the other by the present owners of the stock. Since, in the absence of any material to the contrary, all assets and liabilities, both known and unknown at the time of sale, are to be transferred to the buyer in a sale of corporate common stock, the DOE concluded that the right to a refund was also transferred in the sale. Therefore, the present owners of Blacktop's stock were granted a refund on the basis of Blacktop's eligible purchases, and the refund application of the former owners were denied. The total volume approved in this Decision was 94,519 gallons, and the total refund granted was $98 (comprised of $77 in principal and $19 in interest).

North Hills Supply, et al., 3/9/90, RF272-37252, et al.

The DOE issued a Decision and Order denying four Applications for Refund in the subpart V crude oil special refund proceeding. Each applicant was a reseller of the products it claimed. Therefore, they were not presumed injured by the alleged crude oil overcharges, and they did not prove injury.

Phillips & Jordan, Inc., LeGrand Johnson Construction Co., Western Paving Construction Co., 3/6/90, RF272-35800, RD272-35800, RF272-35869, RD272-35869, RF272-35878, RD272-35878

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Phillips & Jordan, Inc., LeGrand Johnson Construction Co., and Western Paving Construction Co. based upon purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of States and 2 Territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the applications. As evidence that the applicant passed on their increased costs, the States submitted statistical reports indicating that the price of materials used in road construction increased in correlation to an increase in energy costs. In addition, the States submitted an affidavit of a consulting economist which stated that firms in the road construction industry in general were able to pass on any increased energy costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive refunds. In addition, the Motions for Discovery filed by the States were denied. The sum of the refunds granted in this Decision is $110,378.

Ritchie Corp., H.B. Zachry Co., The Lane Construction Corp., 3/7/90, RF272-7225, RD272-7225, RF272-7228, RD272-7228, RF272-7583, RD272-7583

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Ritchie Corp., H.B. Zachry Co., and The Lane Construction Corp. based upon purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of 28 States and 2 Territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the applications. As evidence that the applicants passed on their increased costs, the States submitted statistical reports indicating that the highway mileage completed with federal highway funds remained at high levels between 1973 and 1981. In addition, the States submitted an affidavit of a consulting economist which stated that firms in the road construction industry in general were able to pass on any increased energy costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive refunds. In addition, the Motions for Discovery filed by the States were denied. The sum of the refunds granted in this Decision is $109,996.

Saginaw Asphalt Paving Co., 3/5/90, RF307-32301

The DOE issued a Decision and Order granting an Application for Refund filed by the Saginaw Asphalt Paving Co. (Saginaw). Saginaw requested a refund based upon purchases of 20,536,122 gallons of refined petroleum products used in asphalt-paving production and road construction. A group of 28 States objected to Saginaw's application stating that Saginaw was not injured by crude oil overcharges. They argued that construction companies contracted by local, state, and federal governments generally had price escalator clauses included in the contract that allowed them to pass through the overcharges during the settlement period. The States also submitted a Motion for Discovery. The DOE denied the Motion for Discovery, but requested supplemental information concerning Saginaw's ability to pass through increased fuel costs through contractual price escalator clauses. Upon examination of Saginaw's contracts with the State of Michigan, the DOE found that none contained price escalator clauses. Accordingly, the DOE granted Saginaw a total refund of $16,429.

Ultra Transportation, 3/9/90, RC272-62

The DOE issued a Supplemental Decision and Order rescinding a refund granted to Ultra Transportation in *Edwin Benthem*, Case No. RF272-73801, (July 14, 1990). The amount of the refund rescinded is $256.

Refund Application

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Brodeur's Service Station, Inc., *et al.*	RF304-6459	3/9/90
City of Tucumcari, *et al.*	RF272-27895	3/5/90
Exxon Corp./Simmons Grocery & Hardware, *et al.*	RF307-1987	3/9/90
Exxon Corp./Stone Container Corp.	RF307-2713	3/6/90
Exxon Corp./Thorndale Exxon, *et al.*	RF307-2782	3/7/90
Getty Oil Co./H.C. Oil Co.	RF265-2862	3/6/90
Getty Oil Co./Larry Filipi's Auto Service, *et al.*	RF265-2872	3/9/90
Gulf Oil Corp./Colvin Oil Company.	RF300-10475	3/9/90
Gulf Oil Corp./Emerson Electric Co.	RF300-3647	3/8/90
Gulf Oil Co./Peter F. Vaira, *et al.*	RF300-8952	3/9/90
Gulf Oil Corp./R. Leon Stinson, Jr. M.O.C., Inc.	RF300-5102, RF300-5104	3/8/90
Gulf Oil Corp./Robbe Oil Co.	RF300-10597	3/9/90
Gulf Oil Corp./T&T Farm Services, Inc.	RF300-10662	3/7/90
Gulf Oil Corp./Venta, Inc.	RF300-5249	3/5/90
Power Test Petroleum Distributors, Inc./ Hillcrest Service Station FRD Servicenter, Inc.	RF316-2, RF316-4	3/5/90
Shell Oil Co./General Automotive Systems, Inc., *et al.*	RF315-9000	3/6/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Arco	RF304-11179
Davison's Service Station	RF307-9584
Douglas B. Foster	RF315-8644
Hillsmere Exxon	RF307-8997
Loch Raven Exxon	RF307-10053
Mt. Furn Gulf	RF300-8149
Norton County Cooperative Association.	RF272-76893
Roush Motor Sales	RF304-8802
The Boeing Company	RF272-7937, RD272-7937
Triangle Exxon	RF307-8942
Wyman-Gordon Company	RF272-7921, RD272-7921

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 22, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-15061 Filed 6-27-90; 8:45 am]

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Issuance of Decisions and Orders During the Week of April 9 Through April 13, 1990

During the week of April 9 through April 13, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Metrix International Corp., 4/9/90, LFA-0032

Metrix International Corporation (Metrix) filed an Appeal from a denial by the Director, Contract Operations Division "A", Office of Procurement Operations, Headquarters of the Department of Energy (Procurement Operations), of a Request for Information which Metrix had submitted under the Freedom of Information Act (FOIA). Metrix requested the release of the total points that it had received on a proposal it had submitted to the DOE in response to a Clean Coal Technology III Project Opportunity Notice, as well as the completed evaluation and ratings forms used by the DOE in reviewing the proposal. Procurement Operations withheld the requested information under Exemption 5 of the FOIA as inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. In considering the Appeal, the DOE found that although the withheld documents reflect the deliberative process in general, and are thus predominantly exempt from disclosure under Exemption 5, some portions are factual, do not reveal the deliberative process, and should therefore be segregated and released. Additionally, the DOE determined in a *de novo* review that all portions of the documents which were derived from proposals may be withheld under Exemption 4 as confidential at least until the contracts have been finally awarded. Accordingly, Metrix's Appeal was granted in part and denied in part.

Request for Exception

Bi-State Petroleum, 4/11/90, LEE-0010

Bi-State Petroleum filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief form filing Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the Reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA-782B.

Refund Applications

Bates Fabrics, Inc., The Magee Carpet Co., 4/10/90, RF272-4836, RD272-4734, RF272-6676, RD272-6676

The Department of Energy issued a Decision and Order granting refunds from crude oil overcharge funds to Bates Fabrics, Inc. and the Magee Carpet Co. based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicants used the petroleum products in the course of their normal business activities. These activities are not related to the petroleum industry. The applicants were therefore end-users of refined petroleum products, and were presumed injured. A consortium of 30 States and two territories (the States) filed objections and Motions for Discovery with respect to both applications. In their submissions, the States attempted to rebut the end-user presumption to injury. The DOE rejected the States' objections, denied the Motions for Discovery, and determined that refunds of $12,244 and $7,905 should be granted to Bates and Magee, respectively.

Charles Ashley et al, 4/9/90, RF272-12845 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or conservative estimates to report its gallonage claims. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to be injured. The sum of the refunds granted in this Decision is $4,480. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Coastal Gas, Inc./Solar Gas, Inc., 4/12/90, RR272-41, RR272-42

The DOE issued a Decision and Order, denying two Motions for Reconsideration submitted on behalf of Coastal Gas, Inc. and Solar Gas, Inc., propane resellers during the period of crude oil price controls, August 19, 1973 through January 27, 1981. To demonstrate that they were injured by crude oil overcharges and thus eligible for a refund in the subpart V crude oil refund proceeding, the applicants submitted banks of unrecovered product costs and a report on propane cost pass-through and absorption during the period of crude oil price controls. The DOE determined that this information was not sufficient to demonstrate that the two firms were unable to pass through the crude oil overcharges to their down-stream customers. Accordingly, the Motions for Reconsideration were denied.

Crane & Co., Inc., 4/13/90, RF272-52239, RD272-52239

The DOE issued a Decision and Order concerning an Application for Refund filed by Crane & Co., Inc., a manufacturer of paper products, in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to the application on the grounds that certain studies may indicate that the pulp and paper industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States arued that this evidence was sufficient to rebut the end-user presumption relied upon by Crane & Co., Inc. and therefore the DOE should deny its application. The DOE granted the refund application, determining that the States had failed to show that Crane & Co., Inc. itself has passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the end-user presumption of injury with respect to the applicant.

Exxon Corp./B&S Exxon et al., 4/10/90, RF307-7 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Exxon Corporation special refund proceeding. Three of these applicants operated as partnerships. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. Those applicants who operated as partnerships were determined to have one-half of the allocable shares of their respective partnerships. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,734 ($2,135 principal plus $599 interest).

Exxon Corp./Grundy County Highway Department et al., 4/13/90, RF307-2350 et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Exxon Corporation special refund proceeding by resellers and retailers who purchased directly from Exxon during the consent order period. The DOE determined that the applicants should receive their full allocable share. The sum of the refunds granted in this Decision is $10,845, representing $8,413 in principal and $2,432 in interest.

Exxon Corp./Youman's Gas & Oil Co., Inc. et al., 4/11/90, RF307-1934 et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocated share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The sum of the refunds granted in this Decision is $47,623 ($37,205 principal and $10,418 in interest).

Gulf Oil Corp./Art's Gulf, 4/13/90, RF300-10264

The DOE issued a Decision and Order concerning an Application for Refund submitted by Arthur Salyer (Salyer) on behalf of Art's Gulf (Art's) in the Gulf Oil Corporation special refund proceeding. Art's application was denied because Salyer did not provide any confirming information to demonstrate that he was the owner/operator of Art's or that he had actually purchased covered Gulf refined petroleum products during the consent order period.

Gulf Oil Corp./Ashland Oil, Inc., Ashland-Warren, Inc., 4/11/90, RF300-8899, RF300-8954

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $26,016.

Gulf Oil Corp./W.R. Grace Transportation Services, Inc., 4/13/90, RF300-11063

On March 19,1990, a Decision and Order was issued which granted a refund of $2,920 to W.R. Grace Transportation Services, Inc. (Grace)(Case No. RF300-9643). This refund was granted based on an incorrect gallonage figure. Therefore, in a Decision and Order dated April 13, 1990, the refund of $2,920 granted to Grace was rescinded and a refund of $818 was granted to Grace based upon a more accurate gallonage figure.

Interstate Coal Co., Inc., 4/12/90, RF272-7412, RD272-7412

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Interstate Coal Company, Inc. for purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of 29 States and two territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the application. As evidence that the applicant passed on its increased costs, the States submitted an affidavit of a consulting economist which stated that firms in the coal mining industry in general were able to pass on any increased energy costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The amount of the refund granted in this Decision is $21,255.

Marathon Petroleum Co./Pilot Oil Corp., 4/13/90, RR250-8, RR250-7

The DOE considered Motions for Modification filed by Pilot Oil Corporation in connection with the Marathon Petroleum Company refund proceeding. Pilot's refund application from the Marathon consent order fund had been previously denied because the firm was 50 percent owned by Marathon during the consent order period. In the motions for Modification Pilot alleged that Marathon sold its 50 percent interest to the owners of the other 50 percent interest in Pilot. Pilot contended that these changed circumstances warranted granting it a refund. The DOE rejected this argument, stating that even though Marathon's interest had been sold, Pilot still had not shown that it had experienced any injury as a result of its relationship with Marathon. In this regard, the DOE stated that it could not presume any level of injury with respect to a firm that was partially owned by the consent order firm during the consent order period. Accordingly, the Motions for Modification were denied.

Murphy Oil Corp./Frank Oil Corp., J.A. Reed Oil Co., 4/12/90, RF309-858, RF309-1136

The DOE issued a Decision and Order granting portions of two Applications for Refund in the Murphy Oil Corporation special refund proceeding. The two applicants purchased certain Murphy petroleum products on a sporadic basis and were preliminarily identified as spot purchasers. Since neither applicant showed that it was a regular purchaser of these petroleum products or attempted to rebut the spot purchaser presumption of non-injury, the portions of the applications based on spot purchases were denied. The claimants were granted refunds totalling $907 ($243 in principal and $94 to interest) under the small claims injury presumption based on the 297,452 gallons of other petroleum products that they regularly purchased from Murphy.

Murphy Oil Corp./Peterson Oil Corp., 4/13/90, RF309-1376, RF309-1377

The DOE issued a Supplemental Order modifying two of its prior determinations with respect to Peterson Oil Company's Applications for Refund in the Murphy Oil Corporation (Murphy) special refund proceeding. Previously, the former and present owners of Peterson Oil Company were separately granted refunds based on the same purchases of Murphy petroleum products. In this Supplemental Order, the DOE determined the eligible refund amounts for Peterson Oil Company's former and present owners and directed that the claimants return the excess portions of their earlier refunds.

Washington Construction Co., Washington Corp., 4/12/90, RF272-27801, RD272-27801, RF272-27802, RD272-27802

Washington Construction Co. and Washington Corporations, which are subsidiary and parent, respectively, are both involved in heavy construction and mining. Each filed an Application for Refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. A group of state governments filed statements of objections to their claims and related motions for discovery. The applicants demonstrated the volume of their claims by consulting actual records and by using reasonable estimates of their purchases. The Office of Hearings and Appeals (OHA) found, however, that both firms had entered into contracts during the period of price controls which contained price adjustment clauses. The firms had received compensation for approximately 45 percent of each company's purchases of petroleum products during the period October 1, 1977 through January 27, 1981 as a result of those clauses. Neither company was injured in those instances and each was found ineligible to receive a refund for the purchases covered by such clauses. After considering the remaining claims and the objections, OHA determined that the States had failed to produce any convincing evidence to show that either firm had been able to pass on the crude oil overcharges to its customers, and granted the refund applications. As in previous decisions, OHA rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Washington Construction Co. and Washington Corporations were injured by crude oil overcharges. OHA granted Washington Construction Co. a refund of $14,282 based on its approved purchases of 17,827,809 gallons of petroleum products, and granted Washington Corporations a refund of $13,439 on its approved purchases of 16,799,016 gallons. The States' motions for discovery were denied.

Standard Oil Co. (Indiana)/Standard Oil Co. (Indiana)/ Coline Gasoline Corp./National Helium Corp./ Belridge Oil Col/Perry Gas Processors, Inc./New Mexico, 4/12/90, RM21-170, RM251-171, RM2 172, RM3-173, RM8-174, RM183-175

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of New Mexico in the Amoco I, Amoco II, Coline, National Helium, Belridge, and Perry Gas special refund proceedings. The State wished to extend a previously approved ridesharing program another year. The DOE found that the extension would not compromise the requirement that restitution be timely. Accordingly, the Motion was approved.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Michael & Sons Service Station et al.	RF304-5800	4/13/90
Bernard Lumber Co., Inc. et al.	RF272-76403	4/5/90
Crown Central Petroleum Corp./ Ennis Crown, Chappell's Crown, Petersburg Pike Crown.	RF313-319 RF313-320 RF313-321	4/5/90
E.D.C., Inc./Payless Oil.	RF311-9	4/11/90
Elmsford Transportation Co. et al.	RF272-76002	4/5/90
Exxon Corp./ Enterprise Products Co.	RF307-8609	4/13/90
Getty Oil Co./Hunt's Shell.	RF268-2675	4/10/90
Gulf Oil Corp./ Bernick Oil Co.	RF300-8671	4/13/90
Gulf Oil Corp./ Holcomb Oil Corp.	RF300-4875	4/5/90
Gulf Oil Corp./T & K Gulf, Usher's Gulf Service.	RF300-10287 RF300-10288	4/11/90
Hillandale Farms of Pennsylvania et al.	RF272-77680	4/12/90
Mississippi County Roads et al.	RF272-76201	4/5/90
Valentine Sugars, Inc. et al.	RF272-25980	4/11/90

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Name	Case No.	Date
William Beaumont Hospital Corp. *et al.*	RF272-32540	4/10/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Agee Oil Company	RF300-10374
Avondale Shell	RF315-8405
Bulldog Hiway Express	RF300-9653
Cox Refrigerated Express, Inc	RF300-9845
E.L. Murphy Trucking Co	RF272-12184 RD272-12184
Fortson Gulf	RF300-11024
Gerald Rose	RF300-11022
Inabon Asphalt, Inc	RF300-10226
Joseph Falcon Gulf	RF300-11025
Madison Street Gulf	RF300-11030
Miles Gulf	RF300-11023
Nelson J. Rose	RF300-11021
North Lake Gulf	RF300-11027
Penn Dairies, Inc	RF304-8924
Pennsylvania Department of Transportation.	RF304-5951
Pennsylvania State Police	RF304-8299
Rohlin Construction Co	RF272-34218 RD272-34219
Smith Oil Company	RF311-2
Tappa Gulf	RF300-9917
Taylor Shell	RF315-7054
Trinch Isales Service Station	RF300-9921
West Esplanade Shell, Inc. *et al.* (See attached list).	RF315-7930
Western Mountain Oil Co., Inc	RF300-10086
5 Point Gulf	RF300-11029

Appendix

RF315-7930 ..... West Esplanade Shell, Inc.
RF315-7931 ..... Herbert Wellmans.
Uptown Shell.
RF315-7933 ..... Wilton McDaniel.
Westwego Car Wash.
RF315-7934 ..... Wilton McDaniel.
Bellemeade Shell.
RF315-7935 ..... JKF Enterprises, Inc.
Broad and Orleans Shell.
RF315-7936 ..... JKF Enterprises, Inc.
Canal and Galvez Shell.
RF315-7937 ..... JKF Enterprises, Inc.
Causeway Shell.
RF315-7938 ..... Gary Moore.
Lake Oaks Shell.
RF315-7939 ..... Sion Alyesh.
Chef and I-10 Shell.
RF315-7940 ..... Marcoin Business Services.
Marcoin, Inc.
RF315-7941 ..... George C. Wolfe.
Wolfe's Shell, Inc.
RF315-7942 ..... Peter Lopinto.
Lopinto's Shell Service.
RF315-7943 ..... Earl Lee Larrieu.
Earl's I-10 Shell.
RF315-7972 ..... Raymon Alyesh.
Raymon Shell.
RF315-7973 ..... Raymon Alyeshmerni.
Garden Road Shell.
RF315-7974 ..... Raymon Alyeshmerni.
Garden Road Shell.
RF315-7975 ..... Andrew J. Leslie.
Leslie's Shell.
RF315-7976 ..... Gloria Leslie.
Leslie's Shell.
RF315-7977 ..... Larry Allen.
Westwego Car Wash.
RF315-7978 ..... Larry Allen.
Westwego Car Wash.
RF315-7979 ..... Charles Bernard.
St. Charles Shell.
RF315-7983 ..... Talmage Sharpe.
Sharpe's Shell.
RF315-9628 ..... Nicholas Hingel.
Green Acres Shell.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 22, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-15062 Filed 6-27-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of $1,041,715.42, plus accrued interest, that Agway, Inc., has remitted to the DOE pursuant to a Consent Order executed on March 20, 1987. The funds will be distributed to successful claimants in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Applications for Refund from the Agway escrow fund must be filed in duplicate on or before September 28, 1990. All Applications for Refund from this escrow fund should display a conspicuous reference to Case Number KEF-0102, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Darlene Gee, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Gee).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Agway, Inc., to the DOE to settle alleged pricing and allocation violations with respect to the firm's sales of crude oil and refined petroleum products. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 21, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY; IMPLEMENTATION OF SPECIAL REFUND PROCEDURES

Name of Firm: Agway, Inc.
Date of Filing: February 12, 1988.
Case Number: KEF-0102.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, subpart V. On February 12, 1988, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Agway, Inc., Agway Petroleum Corporation, and Texas City, Refining, Inc. (hereinafter collectively referred to as "Agway").

As determined by Interpretation 77-6,[1] Agway, Inc., an agricultural cooperative whose common stock is owned by over 100,000 farmer-members, owned during the period covered by this Consent Order all the capital stock of Agway Petroleum Corporation (APC) which in turn owned two-thirds of the capital stock of Texas City Refining, Inc. (TCR). The remaining one-third of TCR's capital stock is owned by Southern States Cooperative, Incorporated, an agricultural cooperative. TCR sold 56% of the refined petroleum products it produced to APC, which constituted 66% of APC's requirements.[2] APC then resold these products to member-owners of Agway and others. On the basis of these interrelationships, Interpretation 77-6 found that Agway, APC and TCR constituted a single firm for purposes of the federal petroleum price and allocation regulations.

[1] Interpretation 77-6 was issued by the Federal Energy Administration on February 25, 1977. 5 Continued

I. Background

Agway was a "producer," "refiner," and "reseller" of petroleum products as those terms were defined in 10 CFR 212.31. A DOE audit of Agway's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations. 10 CFR parts 210, 211 and 212. More specifically, the audit revealed that between January 1, 1973 and January 27, 1981, Agway may have violated the DOE's pricing and allocation regulations with respect to its pricing, refining, and sales of crude oil and the pricing and sales of refined petroleum products.

The DOE has taken various administrative enforcement actions against Agway, including the issuance of letters and Notices of Probable Violations. Agway maintained, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. However, Agway states that in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, it entered into a Consent Order (No. RTYA00001Z) with the DOE on March 20, 1987. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Agway does not admit any such violations.

The Consent Order requires Agway to pay a total of $1,000,000, plus interest, in three installments within 270 days of the effective date of the Consent Order to the DOE. Agway has deposited a total of $1,041,715.42. This Decision and Order concerns the procedures for the distribution of the funds in the Agway escrow account.

On April 6, 1990, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that made a reasonable showing of injury as a result of Agway's alleged overcharges. In order to give notice to all potentially affected parties a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 55 Federal FR 14128 (April 13, 1990). We received no comments concerning the proposed refund procedures for Agway. Therefore, we will adopt the procedures in the PD&O as final procedures for the distribution of the Agway escrow account.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations in which the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Because the Consent Order resolves alleged violations involving both sales of crude oil and refined petroleum products, the consent order funds will be divided into two pools. *See Shell Oil Co.*, 16 DOE ¶ 85,402 (1988) (*Shell*). The ERA made no recommendation on the distribution of the consent order funds between crude oil issues and refined product issues. We will divide the consent order funds proportionately according to the cost issues initially identified by ERA in its Notices of Probable Violation.[3] In other words, 31 percent of the consent order funds (or $322,931.78 plus accrued interest) will be set aside as a pool of crude oil overcharge funds available for disbursement. Furthermore, 69 percent of the consent order funds (or $718,783.64 plus accrued interest) will be made available for distribution to purchasers of Agway refined petroleum products who were not Agway members or affiliates and who demonstrate that they were injured as a result of Agway's alleged regulatory violations.[4] The specific distribution procedures for those funds are discussed in detail in the following sections.

III. Crude Oil Claims

The funds in the crude oil pool will be distributed in accordance with the Modified Statement of Restitutionary Policy (MSRP), which was issued by the DOE on July 28, 1988. 51 FR 27899 (August 4, 1986).[5] The MSRP, which was issued as a result of a court-approved Settlement Agreement in *The Department of Energy Stripper Well Litigation*, M.D.L. 378 (D. Kan. 1986), provides that crude oil overcharge payments will be distributed among the States, the United States Treasury, and eligible purchasers of crude oil and refined products.[6] Under the MSRP, up

F.E.G. ¶ 56,316, and was upheld in a decision by the Office of Exceptions and Appeals (now the Office of Hearings and Appeals) on August 3, 1977, 6 FEA ¶ 80,532.

[2] *See* Information supplied by Robert Morrow, Attorney for Agway, received on May 31, 1988, Items 1 & 4, and Attachment A.

[3] On January 9, 1981, ERA issued five Notices of Probable Violation (NOPV) to Agway. Three of the NOPVs concerned crude oil and refined product issues as follows:

NOPV Case No.: RTYE00101—$33,000,000 in crude oil cost issues alleged.

NOPV Case No.: RTYE09101—$64,254,419 in purchased product issues.

NOPV Case No.: RTYL01401—$18,728,887 in non-product cost issues.

[4] We have previously held that affiliates or subsidiaries of a consent order firm are not eligible for refunds based upon the presumption that they were not injured. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 18 DOE ¶ 85,388 at 88,538 (1987). This presumption applies to Agway member firms or those otherwise affiliated with Agway during the consent order period, whether or not currently affiliated with the firm. *See Cosby Oil Co./Yucca Valley Liquor Store*, 13 DOE ¶ 85,402 at 88,988 (1986). It also applies to firms that have become affiliated with Agway after the consent order period, because their receipt of a refund would allow the consent order firm to benefit from this proceeding. *See, e.g., Marathon Petroleum Co./Webster Service Stations*, 17 DOE ¶ 85,009 (1988). For a partial list of Agway affiliates that we find ineligible under this presumption, see the Appendix to this Decision and Order.

[5] In the Order implementing the MSRP, the OHA solicited comments regarding the proper application of the MSRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures the Office will follow in processing applications filed under subpart V regulations for refunds from the crude oil overcharge funds. 52 FR 11737 (April 10, 1987). Since the procedures apply to all crude oil funds subject to subpart V, we need not differentiate between the various crude oil transactions settled by the Agway consent order.

[6] Under the Settlement Agreement, firms which applied for a portion of certain escrow funds established under the Settlement generally must have signed a waiver releasing their claims to any crude oil funds to be distributed by the OHA under subpart V. Accordingly, these firms will not be eligible for a refund from the Agway crude oil pool. *See supra* note 4.

to 20 percent of these crude oil overcharge funds may be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal government for indirect restitution as directed by the MSRP. In the present case, we have decided to reserve the full 20 percent, or $64,586.36 of the initial $322,931.78 crude oil pool, plus a proportionate share of the accrued interest on that amount, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured as a result of alleged crude oil violations.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of alleged violations (i.e., that they did not pass on the alleged overcharges to their customers). We will utilize standards for the showing of injury which OHA has developed for analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users (i.e., ultimate consumers) whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,894–896 (1987). However, reseller and retailer claimants must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report in *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil pool currently available ($322,931.78) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Based upon the amount of the crude oil pool currently available, the crude oil volumetric refund amount in this proceeding is $0.0000001647 per gallon. This volumetric refund amount will increase as interest accrues on the consent order fund. After all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The remaining 80 percent of the crude oil pool ($258,345.42) and 80 percent of accumulated interest will be disbursed in equal shares to the federal and state governments for indirect restitution. *See Shell.* We will direct the DOE's Office of the Controller to segregate the crude oil share of Agway's initial payment and distribute $129,172.71, plus appropriate interest, to the States and the same amount to the federal government. Refunds to the States will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the account which each state will receive if these procedures are adopted is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the States under the Settlement Agreement.

IV. Refined Product Claims

The remainder of the Agway consent order fund ($718,783.64 plus interest accrued on that amount) shall be made available to eligible injured purchasers of Agway refined products. (*See* note 4.) Purchasers of Agway refined products during the period March 6, 1973 through January 27, 1981 (refund period) [7] may submit Applications for Refund.[8] From our experience with Subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities, and cooperatives; and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers"). Residual funds in the Agway escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law No. 99–509, title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. The ERA specifically noted, however, that it was unable to identify all of the customers whom Agway allegedly overcharged. In order to determine the potential refunds for these purchasers, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Agway's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, the potential refund for a previously unidentified claimant will be calculated by multiplying the number of gallons purchased from Agway during the consent order period times a volumetric factor of $0.000396 per gallon.[9] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Agway escrow account.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286 (b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 37,879 gallons of Agway products in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Agway, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we will adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Injury Presumptions

The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expense, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end-users of Agway products, certain types of regulated firms, and cooperatives were injured by their purchases from Agway. In addition, we will presume that resellers and retailers of Agway products submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Agway products and those who sold it on consignment were not injured by their purchases. Each of these presumptions is discussed below, along with the rationale underlying its use.

a. End-Users. First, in accordance with prior subpart V proceedings, we will presume that end-users, *i.e.*, ultimate consumers of Agway products whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Agway products to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives. Second, public utilities, agricultural cooperatives, and other firms whose prices are required by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases, including overcharges, to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will generally not be covered by this presumption.

c. Reseller and Retailer Small Claims. Third, we will presume that a reseller or retailer seeking a refund of $5,000 or less, excluding accrued interest, was injured by Agway's pricing practices. Without this presumption, such an applicant would have to gather records dating as far back as 1973 in order to demonstrate that it absorbed Agway's alleged overcharges. The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Therefore, a small claimant must only document the volumes of products it purchased from Agway in order to demonstrate injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). Resellers and retailers of Agway products that are seeking refunds in excess of $5,000 must follow the procedures that are outlined below in Section 2.

d. Resellers and Retailers Filing Mid-Level Claims. Fourth, in lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[10] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobile Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach to be sound in the absence of more detailed information regarding injury, and we therefore will adopt a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Agway refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $5,000, whichever is greater.

e. Spot Purchasers. Fourth, resellers and retailers that were spot purchasers of products from Agway, *i.e.*, may only sporadic, discretionary purchasers, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. *See Vickers* at 85,396–97. A spot purchaser can rebut this presumption by demonstrating that

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[7] Agway was not subject to mandatory controls prior to March 6, 1973. Because refunds in this type of case are only warranted for purchases of regulated products, the refund period begins on this date.

[8] OHA will not accept Applications for Refund on behalf of classes of applicants. We have previously determined that such claims are inappropriate because they amount to a proposal for "indirect" restitution, i.e., to distribute the funds attributable to parties not specifically identified by the DOE. *See Standard Oil Co. (Indiana)/Diesel Automotive Association*, 11 DOE ¶ 85,230 (1984); *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982).

[9] We computed the volumetric factor by dividing $718,783.64 (the consent order funds in the refined product pool) by 1,815,181,342 gallons, the approximate number of gallons of covered products other than crude oil which Agway sold from March 6, 1973, the date that Agway became subject to the Federal price controls under Special Rule No. 1 (38 FR 6283)(March 8, 1973), through the date of decontrol of the relevant product.

Although the Agway consent order period begins January 1, 1973, refund applications may only be based upon purchases of refined products between March 6, 1973 and the relevant decontrol date for each product as summarized below:

Ethane and liquid asphalt	Apr. 1, 1974.
Residual fuel	June 1, 1970.
No. 1 and No. 2 heating oil, Diesel fuel and kerosene.	July 1, 1976.
Naphthas	Sept. 1, 1976.
Naphtha based jet fuel	Oct. 1, 1976.
Aviation gas and kerosene based jet fuel.	Feb. 25, 1979.
Butane and natural gasoline	Jan. 1, 1980.
Motor gasoline and propane	Jan. 28, 1981.

[10] That is, claimants who purchased between 31,566,666 gallons and 315,666,666 gallons or Agway refined petroleum products during the consent order period (mid-level claimants) may elect to utilize this presumption. Claimants who purchased more than 315,666,666 gallons may elect to limit their claim to $50,000.

its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. Consignees. Finally, we will presume that consignees of Agway products were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent generally sold products pursuant to be charged by the consignee to an agreement whereby its supplier established the prices and compensated the consignee with a fixed commission based upon and volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Agway's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,386 at 88,962 (1986).

2. Non-Resumption Demonstration of Injury

A reseller or retailer whose allocable share is in excess of $5,000 that does not elect to receive a refund under the small claims presumption will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm generally is required to provide a monthly schedule of its banks of unrecouped increased product costs for products that it purchased from Agway. Cost banks should cover the period March 6, 1973, through January 27, 1981.[11] If a firm no longer has records of contemporaneously calculated cost banks for products, it may approximate those banks by submitting the following information regarding its purchases of products from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for products on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for products during the period March 6, 1973 through January 27, 1981; and

(3) A monthly schedule of the firm's purchase or sales volumes of products during the period March 6, 1973 through January 27, 1981.[12]

The existence of banks of unrecouped increased products costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditons forced it to absorb the alleged overcharges. We will infer this to be true if the prices the applicant paid Agway were higher than average market prices for products at the same level of distribution.[13] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Agway for products during the period March 6, 1973 through January 28, 1981. In a recent Decision, the Temporary Emergency Court of Appeals affirmed the OHA's standards for a demonstration of injury, specifically upholding the method used to evaluate comparative market prices and thereby determine competitive disadvantage. *Behm Family Corp.* V. *DOE*, No. 8–22, slip op. (T.E.C.A. April 30, 1990).

If a reseller or retailer that is eligible for a refund in excess of $5,000 does not submit the cost bank and purchase price information described above, it can still apply for a refund of $5,000, plus accured interest, using the small claims presumption.

If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $5,000 small claims threshold, the firm cannot opt for a full $5,000 refund.

C. Allocation Claims

We may also receive claims based upon Agway's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR Part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), *action for review docketed*, C.A.–3–89–2983–C (N.D. Tex. November 22, 1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm unlawfully failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant must provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In evaluating whether an allocation claims meets these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of contemporaneous complaints by the claimant, and we will look at any affirmative arguments made by Agway in its defense. *See Marathon/RFI*, 19 DOE. To assess an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business with particular suppliers other than Agway. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Agway consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimant. Claimants who make a reasonable and non-spurious demonstration of an allocation violation and show that they were injured by the alleged violation may receive a refund based on the profit lost as a result of their failure to receive the allocated product.[14] However, since the Agway Consent Order reflects a negotiated compromise and the consent order amount is less than Agway's potential liability in these proceedings, we will prorate any allocation refund that would be disproportionately large in relation to the consent order fund.

D. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from Individuals and firms that purchased refined petroleum products from Agway between March 6, 1973 and January 27, 1981. No "class claims" on behalf of groups of applicants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF–0102 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Agway petroleum products, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) For each refined covered product, a monthly schedule of the number of gallons that the applicant purchased from Agway during the March 6, 1973, through January 27, 1981 refund period.[15] If a claimant was an indirect purchaser of Agway refined covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Agway;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Agway, an explanation of the nature of that affiliation. If the applicant was or is a member of Agway, an explanation of when the applicant became a member and/or cancelled his membership;

(7) A statement as to whether there has been a change in ownership of the applicant's firm during or since the refund period. If there was such a change in ownership, the applicant must submit a detailed explanation as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Agway proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Agway proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

Applications for Refund should be sent to:

Agway Refund Processing, Case No. KEF–0102, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked within 90 days from the date of publication of this Decision in the Federal Register. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Agway, Inc., pursuant to the Consent Order finalized on March 20, 1987, may now be filed.

(2) Applications for Refund from the Agway refined product pool must be postmarked no later than 90 days after publication of this Decision in the Federal Register.

(3) Applications for Refund from the Agway crude oil pool must be postmarked no later than March 31, 1991.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, as provided in Paragraphs (5), (6), and (7) below, the total net current crude oil equity from the Agway, Inc. subaccount (Consent Order No. RTYA00001Z) within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States.

(5) The Director of Special Accounts and Payroll shall transfer $129,172.71 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer $129,172.71 in principal, plus appropriate interest, of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $64,586.36 in principal, plus appropriate interest, of the funds obtained pursuant to paragraph (4) above into a subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE009W.

(8) This is a final order of the Department of Energy.

Dated: June 21, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Subsidiaries and Affiliates Presumptively Ineligible for Refunds

All members of the Agway Cooperative
All members of the Southern States Cooperative
Agway Data Services, Inc.
Agway Financial Corporation
Agway Insurance Co.
Agway Indemnity Insurance Co.
Agway General Agency
Agway Petroleum Corporation
Texas City Refining, Inc.
H.P. Hood Inc.
Telmark, Inc.
Empire Cheese Co., Inc.
Merchants Produce Co., Inc.
Mid-State Potato Distributors
Seedway Inc.
Curtice-Burns Foods, Inc.
Comstock Foods
Comstock Michigan Fruit Division
Nalley's Fine Foods
Lucca Packing Div., Nalley's Fine Foods
National Brands Beverage Div.
National Oats Co.
Snyder Potato Chips
Southern Frozen Foods
Farman's Pickle Company
Smoke Craft
Brooks Foods
Adams Natural Peanut Butter
Blevins Popcorn
Wilderness Foods
Calypso Foods
Tropic Isle
Southern States Financial Corp.
Southern States Underwriters

[11] We generally require applicants to submit cost banks that continue until a product's price decontrol date. Retailers and resellers of motor gasoline, however, were only required to maintain banks through July 15, 1979, and April 30, 1980, respectively, rather than the January 27, 1981 decontrol date of products.

[12] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 11.

[13] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

[14] If we receive numerous allocation claims, we may adopt a more general formula for calculating refunds based on alleged allocation violations.

[15] Because we will not process claims for less than $15 in principal, an applicant must have purchased at least 37,879 gallons of Agway refined covered products during the refund period in order for us to consider its application. If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

SSC Insurance Agency Inc.

[FR Doc. 90-15083 Filed 6-27-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OMS-FRL-3702-1]

Final Agency Actions Regarding Motor Vehicle Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of mobile source final agency actions.

SUMMARY: This notice announces final EPA actions taken in conjunction with its mobile source program. Persons seeking judicial review of these final actions must petition the United States Court of Appeals for the District of Columbia Circuit for review of these actions. Failure to petition for review of these actions on or before August 28, 1990 will preclude a challenge later in an EPA enforcement action.

FOR FURTHER INFORMATION CONTACT: Leslie Oif, Attorney/Advisor, Manufacturers Operations Division, (EN-340F), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2490.

SUPPLEMENTARY INFORMATION: EPA has determined that the actions summarized below are final. The specific date on which the action became final is indicated. Pursuant to section 307(b)(1) of the Clean Air Act (Act), EPA has determined that these actions are nationally applicable. Accordingly, judicial review of these actions is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit on or before August 28, 1990. Under section 307(b)(2) of the Act, these final actions may not be challenged later in civil or criminal proceedings EPA may bring to enforce these actions. The following EPA actions regarding motor vehicles have become final:

(1) By letter dated November 30, 1989, EPA determined that the Daihatsu Hijet Cutaway qualifies for an exclusion from regulation under the Act under 40 CFR 85.1703. Section 85.1703 provides that a vehicle may be excluded if it cannot exceed 25 miles per hour, lacks features customarily associated with safe and practical street or highway use and exhibits features rendering street or highway use unsafe, impractical or highly unlikely. EPA determined that the Hijet Cutaway lacked features customarily associated with safe and practical street use. The decision of November 30, 1989 was final.

(2) On February 27, 1990, Daihatsu submitted a plan to perform technical modifications to the Daihatsu HiJET Full Cab, including window van versions, in order to satisfy the exclusion criteria of 40 CFR 85.1703(a)(1). Section 85.1703(a)(1) provides that a motor vehicle can be excluded from regulation under the Act if it cannot exceed 25 miles per hour over level, paved surfaces. By letter dated March 1, 1990, EPA determined that Daihatsu's proposal was a sufficient basis to grant an exclusion under 40 CFR 85.1703. The decision of March 1, 1990 was final.

Dated: June 20, 1990.

Richard D. Wilson,

Director, Office of Mobile Sources.

[FR Doc. 90-14959 Filed 6-27-90; 8:45 am]

BILLING CODE 6560-50-M

[PF-528A; FRL 3769-6]

Section 409 Tolerances; Request for Public Comment on Objections to EPA Response to Petition to Revoke Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of objections.

SUMMARY: On April 25, 1990, EPA issued a decision granting in part and denying in part a petition requesting the revocation of several food additive regulations established under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (55 FR 17560). The petitioners had asserted that these regulations violated section 409's Delaney Clause. On May 22, 1990, the petitioners filed objections to EPA's decision challenging, among other things, EPA's ruling that the Delaney Clause is subject to a *de minimis* exception. This Notice requests public comment on the petitioners' objections.

DATES: Written comments, identified by the document control number [PF-528A], must be received on or before July 30, 1990.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticides Programs, 401 M St., SW., Washington, DC 20460. Copies of the petitioners' objections will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: 703-557-2805.

FOR FURTHER INFORMATION CONTACT: Sepehr Haddad, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. 2N3, Westfield Building #3, 2805 Jefferson Davis Highway, Arlington, VA. 703-308-8010.

SUPPLEMENTARY INFORMATION: On April 25, 1990, EPA issued a decision granting in part and denying in part the petition of the State of California, Natural Resources Defense Council, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), Public Citizen, and other individuals to revoke 11 food additive regulations for 7 pesticide chemicals (55 FR 17560). The petitioners had asserted that each of these food additive regulations violated the Delaney Clause in section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). As to some of the food additive regulations, EPA stated it would propose to revoke the regulations but, as to others, EPA found either that the regulations were permissible under a *de minimis* exception to section 409's Delaney Clause or that EPA had insufficient information to take regulatory action. The petitioners filed objections to that decision with EPA on May 22, 1990. By this Notice, EPA is requesting comment on those objections. The petitioners objected to EPA's decision claiming that it was wrong as a matter of law, and argued that (1) there is no *de minimis* exception to the Delaney Clause in section 409; and (2) the Agency may not decline to act under the FFDCA because of separate EPA proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act. The petitioners stated that no evidentiary hearing was necessary on these objections since they involved purely legal issues and requested that EPA rule on their objections within 30 days.

By not requesting a hearing on EPA's decision, the petitioners have waived whatever challenge they may have had to the factual underpinnings of that decision. EPA agrees therefore that a hearing is not appropriate. Nonetheless, EPA believes this matter to be of sufficient public concern that no final EPA decision on the objections should be issued prior to a period of public comment on the petitioners' objections. This is especially important under the circumstances of this petition because, although there was a period of comment on the petition itself, the petition did not state that it involved a challenge to EPA's professed intention to consider a *de minimis* exception to the Delaney Clause in ruling on specific section 409 food additive regulations. In the Notice "Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement," in which EPA announced it would take the initial position in proceedings arising under section 409 that the Delaney Clause contained a *de minimis* exception, EPA stated that it would consider "all arguments" regarding the merits of a *de minimis* exception (53 FR 41104, October 19, 1988). Given the large potential impacts of a decision regarding the *de minimis* exception, EPA believes that all members of the public should have the opportunity to be heard on this issue.

EPA plans to issue its decision on the objections expeditiously following the conclusion of the public comment period.

Dated: June 21, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-15087 Filed 6-27-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-66000; FRL-3772-6]

Standard Evaluation Procedures; Availability of Final Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of four scientific review procedures outlined in the Standard Evaluation Procedures (SEPs), a standard set of guidance documents on how the Health Effects Division, Office of Pesticide Programs, EPA, evaluates studies and scientific data to ensure consistency of scientific review. These documents, described under **SUPPLEMENTARY INFORMATION**, are now available to the public and may be purchased through the National Technical Information Service (NTIS).

ADDRESSES: Address orders to: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

FOR FURTHER INFORMATION CONTACT: By mail: Dr. Maxie Jo Nelson, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 810, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7324)

SUPPLEMENTARY INFORMATION: The SEPs are a standard set of guidance documents on how the Health Effects Division (HED) evaluates studies and scientific data to ensure consistency of scientific reviews. Not only do the SEPs serve as valuable internal reference documents and training aids for new staff, but these documents also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in EPA's science reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. These are the last SEPs that HED has published in the scientific discipline of chemistry; no others are planned at this time. Forty-four SEPs have been published previously and are also available from NTIS, which is responsible for distribution of all SEPs after they have been completed. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Office, Intra-Agency, and public comment; this announcement will serve to provide ordering information for the four SEPs recently published.

Document Title	NTIS Order No.	Price (hard copy)	(microfiche)
Analytical Methods	PB90-183284	15.50	3.50
Metabolism in Food Animals: Qualitative Nature of the Residue	PB90-183292	15.50	3.50
Storage Stability Study	PB90-183276	15.50	3.50
Residues in Meat, Milk, Poultry and Eggs: Feeding Studies/Feed-Groups	PB90-220943	15.50	3.50

The order should specify the title of the SEP document, the NTIS order number, and whether hard copy (price code A03) or microfiche (price code A01) is requested. The NTIS order number is the same for both microfiche and hard copy. Send orders to the NTIS address provided above.

Dated: June 15, 1990.

Penelope A. Fenner-Crisp,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 90-15086 Filed 6-27-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-50703; FRL-3740-1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-63. Extension. Abbott Laboratories, Chemical and Agricultural Products Division, 1400 Sheridan Road, North Chicago, IL 60064-4000. This experimental use permit allows the use of 13,466 grams of the plant growth regulator gibberellic acid on 4,980 acres of rice to evaluate seedling growth of dwarf rice. The program is authorized

only in the States of Arkansas, California, Florida, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from March 9, 1990 to March 9, 1991. A temporary tolerance is not required since the application rate is less than 20 g active ingredient/acre. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

275–EUP–66. Issuance. Abbott Laboratories, Chemical and Agricultural Products Division, 1400 Sheridan Road, North Chicago, IL 60064–4000. This experimental use permit allows the use of 12,580 grams of the plant growth regulator gibberellic acid on 4,997 acres of rice to evaluate growth patterns of rice. The program is authorized only in the States of Arkansas, California, Florida, Louisiana, Mississippi, Missouri, and Texas. The experimental use permit is effective from February 27, 1990 to February 27, 1991. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–25. Extension. BASF Corporation, Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 1,550 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 4,100 acres of rice to evaluate the control of various weeds. The program is authorized only in the States of Arkansas, California, Louisiana, Missouri, Mississippi, and Texas. The experimental use permit is effective from April 9, 1990 to June 30, 1990. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–27. Issuance. BASF Corporation, Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 535 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 267.5 acres of turf to evaluate the control of various weeds. The program is authorized only in the States of California, Delaware, Georgia, Illinois, Indiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oregon, Pennsylvania, and Virginia. The experimental use permit is effective from March 15, 1990 to August 30, 1990. (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

464–EUP–100. Extension. DowElanco, P.O. Box 1706, Midland, MI 48641–1706. This experimental use permit allows the use of 459.25 pounds of the insecticide O-(2-(1,1-dimethylethyl)-5-pyrimidinyl) O,O-diethyl phosphorothioate on 417.5 acres of turf to evaluate the control of white grubs. The program is authorized in the States of Alabama, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, and Virginia. The experimental use permit is effective from March 27, 1990 to March 27, 1991. This permit is issued with the limitation that applicators wear a mask or respirator. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

352–EUP–152. Issuance. E.I. duPont deNemours and Company, Agricultural Products Department, Wilmington, DE 19880–0038. This experimental use permit allows the use of 500 pounds of the insecticide phosphorothioic acid, O,O-diethyl O-(1,2,2,2-tetrachloroethyl) ester on 2,000 acres of field corn to evaluate the control of various insects. The program is authorized in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from April 6, 1990 to April 6, 1991. A temporary tolerance for residues of the active ingredient in or on field corn has been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

8340–EUP–10. Extension. Hoechst Celanese Corporation, Route 202-206, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 3,230.6 pounds of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate on soybeans, tree and vine crops, and noncrop areas to evaluate non-selective postemergence weed control. The program is authorized only in the States of Alabama, California, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Nebraska, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 6, 1990 to June 6, 1991. (Joanne Miller, PM 23, Rm 237, CM #2, (703–557–1830))

8340–EUP–11. Issuance. Hoechst Celanese Corporation, Route 202-206, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 74.25 pounds of the herbicide (+)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate on 450 acres of rice to evaluate selective postemergence annual and perennial grass control. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, Missouri, and, Texas. The experimental use permit is effective from March 30, 1990 to March 30, 1991. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

524–EUP–72. Issuance. Monsanto Agricultural Company, 800 North Lindbergh Boulevard, St. Louis, MO 63167. This experimental use permit allows the use of 920 pounds of the herbicide 3,5-pyridinedicarbothioic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-S,S-dimethyl ester on 920 acres of ornamental plants to evaluate the control of weeds. The program is authorized only in the States of Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Carolina, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. The experimental use permit is effective from April 1, 1990 to April 1, 1992. (Joanne Miller, PM 23, Rm. 237, CM #2, (703–557–1830))

45639–EUP–33. Extension. Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 538.5 pounds of the miticide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine on 2,154 acres of almonds, peaches, and nectarines to evaluate control of mites of clofentezine. The program is authorized only in the States of California, Colorado, Illinois, Indiana, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, and West Virginia. The experimental use permit is effective from April 2, 1990 to April 2, 1991. Temporary tolerances for residues of the active ingredient in or on almonds, peaches, and nectarines have been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

45639–EUP–41. Extension. Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington, DE 19803. This experimental use permit allows the use of 50 pounds of the miticide 3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine on 200 acres of walnuts to evaluate control of mites of clofentezine. The program is authorized only in the State of California. The experimental use permit is effective from April 2, 1990 to April 2, 1991. A temporary tolerance for residues of the active ingredient in or on almonds, peaches, and nectarines have been established. (Dennis Edwards, Jr., PM 12, Rm. 202, CM #2, (703–557–2386))

34704–EUP–10. Extension. Platte Chemical Company, Inc., P.O. Box 667, Greeley, CO 80632. This experimental use permit allows the use of the remaining quantities of the nematocide/insecticide ethoprop and phorate (3,281.56 pounds each) on 2,995 acres of corn to evaluate the control of corn rootworm larvae, cutworms, mites, seed corn beetles, symphylans, wireworms, nematodes, and the suppression of white grubs. The program is authorized only in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Nebraska, North Carolina, Ohio, South Dakota, Texas, and Wisconsin. The experimental use permit is effective from March 24, 1990 to March 24, 1991. Permanent tolerances for residues of the active ingredients in or on corn have been established (40 CFR 180.206 and 180.282). (William Miller, PM 10, Rm. 211, CM #2, (703–557–2600))

34704–EUP–11. Extension. Platte Chemical Company, Inc., P.O. Box 667, Greeley, CO 80632. This experimental use permit allows the use of the remaining quantities of the insecticides fonofos and phorate (1,436 pounds for fonofos and 2,154 pounds for phorate) on 1,000 acres of potatoes and sugar beets to evaluate the control of sugar beet root maggot on sugar beets and aphids, leafhoppers, leaf miners, psyllids, flea beetle larvae, wireworms, and the reduction of flea beetle adults and early season Colorado potato beetles on potatoes. The program is authorized only in the States of California, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New York, North Carolina, North Dakota, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from April 9, 1990 to April 9, 1991. Permanent tolerances for residues of the active ingredient in or on potatoes and sugar beets have been established (40 CFR 180.208 and 180.221). (William Miller, PM 10, Rm. 211, CM #2, (703–557–2600))

707–EUP–120. Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 1,600 pounds of the herbicide 3',4'-dichloropropionanilide on 800 acres of rice to evaluate the control of annual grasses. The program is authorized only in the States of Arkansas, Mississippi, Missouri, Louisiana, and Texas. The experimental use permit is effective from April 13, 1990 to April 13, 1991. A permanent tolerance for residues of the active ingredient in or on rice has been established (40 CFR 180.274). (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

707–EUP–123. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 500 pounds of the insecticide myclobutanil on 500 acres of almonds and almond hulls to evaluate the control of blossom blight. The program is authorized only in the State of California. The experimental use permit is effective from March 20, 1990 to March 19, 1992. Temporary tolerances for residues of the active ingredient in or on almonds and almond hulls have been established. (Susan Lewis, PM 21, Rm. 227, CM #2, (703–557–1900))

264–EUP–81. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 1,160 pounds of the herbicides of the heptanoic acid ester and/or octanoic acid ester of 3,5-dibromo-4-hydroxybenzonitrile on barley, field corn, and wheat to evaluate the control of various weeds. The program is authorized only in the States of California, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, North Dakota, South Dakota, and Wisconsin for field corn and in the States of Arizona, California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, New York, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming for barley and wheat. The experimental use permit is effective from March 8, 1990 to March 8, 1992. Permanent tolerances for residues of the active ingredients in or on barley, corn, and wheat have been established (40 CFR 180.374) (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

264–EUP–82. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 1,160 pounds of the herbicides of the heptanoic acid ester and/or octanoic acid ester of 3,5-dibromo-4-hydroxybenzonitrile on barley, field corn, and wheat to evaluate the control of various weeds. The program is authorized only in the States of California, Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, New York, Ohio, North Dakota, South Dakota, and Wisconsin for field corn and in the States of Arizona, California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, New York, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming for barley and wheat. The experimental use permit is effective from March 8, 1990 to March 8, 1992. Permanent tolerances for residues of the active ingredients in or on field corn, barley, and wheat have been established (40 CFR 180.324). (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

11312–EUP–35. Issuance. Tropical Fruit & Vegetable Research Laboratory, USDA, ARS, FWA, P.O. Box 2280, Honolulu, HI 96804. This experimental use permit allows the use of 13.8 and 258.65 pounds of the insecticides, 4-acetoxyphenyl-2-butanone and O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate, respectively in plastic traps placed in or around 1,170 acres of vegetable fields to evaluate the control of melon flies. The program is authorized only in the State of Hawaii. The experimental use permit is effective from March 8, 1990 to October 31, 1992. (William Miller, PM 12, Rm. 211, CM #2, (703–557–2600))

11312–EUP–36. Issuance. Tropical Fruit & Vegetable Research Laboratory, USDA, ARS, FWA, P.O. Box 2280, Honolulu, HI 96804. This experimental use permit allows the use of 87.31 and 1,088.99 pounds of the insecticides 4-allyl-1,2-dimeathoxybenzene and O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate, respectively in plastic traps placed on the perimeter of 1,620 acres of fruit tree areas to evaluate the control of the oriental fruit fly. The program is authorized only in the State of Hawaii. The experimental use permit is effective from March 8, 1990 to October 31, 1992. (William Miller, PM 12, Rm. 211 CM #2, (703–557–2600))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: June 1, 1990.

Frank Sanders,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–15070 Filed 6–27–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket 87-121]

Additional Pleading Received in FM Directional Antenna Proceeding

June 22, 1990.

On May 11, 1990, the Association for Broadcast Engineering Standards, Inc.; du Treil, Lundin and Rackley; Greater Media, Inc.; Mullaney Engineering, Inc.; and the National Association of Broadcasters ("Joint Petitioners"), filed a Statement of Consensus and Joint Supplement to Petitions for Reconsideration of the Report and Order ("Report") in MM docket 87-121.

The Report (4 FCC Rcd 1681, 1989; 54 FR 9800, March 8, 1989) adopted rules that provide for routine authorization of FM stations at nominally short-spaced transmitter locations, provided that FM service is protected from interference. On April 7, 1989, the Joint Petitioners, as well as Genesis Broadcasting, Inc., filed Petitions for Reconsideration of the Report, expressing many conflicting positions. The Statement of Consensus and Joint Supplement to Petitions for Reconsideration reflects a compromise reached by the petitioners. Parties wishing to file pleadings in response to the Statement of Consensus and Joint Supplement to Petitions for Reconsideration must do so on or before July 20, 1990. Replies to any pleadings must be filed on or before August 3, 1990.

The text of this pleading is available for viewing and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, Northwest, suite 140, Washington, DC 20037.

For further information, contact Bernard Gorden, Engineering Policy Branch, (202) 632-9660.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-14984 Filed 6-27-90; 8:45 am]

BILLING CODE 6712-01-M

Applications Hearings, Determinations, etc.; English Communications Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

I.

Applicant, city and state	File No.	MM docket No.
A. English Communications Limited Partnership; McClellanville, SC.	BPH-880606NP	90-301
B. Bull Broadcasting Corporation; McClellanville, SC.	BPH-880606NQ	
C. MSB Broadcasting Limited Partnership; McClellanville, SC.	BPH-8806060C	
D. Skyway Coastal Communications; McClellanville, SC.	BPH-8806060D	
E. Joseph Papp, III; McClellanville, SC.	BPH-8806060E	
F. Gilchrist Communications, Inc.; McClellanville, SC.	BPH-8806060G	
G. Cape Romain Broadcasting, Inc.; McClellanville, SC.	BPH-8806060B	
H. McClellanville Associates; McClellanville, SC.	BPH-8806060F [Dismissed Herein]	

Issue Heading and Applicant

1. See Appendix, B
2. Air Hazard, F
3. Financial, G
4. Comparative, A,L
5. Ultimate, A,L

II.

Applicant, city and state	File No.	MM docket No.
A. Roanoke Radio Limited Partnership, Roanoke, VA.	BPH-880601NB	90-295
B. Roanoke Valley Broadcasters, Limited Partnership; Roanoke, VA.	BPH-880602NA	
C. Susan D. Brown; Roanoke, VA.	BPH-8806020J	
D. Pamela R. Jones; Roanoke, VA.	BPH-8806020L	

Issue Heading and Applicants

1. Financial, A
2. Site Availability, A
3. Air Hazard, B,D
4. Comparative, A,B,C,D
5. Ultimate, A,B,C,D

III.

Applicant, city and state	File No.	MM docket No.
A. Kathy L. McElroy; Champaign, IL.	BPH-880629ME	90-298
B. Janet P. Brz; Champaign, IL.	BPH-880630MC	
C. Champaign-Urbana Broadcasting Corporation; Champaign, IL.	BPH-880630MF	
D. Lucille S. Bill; Champaign, IL.	BPH-880630MO	
E. R. Sherri Starr; Champaign, IL.	BPH-880630MR	
F. Holiday Broadcasting, Inc.; Champaign, IL.	BPH-880630MV	
G. SpaceCom, Inc.; Champaign, IL.	BPH-880630NB	
H. DOXA, Inc.; Champaign, IL.	BPH-880630NK	
I. Maria E. Barnard; Champaign, IL.	BPH-880630NM	
J. Maneci, Inc.; Champaign, IL.	BPH-880630NP	
K. Sebastopol Broadcast Group, Inc.; Champaign, IL.	BPH-880630NR	
L. Champaign FM Broadcasters Limited Partnership; Champaign, IL.	BPH-880630NV	

Issue Heading and Applicants

1. Financial Qualifications, D, K
2. Alien Control, K
3. Air Hazard, B, F, J
4. Comparative, A-L
5. Ultimate, A-L

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and conveing during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (McClellanville, South Carolina)

1. To determine whether B (Bull) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report changes in the broadcast interest of its principals.

[FR Doc. 90-15075 Filed 6-27-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0168.

Title: Application for Superfund Temporary or Permanent Relocation Assistance.

Abstract: Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), FEMA is responsible for relocating residents, businesses, and community facilities when the Environmental Protection Agency or other lead Federal agency has determined that such relocation assistance is required as a result of a hazardous materials response action that requires relocation for health and safety reasons. Permanent relocation assistance may be provided to eligibile residents, businesses, and community facilities and temporary relocation assistance may be provided to eligible individuals who are displaced for public health and safety reasons in connection with a Superfund hazardous substance response action or to allow the EPA or its agents to conduct clean-up activities. The information collected is used to determine the applicant's eligibility for assistance in accordance with FEMA regulations, 44 CFR parts 220 and 221; and Federal regulations, 49 CFR part 24. FEMA Form 90-90 is used to obtain information for temporary relocation assistance. No form is used to obtain information for permanent relocation assistance.

Type of Respondents: Individuals or household, State and local governments, farms, businesses and other for-profit, non-profit institutions, and small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 205 hours.

Number of Respondents: Permanent relocation assistance—20; temporary relocation assistance—500.

Estimated Average Burden Hours Per Response: Permanent relocation assistance—4 hours; temporary relocation assistance—.25 hour.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: June 19, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-15030 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-859-DR]

Amendment to Notice of a Major Disaster Declaration; Mississippi

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-859-DR), dated February 28, 1990, and related determinations.

DATED: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi dated February 28, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1990:

The county of Lincoln for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15031 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-867-DR]

Amendment to Notice of a Major Disaster Declaration; Missouri

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-867-DR), dated May 24, 1990, and related determinations.

DATED: May 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the Federal Register notice dated May 31 closing the incident period for this disaster is hereby rescinded. The incident period for this disaster is closed effective June 9, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15032 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-867-DR]

Amendment to Notice of a Major Disaster Declaration; Missouri

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of major disaster for the State of Missouri FEMA-867-DR), dated May 24, 1990, and related determinations.

DATED: May 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Missouri, dated May 24, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 24, 1990:

The counties of Benton, Clay, Cole, Dallas, Laclede, Lafayette, Lincoln, Maries, Miller, Montgomery, Morgan, Osage, Pettis, Pulaski, Ray, Saline, Warren and Washington for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15033 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATE: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliotte, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Athens, Butler, and Hamilton for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15034 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATE: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliotte, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Licking and Monroe for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15035 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATE: June 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990.

The counties of Belmont, Harrison, Hocking, Jefferson and Perry for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15036 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATE: June 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The county of Upton for Individual Assistance.

The counties of Liberty, Madison, Pecos, Trinity and Upton for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15037 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-02-M

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of meeting: August 8-9, 1990.

Place: Cervantes Convention Center, 10 South Broadway, St. Louis, Missouri.

Time: August 8—1:30 p.m.-5 p.m. (quarterly meeting), August 9-8:30 a.m.-12 p.m. (quarterly meeting), 2 p.m. to completion (field survey meeting).

Proposed agenda: Old business, new business, field survey meeting.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number: 301-447-1123) on or before July 23, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: June 18, 1990.

Laura A. Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90-15029 Filed 6-27-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200060-016.

Title: Port of New Orleans/Coastal Cargo Company Terminal Agreement.

Parties: Port of New Orleans (Port), Coastal Cargo Company (Coastal).

Synopsis: The Agreement amends the basic agreement to provide for Coastal to exercise an option to relet ten sections of the premises leased from the Port and have its rent increased proportionately.

Agreement No.: 224-200379.

Title: Maryland Port Administration/NYK Line Terminal Agreement.

Parties: Maryland Port Administration (MPA), NYK Line (NYK).

Synopsis: The Agreement provides for MPA to grant NYK a cargo incentive at the Port of Baltimore. MPA will pay to NYK $3.00 per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to cargo coming into and going out of MPA's terminal by direct vessel call.

By Order of the Federal Maritime Commission.

Dated: June 22, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-14940 Filed 6-27-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011288.

Title: Puerto Rico/North Europe Discussion Agreement.

Parties: Sea-Land Service, Inc., P&O Containers, Ltd., *Carol Lines Joint Service comprised of:* Hapag-Lloyd AG, Thos. & Jas. Harrison Ltd., Nedlloyd Lines, B.V., Compagnie Generale Maritime.

Synopsis: The proposed Agreement would authorize the parties to discuss and to voluntarily agree upon rates, practices and other matters relating to the trade between Puerto Rico and Northern Europe.

By Order of the Federal Maritime Commission.

Dated: June 22, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-14941 Filed 6-27-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Fuji Bank, Ltd. Tokyo, Japan; Application To Act as an Intermediary, Principal, and Broker in Interest Rate and Currency Swaps and Related Transactions

The Fuji Bank, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its wholly owned United States subsidiary, Fuji Capital Markets Corporation, New York, New York ("Company"), to engage *de novo* in the following activities:

1. Intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions;

2. Acting as an originator and principal with respect to certain risk-management products such as caps, floors and collars, as well as options on swaps, caps, floors and collars ("swap derivative products");

3. Acting as a broker or agent with respect to the foregoing transactions and instruments; and

4. Acting as an advisor to institutional customers regarding financial strategies involving interest rate and currency swaps and swap derivative products.

The Company would conduct the proposed activities on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or management or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975) ("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Fuji Bank contends that the proposed activities are closely related to banking under the *National Courier* test, and that permitting bank holding companies to engage in the proposed activities

would result in increased competition and gains in efficiency. Fuji Bank has applied for authorization to engage through Company in the full range of activities generally conducted by intermediaries and brokers in the international swap and interest rate management product markets. Fuji Bank contends that these activities have been previously approved by the Board. *The Sumitomo Bank*, 75 Federal Reserve Bulletin 583 (1989) ("*Sumitomo*"). Fuji Bank has made commitments derived from *Sumitomo* that are designed to manage the risk associated with these activities.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14982 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

KeyCorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *KeyCorp*, Albany, New York, and Key Bancshares of Wyoming Inc., Cheyenne, Wyoming; to engage *de novo* through their subsidiary, The Key Trust Company of the West, Cheyenne, Wyoming in performing trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14978 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

The M & B Capital Company, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 23, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The M & B Capital Company*, Mentor, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Merchants and Business Bank, Mentor, Ohio, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *North Fulton Bancshares, Inc.*, Roswell, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Milton National Bank, Roswell, Georgia, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Pawnee Holding Company, Inc.*, Pawnee, Oklahoma; to become a bank holding company by acquiring 99 percent of the voting shares of The Pawnee National Bank, Pawnee, Oklahoma.

Board of Governors of the Federal Reserve System, June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14979 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

South Carolina National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to acquire Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina, and thereby engage in deposit taking activities, lending and other activities pursuant to § 225.25(b)(9), and originating mortgage loans and other activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14980 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

Edward Lee Spencer, Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 12, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Edward Lee Spencer*, Auburn, Alabama to acquire an additional 4.25 percent of the voting shares of Auburn National Bancorporation, Auburn, Alabama, for a total of 18 percent and thereby indirectly acquire Auburn National Bank, Auburn, Alabama.

Board of Governors of the Federal Reserve System, June 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14981 Filed 6-27-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 035]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Centers for Agricultural Research, Education, and Disease and Injury Prevention

Introduction

The National Institute for Occupational Safety and Health (NIOSH) announces the availability of Fiscal Year 1990 funds for cooperative agreements with universities to establish centers for agricultural research, education, and disease and injury prevention.

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended.

Eligible Applicants

Eligible applicants include state and private universities and university-affiliated, not-for-profit medical centers within the United States of America. The restriction of eligible applicants is due to the Fiscal Year 1990 appropriations language which states that centers for agricultural occupational safety and health will be established at universities.

Availability of Funds

Approximately $1,600,000 will be available in Fiscal Year 1990 to fund two to four Centers. It is expected that the average award will be approximately $600,000, ranging from approximately $300,000 to $1,000,000. Funding estimates may vary and are subject to change. The awards are expected to become effective on or about September 30, 1990, and will be awarded for a 12-month budget period within a project period up to 5 years. Continuation awards within the cooperative agreement will be made on the basis of satisfactory progress and the availability of funds.

Purpose

This cooperative agreement program is designed to address the research, education, and intervention activities that are unique to agriculture by establishing centers for agricultural research, education, and disease and injury prevention that will (1) develop and conduct applied preventive research related to the occupational health and safety of agricultural workers and their families (all aspects of health and safety research, evaluation of disease and injury prevention programs, applied research and evaluation of engineering control technology and procedures, and research on ergonomic control technology may be considered); and (2) develop and conduct education and training programs on agricultural health and safety for agricultural workers and their families, graduate/professional students, health care professionals, and extension/outreach personnel.

The objectives of the Centers for Agricultural Research, Education, and Disease and Injury Prevention Program are as follows:

1. Develop and conduct applied preventive research related to the occupational health and safety of agricultural workers and their families.
2. Develop model educational programs on agricultural health and safety for agricultural workers and their families.
3. Develop model programs for the prevention of illness and injury among agricultural workers and their families.
4. Evaluate agricultural injury and disease prevention programs implemented by agricultural extension programs, state health departments, federal agencies, and others.
5. Conduct applied research and evaluation of engineering control technology and procedures developed by federal, state, and private agencies and research on ergonomic control technology.
6. Provide consultation and/or training to researchers, health and safety professionals, graduate/professional students, and agricultural extension agents.

Program Requirements

The activities related to the development of centers for agricultural research, education, and disease and injury prevention require substantial CDC/NIOSH collaboration and involvement. The nature and extent of these activities are described as follows:

A. Recipient Activities

1. Develop and conduct applied research related to the occupational health and safety of agricultural workers and their families.
2. Develop and conduct education and training programs on agricultural health and safety for agricultural workers and their families, extension/outreach personnel, and for graduate/professional education.
3. Develop a research protocol or protocols for the Center for Agricultural Research, Education, Disease and Injury Prevention. Obtain peer review of the protocol; revise and finalize as required for final approval.
4. Where appropriate, collaborate with NIOSH and other CDC scientists on complementary research areas that exist.
5. Collaborate with NIOSH and other CDC staff in reporting and disseminating research results and relevant health and safety education and training information to appropriate federal, state, and local agencies, health care providers, the scientific community, agricultural workers and their families, and management and union representatives.

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.
2. Provide scientific collaboration for appropriate aspects of the program.
3. Assist in the reporting and dissemination of research results and relevant health and safety education and training information to appropriate federal, state, and local agencies, health care providers, the scientific community, agricultural workers and their families, and management and union representative.

Evaluation Criteria

The application, which must include a proposal for both research and training components, will be reviewed based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement, and (b) the relevance of the proposal to the objectives. (20%)
2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) The proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and (b) the proposed method for evaluating the accomplishment. (20%)
3. Strength of existing program for agricultural health and safety in areas of (a) preventive program, (b) research, (c) education, and (d) multidisciplinary approach. (20%)
4. Strength of existing or proposed program for application and dissemination of information, including areas of (a) direct associations with agricultural agencies, state health departments, and federal agencies, and (b) direct associations with agricultural operators (manager/worker) and their families. (10%)
5. Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Driector to the program, and the novelty of program approach. (15%)
6. Training and experience of proposed Program Director and staff including (a) a Program Director who is a recognized scientist and technical expert, and (b) staff with training or experience sufficient to accomplish proposed program. (15%)

Other Requirements

Human Subjects

This program involves research on human subjects, therefore, all applicants must comply with the Department of Health and Human Services regulatons regarding the protection of human subjects. Assurance must be provided that demonstrates the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number (CFDA) for this program is 13.262.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305 on or before August 16, 1990.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, complete copies of application forms and other material may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E-14, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305, or by calling (404) 842-6630 (FTS: 236-6630).

Announcement No. 035, "Centers for Agricultural Research, Education and Disease and Injury Prevention," must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Dr. Stephen A. Olenchock, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, or by calling (304) 291-4256 or (FTS: 923-4256).

Dated: June 22, 1990.

J. Donald Miller,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 90-14906 Filed 6-27-90; 8:45 am]

BILLING CODE 4160-19-M

[Announcement Number Number 044]

Evaluation of Surveillance of Human Immunodeficiency Virus (HIV) Infection

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement applications to evaluate the usefulness of HIV infection reporting for both prevention and epidemiologic purposes.

Authority

This program is authorized under sections 301(a) and 311 of the Public Health Service Act (42 U.S.C. 241(a) and 243), as amended. Regulations governing the implementation of the legislation are covered under 42 CFR 52 "Grants for Research Projects."

Eligibility

Eligible applicants for this program are official State and local health agencies who are current recipients of HIV/AIDS Prevention and Surveillance cooperative agreements, who require HIV infection reporting by name or other unique identifier, and who, as of December 31, 1989, had received at least 500 HIV infection reports (excluding duplicates and infections reported anonymously) through this surveillance system. Applicants are limited to State and local health agencies because these agencies are legally empowered to conduct disease surveillance.

Availability of Funds

Approximately $700,000 will be available for Fiscal Year 1990 to fund 2-4 cooperative agreements. Awards are expected to range from $175,000 to $350,000. It is expected that the awards will begin about September 30, 1990, and will be for a 12-month budget period within a 1- to 3-year project period.

The funding estimates outlined above may vary and are subject to change, depending on availability of funds. Continuation awards within a project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds.

Purpose

The purpose of these awards is to assist State/local health departments in conducting an evaluation of HIV infection reporting. Collaborative projects involving States and CDC will allow for data collection among States to determine the usefulness of HIV infection reports in prevention activities and in monitoring trends in HIV infection in the community and determine the impact of HIV infection reporting on AIDS case surveillance.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

With technical assistance from CDC and in collaboration with other participants, each recipient will implement methods, techniques, and approaches for evaluating the usefulness of HIV infection reporting. Each recipient will participate in national planning and implementation meetings supported through travel funds awarded in the cooperative agreement.

Recipients will be required to use the CDC designed software and report form (or facsimile which includes all data elements in the CDC standardized report form) for data collection on persons with HIV infection and will need to convert previously collected data to this format. Other data collection procedures and forms will be developed so that core data items can be aggregated by CDC. In addition to core data items, participants may collect additional information specific to local needs. Each participant will develop a data base relevant to the individual project to be shared with CDC. This data base must be of limited access to insure confidentiality of persons with HIV infection or AIDS. In addition to collaborating with CDC in the analyses and presentation of core data items, participants would have lead responsibility for analysis and presentation of data collected for local purposes.

B. CDC Activities

CDC will assist the collaborator in conducting the evaluation of HIV infection reporting. In addition to financial support, CDC will provide assistance to the collaborator in the design and conduct of the projects, including providing technical guidance in the development of study protocols, data collection forms, training and pretesting as necessary, and the design of data management systems. CDC will provide standardized computer software and data collection forms for the initial report of persons with HIV infection to the health department, so that collaborating sites will be comparable to each other and to other sites with required HIV infection reporting but who are not participating in the cooperative agreement. CDC will have the lead responsibility for aggregation of data items from the standardized HIV report form and core data items from other data collection forms developed for the purposes of the cooperative agreement and for analyses and presentation of aggregate findings.

Evaluation Criteria

Applications will be reviewed and evaluated on the evidence submitted which specifically describes the applicant's abilities to meet the following criteria:

(1) The quality of plans to develop and implement the evaluation study, describing how potential sources of surveillance data (e.g., HIV test results, patient clinical or demographic information) will be identified accessed, and used, including a plan to protect the confidentiality of all surveillance data. (30 points)

(2) The ability to follow and/or analyze an adequate number of individuals infected with HIV to assure proper conduct of the study. The cumulative number of persons with HIV infection reported as of December 31,

1989, will be an important area of consideration. (15 points)

(3) The applicant's understanding of the objectives of the evaluation and the applicant's ability, willingness, and/or need to cooperate in a study with CDC and other participants, including use of standard data collection forms and software developed by CDC. (15 points)

(4) The applicant's current activities in HIV infection reporting and AIDS surveillance and how they will be applied to achieving the objectives of the evaluation study. (25 points)

(5) How the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of the facilities to be used during the evaluation study and a schedule of accomplishing the activities of the evaluation study. (15 points)

(6) The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds. (not scored)

Other Requirements

The information collection requirement of HIV infection reporting has been sent to OMB for review under the Paperwork Reduction Act. Nonexempt research activities involving human subjects must be reviewed and approved by an Institutional Review Board and the Office for Protection from Research Risks, National Institutes of Health.

Recipients must comply with the requirement to establish an HIV Program Review Panel as defined in the document entitled,

"CONTENT OF HIV/AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS, IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS (55 FR 23414, June 7, 1990)."

Executive Order 12372 Review

Applications are not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372 (45 CFR 100).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number assigned to this program is 13.118.

Application Submission and Deadline

The original and two copies of the application Form PHS-5161-1 (Rev. 3/89) must be submitted to Edwin L. Dixon, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, room 300, Mail Stop-E 14, 255 East Paces Ferry NE., Atlanta, Georgia 30335, on or before June 28, 1990.

Application forms should be available in the institution's business office or from the above address.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service Postmark or obtain a legibly-dated receipt from a commerical carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the critiera in either paragraph 1.a. or 1.b. immediately above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other materials may be obtained from Rose Belk, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Announcement Number 044, "Evalaution of Surveillance of HIV Infection" must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Patricia Fleming, PhD., Division of HIV/AIDS, Center for Infectious Diseases, 1600 Clifton Road, Mailstop G-29, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2050 or FTS 236-2050.

Dated: June 22, 1990.

Robert Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-14985 Filed 6-27-90; 8:45 am]

BILLING CODE 4160-18-M

[Announcement No. 037]

National Institute for Occupational Safety and Health; Cooperative Agreement Program for Occupational Respiratory Disease and Musculoskeletal Disorders Evaluation and Rehabilitation

Introduction

The National Institute for Occupational Safety and Health (NIOSH), CDC, announces the availability of Fiscal Year 1990 funds for cooperative agreement(s) to provide assistance for the development, implementation, and maintenance of a model program that will diagnose, evaluate, and rehabilitate individuals with occupational respiratory disease and musculoskeletal disorders.

Authority

The legislative authority for this program is authorized under sections 20(a) and 21(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a) and 670(a)), section 501(a) of the Federal Mine Safety and Health Act (30 U.S.C. 951(a)), and section 301 of the Public Health Service Act (42 U.S.C. 241), as amended.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments, and small, minority and/or women-owned businesses are eligible for the cooperative agreement(s).

Availability of Funds

Approximately $1 million is available in Fiscal Year 1990 for this cooperative agreement program. Approximately $500,000 will be provided for occupational respiratory disease evaluation and $500,000 for musculoskeletal disorders rehabilitation for a total of one or two awards. These funding estimates may vary and are subject to change. The awards are expected to be made around September 30, 1990, for a 12-month budget period within a project period of 3 to 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

Purpose

The purpose of this occupational respiratory disease and musculoskeletal disorders program is to assist in the development, implementation, and maintenance of a model program for the diagnosis, evaluation, and rehabilitation of individuals with occupational respiratory disease and occupational musculoskeletal disorders. This program may build on existing expertise of an institution or provide assistance in initiating a new program. Personnel for this program will include clinicians and basic scientists from many disciplines such as occupational and pulmonary medicine, physical therapy and rehabilitation medicine, nursing, health education, physiology, immunology, toxicology, and pharmacology. Additionally, this program will report and disseminate findings, relevant health and safety education and training information to state health officials, health care providers, workers, management, unions, and employers. It is envisioned that new research methods and techniques will be developed that improve the early recognition, rehabilitation, and therapy of these diseases and disorders.

The objectives for the occupational respiratory disease and musculoskeletal disorders evaluation and rehabilitation program are as follows:

1. Develop and refine a model program for evaluation and rehabilitation of occupational respiratory disease.
2. Develop and refine a model program for evaluation and rehabilitation of musculoskeletal disorders.
3. Evaluate the effectiveness of a model program for evaluation and rehabilitation of occupational respiratory disease.
4. Evaluate the effectiveness of a model program for evaluation and rehabilitation of musculoskeletal disorders.
5. Provide a collaborative focus for occupational health expertise in occupational respiratory disease and musculoskeletal disorders already existing in an institution.
6. Contribute to a better understanding of occupational respiratory diseases and musculoskeletal disorders.
7. Ultimately reduce the morbidity, mortality, and economic burden of occupational respiratory diseases and musculoskeletal disorders in the United States.

Program Requirements

The activities for this program require substantial CDC/NIOSH-awardee collaboration and involvement. Within this cooperative agreement program, there are two separate programs entitled: (1) Occupational Respiratory Disease and (2) Occupational Musculoskeletal Disorders Evaluation and Rehabilitation. Applicants may apply for either one or both. The nature and extent of program activities are described below:

1. *Recipient activities for the occupational respiratory disease program:*

a. Develop and conduct a model research program for the early recognition, evaluation, diagnosis, rehabilitation, and therapy of occupational respiratory diseases.

b. Collaborate with NIOSH in the reporting and disseminating of information on the organization, activities, and findings of the model research program and relevant health and safety education and training information to state and federal health officials, health care providers, workers, management, unions, and employers.

c. Review and assess the occupational respiratory disease referral base established at their institution. Expand existing referral base by recruiting additional individuals for evaluation. Establish working relationships with state and federal disability compensation programs to enroll workers for evaluation.

d. Develop a protocol or protocols for the evaluation and rehabilitation of occupational respiratory disease. Obtain peer review of the protocol; revise and finalize as required for final approval.

e. Develop a targeted list of occupational respiratory diseases to be evaluated toward effecting the model research program including, but not limited to, silicosis, coal workers' pneumoconiosis, asbestosis, occupational asthma, hypersensitivity pneumonitis, organic dust diseases, and acute toxic respiratory injuries.

2. *Recipient Activities for the Occupational Musculoskeletal Disorders Evaluation and Rehabitation Program:*

a. Develop and conduct a model research progam for the early recognition, evaluation, diagnosis, rehabilitation, and treatment of occupational musculoskeletal disorders.

b. Collaborate with NIOSH in the reporting and disseminating of information on the organization, activities, and findings of the model research program and relevant health and safety education and training information to state and federal health officials, health care providers, workers, management, unions, and employers.

c. Review and assess the occupational musculoskeletal disorders referral base established at their institution. Expand existing referral base by recruiting additional individuals for evaluation. Establish working relationships with state and federal disability compensation program to enroll workers for evaluation.

d. Develop a protocol or protocols for the evaluation and rehabilitation of occupational musculoskeletal disorders. Obtain peer review of the protocol; revise and finalize as required for final approval.

e. Develop a targeted list of occupational musculoskeletal injuries and disorders to be evaluated toward effecting the model research program including, but not limited to, low-back injuries, lower extremity disorders of occupational origin, repetitive motion injuries, and traumatic occupational injuries.

f. Develop new methods and techniques that improve the early recognition, pathogenesis, rehabilitation, and treatment of occupational musculoskeletal disorders.

3. *CDC/NIOSH Activities for the Occupational Respiratory Disease and Occupational Musculoskeletal Disorders Evaluation and Rehabilitation Programs:*

a. Provide professional assistance and scientific collaborstion for the conduct of the model program. Scientific resources for assistance include physicians, physical therapists, immunologists, physiologists, pharmacologists, nurses, technicians, statisticians, industrial hygienists, and other professionals.

b. Provide consultation and technical assistance in all phases of development, implementation, and maintenance of the program and collaborative project activities through site visits, correspondence, and administrative and professional communications with the model program.

c. Participate in the organization's peer review of the project protocol.

d. Assist in reporting and disseminating research findings as well as relevant health and safety education and training information to state health officials, health care providers, workers, management, unions, employers, and the scientific community.

e. Provide coordination between the program director and the scientific research community with expertise in occupational respiratory disease and musculoskeletal disorder conditions to ensure utilization of the most current information in the decision-making process.

f. Provide thorough, historical, and the most relevant scientific and programmatic data available regarding

occupational respiratory disease and musculoskeletal disorder conditions. Provide analysis of available data as needed.

g. Provide technical, scientific, medical, programmatic review of interim plans to ensure expertise consistent with the state-of-the-art.

Evaluation Criteria

The review of the application will be based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Technical merit and originality of the program proposal. (30%).

2. Relevance of the proposal to the scope and objectives described in this Announcement. (20%).

3. Training and experience of the proposed program director(s) and staff. The program director(s) must be a recognized scientist and technical expert, and must assume and provide assurances of major time commitment to the program. (15%).

4. Suitability of the facilities to conduct the program. (15%).

5. Proposed schedule for initiating and accomplishing the activities of the cooperative agreement. (10%).

6. The applicant's understanding of the objectives of the proposed initiative. (5%)

7. Plans for creative collaboration and coordination with local resources including establishment of working relationships with state and federal disability programs. (5/%)

Other Requirements

Human Subjects

This program involves research on human subjects, therefore, all applicants must comply with the Department of Health and Human Services regulations regarding the protection of human subjects. Assurance must be provided that demonstrates the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Paperwork Reduction Act

The projects that will be funded through the cooperative agreement mechanism of this program that invovled the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 13.262.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E–14, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305 on or before August 16, 1990.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the indepenent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Mailstop E–14, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, or by calling (404) 842–6630 (FTS: 236–6630).

Please refer to Announcement Number 037, when requesting information and submitting an application.

Technical assistance may be obtained from Dr. John E. Parker, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, or by calling (304) 291–4223 (FTS: 923–4223).

Dated: June 22, 1990.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 90–14690 Filed 6–27–90; 8:45 am]

BILLING CODE 4160–19–M

Advisory Committee on Childhood Lead Poisoning Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Time and Date: 1 p.m.–5 p.m., July 16, 1990; 8:30 a.m.–4 p.m., July 17, 1990.

Place: Centers for Disease Control, Center for Environmental Health and Injury Control, 4770 Buford Highway, Building 32 Conference room, Chamblee, Georgia 30341.

Statute: Open to the public, limited only by the space available.

Purpose: This Committee will provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, CDC, on revisions to the policy statement entitled "Preventing Lead Poisoning in Young Children," dated January 1985. The revised policy statement will reflect research findings since 1985.

Matters to be Discussed: This statement is used by pediatricians and lead screening programs throughout the United States. The Committee will consider new research findings on lead toxicity in making recommendations for updating the statement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sue Binder, M.D., Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop: F28, Atlanta, Georgia 30333, telephone: 404/488–4580, (FTS) 236–4580.

Dated: June 22, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–14691 Filed 6–27–90; 8:45 am]

BILLING CODE 4160–19–M

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), A Study of Mortality of U.S. Metal Miners, 1950–1990; Meeting

NAME: A Study of Mortality of U.S. Metal Miners, 1950–1990.

TIME AND DATE: 8:30 a.m.–11:30 a.m., July 19, 1990.

PLACE: Appalachian Laboratory, Room 203, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

STATUS: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

PURPOSE: To review the project entitled, "A Study of Mortality of U.S. Metal Miners, 1950–1990."

CONTACT PERSON FOR ADDITIONAL INFORMATION AND COPIES OF THE RESEARCH PROTOCOL: Harlan E. Amandus, Ph. D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 224, Morgantown, West Virginia 26505, telephone (304) 291–4476 or FTS 923–4476.

Dated: June 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–14693 Filed 6–27–90; 8:45 am]

BILLING CODE 4160–19–M

National Institutes of Health

National Cancer Institute; Meeting; Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, July 9, 1990, Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chase Room, Chevy Chase, Maryland 20815.

This meeting will be open to the public on July 9 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on July 9 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Susan E. Feinman, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892 (301/402–0944) will furnish substantive program information.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–15118 Filed 6–27–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Vestibular Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Vestibular Subcommittee of the National Deafness and Other Communications Disorders Advisory Board on July 6, 1990. The meeting will take place from 10 a.m. to 5 p.m. in Conference Room 7, Building 31 C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting which will be open to the public, is being held to discuss and recommend individuals to serve on a scientific panel to update the National Strategic Research Plan in the vestibular areas; and to compare the vestibular research portfolio of the NIDCD to the National Strategic Research Plan to (1) identify changes in the field since the Plan was developed; (2) recommend levels and areas of research activity; (3) recommend potential initiatives; and (4) report to the full Board on, or before, the scheduled January 14, 1991, meeting. Attendance by the public will be limited to space available.

Summaries of the subcommittee's meeting and a roster of participants may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communications Disorders, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Dated: July 22, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–15119 Filed 6–27–90; 8:45 am]

BILLING CODE 4140–01–M

A Study of Pneumoconiosis in Surface Coal Miners Who Have Submitted Examinations to NIOSH's Coal Workers X-Ray Surveillance Program; Meeting

Name: A Study of Pneumoconiosis in Surface Coal Miners Who Have Submitted Examinations to NIOSH's Coal Workers X-Ray Surveillance Program.

Time and Date: 1 p.m.–4 p.m., July 19, 1990.

Place: Appalachian Laboratory, room 203, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Purpose: To review the project entitled, "A Study of Pneumoconiosis in Surface Coal Miners Who Have Submitted Examinations to NIOSH's Coal Workers X-Ray Surveillance Program."

Contact Person for Additional Information and Copies of the Research Protocol: Harlan E. Amandus, Ph.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 224, Morgantown, West Virginia 26505, telephone (304) 291–4476 or FTS 923–4476.

Dated: June 21, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–14692 Filed 6–27–90; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4220–15; F–45607]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Arctic Slope Regional Corporation for approximately 5,328 acres. The lands involved are located in T. 9 S., R. 16 E., Umiat Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Times*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 30, 1990 to file an

appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 90-15019 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-020-00-4212-15; AZA 23648-03]

Classification of Public Lands; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

REALTY ACTION: Amended state selection application, Arizona.

1. The Arizona State Land Department has amended its petition for classification of land for state selection under the provisions of the Enabling Act of June 20, 1910 (36 Stat. 557), as amended. Original application AZA 23648-02 was published in the **Federal Register** on January 2, 1990 in Vol. 55, page 66.

2. BLM will examine the following additional 2,783.51 acres of public land to determine the suitability of disposal including any statutory constraints that would bar transfer to the state of Arizona.

Maricopa County

T. 1 N., R. 7 W.,
Sec. 2, lots 2 to 4, incl., SW¼NE¼, S½NW¼, N½SW¼.
T. 2 N., R. 7 W.,
Sec. 7, lots 1 to 4, incl., E½, E½W½.
T. 2 N., R. 8 W.,
Sec. 12, E½.
T. 3 N., R. 4 W.,
Sec. 1, N½N½.

Graham County

T. 7. S., R. 27 E.,
Sec. 7, lots 1 and 2, NE¼, E½NW¼, N½SE¼;
Sec. 8, lots 1 to 3, incl., NW¼, N½SW¼;
Sec. 9, lots 14 to 19, incl.

Graham and Greenlee Counties

T. 9 S., R. 31 E.,
Sec. 31, lots 2, 3, E½, E½W½.

3. In accordance with 43 CFR 2091.3-1(a), the above-described lands were segregated from appropriations under the public land laws and the mining laws for a period of two years from the date of the amended application filing, April 20, 1990.

The following entities are holders of the rights encumbering the described public lands, as shown.

Graham County Board of Supervisors.	A 12431, A 22826.
Arizona Electric Power Cooperative.	A 9015.
City of Safford	AR 02060.
Southern Pacific Railroad Company.	PHX 066643.
Mountain States Telephone and Telegraph Company.	AR 031315.
Southern California Edison company.	A 9678.
Bureau of Reclamation.	AR 031307.

Grazing Permittees	Allotment No.
Empire Southwest Company	3084
George Hazelton, Edna Herrara	3015
Frieda Leavell	3058
Belva John	4513
Lazy B Cattle Company	5058

4. Information concerning these lands and the proposed transfer may be obtained from Barbara Ahearn, Phoenix District Office, (602) 863-4464.

For a period of 60 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments may present their views in writing to the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify or cancel this action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, all persons asserting a claim to or interest in the described lands, other than holders of the leases, permits, withdrawal applications or rights-of-way listed, may file such claim with the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, with evidence that a copy thereof has been served on the Commissioner, Arizona State Land Department, 1616 West Adams, Phoenix Arizona 85007.

Dated: June 21, 1990.

Charles R. Frost,

Acting District Manager.

[FR Doc. 90-15022 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-32-M

[NV-050-4370-12; 0-00154 4310-HC

Las Vegas District Use of Helicopter and Motor Vehicles for Wild Horse and Burro Excess Animal Removals; Nevada

Notice is hereby given in accordance with Public Law 92-195 as amended by Public Law 94-579 that a public hearing will be held Friday, July 20, 1990. The hearing will begin at 8 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada and continue until 12 p.m.

The agenda is as follows:

1. Welcome and introductions.
2. Presentation and discussion of the use of helicopter for the capture of wild horses and burros in the Las Vegas District during the annual year of 1990.
3. Presentation and discussion of the use of motor vehicles for transporting wild horses and burros during the annual year of 1990.
4. Public comments.

The hearing is open to the public. Interested persons may make oral comments to the Bureau of Land Management during the public comment period on the day of the meeting or they may file written statements before the meeting for the District Managers consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board.

Ben Collins,

District Manager.

[FR Doc. 90-15008 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[Docket No. 0-00162]

Arizona: Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

SUMMARY: A meeting and field tour by the Yuma District Advisory Council will be held on Thursday, July 26, 1990. Council members will meet in Lake Havasu City, Arizona, and will tour Lake Havasu and surrounding Bureau of Land Management public lands.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory Council will be held Thursday, July 26, 1990, 9 a.m. to 2 p.m., in Lake Havasu City, Arizona. The agenda will include: (1) Parker Strip Recreation Plan; (2) Wilderness Bill status; (3) update on contracts; (4) FY 91 Annual Work Plan priorities; (5) La Posa LTVA proposed management changes; and (6) Lower Colorado River Floodway Task Force Report. The meeting will commence at The London Bridge Ramada Inn Resort, and a field trip of Lake Havasu and surrounding public lands will follow.

The public is invited to attend the meeting and the field trip, but must provide their own transportation. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Herman L. Kast,

District Manager.

Dated: June 19, 1990.

[FR Doc. 90-15009 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-32-M

[Docket No. CA-065-09-3110-10-DTNA; 0-00160]

Notice of Realty Action—Exchange; California

AGENCY: United States Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action, Exchange of public and private lands in Kern County, CA 25521, CA 26238, CA 26393, CA 27147.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):
CA 25521, Selected public lands:

San Bernardino Meridian, California

T. 11 N., R. 10 W.,
Sec. 8, NW¼NW¼SE¼

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 22, SE¼SE¼NE¼.

Containing 20 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Fred and Veronica Reinelt.
CA25521 offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 21, SE¼SW¼SE¼.
Sec. 31, Parcel 3 of Parcel Map 3403, in the City of California City, County of Kern, State of California, as per parcel map filed June 22, 1976 in Book 16, Page 55 of Parcel Maps, in the Kern County Recorder's Office.

Containing 20.11 acres of non-federal lands, more or less.

CA 26238, selected public lands:

San Bernardino Meridian, California

T. 11 N., R. 10 W.,
Sec. 8, E½SW¼.

Containing 80 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Chrystal Collins. CA 26238, offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 13, Parcels 1-4 inclusive of parcel map 1368 in the unincorporated area, county of Kern, State of California, as per map filed October 23, 1973 in Book 7, Page 114 of Parcel Maps in Kern County Recorder's Office, and the S½SE¼NE¼.

Containing 40.43 acres of non-federal lands, more or less.

CA 26393, selected public lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. Sec. 22, SW¼NE¼, N½SE¼, E½SW¼SE¼.

Containing 140 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from David Orton, Patricia Orton, Jerry Bower and Jeanette Bower
CA 26393, offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.
Sec. 5, E½SW¼SE¼, SW¼SW¼SE¼, SE¼SW¼, S½SW¼SW¼, NE¼SW¼ SW¼, NW¼SW¼.

Containing 140 acres of non-federal lands, more or less.

CA27147, selected public lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Sec. 14, W½SE¼SW¼.

Containing 20 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Bruce Bergey.

CA 27147, offered lands:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec. 5, NW¼SW¼SE¼, SW¼SW¼SW¼
Containing 20 acres of non-federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire non-federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range. This Notice is issued to provide supplementary information to Notice of Realty Action CA 23082, published in Volume 54, Number 4, of the **Federal Register**, January 6, 1989. The segregative effect will end upon issuance of patent or two years from the date of first publication, whichever occurs first. The values of the lands to be exchanged are approximately equal; equalization of values required by law will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of federal ownership will be subject to the following reservations, terms and conditions:

1. *Reservations to the United States:* (a). Right of way for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. *Subject to:* (a). Public easements in favor of Kern County and California City for road and utility purposes. (b). Such rights as I & M Sheep Company has to graze the land until July 31, 1991, in accordance with section 15 Taylor Grazing Act lease No. 6550 (applies to selected public land in section 8, T.11N., R10W., S.B.M.).

Private lands to be acquired by the United States will be subject to easements and mineral reservations noted in the preliminary title reports. The exchanges are scheduled to be completed in November of 1990.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375-7125. Information relating to these exchanges is available for review at the Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California 93555.

DATES: For a period of 45 days from the date of first publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of

objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 18, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90-15015 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-33-M

[OR 44939]

Noncompetitive Lease; Realty Action; OR

June 20, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described parcel of public land is being considered for noncompetitive lease under section 302 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1732), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 3 S., R. 3 E.,

Sec. 1, Lot 1 and a portion of Lot 14.

The above-described parcel contains approximately 19 acres in Clackamas County. The exact area will be determined upon a metes and bounds survey of the lease area.

The purpose of the lease would be to facilitate a proposed 27-hole public golf course proposal. Most of the golf course would be developed on the adjoining private land (approximately 220 acres). The inclusion of the public land parcel is not essential to the development of the golf course but it would improve the layout of the course. Since the use would be tied to the adjoining private land development, the land would be offered for lease without competition.

The above-described parcel is being considered for lease to Frank J. and Joyce D. Bastasch, proponents of the golf course proposal. The lease would be issued for a term of 20 years with a right of renewal for another 20 years.

Detailed information concerning this proposal, including the environmental assessment/land report, is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Clackamas Area Manager, Salem District Office, address above. Any objections will be reviewed by the Salem District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections this realty action will become the final determination of the Department of the Interior.

Richard A. Whitley,

Clackamas Area Manager.

[FR Doc. 90-15008 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-33-M

[WY-060-90-433-12-24-11]

Recreation Management Restrictions, etc.: Wyoming; Camping Stay limits

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of 14-day camping limit on all public lands in Wyoming.

SUMMARY: In accordance with 43 CFR, part 8364, subpart 8364.1 and part 8365, persons may camp or occupy any specific location within designated campgrounds or on undeveloped public lands within the State of Wyoming for a period of not more than 14 days within any period of 28 consecutive days. Exceptions would include areas closed to camping, areas with specially designated camping-stay limits, and activities authorized by permit. The 28-day period will begin when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through several separate visits or through 14 days of continuous occupation during the 28-day period. After the 14th day of occupation, campers must move outside of a 5 mile radius of the previous location. The authorized officer may give written permission for extension of the 14-day limit, if extenuating circumstances warrant. Camping means overnight occupancy. Occupancy is defined as the taking or holding possession of a camp or residence on public land.

EFFECTIVE DATE: Shall be the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: James K. Murkin, Deputy State Director, Division of Lands and Renewable Resources, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, (307) 775-6113.

SUPPLEMENTARY INFORMATION: This occupancy and camping-stay limit is being established in order to assist the Bureau in reducing the incidence of unauthorized long-term occupancy being conducted under the guise of camping, both with campgrounds and on undeveloped public lands.

Dated: June 20, 1990.

F. William Eikenberry,

Associate State Director.

[FR Doc. 90-15020 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-90-4730-12]

Colorado: Filing of Plats of Survey

June 22, 1990.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 22, 1990.

The plat representing the dependent resurvey of a portion of the east boundary and the subdivision of sections 25 and 26, T. 7 N., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 885, was accepted June 5, 1990.

The plat representing the dependent resurvey of portions of the Twelfth Standard Parallel North (south boundary), T. 49 N., Rs. 9 and 10 E., the east boundary, and the subdivisional lines, and the subdivision of section 12, T. 48 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group No. 906, was accepted June 5, 1990.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of sections 12 and 13, T. 50 N., R. 7 E., New Mexico Principal Meridian, Colorado, Group No. 923, was accepted June 5, 1990.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat correcting the bearing on the east half of the line between sections 28 and 33 and on the east half of the south boundary of section 33, T. 35 N., R. 17 W., New Mexico Principal Meridian, Colorado was accepted June 5, 1990.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90-15021 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-90-4214-11; IDI-010804]

Notice of Proposed Continuation of Withdrawals, Correction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct an error in the land description for a notice of proposed continuation of withdrawal for the Magic Mountain Recreation Area.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The land description in the notice of proposed continuation of withdrawal published on May 17, 1990, 55 FR 20638, second column, lines 5 and 6 under Magic Mountain Recreation Area, which read "east of the Rock Creek Road), W½NW¼NE¼, and NE¼NW¼." are hereby corrected to read "east of the Rock Creek Road), NW¼NE¼, and NE¼NW¼."

Dated: June 21, 1990.

William E. Ireland, Chief,

Realty Operations Section.

[FR Doc. 90-15000 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of the Draft Environmental Assessment and Land Protection Plan; Proposed Tallahatchie National Wildlife Refuge, Quitman, Tallahatchie, and Grenada Counties, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Tallahatchie National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Clarksdale and Grenada encompassing parts of Tallahatchie, Grenada, and Quitman Counties of Mississippi. The purpose of the proposed action is to provide protection and management for wintering and breeding waterfowl and other wildlife on approximately 15,000 acres of agri-wetlands and associated habitats in the area. A Draft Environmental Assessment and Land Protection Plan has been developed by Service biologists in coordination with the Mississippi Department of Wildlife, Fisheries, and Parks; other Federal agencies, and private groups to consider the biological, environmental, and socioeconomic effects of acquiring 15,000 acres in the area to establish a national wildlife refuge. In the assessment, three alternatives and their impacts on the environment are evaluated. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public as of June 29, 1990. Written comments must be received no later than August 17, 1990.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Charles Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objective of the proposal is to preserve wintering habitat for Canada geese, mallards and pintails and production habitat for wood ducks to help meet the habitat goals presented in the North American Waterfowl Management Plan. The Lower Mississippi River Valley is an important source of habitat for migrating and wintering waterfowl in the Mississippi Flyway. The proposal area historically has wintered large concentration of ducks and could provide excellent waterfowl management potential through retention of water in agricultural fields and greentree reservoir development. Secondary compatible uses might include public outdoor activities such as sport fishing, limited hunting, bird watching, nature photography, and other nonconsumptive wildlife-oriented recreation.

The Tallahatchie River Basin is significant to wintering waterfowl because of: (1) Its geographic location in the Mississippi Flyway, (2) the existence of water control devices, and (3) seasonal flooding. The scattered bottomland hardwood forests, the moist soil plant production areas, and other associated habitats contribute to the great diversity of other wildlife. Game species and furbearers found on the area include white-tailed deer, squirrels, rabbits, foxes, and beaver. Numerous wading birds, shorebirds, common raptors, and various passerines use the area during migration and for summer breeding.

The proposed area consists of two separate units 20 miles apart totalling 15,000 acres in northwestern Mississippi. Black Bayou, the northern unit, is situated in the southeast corner of Quitman and adjacent Tallahatchie Counties 25 miles southeast of Clarksdale. The Bear Lake unit lies along the Tallahatchie-Grenada County line 10 miles west of Grenada. Mathews Brake National Wildlife Refuge lies approximately 30 miles south of Bear Lake.

The Environmental Assessment was developed by the Service in consultation with representatives from the Mississippi Department of Wildlife, Fisheries, and Parks, several conservation organizations, and major landowners. The biological, environmental, and socioeconomic effects of acquiring 15,000 acres of waterfowl habitat in the area to establish a national wildlife refuge have been considered. Three alternatives and their potential impacts on the environment are presented and evaluated. The Service believes the preferred alternative, Acquisition and Management by the Fish and Wildlife Service, is a positive step in preventing the loss of additional acres needed to support waterfowl populations in the Lower Mississippi River Valley.

Dated: May 30, 1990.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 90-15007 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Martin Van Buren National Historic Site Kinderhook, NY; Postponement of Public Review Period for Amendment to the 1986 Development Concept Plan

In accordance with the National Park Service Planning Guidelines in the preparation of Development Concept Plans and Environmental Assessments, notice is hereby given that the National Park Service is amending the 1986 Development Concept Plan/ Environmental Assessment for Martin Van Buren National Historic Site Park Operations and Visitor Facilities. On Wednesday, May 30, formal notification was given in the **Federal Register** Vol. 55 No. 104, that the final amendment would be available for review from the Superintendent beginning June 1, 1990. Notice is hereby given that the review of a final document has been postponed for design considerations of the structure. Information on this process may be obtained from the Superintendent, Martin Van Buren National Historic Site, P.O. Box 545, 9H, Kinderhook, New York 12106. The National Park Service prepares Development Concept Plans to ensure adequate consideration of reasonable alternatives in advance of undertaking development proposals.

Dated: June 21, 1990.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 90-15072 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-79-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project 1029-0063, Washington, DC 20503, telephone 202-395-7340.

Title: Application for Blaster Certification in Federal Program States and on Indian Lands.

Abstract: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.

Bureau Form Number: OSM-74

Frequency: On occasion.

Description of Respondents: Individuals seeking certification as Blasters.

Estimated Completion Time: 1 hour.

Annual Responses: 330.

Annual Burden Hours: 290.

Bureau clearance officer: Andrew F. DeVito, (202) 343-5150.

Dated: May 2, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-15004 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions for the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0091), Washington, DC 20503. Telephone number 202-395-7340.

Title: Requirement for surface coal mining and reclamation operations on Indian lands.

OMB Number: 1029-0091.

Abstract: Operators who propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the permitting and approval requirements of part 750 which supplements the regulatory program by specifying additional requirements unique to Indian lands and outside the scope of the regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Surface Coal Mining Companies.

Estimated Completion Time: 90 hours.

Annual Responses: 18.

Annual Burden Hours: 1620.

Bureau Clearance Officer: Andrew F. DeVito, (202) 343-5150.

Dated: June 5, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-14998 Filed 6-27-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-312 (Sub-No. 1X)]

South Carolina Central Railroad Co., Inc.—Abandonment Exemption—in Florence, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment by South Carolina Central Railroad Company, Inc. of 2,460 feet of rail line in Florence, SC, subject to standard labor protective conditions, an environmental condition, and a historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 28, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 8, 1990, petitions to stay must be filed by July 16, 1990, and petitions for reconsideration must be filed by July 26, 1990. Requests for a public use condition must be filed by July 9, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-312 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-15027 Filed 6-27-90; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-44]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Notice is hereby given of the public availability of the Final Environmental Impact Statement (EIS), Tier-2, for the Ulysses mission. The EIS addresses NASA's decisionmaking associated with the completion of preparation and operation of the Ulysses spacecraft, including its planned launch in October 1990.

Comments on the draft EIS were previously solicited from Federal, State and local agencies and members of the public through notices published in the **Federal Register:** NASA notice on February 22, 1990 (55 FR 6328); Environmental Protection Agency notice on February 23, 1990 (55 FR 6443).

Copies of the draft and final statement have been furnished to the Council on Environmental Quality; the Environmental Protection Agency; the Departments of Air Force, Commerce, Defense, Energy, Health and Human Services, and Transportation; the National Academy of Sciences; the Office of Management and Budget; to appropriate State and local agencies; and to numerous private organizations.

Copies of the final statement and final Safety Analysis Report may be examined by contacting the Freedom of Information Act Office at any of the following locations:

(a) National Aeronautics and Space Administration, Washington, DC 20546 (202-453-2939).

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415-694-4190).

(c) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301-286-6255)

(d) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818-354-5179).

(e) NASA, Johnson Space Center, Houston, TX 77058 (713-483-3671).

(f) NASA, Kennedy Space Center, Kennedy Space Center, FL 32899 (407-867-2201).

(g) NASA, Langley Research Center, Hampton, VA 23665 (804-864-6125).

(h) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216-433-2902).

(i) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (205-544-0031).

(j) NASA, Stennis Space Center, Stennis Space Center, MS 39529 (601-688-2164).

Additionally, interested parties may obtain copies of the final EIS from the National Technical Information Service by calling 703-487-4650 and requesting the document by its title.

Dated: June 22, 1990.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 90-15071 Filed 6-27-90; 8:45 am]

BILLING CODE 7510-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

NATIONAL SCIENCE FOUNDATION

Astronomical Sciences; Notice of Intent to Prepare an Environmental Impact Assessment

SUMMARY: The National Radio Astronomy Observatory (NRAO), a National Astronomy Center operated by Associated Universities, Inc., under contract with the National Science Foundation (NSF), is proposing to construct a fully steerable, 100-meter-class radio telescope in Green Bank, Pocahontas County, West Virginia. The Green Bank site for the telescope, owned by the NSF, is located in the National Radio Quiet Zone which was established in 1958 specifically to protect the electromagnetic environment of the radio telescopes located and to be built on the site.

The construction of the Green Bank Telescope entails site preparation for a wheel and track, elevation over azimuth, configuration on a foundation of a cast-in-place concrete ring of approximately 50 meters (165 feet) diameter, and the assembly and erection of a solid-surface reflector of a projected diameter of approximately 100 meters (330 feet). Operation, to start in 1996, will be continuous and identical to the operation of existing telescopes at the Green Bank site.

The NSF will prepare an Environmental Impact Assessment prior to the beginning of construction. All interested Federal, state, and local agencies and private organizations are invited to submit, by July 30, 1990, comments and/or requests for further information on the proposed construction.

ADDRESS AND POINT OF CONTACT: National Science Foundation, 1800 G Street, NW., Washington, DC 20550. *Attn:* Dr. Julian Shedlovsky, (202/357-9752).

Dated: June 22, 1990.

David A. Sanchez,

Assistant Director, Mathematical and Physical Sciences, National Science Foundation.

[FR Doc. 90-15058 Filed 6-27-90; 8:45 am]

BILLING CODE 7555-01-M

Meeting

Name: Task Force on Persons with Disabilities.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Date: July 17 and 18, 1990.

Time/room: July 17: 9 a.m.-5 p.m., room 540. July 18: 8:30 a.m.-3 p.m., room 540.

Type of Meeting: Open.

Contact: Brenda M. Brush, Executive Secretary of the Task Force, National Science Foundation, room 548. Telephone Number: 202-357-5012; TDD: 357-9867.

Purpose of Meeting: To hear from two final witnesses and to develop preliminary findings and recommendations for Foundation action to catalyze removal of barriers to participation in science and engineering careers for persons with disabilities.

Minutes: May be obtained from the Executive Secretary at the above address.

Agenda: Tuesday, July 17: 9 a.m.: Presentation by Commissioner Nell C. Carney of the Department of Education; 10:15 a.m.: presentation by Dr. Harry Lang of the Rochester Institute of Technology; 11:15 a.m.July 17 through 3 p.m. July 18: members will develop, in working sessions, preliminary findings and recommendation to be included in the Task Force's final report.

Accommodation: If you plan to attend the meeting and require any kind of accommodation, please notify the Executive Secretary.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-15057 Filed 6-26-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12-14, 1990, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on May 22, 1990 (55 FR 21128). This revision incorporates additional sessions on Thursday and Friday.

Thursday, July 12, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will briefly report regarding items of current interest.

8:45 a.m.-9:45 a.m.: Systematic Assessment of Licensee Performance (Open)—Representatives of the NRC staff and industry will brief the Committee and discuss proposed changes in the SALP process based on a survey of the regulatory impact on plant operations.

10:00 a.m.–12:00 Noon and 1:00 p.m.–2:00 p.m.: EPRI Requirements for Advanced Light-water Reactors (Open)—The Committee will review and report on the staff's Safety Evaluation Report regarding Chapters 1–5 of the EPRI Requirements Document for Advanced LWRs. Representatives of the NRC staff and ERPI will participate as appropriate.

2:15 p.m.–3:15 p.m.: Requirements For An Essentially Complete Design (Open)—Representatives of the NRC staff will brief the Committee and discuss the status of the development of requirements for an essentially complete design for evolutionary light-water reactors.

3:15 p.m.–4:45 a.m.: Emergency Operating Procedures and Probabilistic Risk Assessment for Shutdown Modes of Reactor Operation (Open)—Representatives of the NRC staff will brief the Committee regarding the status of emergency operating procedures and PRAs for shutdown modes of reactor operation.

4:45 p.m.–5:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of subcommittee activity in designated areas of responsibility including thermal-hydraulic phenomena and the scope and nature of the ACRS annual report on the NRC research program.

5:30 p.m.–6:15 p.m.: NRC Personnel Policies and Practices (Closed)—The Committee will discuss the status of proposed NRC personnel action.

This session will be closed to discuss internal personnel practices of the agency and information, the release of which would represent an unwarranted invasion of personal privacy.

Friday, July 13, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–10:30 a.m.: Nuclear Power Plant Operating Experience (Open/Closed)—Representatives of the NRC staff will brief the Committee and discuss recent operating events and incidents including the discovery of flaw indications and cracks in reactor pressure vessel heads and in a primary system pressurizer, malfunctions of molded case circuit breakers, failure of operators to pass requalification exams, a proposed change in the frequency of steam turbine stop valve testing in Westinghouse nuclear plants, and miscellaneous items as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to these events.

10:45 a.m.–11:30 a.m.: Fire Damper Reliability (Open)—Representatives of the NRC staff and of the industry will brief the Committee on the status of the ongoing work on fire damper reliability.

11:30 a.m.–12:15 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 p.m.–2:45 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports to NRC regarding items considered during this meeting.

2:45 p.m.–3:45 p.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss procedures for conduct of ACRS subcommittee and subgroup meetings.

4:00 p.m.–5:30 p.m.: Generic Issue B–56, "Diesel Generator Reliability" (Open)—The Committee will review and report on the NRC staff's proposed resolution of Generic Issue B–56, "Diesel Generator Reliability." Representatives of the staff and the NUMARC will participate, as appropriate.

5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports to the NRC, as appropriate.

Saturday, July 14, 1990 Room P–110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports to the NRC.

11:30 a.m.–12:30 p.m.: Miscellaneous (Open)—The Committee will complete the discussion of items considered during this meeting and related matters.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss internal personnel practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: June 22, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 15028 Filed 6–27–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529, and 50–530]

Arizona Public Service Co., et al., Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 Palo Verde Nuclear Generating Station Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that a Petition pursuant to § 2.206 of Title 10 of the Code of Federal Regulations (CFR) of May 22, 1990 has been filed with the Commission by Mrs. Linda E. Mitchell (Petitioner). Petitioner states that she is employed by the Arizona Public Service Company (licensee) as an associate electrical engineer at the Palo Verde Nuclear Generating Station (Palo Verde). Petitioner alleges that serious violations exist at Palo Verde in the systems for emergency lighting and fire protection, and that licensee personnel acted improperly to "water down" NRC inspection findings, suppress other serious violations, and discredit an NRC inspector. In addition, Petitioner alleges that NRC Region V agreed to "water down" inspection report findings and retaliated against the NRC inspector in question. Petitioner claims that these actions will chill efforts by NRC inspectors and employees of NRC-licensed facilities to raise safety concerns.

Allegations in the Petition concerning improprieties by NRC personnel have been referred to the Office of the Inspector General for its consideration. Any inquiries regarding those allegations should be directed to the Office of the Inspector General. The remaining allegations in the Petition have been referred to the Director of the Office of Nuclear Reactor Regulation for the preparation of a Director's Decision pursuant to 10 CFR 2.206. As provided by § 2.206, appropriate action will be taken with regard to the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Palo Verde facility located at the Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 21st day of June 1990.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90–15045 Filed 6–27–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw the May 4, 1990 application for proposed amendment to Facility Operating License No. NPF–38 for the Waterford Steam Electric Station, Unit No. 3, located in St. Charles Parish, Louisiana.

The proposed amendment would have revised the license to extend the implementation date of Amendment No. 60 concerning the transfer of control and performance of licensed activities from Louisiana Power and Light Company to Entergy Operations, Inc.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 10, 1990, (55 FR 19682). However, by letter dated June 6, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 4, 1990, and the licensee's letter dated June 6, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 22nd day of June 1990.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 15042 Filed 6–27–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc.; Withdrawal of Application for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw the May 4, 1990, application for proposed amendments to Facility Operating License Nos. DPR–51 and NPF–6 for the Arkansas Nuclear One, Unit Nos. 1 and 2, located in Pope County, Arkansas.

The proposed amendment would have revised the license to extend the implementation dates of Amendment Nos. 128 and 102 concerning the transfer of responsibilities from Arkansas Power and Light Company to Entergy Operations, Inc.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 10, 1990 (55 FR 19682). However, by letter dated June 7, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 4, 1990, and the licensee's letter dated June 7, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72901.

Dated at Rockville, Maryland, this 21st day of June 1990.

For the Nuclear Regulatory Commission.

Richard P. Denley,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 15043 Filed 6–27–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric and Gas Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 38 to Facility Operating License No. NPF–57 issued to the Public Service Electric and Gas Company (the licensee), which revised the Technical Specifications for operation of the Hope Creek Generating Station, located in Salem County, New Jersey. The amendments were effective as of the date of issuance and will be implemented within 60 days of its date of issuance.

The amendments revised Technical Specifications to 5.6.3, Spent Fuel Storage Capacity, to permit the installation of the necessary rack capacity for storage of 4006 spent fuel assemblies.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the Federal Register on November 22, 1989 (54 FR 48340). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 11, 1989, (2) Amendment No. 38 to License No. NPF–57, and (3) the Commission's related

Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, D.C. 20555 and at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 21st day of June 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-15044 Filed 6-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Materials License No. 20-06799-02; Docket No. 030-04659-CivP; ASLBP No. 90-616-02-CivP]

Cambridge Medical Technology Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Cambridge Medical Technology Corporation

[Materials License No. 20-06799-02; E.A. 89-233]

This Board is being designated pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support, dated May 22, 1990, entitled "Order Imposing A Civil Monetary Penalty" (55 FR 22419, June 1, 1990).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Judge John H. Frye, III, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge James H. Carpenter, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Frederick J. Shon, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this fifteenth day of June 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-15046 Filed 6-27-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Extension of SF 3102 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, SF 3102, Designation of Beneficiary—FERS. This form is used by Federal employees or annuitants who wish to designate a beneficiary to receive the lump-sum payment due from the Federal Employees Retirement System (FERS) in the event of death.

Approximately 400 forms are completed annually, each requiring approximately 15 minutes to complete, for a total public burden of 100 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received by July 30, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3235 Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-15017 Filed 6-27-90; 8:45 am]

BILLING CODE 6325-01-M

Notice of Request for Extension of SF 3106 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, SF 3106, Application for Refund of Retirement Deductions (FERS). The information collected permits OPM to determine whether the respondent is eligible to receive the refund, whether to withhold Federal income tax, and whether there is an impediment to the payment in the form of any court order relating to the refund.

Approximately 75,000 forms are completed annually, each requiring approximately 30 minutes to complete, for a total public burden of 37,500 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received by July 30, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3235 Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606-0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-15018 Filed 6-27-90; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences/ Articles Eligible for Duty-Free Treatment, etc.

Review and solicitation of public comment: U.S. International Trade Commission Public Report assessing economic impact of proposed modifications of the list of articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP) as a result of petitions filed for special GSP Review for certain Andean Countries.

ACTION: Corrected notice.

SUMMARY: This notice corrects a previous notice of June 21, 1990 (55 FR 25388). The GSP Subcommittee of the Trade Policy Staff Committee hereby corrects the date established for submitting public comments on the U.S. International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the Special GSP Review for Bolivia, Colombia, Ecuador and Peru. The original notice posted the deadline for submitting comments on the USITC report as 5 p.m. Monday, July 2, 1991. That deadline should have read 5 p.m. Monday, July 2, 1990. All other aspects of the previous notice remain unchanged.

David Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90-14997 Filed 6-27-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW, Washington, DC 20549.

Approval Revised Form N-SAR [17 CFR 274.101] File No. 270-202

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-SAR under the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1 *et seq.*).

Form N-SAR is used by registered investment companies for annual or semi-annual reports required to be filed with the Commission. Approximately 3,400 registered investment companies each spend from 6 to 31.5 hours, annually, complying with the requirements of the form.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235-0330, room 3208 NEOB, Washington DC 20503.

Dated: June 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14961 Filed 6-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28140; File No. SR-NASD-90-31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Conforming Amendments to the PORTAL Market Rules.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Part I, PORTAL Rules

In adopting new SEC Regulation S,[1] the Commission provided that issuers had the option to rely upon Release No. 4708 (July 9, 1964) for a ninety-day period following the effective date of Regulation S. The ninety-day period expires July 24, 1990.

The NASD is proposing to amend the definition of qualified exit transaction in section 18(b)(1) to part I of the PORTAL rules to delete the language providing PORTAL participants, as that term is defined in the PORTAL rules, the ability to exit the PORTAL Market in reliance on an exemption from registration under section 5 of the Securities Act of 1933 ("Securities Act") provided by Release No. 4708 after July 24, 1990. The NASD is, therefore, proposing that this amendment become effective July 25, 1990.

The NASD is also proposing to replace the word "and" with the word "or" in section 19(a) to part I of the PORTAL Rules.

Part II, PORTAL Rules

The NASD is proposing to delete section 2(a)(4) to part II of the PORTAL rules as inconsistent with the provisions of rule 144A. The provision requires that PORTAL designation be obtained with respect to any security underlying a convertible or exchangeable security for which PORTAL designation is requested. As a result of the SEC's adoption of a test of "fungibility" for securities to be eligible for resale pursuant to rule 144A, the PORTAL rule provision can lead to the unintended result that securities otherwise eligible under rule 144A would not be eligible for PORTAL designation.

Language in subsections 2(c)(1)(v), 2(c)(2)(iii), and 2(c)(3) referencing securities underlying convertible and exchangeable securities is also proposed to be deleted.

Part III, PORTAL Rules

The NASD is proposing to amend section 3(a) to permit PORTAL brokers to engage in "riskless principal" transactions in conformance with the definition of that term in rule 144A(a)(5).

The NASD is also proposing to amend section 3(c) to provide for annual re-evaluation of the Audited Financial Statements of a PORTAL dealer in order to demonstrate continuing compliance with rule 144A(a)(1) in conformity with the 16-month standard in rule 144A(d)(1).

Minor clarifying amendments are also proposed to subsections 3(d)(1), 3(d)(2), and 3(e) to clarify the applicability of those provisions where a non-clearing PORTAL dealer or PORTAL broker is accessing the PORTAL depository and clearing organizations through another NASD member providing clearing services. Another amendment to subsection 3(d)(3) corrects the reference to the provision imposing the requirement of a review of a PORTAL dealer's and PORTAL broker's supervisory procedures from subsection 1(b)(7) to 1(b)(8).

Part IV, PORTAL Rules

When the PORTAL rules were originally filed with the SEC on July 17, 1988, the SEC had not proposed rule 144A for comment. Thus, the NASD's proposal was a speculative attempt to anticipate the type of requirements that should apply to secondary trading of securities defined as "restricted" under rule 144(a)(3).

One of the originally proposed provisions that remained in the final version of the PORTAL rules was section 1(b)(2) of part IV that requires that an applicant be a PORTAL

[1] Securities Act Release No. 6863 (April 24, 1990).

qualified investor demonstrate that purchases and sales of PORTAL securities in the PORTAL Market are exempt from state law requirements related to securities or broker/dealer registration.

In the final version of rule 144A, the SEC adopted Preliminary Note 4 to the rule admonishing persons who rely on rule 144A of their obligations to comply with state securities law. The NASD is proposing to delete section 1(b)(2) to part IV of the PORTAL rules on the basis that Preliminary Note 4 to rule 144A obviates the need for the PORTAL rule provision.

In its adoption of the final version of rule 144A(d)(1), the SEC established a requirement that the financial statements upon which a determination of whether a purchaser is a qualified institutional buyer under rule 144A(a)(1) may not be of a date more than 16 months prior to a sale to a U.S. investor or 18 months prior to a sale to a foreign investor. The NASD is proposing to amend section 2(a)(1) to part IV of the PORTAL rules to conform to rule 144A(d)(1) a PORTAL qualified investor's continuing obligation to demonstrate compliance with rule 144A(a)(1). As amended, section 2(a)(1) would require that an investor demonstrate continuing compliance with rule 144A(d)(1) within sixteen months of the date of the financial documents on which the Association previously relied in determining that the investor is eligible to purchase securities in accordance with rule 144A.

In addition, a minor amendment is proposed to section 1(d)(1) to part IV to conform to the final structure of rule 144A(d)(1), thereby permitting an applicant to submit any material to demonstrate it is a qualified institutional buyer that is specified in rule 144A(d)(1).

Finally, section 2(a) to part IV is proposed to be amended to clarify that the continuing requirements of that provision are applicable to an investor other than a dealer registered under section 15 of the Exchange Act, because a broker/dealer's continuing requirements are covered in section 3 to part III of the PORTAL rules.

DTC Authorization

In Amendment No. 6 to SR–NASD–88–23, the NASD requested authorization of The Depository Trust Company ("DTC") as a PORTAL depository organization with respect to securities of U.S. and foreign issuers. Through an oversight, the NASD in Amendment No. 7 proposed to limit DTC's authorization as both a PORTAL depository and PORTAL clearing organization to only cover securities of U.S. issuers. One result of this limitation is that securities of foreign companies issued as "Yankee bonds" would not be eligible as PORTAL securities because they are issued by foreign companies, but cleared through DTC.

Therefore, the NASD is proposing to amend the authorization of DTC as a PORTAL depository and clearing organization to cover any security of a foreign issuer that is DTC-eligible. Any limitation on the types of foreign issuers or securities that are DTC-eligible would be provided by DTC rules.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The NASD is proposing a number of amendments to the PORTAL rules approved by the SEC pursuant to Securities Exchange Act Release No. 27956 (April 27, 1990) in order to conform to the final form of SEC rule 144A adopted by the SEC in Securities Act Release NO. 6862 (April 23, 1990) and, in a few cases, to make minor language changes.

The NASD is also proposing to amend its designation of The Depository Trust Company ("DTC") as a PORTAL depository and clearing organization to include securities of foreign issuers that are DTC-eligible in addition to the securities of United States issuers as previously approved by the Commission in conjunction with its approval of the PORTAL℠ Market.

(b) The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Exchange Act in that the proposed amendments to the PORTAL rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit participants in the PORTAL Market by conforming the provisions of the PORTAL Market rules to SEC rule 144A, making other clarifying changes and extending the authorization of DTC as a PORTAL clearing and depository organization to securities of foreign issuers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 21, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–14982 Filed 6–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28139; File No. SR–OCC–90–07]

Self-Regulatory Organizations; Proposed Rule Change by the Options Clearing Corporation Relating to an Amendment to its Stockholders Agreement and By-Laws Providing for the Dispersement of Funds Upon Acquisition or Liquidation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1990, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to amend its Stockholders Agreement to provide that, upon the acquisition or liquidation of OCC, the Stockholders would disburse an amount, based on a pre-determined formula, to the Clearing Members. The proposed rule change also proposes to establish a Transaction Committee to administer the disbursement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As as result of the October 1987 market break, the Board of Directors of OCC determined that it would be appropriate to maintain retained earnings in order to provide OCC with an operating cushion in the event of a market slow down or business reversal. As a result of that decision, a question was raised as to how such retained earnings would be disbursed in the event that OCC was to be acquired or liquidated.

After discussing this concept with the Stockholders, the Board agreed to recommend amending the Stockholders Agreement to provide that, upon the acquisition or liquidation of OCC, the Stockholders would pay over to Clearing Members on a predetermined basis any excess of the after-tax proceeds realized by the Stockholders over their initial investments in OCC. In addition, the Stockholders agreed that, in the event such after-tax proceeds exceeded the sum of the their initial investments plus OCC's retained earnings, the remainder would be disbursed between the Clearing Members and the Stockholders. This function would be administered by a Transaction Committee of the Board.

In order to effectuate this concept, OCC is amending its By-laws and Stockholders Agreement. The amended By-law provision establishes a Transaction Committee, comprised of three member Directors, to administer the provisions of new section 17 to the Stockholders Agreement.

The Stockholders Agreement would be amended by adding a new section (section 17). This section, entitled "Certain Transactions," sets forth, *inter alia*, the procedures for the distribution of Corporation assets. In addition, paragraphs C and D in section 17 set forth the formula for the distribution of after-tax proceeds that may arise after any consolidation, merger or dissolution. That formula provides that the assets are to be distributed first among Stockholders up to their initial capital contribution. Next, all remaining retained earnings are to be returned to the Clearing Members. Finally, any excess over retained earnings is to be distributed 25% to the Clearing Members and 75% to the participating Stockholders. The form of the Stockholders Agreement is attached hereto as Exhibit A.

The Stockholders of OCC have executed the Stockholders Agreement, as amended. In addition, section 3 of the Stockholders Agreement provides that it will become effective upon the later of: (1) The execution of the Stockholders Agreement by all of the parties to the Stockholder Agreement or (2) receipt of all necessary approvals of the Securities and Exchange Commission.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act, as amended, in that it assures the safeguarding of securities and funds which are in the custody and control of the clearing agency. Moreover, it provides a rational plan of distribution in the event of a consolidation, merger or dissolution of OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR-OCC-90-07 and should be submitted by July 19, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 21, 1990.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Amendment No. 5 to Stockholders Agreement

Agreement, dated this _____ day of _____, 1990, among The Options Clering Corporation, a Delaware corporation (the "Clearing Corporation"), Chicago Board Options Exchange, Incorporated, a Delaware corporation ("CBOE"), American Stock Exchange, Inc., a New York corporation ("AMEX"), Philadelphia Stock Exchange, Inc., a Delaware corporation ("PHLX"), Pacific Stock Exchange Incorporated, a Delaware corporation ("PSE"), National Association of Securities Dealers, Inc. ("NASD"), and New York Stock Exchange, Inc., A New York corporation ("NYSE"), and such other stockholders of the Clearing Corporation as shall hereafter become parties to the Stockholders Agreement (as hereinafter defined) in the manner provided therein.

Witnesseth

Whereas, the Clearing Corporation, CBOE, AMEX, PHLX, PSE, NASD, and NYSE are parties to a Stockholders Agreement dated January 3, 1975, as amended (the Stockholders Agreement");

Whereas, the parties hereto desire to amend the Stockholders Agreement as set forth below;

Now, therefore, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend section 17 of the Stockholders Agreement to read as follows:

1. *Amendment of Section 17, Certain Transactions.*

(a) In the event of:

(i) Any sale or exchange by the Stockholders of a majority of the outstanding stock of the Corporation, or

(ii) Any merger or consolidation in which stock of the Corporation is converted into (x) cash, property, or securities other than common stock of the surviving or resulting corporation, and/or (y) common stock of the surviving or resulting corporation comprising less than a majority thereof, or

(iii) Any distribution by the Corporation to Stockholders,

then the After-Tax Proceeds (as hereinafter defined) of such sale, exchange, merger, consolidation, or distribution ("Transaction") shall be disposed of as provided in this section. Any combination or series of related Transactions shall be deemed to constitute a single Transaction for the purposes of this Section.

(b) The term "After-Tax Proceeds," used in respect of any Transaction, shall mean the aggregate value of the cash, property, and securities received by the Stockholders in such Transaction, less an amount equal to the net federal and state income taxes, if any, what would be payable by the Stockholders in respect of such Transaction without giving effect to any tax consequences of the disposition of After-Tax Proceeds in accordance with this Section.

(c) The After-Tax Proceeds of any Transaction shall be disposed of as follows:

(i) Each Stockholder that received cash, property, or securities in the Transaction ("Participating Stockholder") shall be entitled to retain After-Tax Proceeds up to an aggregate value of $333,333.

(ii) If the After-Tax Proceeds shall exceed the amount retained pursuant to clause (c)(i), 100% of such excess, up to a maximum equal to the amount of retained earinings of the Corporation immediately prior to the transaction, shall be paid over to Clearing Members of the Corporation in accordance with paragraph (d) hereof.

(iii) If the After-Tax Proceeds shall exceed the amounts disposed of pursuant to clauses (c)(i) and (c)(ii), 25% of the excess shall be paid over to Clearing Members of the Corporation in accordance with paragraph (d) hereof and the remaining 75% shall be retained by the Participating Stockholders in proportion to the respective amounts of After-Tax Proceeds realized by such Stockholders.

(d) After-Tax Proceeds of any Transaction that are required to be paid over to Clearing Members pursuant to clause (c)(ii) or (c)(iii) shall be distributed as follows:

(i) First, After-Tax Proceeds equal in value to the Corporation's net profit, if any, after refunds to Clearing Members for the period from the commencement of the Corporation's fiscal year in which the Transaction occurs to the effective date of the Transaction shall be distributed among those parties that were Clearing Members at the effective time of the Transaction ("Participating Clearing Members") in proportion to the clearing fees paid by such clearing Members during such year-to-date period.

(ii) If the amount of After-Tax Proceeds required to be paid over to Clearing Members shall exceed the amount distributed pursuant to clause (d)(i), the excess shall be distributed among the Participating Clearing Members in proportion to the clearing fees paid by such Clearing Members during the Corporation's fiscal year immediately preceding the fiscal year in which the Transaction occurs; provided, however, that if the Transaction occurs on the last day of a fiscal year, such excess shall be distributed among the Participating Clearing Members in proportion to the clearing fees paid by such Clearing Members during the fiscal year in which the Transaction occurs.

(e) Within 30 days after the effective date of any Transaction, the Participating Stockholders shall deliver a written notice ("Transaction Notice") to the Transaction Committee provided for in Article III of the By-Laws of the Corporation (the "Transaction Committee"), describing the terms of the Transaction and stating the aggregate value of the After-Tax Proceeds. The Transaction Notice shall be accompanied by a schedule setting forth in reasonable detail the manner in which After-Tax Proceeds were calculated for each Stockholder. If the proceeds of the Transaction included assets other than cash, the Transaction Notice shall also state the value assigned by the Participating Stockholders to such assets and shall describe in reasonable detail the manner in which such value was determined. If the Participating Stockholders are unable to agree within said 30-day period on any matter required to be included in the Transaction Notice, those Stockholders that are in agreement with each other shall deliver a joint Transaction Notice and any other Stockholders shall deliver separate Transaction Notices reflecting their differing views with respect to the matter in dispute.

(f) If the Participating Stockholders shall deliver a single joint Transaction Notice to the Transaction Committee and the Transaction Committee (i) shall advise the Participating Stockholders in writing that it does not object to the matters set forth in such Notice, or (ii) shall fail to deliver to the Participating Stockholders a written notice of objection complying with the requirements of paragraph (g) hereof within the period provided therein, the Transaction Committee shall be deemed conclusively to have agreed to the matters set forth in the Transaction Notice and the Participating Stockholders shall promptly pay over to Clearing Members, in accordance with paragraph (i) hereof, any After-Tax Proceeds required to be paid over to Clearing Members pursuant to paragraph (c) hereof.

(g) If the Transaction Committee shall deliver to the Participating Stockholders, within 30 days after receipt of a single joint Transaction Statement, a written notice objecting to any of the matters set forth therein and specifying in reasonable detail the basis for such objection, the Participating Stockholders shall endeavor in good faith to resolve the dispute by agreement with the Transaction Committee. If the dispute remains unresolved for 30 days after delivery of the notice of objection, the dispute shall, upon the demand of a majority of the Participating Stockholders or the Transaction Committee, be submitted for arbitration in accordance with the rules of the American Arbitration Association (the "Association"). The decision of the arbitrator shall be final and binding on the Participating Stockholders and the Transaction Committee.

(h) If the Participating Stockholders shall deliver more than one Transaction Notice to the Transaction Committee, any matters as to which such Transaction Notices are in disagreement shall be submitted for arbitration in accordance with the rules of the Association. The Transaction Committee shall submit for arbitration in the same proceeding any disputes that it may have with respect to the matters set forth in such Transaction Notices. The decision of the arbitrator shall be final and binding on the Participating Stockholders and the Transaction Committee.

(i) After-Tax Proceeds required to be paid over to Clearing Members shall be distributed in the forms (and, where applicable, the proportions) in which they were received by the Participating Stockholders, provided that in lieu of delivering fractional securities to any Clearing Member, the Stockholders may pay to such Clearing Member in cash the fair value thereof. The Stockholders may require, as a condition precedent to making any distribution to Clearing Members, a certificate of the Transaction Committee specifying the Clearing Members to whom distributions are to be made and the amounts of After-Tax Proceeds to be distributed to each. The Stockholders shall be fully protected in relying on any such certificate.

2. *Counterpart Execution.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3. *Effectiveness.*

This Agreement shall be effective upon the later of:

(i) Execution by all of the parties named below, or

(ii) Receipt of all necessary approval of the Securities and Exchange Commission.

In witness whereof, the parties hereto have duly executed this Agreement on the day first above written.

THE OPTIONS CLEARING CORPORATION

By: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By: _____

AMERICAN STOCK EXCHANGE, INC.

By: _____

PHILADELPHIA STOCK EXCHANGE, INC.

By: _____

PACIFIC STOCK EXCHANGE INCORPORATED

By: _____

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

By: _____

NEW YORK STOCK EXCHANGE, INC.

By: _____

[FR Doc. 90-14963 Filed 6-27-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

The U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT, Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 18, 1990, from 10 a.m. to 5 p.m., and on July 19, 1990, from 10 a.m. to 5 p.m., both days in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services. The purpose of the meetings will include (on the first day) a debrief of the recent meetings of CCITT Study Groups III, II and the joint CCIR/CCITT experts meeting on Universal Personal Telecommunications, and the upcoming work programs for those study groups plus Study Group I. The second session to be held on July 19 will discuss issues and contributions covering the adhoc group for CCITT Resolution No. 18, their next meeting to take place September 10–14, in Geneva.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone (202) 647-5220. All attendance must use the C Street entrance to the building.

Dated: June 8, 1990.

Earl S. Barbely,

Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 90-15005 Filed 6-27-90; 8:45 am]

BILLING CODE 4710-07-M

Oceans and International Environmental and Scientific Affairs Advisory Committee; Public Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10 a.m., Friday, July 13, 1990, in room 1408, Department of State, 22nd and C Streets NW., Washington, DC.

At this meeting, the Advisory Committee will discuss section 7 of the Antarctic Conservation Act of 1978 "Notification of Travel to Antarctica", which states:

The Secretary of State shall prescribe such regulations as may be necessary and appropriate to implement, with respect to United States citizens, paragraph 5 of Article VII of the Treaty pertaining to the filing of advance notifications of expeditions to, and within, Antarctica. For purposes of this section, the term "United States citizen" shall include any foreign person who organizes within the United States any expedition which will proceed to Antarctica from the United States."

To date, the Department has not deemed it necessary and appropriate to prescribe the regulations contemplated by section 7. Recently, however, it has been suggested that the State Department should prescribe such regulations due to the potential impact of increased U.S. tourism to Antarctica. The purpose of this meeting is to seek the views of the Advisory Committee concerning whether, in light of increased U.S. tourism, section 7 regulations are now appropriate.

This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance.

Requests for further information on the meetings or for advance clearance to enter the building, should be directed to R. Tucker Scully of OES/OA, room 5801, Department of State. He may be reached by telephone on (202) 647-3262.

Dated: June 15, 1990.

Richard J.K. Stretford,

Acting Chairman.

[FR Doc. 90-15001 Filed 6-27-90; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket No. 46780]

Discovery Airways, Inc. and Mr. Philip Ho; Order Deferring Hearing

The hearing is this matter scheduled to begin on June 26, 1990, at 10 a.m., in room 5332, 400-7th Street SW., Washington, DC 20590 is postponed until further order.

Dated at Washington, DC, June 25, 1990.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 90-15136 Filed 6-26-90; 10:10 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: City of Lincoln, Placer County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Placer County, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1140.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposal to construct a State Route 65 bypass of the City of Lincoln and the Community of Sheridan in Placer County.

The proposal will improve local and interregional traffic circulation and safety by providing a bypass facility that will remove State highway traffic from the business district of Lincoln, and an at-grade railroad crossing in Sheridan. The ultimate four-lane freeway will be from 5.3 to 12.0 miles in length depending on the selected alternative.

Alternatives for this project presently consist of: (1) No project, and (2) constructing one of four bypass alignment alternatives.

An informal public informational meeting was held in Lincoln on May 1, 1990 to discuss the project with local citizens and interested parties and to identify any concerns or issues.

Additional scoping meetings will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition at the time of draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program.)

Issued on: June 20, 1990.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 90-15014 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 90-IP-12-NO. 1]

Mazda Research & Development of North America, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Mazda Research & Development of North America, Inc. (Mazda), of Ann Arbor, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S5.1.2 of Standard No. 120 states that:

> Except in the case of a vehicle which has a speed attainable in 2 miles of 50 mph or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall be not less than the lowest GAWR appearing on the label. When a tire listed in appendix A of Standard No. 109 is installed on a multipurpose passenger vehicle, truck, bus, or trailer, the tire's load rating shall be reduced by dividing by 1.10 before calculating the sum.

Mazda produced 14,607 B2200 and B2600i (4×2) models which do not comply with Paragraph S5.1.2. These vehicles were produced between September 7, 1989 and May 25, 1990 and were equipped with tire placards bearing the incorrect English equivalent (as opposed to metric) cold inflation pressure information. The correct English equivalent cold inflation pressure is 35 psi; the inflation pressure listed on these placards is 34 psi. Therefore, the load rating on these tires is reduced by dividing by 1.086 before calculating the sum instead of being reduced by dividing by 1.10. Mazda reported that all other information listed on the tire placard is correct.

Mazda believes the aforementioned noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The noncompliance is a technical noncompliance of S5.1.2 of FMVSS No. 120 only, i.e., the P205/75R14 tires fitted to the affected vehicles are capable of sustaining loads in excess of the 1256 kg (2770 pounds) listed on the tire placard.

2. When calculating the GAWR-R for the metrically designed P205/75R14 tires as a function of the listed metric inflation pressure (i.e., 2.4 kg cm raised to the power of negative two or 240 kpa) no noncompliance with S5.1.2 results.

3. The load capacity of the P205/75R14 tire, as listed in the Tire and Rim Association (TRA) Handbook, is 695 kgs at 240 kpa (1532 pounds, 35 psi). Using TRA's (the source of the rim and tire information for these vehicles) empirically derived formula (non-linear) for the tire load, the tire load at an inflation pressure of 34 psi (235 kpa) is 688 kgs (1516 pounds). Thus, the GAWR-R of this tire at 34 psi is 1376 kgs (3033 pounds) before applying the 10 percent safety factor specified by S5.1.2. The GAWR-R required to be listed on the tire placard is 1251 kgs (2757 pounds) in this instance after applying the 10 percent safety factor. Mazda has listed 1256 kgs (2768 pounds) which results in a safety factor of 9.8 percent. Mazda regards the 0.4 percent or 0.004 difference in safety factor to be insignificant and inconsequential with the respect to vehicle safety.

4. The agency, by denying this petition, would be conferring a greater degree of significance to the 10 percent safety factor than was intended or justified. The preamble to the Final Rule (38 Fed. Reg. 19505, Docket Nos. 71-19-NO6 and 75-32-NO2) regarding this issue stated that the GAWR of an axle system should be reduced by *approximately* 10 percent. Mazda considers a safety factor of 9.8 percent to be approximately 10 percent.

5. Vehicle owners or operators are mostly likely to refer to the tire sidewall for proper cold inflation pressure and tire load capability information. The P205/75R14 tires fitted to the affected vehicles list the correct cold inflation pressure and tire load capacity in both metric and English units.

6. Common tire inflation gauges are graduated in both metric (Kpa) and English (psi) units, thus providing a means by which the vehicle owner or operator can verify the correct inflation pressure regardless of the source of this information (tire sidewall or tire placard).

Interested persons are invited to submit written data, views and arguments on the petition of Mazda, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: July 30, 1990.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 21, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-14953 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 22, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0016.
Form Number: 706-A.
Type of Review: Extension.
Title: United States Additional Estate Tax Return.
Description: Form 706-A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).
Respondents: Individuals or households.
Estimated Number of Respondents: 180.
Estimated Burden Hours Per Reponse/Recordkeeping:
Recordkeeping—3 hours, 17 minutes
Learning about the law or the form—2 hours, 13 minutes
Preparing the form—1 hour, 46 minutes
Copying, assembling, and sending the form to IRS—1 hour, 3 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 1,499 hours.
OMB Number: 1545-0171.
Form Number: 4469.
Type of Review: Extension.
Title: Excess Medicare Tax Credit (Hospital Insurance Benefits Tax Credit).
Description: The maximum hospital insurance benefits that may be imposed on an employee is set by law. Form 4469 is used by railroad employee representatives and qualified U.S. Government employees to figure their credit for excess hospital insurance benefits tax. The information collected is used to verify the taxpayer is entitled to the credit.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Reponse/Recordkeeping:
Recordkeeping—20 minutes
Learning about the law or the form—3 minutes
Preparing the form—10 minutes
Copying, assembling, and sending the form to IRS—1 hour, 17 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 630 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 14998 Filed 6-27-90; 8:45 am]

BILLING CODE 4810-01-M

Customs Service

[T.D. 90-49]

Revocation of Corporate Broker License No. 10121, Exim Customs Brokers, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on September 11, 1989, pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)), the corporate license (No. 10121) for Exim Customs

Brokers, Inc., to conduct Customs business was revoked by action of law.

Dated: January 25, 1990.

Victor G. Weerts,

Director, Office of Trade Operations.

[FR Doc. 90-15028 Filed 6-27-90; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Availability of Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Availability of FY 1991 TCE Application Packages.

SUMMARY: This document provides notice of the availability of Application Packages for the 1991 Tax Counseling for the Elderly (TCE) Program.

DATES: Application packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 1991 Tax Counseling for the Elderly (TCE) Program is August 15, 1990.

ADDRESSES: Application packages may be requested by contacting Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Volunteer and Education Programs Branch, (T:T:VE), 1111 Constitution Ave., NW., room 2714, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Rhett Leverett, Volunteer and Education Program Branch, (T:T:VE), room 2714, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 566-6603.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in section 163 of the Revenue Act of 1978, Public Law No. 95-600, 92 Stat. 2810, Nov. 6, 1978. Regulations were published in the **Federal Register**, at 44 FR 72113 on December 13, 1979. Section 163 gives the Internal Revenue Service authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 1991 budget has been approved, cooperative agreements will be entered into subject to appropriations of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in section 21.006.

Neil Patton,

Chief, Volunteer and Education Programs Branch.

[FR Doc. 90-14048 Filed 6-27-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 125

Thursday, June 28, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 3, 1990, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: All parts of this meeting of the Board will be closed to the public. The matters to be considered at the meeting are:

***Closed Session**

1. Wichita—Ninth District Financial Assistance Plan
2. Conditional Preliminary Approvals:
   a. Wichita—Ninth District FLBA—Reorganization into 8 FLBAs
   b. Wichita—Ninth District PCA—Reorganization into 8 PCAs
3. Enforcement Actions
4. Bookletter Issuance

Dated: June 26, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90-15249 Filed 6-26-90; 3:26 pm]

BILLING CODE 6705-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 25, 1990

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Change in Previously Announced Agenda

Previously Announced

TIME AND DATE: 10:00 a.m., Thursday, June 28, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open

CHANGES IN THE MEETING: The following item has been cancelled.

1. *Harry Ransey v. Industrial Constructors Corp.*, Docket No. WEST 88-246-DM.

It was determined by a unanimous vote of Commissioners that this item be cancelled and no earlier announcement of the cancellation was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90-15159 Filed 6-26-90; 12:10 pm]

BILLING CODE 6735-01-M

BEST COPY AVAILABLE

federal register

Thursday
June 28, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Small Airplane Airworthiness Review Program Notice No. 4; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26289; Notice No. 90-19]

RIN 2120-AD29

Small Airplane Airworthiness Review Program Notice No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes changes to the airframe and flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes that are based on a number of recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These proposals arise from the recognition that updated safety standards will continue to provide an acceptable level of safety in the design requirements for small airplanes used in both private and commercial operations. The proposed changes, if adopted, would provide design requirements applicable to advancements in technology being incorporated in current designs and would reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

DATES: Comments must be received on or before October, 25, 1990.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26289, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915–G, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26289. Comments may be inspected in Room 915–G between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby Sexton, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of each proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Public comments are specifically solicited by this notice on the following subjects:

Proposal 2, § 23.3, Permit installation of turbojet engines on commuter category airplanes.

Proposal 7, § 23.65, Requirement for performance limitations based on weight, altitude and temperature.

Proposal 10, § 23.145, Control force limits for reduced pilot strength, and

Proposal 29, § 23.307, Material correction factors during structural tests.

Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further action on this rulemaking. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26289." The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, (APA-200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On January 31, 1983, the FAA announced the Small Airplane Airworthiness Review Program and invited all interested persons to submit proposals for changes to part 23 (48 FR 4290; Notice No. CE-83-1). The objective of the Review Program was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

On June 9, 1983, the FAA, in response to requests from interested persons, reopened the proposal period for submission of proposals. This action (48 FR 26623; Notice No. CE-83-1A) was based upon an FAA determination that it would be in the public interest to allow more time for the public and the aviation industry to submit their proposals.

By the close of the proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notice Nos. CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice No. CE-84-1 (49 FR 30053) announcing the Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference to discuss the proposals. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket No. 23494.

Notice No. 1 of the Small Airplane Airworthiness Review Program is directed toward improvement of crashworthiness and has resulted in issuance of amendment 23-36 to part 23 (53 FR 30802; August 15, 1987). Notices numbered 2 and 5 address issues of specific concern in past and current certification programs and Notice No. 3 addresses systems and powerplant issues.

A number of proposals were submitted to the conference that did not result in proposed changes to the rule. The FAA decision to take no further regulatory action on those proposals was based on information gained at the conference or during post-conference review. The regulatory sections are included below along with the explanation of why no action was taken to amend the rule.

No action is being taken to amend § 23.1 Applicability.

Explanation: Conference proposal 1 recommends elimination of reference to the number of passengers and to the term "small" airplanes in paragraph (a) of § 23.1.

Conference discussion relative to this proposal was primarily centered around the level of safety that would result with adoption of this proposal. One commenter suggested that the FAA consider conference proposal 1 in combination with Notice of Proposed Rulemaking (NPRM) 83-17 (48 FR 52010; November 15, 1983) addressing commuter category, which was still pending at the time of the conference.

Subsequent to the conference, the FAA issued amendment 23-34 (52 FR 1806; January 15, 1987) to add the commuter category to part 23. As a part of that amendment, § 23.1 was changed to read substantially as proposed by conference proposal 1.

Reference: Conference proposal 1.

No action is being taken to amend § 23.3 Airplane categories.

Explanation: There are two conference proposals directed at § 23.3.

Conference proposal 2 recommends the changes to part 23 necessary to allow the certification of commuter category airplanes with turbojet propulsion systems. Currently, the commuter category applies only to propeller-driven multiengine airplanes and includes both piston-driven and turbine-driven propeller systems. Current part 23 precludes the use of turbojet propulsion systems on commuter category airplanes.

Conference proposal 2 was largely supported at the conference. One commenter noted that a change to allow turbojet propulsion systems was not intended to account for a growing sophistication, it simply is recognition that such a means of propulsion is available. Another commenter noted that terms like "power" and "thrust" are used throughout part 23. That commenter noted that during a recent recertification of a specific part 25 turbojet airplane to part 23 requirements, extensive rule changes were not required; therefore, the rule change as proposed by conference proposal 2 is reasonable.

In general, the FAA recognizes that there is a great interest in providing a viable regulation to allow the use of turbojet propulsion systems on commuter category airplanes. The FAA further recognizes that prior to promulgation of such a regulation, careful study and review is necessary by all concerned.

By this notice, the FAA solicits comments on the advisability of changing existing part 23 to allow the use of turbojet propulsion systems on commuter category airplanes. The FAA will accept preliminary comments on the advisability of such a change and declares its intent that any definitive proposals resulting from such comments will be included in future notices. The FAA further solicits comments relative to possible conflicts such a proposal would have on existing part 23 requirements. Specifically, the FAA is interested in identifying any existing requirements that would require revision to allow the use of turbojet propulsion systems on commuter category airplanes.

Conference proposal 3 recommends changes to part 23 to allow the approval of single-engine airplanes with maximum takeoff weights of up to 20,000 pounds. This proposal was included in the part 23 review as a result of a commitment made by the FAA in response to a petition for exemption from the current 12,500 pound limitation for single-engine airplanes. In that petition, a member of the public requested certification of a single-engine airplane, intended for cargo use only, which would have a maximum takeoff weight of 14,500 pounds.

One commenter noted that single-engine military aircraft having takeoff weights in excess of 12,500 pounds were common during World War II. That commenter stated that, in light of the reliability of new turbopropeller engines, a heavy single-engine airplane was a practical design. The position was further supported by two commenters who agreed that such a design was feasible.

Several commenters opposed the proposal. One commenter voiced concern not only for the safety of the passengers in the airplane, but for the potential damage to people and property on the ground resulting from a single engine failure and the subsequent forced landing. That commenter preferred that airplanes of the size proposed have at least two engines.

The FAA has concluded that certification of single-engine airplanes having maximum takeoff weights in excess of 12,500 pounds is not in the public interest notwithstanding the "cargo-only" utilization proposed. Further, the FAA has determined that the "stay-up" capability of twin-engine airplanes having takeoff weights above 12,500 pounds is necessary to protect both the United States flying public and persons and/or property on the ground.

Reference: Conference proposals 2 and 3.

No action is being taken to amend § 23.21 Proof of compliance.

Explanation: Conference proposal 4 recommends deleting the phrase "by calculations based on, and equal in accuracy to, the results of flight testing", which is currently contained in § 23.21(a). The proponent contended that such a requirement is capable of misinterpretation.

Further, conference proposal 4 recommends that the detail provisions concerning flight test tolerances, which are stated in § 23.21(b), should be omitted and would be more properly located in the Engineering Flight Test Guide for Small Airplanes, FAA Order 8110.7 (where they appear in Section 11).

Note: Subsequent to the conference, the FAA issued Advisory Circular (AC) 23-8, entitled "Flight Test Guide for Certification of Normal, Utility and Acrobatic Airplanes", and the FAA cancelled FAA Order 8110.7. This AC was later revised to include flight test requirements for commuter category airplanes. AC 23-8A, entitled "Flight Test Guide for Certification of part 23 Airplanes", provides guidance for flight test certification requirements for all categories of part 23 airplanes.

Since FAA Order 8110.7 was in effect at the time of the conference and was referenced throughout the conference, it continues to be referenced in this notice, when appropriate, instead of current Advisory Circular AC 23-8A.

In response to the proposal, one commenter opposed the change on the basis that it eliminates analytical procedures from the type certification process and would, therefore, require considerably more flight testing. That commenter stated that further flight testing would result in more expense and would probably have no effect on overall safety.

Another commenter concurred with the intent of the proposal (but possibly not the exact wording), even though it may require more flight testing and added expense.

The FAA has carefully reviewed the current requirements and the proposal, and has concluded that no change to the wording of the current requirements is necessary.

The FAA does not agree with deleting the flight test tolerances required in § 23.21(b). Paragraph (b) states maximum permissible tolerances by regulation, whereas stating these tolerances in an FAA Order alone would not be mandatory.

Reference: Conference proposal 4.

No action is being taken to amend § 23.29 Empty weight and corresponding center of gravity.

Explanation: Conference proposal 9 recommends the deletion of paragraph (b) of § 23.29, which states "The condition of the airplane at the time of determining empty weight must be one that is well defined and can be easily

repeated." The proponent contends that the requirement should be in part 21 and that the intent is covered under that portion of § 23.23 that addresses adverse conditions of loads and centers of gravity.

Two attendees opposed deletion of the requirement contending that the current requirement is a good and valid one. The FAA agrees that a simple and repeatable method for determining an empty weight is necessary to establish a minimum level of safety for type certification; therefore, no change is proposed.

Reference: Conference proposal 9.

No action being taken to amend § 23.49 Stalling speed.

Explanation: The FAA has reviewed the following proposals and the transcript from the conference and has concluded that no revision to the requirements of § 23.49 is warranted at this time.

Conference proposal 26 recommends a text that accomplishes substantially the same objectives as presently stated in § 23.49. It was the consensus at the conference, and the FAA agrees, that the requirements as currently stated are adequate.

Conference proposal 27 recommends a deletion of the 61-knot stall speed limitation for single-engine airplanes but recommends retention of the 61-knot stall speed limitation for those multiengine airplanes lacking the capability of complying with § 23.67 Climb: One engine inoperative. It was the consensus at the conference that the 61-knot stall speed limitation for single-engine airplanes should be retained in the interest of maintaining the current level of safety for these airplanes in the event of an engine failure.

Conference proposal 30 recommends deleting the requirements of § 23.49(b)(2) and proposes to require that all multiengine airplanes have a positive one-engine-inoperative climb capability as recommended in the proponents recommendation for § 23.67. It was the consensus at the conference, and the FAA agrees, that the 61-knot stall speed requirements, as presently stated, should remain unchanged.

Conference proposal 31 recommends a requirement to establish a maximum permitted value for the takeoff speed. It was the consensus at the conference that the proposal would be too limiting, and effectively combined operating rules and type certification requirements. Additionally, the proposal was not supported by conference attendees other than the proponent.

Reference: Conference proposals 26, 27, 30, and 31. Conference proposals 28 and 29 were deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA.

No action being taken to propose a new § 23.71 Glide: single-engine airplanes.

Explanation: Conference proposal 55 recommends issuance of a new § 23.71 to require that a glide ratio (the horizontal distance traveled in a glide per 1000 feet of altitude) be determined for all single-engine airplanes.

During discussion of conference proposal 55, several commenters supported the concept of a glide ratio and discussed the specific location in the AFM where such a ratio should be placed.

One commenter had no strong objection to requiring a glide ratio determination, but questioned if such a rule might be beyond the level of safety of part 23.

One commenter noted that such information has been provided on several airplanes without having a mandatory requirement to do so. Another commenter agreed that such information would be useful but should not be made mandatory.

Post conference review indicates that a requirement to add glide ratios does not add significantly to an increased level of safety and can provide the pilot with information that could be misleading in an emergency situation. Specifically, the altitude available to the pilot (the altimeter reading) is normally the altitude above measured sea level (MSL). The altitude needed to use a glide ratio with any certainty is the altitude above ground level (AGL). With few exceptions, the AGL is less than the MSL. The differences can vary significantly throughout the continental U.S.

The possibility of overestimating the glide distance, because the pilot chooses to use the altimeter reading (MSL) without correcting for ground elevation, is a strong consideration when proposing a change to part 23. Since, in the event of engine failure, there is little time for the pilot to refer to the AFM for glide ratio information, and since the pilot would need to correct for wind velocity, for aircraft configuration and for available altitude above the ground, the FAA has concluded that such a proposed rule change is not appropriate for part 23. However, the FAA does agree that the procedures, speeds, and configurations for glide following engine failure are necessary and proposes them in § 23.1585 of this notice.

Reference: Conference proposal 55.

No action is being taken to propose a new § 23.73 Landing speeds.

Explanation: Conference proposal 56 recommends establishment of landing approach speeds for both the all engines operating condition and the one-engine-inoperative condition. It was the consensus of the conference that the existing controllability testing for one-engine-inoperative conditions and § 23.1585 adequately address the concerns of this proposal.

Reference: Conference proposal 56.

No action is being taken to amend § 23.77 Balked landing.

Explanation: Conference proposal 62 recommends changing § 23.77(a) to convert the "angle of climb" listed as a slope to a "gradient of climb" listed as a percentage. No change in the related climb performance was proposed. Additionally, the proposal recommends eliminating the two-second flap retraction exception listed in § 23.77(a)(3). Finally, the proposal recommends limiting the balked-landing speed to the speed used to show compliance with § 23.75.

These changes were generally opposed at the conference. One commenter stated that there are still airplanes being built with manual retract systems where the two-second flap retraction exception is appropriate. Two commenters opposed restricting the balked-landing, go-around speed to the approach speed, contending instead that demonstrated safe transition between speeds is sufficient. The FAA has determined that § 23.77(a) is adequate for the concerns identified in the proposal.

Conference proposal 63 was withdrawn at the conference.

Reference: Conference proposals 62 and 63.

No action is being taken to amend § 23.151 Acrobatic maneuvers.

Explanation: Conference proposal 97 recommends establishment of specific requirements for acrobatic category airplanes and proposes material for inclusion as an appendix to part 23 that identifies those specific maneuvers necessary for acrobatic category certification.

The proposal was opposed at the conference on the basis that the current rule is sufficient and that the proposed appendix material, which was interpretative, should be inserted in a flight test handbook.

Post conference review indicates that the existing requirements have resulted in a level of safety envisaged for this type of airplane, and that a change, as proposed, is unjustified.

Reference: Conference proposal 97.

No action is being taken to amend § 23.173 Static longitudinal stability.

Explanation: Conference proposal 119 recommends demonstration of static longitudinal stability for all speeds from minimum speed up to V_D. Demonstration to V_D was opposed at the conference. Conference proposal 120 recommends adding clarification to state that the requirements must be met when stability augmentation systems are installed. It was the consensus at the conference that this addition is unnecessary since the airplane must comply with the requirements in the configuration presented by the applicant.

Reference: Conference proposals 119 and 120.

No action is being taken to amend § 23.335 Design airspeeds.

Explanation: Conference proposal 187 recommends revision of § 23.335(c) to increase the design load factor to account for possible overloads resulting from maximum airplane maneuvers at speeds greater than $V = V_S\sqrt{n}$ for cases where the applicant chooses a design maneuvering speed greater than $V_S\sqrt{n}$ as allowed by § 23.335(c). In support of conference proposal 187, the submitter states that the purpose of maneuvering speed (in addition to supplying a speed for design of control surfaces in accordance with §§ 23.423, 23.441 and 23.445) is to provide an operating speed where a pilot can be assured of not exceeding the design limits during maneuvers. If a design maneuvering speed in excess of $V_S\sqrt{n}$ is chosen (as currently allowed by § 23.335(c)), and if the airplane is operated at that speed during maneuver, the potential exists for a pilot to exceed the design limit load factor unless that load factor is increased accordingly.

Post conference review indicates that the design maneuvering speed criteria provided in § 23.335 is necessary and sufficient for control surface design. As such, design maneuvering speed selections greater than $V_S\sqrt{n}$ are appropriate, and requiring increases in load factor above those specified in § 23.337 are unjustified.

However, the FAA recognizes that maneuvering speed is also used by the pilot as that airspeed below which full control surface inputs can be accomplished without structural damage. Maneuvering speed may also be used as a gust penetration speed to minimize the possibility of airframe damage. If the airplane is maneuvered at its maximum weight at airspeeds less than $V_S\sqrt{n}$ the airplane will stall prior to exceeding the maximum design load factor. If the airplane is operated at speeds greater than $V_S\sqrt{n}$ in the same conditions, the maximum design load factor can be exceeded.

The FAA recognizes the dual meaning given maneuvering speed and agrees that the maneuvering speed used to design the control surfaces and the maneuvering speed used by the pilot have different purposes, yet §§ 23.335, 23.1507, and 23.1563 use the same term, "design maneuvering speed, V_A". The FAA proposes to leave § 23.335 unchanged but would establish an "operating maneuvering speed; V_O" in § 23.1507, and alter § 23.1563 to require an airspeed placard listing a maximum operating maneuvering speed, instead of the design maneuvering speed, V_A. Since the operating maneuvering speed (that speed where the C_{NA} max curve intersects the design load factor line) will reduce for weights less than maximum weight, the applicant may choose to placard operational maneuvering speeds for more weights than the maximum.

Reference: Conference proposal 187.

No action is being taken to amend § 23.337 Limit maneuvering load factors.

Explanation: Conference proposal 188 proposes to add an additional sentence to § 23.337(c) to state that control movement limitations would not normally be acceptable as sufficient justification for reducing the maneuvering load factor.

The only comment received at the conference was in opposition to conference proposal 188. That commenter contended that the proposal simply defined one of several possible conditions of compliance, and suggested that advisory material would be more appropriate.

The FAA agrees that conference proposal 188 addresses only one of several possible conditions that might be used to show compliance with existing § 23.337(c). Conference proposal 188 does not prohibit the use of limitations of control movement as a method of compliance; it proposes that such a design would not normally be acceptable. The FAA finds that a rule similar to conference proposal 188 is unnecessary and that existing § 23.337(c) is sufficient.

Reference: Conference proposal 188.

No action is being taken to amend § 23.345 High lift devices.

Explanation: There are three conference proposals directed at § 23.345. Conference proposal 191 recommends increasing the design limit and ultimate load factors for wing flaps and their supporting structure to account for slipstream effects and to provide a minimum static and fatigue strength capability. Subsequent to the conference, the FAA issued amendment 23-38 (54 FR 39508), which amends § 23.572 to address fatigue requirements for those parts of the wing whose failure would be catastrophic. The FAA interprets such parts of the wing to include flaps and the effects of propeller slipstream impingement on those flaps. As such, no change to § 23.345 is recommended as a result of conference proposal 191.

Conference proposal 192 recommends adoption of new requirements applicable to the en route use of high lift devices. Conference discussion indicated that this proposal was primarily directed at the en route use of flaps. One commenter noted that requirements similar to those recommended in conference proposal 192 are mandated in existing § 23.373 applicable to speed control devices, such as spoilers and drag flaps. The FAA has determined that typical small airplanes utilize flaps in en route conditions as speed control devices and, as such, the FAA does not intend to propose similar requirements beyond existing § 23.373 for such designs. The FAA would expect to apply § 23.373 to such flap designs whether called high lift devices or speed control devices.

References: Conference proposals 191 and 192.

Conference proposal 193 was deferred for discussion under the issue applicable to the "primary category" airplane currently under consideration by the FAA.

No action is being taken to amend § 23.365 Pressurized cabin loads.

Explanation: Conference proposal 194 recommends revising § 23.365(a) to no longer require the 150 percent increase in the pressure load when it is combined with the ultimate maneuver load factor in order to comply with the combined loading test requirements for the cabin pressure vessel. Conference proposal 194 recommends no change from the current requirement to assure that the structure will withstand the limit loads resulting from zero up to the maximum relief valve setting but proposes to consider the same pressure loads as ultimate loads when combined with the ultimate flight load. This, in effect, eliminates the 1.5 safety factor for ultimate pressure load conditions.

In support of conference proposal 194, the submitter notes that § 23.841 requires two pressure relief valves in each pressure cabin and argues that pressure loads beyond the limit of the pressure relief valve were not probable. The submitters contend that loads beyond the pressure relief valve setting in combination with ultimate airloads were a result of more than the single failure criteria accepted for small airplanes and that simultaneous

application of two ultimate loads is unprecedented in part 23.

One commentor agreed in part with the proposal, stating that since the load in the pressure cabin is predictable, a reduction in the 150 percent safety factor might be justified. That commenter was opposed to total elimination of the 150 percent safety factor.

Another commentor objected to any reduction in the safety factor for ultimate loading below that already existing in part 23.

One commenter noted that conference proposal 194 was based on the pressure resulting from the maximum relief valve setting, which was usually higher than the operating pressure. That commenter felt that it was illogical to ask for 150 percent of that loading to be combined with the ultimate flight load since such a condition will never be achieved in real life.

Another commenter noted that, from a practical sense, the fatigue requirements generally design the cabin anyway. The proposed rule will not, in most cases, make any difference in design but will reduce the difficulty of testing to test to prove the design.

Another commenter pointed out that the limit cabin pressure without airloads is required to be 1.33 times the normal operating pressure. When increased to ultimate pressure using the 150 percent value, the fuselage pressure vessel must be designed for twice the maximum relief valve setting. This is true even with the two required pressure relief valves. That commenter noted that it was possible to obtain ultimate maneuver load on the airframe but contended that there was no practical way to get ultimate pressure in the pressure vessel. That commenter was unaware of any airplane that had the capability of pressurizing the pressure vessel to twice the relief valve setting. That commenter was of the opinion that conference proposal 194 had merit.

The FAA has reviewed conference proposal 194 and the philosophical intent of the 150 percent safety factor used for ultimate load testing. The FAA finds that the 150 percent increase must be applied to design service conditions to provide a factor of safety beyond the limit condition. The probability of whether or not the 150 percent load is operationally obtainable is not related to the intent of this safety factor. The design condition of full maneuver loads on a pressurized cabin constitutes the design service condition and, as such, the 150 percent safety factor is appropriate. Accordingly, no change is proposed to § 23.365(a)

Conference proposal 195 recommends revising § 23.365 (e) to (1) reword existing paragraph (e); (2) include consideration of cabin penetration due to the probability of engine disintegration, and (3) require consideration of the probability of detachment of parts of the airplane resulting in passenger injury during sudden decompression. This proposal parallels particular similar existing part 25 requirements.

Items (2) and (3) were strongly opposed by commenters at the conference primarily because of the small cabin volume of part 23 airplanes when compared to the volume of part 25 airplanes.

One commenter stated that decompression tests run on part 25 business jets (cabin volumes similar to part 23 airplanes) indicated very little movement of the anthropomorphic dummies or the cabin contents. That commenter stated that, in some cases, the sleeve on the anthropomorphic dummy was noted to move and, in one case, a piece of paper shifted aft a couple of inches.

Another commenter contended that there was no practical design that would prevent penetration of the cabin when a complete engine deterioration occurred.

Post conference review indicates that, in practical small airplane designs, the effects of cabin depressurization are sufficiently different from those of transport category airplanes to justify differences in the requirements. However, Report AM 67-14, entitled "An Evaluation of Potential Decompression Hazards in Small Pressurized Aircraft", published by the Federal Aviation Administration, Office of Aviation Medicine, June 1967, indicates that during sudden decompression, the volumes of even small pressurized aircraft are sufficient to cause passenger ejections from the aircraft, fatal injuries from head impact, concussion and unconsciousness, and, in some cases, even lung rupture. The report recommends considering double-pane windows and plug type exits on all pressurized airplanes. Specific requirements for windows in pressurized airplanes were added by amendment 23-7, effective 1969 and changes to door locking mechanisms have been adopted into part 23 by amendment No. 1 of the Small Airplane Airworthiness Program, (amendment 23-36, 53 FR 30802; August 15, 1988). Therefore, no change is proposed to existing § 23.365(e) and conference proposal 195 is withdrawn.

Reference: Conference proposals 194 and 195.

No action is being taken to amend § 23.373 Speed control devices.

Explanation: Conference proposal 196 proposes to revise § 23.373(a) for all small airplanes having gross weights in excess of 6,000 pounds to increase the deployment speed of speed control devices from the currently allowed placard speed chosen during certification to the design dive speed V_D.

In support of conference proposal 196, the submitter notes that designs have been previously approved that have placarded speeds no higher than V_C. The submitter doubts that anyone deliberately flies at V_D, but contends that existing requirements demand load investigations to V_D because high speed upsets do occur for whatever reason, and aircraft do exceed the maximum airspeed operating limits. The submitter argues that, in such cases, the pilot may use any speed control device available to avoid an excessive overspeed situation in spite of being above the maximum placarded speed. One commenter noted that the condition described by the submitter is not a normal incident and that existing safety factors allow some margin for error.

Conference discussion regarding the 6,000-pound weight demarcation indicated that such a weight limit was consistent with that of appendix A and particular performance requirements of part 23.

Post conference review does not indicate excessive service difficulties related to speed control devices on small airplanes. Recovery from the condition of overspeed described by the submitter, which includes delays in pilot action, are normal certification demonstrations of compliance to § 23.253, consistent with deployment speed limitations appropriate for the airplane design.

Reference: Conference proposal 196.

No action is being taken to amend § 23.399 Dual control system.

Explanation: Conference proposal 201 proposes to add a new paragraph to § 23.399 requiring that control systems design account for pilot forces applied together in the same direction. This proposal is substantially identical to existing transport category requirements on the same subject.

As justification, conference proposal 201 states that experience has shown that such a rule is necessary; but such a contention was unsupported at the conference. One commenter opposed the proposal because of the inadequate justification and pointed out that the examples cited during conference discussion on this proposal were related to malfunctions. That commenter stated that the existing regulation contains sufficient safety factors to compensate for such malfunctions.

After further analysis, the FAA has determined that adequate requirements exist in current § 23.399.

Reference: Conference proposal 201.

No action is being taken to amend § 23.423 Maneuvering loads.

Explanation: There were three conference proposals directed toward § 23.423. Conference proposal 205 recommends changes to appendix B of part 23. Partially as a result of conference proposal 204, and by Notice No. 2 of the Small Airplane Airworthiness Review Program, the FAA has initiated rulemaking action to eliminate appendix B in its entirety from part 23 (54 FR 9276; March 6, 1989). The FAA does not intend to take further action on conference proposal 205.

Conference proposal 206 proposes limiting the use of the equations of § 23.423(b) to airplanes having design dive speeds, V_D, of less than 300 knots and recommended demonstration of check pitch maneuvers at V_D. This proposal was opposed at the conference.

Reference: Conference proposals 205 and 206.

No action is being taken to amend § 23.499 Supplementary conditions for nose wheels.

Explanation: Conference proposal 215 recommends new requirements for nose wheels on airplanes over 6,000 pounds maximum weight to provide loads for situations where significant steering effort is necessary, such as the effort needed to extract the nose gear from a rut. The proposal was opposed at the conference. One commenter stated that the loads seemed arbitrary and lacked service experience as justification.

Reference: Conference proposal 215.

No action is being taken to amend § 23.507, Jacking Loads, or § 23.509, Towing Loads.

Explanation: Conference proposals 216 and 217 recommend exempting these requirements from airplanes weighing less than 1,500 pounds. The FAA concludes that these proposals are more appropriate to "primary category" airplanes.

Reference: Conference proposals 216 and 217 were deferred for discussion under the issues applicable to the "primary category" airplane currently being considered by the FAA.

No action is being taken to amend § 23.571 Pressurized cabin.

Explanation: Conference proposal 224 recommends that for fatigue substantiation, certification by "analysis alone" on simple structure should be eliminated. Further, it proposes to adopt fail-safe criteria similar to part 25 criteria but with a larger increase in cabin differential pressure to align more closely with European philosophy.

Conference discussion indicated analytical approaches to fatigue substantiation had been conservative primarily because of the scatter factors required by the FAA. Further, several commenters noted that there had been no adverse service history on part 23 airplanes sufficient to justify the proposed changes.

Reference: Conference proposal 224.

No action is being taken to amend § 23.572 Flight structure.

Explanation: There are five conference proposals directed at § 23.572 and one that proposes a new § 23.573.

Conference proposals 226 and 229 recommended extending the existing fatigue requirements to the empennage by either including the term "empennage" in existing § 23.572 or by establishing a new section entitled "Empennage and associated structure". Conference proposal 225 recommends that § 23.572 apply to canard and tandem wing configurations as well as the main wing. Conference proposal 228 recommends excluding airplanes of less than 1500 pounds from the requirements of § 23.572. Conference proposals 227 and 515 recommend requiring fatigue strength or fail-safe substantiation for any part of the airplane primary structure whose failure would be catastrophic. Finally, conference proposal 227 also recommends that the loads resulting from propeller wake-induced vibrations be specifically addressed, and conference proposal 515 recommends requiring fail-safe criteria as the primary method of substantiation for airplanes above 6,000 pounds.

Subsequent to the conference, the FAA has initiated a separate rulemaking action proposing fatigue strength or fail-safe substantiation of the empennage for normal, utility and acrobatic airplanes. The FAA expects that compliance with this proposed rule will be based on spectra that includes propeller effects. The FAA has initiated Notice 2 of the Small Airplane Airworthiness Review Program (54 FR 9276; March 6, 1989), which addresses fatigue requirements for canards, tandem wings, and winglets as a proposed change to § 23.572. The FAA finds insufficient service history to support requiring fail-safe strength as the primary method of substantiation for airplanes over 6,000 pounds.

Reference: Conference proposals 225, 226, 227, 228 and 515. Conference proposal 228 was deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA.

No action is being taken to amend § 23.607 Self-locking nuts.

Explanation: Conference proposal 231 recommends changes to § 23.607 to address environmental conditions. The proposal was opposed at the conference and withdrawn by the proponent.

Reference: Conference proposal 231.

No action is being taken to amend § 23.611 Accessibility.

Explanation: Conference proposal 232 proposes to add a new paragraph to § 23.611 requiring a practical inspection means for airplanes of 6,000 pounds or more maximum weight and to permit the use of nondestructive inspection aids to inspect structural elements where it is impractical to provide means for direct visual inspection. The justification for the proposal was that the proposed inspection method and the inspection interval are sufficient to ensure the continued airworthiness of the airplane, particularly for fail-safe designs.

One commenter opposed the proposal contending that the current rule adequately addressed the subject. Conference discussion indicated that some commenters believed that § 23.611 was directed toward visual inspections while others stated that the access necessary would be determined by the inspection method chosen by the applicant.

After further analysis of the proposal, the ensuing conference discussion and the current rule, the FAA has determined that § 23.611 does not limit the inspection method to be used but requires that a means must be provided to allow inspection regardless of the inspection method chosen. The FAA has determined that § 23.611 is adequate for the concerns identified in the proposal.

Reference: Conference proposal 232.

No action is being taken to amend § 23.627 Fatigue strength.

Explanation: Conference proposal 249 recommends deletion of § 23.627 and recommends incorporation of its contents into §§ 23.571 and 23.572.

Post conference review indicates that incorporating the contents of § 23.627 into either §§ 23.571 or 23.572 would limit its use to the fatigue considerations listed for either the pressure cabin or the wing structure. Currently, § 23.627 applies to all airplane structure and is not limited to those structures where fatigue is specifically addressed. Additionally, § 23.627 relates to design details of the airplane (e.g., rounded corners, elimination of notches) intended to avoid stress concentrations.

Conference comments appropriately resulted in the addition of fatigue considerations into the proposed change to § 23.613. However, since § 23.613

relates to material strength properties and design values and does not address the design details addressed in § 23.627, the FAA finds that the retention of § 23.627 is appropriate.

Reference: Conference proposal 243.

No action is being taken to amend § 23.671 General.

Explanation: Conference proposal 248 was withdrawn by the proponent prior to discussion at the conference.

Reference: Conference proposal 248.

No action is being taken to amend § 23.689, Cable systems.

Explanation: Conference proposal 255 recommends altering the wording of existing § 23.689(a)(2) from "Each cable system must be designed so that there will be no hazardous change in cable tension throughout the range of travel under operating conditions and temperature variations; and" to "Each cable system must be designed so that there will be no hazardous change in cable tension throughout the range of travel under operating conditions, within a specified temperature range, and".

In support of conference proposal 255, the submitter stated that cable systems, even when temperature compensated, can be temperature limited at both low and high extremes. The submitter recommends that the temperature limits be identified to ensure adequate function of the system at operational temperature extremes.

One commenter stated that the design temperature extremes should be listed in the Airplane Flight Manual (AFM) and that the airplane be limited by those temperature values. Another commenter strongly opposed conference proposal 255, arguing that the present rule is adequate.

The FAA agrees that existing § 23.689(a)(2) is adequate. By stating "under operating conditions and temperature variations," the rule includes all expected operating conditions and temperature variations expected in service. Reasonable administration of § 23.689(a)(2) precludes the need for the change proposed.

Reference: Conference proposal 255.

No action is being taken to amend § 23.723 Shock absorption tests.

Explanation: Conference proposal 258 recommends revising § 23.723 to allow certification of landing gear primarily by analysis and to require tests only as an option to analysis. Current § 23.723 requires testing to demonstrate the energy absorption capability of the landing gear and allows analysis for increases in weights on previously approved gear only when the energy absorption characteristics are shown to be identical.

Conference discussion concerning the need for energy absorption tests indicated that new certifications should require testing. One commenter stated that drop tests are needed for new designs but that extrapolation of older designs would be appropriate.

Another commenter pointed to discussions on this subject during the 1983 Airframe Policy Program Review conducted by the FAA. That commenter noted that the current rule allows increases in gross weight to be substantiated by analysis based on tests on landing gear with identical energy absorption characteristics; however, changes in energy absorption characteristics in conjunction with weight increases require further drop-test substantiation.

Current § 23.723 was first proposed in 1975 (40 FR 2480; June 10, 1975) as a result of an FAA airworthiness review program. Initially, § 23.723 was proposed substantially as it currently reads, except that the word "identical" was initially proposed as the word "similar." Based on public comment, that analysis must be based on landing gear tests conducted on a landing gear system with identical, not similar, energy absorption characteristics, the FAA agreed and published the current § 23.723.

References: Conference proposal 258.

No action is being taken to amend § 23.777 Cockpit controls, § 23.779 Motion and effect of cockpit controls, or § 23.781 Cockpit control knob shape.

Explanation: There were five proposals recommending changes to these sections. Subsequent to the conference, the FAA issued amendment 23–33, Standardization of Cockpit Controls for Small Airplanes (51 FR 26654; July 24, 1986).

Reference: Conference proposals 277, 278, 279, 280 and 516.

No action is being taken to amend § 23.853 Compartment interiors.

Explanation: Conference proposals 301 and 302 address issues relating to airplanes weighing less than 1500 pounds. The FAA concludes that these proposals are more appropriate to "primary category" airplanes.

Reference: Conference proposals 301 and 302 are deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA.

No action is being taken to amend § 23.867 Lightning protection of structure.

Explanation: Conference proposal 304 addresses issues relating to airplanes weighing less than 1500 pounds. The FAA concludes that this proposal is more appropriate to "primary category" airplanes.

Reference: Conference proposal 304 is deferred for discussion under the issues applicable to the "primary category" airplane currently being considered by the FAA.

No action is being taken to amend § 23.1523 Minimum flight crew.

Explanation: Conference proposal 478 recommends that specific pilot workload criteria be included in § 23.1523. Subsequent to the conference, the FAA issued amendment 23–34 (52 FR 1808; January 15, 1987), which includes the substance of that conference proposal.

Reference: Conference proposal 478.

No action is being taken to amend § 23.1529 Instructions for Continued Airworthiness.

Explanation: Conference proposal 480 addresses issues relating to airplanes weighing less than 1500 pounds. The FAA concludes that this proposal is more appropriate to "primary category" airplanes.

Reference: Conference proposal 480 is deferred for discussion under the issues applicable to the "primary category" airplane currently being considered by the FAA.

No action is being taken to amend § 23.1559 Operating limitations placard.

Explanation: Conference proposal 490 recommends deletion of paragraph (a)(1), stating that the operating limitations in the Airplane Flight Manual (AFM) are sufficient for airplanes certificated in one category only. While there was consensus at the conference that the requirement of paragraph (a)(1) should be deleted, post-conference review indicates that this placard continues to be necessary in each airplane to assure that the airplane is operated in accordance with the limitations in the AFM. No change is proposed accordingly.

Reference: Conference proposal 490.

No action is being taken to amend part 23 to add a new § 23.1586.

Explanation: Conference proposal 503 recommends establishing a new *§ 23.1586 Performance operating limitations* to include weight, airport elevation and ambient temperature (WAT) conditions as limitations on the airplane. Discussion relating to WAT performance is included in proposed § 23.65 (conference proposal 12) of this notice.

Reference: Conference proposal 503.

No action is being taken to amend appendix C of part 23.

Explanation: Conference proposal 512 recommended changing the angle of the main wheel component. After conference discussion, the proposal was withdrawn by the proponent at the conference.

Reference: Conference proposal 512.

Regulatory Evaluation

Benefit-Cost Analysis

The regulatory evaluation prepared for this NPRM analyzes the costs and benefits to update airworthiness standards for part 23 airplanes. This NPRM is the fourth in a series of notices proposing to amend part 23 (Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes) of the Federal Aviation Regulations (FAR). This NPRM is based on a number of proposals submitted at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri.

This regulatory action proposes 51 amendments to the current airworthiness standards for part 23 airplanes. The major objective of these proposals is to develop updated airworthiness standards for the design of aircraft, permit incorporation of advanced technology in aircraft design and reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety. Many of them are geared toward high performance aircraft.

Of the 51 proposals, 50 are expected to impose either zero or negligible costs on aircraft manufacturers. Such proposals would either clarify existing requirements or afford manufacturers the option to incorporate the newest technology in their future models should they choose to do so. The remaining proposal (§ 23.851) is expected to impose significant costs on manufacturers. It will be discussed and analyzed, in terms of costs and benefits, in the following subsection of this evaluation.

Analysis of Proposed § 23.851: Fire Extinguishers

a. Costs

Unit capital costs per certification were estimated at $17,600 for design, $875 for testing and $1,100 for certification. Production costs per airplane were estimated at $425, which includes the mounting bracket as well as the fire extinguisher itself.

The total incremental costs were estimated at $523,000 over the 10-year study period (1990–1999), which reduces to about $324,000 on a discounted basis, in 1988 dollars. (See detailed regulatory evaluation, which is contained in the docket, for additional information on means by which the cost estimate of $523,000 was derived.)

b. Benefits

It was not possible to quantify the benefits of this proposal because the simple availability of a fire extinguisher on an airplane would not necessarily prevent injuries resulting from burns. The availability of a fire extinguisher would not prevent burn injuries if the pilot and his passengers are unable to reach it because of injuries resulting solely from crash impacts. Therefore, one cannot assume that this proposal would prevent all injuries received from burns. In addition, it is difficult to determine if a fatality should be attributed to ground impact forces or ensuing fires in examining the accident record. In spite of these data problems, a cogent argument can be made that fire extinguishers would be cost-beneficial. Most fatalities resulting from small airplane crashes have been caused by burns rather than injuries received at the time of impact. Over the next 10 years (1990–1999), if this proposal prevented only three people from dying because of their inability to escape from a burning aircraft, the benefits would exceed the costs. In addition, the availability of fire extinguishers would be very useful in limiting the damage to aircraft resulting from on-the-ground fires either prior to takeoff or after a crash in which impact forces alone have not caused hull damage.

c. Conclusion

In view of the estimated cost of $324,000 (discounted) and the analysis, which indicates that the benefits of this proposal will exceed its costs if its adoption prevents as few as three people from dying because of their inability to escape from a burning aircraft, the FAA believes that proposed § 23.851 is cost-beneficial.

On balance, in addition to proposed § 23.851, the FAA firmly believes that all of the amendments contained in this notice are cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this proposed rule.

International Trade Impact Assessment

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by part 23 requirements and could, therefore, implement the proposals under study solely on the basis of competitive considerations.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities".

The FAA's criteria for a small aircraft manufacturer is one employing fewer than 75 employees, a substantial number is a number that is not fewer than 11 and that is more than one-third of the small entities subject to the proposed rules, and a significant impact is one having an annual cost of more than $15,000 (in 1988 dollars) per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or fewer. The proposed amendments to 14 CFR part 23, therefore, would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) in addition, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing

business overseas or for foreign firms doing business in the United States.

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety, Tires.

Issued in Washington, DC, on June 15, 1990.

Daniel P. Salvano,

Acting Director of Airworthiness.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23), as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 23.23 is revised to read as follows:

§ 23.23 Load distribution limits.

(a) Ranges of weights and centers of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain load distribution limits (such as spanwise) that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution may not exceed:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

Explanation: This proposal specifies the conditions necessary for limiting the load distribution for weight and balance considerations. The current rule does not comprehensively define the load distribution limits that must be considered; it only addresses the effect of low fuel. This proposal defines a comprehensive set of load distributions that include the effects of low fuel.

Existing § 23.25(a)(2) restricts the airplane maximum weight to a value not less than the weight of an airplane containing full oil, one-half hour of fuel, and having each seat occupied; or, to a value not less than the weight of an airplane containing minimum crew, and full fuel and oil to full tank capacity.

In the past, these restrictions have been interpreted as weight limitations only. The FAA is aware of airplanes that have been manufactured or modified with centers-of-gravity so far aft at the basic empty weight that the airplane cannot be loaded with each seat occupied, full oil and one-half hour of fuel on board without exceeding the aft center of gravity envelope.

The FAA does not expect each airplane to be capable of carrying full fuel and full passengers. The trade-off between the number of passengers and the amount of fuel on board is a long-standing, successful practice. This proposal does not preclude such practice. However, this proposal is intended to assure that when a member of the United states flying public considers a six-place airplane, that person can expect such an airplane to carry six occupants, along with at least thirty-minutes of fuel and full oil. In order to do so, the airplane must not only be within weight limits, but also within c.g. limits. By stating § 23.23(b)(3) as "each applicable flight requirement of this subpart," this proposal requires the maximum weight limitations to be within the weight *and* balance envelope.

An additional submittal to the conference suggested interpretative material for airplanes of 3,000 pounds or less. The suggestion stated that for these smaller airplanes the lateral distribution limits could be shown by flight test, since the amount of fuel would be relatively small when using the one gallon per twelve horsepower criteria of the present rule. The FAA considers that the requirement as proposed eliminates the need for the suggested interpretative material.

It was the consensus at the conference that the proposal more clearly state the purpose of the requirement for load distribution limits, and the FAA agrees. Therefore, the FAA is proposing a change substantially as submitted and discussed at the conference relative to load distribution limits, that is similar to requirements applicable to transport category airplanes.

Reference: Conference proposals 5 and 6.

§ 23.25 [Amended]

3. Section 23.25(a)(2) is amended by inserting a comma after the words "category airplanes" and before the words "and 190 pounds", and by replacing the parenthetical phrase "(unless otherwise placarded)" with the parenthetical phrase "(unless otherwise placarded, except that pilot seats must assume an occupant of 190 pounds)."

Explanation: This proposal clarifies the criteria used for assuming occupant weights in normal, commuter, utility and acrobatic category airplanes.

The addition of the comma, as proposed, separates the criteria for the occupant weight used in normal and commuter category airplanes from the criteria for the occupant weight used in utility and acrobatic category airplanes. The intent of this proposal is to assure that each seat in a normal or commuter category airplane is designed for an occupant weighing at least 170 pounds, and that placarding the seat to any lesser value is not acceptable for these categories.

Placarding seats for an occupant weight of less than 190 pounds (for other than crew seats) is appropriate for airplanes having dual category certification. For example, for an airplane certificated in both the normal and utility category, compliance would be shown assuming 170 pound occupants in each seat for normal category; and for utility category, compliance would be shown assuming 190 pound occupants in the pilot seats and lesser weights in other occupant seats if necessary. Any seat restricted to a lesser weight must be placarded. The placard could reduce the occupant weight in that seat, or prohibit occupancy of the seat altogether in the utility category, but would require certification for a 170 pound occupant in the normal category.

The FAA recognizes that, lacking clear guidance, past certifications have not followed this practice. Airplanes have been certificated with "child seats" that are placarded for specific weights less than 170 pounds. Part 23 does not provide criteria for child seats, and such certifications would be prohibited by this proposal.

This proposal is based on post conference review of § 23.25. There is no comparable conference proposal.

There were two conference proposals directed at § 23.25.

The proponent of conference proposal 7 contends that paragraph (b)(3)(ii) is imprecise as written since it does not adequately define the engine fuel use. Additionally, on turbopropeller-powered airplanes the proponent contends that demonstration of operation at maximum continuous power may well be impossible without exceeding V_{MO}.

One commenter opposed the change contending the rule is satisfactory as written. That commenter noted that the proponent's justification for the proposal speaks to "operation at maximum continuous power may well be impossible without exceeding V_{MO}." The commenter contended that this had nothing to do with the requirement and that if an applicant, or whoever is running the test, decided not to exceed V_{MO}, then a climb could be initiated rather than maintaining level flight. It was the consensus of attendees that conference proposal 7 should be withdrawn. The FAA agrees that the subject paragraph should not be changed as proposed.

Reference: Conference proposal 7. Conference proposal 8 was deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA. See explanation of conference proposal 8.

4. Section 23.33 is amended by revising paragraphs (b)(1), (b)(2) and (d)(2) to read as follows:

§ 23.33 Propeller speed and pitch limits.

* * * * *

(b) * * *

(1) During takeoff and initial climb at V_T, the propeller must limit the engine r.p.m. to a speed not greater than the maximum allowable takeoff r.p.m. as follows:

(i) For reciprocating-engine-powered airplanes, at full throttle or at maximum allowable takeoff manifold pressure.

(ii) For turbopropeller-powered airplanes, at maximum allowable takeoff power.

(2) During a closed throttle glide (or closed power lever, as applicable) the propeller may not cause an engine speed above 110 percent of maximum continuous speed at the following speeds:

(i) For reciprocating-engine-powered airplanes, at the placarded never-exceed speed, V_{NE}.

(ii) For turbopropeller-powered airplanes, at the placarded maximum operating speed, V_{MO}.

* * * * *

(d) * * *

(2) With the governor inoperative, the propeller blades at the lowest possible pitch, with takeoff power, the airplane stationary, and no wind, compliance must be shown with either—

(i) A means to limit the maximum engine speed to 103 percent of the maximum allowable takeoff r.p.m.; or

(ii) For an engine with an approved overspeed, a means to limit the maximum engine and propeller speed to not more than 99 percent of the maximum approved overspeed.

Explanation: The current requirements are stated in a manner that does not consider the turbine engine/propeller combination nor other requirements applicable to turbopropeller-powered airplanes. Usually, there are two governors in the engine/propeller system of turbopropeller-powered airplanes; one controlling the propeller rotational speed and, in many installations, a second one controlling any overspeed of the turbine engine. If the propeller governor is made inoperative, then the limit is established by the turbine engine overspeed governor on the order of 106 to 108 percent. Therefore, for turbine engines, the 103 percent requirement of existing paragraph (d)(2) is not appropriate since it is defined at a condition of takeoff manifold pressure. Manifold pressure is a term that can only be applied to reciprocating engines and is inappropriate for turbine engines.

Existing paragraph (b)(1) also states a condition that does not fully recognize the difference between reciprocating-engine-powered and turbopropeller-powered airplanes. The term "at full throttle" and, particularly, "at maximum allowable takeoff manifold pressure" imply conditions for reciprocating engines that are not terms normally associated with turbopropeller engines.

Existing paragraph (b)(2) states a condition also specifically applicable to reciprocating-engine-powered airplanes; that is, a closed throttle glide at the placarded "never-exceed speed". Turbine powered airplanes have no requirement to establish a "never-exceed speed" but are required by § 23.1505(c) to establish a maximum operating limit speed. Conference proposal 10 stated V_{MO} only, and eliminated consideration of reciprocating-engine-powered airplanes from paragraph (b)(2) of that section.

Section 23.33(b) applies to propellers not controllable in flight. A turbopropeller-powered airplane with a fixed pitch propeller system is not a foreseeable or likely combination; however, in the interest of clarity, the FAA proposes a change to paragraph (b)(2) stating conditions specifically applicable to reciprocating and turbopropeller-powered airplanes.

There are two proposals addressing the lack of appropriate requirements applicable to turbopropeller-powered airplanes and a third proposal addressing engine/propeller combinations when Supplemental Type Certificate applications are being evaluated.

The FAA has carefully considered conference proposals 10, 11, and 12 submitted to the conference recommending changes to § 23.33, the discussions recorded in the conference transcript, and the current requirements. The FAA concludes that conference proposals 10 and 11 have merit but does not agree with the exact wording of either. Therefore, the FAA is proposing to amend paragraphs (b)(1), (b)(2), and (d)(2) to set forth the requirements applicable to turbopropeller-powered airplanes recognizing their unique characteristics when compared to reciprocating-engine-powered airplanes.

Conference proposal 12 recommends a new subparagraph (c) to require a functional flight test to assure governor/propeller adequacy. This proposal was opposed at the conference. One commenter contended that subparagraphs a and b adequately cover this issue and that conference proposal 12 identifies compliance procedures. Two other commenters stated that the contents of conference proposal 12 would be more appropriate as guidance material. The FAA agrees and has included similar material in Advisory Circular AC 23-8A, entitled "Flight Test Guide for Certification of Part 23 Airplanes", issued February 9, 1989.

Reference: Conference proposals 10, 11, and 12.

5. Section 23.45 is amended by removing paragraph (e), by redesignating paragraph (f) as paragraph (e), by amending the cross reference in newly redesignated paragraph (e)(2) from (f)(3) to (e)(3), by amending the cross references in newly redesignated paragraph (e)(5) introductory text from (f)(3) and (f)(4) to (e)(3) and (e)(4), respectively, and by revising paragraphs (b) and (d) to read as follows:

§ 23.45 General.

* * * * *

(b) The performance data must correspond to the propulsive power or thrust available under the particular ambient atmospheric conditions, the particular flight condition, and the relative humidity specified in paragraph (d) of this section.

* * * * *

(d) The performance, as affected by engine power or thrust, must be based on a relative humidity of—

(1) 80 percent, at and below standard temperature; and

(2) 34 percent, at and above standard temperature plus 50 °F.

(3) Between the two temperatures listed in paragraphs (d)(1) and (d)(2) of this section, the relative humidity must vary linearly.

* * * * *

Explanation: This proposal makes clarifying changes to the existing requirements and combines the requirements currently applied in type certification programs for reciprocating-engine airplanes with those for turbine-engine-powered airplanes. The current requirement in paragraph (d) states for reciprocating-engine-powered airplanes, the performance, as affected by engine power, must be based on a relative humidity of 80 percent in a standard atmosphere. In practice, equivalent level of safety determinations have been made with the relative humidity at 80 percent but with the temperature below standard, because it is an unwarranted burden to obtain the precise condition of exactly 80 percent in a standard atmosphere. It was the consensus at the conference, and the FAA agrees, that this change is necessary to clarify the purpose of the requirement.

There are two nearly identical conference proposals to clarify the phrase "approved power or thrust" used in paragraph c. One recommends replacement by the phrase "approved minimum power or thrust," the other recommends the phrase "nominal power or thrust." The proponents defined "approved minimum power or thrust" as the lowest value of the variation of the maximum power on new production engines and "nominal power or thrust" as the lowest value of maximum power expected on an in service engine over the service life of that engine. It was the consensus at the conference that confusion exists relative to the interpretation of this phrase; but no agreement was reached relative to specific wording.

Subsequent to the conference, the FAA issued AC 23-8A, dated February 9, 1989. Post conference review indicates that sufficient guidance exists in that AC to resolve the confusion relative to this phrase in § 23.45(c) and accordingly no change is proposed.

Conference proposals 13 and 14 recommends changes addressing the lightweight, small airplane. It was concluded by the FAA that the proposals were more appropriate to the "Primary Airplane" petition for rulemaking submitted by the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) (49 FR 39338; October 5, 1984). The FAA determined that no fruitful discussion of these proposals could be obtained during the conference in light of that petition.

Two proposals submitted to the conference were withdrawn by the proponent following discussions at the conference. The first

proposal dealt with performance requirements being met at ambient atmospheric conditions instead of standard conditions; and the second dealt with engine power based on specific humidity; that is, pounds of water to pounds of air.

Another proposal recommends demonstration that the airplane performance procedures can be executed consistently, in service, by pilots of average skill. After much discussion at the conference, it was the consensus, and the FAA agrees, that the words addressing the skill level of pilots to perform various performance requirements remain as Presently worded in the applicable sections of part 23.

The last conference proposal addressing changes to § 23.45 deals with the effect of dry and wet grass on the takeoff and landing distances determined in complying with other requirements. Currently part 23 does not specify the type of surface used in determining takeoff or landing distances. However, § 23.1587(a)(6) requires that the type of surface used in determining these distances be stated in the Airplane Flight Manual. The FAA recognizes that most testing for determining takeoff and landing distances is from a smooth, dry, hard surfaced runway and recognizes the adverse effects from other types of surfaces. The use of smooth, dry, hard surfaced runways results in test data that is repeatable. Some of the questions raised at the conference concerning just grass runways alone were: How wet is wet grass, type of grass, grass blade length, standing water depth in the grass if wet, etc. Other questions concerning types of runways dealt with gravel sizes and snow depths. It was stated that such a list could be nearly endless. The FAA has concluded that the requirement in § 23.1587(a)(6) provides an appropriate minimum standard for type certification of part 23 airplanes. Therefore, no proposal is being made to address this issue.

Reference: Conference proposals 15 through 25. Conference proposals 13 and 14 were deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA.

6. Section 23.53 is amended by revising paragraphs (a), (b)(1)(ii) and (b)(2)(ii) to read as follows:

§ 23.53 Takeoff speeds.

(a) For multiengine airplanes, the rotation speed, V_R, may not be less than V_{MC} determined in accordance with § 23.149.

(b) * * *

(1) * * *

(ii) 1.3 V_{SR}, or any lesser speed, not less than 1.2 V_{SR} that is shown to be safe for continued flight (or land-back, if applicable) under all conditions, including turbulence and complete failure of the critical engine.

(2) * * *

(ii) Any lesser speed, not less than 1.2 V_{SR}, that is shown to be safe under all conditions, including turbulence and complete engine failure.

* * * * *

Explanation: This proposal introduces a rotation speed, V_R, for multiengine airplanes and eliminates reference to V_2 for airspeeds at 50 feet. The discussions at the conference were prior to the adoption of § 23.53 Takeoff speeds, by amendment 23-34. The discussions centered on takeoff speeds and proposed revisions to the requirements stated in the then current § 23.51 Takeoff. Since the FAA is not proposing changes to existing § 23.51, and since those items previously included in § 23.51 are now in § 23.53, conference comments relative to the previous § 23.51 are included in the discussion of current § 23.53.

Conference proposal 32 recommends a factoring of the takeoff distance. It was the consensus at the conference that the recommendation was more appropriate to operating rules and was opposed. Conference proposal 30, recommends moving the requirements of paragraph (e) of § 23.51 to § 23.45.

The consensus at the conference was that the requirement remain as stated and in the then current § 23.51. The FAA agrees with the consensus expressed.

The FAA is proposing to revise paragraph (a) by changing the current requirement that the lift-off speed, "V_{LOF}, not be less than V_{MC}", to a proposed requirement that the rotation speed, "V_R, not be less than V_{MC}". The lift-off speed, V_{LOF}, is undefined in terms of pilot action and, unlike the speed at which the pilot rotates for takeoff while on the ground, may result in a critical condition in case of an engine failure at V_{LOF} equal to V_{MC}. It was the consensus at the conference that this change enhances the level of safety and is a necessary change to the applicable requirements for normal, utility, and acrobatic category multiengine airplanes and is consistent with industry practice.

The FAA is proposing changes to paragraph (b) to eliminate reference to V_2 plus four knots since it was the consensus at the conference, and the FAA agrees, that the constraints of 1.1 V_{MC} and 1.2 V_{SR} are more appropriate as minimum requirements at the 50 foot obstacle height.

The FAA is proposing a clarifying change to § 23.53(b)(1)(ii). The current requirement reads, in pertinent part, " * * * complete engine failure." For multiengine airplanes, the requirement is intended to mean a complete failure of the critical engine and the requirement has been applied in that manner. The intent of § 23.53(b)(1)(ii) is to assure that the chosen takeoff speeds result in multiengine airplanes that are capable of safe continued flight (or safe land-back, if appropriate) after single-engine failure under reasonable variations in ambient conditions. It was the consensus at the conference that the requirement should be revised to clarify the intent.

Conference proposal 33 was withdrawn by the proponent prior to being discussed at the conference.

Reference: Conference proposals 32, 33, 34, 35, 36, 37, and 38.

7. Section 23.65 is amended by revising paragraph (a) to read as follows:

§ 23.65 Climb: All engines operating.

(a) Each airplane must have a steady angle of climb at sea level of at least 1:12 for landplanes or 1:15 for seaplanes and amphibians with—

(1) A speed not less than 1.2 V_{SR};

(2) Not more than maximum continuous power on each engine;

(3) The landing gear retracted;

(4) The wing flaps in the takeoff position; and

(5) The cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 through 23.1047.

* * * * *

Explanation: This proposal deletes the current rate-of-climb requirements and specifies a minimum speed at which the angle-of-climb criteria must be met. There were five proposals submitted to the conference relating to revisions to this section. One proposal recommends introducing operational requirements into § 23.65, which was opposed at the conference on the basis that mixing operation requirements and airworthiness standards within part 23 is inappropriate. Two proposals deal with moving the requirements for balked landing performance from § 23.77 to § 23.65, plus one of these proposals recommends introducing operational requirements into the airworthiness standards. Opposition was voiced to both of these proposals. First, it was not considered appropriate to mix operational requirements with the airworthiness standards, and, secondly, no useful purpose was identified to move balked landing requirements from § 23.77.

The FAA is proposing to delete the rate-of-climb requirement presently stated in paragraph (a) and state the minimum speed at which the angle of climb must be met. It was the consensus at the conference that this proposal would be an improvement in the minimum performance standard for the type certification of small airplanes. One commenter opposed requiring a minimum speed at which the angle of climb must be met; however, the FAA considers deletion of the current climb requirement contingent on this speed constraint.

Conference proposal 42 was withdrawn by the proponent prior to any discussion by the conference attendees.

There were three proposals relative to airplane performance intended to account for the aircraft weight, the operational altitude, and the ambient temperature (WAT). Since these proposals relate to takeoff and climb, they are discussed here.

Conference proposal 39 would establish a new section to (1) require climb performance based on WAT limitations, (2) set limitations on maximum takeoff speeds, and (3) establish operational cloud base and visibility limits.

Conference proposal 40 would establish a new section to require consideration of WAT in compliance with §§ 23.65 and 23.67.

Conference proposals 53 and 54 would establish a new section to define the en route climb conditions, including WAT, the airplane configuration, and the airspeeds to be used for compliance with those conditions.

Conference discussion on these proposals was mixed relative to requiring WAT charts on all airplanes. One commenter who opposed these proposals contended that such rules would essentially eliminate the certification of an entire class of airplanes, i.e., the light twins. Another commenter agreed that most light twin airplanes could not maintain positive climb in the configurations proposed. A third commenter contended that there was no justification available to indicate that current performance levels for twin-engine airplanes are unsatisfactory. One commenter agreed with the proponent of these proposals and stated that transport category climb performance criteria should be applied to small airplanes.

Subsequent to the conference and these discussions, part 23 has been amended to add the commuter category. In that amendment, WAT criteria was added to apply to commuter category airplanes for takeoff, climb and landing conditions. Part 23 currently includes WAT criteria for turbine-powered multiengine airplanes in the specific phase of *Climb: one engine inoperative.*

Post conference review indicates that the application of WAT criteria to the performance of all part 23 airplanes, including single-engine airplanes, is not appropriate. Turbine-powered twin-engine airplanes and commuter category airplanes apply WAT criteria in varying degrees. By this notice, the FAA solicits public comment on the need for WAT criteria as information or as a limitation on piston-powered twin-engine part 23 airplanes; and as a separate issue, whether WAT criteria is necessary on turbine-powered twin-engine part 23 airplanes, specifically during the takeoff and landing phase. Comment should address any data relative to the need to change the existing criteria.

Reference: Conference proposals 39, 40, 41, 42, 43, 44, 45, 53 and 54.

8. Section 23.141 is revised to read as follows:

§ 23.141 General.

The airplane must meet the requirements of §§ 23.143 through 23.253 at all practical operating altitudes, not exceeding the maximum operating altitude established under § 23.1527, without exceptional piloting skill, alertness, or strength.

Explanation: The FAA is proposing a clarification to the general requirements for flight characteristics. The proposal is substituting the words "at all practical operating altitudes, not exceeding the maximum operating altitude established under § 23.1527" for the words "at the normally expected operating altitudes". It was the consensus at the conference that the proposal clarifies the objective requirement of the section. One recommendation made at the conference was to make the requirement applicable up to the maximum operating altitude. However, this recommendation was rejected because some of the requirements cannot be demonstrated due to airplane performance limitations. Therefore, good cause exists to retain the wording "practical operating altitudes."

Reference: Conference proposal 64.

9. Section 23.143 is amended by removing the word "Dive" in paragraph (a)(4) and inserting the word "Descent" in its place.

Explanation: The FAA is proposing this change because the word "descent" more accurately reflects the total phase of flight and is considered preferable to the word "dive" in the current requirement. The proposal submitted to the conference also included an appendix. It was the consensus that the material in the proposed appendix would be more appropriate in the Flight Test Guide for small airplanes or an advisory circular. The FAA agrees with this consensus and has included appropriate portions in AC 23-8A, "Flight Test Guide for Certification of part 23 Airplanes", issued February 9, 1989.

A second proposal submitted to the conference recommends reducing the maximum permissible forces in the table of paragraph (c). There was objection expressed to this recommendation because the proposed forces were unacceptably low and could possibly require powered control systems for many general aviation airplanes. The FAA has concluded that this issue needs further study before making a proposal to reduce the currently specified forces.

Reference: Conference proposals 65 and 66.

10. Section 23.145 is revised to read as follows:

§ 23.145 Longitudinal control.

(a) It must be possible, at speeds below the trim speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous power on each engine and the airplane as nearly as possible in trim at 1.3 V_{S1};

(2) Power off and the airplane as nearly as possible in trim at 1.3 V_{S1}; and

(3) Wing flaps and landing gear—

(i) retracted; and

(ii) extended.

(b) With the landing gear extended, no change in trim or exertion of more than 50 pounds control force with one hand for a short period of time may be required for the following maneuvers:

(1) With flaps retracted, and the airplane as nearly as possible in trim at 1.4 V_{S1}, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4 V_{S1} to 1.4 V_{SO}—

(i) With power off; and

(ii) With the power necessary to maintain level flight.

(2) With flaps extended and the airplane as nearly as possible in trim at 1.2 V_{SO}:

(i) With power off, quickly apply takeoff power or thrust and retract flaps as rapidly as possible to the recommended go-around setting while attaining and maintaining the speed used to show compliance with § 23.77. Retract the gear when positive rate of climb is established.

(ii) With power for and in level flight at 1.1 V_{SO}, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous power.

(iii) In paragraphs (b)(2)(i) and (b)(2)(ii) of this section, if gated flap positions are provided, the airplane may be retrimmed between each stage of retraction.

(3) With maximum takeoff power, landing gear retracted, flaps in the takeoff position and the airplane as nearly as possible in trim at V_{FE} appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining speed constant.

(4) With power off, flaps and landing gear retracted, and the airplane as nearly as possible in trim at 1.4 V_{S1}, apply takeoff power rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended, and the airplane as nearly as possible in trim at 1.4 V_{SO}, obtain and maintain airspeeds between 1.1 V_{SO} and either 1.7 V_{SO} or V_{FE}, whichever is lower.

(c) At speeds above V_{MO}/M_{MO} and up to V_D/M_D, a maneuvering capability of 1.5 g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than 1.3 V_{SO} during a power-off glide with landing gear and wing flaps extended, and with—

(1) The most forward center of gravity approved for the maximum weight; and

(2) The most forward center of gravity approved for any weight.

(e) By using normal flight and power controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane, as follows:

(1) For single-engine and multiengine airplanes, without the use of the primary longitudinal control system.

(2) For multiengine airplanes—

(i) Without the use of the primary directional control; and

(ii) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system,

without the primary longitudinal and directional control system.

Explanation: This proposal corrects the trim reference to §§ 23.161(c) (3) and (4), which were eliminated in amendment 23–21 and redesignates trim speeds and procedures. Conference proposal 69 recommends that the trim speed be changed to 1.3 V_{S1} and that this be incorporated in the proposed rule § 23.145(a).

Several conference proposals suggest relief for certain particular configurations that could not meet the proposed trim speeds. Therefore, all trims are worded "as nearly as possible in trim at". There was a conference agreement that all of the tests should be conducted at the proposed speeds regardless of the trim capabilities of the particular aircraft, which makes the rule much simpler and straightforward.

Conference proposal 75 suggests a force of 50 pounds be substituted for "no more than can be readily applied with one hand for a short period". As a result of issues raised during the discussion of conference proposal 66 relative to the strengths of female pilots, the FAA considered values less than 50 pounds.

FAA report number FAA–AM–73–23, dated December 1973, entitled "Study of Control Force Limits for Female Pilots," page 14, indicates that those pilots tested could pull an elevator control with 50 pounds of force for between 30 and 40 seconds, or 35 pounds for between 75 and 100 seconds. Since § 23.145(b) addresses temporary control force input prior to retrim, the FAA considers a 50 pound input appropriate.

Any additional information that addresses control force input relative to reduced pilot strength will be included as comments to this proposal.

One proposal suggests demonstrations to closely represent actual operational circumstances. The FAA agrees and has carried the proposal one step further and proposes a complete balked landing demonstration as § 23.145(b)(2)(i). As suggested in the proposal, the demonstration is started at 1.2 V_{SO}, to allow for the possibility of a pilot inadvertently flying at somewhat less than the normal approach speed of 1.3 V_{SO}. Present § 23.145(c) is included in the same section due to its similarity to the balked landing phase of flight. Gated flap positions are addressed in proposed § 23.145(b)(2)(iii).

Proposed § 23.145(b) is intended to include all significant tests or demonstrations appropriate to longitudinal control at low speeds. However, there were no proposals or discussions that consider longitudinal control at speeds up to V_D/M_D. With some of the new certification projects having M_D up to .77 and maximum altitudes above 40,000, a requirement to demonstrate the ability to pull at least 1.5 g up to V_D/M_D has been proposed as § 23.145(c).

Reference: Conference proposals 67 through 80 and 514.

11. Section 23.147 is revised to read as follows:

§ 23.147 Directional and lateral control.

For each multiengine airplane, it must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 V_{S1} with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in § 23.143 need not be exceeded), with the—

(a) Critical engine inoperative and its propeller in the minimum drag position;

(b) Remaining engines at maximum continuous power;

(c) Landing gear—

(i) retracted; and

(ii) extended; and

(d) Flaps in the most favorable climb position.

Explanation: This proposal deletes existing paragraph (a) in its entirety, renumbers the remaining requirements and deletes reference to center of gravity. There was general agreement at the review to delete § 23.147(a) because any airplane that complies with the rate of roll requirements of § 23.157 would also comply with § 23.147(a), thereby making it redundant. There was also general agreement that one speed (either 1.4 V_{S1} or V_T) would adequately demonstrate compliance with § 23.147(b) since they are practically the same speed. It was decided to use 1.4 V_{S1} since it is generally the easiest to determine. It was also decided to delete § 23.147(b)(5), center of gravity at the rearmost position, because § 23.21 already requires compliance with each requirement of subpart B throughout the range of loading conditions.

A proposal was made to prohibit excessive control forces to maintain straight flight with a sudden reduction of power after accelerating from climb speed to V_{MO} or V_{NO}, and from V_{MO} or V_{NO} to V_D. There was general opposition to this proposal and it is not included.

A proposal was made to require sudden engine failure in the takeoff configuration at the all engine initial climb speed and recovery after a two-second delay. There were comments that two seconds was too long. It was concluded that since the V_{MC} demonstration of § 23.149 is a more severe test of engine failure at a much more critical speed, this proposal was not included.

It was proposed to make the power requirement for § 23.147 (a and b), "Remaining engine at maximum continuous power, or for turbine engines, the maximum power selected by the applicant as an operating limitation for use during climb." For this flight condition, it was decided to retain, "maximum continuous power."

Reference: Conference proposals 81 through 85.

12. Section 23.149 is amended by replacing the word "recovery" in paragraph (d) with the words "the maneuver" and by revising paragraphs (a), (b), and (c) to read as follows:

§ 23.149 Minimum control speed.

(a) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain a straight flight with a yaw of not more than 20 degrees with that engine still inoperative, and maintain straight flight with an angle of bank of not more than 5 degrees. The ability to maintain straight flight at V_{MC} in a static condition with a bank of not more than 5 degrees must also be demonstrated. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MC} may not exceed 1.2 V_{S1}, where V_{S1} is determined at the maximum takeoff weight, with—

(1) Maximum available takeoff power or thrust on the engines;

(2) The most unfavorable center of gravity;

(3) The airplane trimmed for takeoff;

(4) The maximum sea level takeoff weight, or any lesser weight necessary to show V_{MC};

(5) The airplane in the most critical takeoff configuration, except with the landing gear retracted; and

(6) The airplane airborne and the ground effect negligible.

(c) A minimum speed to intentionally render the critical engine inoperative must be established and stated as an operating limitation in § 23.1583 and designated as the safe, intentional, one-engine-inoperative speed, V_{SSE}. V_{SSE} shall not be less than V_{S1} at maximum takeoff weight, nor greater than the higher of 1.05 V_{MC}, or V_{MC} determined at zero bank angle.

* * * * *

Explanation: This proposal defines standards for determining the minimum control speed and rewords particular portions of § 23.149 for clarity. The FAA is proposing a revision to paragraph (a) to eliminate any implication of loss of control and to establish a standard for heading change of not more than 20 degrees. It was the conference consensus that this would be an improvement over the current requirement. Conference proposals 86 and 87 were withdrawn at the conference in favor of conference proposal 88, which is substantially the proposed change for paragraph (a).

The FAA is proposing to combine the requirements of current paragraph (b) applicable to reciprocating-engine-powered airplanes and those of current paragraph (c) applicable to turbine-engine-powered airplanes into one paragraph designated as paragraph (b). The current requirements are substantially the same for both types of airplanes, except current paragraph (b) is somewhat more detailed with respect to flap position, propeller position, and cowl flap position; whereas the most critical takeoff configuration specified in current paragraph (c) is considered more encompassing and objectively stated in determining the critical condition for V_{MC} for airplanes type certificated in accordance with the airworthiness standards of part 23.

V_{MC}, as determined in § 23.149, applies to the minimum flight speed at which the airplane is directionally and laterally controllable when the critical engine is suddenly made inoperative. The FAA is proposing the establishment and determination of an intentional one-engine-inoperative speed for the purpose of inflight pilot training. V_{SSE} must be determined considering the maintenance of a conservative controllability margin with respect to V_{MC} when the critical engine is suddenly and intentionally rendered inoperative. The establishment and determination of a V_{SSE} is an important and necessary safety requirement for pilot training in multiengine airplanes and needs to be established during the type certification program. It was the consensus of the conference attendees that the FAA should propose a requirement that applicants establish a safe and conservative minimum speed for multiengine airplanes when the critical engine is intentionally rendered inoperative for training purposes.

The FAA recognizes that when V_{SSE} is established on airplanes equipped with autofeather, and if autofeather is used when establishing V_{SSE}, V_{SSE} demonstrations must be limited to conditions where autofeather is armed and operative.

The FAA is proposing to remove the word "recovery" in paragraph (d) and insert the words "the maneuver" in its place. This change is necessary because the word "recovery" implies a loss of control of the airplane. Such a loss is not in keeping with the public interest to maintain a minimum level of safety for multiengine airplanes. It is also consistent with the proposed change to paragraph (a) to limit a change in heading to 20 degrees.

Conference proposals 94, 95, and 96 address the issues of establishing the minimum control speed with one-engine-inoperative with the airplane in the approach and landing configurations. The FAA has concluded that by requiring the procedures for safe one-engine-inoperative approaches and landings, it is unnecessary to establish another V_{MC} for these conditions. The consensus at the conference was that this is a reasonable method in addressing these issues.

Reference: Conference proposals 88 through 96.

13. Section 23.153 is revised to read as follows:

§ 23.153 Control during landings.

It must be possible, while in the landing configuration, to safely complete a landing without encountering forces in excess of those prescribed in § 23.143(c) following an approach to land—

(a) At a speed 5 knots less than the speeds used in complying with the requirements of § 23.75 and with the airplane in trim, or as nearly as possible in trim, and without the trimming control being moved throughout the maneuver;

(b) At an approach gradient equal to the steepest recommended for operational use; and

(c) With only those power or thrust changes that would be made when landing normally from an approach at 1.3 V_{S1}.

Explanation: This proposal requires that all airplanes, regardless of weight, be safely controllable during landings. Conference proposal 98 recommended adding a requirement "to overcome any excessive sink rate". The FAA has concluded that a meaningful definition of the word "excessive" would be necessary to the requirement as proposed and that other requirements preclude excessive sink rates such as the landing gear requirements of §§ 23.723 and 23.725.

The proposal requires that control during landings be shown at the steepest gradients recommended for operational use and that the changes in power or thrust be those made when landings are normally performed from an approach at 1.3 V_{S1}.

Reference: Conference proposals 98 and 99.

14. Section 23.155 is amended by revising paragraph (b) to read as follows:

§ 23.155 Elevator control forces in maneuvers.

* * * * *

(b) The requirement of paragraph (a) of this section must be met at 75 percent of maximum continuous power for reciprocating engines, or the maximum power or thrust selected by the applicant as an operating limitation for use during cruise for reciprocating or turbine engines, and with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for level flight at V_A; and

(2) In a turn with the trim setting used for the maximum level flight speed, except that the speed may not exceed V_{NE} or V_{MO}/M_{MO}, whichever is appropriate.

* * * * *

Explanation: This proposal clarifies the conditions used to demonstrate elevator control force. During discussion at the conference, it became clear that some confusion existed with regard to the current requirements. This proposal identifies the two speed conditions for meeting the requirements of paragraph (a). Conference proposals 102 and 103 addressed this clarification.

Conference proposal 100 recommends deleting the requirements of the entire section because the objectives of the requirements are closely related to those of §§ 23.173 and 23.175 concerning static longitudinal stability. As further support for the deletion, the proponent noted that part 25 does not have a similar requirement. Another commenter stated that the probable reason for this was because part 25 airplanes do not perform acrobatic maneuvers and because the requirements for static longitudinal stability deal with force gradients rather than the force values of § 23.155. In addition, it was stated by one attendee that static stability and maneuvering stability are two different issues and the FAA agrees.

Conference proposal 101 recommends that the tests specified should include speeds up to V_D instead of extrapolating to the appropriate limit. The FAA does not agree because the risk of flight testing increases without an improvement in the increased level of safety at this high speed.

Reference: Conference proposals 100, 101, 102 and 103. Conference proposal 104 was deferred for discussion under the issues applicable to the "primary category" airplane.

15. Section 23.157 is amended by adding the phrase "but not more than 10 seconds," after the word "seconds," and before the word "where," in paragraph (a)(2); by adding the phrase "but not more than 7 seconds" after the word "seconds" and before the word "where" in paragraph (c)(2); and by revising paragraph (b) to read as follows:

§ 23.157 Rate of roll.

* * * * *

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the takeoff position;

(2) Landing gear retracted;

(3) For a single engine airplane, at maximum takeoff power; and for a multiengine airplane with the critical engine inoperative and the propeller in the minimum drag position, and the other engines at maximum takeoff power; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 V_{S1} and 1.1 V_{MC}, or as nearly as possible in trim for straight flight.

* * * * *

Explanation: The FAA is introducing a 10-second limit to the time calculated by the equation in § 23.157(a)(2) and a 7-second limit to the time calculated by the equation in § 23.157(c)(2). The limit restricts all airplanes above 12,500 pounds to a maximum rate of roll, thereby correcting an inadvertent oversight introduced when the commuter category was added by amendment 23–34.

Additionally, the FAA proposes to change the engine power condition in paragraph (b)(3) for multiengine airplanes from maximum continuous power to maximum takeoff power on the operative engines in order to more realistically evaluate the rate of roll capability when the critical engine is inoperative and the propeller of the inoperative engine is in the minimum drag position during the takeoff condition. In addition, it is proposed that the speed for multiengine airplanes be not less than 1.1 V_{MC}. This will clarify that this speed is related to the takeoff safety speed

immediately after a takeoff associated with an engine failure where obstacle clearance may be a problem and reasonable rates of roll are necessary.

References: Conference proposals 107 through 112. Conference proposals 105 and 108 were deferred for discussion under the issues applicable to the "primary category" airplane currently being considered by the FAA. Conference proposals 109 and 111 were withdrawn prior to any substantive conference discussions.

16. Section 23.175 is amended by revising paragraphs (a)(3) to read as follows:

§ 23.175 Demonstration of static longitudinal stability.

* * * * *

(a) * * *

(3) All reciprocating engines operating at maximum continuous power, or turbine engines operating at the maximum power selected by the applicant as an operating limitation for use during climb; and

* * * * *

Explanation: The FAA is proposing to revise the engine power requirements for the climb condition. Conference proposal 121 recommends revision of subparagraph 23.175(a)(4) to include a trim speed as high as the speed used to show compliance with the engine cooling requirements of § 23.1041. Conference discussion indicated that the engine cooling requirements were already in §§ 23.1045 and 23.1047, and that clarification was needed prior to further action. Conference proposal 122 recommends that the engine power be the maximum continuous power or the maximum power selected by the applicant as an operating limitation for use during a climb. It was the conference consensus that this revision to § 23.175(a)(3) should be made and the FAA agrees. Conference proposal 122 also recommends that the flaps be in the retracted position. The FAA does not agree with this recommendation because the climb flap position may be other than the retracted position and the present wording of the current requirement encompasses all positions used for climb.

Conference proposal 123 proposes to revise the required cruise conditions by eliminating reference to high speed and low speed cruise conditions, and to eliminate the gear down condition. The only commenter doubted that sufficient justification existed to change the current rule as proposed. Subsequent to the conference, the FAA issued amendment 23-34 (52 FR 1608; January 15, 1987) revising § 23.175. No additional revision is proposed.

Conference proposal 124 recommended adding a requirement to evaluate an airplane for static longitudinal stability in the takeoff configuration. The FAA is not aware of any in service problems relating to the lack of a specific requirement for such an evaluation. Accordingly, no requirement is proposed.

Reference: Conference proposals 121, 122, 123, and 124.

17. Section 23.177 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 23.177 Static directional and lateral stability.

(a) * * *

(1) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 V_{SI} in the takeoff configuration and 1.3 V_{SI} in other configurations, up to the maximum allowable speed for the condition being investigated in the takeoff, climb, cruise and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a 3 degree angle of descent in coordinated flight. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{SI} to V_A, the rudder pedal force must not reverse.

(2) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for any landing gear and flap position. This must be shown with symmetrical power, up to 75 percent of maximum continuous power, at speeds above 1.2 V_{SI} in the takeoff configuration and 1.3 V_{SI} in other configurations, up to the maximum allowable speed for the configuration being investigated in the takeoff, climb, approach and cruise configurations. For the landing configuration, the power must be up to that necessary to maintain a 3 degree angle of descent in coordinated flight. The angle of bank for these tests must be appropriate to the type of airplane and the rudder force must not exceed 150 pounds. The static lateral stability must not be negative at 1.2 V_{SI}.

(3) In straight, steady slips at 1.2 V_{SI} for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of slip is increased up to the maximum appropriate to the type of airplane. At larger slip angles up to the angle at which full rudder and aileron control is used or a control force limit contained in § 23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Enough bank must accompany the sideslip to hold a constant heading. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

* * * * *

Explanation: The FAA is proposing to revise paragraph (a) to require that static directional and lateral stability be shown under more realistic operating conditions expected in service. Paragraph (a)(1) would be revised to evaluate the static directional stability in the approach configuration at the engine power necessary to maintain a 3 degree angle of descent in symmetrical coordinated flight instead of the maximum continuous power condition currently required.

A revision to paragraph (a)(2) is proposed that would require static lateral stability in the landing configuration at the engine power necessary to maintain a 3 degree angle of descent in symmetrical coordinated flight instead of the 75 percent maximum continuous power condition currently required. In addition, it is proposed to delete the current requirement, which states that the bank angle may not be less than 10 degrees. Many airplanes are being required to demonstrate compliance within a condition that results in an unsteady sideslip and necessitates the presence of interconnect springs or other types of interconnections. The issue is related to crosswind landing control. The incorporation of spring interconnects for small or zero sideslip may lead to hazardous crosswind landings when small or zero sideslip should not be hazardous. Conference proposal 128 recommends permitting an unstable rate of roll not to exceed 1 degree per second. It was the consensus at the conference that the measurement of 1 degree per second in flight could result in an unrealistic or unrepetitive evaluation of the static lateral stability of the airplane because of shifts within the fuel tank. The FAA agrees, and therefore, the 1 degree per second instability is not being proposed.

Conference proposal 127 was generally agreed upon as encompassing the necessary improvements to the current rule. That proposal specifies angles of bank for the tests. Specified angles of bank were rejected by the attendees because of agreement to remove the mandatory bank angle in the current requirement of paragraph (a)(2), since most airplanes are demonstrating compliance in what amounts to an unsteady sideslip maneuver. In addition, the conference proposal recommends relaxation of the requirements proposed for landplanes when modified by the addition of floats to convert the landplane to a seaplane. The recommendation applicable to seaplanes with floats is based upon the well recognized and very specialized constraints applicable to floatplane operations. Conventional floats are, by their design, destabilizing when added to an airplane. If the basic airplane is then modified to regain the stability levels of the landplane, controllability of the floatplane while on the water is almost always severely limited. The proponent of this recommendation contends that by limiting the application of the recommendation to the addition of floats on previously certificated landplanes, an initial baseline stability level is assured. The installation of floats will cause an incremental reduction in the baseline stability levels that the proponent considered acceptable, subject to the constraints as set forth in the recommendation when the basic stability requirements are the same as those required of landplanes. The FAA recognizes that the installation of floats on a landplane will present a problem to stability but is of the opinion that an airplane, whether a landplane or a seaplane so converted by the addition of floats, must comply with the static directional and lateral stability requirements.

Conference proposal 129 recommends a relaxation of the static lateral stability requirement similar to that permitted by the military in requirements set forth in Military Standard MIL-F-8785B. The FAA does not agree with this relaxation because the handling qualities requirements for the military emphasize maneuverability at the expense of stability in their airplanes and the objectives of the requirements are not the same.

Conference proposal 130 recommends relaxing the speed requirement to 1.3 V_{SI} in configurations other than the takeoff configuration. It was the conference consensus that this relaxation would more realistically set forth a minimum requirement, since rarely are airplanes operated below 1.3 V_{SI}. The FAA agrees with the recommended revision.

Conference proposal 131 recommends deleting the requirements currently set forth in paragraph (b) of § 23.177 because two-control airplanes have not been designed for a number of years and any future designs could be addressed by the issuance of special conditions. It was the consensus that because paragraph (b) states the requirements for two-control airplanes, the processing of special conditions could be time-consuming. Therefore, the FAA does not propose any action to remove the requirements for two-control airplanes, since the requirements should be available to any applicant desiring to design a two-control airplane in the future.

Reference: Conference proposals 125, 126, 127, 129, 130, and 131. Conference proposal 128 was deferred for discussion under the issues applicable to the "primary category" airplane currently under consideration by the FAA.

§ 23.179 [Removed]

18. Section 23.179 is removed.

Explanation: The current requirements of § 23.179 Instrumented stick force measurements, are statements of how the requirements may be met rather than actual requirements. It was the consensus at the conference, and the FAA agrees, that the material should be in an Advisory Circular since the material is considered guidance for type certification programs.

Reference: Conference proposals 132, 133, and 134.

19. Section 23.181 is amended by revising paragraphs (a)(2) and (b)(2), and by adding a new paragraph (c) to read as follows:

§ 23.181 Dynamic stability.

(a) * * *

(2) In a fixed position except when compliance with § 23.672 is shown.

(b) * * *

(2) In a fixed position except when compliance with § 23.672 is shown.

(c) During the conditions as specified in § 23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path (phugoid oscillation) that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

Explanation: The FAA is revising the requirement to account for required stability augmentation systems and is proposing a requirement to evaluate the airplane for phugoid-type oscillations. Flight test experience has shown that devices employed in the longitudinal stability of an airplane can introduce unacceptable dynamic characteristics as a result of violent phugoid-type oscillations when small out-of-trim control forces are released. The additional requirement is proposed to assure that an evaluation is made for such characteristics.

The FAA received six recommendations to revise § 23.181. Conference proposal 135 recommends specific numbers to define when short period oscillations are heavily damped. It was the consensus at the conference, and the FAA agrees, that short period behavior is obvious and that the guidance material contained in the then current FAA Order 8110.7, Engineering Flight Test Guide for Small Airplanes, is satisfactory without requiring force measurements in every case. (Note: FAA Order 8110.7 has been canceled and replaced by Advisory Circular AC 23-8A, "Flight Test Guide for Certification of Part 23 Airplanes", dated February 9, 1989.) Conference proposal 136 addresses the requirements of § 23.181 when a yaw damper is installed. The FAA has determined that the proposed change to § 23.181 is unnecessary because the airplane must comply with the requirements whether or not a yaw damper is installed to meet the requirements. Conference proposal 137 recommends evaluation of short period oscillations to the V_D speed. The FAA has concluded that such evaluations are currently required by §§ 23.251 and 23.253. Therefore, a revision to § 23.181 to address this issue is unnecessary. Conference proposal 138 recommends removal of the specific requirements of damping in § 23.181(b) and recommends that the airplane must be positively damped with the controls free. It was the consensus that the current requirements are appropriate, but that if removed from the section, the numbers should be stated in the Engineering Flight Test Guide for Small Airplanes. The FAA concluded that the current requirements are adequate and should not be revised.

Conference proposal 139 recommends a new requirement concerning the dynamic stability of an airplane conducted under the conditions in which the longitudinal static stability is assessed under § 23.175. It was the consensus at the conference that the airplane should be evaluated as stated in the proposal for a new paragraph (c) to § 23.181 and the FAA agrees. The opinion was also expressed that the requirements should be more precise, however, no specific recommendations were received. Conference proposal 140 recommends substantially the same requirement as conference proposal 139, but the consensus at the conference was that the recommendation of conference proposal 140 was not clear and that guidance material of the Engineering Flight Test Guide for Small Airplanes would be appropriate for applying the proposed rule of paragraph (c) to § 23.181.

Reference: Conference proposals 135 through 140.

20. Section 23.201 is amended by revising paragraphs (c), (f)(4), and (f)(5) to read as follows:

§ 23.201 Wings level stall.

* * * * *

(c) The wings level stall characteristics must be demonstrated in flight as follows: Starting from a speed above the stall warning speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by an uncontrollable downward pitching motion of the airplane, until the control reaches the stop, or until the activation of an artificial stall barrier; e.g., stick pusher. Normal use of the elevator control for recovery is allowed after the pitching motion has unmistakably developed, or after the control has been held against the stop for not less than two seconds. In addition, engine power may not be increased for recovery until the speed has increased to approximately 1.2 V_{SI}.

* * * * *

(f) * * *

(4) *Power:*

(i) Power off; and

(ii) For airplanes of 6,000 pounds or less maximum weight, 75 percent of maximum continuous power; or

(iii) For airplanes of more than 6,000 pounds maximum weight, the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, except that the power may not be less than 50 percent of maximum continuous power

and need not exceed 75 percent maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 V_{s_1} as practicable.

* * * * *

Explanation: The FAA is proposing to clarify the requirements of paragraph (c) by stating the length of time that the elevator control must be against the stop to consider that the airplane is in a stall condition. In addition, the FAA recognizes the use of artificial stall barrier systems such as a stick pusher, as an acceptable means of defining stall when the artificial stall barrier system activates. It was the consensus of the attendees at the conference that this clarification is needed in the airworthiness standards.

The FAA is proposing to revise paragraph (f) to differentiate between airplanes of 6,000 pounds or less and those of more than 6,000 pounds with respect to the power to be used in power-on stalls. Heavier airplanes with high power-to-weight ratios attain extremely high nose attitudes at 75 percent maximum continuous power. The FAA does not consider the tests demonstrating stall characteristics from these extremely nose high attitudes as an enhancement to safety. Accordingly, the FAA is proposing to lower the power by proposing that a power be used of not less than 50 percent maximum continuous power or the power necessary to maintain level flight in the landing configuration and a speed of 1.4 V_{s_0}. It was the consensus that these revisions would enhance the level of safety during wings level stall tests and not lower than the level of safety intended by the airworthiness standards.

In addition, the FAA is proposing a revision to the trim speed used during the tests. The current requirement states that the airplane must be trimmed at 1.5 V_{s_1} or at the minimum trim speed, whichever is higher. It is being proposed that the trim speed be as near 1.5 V_{s_1} as practicable. It was the consensus that the current requirement should be revised to be more general than currently stated. However, one proposal to relax the trim requirement to values of 1.3 V_{s_1} to 1.5 V_{s_1} was not generally supported and the FAA concurs with the nonsupport of this proposal.

References: Conference proposals 141 through 147.

21. Section 23.203 is amended by revising paragraphs (b) introductory text, (b)(4), (b)(5), (c)(1), (c)(4), and (c)(5) to read as follows:

§ 23.203 Turning flight and accelerated stalls.

* * * * *

(b) When the stall has fully developed or the elevator has reached its stop, it must be possible to regain level flight by normal use of the flight controls but without increasing power, and without—

* * * * *

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls, and without exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated stalls; and

(5) Exceeding the maximum permissible speed or allowable limit load factor.

(c) * * *

(1) *Wing Flaps:* Retracted, fully extended, and in each intermediate position, as appropriate.

* * * * *

(4) *Power:*

(i) Power off; and

(ii) For airplanes of 6,000 pounds or less maximum weight, 75 percent of maximum continuous power; or

(iii) For airplanes of more than 6,000 pounds maximum weight, the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{s_0}, except that the power may not be less than 50 percent maximum continuous power and need not exceed 75 percent maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 V_{s_1} as practicable.

Explanation: The FAA is proposing changes to the roll excursion requirements in paragraph (b) to clarify the permissible limits for both turning stalls and accelerated stalls. The current requirement for not more than 60 degrees of roll is considered to be insufficiently severe in the case of turning flight stalls because it would permit a roll into the turn to go to 90 degrees of bank. In addition, the current requirement is considered overly stringent in the case of a roll out of the turn in an accelerated stall since the bank angle is limited to 30 degrees. It is proposed to permit a bank angle of up to 60 degrees. It was the consensus at the conference that the proposal should be set forth in a notice of proposed rulemaking.

As in § 23.201(f), the FAA is proposing to revise paragraph (c) to differentiate between airplanes of 6,000 pounds or less and those of more than 6,000 pounds with respect to the power to be used in power-on stalls for the same reasons provided in the explanation of the proposed change to § 23.201(f) (Proposal 20 of this notice). It was the consensus that these revisions would enhance the level of safety during turning flight and accelerated stall tests.

In addition, the FAA is proposing a revision to the trim speed to be used during the tests. It is being proposed that the trim speed be as near 1.5 V_{s_1} as practicable. It was the consensus at the conference that the current requirement should be revised to be more general than currently stated. However, one proposal to change the trim requirements to values of 1.3 V_{s_1} to 1.5 V_{s_1} was not generally supported by the attendees nor by the FAA.

Conference proposal 155 recommends additional stall requirements for aerobatic and utility category airplanes. It was the consensus that the current requirements adequately address these issues and the FAA agrees. Therefore, the FAA is taking no action on this recommendation.

References: Conference proposals 148, 149, 150, and 155.

22. Section 23.205 is amended by revising paragraphs (b)(1) and (b)(6) to read as follows:

§ 23.205 Critical engine inoperative stalls.

* * * * *

(b) * * *

(1) *Wing flaps:* Retracted and set to the position used to show compliance with § 23.67.

* * * * *

(6) *Trim:* Level flight, critical engine inoperative, except that for an airplane of 6,000 pounds or less maximum weight that has a stalling speed of 61 knots or less and cannot maintain level flight with the critical engine inoperative, the airplane must be trimmed for straight flight, critical engine inoperative, at a speed as near 1.5 V_{s_1} as practicable.

Explanation: The FAA is proposing that critical engine inoperative stalls be evaluated with the wing flaps in the climb position. The flap position to show compliance with the requirements for climb with the critical engine inoperative may not necessarily be the retracted position as currently required. This additional configuration is likely to occur subsequent to an engine failure and the FAA is of the opinion that the stall evaluation requirements should include this configuration if different from the retracted position. There were no objections voiced at the conference to this proposal.

The FAA is proposing to require that the airplane be trimmed at a speed as near 1.5 V_{s_1} as practicable in place of the current requirement, which states "at a speed not greater than 1.5 V_{s_1}". It was the consensus that this change to the airworthiness standards should be proposed.

One submittal to the conference does not recommend any specific changes to this section, but rather advanced a concept of adequate requirements for minimum control speeds with the critical engine inoperative, V_{MC}, stall characteristics with the critical engine inoperative, and pilot training. The FAA concurs with the concepts submitted.

References: Conference proposals 151, 153, and 154. Conference proposal 152 was a continuation of conference proposal 151 and not a separate proposal submittal.

23. Section 23.207 is amended by revising paragraph (c) and by adding a new paragraph (d) to read as follows:

§ 23.207 Stall warning.

* * * * *

(c) For the stall tests required by § 23.201(c), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots, but not more than the greater of 10 knots or 15 percent of the stalling speed, and must continue until the stall occurs.

(d) For all other stall tests, the stall warning must begin at not less than 5 knots above the stall speed and be sufficiently in advance of the stall for the stall to be averted by action after the stall warning first occurs. In addition, the stall warning must not operate during a normal takeoff, a takeoff continued with one engine inoperative or approach to landing.

Explanation: The FAA is proposing a revision to paragraph (c) to require the current stall warning margins to be applicable to straight stalls as set forth in § 23.201(c) and to state requirements for turning flight and accelerated stalls in a new paragraph (d). The proposal is to assure that an adequate margin above the stalling speed exists in the two stall condition requirements; i.e., §§ 23.201 and 23.203.

Service experience has shown that the current requirements are appropriate for slow, wings level stalls but when the stall warning margin requirements are applied to turning flight and accelerated stalls that the time differences between the stall warning and stall is often so small that the pilot has insufficient time to prevent the stall. This has been found to be particularly true during accelerated stalls with the upper limit at 10 knots above the stall.

It was the conference consensus that the previously discussed changes to the stall warning requirements should be proposed by the FAA in a notice of proposed rulemaking. One issue discussed regarding operation of the stall warning was in conference proposal 159, which stated, in part, the stall warning shall not operate during normal takeoff or landing. While it was agreed that the stall warning should not activate during normal takeoffs, some normal landings may result in activation of the stall warning. Therefore, it was suggested that the word "approach" be used in place of landing. The FAA agrees.

Conference proposal 158 recommends that the pilot be provided with a visual display that indicates that the airplane's stall margin is the relationship between the airplane's lift coefficient and the maximum lift coefficient possible for the airplane's configuration. There was no expression of disagreement with the objectives of this proposal, but it was considered to be beyond the scope of the requirements of part 23. The proposal seems to state design criteria for the system instead of stating the objectives necessary to regulate a stall warning.

Conference proposal 156 recommends adding a sentence to the current requirements that under all conditions of power, flap and entry rate, objectionable warnings must be minimized. The FAA agrees with this objective, but is of the opinion that the proposed revisions of paragraph (c) and the new paragraph (d) meet this objective.

Conference proposal 160 recommends adding a requirement that the stall warning be audible to the pilot when wearing approved headphones. There were extensive comments relative to the audibility of warnings, including stall warnings, when the pilot chooses to use a headset specifically designed to reduce apparent noise level. Several commenters identified other required audible warning systems. Since reasonable design would introduce the stall warning into the speaker system and, subsequently, into the headset, the commenters discussed whether these systems could or should also be introduced into the speaker system so that they could be fed into the earphones of acoustical attenuating headsets.

Section 23.207 requires that "the stall warning must give clearly distinguishable indications under expected conditions of flight." The FAA recognizes that there might be airplanes that, because of the noisy environment or other reasons such as to reduce pilot workload, would require acoustical attenuating headsets as a mandatory part of the basic certification. If these exist, compliance with § 23.207 would demand that audible enunciations be fed through the headset. The FAA does not propose to impose such requirements on airplanes when the pilot chooses to voluntarily use such a headset. Additionally, there are part 23 airplanes with stall warning systems that are driven aerodynamically and are completely independent of any electrical system. The FAA does not propose to prohibit such designs by demanding that these stall warnings be somehow introduced into the speaker system. Accordingly, no change is proposed.

Reference: Conference proposals 156, 157, 158, 159, and 160.

24. Section 23.233 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d) to read as follows:

§ 23.233 Directional stability and control.

(a) It must be demonstrated that there is no uncontrollable ground or water looping tendency in 90° crosswinds, up to a wind velocity of 0.2 V_{s_0}, at any speed at which the airplane may be expected to be operated on the ground or water.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine power to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

* * * * *

(d) Seaplanes must demonstrate satisfactory directional stability and control for water operations up to the maximum wind velocity specified in paragraph (a) of this section.

Explanation: The FAA is proposing to clarify paragraph (a) by specifying that it must be *demonstrated* that the current requirements are met. The recommendation was made on the basis that "demonstrated crosswind velocity" must be shown and § 23.233 was not clear that controllability in a crosswind had to be demonstrated.

The FAA is proposing to revise paragraph (b) by requiring that the airplane be satisfactorily controllable by the aerodynamic forces of the rudder until the airspeed has reduced to at least half of the touchdown speed. It was the conference consensus that this requirement would assure adequate directional stability and control.

The FAA is proposing directional stability and control requirements for seaplanes to assure reasonable control of the airplane during water operations up to the maximum wind velocity of 0.2 V_{s_0}. There was a question raised at the conference as to whether the recommendation was necessary. The FAA has determined that the proposal should be stated for seaplanes based upon the problems encountered where "step taxiing" and turns on the step have created hazardous conditions in strong crosswinds.

Reference: Conference proposals 168 and 169.

25. Section 23.235 is revised to read as follows:

§ 23.235 Taxiing condition.

(a) The shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may be reasonably expected in normal operation, including takeoffs and landings.

(b) The applicant must provide water handling information and allowable sea conditions for seaplanes and amphibians in the Airplane Flight Manual in accordance with § 23.1581(a)(2).

Explanation: The current requirement for taxiing conditions only refers to one aspect of operation on rough surfaces. The FAA is proposing to require an evaluation of the operation of the airplane on the roughest surface that may be reasonably expected in service during taxiing, takeoffs, and landings. This proposal reflects the operational experience of some small airplanes.

The FAA is proposing to require water handling information and information on allowable sea conditions for small airplanes that may be operated from water.

It was the consensus at the conference that the existing requirements be expanded to include the evaluation of rough surface takeoffs and landings. Also, it was agreed that the water handling characteristics be included in the Airplane Flight Manual in accordance with § 23.1581(a)(2), where other information is required that is necessary for safe operation because of design, operating, or handling characteristics for seaplanes and amphibian airplanes.

Reference: Conference proposals 170 and 171.

26. Section 23.251 is revised to read as follows:

§ 23.251 Vibration and buffeting.

There must be no vibration or buffeting severe enough to result in structural damage, and each part of the airplane must be free from excessive vibration, under any appropriate speed

and power conditions up to V_D/M_D. In addition, there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

Explanation: The FAA is proposing a change to the current requirement to clarify that buffeting must not cause structural damage in any envelope condition and to specify a single value of V_D/M_D rather than the minimum value of V_D permitted in the structural requirements. The V_D/M_D value is consistent with other handling qualities assessed and is compatible with the structural requirements. There was consensus at the conference that the current requirement should be revised to address these changes.

Reference: Conference proposal 172.

27. Section 23.253 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 23.253 High speed characteristics.

* * * * *

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to V_{SO}/M_{SO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradients in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in § 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{SO}/M_{SO}, without—

* * * * *

Explanation: The FAA is proposing to expand the trim condition specified in paragraph (a) from "any likely cruise speed" to "any likely speed". This encompasses the descent trim condition. It was the conference consensus that this change should be made.

The proposal to revise paragraph (b) would specify that the speed warning is that stated in § 23.1303. It was the conference consensus that this proposal was needed for clarity.

Reference: Conference proposals 173 and 174.

28. Section 23.305 is amended by revising paragraph (b) to read as follows:

§ 23.305 Strength and deformation.

* * * * *

(b) The structure must be able to support ultimate loads without failure for at least three seconds, except local failures or structural instabilities between limit and ultimate load are acceptable only if the structure can sustain the required ultimate load for at least three seconds. However, when proof of strength is shown by dynamic tests simulating actual load conditions, the three second limit does not apply.

Explanation: This proposal clarifies the FAA's interpretation of failure during static ultimate load test. Using existing § 23.305, the test is a failure if a part or component fails (e.g., a rivet) beyond limit load but below ultimate load during a static ultimate load test. Using a more liberal interpretation, a failure or structural instability between limit and ultimate load is acceptable as long as the entire structure demonstrates the capability to carry ultimate load for three seconds. This proposal clarifies this disparity but is not intended to relieve the requirement for deflection shown in § 23.301(c) or § 23.305(a). The intent of this proposal was unopposed at the conference.

Reference: Conference proposal 178.

29. Section 23.307 is amended by redesignating existing paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 23.307 Proof of structure.

* * * * *

(b) In order to minimize the possibility of any structure being under strength, the results obtained from required substantiating load tests conducted instead of analysis, or at load levels not substantiated by analysis, must be corrected using material correction factors to account for—

(1) Differences between the mechanical properties of the test article and the guaranteed minimum design mechnical properties defined in § 23.615; and

(2) Dimensional variations of the test article from the minimum construction dimensions listed in the type design.

* * * * *

Explanation: This proposal recommends a new requirement to correct structural test results for material correction factors. There were four conference proposals directed toward § 23.307. This proposal was developed from conference proposal 179.

Conference proposal 179 recommends that the results of strength tests be corrected to account for departures from the mechanical properties and dimensions assumed in the design calculations. In support of conference proposal 179, the submitter contends that variations in mechanical properties are accounted for during structural analysis by careful selection of design values to assure that the probability of structure being under strength because of material variations is sufficiently remote, as required by existing § 23.613(b). The submitter states that when the manufacturer elects to demonstrate compliance with the strength requirements of part 23 by testing, it becomes equally necessary to account for material variations. The submitter contends that correction of test results is necessary to ensure a correct interpretation of that test. The submitter states that similar requirements exist in part 25.

Several commenters disagreed with the proposal. One commenter pointed out that existing part 25 excludes redundant-type structure. The commenter noted that, from a practical sense, in redundant-type structural testing, it would be difficult to identify the failure sequence and then apply the proper correction factors, especially in light of the different modes of failure. That commenter also noted that corrections for dynamic tests would be difficult.

Another commenter also contended that part 25 excludes redundant-type structure. The commenter stated that it would be difficult to decide what correction factor to apply because such factors would be different for each member of the structure. Also, the correction factor would be different for each failure mode; e.g., tensile, shear, or buckling. The commenter asserted that the problem is compounded when trying to determine what failure occurs first in order to determine what correction factor to apply.

Another commenter referred to a letter sent by that commenter to the FAA in response to solicitation for comments on a proposed advisory circular on the subject of material correction factors. Although the letter was not read into the record at the conference, pertinent portions of that letter are presented here. In that letter, the commenter contended that no predictable procedure exists to apply load correction ratios and that such a proposal indicates FAA's belief that mill tolerance standards for contemporary aircraft are inadequate. In the letter, the commenter stated that such a position is unfounded based on long experience of previously tested airplanes. The commenter further pointed out that CAR 3.174 was not changed when it was recodified into § 23.307 and contended that policy material related to CAR 3.174 is still pertinent to § 23.307. The commenter argued that the FAA should reissue the policy related to CAR 3.174.

Note: For clarification to the reader, the referenced policy material (CAM 3.174–1(b)) is provided as part of the analysis section below.

Another commenter contended that there are very rigid procedures for quality control and that adoption of conference proposal 179 would be, in effect, showing a lack of confidence in assuming that the item does, in fact, conform to the drawings.

Two other commenters agreed that there is no rational way to correct for material variability and that dimensional variability was part of the quality control system.

Two commenters supported the proposal and voiced support for the draft advisory circular titled "Material Correction Factors Notice of Availability, published in the **Federal Register** (49 FR 4289; February 3, 1984). That draft AC has been withdrawn by the FAA, as published in the Federal Register (51 FR 468; January 6, 1986), in part, because of lack of a regulatory basis.

FAA Analysis—A review of the regulatory history relating to material correction factors follows.

CAR 04.3021 stated, in pertinent part, that when a unit other than the specific one tested is incorporated in the airplane presented for certification, the results of strength tests shall be reduced to correspond to the minimum guaranteed mechanical properties of material specified in the drawings, unless the loads are carried at least 15 percent beyond the required values.

CAR 3 did not contain the above requirement, but CAM 3 did contain the following policy:

"CAM 3.174–1(b) In cases of static or dynamic tests of structural components, no material correction factor is required. The manufacturer, however, should use care to see that the strength of the component tested conservatively represents the strength of subsequent similar components to be used on aircraft to be presented for certification. The manufacturer should, in addition, include in his report of tests of major structural components, a statement substantially as follows:

"The strength properties of materials and dimensions of parts used in the structural component(s) tested are such that subsequent components of these types used in aircraft presented for certification will have strengths substantially equal to or exceeding the strengths of the components tested."

Part 23 does not contain a specific requirement for material correction factors. However, the following requirement is contained in current § 23.615 Design properties:

§ 23.615(c) Material correction factors for structural items such as sheets, sheet-stringer combinations, and riveted joints, may be omitted if sufficient test data is obtained to allow a probability analysis showing that 90 percent or more of the elements will equal or exceed allowable design values.

The current related transport airplane requirement is included herein for comparison.

§ 25.307(d) When static or dynamic tests are used to show compliance with the requirements of § 25.305(b) for flight structures, appropriate material correction factors must be applied to the test results, unless the structure, or part thereof, being tested has features such that a number of elements contribute to the total strength of the structure and the failure of one element results in the redistribution of the load through alternate load paths.

Post conference analysis indicates that the FAA has approved various testing techniques for showing compliance with the requirements of existing § 23.307 or its predecessors. One technique involves incrementally increasing and releasing the load while monitoring deflection to determine when permanent deformation occurs, then increasing the load incrementally, holding each increment for three seconds, until failure occurs. Such a technique is used to define the values of limit load; i.e., the highest load carried before the structure suffers permanent deformation, and ultimate load; i.e., the highest load held by the structure for three seconds prior to failure.

Such testing techniques, without material correction factors to account for variations in material strength and dimensional variations, take advantage of the variation in material properties inherent in the material itself and can result in tested strengths higher than those expected on production articles. For single load path structures where the design "A" values of MIL–HDBK–5 are appropriate, there is a 95 percent confidence level that 99 percent of the articles will fail at a load higher than the design value. The chance of a component failing during testing below the design value is roughly one out of one hundred. As incremental increases in load are applied to the structure, the probability of failure increases, but the design "A" value is compromised. The incremental increases in load tend to test the probability of the material strength values, not the structure. For redundant structure, the 95 percent confidence level for a material being below the design "B" value is 90 percent. In multi-load path (redundant) structure, the chance of success is 90 out of 100 for each component. If the structure consists of 100 articles, the argument can be made that 10 may be under strength.

Historically, aluminum structure has met close dimensional mill tolerances and has had material properties test results provided to the airframe manufacturer by the metal manufacturer. The current use of advanced composite materials places the airframe manufacturer in the posture of manufacturing the material as well as fabricating the part. Variations in both the dimensions and the material properties for these articles tend to be greater than those of metal structures. These variations can become critical during substantiation testing.

The FAA recognizes that past structural testing practices have produced structures demonstrating a sound safety record. In addition, the agency has never set tolerance limits on the dimensions used in the type design. However, it is the FAA's position that some accounting for material variability is appropriate. The FAA offers the proposed rule to solicit public comment to better determine the need for, and the definition of, a requirement to account for the variability of dimensions and material properties for mill fabricated metals and airframe manufacturer fabricated composite materials.

Reference: Conference proposals 179, 180, 181, and 182.

30. Section 23.321 is amended by revising paragraph (b) introductory text to read as follows:

§ 23.321 General.

* * * * *

(b) Considering compressibility effects at each speed, compliance with the flight load requirements of this subpart must be shown—

* * * * *

Explanation: This proposal recommends that the effects of compressibility on flight loads be considered at each speed within the envelope. There were three conference proposals directed toward § 23.321. This proposal is developed from nearly identical conference proposals 183 and 185.

Currently, part 23 does not specifically require consideration of the effects of compressibility on airplane flight loads, even though several small airplanes have configurations and flight envelopes where compressibility effects are significant. This proposal requires that the effects of compressibility be considered throughout the flight envelope.

Two commenters objected to conference proposal 183 because it did not specifically define a minimum speed below which compressibility effects did not need to be considered. Both commenters noted that during the FAA sponsored Airframe Policy and Program Review (October 28, 1983), the FAA intended to initiate a study to define such a speed value.

Another commenter did not object to revising § 23.321 to consider compressibility, but that commenter did disagree with the statement in conference proposal 183 requiring consideration at every speed within the envelope, even down to slow speeds.

It was the conference consensus that compressibility should be considered when significant; however, most commenters contended that the FAA should promulgate a minimum airspeed below which the effects of compressibility could be disregarded.

One commenter argued that the FAA had set a precedent relative to a minimum airspeed for consideration of compressibility in the existing flutter requirements of § 23.629(d)(1) by limiting the simplified flutter criteria to below Mach .6 above 14,000 feet. (See proposed change to 23.629.)

One commenter differentiated between the free-stream Mach number of the airplane and the Mach number of the airflow over certain local areas on the airfoil. That commenter noted that a definite minimum Mach number would be convenient, but not necessarily accurate for all conditions or for all airplanes.

Another commenter noted that the compressibility effect at 60 knots could obviously be considered insignificant; therefore, that commenter argued that in such a case compressibility had been considered and compliance with the proposed rule could be shown without extensive analysis.

Post conference review indicates that consideration of compressibility will vary with the particular airfoil and wing chosen, the airplane configuration, and the operational envelope of the airplane. The FAA does not agree that the airspeed value in § 23.629, which limits the use of simplified flutter criteria, is pertinent to this issue.

Conference consensus was that significant effects of compressibility must be accounted for. The FAA does not agree that a firm number should be placed in the regulations to define when compressibility becomes significant since compressibility effects become significant based on the nature of aerodynamics.

The FAA recognizes that most small airplanes will not require significant adjustments of flight loads due to compressibility effects. When data shows that compressibility effects are insignificant and, if the certification authority agrees, then the effects of compressibility will have been

considered and the intent of this proposed rule change is met.

Conference proposal 184 recommends that § 23.321 include provisions for a structural reserve fuel condition yielding inertia relief based on wing fuel quantities chosen by the manufacturer and approved by the certificating authority. Conference proposal 184 is directed at airplanes having maximum takeoff weights above 6,000 lbs. and proposes reductions in design load factors used for the structural reserve fuel condition from 100 percent to 90 percent of the maneuvering load factor and to 85 percent of the gust load factor.

In support of conference proposal 184, the submitter contends that the structural reserve fuel condition is missing from part 23, and conference proposal 184 is submitted to provide information to manufacturers wishing to adopt such a condition. The submitter offers no reason as to why conference proposal 184 is restricted to weights over 6,000 lbs. and explains that the new loads criteria is provided as a backstop to limit the inertia relief the applicant could gain by adopting a structural reserve condition. Without those limits, the submitter contends that the inertia relief would be fairly unlimited. The submitter confirms that, regardless of the reserve fuel relief, the basic structure must carry .9 times a positive maneuvering load factor and .85 gust velocity without consideration of fuel and assuming that the airplane is at the maximum weight.

One commenter stated that conference proposal 184 was not needed. That commenter contended that the general paragraph under loads (§ 23.301(b)) already requires load distribution to conservatively approximate or closely represent actual conditions and that if the design resulted in a limitation on the airplane due to a zero fuel condition, part 23 addresses that condition.

It was also noted at the conference that conference proposal 184 is similar to part 25. One commenter suggested adoption of the relevant section of part 25, while another commenter opposed the inclusion of part 25 on this subject.

Post conference review indicates that § 23.25 defines a minimum weight as not more than the sum of the empty weight, the minimum crew and a minimum amount of fuel specified therein. This minimum weight is the lowest weight at which compliance with each applicable requirement of part 23 is shown. Sections 23.301 and 23.625 discuss loads "distributed to conservatively approximate or closely represent actual conditions" or "any condition of operation in the V–n envelope" respectively.

The intent of part 23 is to assure safe design under all possible loading conditions within the design envelope. If a critical fuel loading condition can exist during normal operation, it should be accounted for in the design. Part 25 defines minimum weight differently and allows for fuel management limitations.

Reference: Conference proposals 183, 184, and 185.

31. Section 23.301 is amended by revising paragraphs (a) introductory text, (a)(2), and (c) introductory text to read as follows:

§ 23.361 Engine torque.

(a) Each engine mount and its supporting structure must be designed for the effects of—

* * * * *

(2) A limit engine torque corresponding to maximum continuous power and propeller speed acting simultaneously with the limit loads from flight condition A of § 23.333(d); and

* * * * *

(c) The limit engine torque to be considered under paragraph (a) of this section must be obtained by multiplying the mean torque by a factor of—

* * * * *

Explanation: This proposal revises § 23.361 to correct an unintended change introduced to part 23 at amendment 23–28, which significantly reduced the structural design torque levels necessary to be considered in conjunction with flight conditions at takeoff power. The intent is that the torque factors of paragraph (c) apply to all of paragraph (a).

This proposal is based on conference proposal 193 and was accepted without objection at the conference.

Reference: Conference proposal 193.

32. Section 23.369 is amended by revising the heading to read as follows:

§ 23.369 Rear lift truss.

* * * * *

Explanation: This proposal changes the title of § 23.369 by eliminating the phrase "Special conditions for" at the beginning of the title block. The content of § 23.369 remains unchanged.

Conference proposal 198 proposes to delete § 23.369 in its entirety because the submitter contended that there has been little interest in externally braced wings with a rear lift truss for the past 30 years. One commenter agreed.

The FAA has determined that the requirements of § 23.369 are valid and continue to be appropriate for part 23. However, the FAA has concluded that the term "special condition" should be limited to those design features set forth in § 21.16 and should not be used to describe requirements for existing designs.

Reference: Conference proposal 198.

33. Section 23.371 is amended by revising the heading and the introductory text of this section to read as follows:

§ 23.371 Gyroscopic and aerodynamic loads.

For turbine-powered airplanes, each engine mount and its supporting structure must be designed for the gyroscopic and aerodynamic loads that result, with the engines at maximum continuous r.p.m., under either of the following conditions:

* * * * *

Explanation: This proposal includes the aerodynamic loads in the design of the engine mount in addition to the gyroscopic loads currently required by § 23.371.

Conference proposal 197 recommends that a specific requirement be added to part 23 to account for N_p propeller loads when designing the engine mount and its supporting structure. Conference proposal 197 specifically excludes propellers having diameters of nine feet or less and recommends accounting for the component of the propeller lift vector, on large diameter propellers, that is perpendicular to the propeller rotation axis that develops during large pitch or yaw angles.

Discussion at the conference centered around the specific wording of the proposal, the definition of "large" angles of pitch and yaw, and whether the FAA should establish a specific propeller size (like a diameter of nine feet) to define when such aerodynamic loads become critical.

Post conference review indicates that Advisory Circular AC 20–66 entitled *Vibration Evaluation of Aircraft Propellers* makes subjective statements on propeller vibration for propellers whose diameter is above or below 13 feet. British Civil Airworthiness Requirements (BCAR) Chapter K3–4 addresses asymmetric flow through the propeller disc and states that such effects are relatively small and may be discounted on propellers having diameters of nine feet or less.

The aerodynamic loads specified in this proposal include asymmetric flow through the propeller disc as well as other aerodynamically induced loads needed to design the engine mount and supporting structure. The FAA does not intend to establish a specific propeller diameter boundary below which such effects can be ignored.

Reference: Conference proposal 197.

34. Section 23.397(b) is amended by removing the words "130 pounds" in the last line of the table and inserting the words "150 pounds" in its place.

Explanation: This proposal increases the minimum rudder force shown in the last line of the table of § 23.397(b) from 130 pounds to 150 pounds to make it compatible with the "strength of pilots" limits shown in § 23.143.

There are two conference proposals directed at § 23.397. This proposal was developed from conference proposal 200. Conference proposal 199 was withdrawn at the conference. Conference proposal 200 was accepted at the conference without comment or opposition.

Reference: Conference proposal 200. Conference proposal 199 was withdrawn at the conference.

35. Section 23.415 is amended by adding a new paragraph (c) to read as follows:

§ 23.415 Ground gust conditions.

* * * * *

(c) The tie-down attachment fittings and the surrounding structure must be designed for limit load conditions resulting from wind speeds up to 65 knots horizontally from any direction for the weight determined to be critical for tie-down.

Explanation: This proposal revises § 23.415 to add requirements defining airplane tie-down loads, includes design criteria for attachment fittings and surrounding structure and is based on conference proposal 202.

In support of conference proposal 202, the submitter notes that inadvertent damage to primary structure could result if unapproved methods of tie-down were used. The submitter notes that such damage might result in in-flight failures because of undetected damage occurring on the ground and that such tie-down requirements are not currently included in part 23.

Conference proposal 202 recommends that these requirements apply only to airplanes weighing 6,000 lbs. and above. As a result of conference discussion, the proposal was revised to include all small airplanes.

Reference: Conference proposal 202.

36. Section 23.473 is amended by revising paragraph (f) to read as follows:

§ 23.473 Ground load conditions and assumptions.

* * * * *

(f) Energy absorption tests (to determine the limit load factor corresponding to the required limit descent velocities) must be made under § 23.723(a) unless specifically exempted by that section.

* * * * *

Explanation: This proposal revises § 23.473(f) to clarify when an energy absorption test is required. Section 23.723(a) exempts the need for an energy absorption test under certain circumstances and allows for compliance by analysis. Currently, § 23.473(f) states that tests must be made under § 23.723(a).

This proposal is based on comments received from conference proposal 212. At least one commenter stated that there were circumstances when testing was not required even though not specifically defined in § 23.473. The FAA has determined that the proposed change will clarify the intent of § 23.473.

Reference: Conference proposal 212.

37. Section 23.479 is amended by revising paragraphs (b) and (c) to read as follows:

§ 23.479 Level landing conditions.

* * * * *

(b) When investigating landing conditions, the drag components simulating the forces required to accelerate the tires and wheels up to the landing speed (spin-up) must be properly combined with the corresponding instantaneous vertical ground reactions, and the forward-acting horizontal loads resulting from rapid reduction of the spin-up drag loads (spring-back) must be combined with vertical ground reactions at the instant of the peak forward load, assuming wing lift and a tire-sliding coefficient of friction of 0.8. However, the drag loads may not be less than 25 percent of the maximum vertical ground reactions (neglecting wing lift).

(c) In the absence of specific tests or a more rational analysis for determining the wheel spin-up and spring-back loads for landing conditions, the method set forth in appendix D must be used. If appendix D is used, the drag components used for design must not be less than those given by appendix C.

* * * * *

Explanation: This proposal revises § 23.479(c) to add a new requirement to address spring-back loads during the development of ground loads. Additionally, this proposal allows for loads development based on testing or based on a rational analysis other than that referenced in appendix D. This proposal also restricts the minimum values of the drag component if the method referenced in appendix D is used.

Current § 23.479 allows the use of appendix C drag loads even when calculations using the more rational method of appendix D results in higher drag loads. According to the submitter, conference proposal 213 was intended to require the use of the more rational appendix D loads when those loads were higher than those of appendix C.

One commenter opposed conference proposal 213 in favor of conference proposal 513. That commenter, who also was the submitter of conference proposal 513, contended that conference proposal 513 is more appropriate and more clarifying because it addresses spring-back loads. That commenter contended that spring-back loads were addressed in CAR 3 but were omitted during part 23 recodification. That commenter correctly pointed out that current § 23.479 addresses only spin-up loads and does not address the springback condition.

FAA analysis of this proposal indicates that during normal landings, the landing gear develops aft loads caused by the acceleration of the wheel and tire from some initial rotational velocity in flight (usually zero) to the rotational velocity of the rolling tire, on the ground, at landing speed. During initial impact, energy is stored as deflection in the structure of the landing gear and also as kinetic energy of the wheel and tire. The resulting aft load is usually referred to as the spin-up load.

Spring-back is the forward acting load occurring the instant after the wheel and tire come up to speed and is the combination of loads created by the inertia of the wheel and tire and the loads caused by the elastic forward rebound of the landing gear structure. These spring-back loads are more likely to become critical on airplanes having large diameter wheels (high angular inerties) or high landing speeds.

The FAA has, and continues to accept, testing methods where the drag loads related to the spin-up condition were simulated by dropping a landing gear having a stationary (zero angular velocity) wheel and tire onto an inclined plane. This test method does not accurately predict the spring-back loads because it constrains the forward motion of the gear. Further, it does not fully account for the spring-back condition although some forward load develops due to elastic forward rebound of the landing gear structure. This test method would no longer be accepted if the proposed amendment is adopted.

Another accepted testing method consists of pre-rotating the tire in the reverse direction prior to dropping the gear on a flat surface. This method does not constrain the forward motion of the landing gear and more closely simulates the dynamics of the landing condition. Loads measured on, and analysis based on, such tests provide more rational approaches to loads development. This test method would continue to be accepted if the proposed amendment is adopted.

Reference: Conference proposals 213 and 513.

38. Section 23.485 is amended by adding a new paragraph (d) to read as follows:

§ 23.485 Side load conditions.

* * * * *

(d) The side loads prescribed in paragraph (c) of this section are assumed to be applied at the ground contact point and the drag loads may be assumed to be zero.

Explanation: This proposal clarifies the location and combination of loads. The proposal was unopposed at the conference.

Reference: Conference proposal 214.

39. Section 23.521 is amended by revising paragraphs (b) and (c) to read as follows:

§ 23.521 Water load conditions.

* * * * *

(b) Unless the applicant makes a rational analysis of the water loads, §§ 23.523 through 23.537 apply.

(c) Floats previously approved by the FAA may be installed on airplanes that are certificated under this part, provided that the floats meet the criteria of paragraph (a) of this section.

Explanation: This proposal and those proposing new §§ 23.523, 23.525, 23.527, 23.529, 23.531, 23.533, 23.535, 23.537 and a new appendix H are intended to incorporate a complete set of requirements for water loads into part 23. Currently, part 23 refers to requirements listed in ANC–3 and incorporates by reference many sections of part 25. ANC–3 is no longer in print and the FAA proposes that part 23 be a stand-alone regulation relative to seaplane or amphibian certification. These proposed changes are developed from conference proposal 519 and were accepted with only editorial comments from the conference attendees.

Reference: Conference proposal 519.

40. A new § 23.523 is added under the heading "Water Loads" to read as follows:

§ 23.523 Design weights and center of gravity positions.

(a) *Design weights.* The water load requirements must be met at each operating weight up to the design landing weight except that, for the takeoff condition prescribed in § 23.531, the design water takeoff weight (the maximum weight for water taxi and takeoff run) must be used.

(b) *Center of gravity positions.* The critical centers of gravity within the limits for which certification is requested must be considered to reach maximum design loads for each part of the seaplane structure.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

41. A new § 23.525 is added under the heading "Water Loads" to read as follows:

§ 23.525 Application of loads.

(a) Unless otherwise prescribed, the seaplane as a whole is assumed to be subjected to the loads corresponding to the load factors specified in § 23.527.

(b) In applying the loads resulting from the load factors prescribed in § 23.527, the loads may be distributed over the hull or main float bottom (in order to avoid excessive local shear loads and bending moments at the location of water load application) using pressures not less than those prescribed in § 23.533(b).

(c) For twin float seaplanes, each float must be treated as an equivalent hull on a fictitious seaplane with a weight equal to one-half the weight of the twin float seaplane.

(d) Except in the takeoff condition of § 23.531, the aerodynamic lift on the seaplane during the impact is assumed to be ⅔ of the weight of the seaplane.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

42. A new § 23.527 is added under the heading "Water Loads" to read as follows:

§ 23.527 Hull and main float load factors.

(a) Water reaction load factors n_w must be computed in the following manner:

(1) For the step landing case

$$n_w = \frac{C_1 V_{so}^2}{(\text{Tan}^{3/4}\beta)\, W^{1/3}}$$

(2) For the bow and stern landing cases

$$n_w = \frac{C_1 V_{so}^2}{(\text{Tan}^{3/4}\beta)\, W^{1/3}} \times \frac{K_1}{(1+r_1^2)^{3/4}}$$

(b) The following values are used:

(1) n_w = water reaction load factor (that is, the water reaction divided by seaplane weight).

(2) C_1 = empirical seaplane operations factor equal to 0.012 (except that this factor may not be less than that necessary to obtain the minimum value of step load factor of 2.33).

(3) V_{so} = seaplane stalling speed in knots with flaps extended in the appropriate landing position and with no slipstream effect.

(4) β = Angle of dead rise at the longitudinal station at which the load factor is being determined in accordance with figure 1 of appendix H of this part.

(5) W = seaplane design landing weight in pounds.

(6) K_1 = empirical hull station weighing factor, in accordance with figure 2 of appendix H of this part.

(7) r_1 = ratio of distance, measured parallel to hull reference axis, from the center of gravity of the seaplane to the hull longitudinal station at which the load factor is being computed to the radius of gyration in pitch of the seaplane, the hull reference axis being a straight line, in the plane of symmetry, tangential to the keel at the main step.

(c) For a twin float seaplane, because of the effect of flexibility of the attachment of the floats to the seaplane, the factor K_1 may be reduced at the bow and stern to 0.8 of the value shown in figure 2 of appendix H of this part. This reduction applies only to the design of the carrythrough and seaplane structure.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

43. A new § 23.529 is added under the heading "Water Loads" to read as follows:

§ 23.529 Hull and main float landing conditions.

(a) *Symmetrical step, bow, and stern landing.* For symmetrical step, bow, and stern landings, the limit water reaction load factors are those computed under § 23.527. In addition—

(1) For symmetrical step landings, the resultant water load must be applied at the keel, through the center of gravity, and must be directed perpendicularly to the keel line;

(2) For symmetrical bow landings, the resultant water load must be applied at the keel, one-fifth of the longitudinal distance from the bow to the step, and must be directed perpendicularly to the keel line; and

(3) For symmetrical stern landings the resultant water load must be applied at the keel, at a point 85 percent of the longitudinal distance from the step to the stern post, and must be directed perpendicularly to the keel line.

(b) *Unsymmetrical landing for hull and single float seaplanes.* Unsymmetrical step, bow, and stern landing conditions must be investigated. In addition—

(1) The loading for each condition consists of an upward component and a side component equal, respectively, to 0.75 and 0.25 tan β times the resultant load in the corresponding symmetrical landing condition; and

(2) The point of application and direction of the upward component of the load is the same as that in the symmetrical condition, and the point of application of the side component is at the same longitudinal station as the upward component but is directed inward perpendicularly to the plane of symmetry at a point midway between the keel and chine lines.

(c) *Unsymmetrical landing; twin float seaplanes.* The unsymmetrical loading consists of an upward load at the step of each float of 0.75 and a side load of 0.25 tan β at one float times the step landing load reached under § 23.527. The side load is directed inboard, perpendicularly to the plane of symmetry midway between the keel and chine lines of the float, at the same longitudinal station as the upward load.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

44. A new § 23.531 is added under heading "Water Loads" to read as follows:

§ 23.531 Hull and main float takeoff condition.

For the wing and its attachment to the hull or main float—

(a) The aerodynamic wing lift is assumed to be zero; and

(b) A downward inertia load, corresponding to a load factor computed from the following formula, must be applied:

$$n = \frac{C_{TO}\, V_{s1}^2}{(\text{Tan}^{3/4}\beta)\, W^{1/3}}$$

where—

n = inertia load factor;

C_{TO} = empirical seaplane operations factor equal to 0.004;

V_{s1} = seaplane stalling speed (knots) at the design takeoff weight with the flaps extended in the appropriate takeoff position;

β = angle of dead rise at the main step (degrees); and

W = design water takeoff weight in pounds.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

45. A new § 23.533 is added under the heading "Water Loads" to read as follows:

§ 23.533 Hull and main float bottom pressures.

(a) *General.* The hull and main float structure, including frames and bulkheads, stringers, and bottom plating, must be designed under this section.

(b) *Local pressures.* For the design of the bottom plating and stringers and their attachments to the supporting structure, the following pressure distributions must be applied:

(1) For an unflared bottom, the pressure at the chine is 0.75 times the pressure at the keel, and the pressures between the keel and chine vary linearly, in accordance with figure 3 of appendix H of this part. The pressure at the keel (p.s.i.) is computed as follows:

$$P_1 = C_2 \times \frac{K_2\, V_{s0}^2}{Tan\ \beta_k}$$

where—

P_1 = pressure (p.s.i.) at the keel;

C_2 = 0.00213;

K_2 = hull station weighing factor, in accordance with figure 2 of Appendix H of this part;

V_{s0} = seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and

β_k = angle of dead rise at keel, in accordance with figure 1 of Appendix H of this part.

(2) For a flared bottom, the pressure at the beginning of the flare is the same as that for an unflared bottom, and the pressure between the chine and the beginning of the flare varies linearly, in accordance with figure 3 of appendix H of this part. The pressure distribution is the same as that prescribed in paragraph (b)(1) of this section for an unflared bottom except that the pressure at the chine is computed as follows:

$$P_{1a} = C_2 \times \frac{K_2\, V_{s0}^2}{Tan\ \beta}$$

where—

P_{1a} = pressure (p.s.i.) at the chine;

C_2 = 0.0018;

K_2 = hull station weighing factor, in accordance with figure 2 of Appendix H of this part;

V_{s0} = seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and

β = angle of dead rise at appropriate station.

The area over which these pressures are applied must simulate pressures occurring during high localized impacts on the hull or float, but need not extend over an area that would induce critical stresses in the frames or in the overall structure.

(c) *Distributed pressures.* For the design of the frames, keel, and chine structure, the following pressure distributions apply:

(1) Symmetrical pressures are computed as follows:

$$P = C_4 \times \frac{K_2\, V_{s0}^2}{Tan\ \beta}$$

where—

P = pressure (p.s.i.);

C_4 = 0.078 C_2 (with C_2 computed under § 23.527);

K_2 = hull station weighing factor, determined in accordance with figure 2 of Appendix H of this part;

V_{s0} = seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and

β = angle of dead rise at appropriate station.

(2) The unsymmetrical pressure distribution consists of the pressures prescribed in paragraph (c)(1) of this section on one side of the hull or main float centerline and one-half of that pressure on the other side of the hull or main float centerline, in accordance with figure 3 of appendix H of this part.

These pressures are uniform and must be applied simultaneously over the entire hull or main float bottom. The loads obtained must be carried into the sidewall structure of the hull proper, but need not be transmitted in a fore and aft direction as shear and bending loads.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

46. A new § 23.535 is added under the heading "Water Loads" to read as follows:

§ 23.535 Auxiliary float loads.

(a) *General.* Auxiliary floats and their attachments and supporting structures must be designed for the conditions prescribed in this section. In the cases specified in paragraphs (b) through (e) of this section, the prescribed water loads may be distributed over the float bottom to avoid excessive local loads, using bottom pressures not less than those prescribed in paragraph (g) of this section.

(b) *Step loading.* The resultant water load must be applied in the plane of symmetry of the float at a point three-fourths of the distance from the bow to the step and must be perpendicular to the keel. The resultant limit load is computed as follows, except that the value of L need not exceed three times the weight of the displaced water when the float is completely submerged:

$$L = \frac{C_5\, V_{so}^2\, W^{2/3}}{\text{Tan}^{1/3}\beta_s\, (1+r_y^2)^{1/3}}$$

where—

L = limit load (lbs.);

C_5 = 0.0065;

V_{so} = seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect;

W = seaplane design landing weight in pounds;

β_s = angle of dead rise at a station ¾ of the distance from the bow to the step, but need not be less than 15 degrees; and

r_y = ratio of the lateral distance between the center of gravity and the plane of symmetry of the float to the radius of gyration in roll.

(c) *Bow loading.* The resultant limit load must be applied in the plane of symmetry of the float at a point one-fourth of the distance from the bow to the step and must be perpendicular to the tangent to the keel line at that point. The magnitude of the resultant load is that specified in paragraph (b) of this section.

(d) *Unsymmetrical step loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (a) of this section and a side component equal to 3.23 tanβ times the load specified in paragraph (b) of this section. The side load must be applied perpendicularly to the plane of symmetry of the float at a point midway between the keel and the chine.

(e) *Unsymmetrical bow loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (b) of this section and a side component equal to 0.25 tanβ times the load specified in paragraph (c) of this section. The side load must be applied perpendicularly to the plane of symmetry at a point midway between the keel and the chine.

(f) *Immersed float condition.* The resultant load must be applied at the centroid of the cross section of the float at a point one-third of the distance from the bow to the step. The limit load components are as follows:

vertical = $\rho g V$

aft = $C_d \rho_0 V^{2/3} (KV_{so})^2$

side = $C_d \rho_0 V^{2/3} (KV_{so})^2$

where—

ρ = mass density of water (slugs/ft.^{3})

V = volume of float (ft.^{3});

C_d = coefficient of drag force, equal to 0.133;

C_y = coefficient of side force, equal to 0.106;
K = 0.8, except that lower values may be used if it is shown that the floats are incapable of submerging at a speed of 0.8 V_{so} in normal operations;
V_{so} = seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and
g = acceleration due to gravity (ft/sec^2).

(g) *Float bottom pressures.* The float bottom pressures must be established under § 23.533, except that the value of K_z in the formulae may be taken as 1.0. The angle of dead rise to be used in determining the float bottom pressures is set forth in paragraph (b) of this section.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

47. A new § 23.537 is added under the heading "Water Loads" to read as follows:

§ 23.537 Seawing loads.

Seawing design loads must be based on applicable test data.

Explanation: See proposal for § 23.521.

Reference: See proposal for § 23.521.

48. A new § 23.573 is added under the heading "Water Loads" to read as follows:

§ 23.573 Damage tolerance and fatigue evaluation of structure.

Instead of complying with §§ 23.571 and 23.572 of this part, the applicant must evaluate composite airframe structure, the failure of which would result in catastrophic loss of the airplane in each wing (including canards, tandem wings, and winglets), empennage, their carrythrough and attaching wing structure, and/or pressure cabin, using the damage-tolerance criteria prescribed in paragraphs (b) through (j) of this section unless shown to be impractical. If the applicant establishes that damage-tolerance criteria is impractical for a particular structure, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (b) and (k) of this section. Where bonded joints are used, the structure must also be evaluated in accordance with paragraph (i) of this section.

(a) Metallic structure must be approved by using either the fail-safe/fatigue strength evaluations of § 23.571 and § 23.572 or by using the damage tolerant criteria of this section.

(b) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(c) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects or damage from discrete sources under repeated loads expected in service; i.e., between the time the damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or analysis supported by tests.

(d) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(e) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(f) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(g) The structure of the pressurized cabin must be shown by residual strength tests, or by analysis supported by tests, to be able to withstand the loads listed in subparagraphs (g)(1) and (g)(2) of this section, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(1) Critical limit flight loads with the combined effects of normal operating pressures and expected external aerodynamic pressures.

(2) The expected external aerodynamic pressures in 1 g flight combined with a cabin differential pressure without consideration of any other load.

(h) The structure in each wing (including canards, tandem wings, and winglets), empennage, their carrythrough, and attaching structure, including movable control surfaces, whose failure would be catastrophic, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(i) The limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (g) and (h) of this section must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(j) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials, must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

(l) Based on evaluations required by this section, inspections or other procedures must be established as necessary to prevent catastrophic failure, and must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 23.1529.

Explanation: This proposal recommends amending part 23 to add a new § 23.573, applicable to composite structure and to provide the applicant the opportunity to use damage-tolerant design as an alternative to the safe-life/fail-safe design philosophies required by §§ 23.571 and 23.572 for metallic structure. This new section proposes a mandatory requirement for composite materials and offers an optional design philosophy for metallic structure.

The initial conference proposal on this subject was essentially a recodification of the pertinent parts of § 23.571 and was predominantly opposed at the conference on the basis that (1) it was an arbitrary insertion of part 25 requirements into part 23; (2) if chosen by the applicant, more stringent part 25 requirements could be used in the certification basis of a small airplane; and (3) even as an option, the damage-tolerant criteria might later result in a change in part 23 design philosophy.

As a result of conference comments, the proposal was rewritten to remove many of the discrete source damage requirements, the uncontained high energy rotating machinery failure criteria, sonic fatigue requirements, and other criteria not already included in §§ 23.571 and 23.572. The proposal continues to be an option for metallic structure and was rewritten to more closely align with damage-tolerance special conditions applicable to composite structure recently published by the FAA.

In regard to the comment relating to the applicants ability to elect part 25 requirements instead of part 23 requirements, the FAA has further considered this proposal. The FAA recognizes that although adding part 25 requirements to the certification basis of a part 23 airplane may reduce use of the special condition process, this practice is essentially rulemaking without going through the process described in part 11, General Rulemaking Procedures. When there is a need or desire to make such a change in the applicable airworthiness requirements, it must be done by using the special condition or exemption procedures of part 11.

Reference: Conference proposal 229.

49. Section 23.613 is amended by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

§ 23.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraph (e) of this section, compliance with this paragraph must be shown by selecting design values that assure material strength with the following probability:

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component; 99 percent probability with 95 percent confidence.

(2) For redundant structure, in which the failure of individual elements would result in applied loads being safely distributed to other load carrying members; 90 percent probability with 95 percent confidence.

(c) The effects of temperature on allowable stresses used for design in an essential component or structure must be considered where thermal effects are significant under normal operating conditions.

(d) The strength of the structure must minimize the probability of catastrophic fatigue failure, particularly at points of stress concentration.

(e) Design values greater than the guaranteed minimums required by this section may be used where only guaranteed minimum values are normally allowed if a "premium selection" of the material is made in which a specimen of each individual item is tested before use to determine that the actual strength properties of that particular item will equal or exceed those used in design.

Explanation: This proposal revises § 23.613 to incorporate into part 23 the probability basis used for establishing material allowables. The probability basis is currently contained in MIL-HDBK-5 and incorporated by reference in §§ 23.613 and 23.615. There are four conference proposals directed at § 23.613. As a result of comments from the participants at the conference, conference proposals 233 through 239, concerning both §§ 23.613 and 23.615, were discussed concurrently. This proposal was developed primarily from conference proposal 233 and would change § 23.613 to state that basis directly, thereby eliminating the need to reference specific publications in the regulations.

A new paragraph (c) is proposed to address the effects of temperature on the strength properties of the materials and a new paragraph (d) similar to existing § 23.627 is proposed to address fatigue strength.

This proposal would make existing § 23.615 redundant, except for the requirements of § 23.615(b), which are being transferred to § 23.613(e) for clarity and for § 23.615(c), the intent of which is contained in the proposed change to § 23.307 included herein. These proposed changes more closely align part 23 with the comparable section proposed as a change to part 25 (Notice 84-21, 49 FR 47358, December 3, 1984).

Conference proposal 234 recommends elimination of paragraph (b) of current § 23.613. As justification, the submitter contends that the requirement of § 23.613(b) duplicates the intent of existing § 23.613 (a) and (c). The term "extremely remote" as used in paragraph 23.613(b) is not statistically defined in FAA terminology.

Conference proposal 235 recommends that paragraph (c) of existing § 23.613 be replaced to eliminate reference to specific design information sources like MIL-HDBK-5 and to add requirements that account for manufacturing practices and processes. The submitter withdrew conference proposal 235 in favor of conference proposal 233.

Conference proposal 236 recommends that paragraph (c) of existing § 23.613 be deleted and that the specific sources of design information listed therein be published as an advisory circular.

Conference proposal 237 recommends that existing § 23.615 be deleted in its entirety to be consistent with conference proposal 233.

Conference proposal 238 recommends including the definitions of "A" and "B" probability values in § 23.615 along with the addition of Joint Airworthiness Requirements (JAR) terminology.

Conference proposal 239 also recommends defining the "A" and "B" probability values in § 23.615, as did conference proposal 238. Conference proposal 239 was withdrawn at the conference in favor of conference proposal 233.

One commenter supported conference proposal 233 based on including conference proposal 234 and the substitution of the wording of existing § 23.627 instead of paragraph (d) of conference proposal 233. Note: Conference proposal 243 relates to fatigue requirements and recommended the deletion of existing § 23.627 in its entirety. This commenter proposed to retain the wording of existing § 23.627 instead of the wording recommended in paragraph (d) of conference proposal 233. This position was supported by one other commenter.

Another commenter contended that adoption of conference proposal 233 might be confusing because of the probability and confidence interval requirements. That commenter, as well as several others, suggested that changes made relative to material strength properties and design values should be consistent between parts 23, 25, 27 and 29.

Another commenter supported conference proposal 233 and withdrew conference proposals 238 and 239 in favor of conference proposal 233.

As a result of comments made by the committee chairman, discussion on the meaning of "minimize the probability" (relative to the first sentence in paragraph (b) of conference proposal 233) resulted in the conclusion that the action of selecting design values that assure material strength properties meeting the probabilities listed in paragraph (b), in and of itself defines the term "minimize the probability". Discussion resulted in recommendations that the first sentence of paragraph (b) be deleted. However, further discussion indicated the need to assure consistency between parts 23, 25, 27 and 29. The proposed change to § 23.613 closely agrees with changes currently proposed to § 25.613 (Notice 84-21, 49 FR 47365; December 3, 1984).

Two commenters took exception to the specific wording in paragraph (b) of conference proposal 233. They contended that load does not "eventually distribute" through a member or even "distribute" through a member; the load "concentrates" in a member. These two commenters recommended that the proposed change to § 23.613 be revised to reflect this point and they both voiced support, in general, for conference proposal 233.

One commenter contended that upon adopting conference proposal 233, which eliminated reference to a specific list of publications, it would be appropriate to list those publications (e.g., MIL-HDBK-5) in an advisory circular. This position was supported by one other commenter.

One commenter noted that if conference proposal 237 is accepted and existing § 23.615 is deleted in its entirety, the content of paragraph (c) of existing § 23.615 will be lost. Post conference review indicates that the proposed change to § 23.307 addresses the need for material correction factors.

References: Conference proposals 233 through 239.

§ 23.615 [Removed]

50. Section 23.615 is removed.

Explanation: See proposed change to § 23.613.

Reference: See proposal for § 23.613.

51. Section 23.621 is amended by revising paragraphs (c)(1) and (d) introductory text, and by adding a new paragraph (e) to read as follows:

§ 23.621 Casting factors.

* * * * *

(c) * * *

(1) Each critical casting must either—

(i) Have a casting factor of not less than 1.25 and receive 100 percent inspection by visual, radiographic, and magnetic particle or penetrant inspection methods or approved equivalent nondestructive inspection methods; or

(ii) Have a casting factor of not less than 2.0 and receive 100 percent visual inspection and 100 percent approved nondestructive inspection. When an approved quality control procedure is established and an acceptable statistical analysis supports reduction, nondestructive inspection may be reduced from 100 percent, and applied on a sampling basis.

* * * * *

(d) *Non-critical castings.* For each casting other than those specified in paragraphs (c) or (e) of this section, the following apply:

* * * * *

(e) *Non-structural castings.* Castings used for non-structural purposes do not require evaluation, testing or close inspection.

Explanation: There are three conference proposals directed toward § 23.621. This proposal is in two parts and was developed from conference proposals 241 and 242 respectively. Conference proposal 240 was withdrawn during the conference in favor of conference proposal 241.

The first part of this proposal would provide relief from the 100 percent radiographic inspection requirement for critical castings, when the casting factor is increased to a value not less than 2.0, by no longer specifying a radiographic inspection and allowing the use of any approved nondestructive testing method. Also, for castings having a casting factor of not less than 2.0, the nondestructive inspection may be reduced from 100 percent and applied on a sampling basis if approved quality control procedures are established and acceptable statistical analysis supports the reduction.

Critical structural castings were first addressed in Civil Air Regulation (CAR) 3 by amendment 3-7, effective May 3, 1962, as a result of the first Federal Aviation Agency Airworthiness Review. Prior to amendment 3-7, all castings having a casting factor (then called variability factor) of 2.0 required only a visual inspection. Reduced factors of 1.25 for ultimate load and 1.15 for limit load were allowed if all productive castings were both visually and radiographically inspected. As a result of the airworthiness review, CAR 3 was revised to require all critical castings to have a casting factor of at least 1.25, to require a 100 percent visual, a 100 percent radiographic, a 100 percent magnetic particle inspection, a penetrant inspection, or other approved nondestructive method inspection. Casting factors of 2.0 or higher were not addressed by amendment 3-7. Current § 23.621 requirements are essentially the same as those promulgated by amendment 3-7.

The FAA recognizes that fewer inspections may be necessary for castings manufactured under approved quality controls and/or designed with higher margins. The proposed change to § 23.621 allows for reductions accordingly. The first part of this proposal was developed from conference proposal 241 and was discussed without opposition at the conference.

The second part of this proposal would add a new paragraph (e) *Non-structural castings.* Non-structural castings are not specifically addressed in part 23. One commenter interpreted this to mean that there is no provision for using non-structural castings in airplanes. This proposal clarifies the amount of evaluation, testing, and inspection required for nonstructural castings. This proposal was developed from conference proposal 242 and was discussed without opposition.

Reference: Conference proposals 241 and 242. Conference proposal 240 was withdrawn at the conference.

52. Section 23.629 is amended by revising paragraph (d)(1) and by adding new paragraphs (g) and (h) to read as follows:

§ 23.629 Flutter.

* * * * *

(d) * * *

(1) V_D for the airplane is less than 260 knots (EAS) at altitudes below 14,000 feet and less than Mach 0.5 at altitudes at and above 14,000 feet,

* * * * *

(g) For airplanes showing compliance with the fail-safe criteria of §§ 23.571 and 23.572, the airplane must be shown by analysis to be free from flutter to V_D after fatigue failure, or obvious partial failure of a principle structural element.

(h) For airplanes showing compliance with the damage-tolerance criteria of § 23.573, the airplane must be shown by analysis to be free from flutter with the extent of damage for which residual strength is demonstrated.

Explanation: This proposal adds a subscript "D" following the letter "V" in the first line of existing § 23.629(d)(1) to clarify the airspeed as design dive speed, thereby correcting an inadvertent error introduced in amendment 7 to part 23. The proposal also reduces the Mach number from 0.6 to 0.5 to eliminate a discontinuity between 260 knots (EAS) and Mach number at 14,000 feet.

Finally, the proposal introduces flutter criteria for damaged structure. There are three conference proposals directed at § 23.629. Conference proposal 245 proposes to amend § 23.629(a) by requiring flight flutter testing as the final proof that the airplane is free from flutter, control reversal, and divergence. The proposed flight testing would be in addition to either an analysis or the simplified flutter prevention criteria. Existing § 23.629 allows the applicant to choose either analysis, simplified flutter prevention criteria (if appropriate), flight testing, or a combination of those methods as proof that the airplane is free from flutter, control reversal, and divergence.

In support of conference proposal 245, the submitter contends that flight flutter testing is the most satisfactory way of demonstrating freedom from flutter. Several commenters stated that they were not aware of any recent airplane being initially certificated without some sort of flight flutter testing.

One commenter was concerned that conference proposal 245 would eliminate any choice by the applicant and would require flight flutter tests regardless of the extent of the analysis done on the airplane. That commenter noted that conference proposal 245 would apply to amended type certificates and would require flight flutter tests regardless of whether the changes made were critical to flutter.

The FAA agrees that a properly instrumented flight flutter test program based on reliable analysis and ground testing provides the most accurate proof that a newly designed airplane is free from flutter, control reversal, and divergence. Although flight flutter testing without previous analysis is allowed by the current rule, the FAA recommends that flight flutter tests be conducted only after appropriate analysis has been performed, and then only on properly instrumented airplanes. The FAA recognizes that the risk and scope of flight flutter testing increases significantly when conducted without the benefit of previous analysis and ground testing. Analysis, ground testing, and flight flutter testing in combination are encouraged on new certificates.

In cases where airplanes are being modified and where accurate analysis predicts, by sufficient margins, that the modification would not adversely affect the flutter speed, existing § 23.629 allows approval without flight test. However, conference proposal 245 would require flight test in all cases regardless of the modification, the extent and result of the analysis, or the experience of the applicant. Since adoption of conference proposal 245 would have little impact on new certifications, but could have extensive impact on the cost of modifications, the FAA does not propose changing § 23.629(a).

Conference proposal 246 is directed toward § 23.629(d)(1). The use of simplified flutter prevention criteria is limited by existing § 23.629(d)(1) to airplanes having a design dive speed of no more than 260 knots up to 14,000 feet and Mach 0.6 above 14,000 feet. Conference proposal 246 proposes to amend § 23.629(d)(1) by reducing that maximum speed to 200 knots.

In support of conference proposal 246, the submitter contends that control system failures, even on entirely conventional airplanes, often produce flutter speeds well below 260 knots. During discussion at the conference, the submitter explained the actual intent of conference proposal 246 was to impose the fail-safe flutter requirement of § 23.629(f)(2) to airplanes having design speeds of over 200 knots.

Section 23.629(f)(1) applies to airplanes certificated using the simplified flutter prevention criteria of Airframe and Engineering Report No. 45 and requires freedom from flutter, control reversal, and divergence after failure, malfunction, or disconnection of any single element in any tab control system. Section 23.629(f)(2) applies to all other airplanes and adds primary control systems and flutter dampers to the systems requiring failure demonstration.

Airframe and Engineering Report No. 45, "Simplified Flutter Prevention Criteria" has been used successfully on the certification of conventional airplanes since 1962. The single failure criteria referred to in § 23.629 (f)(1) and (f)(2) became effective in 1978 and as such, does not apply to a large percentage of airplanes currently operating. The FAA has no basis to support conference proposal 246.

Reference: Conference proposals 245 and 246. Conference proposal 244 was deferred for discussion under the issues applicable to the "primary category" airplane.

53. Section 23.655 is amended by revising paragraph (a) to read as follows:

§ 23.655 Installation.

(a) Movable surfaces must be installed so that there is no interference between any surfaces, their bracing, or adjacent fixed structure, when one surface is held in its most critical clearance positions and the others are operated through their full movement.

* * * * *

Explanation: This proposal extends the installation requirements currently applicable only to the tail surfaces to include all control surfaces. Current § 23.655 prohibits interference between movable tail surfaces (e.g. rudder and elevator) when these surfaces are operated throughout their full angular movement. Conference proposal 247 would expand this prohibition to all control surfaces, and proposes a new requirement for control surface clearance from adjacent structure.

One commenter suggested that the proposal would be more general if it addressed movable surfaces rather than control surfaces. That commenter stated that such wording would then apply to movable wings as well as control surfaces. Another commenter expressed the opinion that since the introductory title preceding § 23.651 was "Control Surfaces," any changes placed in § 23.655 would not apply to wings. A third commenter was concerned that interference of control surfaces might occur when one surface was held at some position other than the extreme, while the other is moved. That commenter expressed the concern that some interference might occur at intermediate locations. The proposed addition of a requirement to prohibit interference with adjacent fixed structure was not discussed at the conference.

The FAA has determined that requirements added to § 23.655 should only apply to control surfaces. The FAA has limited experience in the certification of movable wings and has decided that changes to part 23 envisioning such are not appropriate at this time. Administration of existing § 23.655 has produced non-interfering movable tail surfaces, therefore, the wording of the proposal remains similar to existing § 23.655.

Reference: Conference proposal 247.

54. A new § 23.672 is added to read as follows:

§ 23.672 Stability augmentation and automatic and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this part, such systems must comply with § 23.671 and the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system that could result in an unsafe condition if the pilot were not aware of the failure. Warning systems must not activate the control system.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system, or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual; and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

Explanation: This proposal would provide criteria for approval of those stability augmentation, automatic and power-operated systems whose performance is essential to flight safety. The proposed § 23.672 is similar to § 23.672 and, as in part 23, the warning system requirement relating to control system activation is not intended to preclude installing tactile warning devices, such as control system shakers activated independently for other purposes.

One commenter agreed with the concept of the proposal but suggested that paragraph (c) be rewritten to read, "It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system the controllability is not impaired below a level needed to permit continued safe flight and landing." The commenter contended that the purpose of this proposal was to maintain controllability of the airplane, and that replacement of paragraphs (c)(1) and (c)(2) by the suggested paragraph accomplished that purpose.

After consideration of the content of the modified proposal, the FAA has determined that the controllability requirements defined in paragraphs (c)(1) and (c)(2) act to clarify the intent of the proposal. The trim, stability, and stall characteristics of paragraph (c)(3) are not addressed in the commenter's modified proposal. Therefore, the unmodified proposal is presented herein.

Another commenter argued that systems similar to those addressed in this proposal are presently installed on airplanes. The commenter was not aware of any problems on those systems and questioned the need to complicate and increase the cost of certification unless justified by some unsafe condition related to those systems.

A third commenter noted that this proposal was taken verbatim from § 23.672.

Reference: Conference proposal 248.

55. Section 23.679 is revised to read as follows:

§ 23.679 Control system locks.

If there is a device to lock the control system on the ground or water:

(a) There must be a means to—

(1) Automatically disengage the device when the pilot operates the primary flight controls in a normal manner; or

(2) Limit the operation of the airplane so that when the device is engaged, the pilot receives unmistakable warning at the start of the takeoff.

(b) The device must have a means to preclude the possibility of it becoming indavertently engaged in flight.

Explanation: This proposal revises § 23.679 to add a new requirement to either automatically disengage the control system lock when the pilot operates the primary flight controls in the normal manner or to limit the operation of the airplane so that when the lock is engaged, the pilot receives unmistakable warning of this at the start of takeoff. Additionally, this proposal rephrases

the requirement of existing § 23.679(b) from "prevent the lock from engaging in flight" to read "preclude the possibility of the lock becoming inadvertently engaged in flight." Both the existing rule and this proposed change are applicable only if means are provided to lock the control system.

There are three conference proposals directed toward § 23.679. This proposal was developed primarily from conference proposal 253, as corrected at the conference. Conference proposal 252 was withdrawn at the conference in favor of conference proposal 253. Conference proposal 254 was also withdrawn at the conference but was the subject of further discussion after withdrawal.

One commenter stated that the phrase "prevent the lock from engaging in flight" lacked clarity and felt that "inadvertent engagement in flight was more objective.

Several commenters discussed the intent of conference proposal 254, paragraph (b), which would have required that the airplane be designed such that it could not become airborne with the control locks engaged.

Several commenters discussed whether a warning by itself was sufficient instead of restricting takeoff of the airplane, and whether that warning should take place prior to becoming airborne, prior to takeoff roll, or at some earlier time.

One commenter cautioned that should the control lock requirements become too complicated, manufacturers may choose not to install them. The commenter was concerned that operators might then install homemade devices that could remain engaged after takeoff. The commenter stressed that any rule change should simplify methods of compliance and administration.

One commenter asked the FAA to be very cautious when making any changes to the current rule.

Reference: Conference proposal 253. Conference proposals 252 and 254 were withdrawn at the conference.

56. Section 23.729 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 23.729 Landing gear extension and retraction system.

* * * * *

(f) * * *

(1) A device that functions continuously when one or more throttles are closed beyond the power settings normally used for landing approach if the landing gear is not fully extended and locked. A throttle stop may not be used in place of an aural device. If there is a manual shutoff for the warning device prescribed in this paragraph, the warning system must be designed so that when the warning has been suspended after one or more throttles are closed, subsequent retardation of any throttle to or beyond the position for normal landing approach will activate the warning device.

(2) A device that functions continuously when the wing flaps are extended beyond the approach flap position, using a normal landing procedure, if the landing gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (f)(1) of this section.

Explanation: This proposal revises § 23.729(f) (1) and (2) by changing the power and flap settings necessary to activate the device that warns the pilot that the landing gear is not fully extended and locked. The power setting necessary to activate the warning device is changed from when one or more "throttles are closed" to when one or more "throttles are closed beyond the power settings normally used for landing approach." The flap setting necessary to activate the warning device is changed from "flaps are extended to or beyond the approach flap position" to "flaps are extended beyond the approach flap position."

In a recent certification review of a small, multiengine, turboprop airplane, it was found that 15 percent of the total reported accidents were caused by inadvertent gear-up landings. The basic landing gear warning system was designed to comply with the current CAR and FAR requirements and to function when the throttles were "closed". In review of the accident reports, it was noted that most of the accidents resulted when the airplane was making an approach using instrument procedures that required a modest amount of engine power to maintain the required stabilized approach angle in a high drag configuration. This normally used power and airplane configuration negated the gear warning system, which was designed to function with throttles closed until just before touchdown, thereby rendering it too late to prevent an inadvertent gear-up landing. The proposed revision would require determining the normally used approach configurations, appropriate power conditions and throttle settings necessary to provide a timely warning of inappropriate landing gear position.

There are four conference proposals directed toward § 23.729. This proposal was developed from conference proposals 259 and 260. Conference proposal 261 was withdrawn at the conference and conference proposal 262 was withdrawn at the conference in favor of conference proposal 260. Conference proposal 259 initially proposed to change the first sentence in § 23.729(f)(1) to state that the warning device must activate "when one or more throttles are closed beyond the critical power settings for all probable approach configurations." One commenter stated that the terms "critical" and "probable" were confusing and proposed replacements similar to those proposed herein. The FAA agrees and has adjusted this proposal accordingly.

Conference proposal 260 recommends changing the first sentence of § 23.729(f)(2) to require activation of the warning device when the wing flaps are extended beyond the approach flap position. The existing § 23.729(f)(2) requires activation when the wing flaps are extended "to or beyond" the approach flaps setting. One commenter stated that the existing rule was sufficient. Another commenter pointed out that under the current rule, when the flap is put in the approach position and the landing gear is still retracted, the gear warning can activate all the way inbound from the outer marker. Additionally, if the approach flap setting is the same as the takeoff flap setting, when the gear is retracted, the gear warning activates. This commenter favored conference proposal 260 because it was the same as current part 25 language.

Reference: Conference proposals 259 and 260. Conference proposals 261 and 262 were withdrawn at the conference.

57. Section 23.731 is amended by removing paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Explanation: Existing § 23.731(a) requires that each main and nose wheel must be approved. The FAA has determined that this rule is redundant to the basic requirement that the complete airplane must be approved, including all components, parts, and appliances. In addition, the FAA concludes that the regulation implies that unapproved equipment can be installed. Although omitted from conference proposal 523 in error, § 23.731 is included here as a part of conference proposal 523.

Reference: Conference proposal 523. Conference proposal 263 was deferred for discussion under the issue applicable to the "primary category" airplane currently being considered by the FAA.

58. Section 23.733 is amended by revising paragraph (a) to read as follows:

§ 23.733 Tires.

(a) Each landing gear wheel must have a tire whose approved tire ratings (static and dynamic) are not exceeded—

(1) By a load on each main wheel tire (to be compared to the static rating approved for such tires) equal to the corresponding static ground reaction under the design maximum weight and critical center of gravity; and

(2) By a load on nose wheel tires (to be compared with the dynamic rating approved for such tires) equal to the reaction obtained at the nose wheel, assuming the mass of the airplane to be concentrated at the most critical center of gravity and exerting a force of 1.0 W downward and 0.31 W forward (where W is the design maximum weight), with the reactions distributed to the nose and main wheels by the principles of statics and with the drag reaction at the ground applied only at wheels with brakes.

* * * * *

Explanation: This proposal eliminates the current reference in part 23 to the Tire and Rim Association by simply stating that tire ratings must be approved, requires that static and dynamic ratings be established and defines the conditions where those ratings are to be used. This proposal is based on conference proposals 264 and 265. Conference proposal 264 recommends eliminating reference to the Tire and Rim Association so that the certificating authority can consider other ratings. Discussion at the conference indicated that the addition of the word "approved" preceding "tire rating" would sufficiently clarify the intent of the requirement. The FAA recognizes the contribution of the Tire and Rim Association and will continue to use those ratings as a basis for approval; however, the FAA intends to consider other recognized organizations, as appropriate.

Conference proposal 265 recommends that the FAA adopt a firm number of 1.45 as a multiplier for the static tire rating to derive the dynamic tire rating where a more accurate dynamic tire rating is not available. In support of this proposal, the submitter stated that current publications by the Tire and Rim Association no longer list dynamic ratings but that comparison between static and dynamic ratings in previous publications indicates that the dynamic ratings did not exceed 1.45 times the static rating. The FAA recognizes that such an approach may be appropriate in some cases, but disagrees that such a multiplier should be regulatory. Instead, this proposal requires approval of both static and dynamic ratings. The approval is to be based on the most accurate information available to the applicant.

Reference: Conference proposals 264 and 265. Conference proposal 266 was withdrawn at the conference.

59. Section 23.737 is revised to read as follows:

§ 23.737 Skis.

The maximum limit load rating for each ski must equal or exceed the maximum limit load determined under the applicable ground load requirements of this part.

Explanation: This proposal eliminates the first sentence in existing § 23.737; i.e., "Each ski must be approved." The FAA has concluded that this requirement is redundant to the basic requirement that the complete airplane must be approved, including all components, parts, and appliances. In addition, the FAA has determined that it implies that unapproved equipment can be installed.

Reference: Conference proposals 269 and 523.

60. Section 23.751 is amended by revising paragraph (a) to read as follows:

§ 23.751 Main float buoyancy.

(a) Each main float must have—

(1) A buoyancy of 80 percent in excess of the buoyancy required by that float to support its portion of the maximum weight of the seaplane or amphibian in fresh water; and

(2) Enough watertight compartments to provide reasonable assurance that the seaplane or amphibian will stay afloat without capsizing if any two compartments of any main float are flooded.

* * * * *

Explanation: This proposal revises § 23.751 to clarify the buoyancy requirements for main floats in paragraph (a)(1) by specifying an 80 percent excess in buoyancy for each main float above the buoyancy required by that float to support the maximum weight of the seaplane. Additionally, the words "without capsizing" are added to paragraph (a)(2) to clarify the extent of flotation necessary after main float compartment flooding.

A strict interpretation of existing § 23.751(a)(1) results in a buoyancy excess of 80 percent of the maximum weight of the seaplane when the design consists of only one main float, or a total of 180 percent of the maximum weight. However, on seaplanes having two main floats, *each float* would be required to have buoyancy of 80 percent in excess of that necessary to support the seaplane, or 180 percent of the maximum weight of the seaplane; for a total of 360 percent of the maximum weight. For designs having three floats, each float would be required to support 180 percent of the maximum weight for a total of 440 percent. This is neither the intent of the rule nor the practice of industry.

The change to paragraph (a)(2) is intended to clarify the fact that the seaplane be afloat in the upright condition.

Reference: Conference proposals 270 and 271.

61. Section 23.753 is revised to read as follows:

§ 23.753 Main float design.

Each seaplane main float must meet the requirements of § 23.521.

Explanation: This proposal eliminates the phrase "must be approved" from existing § 23.753. The FAA has determined that this requirement is redundant to the basic requirement that the complete airplane must be approved, including all components, parts, and appliances. In addition to being redundant, the FAA has concluded that it implies that unapproved equipment can be installed.

Reference: Conference proposal 523.

62. Section 23.755(a) introductory text is amended by inserting the words "without capsizing" between the words "afloat" and "in".

Explanation: See proposal for § 23.751.

Reference: See proposal for § 23.751.

63. Section 23.773 is revised to read as follows:

§ 23.773 Pilot compartment view.

(a) Each pilot compartment must be—

(1) Arranged with sufficiently extensive, clear and undistorted view to enable the pilot to safely taxi, takeoff, approach, land and perform any maneuvers within the operating limitations of the airplane.

(2) Free from glare and reflections that could interfere with the pilot's vision. Compliance must be shown in all operations for which certification is requested; and

(3) Designed so that each pilot is protected from the elements so that moderate rain conditions do not unduly impair the pilot's view of the flight path in normal flight and while landing.

(b) Each pilot compartment must have a means to either remove or prevent the formation of fog or frost on an area of the internal portion of the windshield and side windows sufficiently large to provide the view specified in paragraph (a)(1) of this section. Compliance must be shown under all expected external and internal ambient operating conditions, unless it can be shown that the windshield and side windows can be easily cleared by the pilot without interruption of normal pilot duties.

Explanation: This proposal is based in part on conference recommendation 272, on conference comments, and on a post conference review of the adequacy of previous certifications, which establishes a precedent for compliance with existing § 23.773. It is not the intent of this proposal to require windshield heat on all small airplanes, to preclude open cockpit designs or to prohibit the pilot from using a cloth to wipe the windows. It does, however, define requirements to assure that a means exists to remove or prevent the formation of fog or frost on the inside of the windshield, specifies the extent of credit to be given to pilot actions and defines the area of windshield and windows to be kept clear.

Paragraph (a)(1) of this proposal requires an extensive, clear, and undistorted view sufficient to enable the pilot to perform any maneuvers within the operating limitations of the airplane, and specifies particular operations, such as taxi, takeoff, approach and landing to clarify the extent of view necessary for safe operation.

Paragraph (b) of this proposal is included to address the condition where an airplane is operated at high altitudes, becomes cold-soaked, and is then descended into warm, moist air. Such conditions have resulted in the formation of frost on the inside surface of the windshield and crew compartment windows, which resulted in a limited or completely obscured view. Since, in such cases, compliance has been shown for the current § 23.773(a)(3), a rule change is appropriate to address this condition. The FAA proposes to revise § 23.773 to identify this condition and to clarify the extent of actions taken by the pilot to remove such moisture.

Reference: Conference proposal 272.

64. Section 23.775 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 23.775 Windshields and windows.

* * * * *

(f) Unless operation in known or forecast icing conditions is prohibited by operating limitations, a means must be provided to prevent or to clear accumulations of ice from the windshield so that the pilot has adequate view for takeoff, approach, landing, and taxi.

(g) In the event of any probable single failure, a transparency heating system must be incapable of raising the temperature of any windshield or window to a point where there would be a danger of fire or structural failure as to adversely affect the integrity of the cabin.

Explanation: This proposal is intended to clarify the criteria for determining the cleared windshield area the FAA deems necessary to assure safe operation for icing certification. By specifically identifying the operational phases of takeoff, approach, landing, and taxi, this proposal is intended to prevent the past practices of certifying airplanes for operation in known icing conditions, with panels too small and too far in front of the pilot (in some cases, a single small panel centered on the windshield to be used from either pilot seat) to allow full operation of the airplane. In such cases, the runway is not always visible during approach when crosswinds result in large crab angles. Additionally, upon landing, the ability to locate and safely use taxiways is hampered because of the restricted view available to the pilot through the small panel. This proposal is not intended to preclude the use of such panels, but does identify the criteria for determining the size, location, and, if necessary, the number of the panels.

In addition, a proposal is made to require that the probable single failure of transparency heating systems not adversely affect the integrity of the airplane cabin. Such failures do occur and consideration of such occurrences is necessary as a minimum requirement for the type certification of new airplane designs.

Conference proposal 272a recommends deletion of the current 70% luminous transmittance requirement of § 23.775(d). It was the consensus of the conference, and the FAA agrees, that the 70% luminous transmittance requirement be retained.

Conference proposal 273 recommends that § 23.775(e) be revised by removing the altitude limitation of 25,000 feet for single pane windows, and by relaxing the criteria to allow the applicant to establish the integrity of the windows and windshield at higher altitudes. Conference discussion was mixed on this proposal. One commenter notes that the proposal is relaxatory for windows and windshields above 25,000 feet, but more restrictive below 25,000 feet. The service history does not support the need to change the existing requirement and, in addition, the specific wording of the proposed change would be difficult to administer. The FAA agrees and does not propose to change § 23.775(e) accordingly.

There are three conference proposals recommending the inclusion of bird-strike windshield requirements for part 23 airplanes. Prior to the issuance of Notice 83-17 (48 FR 52010), which resulted in establishment of the commuter category by amendment 23-34, the FAA considered establishing windshield bird strike criteria for airplanes of the type used in commuter service. The FAA conducted an initial economic evaluation that showed that the costs of imposing such requirements far outweighed the benefits projected from historical service history. As a result, the proposed bird-strike criteria was withdrawn by the FAA prior to establishment of a formal notice of proposed rulemaking.

Reference: Conference proposals 272, 273, 274, 275, 276, and 276a.

65. Section 23.851 is revised to read as follows:

§ 23.851 Fire extinguishers.

(a) There must be at least one hand fire extinguisher located conveniently in the pilot compartment.

(b) For commuter category, there must be at least one hand fire extinguisher located conveniently in the passenger compartment.

(c) For hand fire extinguishers, the following apply:

(1) The types and quantities of each extinguishing agent used must be appropriate to the kinds of fire likely to occur where that agent is to be used.

(2) Each extinguisher for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentrations.

Explanation: This proposal extends the commuter category requirement for a hand fire extinguisher in the pilot compartment to all small airplane categories. Additionally, this proposal provides minimum acceptable standards for on-board hand fire extinguishers.

This proposal is based in part on conference proposal 300, which recommends requirements for part 23 substantially the same as those for part 25.

One commenter noted that a rule change adding hand fire extinguishers had merit.

Reference: Conference proposal 300.

66. Section 23.865 is revised to read as follows:

§ 23.865 Fire protection of flight controls, engine mounts, and other flight structure.

Flight controls, engine mounts, excluding those portions that are certificated as part of the engine, and other flight structure located in the engine compartment must be constructed of fireproof material or shielded so that they are capable of withstanding the effects of a fire. Engine vibration isolators must incorporate suitable features to ensure that the engine is retained if the non-fireproof portions of the isolators deteriorate from the effects of a fire.

Explanation: This proposal clarifies existing § 23.865 by excluding those portions of the engine mount certificated with the engine from this section. Additionally, a clarification is provided to address the allowable damage expected on engine isolators.

In support of this proposal, the submitter contended that there had been some confusion in the past regarding whether the rubber engine isolators must be fireproof. The submitter noted that the rubber isolators are not fireproof, but that the isolators could have limited protection. Additionally, since particular parts of the engine mounting system are approved as part of the engine, those portions are excluded from § 23.865.

No objection to this proposal was voiced at the conference.

Reference: Conference proposal 303.

67. Section 23.1507 is revised to read as follows:

§ 23.1507 Maneuvering speed.

(a) The maximum operating maneuvering speed, V_O, speed must be established as an operating limitation.

(b) The maximum operating maneuvering speed, V_O, shall not be greater than $V_s\sqrt{n}$ where—

(1) V_s is the computed stalling speed with flaps retracted at the design weight, normally based on the maximum airplane normal force coefficients, C_{NA}; and

(2) n is the limit maneuvering load factor used in design.

Explanation: This proposal establishes an operating maneuvering speed different from that established by § 23.335(c). The operating maneuvering speed is that speed at which the pilot can be assured of not exceeding the design limit load factor during maneuvers. For further explanation, see § 23.335, as listed in the "Background" section of this notice, and § 23.1563.

Reference: Conference proposal 107.

68. A new § 23.1516 is added to read as follows:

§ 23.1516 Safe, intentional, one-engine-inoperative speed.

The safe, intentional, one-engine-inoperative speed, V_{SSE}, determined in § 23.149 must be established as a separate limitation.

Explanation: See proposal for § 23.149.

Reference: See proposal for § 23.149.

69. Section 23.1521 is amended by revising paragraph (a) to read as follows:

§ 23.1521 Powerplant limitations.

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines or propellers are type certificated. In addition, other powerplant limitations used in determining compliance with this Part must be established.

* * * * *

Explanation: This proposal clarifies existing § 23.1521 to assure that powerplant limitations established for airplane certification do not exceed those established during the certification of the engine or the propeller. It was the consensus at the conference that this recommendation be proposed in an NPRM. Currently, § 23.1521 specifies powerplant limitations established during the type certification of the engines or propellers but does not consider limitations established during the type certification of the airplane.

The FAA is proposing a requirement that other powerplant limitations used in determining compliance with the airworthiness standards of part 23 also be established.

Reference: Conference proposal 476.

70. A new § 23.1522 is added to read as follows:

§ 23.1522 Auxiliary power unit limitations.

If an auxiliary power unit is installed, the limitations established for the auxiliary power unit must be specified in the operating limitations for the airplane.

Explanation: This proposal establishes new minimum requirements for auxiliary power units (APU). Applications for approval of APU installations have been received by the FAA. Little discussion ensued at the conference on this subject; however, the FAA concludes that applicants for approval of APU installations should be informed of the requirements applicable to these installations. Refer to proposed changes to § 23.1549.

Reference: Conference proposal 477.

71. Section 23.1523 is amended by adding the sentence, "The kinds of operation authorized must be established and this information furnished in the Airplane Flight Manual (AFM) as required by § 23.1563", following the existing sentence.

Explanation: This proposal clarifies existing § 23.1523. It is contended that the current paragraph is vague, brief, and does not contain the kinds of operation limitations required in the Airplane Flight Manual as specified by § 23.1583(h). There was no discussion of this proposal at the conference.

Reference: Conference proposal 479.

72. Section 23.1527 is amended by removing the phrase "For turbine engine powered airplanes and turbosupercharged airplanes," from the first part of paragraph (b) and capitalizing the letter "T".

Explanation: This proposal will make it clear that the maximum operating altitude allowed for any part 23 airplane must be established based on those limitations determined by flight, structural, powerplant, functional, or equipment characteristics. This change would be consistent with § 23.141 as proposed in this notice.

Reference: See proposed § 23.141.

73. Section 23.1545 is amended by removing paragraph (b)(6).

Explanation: This proposal deletes the current section requiring a red radial mark on the airspeed indicator to identify the minimum control speed with the critical engine inoperative, V_{MC}, on multiengine airplanes. The FAA considers this marking unnecessary. It can oftentimes be misused, or misunderstood when placed on the airspeed indicator. Deleting this requirement does not imply that V_{MC} will not be measured. Section 23.1513 requires that the minimum control speed, V_{MC}, be established as an operating limitation and will, therefore, be presented in the Airplane Flight Manual Limitation section. It was the consensus at the conference that the marking requirement on the airspeed indicator for V_{MC} should be deleted. Conference proposals 482 and 484 were substantially the same but from different submittals to the conference. Conference proposal 483 is addressed in Notice No. 2.

Reference: Conference proposals 482, 483, 484, and 485.

74. Section 23.1549 is amended by revising the heading, introductory text of the section, and paragraph (d) to read as follows:

§ 23.1549 Powerplant and auxiliary power unit instruments.

For each required powerplant and auxiliary power unit instrument, as appropriate to the type of instruments—

* * * * *

(d) Each engine, auxiliary power unit, or propeller range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

Explanation: This proposal expands the current powerplant instrument requirements to include auxiliary power units (APU). Applications for approval of APU installations have been received by the FAA. Applicants need to be informed of the requirements for these installations necessary to maintain the level of safety established by the airworthiness standards of part 23 instead of utilizing special conditions after the type certification program has begun. There was no discussion at the conference on this proposal. Refer to proposed changes to § 23.1522.

Reference: Conference proposal 486.

75. Section 23.1557 is amended by removing paragraph (f) and by revising paragraph (c) to read as follows:

§ 23.1557 Miscellaneous markings and placards.

* * * * *

(c) Fuel, oil, and coolant filler openings. The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) For reciprocating engine-powered airplanes—

(A) The word "Avgas"; and

(B) The minimum fuel grade.

(ii) For turbine engine-powered airplanes—

(A) The words "Jet Fuel"; and

(B) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "Oil".

(3) Coolant filler openings must be marked at or near the filler cover with the word "Coolant".

* * * * *

Explanation: This proposal clarifies the marking requirements for filler openings. The current requirement, which states that fuel filler openings be marked at or near the filler cover with the word "fuel", has resulted in some airplanes being fueled with an improper fuel. This proposal will differentiate fuels by requiring that the filler openings for reciprocating engine-powered airplanes be marked with the word "Avgas" and that the filler openings for turbine engine-powered airplanes be marked with the words "jet fuel". It is considered impractical to require a marking of all permissible jet fuels for turbine engines at or near the filler opening. The requirement states that an acceptable method of determining the permissible jet fuels is by reference to the Airplane Flight Manual. There was a consensus of agreement with the proposal submitted at the conference when the word "fuel" as applicable to reciprocating engine-powered airplanes was changed to the word "Avgas". The FAA concurs with this change.

The current requirements are silent on the marking of filler openings for coolants. Therefore, it is proposed to require a marking for the coolant filler opening in a manner similar to the requirements for fuels and oil.

The FAA is proposing to delete paragraph (f) because this information is provided to the pilot in the AFM and the fuel quantity indicator is required to be marked at the unusable fuel level by § 23.1553. The FAA considers the current requirement as redundant and will simplify the instrument panel arrangement, resulting in a clearer, more easily scanned instrument panel. It was the consensus at the conference that the current requirement of paragraph (f) should be deleted from the airworthiness standards.

Reference: Conference proposals 488 and 489.

76. Section 23.1563 is amended by revising paragraph (a) to read as follows:

§ 23.1563 Airspeed placards.

* * * * *

(a) The operating maneuvering speed, V_o; and

* * * * *

Explanation: Refer to §§ 23.335 and 23.1507.

Reference: Conference proposals 187 and 491.

77. Section 23.1581 is amended by adding a new paragraph (f) to read as follows:

§ 23.1581 General.

* * * * *

(f) *Log of revisions.* Each Airplane Flight Manual (AFM) must contain a means for recording the incorporation of revisions and/or amendments.

Explanation: This proposal establishes a new requirement for providing a means to record updates to the Airplane Flight Manual. There are three proposals directed at § 23.1581. Conference proposal 402 recommends adoption of requirements for flight manuals substantively identical to existing § 25.1581, 27.1581 and 29.1581. Existing § 23.1581 is unique in that it permits the information in the Airplane Flight Manual to be organized in a form suitable for the pilot's needs. Under this regulation, only those pages containing the operating limitations for the airplane must be approved, identified and distinguished from other pages in the manual. The operating procedures, performance, and loading sections of the manual can, at the option of the applicant, be presented in any manner acceptable to the Administrator as long as the required information is determined in accordance with the applicable requirements. No such option exists in parts 25, 27, and 29. In those requirements, the AFM contains approved data for operating procedures, performance and loading procedures in addition to the operating limitations data.

Discussions at the conference indicated fundamental opposition to conference proposal 402. One commenter noted that segregating required FAA information in a separate section implies that other information presented elsewhere is somehow less safe or less accurate. That commenter noted that the FAA has the responsibility and authority to prohibit any information, approved or unapproved, from being included in the AFM if it is considered inappropriate, inaccurate or unsafe—or for any other justifiable reason. The commenter further noted that the concept of combining approved and unapproved information in the AFM has been used by the General Aviation Manufacturers Association (GAMA) members since the "GAMA Specification for Pilots Operating Handbook" (GAMA Specification No. 1) was finalized. That commenter was unaware of any major problems associated with such use and noted that the additional information required by GAMA Specification No. 1 tends to enhance safe operation by including more information than is specifically required by the regulations.

Conference proposal 402 recommends separate AFM requirements for airplanes having maximum weights below 3,000 pounds. Conference proposal 403 was deferred for possible inclusion in the primary category regulations currently under consideration by the FAA. Conference proposal 404 recommends (1) eliminating of the applicant's option for the extent of approved data, (2) specifically prohibiting reference to specific operating rules, and, (3) requiring that each AFM contain a means for recording and incorporating revisions and/or amendments to that AFM.

Conference comments were mixed relative to the recommendation to prohibit reference to operating rules in the AFM. Objections to incorporation of operating rules in the AFM centered around foreign operation and the inapplicability of the listed operating rules in such operations. Additionally, one commenter objected because the operating rules change over the years making certain citations in the AFM obsolete.

Other commenters cited reference to the performance requirements of part 135, appendix A, as a typical AFM supplement that becomes part of the certification basis of the airplane.

Post conference review indicates that certain references in the AFM to operational rules of one airworthiness authority are appropriate and provide a standard for comparison to the rules of another airworthiness authority. ICAO Annex 8 performance supplements are examples of such cases. The FAA has concluded that such references are appropriate and should not be prohibited in the AFM.

Further, the FAA recognizes the advantage of proper AFM revision/amendment control. Section 23.1581 is revised accordingly.

Reference: Conference proposals 402 and 404.

Conference proposal 403 was deferred for discussion under the issues applicable to the "primary category" airplane currently being considered by the FAA.

78. Section 23.1583 is amended by adding introductory text to the section, by revising paragraphs (a)(2) and (h), and by adding a paragraph (m) to read as follows:

§ 23.1583 Operating limitations.

Operating limitations determined during type certification of each airplane must be stated, including the following:

(a) * * *

(2) The speeds V_{MC}, V_O, V_A, V_{LE}, V_{LO}, and V_{SSS} (if established), and their significance.

* * * * *

(h) *Kinds of operation.* The kinds of operation, such as VFR, IFR, day, or night, in which the airplane is type certificated and in which it may or may not be used, including the meteorological conditions in which it may or may not be used, must be furnished. Installed equipment that affects any operating limitation must be listed and identified as to the equipment's required operational status for the kinds of operation for which approval is requested.

* * * * *

(m) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential must be furnished if less than the maximum possible.

Explanation: The FAA is proposing an introductory sentence to the section because during the type certification procedures there are nearly always limitations required other than those specified by the specific requirements in this section. It was the consensus that this introductory sentence should be a part of the airworthiness standards. Paragraph (a)(2) revises the operating limitations to add the operating maneuvering speed and the safe, intentional, one-engine-inoperative speed that were identified in the proposed changes to §§ 23.149 and 23.335, respectively.

The FAA is proposing to expand paragraph (h) to identify the kinds of operation that were type certificated, such as icing certification, and to identify the operational status of installed equipment as a limitation that must function in that kind of operation.

The FAA is proposing a new paragraph (m). Although generally covered by § 23.23, Load distribution limits, the effects of an asymetric fuel load is not emphasized and, although lateral center of gravity limits must be furnished in the Airplane Flight Manual (AFM), the effects of lateral fuel imbalance is not usually addressed. It was the consensus at the conference that this is currently being done during type certification on an airplane by airplane basis but a requirement of general applicability should be proposed by the FAA for small airplanes. One attendee noted that the imbalance limitation should also include luggage compartments in the wings, and in response to this concern, reference to § 23.23 was cited as presently addressing the luggage compartment issue.

Reference: Conference proposals 405, 406, 407, and 408.

79. Section 23.1585 is amended by revising paragraphs (a) and (c) and adding paragraph (b) to read as follows:

§ 23.1585 Operating procedures.

(a) For each airplane, information concerning normal, abnormal, and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be identified and segregated, including—

(1) The maximum demonstrated values of crosswind velocity for takeoff and landing and procedures and information pertinent to operations in crosswinds;

(2) The speeds, configurations, and procedures for making a normal takeoff and the subsequent climb;

(3) Procedure for abandoning a takeoff due to engine failure or other cause;

(4) The recommended climb speeds, and any variation with altitude;

(5) The speeds, configurations, and procedures for making a normal approach and landing, and a transition to the balked landing condition;

(6) An explanation of significant or unusual flight or ground handling characteristics of the airplane; and

(7) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (e.g., stalling).

(b) For single-engine airplanes, the procedures, speeds, and configurations for a glide following an engine failure and subsequent forced landing.

(c) For multiengine airplanes, the information must include—

(1) Procedures and speeds for continuing a takeoff following failure of the critical engine and the conditions under which takeoff can be safely continued, or a warning against attempting to continue the takeoff;

(2) Procedures, speeds, and configurations for continuing a climb following engine failure after takeoff or en route;

(3) Procedures, speeds, and configurations for making an approach and landing with one engine inoperative;

(4) Procedures, speeds, and configurations for making a go-around with one engine inoperative and the conditions under which the go-around can safely be executed, or a warning against attempting the go-around maneuver; and

(5) Procedures for maintaining or recovering control of the airplane with one engine inoperative at speeds above and below V_{MC}.

(6) Procedures for restarting engines in flight, including the effects of altitude, must be set forth in the Airplane Flight Manual.

* * * * *

Explanation: Proposals made under this heading are confined to flight procedures and scheduled speeds that are essential for the safe operation of the airplane and the achievement of the scheduled performance. Much of the material is based on § 23.1535, or § 23.1587 in the case of stalling and some other speeds.

The usefulness of data on maximum height loss and pitch attitude excursions in the stall, required by § 23.1587 (a)(1) and (c)(1), is doubted and such requirements have not been included in these proposals. The requirement of § 23.1585(c)(1) relating to lateral/directional controllability above and below V_{MC} is considered to be within the scope of basic airmanship. Detailed procedures related to the fuel and electrical system, such as in existing § 23.1585 (d) through (g) are considered to fall outside the redefined scope of this proposed § 23.1585, which deals only with flight operating procedures.

An attempt has been made to organize this proposed requirement for the provision of information on flight procedures and speeds into a logical sequence, calling up the data in the order in which its determination is called for in subpart B of part 23. The material is subdivided into data applicable to all airplanes, glide data that is specified to single-engine airplanes and additional data appropriate only to twin-engine airplanes. Finally, the procedure for starting engines in flight is considered necessary for all airplanes and has been determined by § 23.903(f). Therefore, reference to commuter category and to turbine engines has been eliminated.

Reference: Conference proposals 499, 501, 502, and 521. Conference proposal 500 was deferred for discussion under the issue applicable to the "primary category" airplane currently under consideration by the FAA.

80. Section 23.1587 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 23.1587 Performance information.

The following information must be furnished:

(a) For normal, utility, and acrobatic category airplanes:

(1) The takeoff distance determined under § 23.51; and the kind of runway surface used in the tests.

(2) The climb gradient determined under §§ 23.65 and 23.77, the airspeed, power and the airplane configuration.

(3) The landing distance determined under § 23.75.

(4) For multiengine airplanes, the one engine inoperative en route climb/descent gradients determined under § 23.67.

(5) The calculated approximate effect on takeoff distance, landing distance, and climb performance for variations in—

(i) Altitude from sea level to 10,000 feet in a standard atmosphere and cruise configuration; and

(ii) Temperature, at those altitudes from 60° F below standard to 40° above standard.

(b) For skiplanes, a statement of the approximate reduction in climb performance may be used instead of complete new data for the skiplane configuration if—

(1) The landing gear is fixed in both the landplane and skiplane configurations;

(2) The climb performance is not critical, and;

(3) The climb reduction in the skiplane configuration does not exceed 50 feet per minute.

(c) For each airplane:

(1) Any loss of altitude more than 100 feet, or any pitch more than 30 degrees below level flight attitude, occurring during the recovery part of maneuvers prescribed in §§ 23.201(c) and 23.203, if applicable.

(2) The stalling speed, V_{SO}, at maximum weight.

(3) The stalling speed, V_{S1}, at maximum weight and with the landing gear and wing flaps retracted and the effect upon this stalling speed of angles of bank up to 60 degrees.

(4) The speed used in showing compliance with the cooling and climb requirements of §§ 23.1041 through 23.1047 if this speed is greater than the best rate of climb with one engine inoperative for multiengine airplanes and the maximum atmospheric temperature at which compliance with the cooling requirements has been shown.

* * * * *

Explanation: The FAA is proposing a substantial reorganization and simplification of the performance information requirements to be included in the Airplane Flight Manual (AFM). It was the consensus at the conference that these actions would clarify the requirements by following the sequence as set forth in subpart B of part 23. It was agreed that some of the information currently required in the performance information section was not related to performance and should be stated elsewhere; for example, the conditions under which the full amount of usable fuel in each tank could be safely used. One significant change agreed to by the attendees at the conference was an increase from 8,000 feet to 10,000 feet for calculation of performance information because of the realistic operating environment of small airplanes. One proposal addresses the flight and ground handling characteristics. It was generally agreed, and the FAA concurs, that this requirement belongs in the operating procedures portion of the AFM. Another proposal recommends the use of density altitude. This recommendation was rejected by the attendees at the conference and by the FAA, as was another recommendation for grass runway performance information data.

Reference: Conference proposals 504 through 510 and 521.

81. Section 23.1589 is amended by revising paragraph (a) to read as follows:

§ 23.1589 Loading information.

* * * * *

(a) The weight and location of each item of equipment that can be easily removed, relocated, or replaced and that is installed when the airplane was weighed under the requirement of § 23.25.

* * * * *

Explanation: Section 23.1589(a) in conjunction with § 23.25 relates back to

§ 23.29(b), which requires that "the condition of the airplane at the time of determining empty weight must be one that is well defined and can be easily repeated."

The word "condition" referred to in § 23.29(b) is not specific in meaning. "Well defined" and "easily repeated" are qualitative and general, but a requirement is clearly inferred that an "empty weight reference condition" can be verified as representative of the airplane. This "empty weight reference condition" is partially defined by § 23.29(a). It is further defined in § 23.1589(a), which requires that weight and location of "each" item of equipment be furnished. Furthermore, it is customary for the manufacturer to further define this condition by specifying variable factors, such as leveling procedures, cautions on the effect of moving air in the weighing procedures, adjustable seat positions, the position of flight controls.

In practice, the requirement of § 23.1589(a) is seldom met. The reasons for this are:

1. No one, especially the pilot, needs to know the weight and location of "each" item of equipment.

2. It is difficult for anyone, especially the pilot, to verify the weight and location or even the installation of "each" item of equipment.

3. It is difficult and expensive for the manufacturer to prepare and maintain this data for each item of equipment.

The word "each" provides no limit to the extent that items of structure, systems and installations should be included. In addition, the interpretation of the existing requirement has been very inconsistent. Actually, the word "each" is neither functional in purpose nor practical in application as it presently stands. A more usable requirement is needed.

The manufacturer provides the empty weight and balance data when an airplane is granted its Certificate of Airworthiness. Whenever an alteration is made to that airplane that affects its weight and balance, the person responsible for making the alteration is required to provide a new set of empty weight and balance data. This regulatory procedure provides a continuum of the "empty weight reference condition" that is sufficiently adequate and practical regardless of whether there is a weight and location given for "each item of equipment.

The empty weight information the pilot needs for calculating a proper weight and balance is:

1. The empty weight and balance data originally provided for the airplane.

2. The weight and location of items of equipment included in the empty weight and balance of the airplane that can be easily removed, relocated, or replaced.

The items of equipment that are easily removed, relocated, or replaced might include such items as adjustable ballast, removable seats, portable oxygen systems, tow bars, removable cargo pads, life rafts, cockpit and cabin furnishings, batteries, etc.

The pilot does not need to know the weight and location of centers of gravity of engine, propeller, avionics, hydraulic components, wheels, tires, etc. A mechanic does not need to know the weight and center of gravity location of "each" item of equipment to maintain the continuum of the "empty weight reference condition". Any time that the empty weight and balance figures appear questionable, a new "empty weight reference condition" can be established by performing a new weight and balance calculation. This is frequently done, even though an itemized equipment list is provided.

It was noted at the conference that the current list of items is quite lengthy and complex and it was the consensus that the proposal should be set forth in an NPRM by the FAA and the FAA concurs.

Reference: Conference proposal 511.

82. Appendix D of part 23 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

Appendix D to Part 23—Wheel Spin-Up and Spring-Back Loads

* * * * *

(c) Dynamic spring-back of the landing gear and adjacent structure at the instant just after the wheels come up to speed may result in dynamic forward acting loads of considerable magnitude. This effect shall be determined, in the level landing condition, by assuming that the wheel spin-up loads calculated by the methods of this appendix are reversed. Dynamic spring-back is likely to become critical for landing gear units having wheels of large mass or high landing speeds.

Explanation: For explanation, see § 23.479.

Reference: Conference proposals 213 and 513.

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Appendix H to Part 23—Seaplane Loads

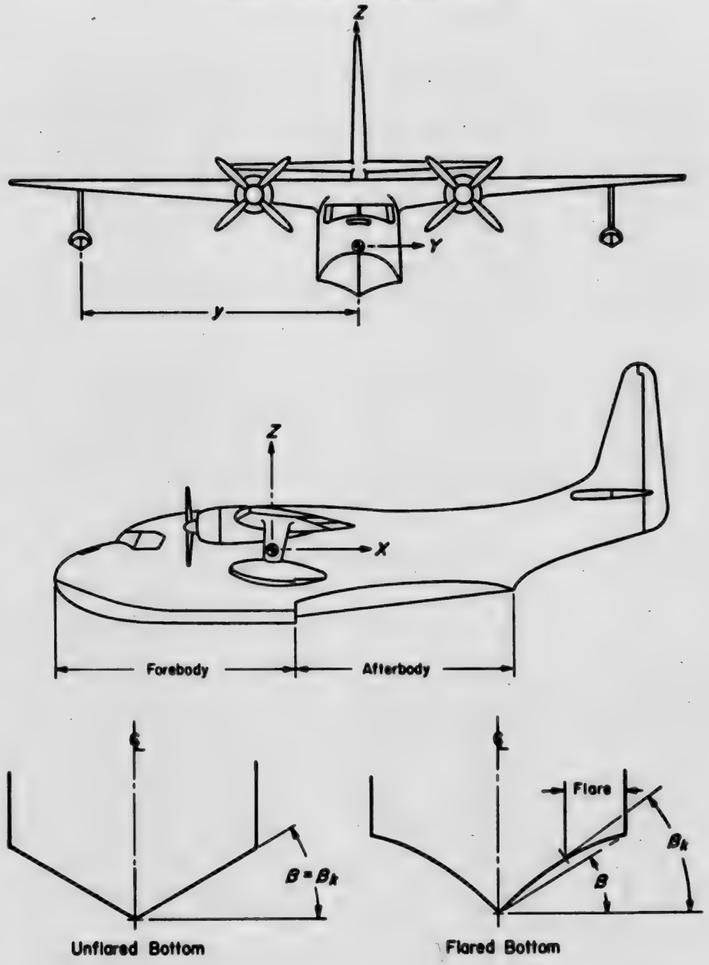


FIGURE 1. Pictorial definition of angles, dimensions, and directions on a seaplane.

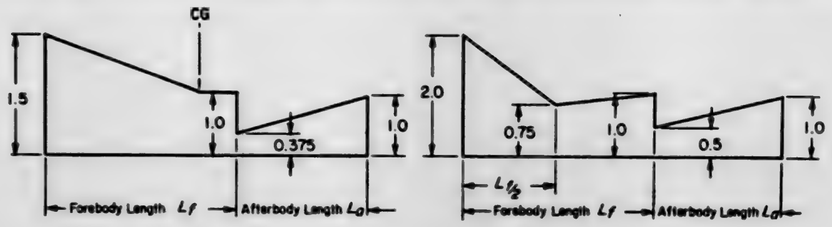


FIGURE 2. Hull station weighing factor

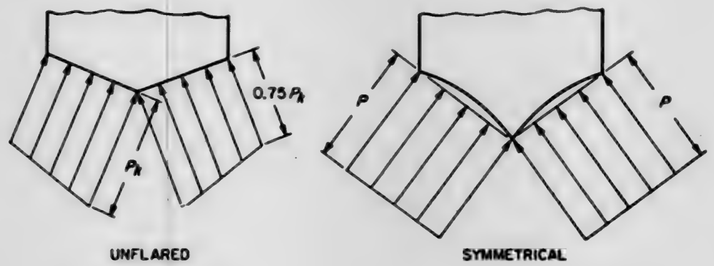


FIGURE 3. Transverse pressure distributions.

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Explanation: See proposal for § 23.521.

Reference: Conference proposal 518.

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Thursday
June 28, 1990

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 178 Performance-Oriented Packaging Standards; Additional Proposals for Flammable Solids, Oxidizers, and Organic Peroxides; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 178

[Docket No. HM-181D, Notice No. 90-12]

RIN 2137-AB90

Performance-Oriented Packaging Standards; Additional Proposals for Flammable Solids, Oxidizers, and Organic Peroxides

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, with regard to the hazard classification, packaging, and hazard communication requirements applicable to flammable solids, oxidizers, and organic peroxides. The proposed changes are based on the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The purpose of the action is to: Promote safety through better classification and packagings; simplify the HMR; promote flexibility and technological advances in packaging; and harmonize domestic regulations for flammable solids, oxidizers, and organic peroxides with those used internationally. The intended effects of this action are to enhance safety and facilities international commerce.

DATES: Comments must be received on or before August 20, 1990.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted, if possible, in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (*i.e.*, Docket HM–181D). The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Schultz, Office of Hazardous Materials Transportation, RSPA, 400 Seventh Street SW., Washington, DC, (202) 366–4545.

SUPPLEMENTARY INFORMATION: This supplemental notice of proposed rulemaking (SNPRM) revises the proposals set forth in Docket HM–181, Notice 87–4 (52 FR 16482 and 52 FR 42772) as they relate to flammable solids, oxidizers, and organic peroxides. These changes would incorporate classifications for certain hazardous materials that are consistent with the classification criteria found in the sixth edition of the U.N. Recommendations.

The supplementary information is organized under the following headings to assist the reader:

I. Background
II. Related Rulemakings
III. Major Features
  A. Class 4 Revisions
  B. Class 5 Revisions
IV. Review by Sections
V. Administrative Notices

I. Background

On May 5, 1987, RSPA issued an NPRM entitled "Performance-Oriented Packaging Standards; Miscellaneous Proposals" (Docket HM–181; Notice 87–4; 52 FR 16482), proposing sweeping changes to the HMR, including the adoption of performance-oriented packaging standards and hazard classification criteria. Docket HM–181 was republished on November 6, 1987 (52 FR 42772) and contained corrections and supplemental proposals to the May 5, 1987 publication. Substantial background information is provided in those rulemakings and the reader is referred to them for greater detail. The following are the major considerations in support of those proposals as they relate to hazard classification: (1) The UN classification system conveys more directly the hazard characteristics of flammable solids, oxidizers, and organic peroxides. (2) Proper classification is necessary to ensure appropriate packaging, hazard communication, and handling, thereby enhancing transportation safety. This notice revises and supplements the proposals in Notice 87–4, based on the UN Recommendations, concerning Classes 4 and 5.

The proposed changes in this supplemental notice would address the following areas: (1) The definitions of materials in Classes 4 and 5 would be improved and expanded; (2) the methods and criteria for classifying a material into Class 4 or 5, and then assigning the material to a packing group, would be described; (3) shipping names within Division 5.2 (organic peroxides) would be revised to conform with the UN Recommendations; (4) packaging requirements would be added for self-reactive materials and revised for organic peroxides.

The definitions of Classes 4 and 5 would be clarified and ambiguous terms eliminated. In addition, classification and packing group assignment criteria would be incorporated in the regulatory text and test methods for Class 4 and Division 5.1 are included in two appendices.

There are two classification systems being introduced in this SNPRM in the form of appendices to 49 CFR part 173. Each system provides tests and criteria for the assignment of a material to a division within a class and to a packing group. The methods used to classify a material are based on the UN Recommendations, Chapters 11 and 14, for Division 5.1 solids and Class 4 materials, respectively.

An additional classification system is being introduced for Division 5.2 materials. Since publication of Notice 87–4 on November 6, 1987, the United Nations has introduced "generic types" of shipping descriptions. When a new organic peroxide is introduced into commerce, its transportation hazards are determined using standard tests. A competent authority, as defined in accordance with 49 CFR 171.8, then assigns the new organic peroxide to a generic type description based on the test results. By using this procedure, it is not necessary to go through the lengthy process by which the importing and exporting countries reach agreement on packaging requirements or the assignment of a UN identification number whenever a new organic peroxide product comes on the market. More importantly, because the classification system is based on hazard considerations, its implementation will help effect uniform safety standards. Included as part of these safety standards is a new method for specifying Division 5.2 packaging.

In Notice 87–4, we stated that not all hazardous materials are accommodated by the use of the general non-bulk packaging sections. Because of unique physical, chemical, or lethality problems, some materials require special packaging and handling. In that document, two methods were proposed to handle these problem materials. One would be to add special packaging provisions in the § 172.101 Hazardous Materials Table (HMT). The other method for dealing with these hazardous materials is to add a unique packaging section for a particular material when the general packaging provisions are not adequate to package the material safely. The general packaging tables have sufficient flexibility so that they could be modified to handle most materials; however, for certain materials, the number of special provisions needed is so large that their addition to the HMT would make it unwieldy. For these reasons, the addition of a separate packaging section is preferable. This SNPRM proposes two packaging sections, §§ 173.224 and 173.225, for self-reactive substances (Division 4.1) and organic peroxides (Division 5.2), respectively.

II. Related Rulemakings

Concurrent with this SNPRM, the following two advance notices of proposed rulemaking are withdrawn:

A. Docket HM–178

On May 7, 1981, RSPA published an advance notice of proposed rulemaking entitled, "Definition of Flammable Solid" (46 FR 25402) under Docket HM–178. RSPA recognized the shortcomings of the existing subjective classification system for flammable solids and proposed seven subgroupings for those materials. With a few exceptions, those seven subgroupings generally agree in principle with the definitions of Class 4 materials contained in the UN Recommendations and incorporated in this notice. The definitions omit wetted-explosives and self-reactive materials, however, and include some fermenting materials and elevated temperature materials. Elevated temperature materials have now been transferred into Docket HM–198A (54 FR 38930; September 21, 1989), but no work is currently planned on fermenting materials. In light of the duplication that would result from this supplemental notice and Docket HM–178, HM–178 is withdrawn. Hazard classification, hazard communication, and packaging standards for elevated temperature materials will still be given consideration under Docket HM–198A.

B. Docket HM–179

An advance notice of proposed rulemaking, under Docket HM–179, issued June 15, 1981 (46 FR 31294), entitled "Definition of Oxidizer", contained definitions, tests, and criteria for classifying oxidizers. The portion of that ANPRM which applied to solid oxidizers, has been incorporated into the UN Recommendations and is also contained in the proposed appendix F to part 173 in this notice. RSPA believes that rulemaking concerning liquid oxidizers should await adoption of criteria in the UN Recommendations. Therefore, Docket HM–179 is withdrawn.

III. Major Features

A. Class 4 Revisions

The further revisions to Class 4 would enhance the definitions for those materials proposed in § 173.124 (52 FR 42772) and explain, in an appendix (appendix E to part 173), the criteria by which a material is classified as Class 4. Although it was proposed to adopt Class 4 test criteria in Notice 87–4, these criteria were not included. This omission is corrected in this document.

Class 4 materials include flammable solids, spontaneously combustible materials, and materials that are dangerous when wet. The class includes some liquids in Divisions 4.2 and 4.3. Their classification scheme applies to a broad range of materials, including simple raw materials which may self-heat, and finished goods such as fuses (railway or highway). The proposed classification scheme would reflect that diversity. Test methods fall into two general categories: the first category uses fixed procedures of step-by-step protocol tests to evaluate specific characteristics of materials under conditions which may be experienced during transportation. The second category compares a new material with materials already in the division to determine its classification. The packing group is determined as part of the classification process. In order for a material to be classified within a division, some threshold of a specific hazard must be exceeded. The degree to which that hazard is assessed is determined by using packing groups. Packing Group III indicates minor danger; Packing Group II indicates moderate danger, while Packing Group I indicates great danger. In many cases, the packing group is determined using quantitative data derived from specific tests. Where quantitative tests have not been developed, packing group assignments are subjective and ultimately based upon the transportation experience with these or similar materials.

Certain self-reactive materials require special packaging and transport conditions. Their shipping requirements are not easily accommodated in the HMT and this notice would provide a new section (§ 173.224) which details packaging and temperature control requirements for self-reactive materials.

B. Class 5 Revisions

This notice proposes extensive revisions to the proposals made in Notice 87–4. The definitions for Divisions 5.1 and 5.2 in proposed §§ 173.127 and 173.128, respectively, would be revised. Test methods for classification and packing group criteria for Division 5.1 are proposed in a new appendix F to part 173. This system entails a graduated comparison to materials with known characteristics, of the potential of a specific material to accelerate combustion.

Revisions to Division 5.2 include 20 new generic shipping descriptions in the § 172.101 Table, a classification system for assigning those descriptions, and a packaging system which recognizes the unique characteristics of organic peroxides. The 20 new generic entries for organic peroxides would replace 156 existing entries in the § 172.101 Table. Generic types A through G would be defined in § 173.128, based on classification criteria incorporated by reference from the UN Recommendations, Tests and Criteria, Part III. The classification system reflects the hazard characteristics of organic peroxides as packaged for shipment and requires that the temperature of the package be controlled, when appropriate. Criteria for determining when temperature controls are appropriate are applicable to both self-reactive materials in Division 4.1 and organic peroxides in Division 5.2. These criteria appear in proposed § 173.223.

A listing of technical names for organic peroxides would appear in a new Organic Peroxides Table in proposed § 173.225, and would be used to determine the applicable generic shipping name, packaging, and other requirements for known organic peroxides. Materials not identified by technical name, or formulations of identified materials, would be subject to approval by the Director, Office of Hazardous Materials Transportation (OHMT), prior to shipment, except for certain samples.

A packaging system based on the UN Recommendations is included in proposed § 173.225 and replaces that proposed in Notice 87–4. It is proposed that certain organic peroxides which exhibit explosive properties, specifically organic peroxides Type B, would require an EXPLOSIVE subsidiary label. Bulk packaging requirements are proposed for certain liquid Type F organic peroxides.

IV. Review by Sections

Note: Unless otherwise noted, this section-by-section review is based on the recodification proposed in Notice 87–4 (52 FR 42772, November 6, 1987).

Section 171.7

This section is being amended to incorporate citations of the United

Nations classification testing. The tests and their purposes are discussed later in this preamble. This notice also proposes removing the reference to the SADT Test of the Organic Peroxide Producers Safety Division. That test is currently cited in the regulations (49 CFR 171.7), and it is the basis for the USA SADT Test in the UN Recommendations on the Transport of Dangerous Goods, Test and Criteria. The SADT Test citation is being changed only to reduce the number of referenced documents. This section is also being revised by a rulemaking concerning explosives under Docket HM–181A (55 FR 18439, May 2, 1990). The proposals in this notice supplement rather than preempt those revisions.

Section 172.101

The § 172.101 Table would be amended to reflect the introduction of the generic shipping description system for Division 5.2 and the removal of 156 obsolete entries for organic peroxides. Twenty generic entries for organic peroxides would be added. In addition, 21 entries for self-reactive materials would be revised to reference the new packaging table (§ 173.224) for those materials. However, two self-reactive entries would not be changed. As proposed in Notice 87–4, shipments of self-reactive samples (UN3031) and self-reactive trial quantities (UN3032) would require approval by the Director, OHMT.

In the preamble to the § 172.101 Table, paragraph (c)(14) would be added to require use of the new Organic Peroxides Table in § 173.225 for selection, based on the technical name of the organic peroxide, of an appropriate proper shipping name. Because of this change, it is also necessary to revise paragraph (c)(5) to delete the reference to organic peroxides.

Section 172.102

A special provision (T37; § 172.102(c)(ii)) for tert-butyl hydroperoxide is being deleted from this section because the provision would be relocated to § 173.225(c), under this notice. New special provisions 41 and 53 provide exceptions from the requirement for a subsidiary EXPLOSIVE label for certain packages for self-reactive materials.

Section 172.202

In a final rule issued under Docket HM–126C (54 FR 27138; June 27, 1989), RSPA issued new requirements for identifying the technical constituents of hazardous materials. Proposed § 172.202(f) is thereby rendered obsolete and is withdrawn in this notice.

Section 172.203

This section would be revised for consistency with Docket HM–126C, to add generic shipping names for organic peroxides in paragraph (k)(3), and to require in paragraph (k) that the concentration be added to the shipping description for those organic peroxides which may qualify for more than one generic entry depending on their concentration.

Section 173.21

Paragraph (f)(1) would be revised to reference the temperature control requirements proposed in § 173.223 of this notice. Paragraph (f)(2) is revised to reference the SADT test in the UN Recommendations on the Transport of Dangerous Goods, Test and Criteria, Part II. In addition, a restriction on the amount of active oxygen that may be present in certain types of organic peroxides is being proposed in new paragraph (j). This restriction reflects current requirements for domestic transportation.

Section 173.124

The definitions for the divisions in Class 4 are being expanded for clarity. Explanations or examples are being added so that the type of materials identified by name can be understood. As revised, the general term for matches and similar materials has been shortened to "materials which cause a fire through friction".

Section 173.125

This section is revised to show the criteria for assigning packing groups for Class 4 materials. In Notice 87–4, [52 FR 42772, November 6, 1987], RSPA proposed to supply the UN Recommendations' test methods and criteria for assignment of packing group. This is provided in appendix E. Placing those criteria in the regulations makes them more accessible.

Section 173.127

This newly proposed section contains the definition and packing group assignment for Division 5.1, so that definitional terms for Divisions 5.1 and 5.2 will be located in separate sections. The definition of Division 5.1 has been amended by deleting examples of specific anions which may contribute to a fire. The examples are no longer needed because of the revised definition and addition of test methods in the new appendix F.

Section 173.128

The definitions for organic peroxides are expanded from that proposed in Notice 87–4 to conform with changes to the UN Recommendations made since publication of Notice 87–4 on November 6, 1987. The definitions appear in paragraph (a). An exception, based on available oxygen, appears in paragraph (a)(4). Seven generic types of organic peroxides are defined in paragraph (b). The procedure for assigning a specific organic peroxide to a generic type is set forth in paragraph (c). If an organic peroxide is identified by technical name in the Organic Peroxides Table in § 173.225, the generic type is assigned in that Table. Otherwise, the type is assigned by the Director, OHMT, based on submission of test data. Test procedures are incorporated by reference to Part III of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, in paragraph (d) of § 173.128, and a specific testing protocol is set forth.

Section 173.129

This section is revised to address Division 5.2 because assignment of packing groups for Division 5.1 materials would now be located in § 173.127. All Division 5.2 materials are assigned to Packing Group II; the rationale is that all Division 5.2 materials represent at least a moderate danger. Materials that might be in Packing Group I would pose an even greater hazard if not permitted to vent should decomposition begin. In other words, a packaging failure due to decomposition would be a much greater hazard in a Packing Group I packaging than the failure of a Packing Group II packaging because more pressure would have built up within the former.

Section 173.152

Paragraph (b) is being revised to remove the reference to Packing Groups II and III for Division 5.2 materials, since all Division 5.2 materials are assigned to Packing Group II.

Section 173.223

This section is added to set forth criteria for determining when temperature controls are needed. The requirements for temperature control that are currently in the regulations for self-reactive materials and organic peroxides do not indicate how to establish an appropriate transportation temperature. The results of the material's SADT Test determines the temperature control requirements. The UN Recommendations lists the temperature control scheme for applying the test results. It is being included in these regulations for clarity. Also note that, although the procedure for determining the temperature control requirements is being added, the requirement for approval by the Director, OHMT, for materials employing refrigeration for stabilization (§ 173.21) is not being removed.

Section 173.224

This section is added to specify packaging and temperature controls for self-reactive materials in Division 4.1. The packagings permitted for self-reactive materials are restricted, with two exceptions, to fiberboard outer packagings and plastic inner packagings. Furthermore, certain of these materials require temperature control. The most effective means of presenting these requirements is in a special section which is organized into two tables. The self-reactive materials table in paragraph (b) specifies, by identification number, the permitted packaging method(s) and the control and emergency temperatures, as appropriate, for the material being shipped. The table of packing methods in paragraph (c) specifies, by packing method, the types of packagings and package quantity limits. It should be noted that although these packagings are not in the UN Recommendations at present, RSPA anticipates inclusion of similar provisions in the UN Recommendations in the near future.

Section 173.225

The packaging system for organic peroxides proposed in Notice 87–4 (52 FR 42772, November 6, 1987) is withdrawn and replaced with a new system which has been incorporated into the UN Recommendations. Paragraph (a) states that packaging for organic peroxides must conform to the provisions of the section. Paragraph (b) sets forth an Organic Peroxides Table which specifies the technical name for specifically identified organic peroxides, the identification number which is used to select an appropriate generic proper shipping name from the § 172.101 Table, specifications for concentrations of the peroxide or constituents of solutions, packing methods that may be used, temperature controls, and additional special provisions.

Paragraph (c) sets forth procedures for new organic peroxides and formulations of identified peroxides and samples. New organic peroxides and formulations of currently identified peroxides would have to be approved for transport under the provisions of proposed § 173.128(c). Packaging would then be prescribed, by generic type, in the Packing Method Table for Generic Types in paragraph (c)(3) of § 173.225. Paragraph (c)(4) contains provisions for shipping samples for testing or evaluation. Approval by the Director, OHMT, would be required only for those materials subject to the refrigeration requirements of proposed § 173.21(f)(3) of Notice 87–4 (52 FR 42772, November 6, 1987).

Paragraph (d) sets forth two Tables of Packing Methods, for liquids and solids, respectively, specifying the types of packagings and quantity limits applicable to each packing method. Paragraph (e) specifies authorized bulk packagings for those organic peroxides for which bulk packagings are authorized in the Organic Peroxides Table in paragraph (b). Bulk packagings are authorized only for those certain organic peroxides which are Type F liquids, generally based on current packaging authorizations. The system proposed in this notice, is based on the hazard of the material as determined by the tests which are also used to assign it to a generic type. The greater the hazard posed by a chemical, the smaller the packaging in which it may be shipped. In this way, a weighted hazard (the product of the severity of the hazard multiplied by its quantity) is nearly constant for all of the generic types. For packing methods OP6A and OP6B, there is an additional consideration: for large amounts of either material, the structural integrity of the container may be limiting. For example, an OP6A allows the contents of inner plastic drums and receptacles to weigh 200 kg when in an outer fiber drum, but only 75 kg when in an outer fiber box.

Appendix E to Part 173

For ease of reference, the UN Recommendations' classification schemes for Class 4 materials are listed in appendix E. These materials have a wide range of properties, and, therefore, the nature of the classification tests is commensurately diverse. The testing is based on the behavior of a material under conditions in standardized tests, which are intended to predict the behavior of a material when exposed to conditions which may be encountered during transportation, (*e.g.*, heat, fire, air, or water). If, under the conditions of exposure to these elements, the materials cause or exacerbate a hazardous condition, they are then assigned to the appropriate packing group. Specifically, this appendix contains tests and criteria for readily combustible solids, pyrophoric materials, self-heating materials, and materials which are dangerous when wet. The tests have been devised so that they are simple, have minimal equipment requirements, and are economical to run. Tests for wetted-explosives are not included in this rulemaking. For a material to be classified as a wetted-explosive, it must be subject to the tests prescribed in Docket HM–181A. If it qualifies as an explosive when dry, but does not so qualify when wetted, it is classed in Division 4.1 and assigned to Packing Group I.

Currently, the United States is working with the UN to develop tests to classify self-reactive materials. However, until development of tests are completed, these materials will be classed based on comparisons with materials which are already considered to be self-reactive. In addition, there is no standard test for materials which can cause fire through friction. For this material to present a hazard, however, the material has been intentionally designed to possess a hazard (e.g., matches), therefore, there is no need to determine if this hazard is present.

Appendix F to Part 173

The classification and determination of packing group for oxidizers are based on the simple tests in Appendix F. A principle underlying the tests is that an oxidizer may stimulate combustion differently, depending on how much oxidizer is present in proportion to any combustible material. For this reason, two ratios of combustible material to oxidizer are used: 1 to 1 and 1 to 4. The contribution that an oxidizer makes toward accelerating the rate of combustion is evaluated relative to the contribution made by standards containing, in turn, ammonium persulfate, potassium perchlorate, or potassium bromate. As soon as a material is found in both ratios tested to be less hazardous on average than any standard, the test may be concluded.

Section 178.522

This section is being revised to introduce a new composite packaging with inner plastic receptacles (6HH2). In selecting that code to designate this new packaging, composite packaging 6HH has been redesignated as 6HH1. These packagings appear in the Packaging Method Tables for Division 5.2, organic peroxides. Therefore, it is appropriate to include them in this notice. In addition, an omission in the previous NPRMs under Docket No. HM–181 is being corrected—the maximum net mass for 6HA2 packaging has been included in this notice.

V. Administrative Notices

A. Executive Order 12291

The RSPA has determined that this rulemaking: (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). The proposals in this document entail technical amendment to the proposals made in Notice 87–4 (52 FR 16482 and 52 FR 42772, published May 5, 1987 and November 6, 1987, respectively). Their anticipated economic impacts are so minimal that preparation of a regulatory evaluation is not considered necessary. A regulatory evaluation for Notice 87–4 is available in Docket HM–161.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact on the States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

C. Regulatory Flexibility Act

The proposed changes would generally affect persons involved in classification and hazard communication for certain categories of hazardous materials, some of whom may be small entities. Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that the regulations proposed within would not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The information collection requirement contained in proposed § 173.128 is being submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

The following list of Federal Register Thesaurus of Indexing Terms apply to this notice of proposed rulemaking.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Explosives, Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the proposals to amend 49 CFR parts 171, 172, 173, and 178, as published in Docket HM–161, Notice No. 87–4, on November 6, 1987 (52 FR 42772–43000), would be modified as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808; 49 CFR part 1.

2. Section 171.7(c), as proposed at 52 FR 42778 on November 6, 1987, would be amended in the table by removing the entry for the Society of Plastics Industries, Inc., Organic Peroxides Producers Safety Division and revising the entry for the United Nations, to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

Source and name of material	49 CFR reference
* * * * *	
United Nations, United Nations Sales Section, New York, NY 10017:	
UN Recommendations on the Transport of Dangerous Goods, Sixth Revised Edition (1989).	172.401; 172.407; 172.519.
UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Parts I and II, First Edition (1988).	173.21; 173.56; 173.57; 173.223.
UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Part III, First Edition, Addendum 1 (1988).	173.225.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, and 1806; 49 CFR part 1, unless otherwise noted.

4. In § 172.101, as proposed at 52 FR 42783 on November 6, 1987, paragraph (c)(5) is revised and paragraph (c)(14) is added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(5) When one entry references another entry by use of the word "see", if both names are in roman type, either name may be used as the proper shipping name (*e.g.*, Ethyl alcohol, *see* Ethanol); however, the referenced entry is preferred.

* * * * *

(14) *Organic peroxides.* Generic proper shipping names for organic peroxides, as listed in Column 2 of the Table, shall be selected based on the technical name of the organic peroxide, in accordance with the provisions of § 173.225 of this subchapter.

* * * * *

§ 172.101 [Amended]

5. In § 172.101, the Hazardous Materials Table, as proposed at 52 FR 42787 on November 6, 1987, would be amended by removing the current entries assigned hazard class 5.2 in column 3 which have the identification numbers listed below; adding 20 new generic entries of hazard class 5.2 in alphabetical order; and revising columns 6, 7 and 8B for those class 4.1 entries known as self-reactive substances as follows:

REMOVE

UN2080, UN2081, UN2082, UN2083, UN2084, UN2085, UN2087, UN2088, UN2089, UN2090, UN2091, UN2092, UN2093, UN2094, UN2095, UN2096,

UN2097, UN2098, UN2099, UN2100, UN2101, UN2102, UN2103, UN2104, UN2105, UN2106, UN2107, UN2108, UN2110, UN2111, UN2112, UN2113, UN2114, UN2115, UN2116, UN2117, UN2118, UN2119, UN2120, UN2121, UN2122, UN2123, UN2124, UN2125, UN2126, UN2127, UN2128, UN2129, UN2130, UN2131, UN2132, UN2133, UN2134, UN2135, UN2136, UN2137, UN2138, UN2139, UN2140, UN2141, UN2142, UN2143, UN2144, UN2145, UN2146, UN2147, UN2148, UN2149, UN2150, UN2151, UN2152, UN2153, UN2154, UN2155, UN2156, UN2157, UN2158, UN2159, UN2160, UN2161, UN2162, UN2163, UN2164, UN2165, UN2166, UN2167, UN2168, UN2169, UN2170, UN2171, UN2172, UN2173, UN2174, UN2175, UN2176, UN2177, UN2178, UN2179, UN2180, UN2182, UN2183, UN2184, UN2185, UN2255, UN2550, UN2551, UN2562, UN2592, UN2593, UN2594, UN2595, UN2596, UN2597, UN2598, UN2755, UN2756, UN2863, UN2864, UN2865, UN2866, UN2867, UN2868, UN2869, UN2890, UN2891, UN2892, UN2893, UN2894, UN2895, UN2900, UN2907, UN2908, UN2909, UN2957, UN2958, UN2959, UN2960, UN2961, UN2962, UN2963, UN2964, UN3044, UN3045, UN3046, UN3047, UN3058, UN3059, UN3060, UN3061, UN3062, UN3063, UN3087, UN3088, UN3089, UN3061.

ADD

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class	Identification Numbers	Packing group	Labels	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel Stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Organic peroxide type A, liquid or solid	Forbidden											
	Organic peroxide type B, liquid	5.2	UN3101	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	FORBIDDEN.	FORBIDDEN.	D	12, 40
	Organic peroxide type B, solid	5.2	UN3102	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	FORBIDDEN.	FORBIDDEN.	D	12, 40
	Organic peroxide type C, liquid	5.2	UN3103	II	ORGANIC PEROXIDE.		152	225	None	5 l	10 l	D	12, 40
	Organic peroxide type C, solid	5.2	UN3104	II	ORGANIC PEROXIDE.		152	225	None	5 kg	10 kg	D	12, 40
	Organic peroxide type D, liquid	5.2	UN3105	II	ORGANIC PEROXIDE.		152	225	None	5 l	10 l	D	12, 40
	Organic peroxide type D, solid	5.2	UN3106	II	ORGANIC PEROXIDE.		152	225	None	5 kg	10 kg	D	12, 40
	Organic peroxide type E, liquid	5.2	UN3107	II	ORGANIC PEROXIDE.		152	225	None	10 l	25 l	D	12, 40
	Organic peroxide type E, solid	5.2	UN3106	II	ORGANIC PEROXIDE.		152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type F, liquid	5.2	UN3109	II	ORGANIC PEROXIDE.		152	225	225	10 l	25 l	D	12, 40
	Organic peroxide type F, solid	5.2	UN3110	II	ORGANIC PEROXIDE.		152	225	None	10 kg	25 kg	D	12, 40
	Organic peroxide type B, liquid, temperature controlled.	5.2	UN3111	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type B, solid, temperature controlled.	5.2	UN3112	II	ORGANIC PEROXIDE EXPLOSIVE.	53	None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type C, liquid, temperature controlled.	5.2	UN3113	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type C, solid, temperature controlled.	5.2	UN3114	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type D, liquid, temperature controlled.	5.2	UN3115	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type D, solid, temperature controlled.	5.2	UN3116	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type E, liquid, temperature controlled.	5.2	UN3117	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type E, solid, temperature controlled.	5.2	UN3118	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type F, liquid, temperature controlled.	5.2	UN3119	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40
	Organic peroxide type F, solid, temperature controlled.	5.2	UN3120	II	ORGANIC PEROXIDE.		None	225	None	FORBIDDEN.	FORBIDDEN.	D	2, 40

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class (3)	Identification Numbers (4)	Packing group (5)	Labels (6)	Special provisions (7)	(8) Packaging authorizations (§173.***) Exceptions (8A)	Non-bulk packaging (8B)	Bulk packaging (8C)	(9) Quantity limitations Passenger aircraft or railcar (9A)	Cargo aircraft only (9B)	(10) Vessel stowage requirements Vessel stowage (10A)	Other stowage provisions (10B)
	2,2'-Azodi-(2,4-dimethyl-4-methoxyvaleronitrile	4.1	UN2955	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2
	2,2'-Azodi-(2,4 dimethylvaleronitrile)	4.1	UN2953	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2
	1,1'-Azodi-(hexahydrobenzonitrile)	4.1	UN2954	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	B	12, 61, 85
	Azodiisobutyronitrile	4.1	UN2952	II	FLAMMABLE SOLID, EXPLOSIVES.	41, 53	None	224	None	Forbidden	Forbidden	D	2
	2,2'-Azodi (2-methyl-butyronitrile)	4.1	UN3030	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2, 61
	Benzene-1,3-disulfohydrazide, *not more than 52 per cent as a paste.*	4.1	UN2971	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	B	12, 61, 85
	Benzene sulfohydrazide	4.1	UN2970	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	B	12, 61, 85
	4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride.	4.1	UN3037	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2
	4-(Benzyl(methyl)amino)3-ethoxybenzenediazonium zinc chloride.	4.1	UN3036	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2
	3-Chloro-4-diethylaminobenzenediazonium zinc chloride.	4.1	UN3033	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	C	1
	2-Diazo-1-naphthol-4-sulpho-chloride	4.1	UN3042	II	FLAMMABLE SOLID, EXPLOSIVE.	53	None	224	None	Forbidden	Forbidden	D	
	2-Diazo-1-naphthol-5-sulpho-chloride	4.1	UN3043	II	FLAMMABLE SOLID, EXPLOSIVE.	53	None	224	None	Forbidden	Forbidden	D	
	2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride.	4.1	UN3038	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	C	2
	4-Dimethylamino-6-(2-dimethylaminoethoxy) toluene-2-diazonium zinc chloride.	4.1	UN3039	II	FLAMMABLE SOLID.		None	224	None	Forbidden	Forbidden	D	2
	N,N'-Dinitroso-N,N'-dimethyl terephthalamide *not more than 72% as a paste.*	4.1	UN2973	II	FLAMMABLE SOLID, EXPLOSIVE.	41, 53	None	224	None	Forbidden	Forbidden	D	12, 61
	N,N'-Dinitrosopentamethylenetetramine *not more than 82% with phlegmatizer.*	4.1	UN2972	II	FLAMMABLE SOLID, EXPLOSIVE.	41, 53	None	224	None	Forbidden	Forbidden	D	12, 61
	Diphenyloxide-4,4'disulfohydrazide	4.1	UN2951	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	B	12, 61, 85
	4-Dipropylaminobenzenediazonium zinc chloride.	4.1	UN3034	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	C	
	3-(2-Hydroxyethoxy)-4-pyrrolidin-1-ylbenzenediazonium zinc chloride.	4.1	UN3035	II	FLAMMABLE SOLID.		None	224	240	Forbidden	Forbidden	D	2
	Sodium 2-diazo-1-naphthol-4-sulphonate	4.1	UN3040	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	C	61
	Sodium 2-diazo-1-naphthol-5-sulphonate	4.1	UN3041	II	FLAMMABLE SOLID.		None	224	None	15 kg	50 kg	C	61

6. Section 172.102, as proposed at 52 FR 42932 on November 6, 1987, would be revised by removing special provision T37 in the table in paragraph (c)(7)(ii) and adding new special provisions 41 and 53 in the table in paragraph (c)(1) to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code	Special provisions
* * * * *	
41	When Packaging Method F1 or F5a (see § 173.224(c) of this subchapter) are used, an EXPLOSIVE label is not required.
* * * * *	
53	Packages of these materials should bear a subsidiary risk label, "EXPLOSIVE", unless exempted by the Director, OHMT, or the competent authority of the country of origin. A copy of the exemption shall accompany the shipping papers.
* * * * *	

§ 172.202 [Amended]

7. In § 172.202, as proposed at 52 FR 42935 on November 6, 1987, remove "and paragraph (f) would be added" from amendatory instruction 14 and remove paragraph (f) from the regulatory text.

8. In § 172.203, as proposed at 42 FR 42935 on November 6, 1987, revise both amendatory instruction 15 and the regulatory text to read as follows:

In § 172.203, a sentence would be added at the end of the introductory text of paragraph (k) and paragraphs (j) and (m)(3) would be revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(j) *Dangerous when wet material.* The words "Dangerous when wet" shall be entered on the shipping paper in association with the basic description for a material which meets the definition of a dangerous when wet material in § 173.124(c) of this subchapter.

(k) * * * For oganic peroxides which may qualify for more than one generic listing depending on concentration, the technical name must include the actual concentration being shipped or the concentration range for the appropriate generic listing.

* * * * *

(m) * * *

(3) For Division 2.3 materials Division 6.1, Packing Group I materials which are poisonous by inhalation under the criteria in § 173.133(i)(2) of this subchapter, the words "Poison-Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. The word "Poison" need not be repeated if it otherwise appears in the shipping description.

§ 172.203 [Amended]

9. In § 172.203, as proposed at 52 FR 42935 on November 6, 1987, this proposed change is added as item 15a to read as follows:

15a. In paragraph (k)(3) of § 172.203:

a. The following proper shipping names are removed: organic peroxide, solid, n.o.s. organic peroxide, liquid or solution, n.o.s.

b. The following proper shipping names are added in appropriate alphabetical sequence:

Organic peroxide type B, liquid
Organic peroxide type B, liquid, temperature controlled
Organic peroxide type B, solid
Organic peroxide type B, solid temperature controlled
Organic peroxide type C, liquid
Organic peroxide type C, liquid, temperature controlled
Organic peroxide type C, Solid
Organic peroxide type C, solid, temperature controlled
Organic peroxide type D, liquid
Organic peroxide type D, liquid, temperature controlled
Organic peroxide type D, solid
Organic peroxide type D, solid temperature controlled
Organic peroxide type E, liquid
Organic peroxide type E, liquid, temperature controlled
Organic peroxide type E, solid
Organic peroxide type E, solid, temperature controlled
Organic peroxide type F, liquid
Organic peroxide type F, liquid, temperature controlled
Organic peroxide type F, solid
Organic peroxide type F, solid, temperature controlled

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 would be revised to read as follows:

Authority 49 App. U.S.C. 1802, 1803, 1804, 1805; 49 CFR part 1, unless otherwise noted.

11. Section 173.21 as proposed at 52 FR 42962 on November 6, 1987, is amended by revising paragraphs (f)(1) and (f)(2) and adding a new paragraph (j) to read as follows:

§ 173.21 Forbidden materials and packages

* * * * *

(f) * * *

(1) For organic peroxides, Division 5.2, the decomposition temperature of 130° (54.4°C) does not apply if the controlled temperature requirements specified in § 173.223 are applied to determine when refrigeration is required, and refrigeration is approved as required by paragraph (f)(3) of this section.

(2) The determination of whether a material is forbidden under this section may be made using the USA Self-accelerating Decomposition Temperature (SADT) Test, Test 1 in Part II of the UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, First Edition (1986).

* * * * *

(j) An organic peroxide of the "ketone peroxide" category which contains more than 9 percent available oxygen as caculated using the equation in § 173.128 (a)(4)(ii). The category, ketone peroxide, includes, but is not limited to:

Acetyl acetone peroxide
Cyclohexanone peroxide(s)
Diacetone alcohol peroxides
Methylcyclohexanone peroxide(s)
Methyl ethyl ketone peroxide(s)
Methyl isobutyl ketone peroxide(s)

12. Section 173.124, as proposed at 52 FR 42960 on November 6, 1987, is revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) *Division 4.1 (Flammable Solid).* For the purpose of this subchapter, "flammable solid" (Division 4.1) means any of the following three types of materials:

(1) Wetted explosives that—

(i) When dry are Explosives of Class 1 other than those of compatibility group A, which are wetted with sufficient water, alcohol, or plasticizer to suppress explosive properties; and

(ii) Are specifically authorized by name either in the § 172.101 Table of this subchapter or have been assigned a shipping name and hazard class by the Director, OHMT, under the provisions of—

(A) An exemption issued under subchapter B of this chapter; or

(B) An approval issued under § 173.86(i).

(2) Self-reactive materials, that is, materials that are liable to undergo, at normal or elevated temperatures, a strongly exothermal decomposition caused by excessively high transport temperatures or by contamination; and

(3) Readily combustible solids, that is, materials that—

(i) Can be easily ignited by brief contact with an ignition source;

(ii) Are solids which may cause a fire through friction, such as matches;

(iii) Show a burning rate faster than 2.2 millimeters per second when tested in accordance with paragraph 2.3 of Appendix E to this part.

(iv) Any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with paragraph 2.3 of appendix E to this part.

(b) *Division 4.2 (Spontaneously Combustible Material).* For the purposes of this subchapter, "spontaneously combustible material" (Division 4.2) means—

(1) A pyrophoric material. A pyrophoric material is a liquid or a solid that, even in small quantities and without an external ignition source, can ignite within five (5) minutes after coming in contact with air when tested according to paragraph 3.1.1 or 3.1.2, as appropriate, of appendix E to this part.

(2) A self-heating material. A self-heating material is a material that, when in contact with air and without an energy supply, is liable to self-heat. A material of this type which exhibits spontaneous ignition or if the temperature of the sample exceeds 200° C during the 24 hour test period when tested in accordance with paragraph 3.2.1 of appendix E to this part, is classed as a Division 4.2 material.

(c) *Division 4.3 (Dangerous when wet material).* For the purpose of this chapter, "dangerous when wet material" (Division 4.3) means a material that, by contact with water, is liable to become spontaneously flammable, or to give off flammable or toxic gas at a rate greater than 1 liter per kilogram of the material, per hour, when tested in accordance with paragraph 4 of appendix E to this part.

13. Section 173.125, as proposed at 52 FR 42961 on November 6, 1987, is revised to read as follows:

§ 173.125 Class 4—Assignment of packing group.

(a) The packing group of a Class 4 material is as assigned in column 5 of the § 172.101 table of this subchapter. When the § 172.101 table of this subchapter indicates that the packing group of a hazardous material is to be determined on the basis of test results following test methods given in appendix E, the packing group shall be determined by applying the appropriate criteria given in this section.

(b) Packing group criteria for readily combustible materials of Division 4.1 is as follows:

(1) For materials other than metal powders, a material is assigned to—

(i) Packing Group II, if the burning rate is greater than 2.2 mm/s and the flame passes the wetted zone; or

(ii) Packing Group III, if the burning rate is greater than 2.2 mm/s and the wetted zone stops the flame.

(2) For metal powders, a material is assigned to—

(i) Packing Group II, if the zone of reaction spreads over the whole length of the sample in 5 minutes or less; or

(ii) Packing Group III, if the zone of reaction spreads over the whole length of the sample in more than 5 but not more than 10 minutes.

(3) Solids which may cause a fire through friction are assigned to packing groups by analogy with existing entries in the § 172.101 table of this subchapter.

(c) Packing group criteria for Division 4.2 materials is as follows:

(1) Pyrophoric liquids and solids of Division 4.2 are assigned to Packing Group I.

(2) A self-heating material is assigned to—

(i) Packing Group II, if the material gives positive test result when tested with the 2.5-cm cube size sample; or

(ii) Packing Group III, if the material gives a positive test result when tested with the 10-cm cube size sample but a negative test result with the 2.5-cm cube size sample.

(d) A Division 4.3 dangerous when wet material is assigned to—

(1) Packing Group I, if spontaneous ignition occurs, or the material demonstrates a tendency of spontaneous ignition, or the rate of evolution of flammable gases is equal to or greater than 10 liters per kilogram of material over any one minute; or

(2) Packing Group II, if the rate evolution of flammable gases is equal to or greater than 20 liters per kilograms of material per hour, and which does not meet the criteria for Packing Group I; or

(3) Packing Group III, if the rate of evolution of flammable gases is greater than 1 liter per kilogram of material per hour, and which does not meet the criteria for Packing Group I or II.

14. Subpart D, as proposed at 52 FR 42966 on November 6, 1987, would be amended by revising § 173.127 to read as follows:

§ 173.127 Class 5, Division 5.1—Definition and Assignment of Packing Groups.

(a) *Definition.* For the purpose of this subchapter, "oxidizer" (Division 5.1) means a material that may, generally by yielding oxygen, cause or enhance the combustion of other materials. A solid material is classed as a Division 5.1. material if, when tested in accordance with Appendix F of this part, in either concentration tested, the mean burning time of the test mixture, is equal to or less than that of the average of the three tests with ammonium persulfate mixture. A liquid is classed as a Division 5.1 material by analogy of existing entries in the § 172.101 Table of this subchapter.

(b) *Assignment of packing groups.* (1) The packing group of a Division 5.1 material shall be as assigned in column 5 of the § 172.101 table of this subchapter.

(2) When the § 172.101 Table of this subchapter indicates that the packing group of a solid oxidizer is to be determined on the basis of the test results following test method given in appendix F of this part, the packing group shall be assigned by the following criteria.

(i) Packing Group I, for a material which, in either concentration tested, exhibits a burning time equal to or less than that of potassium bromate;

(ii) Packing Group II, for a material which, in either concentration tested, exhibits a burning time between that of potassium bromate and that of potassium perchlorate; or

(iii) Packing Group III, for a material which, in either concentration tested, exhibits a burning time between that of potassium perchlorate and that of ammonium persulphate.

(3) Liquid oxidizers are assigned to packing groups by analogy with existing entries in the § 172.101 Table.

15. Section 173.128, as proposed at 52 FR 42961 on November 6, 1987, is revised to read as follows:

§ 173.128 Class 5, Division 5.2—Definitions and Types.

(a) *Definitions.* For the purposes of this subchapter, "organic peroxide" (Division 5.2) means any organic compound containing oxygen (O) in the bivalent —O—O— structure and which may be considered a derivative of hydrogen peroxide, where one or more of the hydrogen atoms have been replaced by organic radicals, unless any of the following paragraphs apply:

(1) The material meets the definition of an explosive as prescribed in subpart C of this part, in which case it must be classed as an explosive;

(2) The material is forbidden from being offered for transportation according to § 172.101 of this subchapter or § 173.21;

(3) The Director, OHMT, has determined that the material does not present a hazard which is associated with a Division 5.2 material; or

(4) The material meets one of the following conditions:

(i) For materials containing no more than 1.0% hydrogen peroxide, the available oxygen, as calculated using the equation in paragraph (a)(4)(ii) of this section, is not more than 1.0%, or

(ii) For materials containing more than 1.0% but not more than 7.0% hydrogen peroxide, the available oxygen, content (O_a) is not more than 0.5%, when determined using the equation:

$$O_a = 16 \times \sum_{i=1}^{k} \frac{n_i c_i}{m_i}$$

where, for a material containing k species of organic peroxides:

n_i = number of $-O-O-$ groups per molecule of the ith species

c_i = concentration (mass %) of the ith species

m_i = molecular mass of the ith species

(b) *Generic types.* Division 5.2 organic peroxides are assigned to a generic system which consists of seven types. An organic peroxide identified by technical name in the Organic Peroxides Table in § 173.225 is assigned to a generic type in accordance with that Table. Organic peroxides not identified in the Organic Peroxides Table are assigned to generic types under the procedures of paragraph (c) of this section.

(1) *Type A.* Organic peroxide type A is an organic peroxide which can detonate or deflagrate rapidly as packaged for transport. Transportation of type A organic peroxides is forbidden.

(2) *Type B.* Organic peroxide type B is an organic peroxide which, as packaged for transport, neither detonates nor deflagrates rapidly, but can undergo a thermal explosion.

(3) *Type C.* Organic peroxide type C is an organic peroxide which, as packaged for transport, neither detonates nor deflagrates rapidly and cannot undergo a thermal explosion.

(4) *Type D.* Organic peroxide type D is an organic peroxide which—

(i) Detonates only partially, but does not deflagrate rapidly and is not affected by heat when confined;

(ii) Does not detonate, deflagrates slowly, and shows no violent effect if heated when confined; or

(iii) Does not detonate or deflagrate, and shows a medium effect when heated under confinement.

(5) *Type E.* Organic peroxide type E is an organic peroxide which neither detonates nor deflagrates and shows low, or no, effect when heated under confinement.

(6) *Type F.* Organic peroxide type F is an organic peroxide which will not detonate in a cavitated state, does not deflagrate, shows only a low, or no, effect if heated when confined, and has low, or no, explosive power.

(7) *Type G.* Organic peroxide type G is an organic peroxide which will not detonate in a cavitated state, will not deflagrate, shows no effect when heated under confinement, has no explosive power, is thermally stable (self-accelerating decomposition temperature above 60 °C), and, for desensitized liquid formulations, is desensitized with a compatible organic liquid which boils above 150 °C (diluent type A, see § 173.225(b)).

(c) *Procedure for assigning an organic peroxide to a generic type.* An organic peroxide shall be assigned to a generic type based on—

(1) Its physical state (*i.e.*, liquid or solid), in accordance with the definitions for liquid and solid in § 171.8 of this subchapter;

(2) A determination as to its control temperature and emergency temperature, if any, under the provisions of § 173.223;

(3) Performance of the organic peroxide under the test procedures specified in the United Nations Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Part III, Addendum 1, and the provisions of paragraph (d) of this section; and

(4) Except for an organic peroxide which is identified by technical name in the Organic Peroxides Table in § 173.225(b) or an organic peroxide which may be shipped as a sample under the provisions of § 173.225(c), the organic peroxide is approved, in writing, by the Director, OHMT, including assignment of a generic type and shipping description. The person requesting approval shall submit all relevant data concerning physical state, temperature controls, and test results to the Director, OHMT.

(d) *Tests.* The generic type for an organic peroxide shall be determined using the testing protocol from Figure 1.1 (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Recommendations, Tests and Criteria, part III, using only the following tests:

(1) Test series A: Cap Test for Organic Peroxides (Test method A.3);

(2) Test series B: Detonation Test in Package (Test method B.1);

(3) Test series C: Time/Pressure Test (Test method C.1) and Deflagration Test (Test method C.2);

(4) Test series D: Deflagration Test in Package (Test method D.1);

(5) Test series E: Dutch Pressure Vessel Test (Test method E.2) and United States Pressure Vessel Test (Test method E.3);

(6) Test series F: Modified Trauzl Test for Organic Peroxides (Test method F.4); and

(7) Test series G: Organic Peroxide Package Test (Test method G.2).

16. Section 173.129, as proposed at 52 FR 42961 on November 6, 1987, is revised to read as follows:

§ 173.129 Class 5, Division 5.2—Assignment of packing group.

All Division 5.2 materials are assigned to Packing Group II in Column 5 of the § 172.101 table.

§ 173.152 [Amended]

17. In § 173.152, as proposed at 52 FR 42965 on November 6, 1987, the phrase "in Packing Groups II and III" is removed from the introductory text of paragraph (b) and paragraph (b)(3).

18. Subpart E, as proposed at 52 FR 42958 on November 6, 1987, would be amended by revising § 173.223 to read as follows:

§ 173.223 Determination of temperature control for Divisions 4.1 and 5.2.

(a) For a self-reactive material not identified by technical name in § 173.224, an organic peroxide not identified by technical name in § 173.225, or a new formulation of one or more organic peroxides identified by technical name in § 173.225, that is required to be shipped under controlled temperature conditions, the control temperatue and emergency temperature for a package shall be as specified in the table in this paragraph, based upon the material's self-accelerating decomposition temperature (SADT). The SADT of a material shall be determined using the USA SADT Test in the UN Recommendations for the Transport of Dangerous Goods, Tests and Criteria, First Edition (1986), (see § 171.7 of this subchapter). The control temperature is the temperature above which a package of the material may not be offered for transportation or transported. The emergency temperature is the temperature at which, due to imminent danger, emergency measures must be initiated.

§ 173.223 TABLE: METHOD OF DETERMINING CONGROL AND EMERGENCY TEMPERATURE

SADT [1]	Control temperatures	Emergency temperature
SADT < 20 °C (68 °F).	20 °C (36 °F) below SADT.	10 °C (18 °F) below SADT.
20 °C (68 °F) < SADT < 35 °C (95 °F).	15 °C (27 °F) below SADT.	10 °C (18 °F) below SADT.
35 °C (95 °F) < SADT < 50 °C (122 °F).	10 °C (18 °F) below SADT.	5 °C (9 °F) below SADT.
50 °C (122 °F) < SADT.	temperature control not required.	

[1] Self-accelerating decomposition temperature.

(b) For a self-reactive material identified by technical name in § 173.224, the control temperature and emergency temperature are as specified in § 173.224.

(c) For an organic peroxide identified by technical name in § 173.225, the control temperature and emergency temperature are as specified in § 173.225.

§ 173.223 TABLE: METHOD OF DETERMINING CONGROL AND EMERGENCY TEMPERATURE—Continued

SADT [1]	Control temperatures	Emergency temperature
35 °C (95 °F) < SADT < 50 °C (122 °F).	10 °C (18 °F) below SADT.	5 °C (9 °F) below SADT.
50 °C (122 °F) < SADT.	temperature control not required.	

[1] Self-accelerating decomposition temperature.

19. Subpart E, as proposed at 52 FR 42958 on November 6, 1987, would be amended by revising § 173.224 to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(a) When the § 172.101 table of this subchapter specifies that a Division 4.1 material be packaged in accordance with this section, only non-bulk packagings which conform to the provisions of this section may be used. Each packaging must conform to the general packaging requirements of subpart B, part 173, and to the requirements of part 178 of this subchapter at the Packing Group II performance level. Packing Group I and Packing Group III non-bulk packagings are not authorized. Self-reactive materials which require temperature control are subject to the provisions of § 173.21(f).

(b) *Self-reactive materials table.* The self-reactive materials table specifies, by identification (ID) number the packing method that must be used, the control temperature, and the emergency temperature, as follows:

(1) *ID numbers.* The first column of the table gives the identification numbers for self-reactive materials as assigned in column 4 of the § 172.101 table of this subchapter.

(2) *Packing methods.* The second column of the table designates the packing method or methods that are authorized to package the self-reactive material. The table of packing methods in paragraph (c) of this section defines the packing methods.

(3) *Temperatures.* Column 3a specifies the control temperature. Column 3b specifies the emergency temperature. The letters "NR" means that temperature controls are not required.

§ 173.224(b) TABLE—SELF-REACTIVE MATERIALS TABLES

ID number (1)	Proper shipping name (2)	Packing methods (3)	Temperature, °C (°F) Control (4a)	Temperature, °C (°F) Emergency (4b)
UN2951	Diphenyloxide-4, 4' disulfohydrazide	F1, F5a	NR	NR
UN2952	Azodiisobutyronitrile	F1, F2, F3, F5a	40 (104)	45 (113)
UN2953	2, 2' -Azodi-(2, 4 dimethylvalero-nitrile)	F1, F2, F3, F5a	10 (50)	15 (59)
UN2954	1, 1' -Azodi-(hexahydrobenzo-nitrile)	F1, F2, F3, F5a	NR	NR
UN2955	2, 2' -Azodi-(2, 4-dimethyl-4-methory valeronitrile)	F1, F2, F3, F5a	−5 (23)	5(41)
UN2970	Benzene sulfohydrazide	F1, F2, F3, F5a	NR	NR
UN2971	Benzene-1, 3-disulfohydrazide, [not more than 52 per cent as a paste]	F1, F2, F3, F5a	NR	NR
UN2972	N,N' -Dinitrosopentamethylenetetramine [not more than 82% with phlegmatizer]	F1, F2, F3, F5a	NR	NR
UN2973	N,N' -Dinitroso-N,N' -dimethyl terephthalamide [not more than 72% as a paste]	F1, F5a	NR	NR
UN3030	2, 2' -Azodi (2-methyl-butyro-nitrile)	F5b	40 (104)	45 (113)
UN3033	3-Chloro-4-diethylaminobenzene diazonium zinc chloride	F1, F5	NR	NR
UN3034	4-Dipropylaminobenzenediazonium zinc chloride	F1, F5	NR	NR
UN3035	3-(2-Hydroxyethoxy)-4-pyrrolidin-1-yl-benzenediazonium zinc chloride	F1, F5	40 (104)	45 (113)
UN3036	2, 5-Diethoxy-4-morpholinobenzene-diazonium zinc chloride	F1, F5	35 (95)	40(104)
UN3037	4-(Benzyl (ethyl) amino)-3-ethoxy-benzenediazonium zinc chloride	F1, F5	40 (104)	45 (113)
UN3038	4-(benzyl (methyl) amino) 3-ethoxy benzenediazonium zinc chloride	F1, F5	40 (104)	45 (113)
UN3039	4-Dimethylamino-6-(2-dimethyl) aminoethoxy) toluene-2-diazonium zinc chloride	F1, F5	40 (104)	45 (113)
UN3040	Sodium 2-diazo-1-naphthol-4-sulphonate	F1, F5	NR	NR
UN3041	Sodium 2-diazo-1-naphthol-5-sulphonate	F1, F5	NR	NR
UN3042	2-Diazo-1-naphthol-4-sulphochloride	F1	NR	NR
UN3043	2-Diazo-1-naphthol-5-sulphochloride	F1	NR	NR

(c) *Table of packing methods for self-reactive materials.* The table of packing methods for self-reactive materials specifies, by packing method, packaging quantity limits and the types of packagings that are authorized, as follows:

(1) *Packing method.* The first column of the table provides the packing method (*e.g.*, F1).

(2) *Quantity limitations.* Column 2a specifies the maximum net mass per inner packaging, in kilograms and pounds, where inner packagings are required. If column 2a is blank, inner packagings are not required. Column 2b specifies the maximum net mass per outer packaging, in kilograms and pounds.

(3) *Description of packaging.* Column 3a specifies the type of inner packaging that must be used. If column 3a is blank, inner packagings are not required. Column 3b specifies the outer packaging that must be used.

§ 173.224(c) TABLE—PACKING METHODS FOR SELF-REACTIVE MATERIALS

Packing method (1)	Contents (2) Maximum of inner packaging (2a)	Contents (2) Maximum of whole packaging (2b)	Description of packaging (3) Inner packaging	Description of packaging (3) Outer packaging
F1		110 lb (50 kg)		Fiber drum 1G, with plastic liner or internal coating.

§ 173.224(c) TABLE—PACKING METHODS FOR SELF-REACTIVE MATERIALS—Continued

Packing method (1)	Contents (2)		Description of packaging (3)	
	Maximum of inner packaging (2a)	Maximum of whole packaging (2b)	Inner packaging	Outer packaging
F2	110 lb (50 kg)	110 lb (50 kg)	Plastic bag, packed singly	Fiberboard box 4G.
F3	11 lb (5 kg)	88 lb (40 kg)	Plastic boxes, plastic bottles or jars	Fiberboard box 4G.
F4	11 lb (5 kg)	55 lb (25 kg)	Plastic bottles or jars, plastic bags, plastic boxes.	Fiber drum 1G, fiberboard box 4G.
F5a		110 lb (55 kg)		Fiber drum, slit proof 1G.
F5b		55 lb (25 kg)		
F6	121 lb (55 kg)	121 lb (55 kg)	Plastic bags	Steel drum, removable head 1A2, aluminum drum, removable head 1B2.

20. Section 173.225, as proposed at 52 FR 42977 on November 6, 1987, is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

(a) *General.* When the § 172.101 Table of this subchapter specifies that an organic peroxide be packaged under this section, the organic peroxide must be packaged and offered for transportation in accordance with the provisions of this section. Each packaging must conform to the general requirements of subpart B of part 173 and to the applicable requirements of part 178. Non-bulk packagings must meet Packing Group II performance levels. Packing Group I and Packing Group III non-bulk packagings are not authorized. Organic peroxides which require temperature control are subject to the provisions of § 173.21(f).

(b) *Organic peroxides table.* (1) The following Organic Peroxides Table specifies, by technical name, those organic peroxides that are authorized for transportation and not subject to the approval provisions of § 173.128 of this part. An organic peroxide identified by technical name in the following table is authorized for transportation only if it conforms to all applicable provisions of the table. For an organic peroxide not identified in the table by technical name or a formulation of an identified organic peroxide, the provisions of paragraph (c) of § 173.128 apply. The column headings of the Organic Peroxides Table are as follows:

(1) *Technical name.* The first column specifies the technical name.

(2) *ID number.* The second column specifies the identification (ID) number which is used to identify the proper shipping name in the § 172.101 Table of this subchapter.

(3) *Concentration of organic peroxide.* The third column specifies concentration (mass percent) limitations, if any, in mixtures or solutions for the organic peroxide. Limitations are given as minimums, maximums, or a range, as appropriate. A range includes the lower and upper limits (*i.e.*, "53–100" means from, and including, 53 percent to, and including 100 percent).

(4) *Concentration of stabilizers.* The fourth column specifies the type and concentration (mass percent) of diluent or inert solid, when required. Other types and concentrations of diluents may be authorized if approved by the Director, OHMT.

(i) The required mass percent of "Diluent type A" is specified in column 4a. A diluent type A is an organic liquid that does not detrimentally affect the thermal stability or increase the hazard of the organic peroxide and with a boiling point not less than 150 °C at atmospheric pressure. Type A diluents may be used for desensitizing all organic peroxides.

(ii) The required mass percent of "Diluent type B" is specified in column 4b. A diluent type B is an organic liquid that does not detrimentally affect the thermal stability or increase the hazard of the organic peroxide and which has a boiling point, at atmospheric pressure, of less than 150 °C but at least 60 °C, and a flash point greater than 5 °C. A type B diluent may only be used for the desensitization of an organic peroxide for which it is specified in the table. The boiling point of a type B diluent must be at least 50 °C above the control temperature of the organic peroxide. A Type A diluent may be used to replace a Type B diluent in equal concentration.

(iii) The required mass percent of "Inert solid" is specified in column 4c. An inert solid is a solid that does not detrimentally affect the thermal stability or increase the hazard of the organic peroxide.

(5) *Concentration of water.* Column 5 specifies, in mass percent, the minimum amount of water, if any, which must be in solution with the organic peroxide.

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) which is authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3A is specified, then OP2A and OP1A are also authorized. The Table of Packing Methods in paragraph (d) of this section defines the packing methods.

(7) *Temperatures.* Column 7a specifies the control temperature. Column 7b specifies the emergency temperature. Temperatures are specified only when temperature controls are required. (See § 173.223.)

(8) *Notes.* Column 8 specifies other applicable provisions, as set forth in notes following the table.

ORGANIC PEROXIDES TABLE

Technical Name	ID Number	Concentration	Stabilizer (%)			Water	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7A			2
Acetyl acetone peroxide	UN3108	≤32					OP7B			21
Acetyl benzoyl peroxide	UN3105	≤45	≥55				OP7A			
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4B	−10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≥32			≥68		OP7A	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8A			
tert-Amyl peroxybenzoate	UN3105	≤96	≥4				OP7A			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7A	20	25	

ORGANIC PEROXIDES TABLE—Continued

Technical Name	ID Number	Concentration	Stabilizer (%)			Water	Packing Method	Temperature(°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	10	
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5A	10	15	
tert-Amylperoxy-3,5,5-trimethylhexanoate	UN3101	≤100					OP5A			
tert-Butyl cumyl peroxide	UN3105	≤100					OP7A			
n-Butyl-4,4-di-(tertbutylperoxy)-valerate	UN3103	<52, ≤100					OP5A			
n-Butyl-4,4-di-(tertbutylperoxy)-valerate	UN3106	≤52			≥48		OP7A			
tert-Butyl hydroperoxide	UN3103	73–90				≥10	OP5A			
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7A			4
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8A			14
tert-Butyl hydroperoxide *and* di-tert-Butyl peroxide	UN3103	≤82 ≥9				≥7	OP5A			
tert-Butyl monoperoxymaleate	UN3102	<52, ≤100					OP5B			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP8A			
tert-Butyl monoperoxymaleate *as a paste*	UN3108	≤42					OP6B			21
tert-Butyl monoperoxyphthalate	UN3102	≤100					OP5B			
tert-Butyl peroxyacetate	UN3101	<52, ≤77	≥23				OP5A			
tert-Butyl peroxyacetate	UN3101	≤52	≥48				OP6A			
tert-Butyl peroxybenzoate	UN3103	78–100	≤22				OP5A			
tert-Butyl peroxybenzoate	UN3105	<52, ≤77	≥23				OP7A			
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7B			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7A			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5A	20	25	
tert-Butyl peroxydiethylacetate *and* tert-Butyl peroxybenzoate	UN3105	≤33 ≤33	≥33				OP7A			
tert-Butyl peroxy-2-ethylhexanoate	UN3113	53–100					OP6A	20	25	
tert-Butyl peroxy-2-ethylhexanoate *and* 2,2-Di-(tert-butylperoxy)butane	UN3115	≤31 ≤36		≥33			OP7A	35	40	
tert-Butyl peroxy-2-ethylhexanoate *and* 2,2-Di-(tert-butylperoxy)butane	UN3106	≤12 ≤14	≥14			≥60	OP7A			
tert-Butyl peroxyisobutyrate	UN3111	<52, ≤77		≥23			OP5A	15	20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7A	15	20	
tert-Butylperoxy isopropyl carbonate	UN3103	≤77	≥23				OP5A			
tert-Butyl peroxyneodecanoate	UN3115	<77, ≤100					OP7A	−5	5	
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	0	10	
3-tert-Butylperoxy-3-phenylphthalide	UN3106	≤100					OP7A			
tert-Butyl peroxypivalate	UN3113	<67, ≤77	≤23				OP5A	0	10	
tert-Butyl peroxypivalate	UN3115	≤67		≥33			OP7A	0	10	
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7B			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	≤100					OP7A			
3-Chloroperoxybenzoic acid	UN3102	<57, ≤86				≥14	OP1B			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7B			
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8A			14, 8
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7A	−10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7A	−5	5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6B			
Cyclohexanone peroxide(s) *as a paste*	UN3108	≤72					OP7B			5, 21
Cyclohexanone peroxide(s)	UN3105	≤72	≥28				OP7A			5
Cyclohexanone peroxide(s)	Exempt	≤32			≥68					
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7A	30	35	7
Diacetyl peroxide	UN3115	≤27		≥73			OP7A	20	25	8,4
Di-tert-amyl peroxide	UN3107	≤100					OP8A			
Dibenzoylperoxide	Exempt	≤35			≥65					
Dibenzoyl peroxide	UN3102	52–100			≤48		OP2B			
Dibenzoyl peroxide	UN3102	78–94				≥6	OP4B			
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6B			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7B			
Dibenzoyl peroxide *as a paste*	UN3106	<52, ≤62					OP7B			21
Dibenzoyl peroxide *as a paste*	UN3108	≤52					OP6B			21
Dibenzoyl peroxide	UN3106	36–52			≥48		OP7B			
Dibenzyl peroxydicarbonate	UN3112	≤87				≥13	OP5B	25	30	
Di-(4-tert-butylcyclohexyl) peroxydicarbonate	UN3114	≤100					OP6B	30	35	
Di-(4-tert-butylcyclohexyl) peroxydicarbonate *as a stable dispersion in water.*	UN3119	≤42					OP6A	30	35	
Di-tert-butyl peroxide	UN3107	≤100					OP8A			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	81–100					OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	<52, ≤80	≥20				OP5A			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	≤52	≥48				OP7A			

ORGANIC PEROXIDES TABLE—Continued

Technical Name (1)	ID Number (2)	Concentration (3)	Stabilizer (%) A (4a)	Stabilizer (%) B (4b)	Stabilizer (%) I (4c)	Water (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes (8)
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≦42	≧13		≧45		OP7B			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≦27	≧36	≧36			OP8A			
2,2-Di-(4,4-tert-butylperoxycyclo-hexyl)propane	UN3106	≦42			≧58		OP7B			
Di-n-butyl peroxydicarbonate	UN3115	<27, ≦52		≧48			OP7A	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≦27		≧73			OP8A	−10	0	
Di-sec-butyl peroxydicarbonate	UN3113	<52, ≦100					OP4A	−20	−10	
Di-sec-butyl peroxydicarbonate	UN3115	≦52		≧48			OP7A	−15	−5	
Di-(2-tert-butylperoxyisopropyl)-benzene(s)	UN3106	43–100			≧57		OP7B			
Di-(2-tert-butylperoxyisopropyl)-benzene(s)	Exempt	≦42			≧58					
Di-(tert-butylperoxy)phthalate	UN3105	<42, ≦52	≧48				OP7A			
Di-(tert-butylperoxy)phthalate *as a paste*	UN3106	≦52					OP7B			21
Di-(tert-butylperoxy)phthalate	UN3107	≦42	≧58				OP8A			
2,2-Di-(tert-butylperoxy)propane	UN3105	≦52	≧48				OP7A			
2,2-Di-(tert-butylperoxy)propane	UN3106	≦42	≧13		≧45		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethyl cyclohexane.	UN3101	<57, ≦100					OP5A			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethyl cyclohexane.	UN3106	≦57			≧43		OP7B			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethyl cyclohexane.	UN3107	≦57	≧43				OP8A			
Dicetyl peroxydicarbonate	UN3116	≦100					OP7B	20	25	
Dicetyl peroxydicarbonate *as a stable dispersion in water.*	UN3119	≦42					OP8A	30	35	
Di-4-chlorobenzoyl peroxide	UN3102	≦77				≧23	OP5B			
Di-4-chlorobenzoyl peroxide *as a paste*	UN3106	≦52					OP7B			21
Di-4-chlorobenzoyl peroxide	Exempt	≦32			≧66					
Dicumyl peroxide	UN3110	<42, ≦100			≧57		OP8B			13
Dicumyl peroxide	Exempt	≦42			≧58					
Dicyclohexyl peroxydicarbonate	UN3112	<91, ≦100					OP5B	5	10	
Dicyclohexyl peroxydicarbonate	UN3114	≦91				≧9	OP3B	5	10	
Didecanoyl peroxide	UN3102	≦100					OP6B	15	20	
Di-2,4-dichlorobenzoyl peroxide	UN3102	≦77				≧23	OP5B			
Di-2,4-dichlorobenzoyl peroxide *as a paste with silicon oil.*	UN3106	≦52					OP7B			
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	<77, ≦100					OP5A	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≦77					OP7A	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water.*	UN3117	≦42					OP8A	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate *as a stable dispersion in water (frozen).*	UN3117	≦42					OP8B	−15	−5	
Diethyl peroxydicarbonate	UN3115	≦27		≧73			OP7A	−10	0	
2,2-Dihydroperoxypropane	UN3102	≦27			≧73		OP5B			
Di-(1-hydroxycyclohexyl) peroxide	UN3106	≦100					OP7B			
Diisobutyryl peroxide	UN3111	<32, ≦52		≧48			OP5A	−20	−10	
Diisobutyryl peroxide	UN3115	≦32		≧68			OP7A	−20	−10	
Diisopropyl peroxydicarbonate	UN3112	<52, ≦100					OP2B	−15	−53	
Diisopropyl peroxydicarbonate	UN3115	≦52		≧48			OP7A	−10	0	
Diisotridecyl peroxydicarbonate	UN3115	≦100					OP7A	−10	0	
Dilauroyl peroxide	UN3106	≦100					OP7B			
Dilauroyl peroxide *as a stable dispersion in water.*	UN3109	≦42					OP8A			
Di-(2-methylbenzoyl) peroxide	UN3112	≦87				≧13	OP5B	30	35	
2,5-Dimethyl-2,5-di-(benzoyl-peroxy) hexane	UN3102	<82, ≦100					OP5B			
2,5-Dimethyl-2,5-di-(benzoyl-peroxy) hexane	UN3106	≦82			≧18		OP7B			
2,5-Dimethyl-2,5-di-(benzoyl-peroxy) hexane	UN3104	≦82				≧18	OP5B			
2,5-Dimethyl-2,5-di-(tert-butyl-peroxy)hexane	UN3105	<52, ≦100					OP7A			
2,5-Dimethyl-2,5-di-(tert-butyl-peroxy)hexane	UN3106	≦52			≧48		OP7B			
2,5-Dimethyl-2,5-di-(tert-butyl-peroxy)hexyne-3	UN3103	<52, ≦100					OP5A			
2,5-Dimethyl-2,5-di-(tert-butyl-peroxy)hexyne-3	UN3106	≦52			≧48		OP7B			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3115	≦100					OP7A	20	25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≦82				≧18	OP6B			
2,5-Dimethyl-2,5-di-(3,5,5-tri-methylhexanoylperoxy)hexane.	UN3105	≦77	≧23				OP7A			
Dimyristyl peroxydicarbonate	UN3116	≦100					OP7B	20	25	
Dimyristyl peroxydicarbonate *as a stable dispersion in water.*	UN3119	≦42					OP8A, N	20	25	
Di-n-nonenoyl peroxide	UN3116	≦100					OP7B	0	10	
Di-n-octanoyl peroxide	UN3114	≦100					OP5B	10	15	

ORGANIC PEROXIDES TABLE—Continued

Technical Name (1)	ID Number (2)	Concentration (3)	Stabilizer (%) A (4a)	Stabilizer (%) B (4b)	Stabilizer (%) I (4c)	Water (5)	Packing Method (6)	Temperature(°C) Control (7a)	Temperature(°C) Emergency (7b)	Notes (8)
Diperoxy azelaic acid	UN3116	≦27			≧73		OP7B	35	40	
Diperoxy dodecane dioic acid	UN3119	<13, ≦42			≧58		OP7B	40	45	
Diperoxy dodecane dioic acid	Exempt	≦13								
Di-(2 Phenoxyethyl) peroxydicarbonate	UN3102	<85, ≦100					OP5B			
Di-(2 Phenoxyethyl) peroxydicarbonate	UN3106	≦85				≧15	OP7B			
Dipropionyl peroxide	UN3117	≦27		≧73			OP8A	15	20	
Di-n-propyl peroxydicarbonate	UN3113	≦100					OP4A	−25	−15	
Distearyl peroxydicarbonate	UN3106	≦87			≧13		OP7B			
Disuccinic acid peroxide	UN3102	<72, ≦100					OP4B			
Disuccinic acid peroxide	UN3116	≦72				≧28	OP7B	10	15	16
Di-(3,5,5-trimethyl-1,2-dioxo-lanyl-3) peroxide *as a paste.*	UN3116	≦52					OP7B	30	35	21
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	≦82	≧18				OP7A			
Ethyl-3,3-di-(tert-amylperoxy)-butyrate	UN3105	≦67	≧33				OP7A			
Ethyl-3,3-di-(tert-butylperoxy)-butyrate	UN3103	<77, ≦100					OP5A			
Ethyl-3,3-di-(tert-butylperoxy)-butyrate	UN3105	≦77	≧23				OP7A			
Ethyl-3,3-di-(tert-butylperoxy)-butyrate	UN3106	≦52			≧48		OP7B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane.	UN3102	<52, ≦100					OP4B			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane.	UN3105	≦52	≧48				OP7A			
3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane.	UN3106	≦52			≧48		OP7B			
Isopropylcumyl hydroperoxide	UN3109	≦72	≧28				OP8A			14
p-Menthyl hydroperoxide	UN3105	<55, ≦160					OP7A			
p-Menthyl hydroperoxide	UN3109	≦55	≧45				OP8A			14
Methylcyclohexanone peroxide(s)	UN3115	≦67		≧33			OP7A	35	40	
Methyl ethyl ketone peroxide(s)	UN3101	≦52	≧48				OP5A			9
Methyl ethyl ketone peroxide(s)	UN3105	≦45	≧55				OP7A			10
Methyl ethyl ketone peroxide(s)	UN3107	≦40	≧60				OP8A			11
Methyl isobutyl ketone peroxide(s)	UN3105	≦62	≧19	≧19			OP7A			
Peroxyacetic acid, type D, stabilized	UN3105	≦43					OP7A			20
Peroxyacetic acid, type E, stabilized	UN3107	≦43					OP8A			20
Peroxyacetic acid, type F, stabilized	UN3109	≦43					OP8A			20
Pinanyl hydroperoxide	UN3105	<55, ≦100					OP7A			
Pinanyl hydroperoxide	UN3109	≦56	≧45				OP8A			14
Tetrahydronaphthyl hydroperoxide	UN3106	≦100					OP7B			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≦100					OP7A			
1,1,3,3-Tetramethylbutylperoxy-2-ethylhexanoate.	UN3115	≦100					OP7A	20	25	
2,4,4-Trimethylpentyl-2-peroxy phenoxyacetate	UN3115	≦37		≧63			OP7A	−10	0	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	≦52		≧48			OP8A	20	25	
Di-(3,5,5-trimethyl-1,2-dioxolanyl-3) peroxide *as a paste.*	UN3116	≦52					OP7B	30	33	21
tert-Butyl peroxy-2-ethylhexanoate	UN3117	≦52		≧48			OP8A	20	25	

Notes:

1. [Reserved]
2. Available oxygen must be <47%.
3. [Reserved]
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be <9%.
6. Available oxygen must be <7.5%.
7. Hydrogen peroxide must be <9%; available oxygen must be <4.7%.
8. Only non-metallic packagings are authorized.
9. Available oxygen must be >10%.
10. Available oxygen must be <10%.
11. Available oxygen must be <8.2%.
12. Samples may only be offered for transportation when all available data indicate that the sample is no more dangerous than an Organic Peroxide type C, and the sample is packaged using packaging method OP2A for liquids or OP2B for solids, as appropriate, in quantities less than 10 kg per shipment, employing any necessary temperature controls.
13. Up to 2080 kg per receptacle assigned to Organic Peroxide type F on the basis of large scale trials.
14. This material may be transported in bulk packagings under the provisions of § 173.225(e).
15–17. [Reserved]
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water and acid(s).
21. With diluent type A, with or without water.
22. With >3% by mass, ethylbenzene.
23. With >19%, by mass, methyl isobutyl ketone.

(c) *New organic peroxides, formulations and samples.* (1) Except as provided for samples in paragraph (c)(4) of this section, no person may offer for transportation an organic peroxide which is not identified by technical name in the Organic Peroxides Table of this section, or a formulation of one or more organic peroxides which are identified by technical name in that table, unless the organic peroxide is assigned a generic type and shipping description and is approved by the Director, OHMT, under the provisions of § 173.128(c).

(2) Except as provided under the provisions of an approval under § 173.128(c), bulk packagings are not authorized.

(3) Non-bulk packagings are authorized as specified in the Packing Method Table for Generic Types, as follows. Column 1 of the table specifies

the generic type by identification (ID) number from the § 172.101 Table of this subchapter. Column 2 of the table specifies the generic proper shipping name from the § 172.101 Table of this subchapter. Column 3 of the table specifies the series of packing methods authorized for use (e.g., "OP1A–OP5A" means that packing methods OP1A, OP2A, OP3A, OP4A, and OP5A are authorized). The Table of Packing Methods in paragraph (d) of this section defines the packing methods. The Packing Method Table for Generic Types is as follows:

§ 173.225(c) TABLE—PACKING METHOD TABLE FOR GENERIC TYPES

UN No. (1)	Proper shipping name (2)	Packing method (3)
UN3101	Organic peroxide type B, liquid.	OP1A-OP5A
UN3102	Organic peroxide type B, solid.	OP1B-OP5B
UN3103	Organic peroxide type C, liquid.	OP1A-OP6A
UN3104	Organic peroxide type C, solid.	OP1B-OP6B
UN3105	Organic peroxide type D, liquid.	OP1A-OP7A
UN3106	Organic peroxide type D, solid.	OP1B-OP7B
UN3107	Organic peroxide type E, liquid.	OP1A-OP8A OP1A-OP5A
	controlled.	
UN3112	Organic peroxide type B, solid, temperature controlled.	OP1B-OP5B
UN3113	Organic peroxide type C, liquid, temperature controlled.	OP1A-OP6A
UN3114	Organic peroxide type C, solid, temperature controlled.	OP1B-OP6B
UN3115	Organic peroxide type D, liquid, temperature controlled.	OP1A-OP7A
UN3116	Organic peroxide type D, solid, temperature controlled.	OP1B-OP7B
UN3117	Organic peroxide type E, liquid, temperature controlled.	OP1B-OP8A
UN3118	Organic peroxide type E, solid, temperature controlled.	OP1B-OP8B
UN3119	Organic peroxide type F, liquid, temperature controlled.	OP1B-OP8A
UN3120	Organic peroxide type F, solid, temperature controlled.	OP1B-OP8B

(4) *Samples.* Samples of new organic peroxides or new formulations of organic peroxides identified in the Organic Peroxides Table in paragraph (b) of this section, for which complete test data are not available, and which are to be transported for further testing or evaluation, may be assigned an appropriate shipping description for organic peroxide Type C, packaged and offered for transportation, under the following conditions:

(i) Data available to the person offering the material for transportation must indicate that the sample would pose a level of hazard no greater than that of an organic peroxide Type C and that the control temperature, if any, is sufficiently low to prevent any dangerous decomposition and sufficiently high to prevent any dangerous phase separation;

(ii) The sample must be packaged in accordance with packing method OP2A or OP2B, for a liquid or solid, respectively;

(iii) Packages of the organic material may be offered for transportation and transported in a quantity not to exceed 10 kg (22 pounds) per transport vehicle; and

(iv) One of the following shipping descriptions must be assigned:

(A) Organic peroxide Type C, liquid, 5.2, UN3103;

(B) Organic peroxide Type C, solid, 5.2, UN3104;

(C) Organic peroxide Type C, liquid, temperature controlled, 5.2, UN3113; or

(D) Organic peroxide Type C, solid, temperature controlled, 5.2, UN3114.

(d) *Tables of packing methods.* The tables in this paragraph specify the types of packagings and quantity limitations that apply for each packing method in the series OP1A–OP8A, for liquids (Packagings for Liquid Organic Peroxides), and the series OP1B–OP8B, for solids (Packaging for Solid Organic Peroxides). In each table, column 1a specifies the type of packaging, column 1b specifies the packaging code, and columns 2a through 2h specify the packing methods.

(1) A liquid organic peroxide for which a packing method is specified in paragraph (b) or (c) of this section must be packaged in accordance with the following provisions:

§ 173.225(d)(1)—TABLE 11.2(A) PACKAGINGS FOR LIQUID ORGANIC PEROXIDES

Type and materials	Packaging code (see 6.4.7)	Maximum quantity or net mass per packing method [1]							
		OP1A [2]	OP2A [2]	OP3A [2]	OP4A [2]	OP5A [2]	OP6A [2]	OP7A	OP8A
Steel drum	1A1	(*)	(*)	(*)	(*)	(*)	(*)	60	225
Steel drums [3]	1A2	(*)	(*)	(*)	(*)	(*)	(*)	60 kg	200 kg
Aluminum drum	1B1	(*)	(*)	(*)	(*)	(*)	(*)	60 liters	225 liters
Fiber drum [3]	1G	0.5 kg	0.5/10 kg	5 kg	5 kg	25 kg	50 kg	50 kg	200 kg
Plastic drum	1H1	0.5	0.5	5	5	30	60	60	225
Plastics jerrican	3H1	0.5	0.5	5	5	30	60	60	60
Wooden box [3]	4C1	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Plywood box [3]	4D	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Fiberboard box [3]	4G	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Plastics receptacle with outer steel drum	6HA1	(*)	(*)	(*)	(*)	(*)	(*)	60	225
Plastics receptacle with outer aluminum drum	6HB1	(*)	(*)	(*)	(*)	(*)	(*)	60	225
Plastics receptacle with outer fiber drum	6HG1	0.5	0.5	5	5	30	60	60	225
Plastics receptacle with outer fiberboard box	6HG2	0.5	0.5	5	5	30	60	60	60
Plastics receptacle with outer plastics drum	6HH1	0.5	0.5	5	5	30	60	60	225
Plastics receptacle with outer solid plastics box	6HH2	0.5	0.5	5	5	30	60	60	60

* Prohibited for organic peroxide types B and C.
[1] If two values are given, the first applies to the maximum net mass per inner receptacle and the second to the maximum net mass of the complete package.
[2] For combination packagings containing organic peroxide type B or C, only plastics bottles, plastics jars, glass bottles or glass ampoules may be used as inner packagings. However, glass receptacles may only be used as inner receptacles for packing methods OP1A and OP2A.
[3] Only allowed as part of a combination packaging. Inner receptacles must be suitable for liquids.

(2) A solid organic peroxide for which a packing method is specified in paragraph (b) or (c) of this section must be packaged in accordance with the following provisions:

§ 173.225(d)(2)—TABLE PACKAGINGS FOR SOLID ORGANIC PEROXIDES

Type and Materials	Packaging Code (see 6.4.7)	Maximum quantity or net mass per packing method [1]							
		OP1B [2]	OP2B [2]	OP3B [2]	OP4B [2]	OP5B [2]	OP6B [2]	OP7B	OP8B
Steel drum	1A2	(*)	(*)	(*)	(*)	(*)	(*)	50 kg	200 kg
Aluminum drum	1B2	(*)	(*)	(*)	(*)	(*)	(*)	50 kg	200 kg
Fiber drum	1G	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	200 kg
Plastics drum	1H2	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	200 kg
Wooden box	4/C1	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Plywood box	4D	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Fiberboard box	4G	0.5 kg	0.5/10 kg	5 kg	5/25 kg	25 kg	50 kg	50 kg	100 kg
Plastics receptacle with outer steel drum	6HA1	(*)	(*)	(*)	(*)	(*)	(*)	50 kg	200 kg
Plastics receptacle with outer aluminum drum	6HB1	(*)	(*)	(*)	(*)	(*)	(*)	50 kg	200 kg
Plastics receptacle with outer fiber drum	6HG1	0.5 kg	0.5 kg	5 kg	5 kg	25 kg	50 kg	50 kg	200 kg
Plastics receptacle with outer fiberboard box	6HG2	0.5 kg	0.5 kg	5 kg	5 kg	30 kg	60 kg	60 kg	75 kg
Plastics receptacle with outer plastics drum	6HH1	0.5 kg	0.5 kg	5 kg	5 kg	30 kg	60 kg	60 kg	200 kg
Plastics receptacle with outer solid plastics box	6HH2	0.5 kg	0.5 kg	5 kg	5 kg	30 kg	60 kg	60 kg	75 kg

* = Prohibited for organic peroxide types B and C.
[1] = If two values are given, the first applies to the maximum net mass per inner receptacle and the second to the maximum net mass of the complete package.
[2] = For combination packagings containing organic peroxide type B or C, only non-metallic packagings allowed. However, glass receptacles may only be used as inner receptacles for packing methods OP1B and OP2B.
[3] = If fire retardant partitions are used, the maximum net mass of the complete package may be 25 kg.

(e) *Bulk packagings for organic peroxides.* When bulk packagings are authorized under the provisions of the Organic Peroxides Table in paragraph (b) of this section, only the following packagings are authorized:

(1) *Rail cars.* DOT 103W, 103AW, 111A60F1, 111A60W1, 111A100F2, and 111A100W2 tank car tanks are authorized. DOT 103W, 111A60F1 and 111A60W1 tank car tanks must have bottom outlets effectively sealed from inside. Gauging devices are required on DOT 103W tank car tanks. Riveted tank car tanks are not authorized.

(2) *Cargo tanks.* Specification MC 310, MC 311 and MC 312 cargo tank motor vehicles with a tank design pressure of at least 25 psig (172 kPa) are authorized. Bottom outlets are not authorized.

(3) *Portable tanks.* Specification IM 101 intermodal portable tanks are authorized as follows:

(i) Each tank must have a minimum design pressure of 2.67 bars (38.7 psig), a minimum shell thickness of 8.35 mm (0.025 inch) mild steel.

(ii) Bottom outlets are not authorized.

(iii) Each tank must be equipped with at least two self-reclosing pressure relief devices of at least 7.62 cm (3.0 inches) diameter. The pressure relief devices must be set at a pressure that is determined by the following formula:

Pressure relief valve setting = 1.2 × (Vapor pressure of lading at 46 °C (115 °F) + Static head of lading + Pressure of gas padding, if any).

(iv) For tertiary butyl hydroperoxide (TBHP), each tank must contain 7.62 cm (3.0 inches) low density polyethylene (PE) saddles having a melt index of between 0.2 and 10.0 g/min (ASTM D1238, condition E) as part of the lading, with a ratio of PE to TBHP over a range of 0.008 to 0.012 by mass. Alternatively, plastic or metal containers equipped with fusible plugs having a melting point between 69 °C (156 °F) and 71 °C (160 °F) and filled with a sufficient quantity of water to dilute the TBHP to 65% or less by mass may be used. The PE saddles must be visually inspected after each trip and, at a minimum, once every 12 months, and replaced when discoloration, fracture, severe deformation, or other indication of change is noted.

21. Part 173, as proposed to be amended at 52 FR 42988 on November 8, 1987, is further amended to add an item 129a to read as follows:

129a. New appendixes E and F would be added to part 173, to read as follows:

Appendix E—Guidelines for the Classification and Packing Group Assignment of Class 4 Materials

1. General

Tests and criteria for assignment to the three divisions of Class 4 are addressed below. The following principles should be applied to the classification of and assignment of a packing group to a new material or a new composition of existing material(s) not already covered by the entries in the § 172.101 Hazardous Material Table.

2. Classification and Packing Group Assignment of a Division 4.1 Material

2.1. A wetted explosive is listed as Division 4.1 in the § 172.101 Hazardous Material Table after consideration of all appropriate data to ensure that its explosive properties are suppressed.

2.1.1. Packing Group I is assigned to any wetted explosive.

2.2. A self-reactive material is listed in the § 172.101 Hazardous Material Table after consideration of the particular properties of the material. The following considerations apply:

(a) Any self-reactive material which, when packaged for transport, can detonate, is forbidden.

(b) Any self-reactive material which in laboratory testing shows a high mechanical sensitivity and is liable to detonate or deflagrate rapidly is forbidden. (Deflagration is the subsonic transmission of a decomposition front through a material without the necessary participation of oxygen from the air.)

(c) Any self-reactive material which in laboratory testing shows a high mechanical sensitivity is provisionally acceptable as a self-reactive material of Division 4.1, provided that this formulation does not detonate or deflagrate rapidly.

2.2.1. Assignment of Packing Groups. Packing Group II is assigned to self-reactive materials.

2.3. Readily combustible solids are classed in Division 4.1 in accordance with the following test methods and the procedure indicated in the flow-chart, figure E-1.

2.3.1. Preliminary screening test.

(a) The material in its commercial form, is formed into an unbroken strip or powder train about 250 mm long by 20 mm wide by 10 mm high on a cool, impervious, low-heat conducting base plate.

(b) A hot flame (minimum temperature 1000 °C) from a gas burner (minimum diameter 3 mm is applied to one end of the powder train until the powder ignites or for a maximum of 2 minutes (5 minutes for powders of metals or metal-alloys). It should be noted whether combustion propagates along 200 mm of the train within the 2 minute test period (or 20 minutes for metal powders).

(c) If the material does not ignite and propagate combustion either by burning with flame or smoldering along 200 mm of the

powder train within the 2 minute (or 20 minute) test period, then the material may not be classified as a flammable solid and no further testing is required.

(d) If the material propagates burning of a 200 mm length of the powder train in less than 2 minutes, or less than 20 minutes for metal powders, the full test program below must be carried out.

2.3.2. Burning rate test

(a) The powdered or granular material, in its commercial form, is loosely filled into a mold of 250 mm long with a triangular cross-section of inner height 10 mm and width 20 mm. (See Figure E-2.) On both sides of the mold, in the longitudinal direction, two metal sheets are mounted as lateral limitations which extend 2 mm beyond the upper edge of the triangular cross-section (figure 2). The mold is then dropped three times from a height of 2 cm onto a solid surface. The lateral limitations are then removed and the impervious, non-combustible, low heat conducting plate is placed on top of the mold, the apparatus inverted and the mold removed. Pasty materials are spread on a non-combustible surface in the form of a rope 250 mm in length with a cross-section of about 1 cm^2. Any suitable ignition source such as a small flame or a hot wire of minimum temperature 1000 °C is used to ignite the pile at one end. In the case of a moisture sensitive material, the test must be carried out as quickly as possible, after its removal from the container.

(b) Arrange the pile across the draft in a fume-chamber. The air speed must be sufficient to prevent fumes escaping into the laboratory and should not be varied during the test. A draft screen may be erected around the apparatus.

(c) Add 1 ml of a wetting solution to the pile 30–40 mm beyond the 100 mm timing zone. (See 2.3.2.(d).) With many materials, water rolls off the sides of the pile, so the addition of wetting agents may be necessary. Wetting agents used must be free from combustible diluents and the total active matter in the wetting solution may not exceed 1%. This liquid may be added to a hollow up to 3 mm deep and 5 mm in diameter in the top of the pile. Apply the wetting solution to the ridge deep by drop, ensuring the whole cross-section of the pile is wetted without loss of liquid from the sides. The liquid must be applied over the shortest possible length of the pile consistent with avoiding loss from the sides. This portion of the test is not applicable to metal powders.

(d) Ignite one end of the pile. When the pile has burned a distance of 60 mm, measure the rate of burning over the next 100 mm. Note whether or not the wetted zone stops propagation of the flame. The test is performed six times using a clean cool plate each time, unless a positive result is observed earlier.

2.3.3. Criteria for classification

(a) Powdered, granular or pasty materials are classified in Division 4.1 when the time of burning of one or more of the test runs, according to the test method described in 2.3.2, is less than 45 s or the rate of burning is more than 2.2 mm/s.

(b) Powders of metals or metal alloys are classified when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

2.3.4. Assignment of Packing Groups

2.3.4.1. Combustible solids (other than metal powders). Packing Group II is assigned if the burning time is less than 45 s and the flame passes the wetted zone. Packing Group III is assigned if the burning time is less than 45 s and the wetted zone stops the flame propagation for at least 4 minutes.

2.3.4.2. Powders of metal or metal alloys. Packing Group II is assigned if the zone of reaction spreads over the whole sample in 5 minutes or less. Packing Group III is assigned if the reaction spreads over the whole length of the sample in more than 5 minutes.

2.4. Solids which may cause or constitute no fire through friction are classified in Division 4.1 by analogy with existing entries.

2.4.1. Assignment of Packing Group for solids which may cause or constitute to a fire through friction. The packing group is assigned by comparison with existing classifications or in accordance with any appropriate special provision.

3. Division 4.2—Materials Liable to Spontaneous Combustion

3.1. Pyrophoric materials

3.1.1. Test method for solid pyrophoric materials. 1 to 2 cm^3 of the powdery material to be tested is poured from about 1 m height onto a non-combustible surface and it is observed whether the material ignites during dropping or within 5 minutes of settling. This procedure is repeated six times unless a positive result is obtained earlier.

3.1.2. Test methods for liquid pyrophoric materials

(a) Part 1: A porcelain cup of about 10 cm diameter is filled with diatomaceous earth or silica gel at room temperature to a height of about 5 mm. Approximately 5 ml of the liquid to be tested is poured into the prepared porcelain cup and it is observed if the material ignites within 5 minutes. This procedure is repeated six times unless a positive result is obtained earlier.

(b) Part 2: A 0.5 ml test sample is delivered from a syringe to an indented dry No. 3 Whatman filter paper. The test is conducted at 25 ± 2 °C and a relative humidity of 50 ± 5%. Observations are made to see if ignition or charring occurs on the filter paper within five minutes after the liquid to be tested is introduced. This procedure is repeated three times using fresh filter paper each time unless a positive result is obtained earlier.

3.1.3. Criterion for classification

3.1.3.1. Solid material. If the sample ignites in one of the tests, the material is considered pyrophoric and should be classified in Division 4.2.

3.1.3.2. Liquid material. If the liquid ignites in Part 1 of the test, or if it ignites or chars the filter paper in Part 2 of the test, it is considered to be pyrophoric and should be classified in Division 4.2.

3.1.4. Assignment of Packing Group. Packing Group I is assigned to all pyrophoric solids and liquids.

3.2. Self-heating materials

3.2.1. Test method for self-heating materials

(a) A hot air circulating type of oven with an inner volume of more than 9 litres and capable of controlling the internal temperature at 140 ± 2 °C is used.

(b) Cubic sample containers of 2.5 cm and 10 cm side, made of stainless steel net with a mesh opening of 0.053 mm, with their top surface open, are used. Each container is housed in a cubic container cover made from a stainless steel net with a mesh opening of 0.595 mm and slightly larger than the sample container, so that the container fits in this cover. In order to avoid the effect of air circulation, another stainless steel cage, made from a net with a mesh opening of 0.595 mm and 15 × 15 × 25 cm in size, is further installed to house the cover.

(c) Chromel-Alumel thermocouples of 0.3 mm diameter are used for temperature measurement. One is placed in the center of the sample and another between the sample container and the oven wall. The temperatures are measured continuously.

(d) The sample, powder or granules, in its commercial form, is filled to the brim of the sample container and the container tapped several times. If the sample settles, more is added. If the sample is heaped, it is levelled to the brim. The container is housed in the cover and cage, then hung at the center of the oven.

(e) The oven temperature is raised to 140 °C and kept there for 24 hours. The temperatures of the sample is recorded. The first test is conducted with a 10 cm cube sample. Observations are made to determine if spontaneous ignition occurs or if the temperature of the sample exceeds 200 °C. If negative results are obtained no further test is necessary. If positive results are obtained a second test is conducted with a 2.5 cm cube sample to determine the data for packing group assignment.

3.2.2. Criteria for classification. A self-heating material should be classified in Division 4.2 if in the first test using a 10 cm cube sample, spontaneous ignition occurs or the temperature of the sample exceeds 200 °C during the 24 hour testing time. This criterion is based on the self-ignition temperature of charcoal, which is 50 °C for a cubic volume of 27 m^3 and 140 °C for a one litre sample. Materials with self-ignition temperatures higher than 50 °C for 27 m^3 should not be classified in Division 4.2.

3.2.3. Assignment of Packing Groups

3.2.3.1. Packing Group II is assigned to materials which give positive results when tested with the 2.5 cm cube sample.

3.2.3.2. Packing Group III is assigned to materials which give positive results when tested with the 10 cm cube sample but which give a negative result with a 2.5 cm cube sample.

4. Assignment of Materials for Division 4.3

The following test method is used to determine whether the reaction of a material with water leads to the development of a dangerous amount of gases which may be flammable. The test method can be applied to solid and liquid materials. It is not applicable to pyrophoric materials.

4.1. Test method

The material should be tested at a temperature of 20 °C and atmospheric pressure by bringing it into contact with water. For a solid material, the package should be inspected for any particles <1mm

μm diameter. If that powder constitutes more than 1% (mass) of the total or if the material is friable, then the whole of the sample should be ground to a powder before testing to allow for a reduction in particle size during handling and transport, otherwise the material should be tested in its commercial state. The testing should be performed three times.

If spontaneous ignition of the gas occurs at any step, the material is classified in Division 4.3, and no further testing is necessary.

(a) A small quantity (approximately 2 mm diameter) of the test material is placed in a trough of distilled water at 20 °C. It is noted whether any gas is evolved and if it spontaneously ignites.

(b) A small quantity of the test material (approximately 2 mm diameter) is placed in the center of a filter paper which is floated flat on the surface of distilled water at 20 °C in a 100 mm diameter evaporating dish. The filter paper is to keep the material in one place, under which condition the likelihood of spontaneous ignition of any gas is greatest. It is noted whether any gas is evolved and if it spontaneously ignites.

(c) The test material is made into a pile approximately 2 cm high and 3 cm in diameter with an indentation in the top. A few drops of water are added to the hollow. It is noted whether any gas is evolved and if it spontaneously ignites.

(d) Water is put into the dropping funnel and enough of the material (up to a maximum weight of 25 g) to produce between 100 cm^3 and 250 cm^3 of gas is weighed and placed in a conical flask. The tap of the dropping funnel is opened to let the water into the conical flask and a stop watch is started. The volume of gas evolved is measured by any suitable means. The time taken for all the gas to be evolved is noted and where possible, intermediate readings are taken. The rate of evolution of gas is calculated over 7 hours at one hour intervals. If the rate of evolution is erratic or is increasing after 7 hours, the measuring time should be extended to a maximum time of 5 days. The five day test may be stopped if the rate of evolution becomes steady or continually decreases and sufficient data has been established to assign a packing group to the material or to determine that the material should not be classified in Division 4.3. If the chemical identity of the gas is unknown the gas should be tested for flammability.

4.2. Criteria for classification. A material should be classified in Division 4.3 if:

(a) spontaneous ignition takes place in any step of the test procedure, or

(b) there is an evolution of a flammable gas at a rate greater than 1 liter per kilogram of the material per hour.

4.3. Assignment of Packing Groups

(a) Packing Group I is assigned to any material which reacts vigorously with water at ambient temperatures and demonstrates generally a tendency for the gas produced to ignite spontaneously, or which reacts readily with water at ambient temperatures such that the rate of evolution of flammable gas is equal to or greater than 10 litres per kilogram of material over any one minute.

(b) Packing Group II is assigned to any material which reacts readily with water at ambient temperatures such that the maximum rate of evolution of flammable gas is equal to or greater than 20 litres per kilogram of material per hour, and which does not meet the criteria for Packing Group I.

(c) Packing Group III is assigned to any material which reacts slowly with water at ambient temperatures such that the maximum rate of evolution of flammable gas is greater than 1 litre per kilogram of material per hour, and which does not meet the criteria for Packing Groups I or II.

Appendix F—Guidelines for the Classification and Packing Group Assignment of Division 5.1 Materials

1. Introduction

This test method is designed to measure the potential for a solid substance to increase the burning rate or burning intensity of a combustible substance when the two are thoroughly mixed. Two tests are run in triplicate for each substance to be evaluated, one at a 1 to 1 ratio, by mass, of the sample to sawdust and one at a 4 to 1 ratio, by mass, of the sample to sawdust. To determine whether a material should be in Division 4.1, the burning characteristics of each mixture are compared with a standard having a 1 to 1 ratio, by mass, of ammonium persulfate and sawdust. If a material is classified in Division 4.1, the packing group is determined using the same method, with potassium perchlorate and potassium bromate substituted for ammonium persulfate as necessary.

2. Procedure

Ammonium persulfate, potassium perchlorate, and potassium bromate are reference substances. These substances should pass through a sieve mesh size smaller than 0.3 mm and should not be ground. Dry the reference substances at 65 °C for 12 hours and keep in a desiccator until required.

The combustible material for this test is softwood sawdust. It should pass through a sieve mesh smaller than 1.8 mm and should contain less than 5% of water by weight. If necessary, spread it in a layer less than 25 mm thick, dry for 4 hours and keep in a desiccator until required.

Prepare a 30.0 g±0.1 g mixture of the reference substance and sawdust in a 1 to 1 ratio, by mass. Two 30.0±0.1 g mixtures of the material to be tested, in the particle size in which it is to be transported, and the sawdust, are prepared in ratios of 1 to 1, by mass and 4 to 1 by mass. Each mixture should be mixed mechanically without excessive stress as thoroughly as possible.

The test should be conducted in ventilated area under the following ambient conditions:

temperature 20 °C±5 °C

humidity 50% ±10%

Form each of the mixtures into a conical pile with dimensions of approximately 70 mm base diameter and 60 mm height on a cool, impervious, low heat conducting surface. Ignite the pile by means of a wire of inert metal in the form of a circular loop 40 mm in diameter positioned inside the pile 1 mm above the test surface. Heat the wire electrically to 1000 °C until the first sign of combustion are observed or it is clear that the pile cannot be ignited. Turn off the electrical power used to heat the wire as soon as there is combustion.

Record the time from the first observable signs of combustion to the end of all reaction: smoke, flame, incandescence. Repeat the test three times for each of the two mixing ratios.

3. Criteria for Classification

A Substance should be classified in Division 5.1 if, in either concentration tested, the mean burning time of the sawdust, established from three tests, is equal to or less than that of the average of the three tests with ammonium persulfate mixture.

4. Assignment of Packing Group

Packing Group I is assigned to any substance which, in either mixture ratio tested, exhibits a burning time less than potassium bromate.

Packing group II is assigned to any substance which, in either mixture ratio tested, exhibits a burning time equal to or less than that of potassium perchlorate and the criteria for Packing Group I is not met.

Packing Group III is assigned to any substance which, in either concentration tested, exhibits a burn time equal to or less than that of ammonium persulfate and the criteria for Packing Groups I and II are not met.

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FIGURE E-1: FLOW CHART FOR ASSIGNING READILY COMBUSTIBLE SOLIDS (EXCEPT METAL POWDER) TO DIVISION 4.1

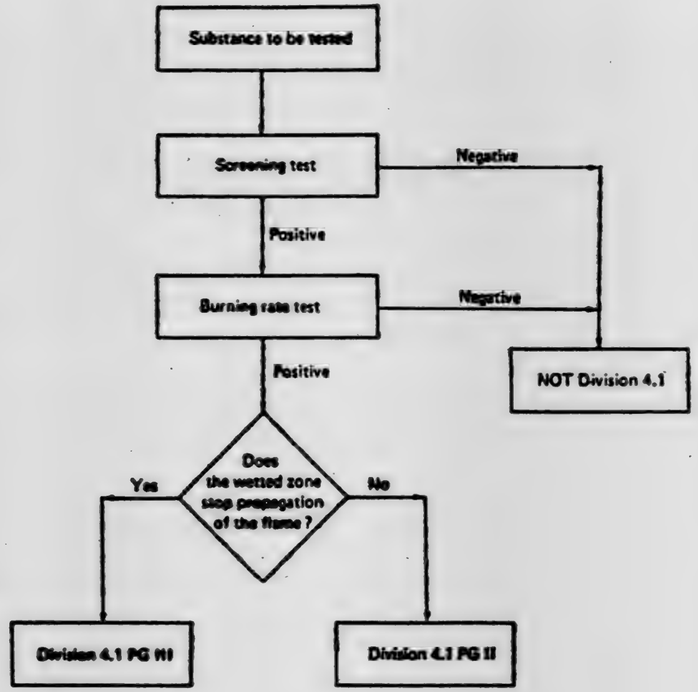
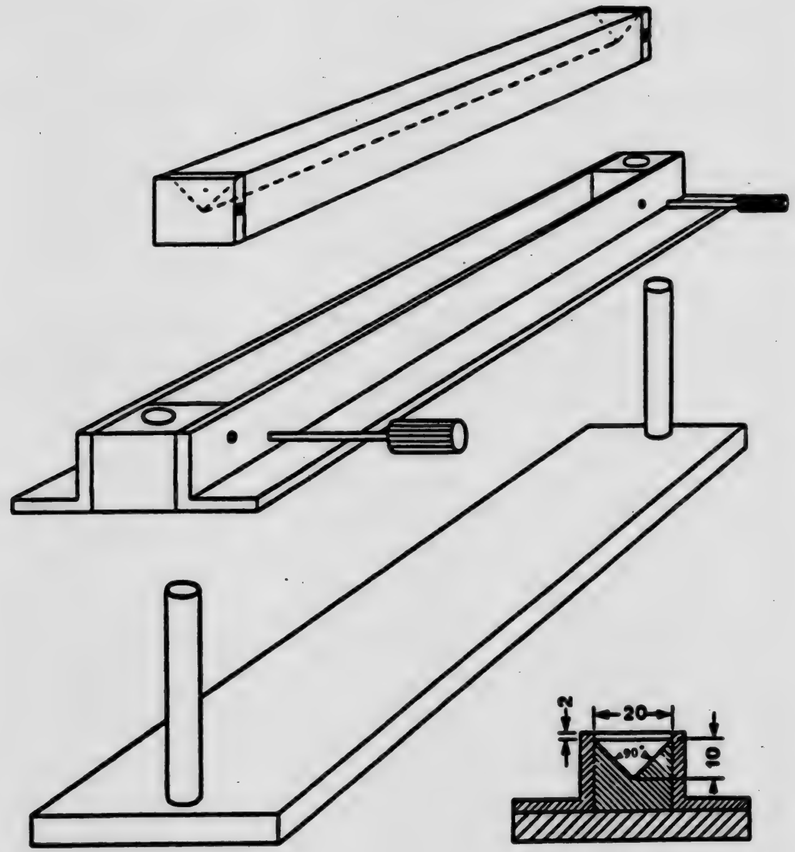


FIGURE E-2 POWDER TRAIN MOLD



Dimensions shown are in millimeters (mm)

Length of mold: 250 mm

PART 178—SPECIFICATIONS FOR PACKAGINGS

23. The authority citation for part 178 would be revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808, 1808; 49 CFR part 1, unless otherwise noted.

24. Section 178.522, as proposed at 52 FR 42995 on November 6, 1987 is amended by revising paragraphs (a)(10), (b)(3)(viii), (b)(4) and (b)(5) and by adding paragraphs (a)(11) and (b)(3)(ix) to read as follows:

§ 178.522 Standards for composite packagings with inner plastic receptacles.

(a) * * *

(10) 6HH1 for a plastic receptacle within a protective plastic drum.

(11) 6HH2 for a plastic receptacle within a protective solid plastic box.

(b) * * *

(3) * *

(viii) 6HH1: Protective packaging must conform to the requirements for plastic drums, § 178.509(b).

(ix) 6HH2: Protective packaging must conform to the requirements for solid plastic boxes, § 178.517(b).

(4) Maximum capacity of inner receptacles is as follows: 6HA1, 6HB1, 6HD1, 6HG1, 6HH1—250 liters (66.0 gallons); 6HA2, 6HB2, 6HC, 6HD2, 6HG2, 6HH2— 60 liters (15.9 gallons).

(5) Maximum net mass is as follows: 6HA1, 6HB1, 6HD1, 6HG1, 6HH1—400 kg (881.8 pounds); 7HA2, 6HB2, 6HC, 6HD2, 6HG2, 6HH2—75 kg (165.4 pounds).

Issued in Washington, DC, on June 12, 1990 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-14766 Filed 6-27-90; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
June 28, 1990

Part IV

Department of Agriculture

Federal Grain Inspection Service

7 CFR Part 800

Railroad Track Scale Test Services Fees; Proposed Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 800

RIN 0580-AA17

Fees for Railroad Track Scale Test Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) proposes to revise the existing fee schedule and establish a separate hourly rate for providing railroad track scale test services to applicants for the service under the United States Grain Standards Act, as amended (USGSA). This proposed fee is intended to recover the projected operating costs which include related supervisory and administrative costs, and provide for reasonable operating reserves.

DATES: Comments must be submitted on or before July 30, 1990.

ADDRESSES: Written comments must be submitted to Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628 South Building, Box 96454, Washington, DC 20090-6454; telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Paul D. Marsden, TLX 7607351 ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection during regular business hours in Room 0628 South Building, 1400 Independence Ave., SW., Washington, DC (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most requestors of railroad track scale test services under the USGSA do not meet the requirements for small entities.

Background

Section 7B (a) of the United States Grain Standards Act, as amended (USGSA) (7 U.S.C. 79b (a)), authorizes the Administrator to provide for the testing of all equipment used in the official weighing program, including railroad track scales that are used for the official weighing of grain. In addition, that section of the Act authorizes the promulgation of regulations for the charging and collection of reasonable fees to cover the estimated incidental costs of FGIS for the performance of such testing.

Currently, applicants that request and are provided official railroad track scale test services are assessed the noncontract hourly rate of $38.80, for regular workday (Monday to Saturday) and $52.80 for nonregular workday (Sunday and holiday) as described in 7 CFR 800.71 Schedule A (Original Inspection and Official Weighing). This hourly rate, which includes expenses such as personal transportation costs and applicable per diem rates, falls short of recovering all costs.

Proposed Action

FGIS proposes to charge a separate hourly rate for providing track scale test services to applicants for the service. This proposed hourly rate is intended to recover the projected operating costs, which include related supervisory and administrative costs. FGIS' operating costs include personnel compensation, personnel benefits, rent, communications, utilities, supplies, equipment, and travel. The proposed new hourly rates for official railroad track scale test services are: regular workdays (Monday–Saturday) $56.60 per hour; nonregular workdays (Sunday and Holidays) $73.60 per hour.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.71(a) is amended by revising Schedule A to read as follows:

§ 800.71 Fees assessed by the Service.

* * * * *

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN THE UNITED STATES [1]

Inspection and weighing service (bulked or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative)	$29.20	$39.80
(ii) Noncontract (per hour per service representative)	38.80	52.80
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: [2] [3]		
(i) Grading service:		
(A) Grade and factors (per sample)	56.60	73.60
(B) Protein test (per sample)	14.15	18.40
(C) Factor determination (per factor)	28.30	36.80
(ii) Sampling services (per hour per service representative)	56.60	73.60
(iii) Review of weighing service (per hour per service representative)	56.60	73.60
(3) Extra copies of certificates (per copy)	3.00	3.00
(4) Official track scale testing service	56.60	73.60

[1] Official inspection and weighing services include, but are not limited to: grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

Dated: June 11, 1990.

John C. Foltz,

Administrator.

[FR Doc. 90-14377 Filed 6-27-90; 8:45 am]

BILLING CODE 3410-EN-M

federal register

Thursday
June 28, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation (FAR); Integrity of Unit Prices and Fuels Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation (FAR); Integrity of Unit Prices and Fuels Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) 15.812–1 (b) and (c), and by adding 15.812–2(a)(5) to exclude the clause at 52.215–26, Integrity of Unit Prices, from solicitations and contracts for petroleum products. Additionally, the exemption from application of the clause for supplies priced on the basis of a catalog or market price has been expanded to apply to all agencies. This latter revision is made after reevaluation of the authority and requirements included in section 501 of Public Law 98–577.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–29 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–29.

SUPPLEMENTARY INFORMATION:

A. Background

The revision regarding petroleum products is made to codify a deviation granted to the Defense Logistics Agency in May 1986 and to extend it to all agencies in view of the manner in which petroleum product prices are determined. The revisions extending the exemption for commercial products to all agencies, in lieu of solely to DoD and NASA, are made in light of the section 501 of Public Law 98–577 prohibition from requiring cost or pricing data not otherwise required by law.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the policies affected do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small business and other interested parties.

Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–29) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a revised information collection requirement concerning Integrity of Unit Prices and Fuels Contracts, OMB 9000–0060, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning OMB Control number 9000–0060 will be invited through a subsequent Federal Register notice.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 19, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.812–1 is amended by revising the first sentence in paragraph (a), and the fourth sentence in paragraph (c), to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public. * * *

(c) * * * The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. * * *

3. Section 15.812–2 is amended by adding paragraph (a)(5) to read as follows:

15.812–2 Contract clause.

(a) * * *

(5) Contracts for petroleum products.

* * * * *

[FR Doc. 90–14871 Filed 6–27–90; 8:45 am]

BILLING CODE 6820–34–M

federal register

Thursday
June 28, 1990

Part VI

Department of Health and Human Services

Office of Refugee Resettlement

Refugee Resettlement Program; Availability of Funding to States for FY 1990 Targeted Assistance Discretionary Grants for High Impact Areas; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program; Availability of Funding to States for FY 1990 Targeted Assistance Discretionary Grants for High Impact Areas

AGENCY: Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services.

ACTION: Notice of availability of funding to States for FY 1990 targeted assistance discretionary grants for services to refugees* in high impact areas.

SUMMARY: This notice governs the availability of funds and award procedures for $3,806,200 in FY 1990 targeted assistance discretionary grants for services to refugees under the Refugee Resettlement Program (RRP). These grants, which are to be awarded on a competitive basis, are for localities most heavily impacted by an influx of refugees.

APPLICATION DEADLINE: The deadline for applications for grants under this notice is August 13, 1990.

Applications for grants under this notice *must be received on time.* An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of the final notice unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Office of Grants Management, FSA, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up to 4:30 p.m. of the closing date.

Late applications will be returned to the sending agency.

To be considered complete, an application package must include a signed original and two copies of Standard Form 424, 424A, and 424B. The package must also include the following three certifications by the applicant: Drug-Free Workplace, Debarment and Suspension, and Anti-Lobbying. (See attachments to this notice.)

GRANT REGULATIONS: Grants are subject to the administrative regulations published under title 45 of the Code of Federal Regulations. (See attachment A of this announcement.)

FOR FURTHER INFORMATION ON APPLICATION AND GRANT PROCEDURES, STATES SHOULD CONTACT: Shirley B. Parker, Office of Grants Management, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-4818.

FOR FURTHER PROGRAMMATIC INFORMATION, STATES SHOULD CONTACT: Ron Munin, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-4559.

SUPPLEMENTARY INFORMATION: Under this notice, $3,806,200 in FY 1990 targeted assistance funds is expected to be awarded on a competitive basis in accordance with the requirements of this notice. This amount comprises 25% of the total of $38,062,000 available for the targeted assistance program (TAP) under the FY 1990 Appropriations Act for the Department of Health and Human Services (Pub. L. 101-166).

Of the $3,806,200 covered by this notice, the Director of the Office of Refugee Resettlement (ORR) plans to use $951,300 (25%) to offset impacts on employment services and $2,853,900 (75%) to offset impacts on schools, hospitals, and other institutions.

The proposed award of other TAP funds was described in a separate notice published in the Federal Register of April 13, 1990 (55 FR 13974).

The Conference Report on appropriations reads as follows with respect to targeted assistance funds (H. Rept. 101-274, p. 28):

> The conference agreement for targeted assistance includes $14,000,000 to increase the current program of support for communities which continue to be affected as a result of the massive influx of Cuban and Haitian entrants during the Mariel boatlift. This program received $10,500,000 in fiscal year 1989 and in the Senate bill.
>
> The conferees intend that 10 percent of the total appropriated for targeted assistance be used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong and Cambodians, including secondary migrants who entered the United States after October 1, 1988. The conferees expect these grants to be awarded to communities not presently receiving targeted assistance because of previous concentration requirements and other factors in the grant formulas, as well as those who do currently receive targeted assistance grants. These grants shall be available to assist local schools, hospitals, employment services, and other institutions.

(In the paragraph quoted above, "1989" is a typographical error, and the date should read "October 1, 1979." See *Congressional Record,* October 11, 1989, p. H6888, col. 3, last paragraph.)

In accordance with the Conference Report language, the Director of the ORR will use 10% of the TAP funds as described in this notice.

I. Purpose and Scope

The targeted assistance program reflects the requirements of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), which provides as follows:

> (B)(A) The Director [of ORR] is authorized to make grants to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.
>
> (B) Grants shall be made available under this paragraph—
>
> (i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency,
>
> (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.

The funds available under this notice are for grants to States for services to refugees in localities most heavily impacted by an influx of refugees who have entered the U.S. after October 1, 1979, where there exists and can be demonstrated a specific need for supplementation of resources for services to the refugees.

These grants will be awarded on a competitive basis under two separate competitions: (1) One competition, for which $951,300 (25% of the funds covered by this notice) is being made available, is for impacts on employment services; (2) the other, for which $2,853,900 (75% of the funds) is being made available, is for impacts on schools, hospitals, and other institutions. The Director reserves the right to reallocate funds between the two competitions in the event that acceptable applications do not account for all of the available funds under one of the competitions. Final determination as to the acceptability of applications will be at the discretion of the Director of ORR.

A State may apply for an award on behalf of any heavily impacted local area regardless of whether the areas is currently receiving other TAP funds.

Local impacts could be experienced in, and awards may be sought for the assistance of, public and/or private-nonprofit employment services, schools, hospitals, and other institutions.

ORR expects to fund grants for local impacts ranging from about $150,000 to $200,000. No award for a single local impact may exceed $400,000.

In accordance with HHS grant regulations, each application, including each local impact component thereof, will be evaluated by an independent review panel. Each application will also be reviewed by regional staff of the Family Support Administration and staff of ORR. The Director of ORR will determine which components will be funded and at what levels.

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Pub. L. 100-461).

III. Eligible Applicants and Grantees

Eligible applicants and grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

For any local impact component that is included in a State's application and is approved for funding, the State must make at least 95% of the grant award available to the county or other local public or private entity.

If a State decides not to apply for funds under this notice, it may delegate its authority to one or more county governments which wish to apply. Under this circumstance, a county's application is required to include a written delegation of authority from the State agency responsible for the refugee program; if the county's application is approved for funding, the county government will be the grantee.

IV. Application Requirements

The application requirements for grants under this notice are as follows:

The State agency will submit a single application on behalf of the communities for which the State is applying for funds under this announcement, unless the State has delegated its authority to apply to one or more counties, as described above.

The grant period may be for up to 15 months beginning no earlier than October 1, 1989, reflecting the start of the fiscal year for which the funds were appropriated.

A separate narrative and cost justification must be submitted for each impact component in each locality, and each local impact component will be evaluated on its own merits under the criteria specified in this announcement.

For example, if a State is applying for funds for localities A and B to address the impact of (1) refugee pupils in their schools and (2) treatment of refugees in their hospitals, there must be a separate narrative justification and budget for each of the two types of institutions in each locality—a total of four justifications and budgets.

Limits on length of application: The narrative justification and budget for each local impact component *must not exceed 10 pages* (typewritten, double spaced on standard, letter-size paper) *plus a maximum of 10 pages of appended material.* In the event that the narrative justification and budget exceeds 10 pages or the supplementary material exceeds 10 pages, only the first 10 pages will be considered in the review process.

Applications must be submitted on Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-Construction Programs; SF 424B, Assurances—Non-Construction Programs.

A State's application must include the following information for each local impact component:

1. The numbers, national origins, years of arrival in the U.S. and in the local community, and other relevant information about the refugees who are impacting on the local institution.

2. The nature of the impact on the institution.

3. The estimated numbers of refugees to be served with the funds applied for, a description of the services they would receive, and the unit costs of the services.

4. For each local impact component, a line-item budget, together with a narrative justification, which provides the State's best estimates of (a) the costs associated with the refugee impact on the given local institution, (b) the amounts and types of Federal refugee funds that are available to address this impact, (c) the amounts and sources of other funds (Federal, State, and local) which are expected to be used to help address the impact, and (d) the residual impact for which funding is being sought under this announcement. The budget must specify the time period to which the impact costs apply to enable comparisons to be made among the applications received on the basis of a uniform duration of time (say, a prorated 12-month period).

5. A statement of the expected results/outcomes from the funds being sought.

V. Criteria for Evaluating Grant Applications

Each local impact component within a

---

*In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section III of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from a refugee's date of arrival or until the refugee becomes a permanent resident, whichever occurs sooner. Therefore refugees admitted under the private sector initiative may not be counted when calculating impact for purposes of a grant application unless their period of coverage under this initiative has been completed.

State's grant application will be rated individually by an independent review panel on the following criteria, and a separate score for each impact component will be assigned.

The evaluation of applications will be based on (1) the degree of local impact which is satisfactorily demonstrated in the application; (2) the extent to which the impact cannot be met from other Federal, State, or local funding sources; and (3) the allowability of the type of services for funding under section 412(c) of the INA.

The criteria and weights are as follows:

1. Degree of impact demonstrated which cannot be addressed by other funding sources.....40 points
2. Urgency of the need for, and reasonableness of the projected cost of, the services proposed to be provided.....20 points
3. Quality and appropriateness of the services proposed.....20
4. Degree to which the impact reflects long-term or difficult-to-address needs, such as the needs of some Laotian Hmong and Cambodian refugees.....20 points

VI. Grant Application Review and Award Procedure

Grant applications will be evaluated by an independent review panel according to the above criteria and in accordance with HHS grant regulations. The Director will also seek recommendations on applications by the appropriate FSA Regional Administrator and review by ORR staff. Final determination as to the acceptability of applications and funding will be at the discretion of the Director of ORR.

VII. Executive Order 12372 Notification Process

Applications are covered by the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," which provides for review of proposed Federal assistance by State and local governments. Therefore requests for funds under this announcement are subject to the clearance procedures established by the applicant State. (See Catalog of Federal Domestic Assistance Number 13.787.)

Applicants should contact their State Single Point of Contact (SPOC) as soon as possible and follow their State review process instructions. SPOC comments are due 60 days after the application deadline. SPOC comments should be forwarded to the Family Support Administration, Office of Grants Management, 6th floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

(See attached list of State Single Points of Contact.)

VIII. Reporting Requirements

Successful grantees will be required to file Financial Status Reports (SF–269) and Program Progress Reports on a semiannual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. Semiannual Financial Status Reports and Program Progress Reports covering activity through September 30 and March 31 of each year will be due on November 30 and May 31 of each year. The original of each report will be submitted to the Grants Management Officer, FSA. One copy of each report will be submitted to the project officer in the FSA Regional Office, and one copy will be sent to Division of Operations, ORR, 6th floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The final Financial and Program Progress Reports will be due 90 days after the budget expiration date or termination of grant support. Rules specified in 45 CFR part 92, Subpart C—Post-Award Requirements, 92.40 (d) and (e), apply to all grants. Although ORR does not expect the funded components to include evaluation activities, it does expect grantees to maintain adequate records to track and report on activities and expenditures. Employment services projects will be required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970–0042, expiration date February 28, 1991.

Dated: June 20, 1990.

Chris Gersten,

Director, Office of Refugee Resettlement.

Attachment A—DHHS Regulations Applicable to all Applicants/Grantees

The following DHHS regulations apply to all applicants/grantees. Title 45 of the *Code of Federal Regulations:*

Part 16—Departmental Procedures of the Grant Appeals Board

Part 74—Administration of Grants (non-governmental)

Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sections
- 74.62(a) Non-Federal Audits
- 74.173 Hospitals
- 74.174(b) Other Nonprofit Organizations
- 74.304 Final Decisions in Disputes
- 74.710 Real Property, Equipment and Supplies
- 74.715 General Program Income

Part 75—Informal Grant Appeals Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the Basis of Sex in the Admission of Individuals to Training Programs

Part 84—Nondiscrimination on the Basis of Handicap in Programs

Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities.

BILLING CODE 4130-04-M

ATTACHMENT B—SF–424—Application for Federal Assistance

OMB Approval No. 0340-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐–☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision; If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING: a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE_____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

ATTACHMENT C—SF-424A—Budget Information

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

ATTACHMENT D—Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program an.lte purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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OMB Approved No. 0348-0041

BUDGET INFORMATION — Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL	$ .00	$ .00	$ .00
13. Contingencies (sum of lines 1-11)	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS (subtract #15 from # 14)	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: Enter eligible costs from line 16c Multiply X ———— % (Consult Federal agency for Federal percentage share). Enter the resulting Federal share.			$ .00

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Standard Form 424C (4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424C

This sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions please contact the Federal agency.

Column a. — If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATIONS."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

Column b. —If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

Column c. — This is the net of lines 1 through 16 in columns "a." and "b."

Line 1 — Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable-legal costs are generally only those associated with the purchase of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 — Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 — Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4 — Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 — Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 — Enter estimated engineering inspection costs.

Line 7 — Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9 — Enter estimated cost of the construction contract.

Line 10 — Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 — Enter estimated miscellaneous costs.

Line 12 — Total of items 1 though 11.

Line 13 — Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 — Enter the total of lines 12 and 13.

Line 15 — Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 — Subtract line 15 from line 14.

Item 17 — This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

OMB Approved No. 0348-0042

ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statues relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination of the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

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11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-333) regarding labor standards for federally assisted construction subagreements.

14. Will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

19. Will comply with all applicable requirements of all other Federal laws, Executive Orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4150-04-C

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Attachment E—State Single Point of Contact

May 1, 1990

State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125-0347, Telephone (205) 284-8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106-4459, Telephone (203) 566-3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Telephone (202) 727-6111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548-3016 or 548-3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782-8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373-7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373-6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960-4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444-5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, Attn: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire, 03301, Telephone: (603) 271-2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey, 08625-0803, Telephone (609) 292-8613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625-0803, Telephone (609) 292-6025

New Mexico

Dorothy E. (Duffy) Rodriguez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Caroline 27611, Telephone (919) 733-0499

North Dakota

William Robinson, State Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota, 58505, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone: (614) 466-0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6901 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843-9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone: (401) 277-2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota, 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-5278

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741

Please direct correspondence and questions to: William C. Carey, Section Chief.

Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (617) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 22 & 23 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

Attachment F—U.S. Department of Health and Human Services Certificate Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

1. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

2. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code):

_____

_____

_____

_____

_____

Attachment G—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principles involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment H—Certification Regarding Anti-Lobbying Provisions

Certification for Contracts, Grants, Loans, and Cooperative Agreement

The Undersigned Certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Organization: _____

Title: _____

Date: _____

BILLING CODE 4160-04-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only: Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

[FR Doc. 90-13047 Filed 6-27-90; 8:45 am]
BILLING CODE 4150-04-C

Authorized for Local Reproduction
Standard Form - LLL-A

federal register

Thursday
June 28, 1990

Part VII

Department of the Treasury
Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 25 et al.
Community Reinvestment Act; Joint Temporary Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 90-10]

RIN 1557-AA88

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-0681]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AB09

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket No. 90-819]

RIN 1550-AA26

Community Reinvestment Act

AGENCY: The Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint temporary rule with request for comment.

SUMMARY: The agencies listed above (agencies) are issuing this temporary rule to amend their respective regulations found at 12 CFR parts 25, 228, 345, and 563e. These regulations are being amended to implement changes in the Community Reinvestment Act (CRA) contained in title XII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). These amendments are intended to establish and set forth requirements for the institutions supervised by the agencies with regard to the public availability of the public section of the Community Reinvestment Act Performance Evaluations and CRA ratings of the institutions as prepared by the agencies.

This temporary rule implements portions of a proposal issued through a notice of request for comment by the Federal Financial Institutions Examination Council (FFIEC) on December 22, 1989 (54 FR 52914), relating to these same matters, as well as others. This rule requires institutions to place the CRA Performance Evaluation and CRA rating in a public comment file, which they are already required to maintain, within 30 business days of receipt from the appropriate supervisory agency. The institution will be required to make the evaluation and rating available for public inspection, and to provide copies of the evaluation, upon request, and will be permitted to charge a reasonable fee for reproduction and mailing costs, if applicable.

DATES: This temporary rule is effective on July 1, 1990. Comments must be received on or before August 27, 1990. A final rule is anticipated by year end 1990.

ADDRESSES: (1) *Office of the Comptroller of the Currency (OCC).* Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East SW., Washington, DC 20219, Attention: Docket No. 90-10. Comments will be available for public inspection and photocopying at the same location.

(2) *Board of Governors of the Federal Reserve System (Board).* Comments should refer to Docket No. R-0681, and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551. They may be delivered to room B-2222, Eccles Building, between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. Comments will be available for inspection in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

(3) *Federal Deposit Insurance Corporation (FDIC).* Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room 6108 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room 6108 between 8:30 a.m. and 5 p.m. on business days. FAX number: (202) 347-2773 or 2775.

(4) *Office of Thrift Supervision (OTS).* Send comment letters to the Director, Information Services Section, Office of the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Comment letters will be available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: (1) *OCC.* John H. McDowell, Director, Consumer Activities Division, (202) 287-4265, or Robert Roth, Attorney, Legal Advisory Services Division, (202) 447-1883.

(2) *Board.* Janice Scandella, Review Examiner, Division of Consumer and Community Affairs, (202) 452-3946; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, (202) 452-3544.

(3) *FDIC.* Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, (202) 898-3538, or Ken A. Quincy, Chief, Special Review Section, Division of Supervision, (202) 898-6753.

(4) *OTS.* Jerauld C. Kluckman, Director, Compliance Programs, Supervision Policy, (202) 785-5442, or Timothy R. Burniston, Senior Compliance and Consumer Affairs Specialist, Compliance Programs, Supervision Policy, (202) 785-5440.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the FIRREA, Public Law No. 101-73, 103 Stat. 183, 511 (1989) amended the CRA, title VIII, Public Law No. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) in several respects. It requires the financial supervisory agencies to use a four-tier descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tier rating system presently in use. It also requires public disclosure of those ratings beginning July 1, 1990. In addition, it requires the agencies to make public their CRA performance assessments and requires that those assessments address each of the CRA regulatory assessment factors and discuss the basis for the examiner's conclusions with respect to each one. FIRREA allows the agencies to maintain as confidential information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. FIRREA also permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

FFIEC Notice

On December 22, 1989, the FFIEC published for public comment in the Federal Register (54 FR 52914) proposals to implement all aspects of these amendments. The comment period ended on January 29, 1990. The FFIEC's notice, issued as a set of guidelines, proposed requirements for the examined institutions to make the examination assessments and ratings public. It would have required an institution to make public the written evaluation containing

the rating for its most recent CRA examination by including it in its CRA public comment file. The CRA public comment file is already required by existing CRA regulations. The FFIEC's notice would have required that an institution place the written evaluation in the public comment file within 30 days of its receipt from the supervisory agency. It would have limited the requirement for making the evaluation available in the public comment file to the institution's head office. The notice would have also required the institution to make copies of the evaluation available upon request for no more than the duplication cost.

Comments Received in Response to the FFIEC Notice

The agencies have received and reviewed 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of Congress. The agencies determined that it is necessary to codify in regulatory form the requirements to make CRA Performance Evaluations and CRA ratings public. The other matters covered by the FFIEC's notice will be addressed in separate issuances. The major comments relating to the method proposed for making the written CRA Performance Evalautions and CRA ratings public are addressed below along with an explanation of the regulatory changes found in this temporary rule.

The FFIEC's notice would have required, at a minimum, that the institution make its written CRA Performance Evaluation and CRA rating publicly available by placing it in the public comment file at the head office. It also would have required that this be done within 30 days of its receipt of the written CRA Performance Evaluation. It would have required the institution to revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. This system was proposed by the FFIEC primarily to promote ease of administration and because it would be less likely to lead to errors (for example, where a branch inadvertently maintained an out-of-date evaluation in its public comment file). This was viewed as a potential problem, especially for larger institutions serving more than one community.

Community group commenters argued strongly for wider availability of the evaluations throughout the various communities an institution might serve. They cited the difficulties, especially for low- and moderate-income people, of having to go to another community to personally retrieve a copy of the evaluation. This problem is most apparent where the institution operates over a large geographic area such as an entire state.

To address this concern, the FFIEC is modifying its proposal to require that the institutions place the evaluation in the CRA public file at the head office and at one designated office in each local community. This approach is consistent with the requirement that institutions keep CRA public files at the head office and materials relating to each local community at a designated office in that community. The agencies believe this modification enhances convenient public access to the evaluation and does not impose an additional administrative burden on institutions.

Some community group commenters suggested requiring institutions to place more than the most recent CRA Performance Evaluation in the public files. While the agencies support disclosure of institutions' CRA performance, they do not believe that it is necessary for an institution to place more than the most recent evaluation in its public file. Such a requirement would exceed the record retention responsibility contemplated by the CRA. Further, since examination frequency schedules vary among the agencies, some institutions could be required to retain prior adverse evaluations which would have minimal bearing on their current CRA performance. Institutions may, at their discretion, include in their public files more than the most recent CRA evaluation for examinations commenced on and after July 1, 1990.

The FFIEC's notice would have required an institution to place the evaluation in the CRA public file within 30 days after its receipt and would encourage the institution to place a response in the file as well. Many financial institution commenters felt the 30 day time period was too short. They stated that additional time is needed for a board of directors to review the evaluation and prepare a response.

The agencies are aware of time constraints an institution faces in reviewing an evaluation and preparing a response for inclusion in the public file. To afford some measure of relief, the agencies are modifying the proposal to provide an institution 30 business days to place the evaluation and, if an institution so chooses, its response, in the CRA public file.

Industry commenters wanted to charge reproduction costs and mailing costs for CRA evaluation copies. This rule permits institutions to charge reproduction costs and a reasonable mailing fee since the public has the option to view the documents in the institutions' offices at no cost. While the agencies' CRA regulations already permit institutions to charge a reproduction free for CRA statements, the agencies are modifying their regulations to also permit the assessemnt of mailing fees in connection with meeting public requests for CRA statements.

Temporary Rule With Request for Comments

This temporary rule codifies in regulatory form the requirements to make CRA Performance Evaluations and CRA ratings public. The agencies are promulgating this regulation in temporary rule form to ensure that existing CRA regulations are modified to reflect the new FIRREA disclosure requirements prior to the July 1, 1990, effective date mandated by the Act. Although the temporary rule is effective upon publication, the agencies are requesting comments from the public prior to adopting final regulations.

The specific elements of the disclosure requirements that are being implemented in this temporary rule were set forth in the December 22, 1989 FFIEC notice. The notice expressly solicited public comments on, among other things, procedures for the diclosure of CRA rating information, including the method by which insured depository institutions would be required to disclose the public section of their CRA Performance Evaluations. The notice further stated that any comments received would be taken into account in modifying the existing CRA regulations to implement the FIRREA provisions. Final guidelines, incorporating comments received from the public, were adopted by the FFIEC on May 1, 1990 (55 FR 18163). This temporary rule reflects comments received during the development of the guidelines.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this temporary rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. This temporary rule imposes only minor burdens on all institutions, regardless of size. An institution must make available to the public the CRA evaluation prepared and provided by its regulatory agency. This requirement implements FIRREA.

Executive Order 12291

The OCC and OTS have determined that this temporary rule, if published as a final rule, would not constitute a "major rule" and therefore does not require a Regulatory Impact Analysis. This temporary rule will not: have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This temporary rule imposes only minimal costs on the institutions and lets them recover reasonable mailing and copying costs. Also, since this rule furthers institutions' CRA activities, it is reasonable to expect a positive effect on the institutions, the public, and the economy.

Economic Impact Statement

This temporary rule will impose a minor burden on all covered institutions regardless of size. All institutions will have to familiarize themselves with the new rules, establish procedures to ensure that the CRA Performance Evaluations are added to existing CRA public files within the prescribed period (30 business days from receipt), and replace current CRA public notices to reflect the required new statement. None of these provisions is expected to impose a significant cost on financial institutions.

List of Subjects

12 CFR Part 25

Community development, Consumer protection, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Community development, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Consumer protection, Credit, Investments, Reporting and record keeping requirements.

12 CFR Part 563e

Community development, Consumer protection, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, part 25 of chapter I, part 228 of chapter II, part 345 of chapter III, and part 563e of chapter V of title 12 of the Code of Federal Regulations are amended as set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

PART 25—[AMENDED]

1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 (as amended).

2. In § 25.4, paragraph (f) is revised to read as follows:

§ 25.4 Community Reinvestment Act statement.

* * * * *

(f) Copies of each current CRA statement shall be provided to the public upon request. A national bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

3. In § 25.5, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4) and revised, new paragraph (a)(2) is added, paragraphs (c)(1) and (c)(2) are revised, and new paragraphs (c)(3) and (d) are added to read as follows:

§ 25.5 Files of public comments and recent CRA statements.

(a) * * *

(2) A copy of the public section of the most recent CRA Performance Evaluation prepared by the Comptroller (the format and content of the bank's CRA Performance Evaluation, as prepared and transmitted to the bank by the Comptroller may not be altered or abridged in any manner). The bank must place this copy in the public file within 30 business days after its receipt from the Comptroller;

(3) Any response to the comments under paragraph (a)(1) of this section or to the CRA Performance Evaluation under paragraph (a)(2) of this section that the bank wishes to make; and

(4) Any CRA statements in effect during the past 2 years.

* * * * *

(c) * * *

(1) All materials at the head office;

(2) Those materials relating to each local community, at a designated office in that community; and

(3) The most recent CRA Performance Evaluation and any response by the national bank thereto shall, at a minimum, be available at the head office and at the office in each local community so designated under paragraph (c)(2) of this section.

(d) National banks shall provide copies of the public section of their most recent CRA Performance Evaluation to the public upon request. A national bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

4. In § 25.6, the first paragraph of the existing text is revised, the term "Regional Administrator of National Banks" is changed to "Deputy Comptroller" each time it appears in the text of the Community Reinvestment Act Notice, all existing text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 25.6 Public notice.

(a) Each national bank shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by banks having more than one local community. The last item shall be included only if the bank is a subsidiary of a holding company that is not prevented by statute from acquiring additional banks.

Community Reinvestment Act Notice

* * * * *

(b) Within 30 business days of receipt of its first publicly available, written CRA Performance Evaluation, each national bank shall add language to the public CRA Notice as follows:

• You may obtain the public section of our most recent CRA Performance Evaluation, which was prepared by the Office of the Comptroller of the Currency at (address of head office) [if the national bank has more than one local community, each office (other than off-premises electronic deposit facilities) in that community shall include the address of the designated office for that community].

Robert L. Clarke,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

PART 228—[AMENDED]

5. The authority citation for part 228 is revised to read:

Authority: Community Reinvestment Act of 1977 (Pub. L. 95-128, 91 Stat. 1147) 12 U.S.C. 2901 *et seq.*; 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842.

6. In § 228.4, paragraph (f) is revised to read as follows:

§ 228.4 Community Reinvestment Act statement.

* * * * *

(f) Copies of each current CRA statement shall be provided to the public upon request. A state member bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

7. In § 228.5, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4), and revised, new paragraph (a)(2) is added, paragraphs (c)(1) and (c)(2) are revised, and new paragraphs (c)(3) and (d) are added to read as follows:

§ 228.5 Files of public comments and recent CRA statements.

(a) * * *

(2) A copy of the public section of the most recent CRA Performance Evaluation prepared by the appropriate Federal Reserve Bank on behalf of the Board of Governors of the Federal Reserve System (the format and content of the bank's CRA Performance Evaluation, as prepared and transmitted to the state member bank by the appropriate Federal Reserve Bank may not be altered or abridged in any manner). The state member bank must place this copy in the public file within 30 business days after its receipt from the appropriate Federal Reserve Bank.

(3) Any response to the comments under paragraph (a)(1) of this section or to the CRA Performance Evaluation under paragraph (a)(2) of this section that the state member bank wishes to make; and

(4) Any CRA statements in effect during the past 2 years.

* * * * *

(c) * * *

(1) All materials at the head office;

(2) Materials relating to each local community, at a designated office in that community; and

(3) The most recent CRA Performance Evaluation and any response by the state member bank thereto shall, at a minimum, be available at the head office and at the office in each local community so designated under paragraph (c)(2) of this section.

(d) State member banks shall provide copies of the public section of their most recent CRA Performance Evaluation to the public upon request. A state member bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

8. In § 228.6 the first paragraph of the existing text is revised, all existing text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 228.6 Public notice.

(a) Each state member bank shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by banks having more than one local community. The last item shall be included only if the state member bank is a subsidiary of a holding company that is not prevented by statute from acquiring additional banks.

* * * * *

(b) Within 30 business days of receipt of its first publicly available, written CRA Performance Evaluation, each state member bank shall add language to the public CRA Notice as follows:

• You may obtain the public section of our most recent CRA Performance Evaluation, which was prepared by the Federal Reserve Bank of _____ at (address of head office) [if the state member bank has more than one local community, each office (other than off-premises electronic deposit facilities) in that community shall include the address of the designated office for that community].

By order of the Board of Governors.

Dated: May 2, 1990.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

PART 345—[AMENDED]

9. The authority citation for part 345 continues to read as follows:

Authority: Community Reinvestment Act of 1977 (title VIII of the Housing and Community Development Act of 1977, Pub. L. 95-128; 91 Stat. 1147, *et seq.* (12 U.S.C. 2901 note)).

10. In § 345.4, paragraph (f) is revised to read as follows:

§ 345.4 Community Reinvestment Act statement.

* * * * *

(f) Copies of each current CRA statement shall be provided to the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

11. In § 345.5, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4) and revised, new paragraph (a)(2) is added, paragraphs (c)(1) and (c)(2) are revised, and new paragraphs (c)(3) and (d) are added to read as follows:

§ 345.5 Files of public comments and recent CRA statements.

(a) * * *

(2) A copy of the public section of the most recent CRA Performance Evaluation prepared by the Federal Deposit Insurance Corporation (the format and content of the bank's CRA Performance Evaluation, as prepared and transmitted to the bank by the Federal Deposit Insurance Corporation may not be altered or abridged in any manner). The bank must place this copy in the public file within 30 business days after its receipt from the Federal Deposit Insurance Corporation;

(3) Any response to the comments under paragraph (a)(1) of this section or to the CRA Performance Evaluation under paragraph (a)(2) of this section that the bank wishes to make; and

(4) Any CRA statements in effect during the past 2 years.

* * * * *

(c) * * *

(1) All materials at the home office;

(2) Materials relating to each local community, at a designated office in that community; and

(3) The most recent CRA Performance Evaluation and any response by the bank thereto shall, at a minimum, be available at the home office and at the office in each local community so designated under paragraph (c)(2) of this section.

(d) Insured State nonmember banks shall provide copies of the public section of their most recent CRA Performance Evaluation to the public upon request. A bank may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

12. In § 345.6, the first paragraph of the existing text is revised, all existing text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 345.6 Public notice.

(a) Each insured State nonmember bank shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by banks having more than one local community. The last item in this notice shall be included only if the bank is a subsidiary of a holding company that is not prevented by statute from acquiring additional banks.

* * * * *

(b) Within 30 business days of receipt of its first publicly available, written CRA Performance Evaluation, each insured State nonmember bank shall add language to the public CRA Notice as follows:

• You may obtain the public section of our most recent CRA Performance Evaluation, which was prepared by the Federal Deposit Insurance Corporation at (address of home office) [if the bank has more than one local community, each office (other than off-premises electronic deposit facilities) in that community shall include the address of the designated office for that community].

By order of the Board of Directors.

Dated: April 20, 1990.

Hoyle L. Robinson,

Executive Secretary.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

PART 563e—[AMENDED]

13. The authority citation for part 563e continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 *et seq.*).

14. In § 563e.4, paragraph (f) is revised to read as follows:

§ 563e.4 Community Reinvestment Act statement.

* * * * *

(f) Copies of each current CRA statement shall be provided to the public upon request. An association may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

15. In § 563e.5, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4) and revised new paragraph (a)(2) is added, paragraphs (c)(1) and (c)(2) are revised, and new paragraphs (c)(3) and (d) are added to read as follows:

§ 563e.5 Files of public comments and recent CRA statements.

(a) * * *

(2) A copy of the public section of the most recent CRA Performance Evaluation prepared by the Office of Thrift Supervision (the format and content of the association's CRA Performance Evaluation, as prepared and transmitted to the association by the Office of Thrift Supervision may not be altered or abridged in any manner). The association must place this copy in the public file within 30 business days after its receipt from the Office of Thrift Supervision;

(3) Any response to the comments under paragraph (a)(1) of this section or to the CRA Performance Evaluation under paragraph (a)(2) of this section that the association wishes to make; and

(4) Any CRA statements in effect during the past 2 years.

* * * * *

(c) * * *

(1) All materials at the home office;

(2) Those materials relating to each local community, at a designated office in that community; and

(3) The most recent CRA Performance Evaluation and any response by the association thereto shall, at a minimum, be available at the home office and at the office in each local community so designated under paragraph (c)(2) of this section.

(d) Associations shall provide copies of the public section of their most recent CRA Performance Evaluation to the public upon request. An association may charge a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

16. In § 563e.6, the first paragraph of the existing text is revised, all existing text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 563e.6 Public notice.

(a) Each association shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by associations having more than one local community.

* * * * *

(b) Within 30 business days of receipt of its first publicly available written CRA Performance Evaluation, each association shall add language to the public CRA Notice as follows:

• You may obtain the public section of our most recent CRA Performance Evaluation, which was prepared by the Office of Thrift Supervision at (address of home office) [if the association has more than one local community, each office (other than off-premises electronic deposit facilities) in that community shall include the address of the designated office for that community].

Dated: May 10, 1990.

T. Timothy Ryan,

Director.

[FR Doc. 90-14854 Filed 6-27-90; 8:45 am]

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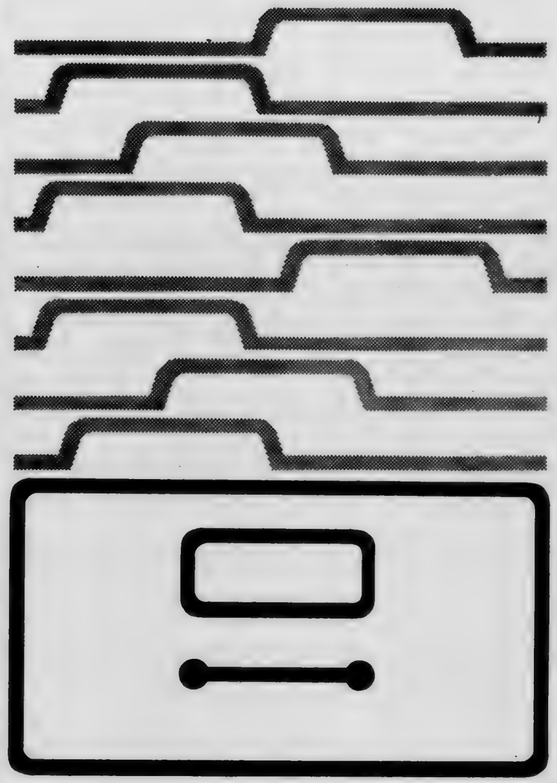
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H.R. 4612 / Pub. L. 101-311

To amend title 11 of the United States Code regarding swap agreements and forward contracts. (June 25, 1990; 104 Stat. 267; 4 pages) Price: $1.00

S. 2769 / Pub. L. 101-312

To authorize the Secretary of Veterans Affairs to proceed with a proposed administrative reorganization of the regional field offices of the Veterans Health Services and Research Administration of the Department of Veterans Affairs, notwithstanding the notice-and-wait provisions in section 210(b) of title 38, United States Code. (June 25, 1990; 104 Stat. 271; 1 page) Price: $1.00



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in the Code of Federal Regulations (CFR)

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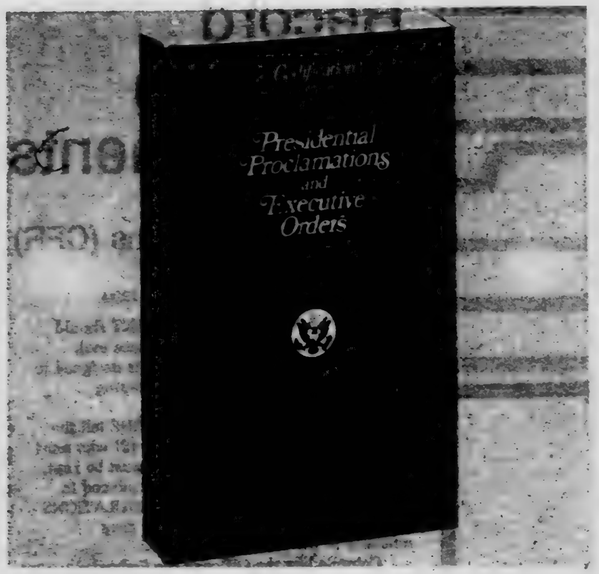
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Vol. 55 No. 126

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-90-111 FR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revision of the Administrative Rules and Regulations (Short Life Allotments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This action was recommended by the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of the orders. This final rule will require handlers requesting short life allotments to submit additional information to the committees in order to aid the committees in administering the short life allotment provisions in the orders in an equitable manner. This rule also adds deadlines for the filing of short life allotment requests.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This final rule changes the administrative rules and regulations of the navel and Valencia orange marketing orders. The changes will require handlers requesting short life allotments to submit additional information to the committees in order to aid the committees in administering the short life allotment provisions of the orders in an equitable manner. Deadlines are also established for the filing of short life allotment applications.

Paragraphs (a) of §§ 907.50 and 908.50 of the navel and Valencia orange marketing orders, respectively, provide that, prior to recommendations for regulation for each prorate district, the committees shall submit to the Secretary their respective marketing policies for the ensuing season. These marketing policies include, among other information, the estimated utilization of the navel or Valencia orange crops, showing the quantity and percentage of these crops that will be marketed in domestic, export, and byproduct channels.

Paragraphs (b) of §§ 907.51 and 908.51 of the orders provide that the committees shall provide equity of marketing opportunity to handlers in all districts. Paragraphs (a) of §§ 907.110 and 908.110 of the administrative rules and regulations of the orders state that the committees shall establish an equity factor which is the same for all prorate districts. The equity factor is stated as a percentage of the tree crop in each district and reflects a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation each season. Paragraphs (b) of the same sections provide that in the marketing policy meetings for each prorate district the committees shall formulate weekly shipping schedules for the ensuing season reflecting, insofar as practicable, the quantity of oranges grown in that district to be shipped under volume regulation each week. The quantity of oranges on such schedules is computed by application of the equity factor to the tree crop of the district. Paragraphs (f) of §§ 907.110 and 908.110 give the committees authority to make such adjustments as they deem advisable in the equity factors, the weekly shipping schedules, and the percentage allocations to prorate districts, in order to reflect changing crop or market conditions.

Paragraphs (h) of §§ 907.53 and 908.53 of the orders provide that during any week when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments. On the basis of such computation, the committees fix a prorate base for each person who is entitled thereto. Based on such prorate

bases, the committees calculate the quantity of oranges (allotment) which may be handled by each handler during each week in which volume regulations are issued.

Paragraphs (g) of §§ 907.110 and 908.110 authorize the committees to calculate each season an estimated percentage of the total tree crop in the production areas which, in the judgment of the committees, will be handled under volume regulation and prepare a schedule of estimated weekly shipments based thereon, taking into account the purposes of the Act. Such percentages and schedules are used as references for determining adjustments in the prorate bases of handlers, for granting short life allotments, and for matters wherein it is necessary to consider utilization of the crop within a district.

Most navel and Valencia oranges are picked and packed as needed as they can be stored on the tree for an indefinite period without significant losses in fruit quality and condition. However, because of environmental conditions in different producing localities and due to the characteristics of some varieties and combinations of rootstock and scion varieties, some oranges are produced which do not possess the keeping qualities of other oranges produced in the same prorate district. At the end of the shipping season, the fruit is puffy, soft, and deteriorates very quickly. These oranges are called short life oranges. The shipping life of such oranges is shorter than the shipping life of other oranges in the same district and thus, they have a shorter marketing period. Under the orders, the normal marketing period for navel and Valencia oranges is that period in which the fruit is of such quality that it can be shipped and will hold sufficiently well to be acceptable to consumers. The normal marketing period of short life oranges is shorter than that of other oranges and can vary not only between districts but between groves in the same district.

Sections 907.61 and 908.61 of the orders provide for the committees to withhold from the allotments of handlers, on a uniform proportionate basis for all handlers, an amount sufficient to permit a handler of short life oranges to handle during the normal marketing period of such short life oranges as large a proportion of oranges as the average which will be handled by all handlers. The committees determine, on the basis of all available information, the extent to which a handler needs short life allotment and allocate such allotment to the handler at a uniform weekly rate, insofar as practicable, during the normal marketing period of the handler's short life oranges. Thus, handlers who are granted short life allotments are permitted to handle during the shipping season of their short life oranges a quantity of short life oranges equal proportionately to the average to be handled by all handlers of navel or Valencia oranges within their prorate district. After a handler receives short life allotment allowing the expedited marketing of short life oranges, allotment which would have been assigned to that handler during the rest of the marketing season is allocated to handlers from whom allotment was withheld to permit the allocation of short life allotment.

Short life allotments are only applicable during the normal marketing period of such oranges. Thus, a handler whose oranges can only be marketed for a six-week period beginning in November could receive short life allotment only during that period, whereas a handler whose short life oranges can only be marketed for a six-week period beginning in January could receive short life allotment for those oranges only during that period.

To require handlers of short life oranges to market their oranges at the same rate as other handlers would result in handlers of short life oranges shipping a lower percentage of their crop of oranges to the fresh domestic market compared to other handlers in the district and industry because short life oranges shipped during the latter part of the shipping season could not be shipped to markets for sale to consumers in good condition.

There are handlers who ship both short and normal life oranges. Some of these handlers, because they have a low percentage of short life oranges, are able to adjust their picking and packing operations to allow the shipment of all of their short life oranges before they begin to deteriorate. Thus, they are able to handle their total supply of oranges without undue difficulty. There are other handlers who have a high percentage of short life oranges and are unable to ship all their short life oranges prior to the time such oranges begin to deteriorate. Without short life allotments, they would be unable to ship the same percentage of oranges into a fresh domestic market as the rest of the industry and their district.

Short life allotment provisions in the navel and Valencia orange marketing orders state that short life allotments shall be allocated to handlers of short life oranges at a uniform weekly rate, insofar as practicable, during the normal marketing period of the handlers' short life oranges. The uniform weekly rate is calculated by comparing the total allotment a handler would have received under general maturity during that handler's shortened shipping season and the actual amount of allotment necessary for the handler to ship up to the industry equitable percentage during that same shipping season. The amount of extra allotment a handler must receive is expressed as a percentage uniformly applied, insofar as practicable, each week of the handler's short life shipping schedule. This percentage is derived by dividing the number of additional cartons the handler needs in order to ship up to the industry season average by the number of cartons the handler would receive under general maturity, and converting that number to a percent.

The phrase in the regulation "insofar as practicable" gives the committees flexibility in setting percentages for short life allotments each week. However, handlers who qualify for short life allotments must receive such allotment as uniformly as possible each week of their reduced shipping season. Thus, the allocation percentage for handlers with short life oranges must be adjusted each week that actual allotment levels established by the Secretary deviate from the shipping schedule. Such adjustments must continue in order to permit handlers of short life oranges to ship up to the level of handlers shipping during the regular season before the ending date of their short life season. The modifications to the administrative rules and regulations of the orders contained herein will not alter this method of issuing short life allotments.

Sections 907.114 and 908.114 of the administrative rules and regulations of the orders require that handlers controlling short life oranges who desire to obtain short life allotments must file, with the appropriate committee, an application for such allotment on N.O.A.C./V.O.A.C. Forms No. 10. These applications request information which includes the following: (1) The location of each grove producing short life oranges; (2) a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the marketing period and total utilization of all oranges; (3) a suggested shortened marketing season which shows the final date when the short life oranges covered by the application should be marketed; and (4) a showing satisfactory to the committees why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

Recently, there has been growing concern among the orange industries that the current applications for short life allotments do not provide enough information for the committees to determine whether or not short life allotments are necessary. Therefore, the committees unanimously recommended amending §§ 907.114 and 908.114 to require that additional information be submitted by applicants for short life allotments. The additional reporting requirements will be reported on revised N.O.A.C./V.O.A.C. Forms No. 10 and new N.O.A.C./V.O.A.C. Forms No. 10A, which request information on each grove producing short life oranges.

Revised N.O.A.C./V.O.A.C. Forms No. 10 require information on the percentage of grades of oranges packed out each year, the beginning and ending dates of the shipments in each year, and the estimated quantity and the acreage of all general maturity and short life oranges controlled by the applicant. New N.O.A.C./V.O.A.C. Forms No. 10A require additional information such as: (1) The root stock and scion used, if known, of the trees in the short life producing grove; (2) a breakout of historical short life crop utilization for the past 10 years, if available, which includes the beginning and ending dates of shipments for each year; (3) a physical description of the fruit at the end of each of the previous 10 shipping seasons; (4) information regarding the application of materials to extend on-tree storage life of navel and Valencia oranges during the past 10 years; and (5) planned treatments to extend on-tree storage life of the upcoming crop.

Information regarding percentages of grades of fruit shipped to the domestic market each year will allow the committees to determine if "high grading" of fruit is being practiced by the handler. High grading is a practice whereby handlers choose to selectively pack and ship primarily high grade (i.e., high quality) fruit. This results in the handler harvesting a larger quantity of fruit each week in order to utilize such handler's prorate for only high grade fruit. Therefore, a lower percentage of such handler's fruit is shipped in fresh domestic channels than the average since the handler is selectively packing only high grade fruit and utilizing the remainder in other outlets. This shortens the handler's marketing season, as the handler can ship only as much high grade fruit as the handler has available, and, once the fruit is picked, the handler's shipments from that particular grove are complete.

Information on the rootstock and scion variety will aid the committees in determining if the applicant's trees are susceptible to producing short life fruit. Certain varieties and combinations of rootstock and scion varieties are known to be susceptible to the production of short life fruit.

Information regarding crop utilization in past years will allow the committees to determine if the handler applying for short life allotment has been able to market the same proportionate share of fruit to fresh domestic markets as the average of all handlers in that district.

A description of the fruit at the ending date of the shipments will help the committees determine if the fruit is actually in a less marketable condition than is normal for fruit in that district at that point of the general maturity shipping season.

Use of materials such as growth regulators to extend one-tree fruit life is a common practice in the orange industries. Information regarding the use of such materials used to extend on-tree fruit life will aid in the committees' review and decision process to determine if the applicant's fruit is actually short life fruit. Information on planned treatments to extend on-tree storage life of the upcoming crop will help the committees determine if the handler has planned to take appropriate measures to extend the on-tree life of the short life oranges.

This action requires handlers to submit additional information on their short life oranges in order to qualify for short life allotments. It is estimated that the additional information will take less than 10 minutes per form to complete and thus will present no significant burden to handlers.

This additional information will aid the committees in determining that short life fruit genuinely exists, that the shortened marketing season is not a result of marketing patterns and handler decisions, and that the handler cannot adequately intermingle such handler's short life and normal life oranges to be able to ship up to the industry's average. The committees consider the additional information necessary so that they can review short life requests in as equitable a manner as possible. Therefore, §§ 907.114 and 908.114 are amended by revising paragraphs (b) of those sections and by adding new paragraphs (c). In addition, changes to paragraphs (a) of §§ 907.114 and 908.114 are made to provide gender neutral language.

This final rule also requires navel orange handlers to file applications for short life allotments by August 31 prior to the marketing year for navel oranges in Districts 1, 3, and 4 and by September 30 for handlers in District 2. The proposed rule published in the September 12, 1989, issue of the Federal Register (54 FR 37867), proposed that for the 1990–91 fiscal year, navel orange handlers in all districts would be required to file applications for short life allotments prior to October 31 in order to give handlers sufficient time to file such applications during this fiscal year. This final rule deletes that language as it appeared in the proposed rule. This rule is effective beginning with the 1990–91 fiscal year for navel oranges. The required filing dates for applications are as described previously.

Valencia orange handlers are required to file applications for short life allotments by December 31 prior to the marketing year for Valencia oranges in District 3 and January 31 for handlers in Districts 1 and 2. This final rule is effective beginning with the 1990–91 fiscal year for Valencia oranges. The different dates for the districts reflect their different growing seasons. Receiving applications by these dates will give the committees adequate time to include considerations for short life allotments and any needed revisions to their respective shipping schedules. Once the handlers have provided the committees with adequate information in order for the committees to determine the validity of the short life applications, the committees will give written notice to the applicants before general maturity allotments are issued for the prorate district in which the short life oranges are grown. Since short life allotments will be issued during each week of the handler's short life shipping season, the committee could not delay its decision. In addition, once the committees approve short life allotments for a handler, such allotments will be issued from the beginning of the handler's shipping season for such oranges at a uniform weekly rate, insofar as practicable.

A proposed rule published in the September 12, 1989, issue of the Federal Register (54 FR 37867) requested comments from interested persons until September 27, 1989. Two comments were received. They were from Mr. Carl A. Pescosolido of Cal-Ranch and Mr. James A. Moody representing Farmers Alliance for Improved Regulation. The comments are discussed herein.

Both Mr. Pescosolido and Mr. Moody, in their comments on the September 12, 1989, proposed rule, raised several issues opposing the additional information requested by the

committees from short life allotment applicants. Many of their issues are similar and will be discussed together.

Both commenters stated that the committees have not established criteria for granting short life allotments and that decisions by the committees to accept or reject applicants' short life applications will be subjective and reflect favoritism.

Because the number of oranges which qualify for short life allotment may, by their very nature, vary from season to season and district to district, the rule allows the committees flexibility to respond to the needs of handlers. Short life oranges could be the result of many cultural and environmental conditions, including varietal type, combinations of rootstock and scion varieties, and/or weather conditions in different producing localities. The quantity of short life fruit can vary not only between districts but between groves in the same district. The criteria for short life oranges are that such oranges do not have good keeping quality and have a shorter marketing season than normal life oranges in the same district. The information provided by the applicants will aid the committees in determining that short life fruit genuinely exists and that the shortened marketing season is not a result of marketing patterns and handler decisions and allow the committees to respond to the needs of handlers with short life oranges.

Both Messrs. Pescosolido and Moody stated that there are no facts in the proposed rule which inform growers of the extent of the problem which the committees are trying to solve. From the time of promulgation of the marketing orders there has been discussion of problems handlers experienced in marketing short life oranges. These problems (shortened marketing season, reduced keeping qualities such as puffiness, softness, etc.) are still experienced by many growers. The committees, in response to industry concerns about the ability of handlers to market short life oranges, recommended revising the rules and regulations concerning short life allotments to aid the committees in administering the short life allotment provisions in the orders in an equitable manner.

In another issue, Messrs. Pescosolido and Moody commented on the economic consequences of handlers receiving short life allotments. Mr. Pescosolido stated that growers of navel oranges have always received higher f.o.b. (free-on-board) prices for fruit marketed in November and December than growers have received for fruit marketed later in the season. Therefore, according to Mr. Pescosolido, any handler who ships navel oranges earlier than other handlers will receive greater revenue and experience less risk than would handlers who do not receive short life allotments. As discussed previously, the provisions in the regulations concerning short life allotments are responsive to concerns about the ability of handlers to market short life oranges. Short life oranges have a shorter marketing period than other oranges. Furthermore, this marketing period could be a period beginning in November, January, or any other month and not just in November or December. Handlers can only receive allotment for short life oranges during the marketing period of such oranges. Handlers' requests for short life allotments must first be approved by the appropriate committee based on the information they submitted to the committees. If the appropriate committee determines that the handler cannot market such oranges under normal allotment, short life allotments would be granted to the handler. Handlers who are granted short life allotments are permitted to handle, during the shipping season of their short life oranges, a quantity of short life oranges equal proportionately to the average to be handled by all handlers of navel or Valencia oranges within their prorate districts. Further, after a handler receives short life allotment allowing the expedited marketing of short life oranges, allotment which would have been assigned to that handler during the rest of the marketing season is allocated to handlers from whom allotment was withheld to permit the allocation of short life allotment.

Mr. Moody stated that the ratio of short life to normal life oranges that would trigger eligibility for short life allotment should be specified in the rule. It would be difficult to establish a percentage for short life oranges as this percentage could change not only between seasons but during a season. As explained earlier, some handlers, because they have a low percentage of short life oranges, are able to adjust their picking and packing operations to allow the shipment of all of their short life oranges without a short life allotment before the short life oranges deteriorate. However, there are other handlers who have a high percentage of short life oranges and, while under prorate limitations, might not be able to ship all of their short life oranges prior to the time such oranges begin to deteriorate. These percentages would likely change each season, based on growing conditions and the timing of the onset, level and duration of general maturity allotments.

Mr. Moody further comments that the deadlines for submission of the applications for short life allotment are too early as handlers may not know that the fruit will be short life until just prior to general maturity. Much of the information submitted by a handler applying for short life allotment includes historical data which will aid the committees in determining that short life fruit exists. Generally, handlers should be aware prior to the beginning of the season whether or not they will have fruit that is susceptible to short life qualities and the quantity of such fruit.

Mr. Moody further commented that short life applicants should be informed or the reasons as to why their applications were denied and that an appeal procedure should be specified in the short life rules and regulations. This comment has merit. Paragraph (b)(2) of §§ 907.114 and 908.114 as proposed stated "Each applicant shall be given written notice of the committee's action as soon as it is taken." It has been determined that the sections should, in the case of a negative determination, also provide that the appropriate committee staff shall notify the applicant of the basis for the determination and the applicant will be afforded an opportunity, either orally or in writing, to present facts and reasons for reconsideration of the application.

In his last comment, Mr. Moody states that the committees should not have the power to grant or deny applications as this is an unconstitutional delegation of the lawmaking function. The appointment by the Secretary of the members of the committees is authorized by section 608(c)(7) of the Act. That section provides that the committees selected by the Secretary shall administer the orders in accordance with its terms and provisions. Through this means Congress provided that the day to day administration of the orders should rest with the committee subject to the approval of the Secretary. Thus, the committees are authorized to make certain decisions such as approving or not approving short life applications. The Secretary retains the right to disapprove any committee action at any time.

Mr. Moody's comment in regard to appeal procedures for negative responses to short life applications is accepted as indicated above. For the reasons stated above, all other exceptions are denied.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in §§ 907.114 and 908.114 of this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581-0116 (navel oranges) and 0581-0121 (Valencia oranges).

After consideration of all relevant matter presented, including the committees' recommendations and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

Note: These sections will appear in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Section 907.114 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.114 Short life allotments.

(a) *Qualification for short life allotment.* A handler shall be considered to have short life oranges when such handler has oranges which historically are known to lack keeping qualities which will permit such handler to handle, during the normal marketing period for the oranges grown in the handler's prorate district, the same proportion of such oranges as the average which will be handled by all handlers pursuant to § 907.110(g).

(b)(1) *Application to be filed.* Each handler controlling short life oranges who desires to obtain short life allotments shall file with the committee, prior to the crop year for which an application for a Prorate Base and Allotments is filed by such handler, a signed application for such allotments on N.O.A.C. Form No. 10. The deadline for the filing of such application shall be August 31 for handlers in Districts 1, 3, and 4 and September 30 for handlers in District 2. The application shall contain the following information: Name and address of the handler applicant; location of each grove producing short life oranges; the estimated quantity and the acreage of all general maturity and short life oranges controlled by the applicant; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of all oranges; the percentage pack-out of fruit by grade; the beginning and ending dates of the shipments in each year; a suggested shortened marketing season showing the beginning date of the normal marketing period of such fruit and the ending date which is the final date when the short life oranges covered by the application could be marketed; and a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

(2) *Application supplement.* At the time handlers file applications for allotment for short life oranges they shall file, for each grove having short life oranges included in the application, a signed application information supplement on N.O.A.C. Form No. 10A. The application supplement shall include the following information: Name of the applicant handler; the location of the grove; the acreage in the grove; the year it was planted; the rootstock and scion of the trees, if known; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of the oranges produced in the grove and the beginning and ending dates of the shipments of the short life oranges for each year in which utilization is listed in the application; a description of the condition of the short life oranges at the ending dates of shipments; a description of any methods or materials used by the grower to extend the on-tree storage life of the short life oranges; and any planned treatments to extend the on-tree storage life of the short life oranges in the upcoming year.

(c) Using the information furnished on the forms referred to in paragraph (b) of this section, along with such other relevant information as is available, the committee shall determine which applicants are entitled to receive short life allotments, the amount of the allotments, and the specific time span (which includes the beginning and ending dates of the normal marketing season of such fruit) over which they will be given. Action shall be taken for each applicant as soon as is practicable after the application is received, but in no event later than the time when general maturity allotments are issued for the prorate district in which the short life oranges are grown: *Provided*, That such application provided the committee with adequate information to allow the committee to determine the validity of such application. Each applicant shall be given written notice of the committee's action as soon as it is taken. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the reasons therefor, and afford the applicant an opportunity to request reconsideration of the application and to, either orally or in writing, present facts and reasons therein.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.114 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.114 Short life allotments.

(a) *Qualification for short life allotment.* A handler shall be considered to have short life oranges when such handler has oranges which historically are known to lack keeping qualities which will permit such handler to handle, during the normal marketing period for the oranges grown in the handler's prorate district, the same proportion of such oranges as the average which will be handled by all handlers pursuant to § 908.110(g).

(b)(1) *Application to be filed.* Each handler controlling short life oranges who desires to obtain short life allotments shall file with the committee, prior to the crop year for which an application for a Prorate Base and Allotments is filed by such handler, a signed application for such allotments on V.O.A.C. Form No. 10. The deadline for the filing of such application shall be December 31 for handlers in District 3 and January 31 for handlers in Districts 1 and 2. The application shall contain the following information: Name and address of the handler applicant; location of each grove producing short life oranges; the estimated quantity and the acreage of all general maturity and short life oranges controlled by the

applicant; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of all oranges; the percentage pack-out of fruit by grade; the beginning and ending dates of the shipments in each year; a suggested shortened marketing season showing the beginning date of the normal marketing period of such fruit and the ending date which is the date when the short life oranges covered by the application could be marketed; and a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

(2) *Application supplement.* At the time handlers file applications for allotment for short life oranges they shall file, for each grove having short life oranges included in the application, a signed application information supplement on V.O.A.C. Form No. 10A. The application supplement shall include the following information: Name of the applicant handler; the location of the grove; the acreage in the grove; the year it was planted; the rootstock and scion of the trees, if known; a record covering the maximum number of years available, but not in excess of the 10 immediately preceding years, which shows the utilization of the oranges produced in the grove and the beginning and ending dates of the shipments of the short life oranges for each year in which utilization is listed in the application; a description of the condition of the short life oranges at the ending dates of shipments; a description of any methods or materials used by the grower to extend the on-tree storage life of the short life oranges; and any planned treatments to extend the on-tree storage life of the short life oranges in the upcoming year.

(c) Using the information furnished on the forms referred to in paragraph (b) of this section, along with such other relevant information as is available, the committee shall determine which applicants are entitled to receive short life allotments, the amount of the allotments, and the specific time span (which includes the beginning and ending dates of the normal marketing season of such fruit) over which they will be given. Action shall be taken for each applicant as soon as is practicable after the application is received, but in no event later than the time when general maturity allotments are issued for the prorate district in which the short life oranges are grown: *Provided*, That such application provided the committee with adequate information to allow the committee to determine the validity of such application. Each applicant shall be given written notice of the committee's action as soon as it is taken. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the reasons therefor, and afford the applicant an opportunity to request reconsideration of the application and to, either orally or in writing, present facts and reasons therein.

Dated: June 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-15213 Filed 6-28-90; 8:45 am]

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7 CFR Part 1068

[Docket No. AO-178-A43; DA-90-010]

Milk in the Upper Midwest Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the pooling requirements for regular and reserve supply plants; provides discretionary authority for the market administrator to make changes to regular and reserve supply plant shipping requirements; changes the administrative assessment on milk pooled under the order; and removes certain order language made obsolete by these changes in the Upper Midwest milk order.

These changes are based on evidence presented at a public hearing held in Bloomington, Minnesota, on March 14–15, 1990. More than the required number of producers in the marketing area have approved these amendments for their market.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 2, 1990; published March 8, 1990 (55 FR 8472).

Emergency Final Decision: Issued May 30, 1990; published June 6, 1990 (55 FR 23069).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1068.85.

(b) Additional findings. It is necessary in the public interest to make this order amending the order effective not later than July 1, 1990. Any delay beyond that

date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The Emergency Final decision of the Assistant Secretary containing all amendment provisions of this order was issued May 30, 1990 (55 FR 23069). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective July 1, 1990, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1068

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. The authority citation for 7 CFR part 1068 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1068.7 is amended by revising paragraphs (a)(1) and (b) and amending paragraph (d) by removing and reserving paragraphs (d)(1) and (d)(2), revising paragraphs (d)(4) introductory text, (d)(4)(i), (d)(4)(iv), and (d)(5)(ii)(B), redesignating paragraph (d)(7) as (d)(8) and adding a new (d)(7) to read as follows:

§ 1068.7 Pool plant.

* * * * *

(a) * * *

(1) The total route disposition (except filled milk) as a percent of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator is at least equal to the marketwide Class I utilization percentage for the same month of the preceding year; and

* * * * *

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) The volume of fluid milk products delivered to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

(i) These shipping percentages may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentage might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

(ii) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1068.9(c);

(iii) A proprietary handler may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1068.13(d);

(2) In order to meet the requirements of this paragraph, two or more supply plants operated by one or more handler(s) may qualify for pooling as a unit during the following months of August through July by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant, provided that:

(i) The handler(s) file a request with the market administrator for such unit status no later than July 15 of each year. Such a request should specify the order in which plants would cease to be considered part of the unit if the unit fails to meet the applicable percentage requirements of this paragraph. Any plant that ceases to be part of a unit will not be eligible to rejoin a unit until the following August. No plant may become part of a unit after the unit is formed and the market administrator has been notified; and

(ii) Each handler operating supply plant(s) for which the shipping percentages are met as part of a unit must ship at least 5 percent of the Grade A milk received at its plant(s) from dairy farmers during the month (including milk delivered to the handler's plant(s) from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant(s) by the plant operator but excluding milk diverted to the plant(s) from another pool plant) to pool distributing plant(s) in one of the months of August through December in order for the handler's plant(s) to be a supply plant(s) for the month of December; and

(iii) Each plant in the unit is located in the marketing area, or was a pool plant pursuant to § 1068.7(b) for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status.

(3) The quantity of fluid milk products moved from a supply plant to a pool distributing plant or pool distributing plant unit that shall count toward meeting the shipping requirements of paragraphs (b)(1) and (b)(2) of this section shall be a net quantity which shall exclude the pounds by which the quantity specified in paragraph (b)(3)(i) of this section exceeds the quantity specified in paragraph (b)(3)(ii) of this section:

(i) The pounds of bulk fluid milk products transferred from the pool distributing plant or pool distributing plant unit during the month that are not to another pool distributing plant or pool distributing plant unit or to a

commercial food processing establishment pursuant to § 1068.40(b)(3).

(ii) 1,000,000 pounds.

(c) * * *

(d) * * *

(1) [Reserved]

(2) [Reserved]

(3) * * *

(4) The volume of bulk fluid milk products shipped from the plant to pool distributing plants as a percent of the total Grade A milk received at the plant from dairy farmers during the month (including milk delivered to the plant from dairy farms for the account of a cooperative association pursuant to § 1068.9(c) and milk diverted from the plant by the plant operator but excluding milk diverted to the plant from another pool plant) is not less than 10 percent for each of the months of January through June and, for each of the months of July through December, is not less than the marketwide Class I utilization percentage for the same month of the preceding year, subject to the following conditions:

(i) These shipping percentages may be decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision of the shipping percentage might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

(ii) * * *

(iii) * * *

(iv) Shipments from a reserve supply plant to a distributing plant regulated under another Federal order may count as if delivered to a pool distributing plant if the market administrator is notified of the amount of any such commitments to ship milk no later than the fifteenth day of the prior month. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to an other order plant may not be classified pursuant to § 1068.42(b)(3).

(5) * * *

(ii) * * *

(B) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Total credit for shipments to plants regulated under other Federal orders shall be limited to the quantity of milk delivered from the plant to pool distributing plants during the month. Qualifying shipments to an other order plant may not be classified pursuant to § 1068.42(b)(3); and

(6) * * *

(7) The quantity of fluid milk products moved from the reserve supply plant to a pool distributing plant or pool distributing plant unit that shall count toward meeting the shipping requirements of paragraphs (d)(4), (d)(5), and (d)(6) of this section shall be a net quantity which shall exclude the pounds by which the quantity specified in paragraph (d)(7)(i) of this section exceeds the quantity specified in paragraph (d)(7)(ii) of this section.

(i) The pounds of bulk fluid milk products transferred from the pool distributing plant or pool distributing plant unit during the month that were not to another pool distributing plant or pool distributing plant unit or to a commercial food processing establishment pursuant to § 1068.40(b)(3).

(ii) 1,000,000 pounds.

* * * * *

3. In § 1068.13, amend paragraph (d) by revising paragraph (d)(2), redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively, and add a new paragraph (d)(4) to read as follows:

§ 1068.13 Producer milk.

* * * * *

(d) * * *

(2) The total quantity of milk diverted by a cooperative association during the month as a percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month shall not exceed the market's combined Class II and III utilization percentage for the same month of the prior year;

* * * * *

(4) The diversion limitations specified in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator on the basis that such revision is necessary to prevent uneconomic handling or shipments of milk. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments. Any request for revision of diversion limitations shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective;

* * * * *

§ 1068.85 [Amended]

4. In § 1068.85, amend the introductory text by changing "3 cents" to "5 cents".

Signed at Washington, DC, on June 25, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-15157 Filed 6-28-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1822, 1930, 1944, and 1965

Congregate Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding congregate housing under its section 515 rural rental housing program. This action is necessary to provide the public and FmHA personnel with expanded and clearer instructions on congregate housing. The intended effect is to make our regulations more responsive and to further the prudent development of congregate housing in rural America.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Eileen Nowlin, Senior Loan Specialist, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1606.

SUPPLEMENTARY INFORMATION:

Classification

This final rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities.

Background/Discussion

Congregate housing is a unique form of Multiple Family Housing. It should not be confused with or be considered an expansion of an elderly housing project. Congregate housing consists of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Although current FmHA regulations contain instructions on making congregate housing loans, additional and more concise guidance is essential to improve program delivery and to aid in the development of successful congregate housing. The major highlights of the revisions include:

Subpart E of Part 1944.

Arranges all instructions pertaining to congregate housing in specific areas. Differentiates between congregate housing and group homes.

Adds the definitions of "Elderly" and "Elderly family" which were inadvertently removed in the last revision to this subpart. The definitions were taken from subpart C of part 1930.

Provides additional design criteria for congregate housing and group homes.

Describes support services necessary for congregate housing and group homes; lists specific information that must be provided to FmHA on each service component.

Provides that developers without actual experience or training in the development and management of congregate housing consult with persons or entities experienced with same.

Expands the information required in market studies for congregate housing.

Contains Exhibit E which provides further guidance to applicants on the type of information needed at the preapplication stage.

Exhibit J of subpart C of part 1930 is added and:

Details the management requirements of congregate housing and group homes.

Provides that developers without actual experience or training in the development and management of congregate housing consult with persons or entities experienced with same.

Provides further guidance on eligible tenants. Distinguishes between tenants who need the services to remain independent and tenants who do not need, but desire services to remain independent.

Stipulates that tenants who need services to remain independent may meet tenant eligibility requirements contained in FmHA Instruction 1930-C by taking services provided by the project.

Permits borrowers to maintain separate waiting lists for tenants who need services to remain independent and those who do not need, but desire services to remain independent.

Discussion of Comments

A proposed rule was published in the Federal Register (54 FR 29901) dated July 17, 1989, and invited comments for 60 days ending September 15, 1989. Fifteen comments were received during the comment period and three were received late. All comments were considered. Comments were received from different developers, legal service organizations, trade associations, nonprofit organizations, FmHA employees and other individuals.

The comments are summarized as follows:

1. *Comments Regarding Congregate Housing Tenants.*

Exhibit J of 1930-C, V A. One respondent stated that requiring tenants who need services to remain independent to use them as a condition of occupancy may be construed as requiring mandatory services. *Response:* Tenants who need services to remain independent generally will not be able to meet the requirements of paragraph VI B1(i) of exhibit B of subpart C of part 1930 unless they use the service(s) provided by the congregate housing project. However, the Agency does not believe that mandatory services should be required; therefore, the section has been modified to stress that tenants must meet eligibility requirements contained in exhibit B of subpart C of part 1930.

Exhibit J of 1930-C, V B. One respondent stated that tenants with the most critical need for services should be given priority for available units. *Response:* The Agency has made a provision for borrowers to maintain a separate waiting list for tenants who need services to remain independent and those who do not. However, prospective tenants must be selected on a first-come first-served basis according to the chronological order of each categorized waiting list. The Agency believes that this is a less subjective way of selecting tenants. One respondent felt that the statement in this section which states, "Most tenants living in congregate housing will be independent * * *." is inconsistent with the statement in § 1944.224(a)(1) of subpart E of part 1944 which states, "Fully independent tenants who do not want to participate in the services should be encouraged to explore the availability of housing offered by noncongregate elderly projects." *Response:* The Agency has reviewed these sections and has modified the language in § 1944.224(a)(1) of subpart E of part 1944 accordingly.

Exhibit J of 1930-C, V B 1 a. One respondent stated that there should be no differentiation made between those who need services and those who elect to take them. *Response:* The Agency believes that there should be an established need for congregate housing projects; therefore, no change is made to this provision. Eight respondents commented on the suggestion that 15 to 30 percent of the tenants of the project should need services to remain independent. Most recommended dropping the established mix, while some suggested increasing the percentage. *Response:* The Agency believes that project management should establish a goal concerning the number of people who need services; however, the section has been modified to delete a specific goal.

Exhibit J of 1930-C, V B 1 b. One respondent emphasized that the assessment should take into consideration tenants who are eligible for medicaid funding for services. The respondent stated that these programs often require that an assessment indicate that tenants would need intermediate care if the services were not provided. *Response:* The Agency has reviewed this section and believes that the existing language will not prohibit tenants from using services funded by medicaid. Therefore, no change to the section is being made. One respondent stated that the language in this section indicates that project management is not included initially in tenant selection since the committee would make recommendations and present them to management for concurrence. Another

respondent said that the Agency should give further clarification concerning the members of the committee. *Response:* The Agency has reviewed this section and has modified the language to state that project management should be included initially in the tenant selection process. The Agency has also given other examples of appropriate committee members. One respondent suggested that the requirement for using a selection committee be dropped. *Response:* The Agency believes that tenants' needs for services must be evaluated to ensure that tenants who are suitable for congregate housing are selected. Therefore, the requirement remains. One respondent stated that the term "selection committee" be changed to "professional assessment committee" since other congregate programs use this language. *Response:* The Agency agrees and has changed the terminology to reflect the suggestion. Two respondents stated that when project managment determines that a tenant can no longer remain independent, the tenant should have appeal rights. *Response:* The Agency agrees but believes that this unfavorable action is addressed by FmHA Instruction 1944–L. Therefore, no change is made.

Exhibit J of 1930–C, VI. One respondent stated that borrowers should be required to reassess tenants' ability to remain independent and document their findings. *Response:* The Agency agrees and has modified the section to require reassessment when a new tenant certification is prepared.

Exhibit J of 1930–C, VII B. One respondent stated that the last sentence of the agreement concerning a tenant's inability to pay for services may be discriminatory against very low-income tenants. The Agency has reviewed the agreement and has deleted the last sentence.

2. *Comments Regarding Services Provided to Others than Tenants of FmHA Financed Congregate Housing.*

Exhibit J of 1930–C, VII. One respondent stated that entities that provide meals to others should also pay a pro rata share of the owners return. One respondent stated that no lease payment should be required if the meals are provided by a local agency on aging or other nonprofit group. Two respondents suggested that nonprofit meal suppliers should be charged only a nominal lease payment since tenants of the project will also benefit from low cost meals. *Response:* The Agency agrees that only a nominal lease payment should be charged when the meals are provided by a nonprofit group; however, the payment should be enough to cover the pro rata share of operating expense, debt service and reserve accounts. The Agency's experience is that nonprofit groups who currently provide meals in this situation pay a very nominal amount for use of the kitchen and dining facilities. Therefore, no change to this requirement is made. One respondent stated that allowing congregate housing tenants to have priority in receiving services in this situation would not be enforceable and may jeopardize the meal provider's funding. *Response:* The meal provider must enter into a service agreement with the owner of the project that guarantees the service for tenants of the project. The Agency believes that the meal provider's first responsibility should be to the tenants of the project; therefore, no change is made to this section.

3. *General Comments Concerning Exhibit J of 1930–C.*

Exhibit J of 1930–C, II. One respondent suggested that the definition of congregate housing be changed to say that services are "available" at the project rather than the project must "provide" the service. *Response:* The Agency believes that congregate housing projects should be responsible for providing services to tenants. Third party service providers may be used; however, the congregate project should be responsible for seeing that services are provided to tenants. No change is made.

Exhibit J of 1930–C, IV A. Two respondents agreed with the requirement that borrowers who are not experienced with congregate housing and group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. *Response:* The Agency appreciates these comments and strongly concurs; the requirement has been maintained in this paragraph.

Exhibit J of 1930–C, IV B. One respondent agreed that servicing plans must specifically address the services that will be provided to congregate tenants. *Response:* The Agency appreciates the comment and has maintained the requirement in this paragraph.

Exhibit J of 1930–C, IV C. One respondent said that the profit on services should be capped. *Response:* The Agency believes that borrowers will have to provide services at a reasonable cost to assure affordability by very low- and low-income tenants. The Agency feels that any profit made would be modest and does not believe that a cap should be placed on profit from services. One respondent stated that borrowers should have firm service contracts with established providers and stated that local agencies on aging may not be dependable over the course of time. *Response:* The Agency's experience with local areas on aging has shown that they are dependable service providers over time. Their funding may change yearly; however, their resources generally have been adequate to meet established needs. The proposed regulation states that applicants must document the availability of alternate service providers; therefore, we believe local agencies should be considered as feasible providers if they are active in the community where the housing is proposed. One respondent stated that borrowers who provide services should be required to submit a service agreement specifying the services they will provide, the cost of the services and their commitment to provide the services for at least 1 year after the project becomes operational. *Response:* Borrowers who will provide services must submit a service plan which details how the services will be provided. These plans must evidence the feasibility of the service being provided for a period that would generally exceed the length of a service agreement. Therefore, the Agency does not believe it is necessary for a borrower who provides services to enter into a service agreement with the project; therefore, no change is made.

Exhibit J of 1930–C, V B 1 c. One respondent supported separate waiting lists but said there should be an easy way to move someone who initially does not need services to the other list if the person's condition changes. *Response:* The Agency has reviewed this section and believes that the existing language would allow for such situations. Therefore, no change has been made to the section. One respondent stated that the provision for allowing separate waiting lists for tenants who need services and those who are fully independent should be dropped. *Response:* The Agency believes that two group of tenants will be served by congregate housing: Those who need services to remain independent and those who are fully independent. In order to maintain a balanced project, the Agency believes that separate waiting lists are appropriate. Therefore, no change is made.

Exhibit J of 1930–C, V B 2 a. Three respondents stated that there should be no restriction on group home borrowers requiring tenants to participate in training or rehabilitation programs sponsored by them. *Response:* The Agency agrees that there are many benefits to a tenant being enrolled in such a program. However, there are some tenants who may be employed by another source and still meet the requirements of tenancy. Several group homes financed by FmHA have tenants who belong to borrower sponsored rehabilitation programs while other tenants are employed by outside sources. The Agency believes that tenants who are evaluated to be eligible tenants in a group homes should have access to the housing even though they may be employed by an outside source. Therefore, no change is made to the section.

Exhibit J of 1930–C, V B 2 b. One respondent stated that "out-of-state" should be added to the section to verify that people in this category can be considered for tenancy. *Response:* The Agency agrees and has added the language.

Exhibit J of 1930–C, VII A. Two respondents stated that the lease clause should also apply to group homes. *Response:* The Agency agrees and has modified the section to include group homes. One respondent stated that a provision should be included allowing for increased service cost if the cost of contracted services rises during the lease period. *Response:* The Agency believes that service providers should plan their costs well enough in advance so that cost increases can be passed on to tenants during annual lease renewals. Therefore, no change is made.

Exhibit J of 1930–C, VIII. One respondent stated that rent and service payments should be made separately. *Response:* The Agency has reviewed this section and believes that the payments can be made separately or combined. However, the Agency maintains its position that borrowers must account for the payments separately.

Exhibit J of 1930–C, X. One respondent stated that FmHA should not impose overly rigid accounting requirements. *Response:* The Agency realizes that some costs could appropriately be reflected on either the operation and maintenance budget or the service budget. The Agency believes that the current language in the section will allow borrowers to justify where such costs should be accounted for; therefore, no change is made to the section.

4. *Comments Regarding Design Criteria* [These comments refer to § 1944.224(2)].

One respondent said that the Agency should encourage single structure buildings so that tenants will not have to go outside to reach common areas. *Response:* The Agency agrees that routes between living units and service areas must be carefully considered and designed. The FmHA Design Guide, which is referenced in paragraph (ii) of this section, will be modified to recommend that these routes be located in interior corridors or enclosed all-weather walkways. The general requirement that these routes be safe, comfortable and minimal in length will remain unchanged.

One respondent suggested that a preliminary design conference to include a representative of FmHA, the developer, project management, the service provider and project architect, be held prior to the Agency issuing an AD 622. *Response:* We agree that such a conference is a prudent business practice that benefits all parties involved and is often encouraged by our field office managers. However, the Agency believes that it would be inappropriate to require or regulate this practice; therefore, no change is made.

Section 1944.224(a)(2)(i). Three respondents felt that we should change the requirement that sites be located as close to services as possible. One felt that the cost of such sites would be prohibitive; one said that locating projects in truly residential areas is more important; and two said that the Agency should put more emphasis on the time it takes to get to services. *Response:* Although it is desirable to have services within walking distance of congregate projects, the Agency realizes that cost is a factor in many cases and that locating projects in established residential areas is important. FmHA also agrees that more emphasis should be given to the time it takes to get to services since adequate transportation must be provided to tenants of a congregate project. The Agency has, therefore, modified the language concerning site selection to reflect these views.

Section 1944.224(a)(2)(iii). One respondent said that handrails should be required on both sides of a common area hall. *Response:* The Agency realizes that handrails on both sides of a corridor would maximize assistance to residents; however, they would also create more of an institutional character to the interior spaces, which we are trying to avoid or minimize. The Agency believes that handrails on one side of public corridors provide reasonable assistance for the number of anticipated users; therefore, no change is made.

5. *Comments Regarding Support Services.*

Section 1944.224(a)(4). One respondent stated that all services should be mandatory for all congregate housing tenants. One respondent stated that tenants should be made to take at least one meal daily. *Response:* The Agency believes that tenants who do not require services to remain independent should be given a choice concerning whether or not to use services. Borrowers should market congregate housing to show the desirability of using services. No change is made to this section.

Section 1944.224(a)(4). One respondent stated that the language was not consistent concerning services that "should" be provided and services that "must" be provided. *Response:* The Agency has modified language in this section to reflect that certain services must be made available to tenants of FmHA financed congregate projects.

Section 1944.224(a)(5)(i). One respondent said that meals should be "available" to tenants of a congregate project, not "provided" by the project. *Response:* The Agency believes that support services should be provided by congregate projects; therefore, no change will be made.

Section 1944.224(a)(5)(i)(B). One respondent stated that this section seems to allow congregate borrowers to deny occupancy to tenants who do not elect to participate in the meal service. *Response:* The Agency agrees that the language could be misinterpreted and has modified the section. Two respondents feel that priority should be given to tenants who elect to use the meal service. *Response:* The Agency has no basis for allowing priority for those who choose to take meals provided by the project. However, the Agency does make a distinction between those who need services to remain independent and those who elect to use them; priority may be given to those who need services according to provisions in the regulation. One respondent said that the regulations should clearly state that borrowers have the option of being the meal provider. *Response:* The Agency has reviewed the section and believes that there is no confusion concerning a borrower's option to provide services. Therefore, no change is made.

Section 1944.224(a)(5)(iii). One respondent stated that housekeeping should be "available" to congregate housing tenants, not "provided." *Response:* The Agency believes that congregate projects should be responsible for providing services to tenants. Borrowers may engage a third party provider, but it is the borrowers' responsibility to ensure that services will be provided to tenants. Therefore, no change is made.

Section 1944.224(a)(5)(iv). One respondent said that personal services should not be required in FmHA

financed congregate housing. *Response:* The Agency believes that some congregate housing tenants may need nonmedical personal services in order to remain independent. Therefore, this requirement is not changed.

Section 1944.224(a)(5). One respondent stated that congregate housing applicants should provide a list of potential alternate service providers without regard to the likelihood of their availability to provide services. *Response:* The Agency believes that applicants must document the availability of alternate service providers and their ability and willingness to provide services for tenants of the project. Therefore, no change is made. One respondent stated that outside service providers should not be relied on except in small projects. *Response:* The Agency feels that each congregate proposal should be judged on its own merits and does not want to prohibit outside providers if they are feasible. Therefore, no change is made.

Section 1944.224(a)(6). One respondent stated that a letter of commitment from each service provider is unreasonable at the preapplication stage if the provider depends upon funds that are allocated annually. *Response:* The Agency agrees that the letter of commitment can be made based on the availability of funding and has changed the section. The section will also stress the importance of alternate service providers in such cases.

6. *Comments Regarding Services Provided to People Who Are Not Tenants of FmHA Financed Congregate Housing.* (This refers to § 1944.224(a)(7)). Two respondents stated that, if a nonprofit organization is providing meals and the project has been designated as a meal site to serve other elderly residents of the community, FmHA should not require any payment from the organization. *Response:* The Agency believes that tenants should not have to pay for the extra costs involved with a designated meal site, even though these costs generally are nominal. Therefore, no change is made to this requirement.

7. *Comments Regarding Group Home Tenants.*

Section 1944.224(b). Two respondents stated that many tenants of group homes, especially those designated for the developmentally disabled or mentally impaired, need some supervision at all times. They suggested that the Agency drop the prohibition against "constant supervision" in this section. *Response:* The Agency agrees and has modified the section in accordance with the suggestion.

Section 1944.224(b)(2). Two respondents stated that shelter cost should be kept separate from service cost in group homes. *Response:* The Agency agrees and has deleted the section.

8. *Comments Regarding Market Studies for Congregate Housing and Group Homes.*

Section 1944.224(c). Three respondents suggested that market studies should establish the demand for congregate housing by people over 70 and address the growth trends for the elderly over 85. *Response:* The Agency agrees and has incorporated this into the section. Two respondents stated that more specific income information should be included in market studies. One respondent suggested that the local social security office be contacted for income information that is specific to the age group that would be eligible for congregate housing. *Response:* The Agency agrees and has incorporated this into the section. One respondent stated that market studies should include information on local services available, local needs for services and the ability of service providers to meet the needs in the community proposed. *Response:* The Agency agrees and has modified the section to include this requirement.

Section 1944.224(c)(1). Six respondents said that the Agency should drop the requirement for mail-out surveys to demonstrate the need for congregate housing. *Response:* The Agency never intended that this be a requirement; it was an option that applicants could consider if adequate information on the elderly population was not available from another source. The Agency has reviewed this section and modified the language to reinforce that a mail-out survey can be conducted at the option of the applicant.

9. *General Comments of Section 1944.224 of Subpart E of Part 1944.*

Three respondents stated that separate funding for congregate proposals should be maintained in FmHA's National Office. One respondent said that no funding priority should be given for congregate proposals. *Response:* Funding allocations are provided to FmHA field offices on an annual basis. Subpart L of part 1940 is the vehicle used for allocating funds to field offices; therefore, any special consideration for funding would be expounded in that regulation. That regulation currently makes no provision for a special allocation of funds for congregate housing projects.

Two respondents stated that the regulation should give guidance concerning the items that can appropriately be financed with FmHA loan funds. *Response:* The Agency agrees and has added a section which further describes eligible loan items.

Two respondents stated that applicants who are inexperienced with congregate housing should be required to contract with an experienced consultant to prepare the proposal. *Response:* The Agency does not believe it is appropriate to mandate applicants to obtain a consultant since the cost of a consultant would not be an eligible loan item. We believe that a prudent applicant who has little or no experience with congregate housing will see the value of engaging such a person to enhance the viability of the proposal. Therefore, no change is made.

One respondent stated that "strongly recommending" a consultant in preparing a preapplication conflicts with § 1944.224(a)(3) of subpart E of part 1944 which "requires" applicants to seek assistance from organizations or individuals experienced with congregate issues in developing the management and servicing plans. *Response:* The Agency believes that applicants can consult with experienced people on congregate management issues at a reasonable expense and that obtaining this specific information will greatly enhance the success of the project. Therefore, no change is made to this requirement.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415—Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, programs 10.415—Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Public Law 91-90, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

List of Subjects

7 CFR Part 1822

Aged, Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart F—Rural Cooperative Housing Loans

2. Section 1822.232 is amended by revising paragraphs (h) and (i) to read as follows:

§ 1822.232 Definitions.

* * * * *

(h) References in subpart E of part 1944 of this chapter to "rental housing," "rental basis," "tenant," "rents, " and "organization" mean "cooperative housing," "cooperative basis," "occupant," "occupancy charges," and "cooperative."

(i) Definitions in § 1944.205 of subpart E of part 1944, as appropriate, will apply.

§ 1822.233 [Amended]

3. In § 1822.233, paragraph (a)(1) is amended by changing the reference from "§ 1944.205(f)" to "§ 1944.205".

PART 1930—GENERAL

4. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

5-6. Section 1930.134 is revised to read as follows:

§ 1930.134 FmHA records.

FmHA officials will maintain records in accordance with subparts A and G of part 2033 (available in any FmHA office).

7. Section 1930.141 is amended by revising paragraph (a) and (d), redesignating paragraphs (f) through (i) as paragraphs (g) through (j), and adding a new paragraph (f) to read as follows:

§ 1930.141 Materials to be provided borrower/applicant.

* * * * *

(a) Exhibits B and B-1 through B-9 of this subpart, when applicable.

* * * * *

(d) Exhibit E of this subpart.

* * * * *

(f) Exhibits J, J-1 and J-2 of this subpart, when applicable.

* * * * *

8. Exhibit B to subpart C, paragraph II is amended by redesignating subparagraphs LL through PP as OO through SS, and subparagraphs N through KK as O through LL, adding new paragraphs N, MM, and NN, and revising paragraph G to read as follows:

Exhibit B to Subpart C, Part 1930—Multiple Housing Management Handbook

* * * * *

II. Definitions

* * * * *

G. *Congregate housing.* Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

* * * * *

N. *Group home.* Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can be a multi-unit structure.

* * * * *

MM. *Service agreement.* A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

NN. *Service plan.* A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

* * * * *

Exhibit B to Subpart C [Amended]

9. Paragraph VI B1 is amended by removing subparagraphs j and l, and redesignating subparagraphs k through o as subparagraphs j through m respectively.

Exhibit B to Subpart C [Amended]

10. Paragraph VI C3 is amended by revising subparagraph (f) to read as follows:

VI. Renting Procedure

* * * * *

(C) * * *

(3) * * *

(f) In congregate housing projects, priority can be given to tenants who need services to remain independent in accordance with exhibit J of this subpart.

* * * * *

Exhibit B to Subpart C [Amended]

11. Paragraph VIII B is amended by removing subparagraph 7.

12. Exhibit J is added to read as follows:

Exhibit J of Subpart C—Management of Congregate Housing and Group Homes

I. Purpose

This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

II. Definitions

Congregate housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

Group home. Housing that is occupied by elderly, handicapped or disabled tenants

sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can also be a multi-unit structure.

Service agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

III. Rent Subsidy Opportunities

Congregate housing and group homes are subject to the provisions of paragraph IV of exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

IV. Management operations

Borrowers must comply with paragraph V of exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains services will be provided.

A. *Borrowers experience.* Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management questionnaire in either exhibit B-4 or B-5 of this subpart. Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B. *Service plans.* Congregate housing/group home borrowers must submit a service plan as defined in paragraph II of this exhibit. See exhibit E of subpart E of part 1944 for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

C. *Service agreements.* Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided. The service agreement will be an addendum to the management agreement when appropriate, or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least one year.

V. Renting Procedure

In addition to meeting the conditions of paragraph VI of exhibit B of this subpart, borrowers must meet the following conditions.

A. *Eligible tenants.* 1. Tenants must meet the general provisions of paragraph VI B of exhibit B of this subpart and be eligible to occupy elderly housing as defined in paragraph VI B 1 i of exhibit B of this subpart. Borrowers must be careful to ensure that all tenants, especially those who need the services to remain independent, can live independently in the project with the scope of services offered.

2. Tenants who need the services to remain independent may have a physical limitation that would make them ineligible tenants in a typical elderly RRH project. Tenants who need services to remain independent may meet the tenant eligibility requirements contained in paragraph VI B 1 i of exhibit B of this subpart by taking the services provided by the project.

B. *Tenant selection.* Borrowers must meet the provisions of paragraph VI F of exhibit B of this subpart. In congregate housing and group homes, a further critical dimension is added for the selection and placement of tenants. This involves determining the ability of a tenant to sustain independence with the support services provided. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1. *Congregate housing—a. Tenant mix.* Most tenants living in congregate housing will be people who can live independently and will be able to extend their independence by using services available from the project.

Some tenants may need services to enable them to remain independent. Borrowers must establish a written plan for ensuring an appropriate mix of tenants. If feasible, project management should be consulted when establishing the tenant mix. The plan should establish a maximum percentage of tenants who need services to remain independent. As existing tenants age, the percentage may increase. FmHA must concur with the proposed plan.

b. *Determining ability to be independent.* (1) An evaluation of the ability of tenants to sustain independence with the support services provided by the project must be made. This evaluation must be made by a qualified professional assessment committee, which includes project management, a professional medical member, and others deemed appropriate by project management (i.e., social service caseworkers, representatives of elderly advocacy groups, clergymen, etc.). The assessments should be presented to project management for concurrence. A tenant's likelihood of sustaining independence as a result of living in congregate housing should be verified by one of the following methods:

(i) Certification by a physician or an agency responsible for support services as to a person's ability to remain independent with assistance from services.

(ii) By the use of any objective guide, such as exhibits J-1 and J-2 of this subpart.

(2) When a determination is made concerning a tenant's need for services, he/she will be notified and placed on an appropriate waiting list and the tenant file and/or lease will be documented accordingly.

c. *Waiting lists.* To sustain a balanced mix of tenants, management may maintain a separate waiting list for fully independent tenants and tenants who need services to remain independent. Management may choose tenants in order to assure a balanced project in accordance with paragraph V B 1(a) of this exhibit. Selection of new tenants should be based on the predetermined tenant mix ratio. If necessary to maintain a balanced project, fully independent tenants may be chosen over tenants who need services or vice versa. The other provisions contained in paragraph VI F of exhibit B of this subpart concerning waiting lists are applicable.

2. *Group home.* A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled, or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes:

a. Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

b. Tenants should be selected from the local area before considering other areas.

c. *Determining per unit rental rates for group living arrangements.* A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom or a portion of a bedroom. Rents are determined as follows:

1. When all units are of equal size, divide operational costs equally.

2. When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a. The size of traditional units is their square footage.

b. The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3. A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VI. Verification and Certification of Tenant Income, Ability to Live Independently and/or Employment

The provisions of paragraph VII of exhibit B of this subpart apply. In addition to recertifying income, management must reassess the ability of each tenant to remain independent with the services provided by the project. Informal reassessment should be an ongoing process; however, a formal reassessment that uses the same criteria as the initial assessment must be done when a recertification of tenant income is prepared.

VII. Lease Agreements

In addition to the conditions contained in paragraph VIII of exhibit B of this subpart, the following should be addressed:

A. *Tenants who need services to remain independent.* If a tenant needs services to remain independent, the lease must contain the following clause:

"I agree that I need the following services in order for me to live independently in this congregate housing/group home project. (List necessary services.) I understand that I must pay a monthly charge of $____ for the services and that this payment will be in addition to my monthly rent payment."

B. *Inability to remain independent.* The following clause should be included in all leases for all congregate housing/group home tenants:

"I understand that management will periodically reassess my ability to live independently, applying the same criteria that was used to determine my initial eligibility for residency. If management determines that I can no longer live independently without services, I understand that choosing not to use them could render me an ineligible tenant in the project. If management determines that I have become physically or mentally unable to live independently in the project even with the services provided, I will voluntarily move from this congregate housing/group home project."

c. *Services provided to other than tenants of FmHA financed congregate housing.* If the meal facility serves others than the tenants of the project, the applicant must obtain a lease from the services provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following condition must be met:

1. The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement:

"This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative."

VIII. Rent Collection

The provisions of paragraph IX of exhibit B of this subpart will apply for the services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and services must be accounted for separately.

IX. Borrower Project Budgets

Borrowers must separate the revenue and expenses of project operations from the service component. Forms FmHA 1930-6, "Monthly Report," 1930-7, "Statement of Budget and Cash Flow," and 1930-8, "Year End Report and Analysis for Fiscal Year Ending ____" must reflect project operations only.

X. Accounting and Reporting Requirements and Financial Management Analysis

Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project cannot be used to supplement the cost of services. Detailed financial reports on the service component will not be required unless specifically requested by FmHA, but the project audit or verification of accounts must allocate revenue and expense between project operations and the service component.

XI. Termination of Tenancy and Eviction

To ensure that congregate housing remains residential and noninstitutional in nature, borrowers must explain clearly to applicants that:

A. When tenants can no longer remain independent without using the services, they may meet the tenant eligibility requirements contained in paragraph VI B 1 i of exhibit B of this subpart by taking the services provided by the project.

B. As a condition of occupancy, tenants must agree to vacate the project when they can no longer remain independent even though they are assisted with services.

PART 1944—HOUSING

13. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

14. Section 1944.205 is amended by revising the definitions of "Congregate housing," "Elderly," "Elderly family," "Handicap," and "Limited profit basis," revising and retitling the definition of "Group living" to "Group home," and adding alphabetically the definitions of "Service agreement" and "Service plan" to read as follows:

§ 1944.205 Definitions.

* * * * *

Congregate housing. Residential housing consisting of private apartments and central dining facilities in which services are provided to tenants to enable them to remain independent. Tenants must not require the supervision or additional services provided by an intermediate health care facility.

* * * * *

Elderly (Senior Citizen). A person who is at least 62 years old. The term elderly (senior citizen) also means persons with handicaps or disabilities, regardless of age as defined herein.

(a) Disabled person with disability. A person who is considered disabled if the person meets the criteria of either of the following:

(1) The person has an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which:

(i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death,

(ii) Substantially impedes the ability to live independently,

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(2) In the case of a blind person who is at least 55 years old (within the meaning of blindness as determined in section 223 of The Social Security Act), is unable, because of the blindness, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

Note: Receipt of veteran's benefits for disability, whether service oriented or otherwise, does not automatically establish disability.

(b) The person has a developmental disability; a severe, chronic disability which:

(1) Is attributable to a mental or physical impairment or combination of mental or physical impairment;

(2) Was manifested before age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care

(ii) Receptive and expressive language

(iii) Learning

(iv) Mobility

(v) Self-direction

(vi) Capacity for independent living

(vii) Economic self-sufficiency

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

(c) Handicapped person is a person with a physical or mental impairment that:

(1) Is expected to be a long-continued and indefinite duration;

(2) Substantially impedes the person's ability to live independently and could be improved by more suitable housing conditions;

(3) Is of such a nature that the person's ability to live independently

could be improved by more suitable housing conditions.

(d) The term handicapped (or handicap) further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special senses organs; respiratory; including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addition (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(e) Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(f) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(g) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has one of the impairments defined in paragraph (d)(1) and (d)(2) of this definition but is treated by another person as having such an impairment.

Elderly family. A household where the tenant or co-tenant is at least 62 years old or is disabled or handicapped as defined in this section. An elderly family may include a person(s) younger than 62 years of age who is essential to the care of the disabled and/or handicapped person's care and well being. (To receive an elderly family deduction, the elderly, disabled or handicapped person must be the tenant or co-tenant.)

• • • • • •

Group home. Housing that is occupied by elderly, handicapped or disabled tenants sharing living space within a rental unit in which a resident assistant may be required. A group home is generally designed as a single household dwelling but can be a multi-unit structure.

• • • • • •

Handicap. (See definition of "Elderly.")

• • • • • •

Limited profit basis. An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in § 1944.215 of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

• • • • • •

Service agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service and length of time the service will be provided.

Service plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

• • • • • •

§ 1944.212 [Amended]

15. Section 1944.212(e)(3) is amended by removing all but the first two sentences, including subparagraphs (i), (ii), and (iii).

§ 1944.213 [Amended]

16. Section 1944.213 is amended by removing paragraph (b)(5), and redesignating paragraphs (b)(6) through (b)(12) as paragraphs (b)(5) through (b)(11) respectively.

17. Section 1944.215 is amended by removing paragraph (c), redesignating paragraphs (d) through (u) as paragraphs (c) through (t) respectively, and amending redesignated paragraph (h) by removing paragraphs (h) (1) and (2), and revising paragraph (b)(2) to read as follows:

§ 1944.215 Special conditions.

• • • • • •

(b) • • •

(2) Consist of mulit-unit type housing with two or more units and appropriate related facilities except for the conversion of section 502 inventory housing as covered in § 1944.212(o) of this subpart, manufactured homes and group homes.

• • • • • •

18. Section 1944.222 is amended by revising paragraph (d) to read as follows:

§ 1944.222 Technical, legal and other services.

• • • • • •

(d) *Compliance with Federal, state and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy).

• • • • • •

19. Section 1944.224 is added to read as follows:

§ 1944.224 Supplemental requirements for congregate housing and group homes.

This section includes additional provisions that apply to the making of loans for congregate housing and group homes. It will apply in addition to all other applicable requirements contained elsewhere in this subpart. Congregate housing and group homes are types of section 515 RRH that require a broader commitment from applicants to ensure that needed and desired services will be provided to prospective tenants. The concept may not be desired or feasible in all market areas. Congregate housing is unique and has many components. It is not merely an elderly housing project with services. It must be designed and managed to meet the needs of aging tenants. The management of congregate housing requires supervision of support services and more interaction and oversight of tenants. We strongly recommend that applicants who have not dealt with this type of housing obtain assistance from organizations or individuals who have experience in

planning and designing congregate housing.

(a) *Congregate housing.* Congregate housing will create an environment that will enable fully independent individuals to maintain their independence longer by making available nutritious meals and other services that can enhance their independence. Congregate housing will also help people who need some services to extend an independent lifestyle.

(1) *Eligible tenants.* Eligible tenants are described in § 1944.205 of this subpart and paragraph V A of exhibit J of subpart C of part 1930 of this chapter. Tenants who need the services to remain independent may meet the tenant eligibility requirements contained in paragraph VI B 1 i of exhibit B of subpart C of part 1930 of this chapter by taking the services provided by the project. Fully independent tenants who do not want to participate in the services may be more suitable for noncongregate elderly projects.

(2) *Design criteria.* Applicants must pay particular attention to the layout of the structure and the effect of design elements on project management and ongoing operations. Applicants should engage the services of an architect experienced in congregate design. The initial planning of congregate housing should include input on design considerations from project management to prevent the potential long-term affects of poorly conceived design on operations. Congregate housing must be planned and developed in accordance with subparts A and C of part 1924 of this chapter. In addition, it must meet the following design criteria:

(i) Applicants must pay particular attention to the site requirements contained in § 1944.215(o) of this subpart. Congregate housing should be located as close to services and shopping as possible, considering the availability of affordable residential sites. The time it takes to reach services is also important especially when considering potential medical emergencies.

(ii) Facilities needed to accommodate the services described in § 1944.224 (a)(5) of this subpart must be designed in accordance with acceptable practices. Specific design guidelines are provided in chapter 1 of Guide 2 of subpart A of part 1924 of this chapter. These facilities may be larger than necessary to meet the tenants' requirements if they are needed in the community and other sources of funds are available to pay a pro rata share of the cost.

(iii) The decreasing physical and mental capabilities of the tenants must be considered in the design. The walkways and corridors between living units and the support service facilities must be safe, comfortable and minimal in length. Handrails that comply with the Uniform Federal Accessibility Standards must be provided on at least one side of all public corridors.

(iv) Areas used by the tenants will be separated as much as possible from areas needed for delivery of food and supplies and other building services. Interior spaces and finish materials must be residential in character and designed to help prevent tenants from becoming disoriented within the building(s).

(v) Emergency lighting must be provided in every public space, corridor, stairway, elevator and other means of egress.

(vi) The entrances to all living units must be on a route accessible to the physically handicapped. Living units accessible only via exterior steps or interior stairs will not be acceptable.

(vii) The size of rooms and spaces in the living units must be comparable to units provided in other housing for the elderly. Kitchen facilities must be provided in all living units and include, as a minimum, a cooktop, oven, sink, refrigerator and a food preparation surface.

(viii) The bathroom and one bedroom in each living unit, and any public toilet rooms, must be furnished with an emergency call system that is appropriate for the size and management of the housing facility.

(3) *Limitation on use of loan funds.* Loan funds cannot be used for:

(i) Items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, etc. Congregate housing projects require additional items that will not become affixed to the real estate. Developers are responsible for ensuring that these items are made available to the project. The initial operating capital can be used for these items in accordance with § 1944.211(a)(6)(ii) of this subpart.

(ii) Specialized equipment for training and therapy.

(iii) Operating capital for a central dining facility.

(4) *Management of congregate projects.* Applicants must meet the provisions of exhibit J of subpart C of part 1930 of this chapter in managing congregate housing. In addition to the elements of managing a typical rural rental housing project, congregate housing requires increased management experience and skills. Delivery of services, oversight of tenants and the decisionmaking process of tenant selection add a unique dimension to prudent management. The success or failure of a project will rely heavily upon management effectiveness and delivery of services. Applicants who are not experienced with congregate housing must seek assistance from organizations or individuals experienced with congregate issues in developing the management and servicing plans. A separate plan detailing the delivery of services must be submitted with the preapplication. If the applicant will be the service provider, it must also submit separate budgets for operation and maintenance of the project and services.

(5) *Support services.* Exhibit E of this subpart must be addressed in planning services. Adequate services must be offered to extend the independence of tenants and be reasonably priced to ensure affordability by very low- and low-income tenants. A wide variety of services may be offered; however, the following services must be provided:

(i) *Meals.* Since some tenants will depend on the meal service as their only sustenance, at least one cooked meal a day, 7 days a week, must be provided. There may be cases where the meal provider does not furnish meals on a daily basis. On days the meal provider does not furnish meals, an alternate source must provide meals to tenants who are not inclined to prepare their own meals. The following conditions apply to meals:

(A) To ensure that the meals are wholesome and meet the needs of individual tenants, a professionally trained dietitian or nutritionist must be involved in planning the menus.

(B) The feasibility of sustained meal service may be dependent on the number of people who elect to use it. Congregate housing borrowers should actively solicit tenant participation in the meal service if the economic feasibility of the service depends on user charges.

(C) If the entity that operates the service is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA), the entity must be authorized by FNS to accept food stamps from tenants for the purchase of meals.

(ii) *Transportation.* Transportation must be provided to the project on a fixed schedule based on tenant needs. Applicants are encouraged to work with public and private transportation sources to develop a dependable and economical method for providing this service. If these sources cannot provide adequate transportation, the applicant

must develop a project-sponsored transportation system.

(iii) *Housekeeping.* Housekeeping services must be provided to tenants who require assistance in keeping their units clean. Light housekeeping tasks, such as dusting, vacuuming, floor washing, bathroom cleaning and laundry for bedding, generally should be provided on a weekly basis. Heavier tasks, such as oven cleaning, window cleaning and drapery cleaning, should be provided periodically.

(iv) *Personal services.* Limited nonmedical personal services must be made available to tenants who need them to remain independent. Personal services can include such items as assistance with personal hygiene, nutrition counseling and general health screening. They do not include recurring medical assistance such as dispensing medication or constant medical supervision. Space may be included in the project for a small beauty shop and health screening area. Applicants may want to consider contracting for personal services to assure their continued and dependable availability to tenants.

(v) *Recreation/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. Areas such as hobby and craft classes, special dinners and wellness exercise classes could be considered.

(6) *Service providers.* Service must be provided at a cost that can be afforded by very low-, low- and moderate-income tenants. Applicants should explore as many service providers as possible to ensure services at the most reasonable cost. Applicants must research alternative service providers since the original provider may be unable to furnish service in the future. If feasible, project management should be consulted concerning alternative service providers since they may have experience with available sources in the area. Documentation concerning alternative services must be submitted as part of the preapplication. Alternative sources must be documented even if the applicant plans to use onsite personnel for services. The availability of services from alternative sources can enhance a proposal's feasibility since long-term services are crucial to the success of congregate housing.

(7) *General service requirements.* Applicants must provide a plan which addresses the long-term availability of assistance from service providers. As a part of the preapplication, applicants must provide a letter of commitment from each service provider detailing its ability and willingness to provide services. This letter must identify the type, scope, cost, term and any licensing requirements of services that will be provided to the project. If a local agency on aging will provide a service, the commitment can be contingent on the agency maintaining its level of funding. In these cases, it is imperative that applicants document the availability of alternative sources as required in 1944.224(a)(6) of this section. As a part of the final application, applicants must provide a service agreement detailing the information contained in the letter of commitment. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year. Applicants should refer to paragraph IV of exhibit J of subpart C of part 1930 for further guidance.

(8) *Services provided to people who are not tenants of FmHA financed congregate housing.* If the meal facility serves people who are not tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt service and reserve account attributable to the portion of increased space that is in excess of the needs of tenants in the project. In most cases, this will be a negligible amount that the meal provider can afford to pay. Applicants should refer to paragraph VII C of exhibit J of subpart C of part 1930 of this chapter for further guidance.

(b) *Group homes.* Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living. Group homes may be designated for elderly, disabled or other handicapped tenants as defined in § 1944.205 of this subpart. Appropriate common areas and facilities should be included to encourage participation by the tenants under the direction of a staff person in sharing the meal preparation, housekeeping, social and recreational activities within the home. It is not the goal of group homes to provide housing for tenants requiring constant medical attention. The following conditions are applicable to group homes:

(1) A group home is generally designed as a single household dwelling; however, it can also be a small multi-unit structure. Specific design guidelines are provided in chapter 1 of Guide 2 of subpart A of part 1924 of this chapter. In addition, group homes must meet the following design criteria:

(i) The potential decreasing physical and mental capabilities of tenants must be considered in the design.

(ii) Interior spaces and finish materials must be residential in character.

(iii) Emergency lighting must be provided in every corridor, stairway and other means of egress.

(iv) The entrances to all living units must be on a route accessible to the physically handicapped.

(2) Prospective tenants must be medically evaluated to determine their ability to sustain independence in a group home. Applicants should be guided by paragraph V B 1 b of exhibit J of subpart C of part 1930.

(3) A group may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. Refer to exhibit J of subpart C of part 1930 of this chapter for additional information.

(4) A group home may be associated with another organization, such as a workshop for the developmentally disabled. However, it must be a separate entity and able to function without being dependent on another organization.

(5) Applicants must show that adequate support services needed by the tenants will be available on a continual long range basis. Support services can be provided by the project or by a State or local public agency. A nonprofit organization with an estimated ongoing service program also may be deemed capable of providing support services.

(6) Food stamps must be accepted from tenants as part of their contribution for meals in accordance with 1944.224 (a)(5)(C) of this section.

(7) Tenants who need services to remain independent may meet the tenant eligibility requirements contained in paragraph VI B 1 i of exhibit B of subpart C of part 1930 by taking the services provided by the project.

(8) Instructions on how to determine the per unit rental rates for group homes are stipulated in exhibit J of subpart C of part 1930 of this chapter.

(c) *Market studies for congregate housing and group homes.* In addition to the requirements of exhibit A–7 of this subpart, the following are applicable to market studies for congregate housing and group homes:

(1) Market studies must address the need for housing with services. Local agencies on aging and other groups familiar with the elderly can be a valuable source of information on the needs and wants of elderly people in the market area. Applicants can conduct a mail-out survey to age and income qualified elderly people if information is not available from other sources.

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants to ensure feasibility of the project. The market study must clearly identify the expanded area and contain separate information on the additional communities. If used, mail-out surveys must clearly address the probability of respondents relocating to the proposed site.

(3) Market studies should include income information from the local social security office since many elderly people are dependent on social security and/or supplemental security income. This information will assist in determining if proposed tenants would have sufficient income to afford the services provided by the project.

(4) Demand for congregate housing generally is displayed by elderly people who are older than 70 years. Therefore, the market study must contain demographic information particular to those over the age of 62 and those over 70 years old. The study must also address the growth trends of people who are over 85 years old.

(5) Market studies must include information concerning alternative service providers as required in § 1944.224(a)(6) of this section.

(d) *Compliance with other laws.* Congregate housing and group homes must meet all applicable Federal, State and local laws, statutes, codes and/or ordinances pertaining to these types of housing and the services provided.

20. In Exhibit A–6, paragraph VIII is added to read as follows:

Exhibit A–6—Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) Loan

* * * * *

VIII. For congregate housing proposals. Applicants must submit information on the services to be provided in accordance with exhibit E of this subpart.

21. Exhibit E of subpart E is added to read as follows:

Exhibit E of Subpart E—Support Services for Congregate Housing and Group Homes

I. Purpose

This exhibit prescribes support services for congregate housing and group homes.

II. General

The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants. If feasible, fully independent tenants who do not require services to live independently should be given the option of choosing the services they want and can afford.

III. Existing Community Services and Requirements

Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery must be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the preapplication.

IV. Service Agreements

Applicant must submit a service agreement(s) for services that will not be provided by employees of the project. If services will be provided by employees of the project, the applicant must submit a separate budget for services and describe how tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and spend an appreciable amount of time in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V. Services for Congregate Housing

The following services must be made available to tenants of congregate housing projects:

A. *Meals.* At least one nutritious meal a day, 7 days a week, must be provided in accordance with § 1944.224(a)(5)(i) of this subpart. The following information concerning the meal service must be included with the preapplication.

1. Who will provide the meals (i.e., meals offered by a local agency with tenant contribution; supplied or contracted for by owner with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

3. The cost to the tenant. Will tenants pay by the meal or be charged a rate for a specified time?

4. A statement concerning the frequency of meals, including the number of meals to be served per week.

5. Information concerning how the meals will be served (i.e., waiter style, buffet, tray service).

6. Any licensing requirement necessary for the service.

B. *Transportation.* Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the preapplication:

1. Who will provide the service (i.e., transportation provided by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle purchase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

3. The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

4. A typical proposed schedule.

C. *Housekeeping.* Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1. Who will provide the service (i.e., housekeeping offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

4. The cost to the tenant.

D. *Personal services.* Personal services include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the preapplication:

1. Who will provide the service (i.e., personal services offered by a local agency with tenant contribution; volunteer health services; contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be provided.

4. The cost to the tenant.

5. Any licensing requirement necessary for the services.

E. *Recreational/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the preapplication:

1. Who will provide the service (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown which includes the cost of labor and supplies.

3. The types and frequency of recreational/social activities that will be offered.

4. The cost to the tenant.

VI. Services for Group Homes

The following services must be made available to tenants of a group home:

A. *Meals.* At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in some group homes may be able to prepare meals on their own with supervision from a project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B. *Transportation.* Applicants must submit information on the transportation service as detailed in paragraph V B of this Exhibit.

C. *Housekeeping.* Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D. *Personal services.* A higher percentage of tenants in a group home may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E. *Recreational/social.* In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

VII. Additional Items Necessary for Congregate Housing/Group Homes That Cannot be Financed with FmHA Loan Funds

Congregate housing/group home projects require additional items that will not become affixed to the real estate. These items can include special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, steamtables, etc. In accordance with § 1944.224(a)(3) of this subpart, loan funds cannot be used to finance these items. As a part of the preapplication, applicants must include a proposed list of additional items that will be needed by the project and state how these items will be paid for.

PART 1965—REAL PROPERTY

22. The authority citation for part 1965 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

23. Section 1965.65 is amended by changing the reference in paragraph (c)(10) introductory text from "§ 1944.215(1)" to "§ 1944.215(k)".

Dated: April 16, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-14779 Filed 6-28-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AEA-18]

Revocation of Control Zone; Fort Meade, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revokes the Control Zone established for the Tipton Army Air Field (AAF) located at Fort Meade, MD. Weather reporting at the Tipton AAF and the Fort Meade, MD Control Zone have been consistently unavailable since October 1, 1989 due to the closure of the part time Control Tower at the field on that date. The reporting of aviation weather at the field is a necessary requirement for the continued establishment of a Control Zone. Due to the consistent unavailability of the weather reporting services, the FAA finds it necessary to revoke the Fort Meade, MD Control Zone. This action returns that amount of controlled airspace back to the public which is not deemed necessary by the FAA for operations conducted under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 u.t.c. August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On September 19, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Control Zone established at Fort Meade, MD due to the consistent unavailability of weather reporting at the Tipton AAF (54 FR 41458). The proposed action would return that amount of controlled airspace back to the public which was not deemed necessary by the FAA to contain aircraft operating under Instrument Flight Rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received on the proposal.

The Department of the Army, Tipton Army Airfield Commander has stated that actions were being initiated to restore communications and weather reporting services at the Tipton AAF. It was suggested that further rulemaking proceedings be suspended pending the timely reestablishment of weather reporting at the field. Attempts to ascertain the establishment of weather reporting at the field were unsuccessful over a six (6) month period. The FAA, after careful review and consideration for the requirements of continued Control Zone establishment outlined in FAA Order 7400.2, finds no justification for the continued establishment of this Control Zone.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Control Zone established at Fort Meade, MD due to the continuous unavailability of weather reporting at the Tipton AAF.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Meade, MD [Remove]

Remove the description of the Fort Meade, MD Control Zone in its entirety.

Issued in Jamaica, New York, on June 8, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-15175 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-20]

Alteration of VOR Federal Airway V-135; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-135 located in the vicinity of Tonopah, NV. The realignment of this airway will provide the necessary airspace needed to protect V-135 from Restricted Area R-4807, Tonopah, NV. This action will improve traffic flow in this area. This action is the result of an action to realign the lateral limits of R-4807.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On February 16, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-135 located in the vicinity of Tonopah, NV (55 FR 5623). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters VOR Federal Airway V-135 located in the vicinity of Tonopah, NV. The realignment of this airway will provide the airspace needed to protect V-135 from Restricted Area R-4807, Tonopah, NV. This action will improve traffic flow in this area and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-135 [Amended]

By removing the words "INT Beatty 326° and Tonopah, NV, 196° radials;" and substituting the words "INT Beatty 326° and Tonopah, NV, 223° radials;"

Issued in Washington, DC, on June 22, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-15176 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-2]

Alteration of VOR Federal Airways; PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-12 located in the State of Pennsylvania. The increase in air traffic between Philadelphia and Reading, PA, has dictated the need to realign V-12. This action will increase air safety, reduce controller workload, and improve flight planning.

EFFECTIVE DATE: 0901 u.t.c. August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On May 10, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Federal Airway V-12

located in the State of Pennsylvania (54 FR 20146). The airway realignment enhances the flow of traffic between Philadelphia and Reading, PA. This action will increase air safety, reduce controller workload, and improve flight planning. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V–12 located in the State of Pennsylvania. The increase in air traffic between Philadelphia and Reading, PA, has dictated the need to realign V–12. This action will increase air safety, reduce controller workload, and improve flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–12 [Amended]

By removing the words "INT Harrisburg 092° and East Texas, PA, 225° radials; to East Texas." and substituting the words "INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown."

Issued in Washington, DC, on June 22, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-15179 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 89–AWP–19]

Alteration of Restricted Area R–4807; Tonopah, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the boundaries and changes the using agency of Restricted Area R–4807, Tonopah, NV. Currently, the northwest portion of R–4807 does not provide sufficient maneuvering room for aircraft to utilize the westernmost targets on Ranges 71 and 76. The expansion provides for optimum utilization of the area. Part 71 is also amended to include R–4807 in the Continental Control Area. The expansion of R–4807 requires realignment of VOR Federal Airway V–135 which is being addressed under a separate action (Docket Number 89–AWP–20).

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7683.

SUPPLEMENTARY INFORMATION:

History

On February 16, 1990, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to alter the boundaries and change the using agency of Restricted Area R–4807, Tonopah, NV, and to include R–4807 in the Continental Control Area (55 FR 5625). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.48 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations expand Restricted Area R–4807, Tonopah, NV, by approximately 4.4 nautical miles at the northwest corner. Presently, the narrow east-to-west dimensions of the northwest corner severely limit the use of Range 71. The northern portion of Range 71 is not usable because the turn radius of aircraft operating at combat airspeeds does not permit such aircraft to remain within range airspace. Consequently, all tactical targets are located in Range 71S. This situation limits the ability of aircrews to employ realistic attack and defensive maneuvering and could seriously degrade their training mission. The Air Force considered the option of expanding airspace to the east by acquiring a portion of R–4809 which belongs to the Department of Energy (DOE). This was not practical due to DOE mission requirements in R–4809. The proposed expansion of the R–4807 airspace boundaries (to coincide with the present land boundaries) would allow for additional tactical targets and increase the overall capacity of the Tactical Fighter Weapons Center Range Complex. The total airspace expansion is limited to 55 square miles, all of which is over land owned by Nellis AFB or the Bureau of Land Management. Mitigating measures such as restricting overflight to a minimum of 2,000 feet above ground level in certain areas provide for environmental protection of indigenous wildlife. This action also amends part 71 to include R–4807 in the Continental Control Area, enabling joint use by nonparticipating aircraft when not required by the military. Implementation of this alteration requires realignment of that segment of VOR Federal Airway V–135 between Tonopah and Beatty to provide protected airspace between the airway and the restricted area. The V–135 realignment is being addressed under a separate action (Docket Number 89–AWP–20).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

In accordance with the National Environmental Policy Act and the regulations of the Council on Environmental Quality, the Air Force conducted an environmental review of military training activities associated with the revised restricted area. The Air Froce prepared an environmental assessment (EA) in 1989. On the basis of that EA, a Finding of No Significant Impact (FONSI) was issued in May 1989. The FAA adopted the Air Force EA in September 1989. On the basis of the conclusions contained in the EA, the FAA finds that the airspace action adopted in this amendment will have no significant impact on the environment. A copy of the FAA FONSI issued September 29, 1989, has been placed in the public docket for this rulemaking. A copy of the EA is available from the Environmental Engineer, 554 CESS/DESPV, Nellis AFB, NV 89191–5000, or may be inspected during normal business hours in the FAA Office of Environment, AEE–1, Room 432, 800 Independence Avenue SW., Washington, DC 20591.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas, and Continental control area.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R–4807 Tonopah, NV [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

4. Section 73.48 is amended as follows:

R–4807 Tonopah, NV [Amended]

By removing the present boundaries and using agency and substituting the following:

Boundaries. Beginning at lat. 38°51'00" N., long. 116°33'30" W.; to lat. 37°28'30" N., long. 117°04'30" W.; to lat. 37°33'00" N., long. 117°05'38" W.; to lat. 37°53'00" N., long. 116°55'00" W.; to lat. 37°47'00" N., long. 116°55'00" W.; to lat. 37°33'00" N., long. 116°43'00" W.; to lat. 37°33'00" N., long. 116°28'00" W.; to lat. 37°53'00" N., long. 116°28'00" W.; to lat. 37°53'00" N., long. 116°11'00" W.; to lat. 37°42'00" N., long. 116°11'00" W.; to lat. 37°42'00" N., long. 115°53'00" W.; to lat. 37°33'00" N., long. 115°53'00" W.; to lat. 37°33'00" N., long. 115°48'00" W.; to lat. 37°28'00" N., long. 115°48'00" W.; to lat. 37°28'00" N., long. 116°00'00" W.; to lat. 37°16'00" N., long. 116°00'00" W.; to lat. 37°16'00" N., long. 116°34'00" W.; to the point of beginning.

Using agency. U.S. Air Force, Commander, Tactical Fighter Weapons Center, Nellis AFB, NV.

Issued in Washington, DC, on June 22, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-15177 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90–ASO–2]

Alteration of Jet Route, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–103 by revoking a segment of that route located between St. Petersburg, FL, and Ormond Beach, FL. The FAA made a determination that the route segment between St. Petersburg, FL, and Ormond Beach, FL, crosses routes of the predominantly north/south flow of traffic in that area. This action increases safety and reduced chart clutter.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1990, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J–103 by revoking a segment of that route located between St. Petersburg, FL, and Ormond Beach, FL (55 FR 11968). The FAA made a determination that the route segment between St. Petersburg, FL, and Ormond Beach, FL, crosses routes of the predominantly north/south flow of traffic in that area. This action increases safety and reduces chart clutter. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of Jet Route J–103 by revoking the route segment between St. Petersburg, FL, and Ormond Beach, FL. High altitude operations in Central Florida flow north and south. This action reduces chart clutter by removing a jet route that is not being utilized and increases flight safety by eliminating some jet route intersections.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-103 [Revised]

From Ormond Beach, FL, to Savannah, GA.

Issued in Washington, DC, on June 22, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-15176 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 774, 779, 786, 787, and 799

[Docket No. 900672-0172]

Establishment of General License GDR; Exports to the German Democratic Republic

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) (15 CFR Parts 730-799) to reduce licensing requirements on trade with the German Democratic Republic. This action is taken following agreement reached in COCOM in response to steps taken by the Federal Republic of Germany and the German Democratic Republic toward unification. This rule creates a new General License designated GDR. General License GDR is designed to allow a significant number of items listed on the Commodity Control List (CCL) (15 CFR 799.1, supplement No. 1) under Export Control Commodity Numbers ending in the code letter "A" ("A" level commodities), as well as certain technical data and software, to be exported to the German Democratic Republic without a validated license.

Certain special requirements will apply to shipments of these "A" level commodities, technical data, and software to the German Democratic Republic. This rule also deletes a restriction on ECCN 1091A under General License GCT.

Items not eligible for export under General License GDR continue to require a validated license.

DATES: *Effective:* This rule is effective July 1, 1990. *Comments:* Comments should be received by August 15, 1990.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Background Information

The members of COCOM have agreed to treat the German Democratic Republic differently from other proscribed destinations because the German Democratic Republic has agreed to unite with the Federal German Republic. The German Democratic Republic is currently undertaking measures to adopt licensing procedures to effectively control strategic trade. These procedures include full licensing of COCOM controlled items, both indigenous and imported for export or reexport and implementation of a German Democratic Republic End-Use Certificate in all cases of imports of controlled commodities.

To carry out this COCOM agreement and facilitate the transition to unification, the Bureau of Export Administration is reducing export controls to the German Democratic Republic by establishing a new General License GDR.

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising the validated license requirements for shipments of multilaterally controlled ("A" level) items to the German Democratic Republic. These changes are based on a review of multilateral export controls maintained by the U.S. and certain allied countries through the Coordinated Committee on Multilateral Export Controls (COCOM). General License GDR provides benefits, for exports of "A" level items to the German Democratic Republic, that are similar to certain benefits currently available for exports to COCOM destinations under General License GCT.

The changes represent a significant reduction in the number of validated licenses that will be required for exports to the GDR. This will reduce the paperwork burden on exporters, because a much smaller number of license applications will have to be filed for exports to the German Democratic Republic. Based upon recent export licensing statistics, BXA estimates that approximately 80 percent (in terms of dollar value) of times presently requiring a validated license to be exported to the German Democratic Republic, will no longer require a validated license.

The commodities eligible for export under General License GDR are all "A" level commodities that are *not* specifically exluded by the *"Commodities Not Eligible for General Licenses GCT or GDR"* Paragraph or by the *"Commodities Not Eligible for General License GDR"* paragraph located in certain ECCNs. In addition, software described in supplement No. 3 to part 779, and technical data that is *not* listed in § 779.4(c) or (d), are eligible for General License GDR.

Use of General License GDR for exports of eligible "A" level commodities and software to the German Democratic Republic is subject to the following special requirements:

(1) Prior to shipment, each exporter will be required to obtain an End-Use Certificate issued by the German Democratic Republic that certifies that the importer will comply with all government restrictions on the shipment of these "A" level commodities;

(2) Exporters will be required to submit the GDR End-Use Certificate issued by the German Democratic Republic to the Office of Export Licensing (OEL) promptly, but in no case later than 60 days after date of export;

(3) Consistent with the record retention and inspection requirements of § 787.13 of the EAR, all exporters and importers will be required to maintain records of all transactions involving such exports of eligible "A" level commodities. Such records are subject to U.S. Government inspection; and

(4) Prior U.S. authorization will be required to redirect these "A" level commodities and software to any country of destination while enroute to the German Democratic Republic.

Although most "A" level commodities will be eligible for export to the German Democratic Republic under General License GDR, a few commodities will continue to require validated licenses and appropriate supporting documentation. Exporters will need to check the *Commodities Not Eligible for General Licenses GCT and GDR* and the *Commodities Not Eligible for General License GDR* paragraphs of the applicable Export Control Commodity Number to determine whether a validated license is required for export to the German Democratic Republic.

Exports of "B" level commodities are not affected by this rule and will continue to require a validated license and any applicable supporting documentation.

Reexports to and among COCOM participating countries under § 774.2(k) will not be affected by the creation of General License GDR. Reexports from COCOM countries to the German Democratic Republic is authorized as a permissive reexport if the shipment would be eligible for General License GDR if exported from the United States. Foreign consignees in non-COCOM countries continue to be responsible for obtaining prior U.S. government reexport authorization, as well as complying with their own country's export controls. (See EAR part 774.)

Notwithstanding § 787.4, equipment already in the GDR may be repaired or upgraded, regardless of the circumstances surrounding the original export, provided that both the equipment in the GDR and the goods being exported are eligible for General License GDR and the equipment if upgraded would continue to be eligible for General License GDR.

General License GDR also will allow exports of software described in supplement No. 3 to part 779. Exports of technical data will be allowed under General License GTDR unless the technical data is identified in § 779.4 (c) or (d) or a validated license is required by an entry on the CCL, provided a written assurance is obtained as provided in § 779.4(f). In determining the need for approval of "release" of technical data, exporters should treat East German persons outside the GDR the same as they would treat West German persons.

Rulemaking Requirements

1. This rule is consistent with Executive orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, a reduction in the validated license requirements will result because of this rule, reducing the paperwork burden on the public. Affected OMB controlled collections include 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be issued in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close August 15, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

In addition to comments on the effects of this rule, BXA would appreciate any comments that would help quantify the extent of the anticipated reduction in licensing burden.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects

15 CFR Parts 771, 774, 786, and 799

Exports, Reporting and Recordkeeping Requirements.

15 CFR Part 779

Computer technology, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 771, 774, 779, 786, 787, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 771, 779, 786, 787, and 799 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 771—AMENDED

3. Part 771 is amended by adding a new § 771.26 to read as follows:

§ 771.26 General License GDR; Exports to the German Democratic Republic.

(a) *Scope.* A general license designated GDR is established, authorizing exports to the German Democratic Republic of all "A" level commodities except those specifically excluded by the *"Commodities Not Eligible for General Licenses GCT or GDR"* paragraph or by the *"Commodities Not Eligible for General License GDR"* paragraph set forth in certain Export Control Commodity Numbers (ECCNs) on the Commodity Control List. This general license authorizes exports of software described in supplement No. 3 to part 779 of this subchapter (see the note in § 779.4(f) of this subchapter for exports of technical data to the German Democratic Republic). Exports may be made under General License GDR only when intended for use or consumption within the German Democratic Republic, reexport among and consumption within COCOM member countries, or reexport in accordance with other provisions of the Export Administration Regulations.

(b) *Eligible exports.* The commodities eligible for export under this General License GDR are all "A" level commodities that are *not* specifically excluded by the *"Commodities Not Eligible for General Licenses GCT or GDR"* paragraph or by the *"Commodities Not Eligible for General License GDR"* paragraph set forth in certain ECCNs. Exports intended to upgrade equipment in the German Democratic Republic are eligible unless the export would make the upgraded equipment ineligible for General License GDR. Notwithstanding § 787.4 of this subchapter, equipment already in the GDR may be repaired or upgraded, regardless of the circumstances surrounding the original export, provided that both the equipment in the GDR and the goods being exported are eligible for General License GDR and the equipment if upgraded would continue to be eligible for General License GDR. Eligible software is described in supplement No. 3 to part 779 of this subchapter. All shipments under this General License GDR are subject to the prohibitions contained in § 771.2(c).

(c) *Special documentation requirement for the German Democratic Republic.* Prior to shipping any eligible "A" level commodity or software under General License GDR, the exporter must obtain an original GDR End-Use Certificate issued to the GDR importer by the Office of Import and Export Controls, Ministry of Economics, 44286 Unter den Linden, East Berlin, GDR. In the case of software, this certificate replaces the written assurance required by § 779.4(f)(1)(i)(A) of this subchapter. The exporter shall submit the GDR End-Use Certificate to the Office of Export Licensing (OEL), P.O. Box 273, Washington, DC 20230, no later than 60 days following shipment.

(d) *Restrictions on commodities re-directed enroute.* Commodities or software exported under the provisions of this § 771.26 may *not* be re-directed enroute to a new country of destination without prior authorization from the Office of Export Licensing, U.S. Department of Commerce, except to a country eligible to receive the shipment under General License GCT.

(e) *Destination Control Statement.* In accordance with § 786.6 of this subchapter, the exporter is required to enter an appropriate Destination Control Statement on all commercial documents (e.g., the bill of lading, the airway bill, and the commercial invoice) covering an export from the United States under General License GDR. In using the destination control statements listed in § 786.6(d) of this subchapter, Statements No. 1 and 2 shall be completed to show the "German Democratic Republic" as the country of ultimate destination, and Statement No. 2 may be completed to show distribution or resale in "COCOM countries" or the "German Democratic Republic."

(f) *Recordkeeping requirements.* Records of transactions involving exports under General License GDR must be maintained in accordance with the recordkeeping requirements of § 787.13 of this subchapter.

PART 774—[AMENDED]

4. Section 774.2 is amended by adding a new paragraph (l) to read as follows:

§ 774.2 Permissive reexports.

* * * * *

(l) Reexports from a COCOM participating country to the German Democratic Republic of commodities or software that may be exported directly from the United States to the German Democratic Republic under General License GDR (see § 771.26 of this subchapter).

PART 786—[AMENDED]

5. Section 786.6 is amended by revising paragraph (a)(1)(ii) and by revising paragraph (c)(2) to read as follows:

§ 786.6 Destination control statements.

(a) * * *

(1) * * *

(ii) General License GLV, GTF–US, GTE, GLR, GFW, G–COM, G–COCOM, GCT, GDR, or G–CEU.

* * * * *

(c) * * *

(2) *General license shipments.* For a shipment under any general license, except General Licenses G–COCOM, GCT, and GDR, any of the three destination control statements in paragraph (d) of this section may be used. For shipments under General Licenses G–COCOM, GCT, or GDR exporters must use Statement No. 1 or 2.

* * * * *

PART 787—[AMENDED]

6. Section 787.13(c) is amended in the second sentence by adding the reference "771.26," immediately following the reference "771.25,".

PART 779—[AMENDED]

7. Section 779.4(f) is amended by adding introductory text immediately following the heading to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(f) *Written assurance requirements.* Effective July 1, 1990, technical data eligible for General License GTDR may be shipped under that general license to the German Democratic Republic (GDR), provided a written assurance described herein is obtained. Notwithstanding the GDR's status as a Group Y country, the GDR need not be listed in future written assurances, and assurances previously given regarding the GDR may be disregarded, unless the technical data is related to a product that is excluded from eligibility for General License GDR (§ 771.23 of this subchapter).

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

8. In supplement No. 1 to § 799.1 (the Commodity Control List), the entries listed below are amended by revising the phrase *"GCT"* to read *"General Licenses GCT or GDR"* in the heading of the *Commodities Not Eligible for GCT* paragraph for each entry:

A. In Commodity Group 0, Metal-Working Machinery: ECCN 2018A;

B. In Commodity Group 1, Chemical and Petroleum Equipment: ECCN 2118A;

C. In Commodity Group 3, General Industrial Equipment: ECCNs 1302A, 3338A, 1355A, 1357A, 1361A, 1362A, 1358A, and 1388A;

D. In Commodity Group 4, Transportation Equipment: ECCNs 1417A, 1418A, 1460A, and 1485A;

E. In Commodity Group 5, Electronics and Precision Instruments: ECCNs 1501A, 1510A, 1516A, 1517A, 1518A, 1522A, 1527A, 1529A, 1531A, 1533A, 1553A, 1564A, 1565A, 1568A, 1585A, 1587A, and 1595A;

F. In Commodity Group 6, Metals, Minerals, and Their Manufacturers: ECCNs 3604A and 3609A; and

G. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials: ECCNs 1715A, 1746A, and 1763A.

Supplement No. 1 to § 799.1 [Amended]

9. In supplement No. 1 to § 799.1 (the Commodity Control List), Group 0, (Metal-Working Machinery) the entry for ECCN 1091A is amended by removing the *"Commodities Not Eligible for GCT"* paragraph.

Supplement No. 1 to § 799.1 [Amended]

10. In supplement No. 1 to § 799.1 (the Commodity Control List), in the entries listed below, add a new paragraph immediately following the *GLV $ Value Limit* paragraph of each entry to read as follows:

"Commodities Not Eligible for General License GDR: Entire entry."

A. In Commodity Group 1, Chemical and Petroleum Equipment: ECCNs 2120A and 3131A;

B. In Commodity Group 2, Electrical and Power-Generating Equipment: ECCN 2261A;

C. In Commodity Group 3, General Industrial Equipment: ECCNs 2317A, 2319A, 3362A, and 3393A;

D. In Commodity Group 4, Transportation Equipment: ECCNs 2408A, 2409A, 2410A, 2414A, 2418A, and 2460A;

E. In Commodity Group 6, Metals, Minerals, and Their Manufactures: ECCNs 2603A, 3605A, 3607A, 3608A, and 2616A;

F. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials: ECCNs 2708A, 3709A, and 3711A; and

G. In Commodity Group 9, Miscellaneous: ECCNs 2901A and 2913A.

Dated: June 25, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90–15083 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 776, 778, 779, and 799

[Docket No. 90067–0171]

Revisions to the Commodity Control List Based on COCOM Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule amends a number of Export Control Commodity Numbers (ECCNs) on the CCL. These revisions are the result of negotiations at a high level meeting of the Coordinating Committee for Multilateral Export Controls (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries. The meeting endorsed substantial reductions in national security export controls.

This rule amends 15 CFR parts, 776, 778, 779 and 799. In the CCL, it removes ECCNs 1075A, 1093A, 1129A, 1203A, 1206A, 1305A, 1354A, 1356A, 1359A, 1360A, 1365A, 1372A, 1425A, 1514A, 1521A, 1532A, 1544A, 1545A, 1547A, 1588A, 1635A, 1734A, 1749A, and 1760A. ECCNs 1302A, 1518A, 1541A, 1543A, 1559A, and 1564A, are renumbered and retained for nuclear nonproliferation or missile technology reasons. Portions of ECCNs 1570A and 1587A are renumbered and retained for these same reasons, with the balance of the entries deleted. Substantial decontrols have been effected for computers in ECCN 1565A, for machine tools in ECCNs 1091A, 1312A, 1370A, 1391A, and for telecommunications items in ECCNs 1353A, 1516A, 1519A, 1520A, 1527A, 1531A, 1587A. Finally, ECCNs 1358A, 1529A, 1568A, and 1763A, and some items from ECCNs 1391A, 1555A, and 1585A, are decontrolled to the China "green line" level. The net effect of this rule will be a substantial reduction in the number of export license applications that will have to be filed.

EFFECTIVE DATE: This rule is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on machine tools and industrial equipment, call Surendra Dhir, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–5695.

For questions of a technical nature on test instruments or semiconductor manufacturing equipment, call Robert Anstead, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–1641.

For questions of a technical nature on telecommunications equipment, call Joseph Westlake, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–0730.

For questions of a technical nature on chemicals, metalloids, petroleum products and related materials, call Jeff Tripp, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–1309.

For questions of a technical nature on computer systems or software, call Randy Williams, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–0708.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1990, the White House announced that President Bush had concluded that the COCOM control lists should be completely overhauled. While aiming at development of a new "core list" by the end of the year, the President determined to recommend significant immediate revisions. These

proposals have been discussed in COCOM and have resulted in substantial changes that were endorsed by a high level COCOM meeting on June 6 and 7. These interim changes are effective July 1, 1990.

Thirty national security controlled entries are being deleted entirely from the COCOM list. All or part of eight of these entries will be retained on the CCL in some form—three for missile technology concerns (ECCNs 1302A, 1518A, and 1587A) and the other five (ECCNs 1541A, 1542A, 1559A, 1570A, and 1584A), for countries of particular concern, for nuclear non-proliferation reasons. A new Supplement No. 4 to Part 778 lists the countries that will be affected by these nuclear controls. In addition, portions of certain other entries are also retained for missile technology (ECCNs 1529A, 1531A, and 1568A) or nuclear non-proliferation reasons (ECCNs 1091A and 1312A), even though removed from national security control.

Four entries, and certain items included in three others, are decontrolled to the China "green line" level. Additional decontrols will be made in several entries, following further COCOM discussions and drafting of decontrol language. Such changes will be announced as soon as they are available.

Computer controls are being liberalized in a number of ways. Computers up to a Processing Data Rate (PDR) of 275 million bits per second are decontrolled. Advisory Note 9 is revised to permit approval of licenses, without referral to the Department of Defense or COCOM, for computers up to a PDR of 550 mbps. General License GFW will be available at the same level. Computers with PDRs between 550 mbps and 1000 mbps will be given favorable consideration to controlled countries under Advisory Note 12.

This rule changes the special visitation requirements for computers. Parties who have exported computers previously need not continue to adhere to visitation requirements, unless visitation would be required by Advisory Note 12 to ECCN 1505A, as amended by this rule.

Changes in machine tool controls are designed to permit export of all but the most precise and militarily critical equipment. Approximately 75 percent of the advanced machine tools produced in the United States can now be exported without a license, compared with only 10 percent under the previous controls. Positioning accuracies of plus or minus 2, 3, or 4 microns will be allowed, depending on the type of machine tool. Previously, only positioning accuracies of plus or minus 10 microns were allowed. Computer Numerical Controls based on 32 bit microprocessors will be permitted.

For telecommunications, decontrols include mobile radio and analog cellular communications equipment, civil satellite ground stations, and full featured small digital PABX's. Larger digital switches and packet switching data communications systems may be approved without referral to the Department of Defense or COCOM. Favorable consideration may be given to exports to controlled countries of production facilities for telephone switches.

In October 1988, BXA published a proposed rule designed to clarify and simplify technical data controls. The present rule follows the October 1988 proposed rule by including in certain ECCNs specific provisions dealing with technical data and software. This begins, on a small scale, the transition to including descriptions of technical data and software subject to controls on the CCL instead of separately in part 779. This process will, when completed, enable us to adhere more closely to the treatment of technical data and software on the COCOM lists.

That proposal was based on a revision of each entry on the CCL to incorporate specific controls on technical data and software. That task has proven to be much more complex and time consuming than had been anticipated, and BXA has been unable to devote the resources necessary for completion. To avoid further delay in publishing the revised technical data regulations, this rule makes changes in the way exporters determine licensing requirements.

Until all technical data and software licensing requirements are reflected in the CCL, exporters will be required to determine first whether their technical data or software is within a CCL entry that both encompasses the technical data or software *and* specifically provides for licensing requirements in a paragraph headed "Technical Data and Software." If the licensing requirements are described in a "Technical Data and Software" paragraph, then any conflict between the provisions of part 779 and the CCL are resolved in favor of the CCL. If the licensing requirements are not described in a CCL entry, then the provisions of part 779 prevail. An exception to this guidance is the software described in ECCNs 1355, 1388, and 1527, which remains subject to the validated license controls imposed on those entries even though no "Technical Data and Software" paragraph appears in those entries.

This duty to determine whether technical data or software is identified on the CCL will enable BXA to proceed with publication of the new technical data regulations while integrating technical data and software into the CCL in stages.

Notwithstanding § 787.4, equipment already in Country Groups Q, W, or Y that is removed from national security control by this rule may be repaired or upgraded, regardless of the circumstances surrounding the original export, provided that necessary approvals are obtained for the repair parts or upgrade, and that the equipment if upgraded would not become subject to national security control.

This rule revises Supplement No. 3 to Part 779 to clarify the extent to which standard commercial software may be shipped to Country Groups TVQWY without a written assurance under General License GTDR, and also provides a description of software that is "standard commercially available."

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694-0005, 0694-0007, 0694-0010, 0694-0013, 0694-0021, 0694-0023, and 0694-0049. Licensing requirements will be reduced as a result of this rule, thereby reducing the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

Since negotiations on multilateral export controls will continue, with the specific goal of establishing an entirely new "core list," comments on the general extent of controls are also particularly welcome. To meet multinational deadlines, comments on the "core list" concept must be received by July 20, 1990.

List of Subjects

15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 776, 778, 779 and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 776 and 778 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 776—[AMENDED]

2. Section 776.18 is amended by revising the introductory text to read as follows:

§ 776.18 Equipment and related technical data used in the development of missiles capable of delivering nuclear weapons.

In support of U.S. foreign policy to limit the proliferation of missiles that are capable of delivering nuclear weapons, an individual validated license is required to export certain equipment and technical data related to the development and production of such nuclear-capable missiles to Country Groups QSTVWYZ. The specific commodities appear within ECCNs 2018A, 2118A, 4118B, 4302B, 1357A, 1361A, 1362A, 1365A, 1460A, 1485A, 1501A, 1516A, 1517A, 4518B, 1522A, 1529A, 4529B, 1531A, 4531B, 1533A, 1564A, 1565A, 1568A, 4568B, 4587B, 1595A, 1715A, and 1746A.

* * * * *

PART 778—[AMENDED]

3. Part 778 is amended by adding and reserving a Supplement No. 3 and by adding a new Supplement No. 4 to read as follows:

Supplement No. 3—[Reserved]

Supplement No. 4—Nuclear Non-Proliferation—Special Country List

Afghanistan
Albania
Algeria
Andorra
Angola
Argentina
Bahrain
Brazil
Burma
Chile
Comoros
Djibouti
Guyana
India
Iran
Iraq
Israel
Kuwait
Libya
Malawi
Mauritania
Mozambique
Niger
Oman
Pakistan
Qatar
Saudi Arabia
South Africa
St. Kitts
Syria
Tanzania
United Arab Emirates
Vanuatu
Yemen Arab Republic
Zambia
Zimbabwe

4. The authority citation for 15 CFR parts 779 and 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 779—[AMENDED]

§ 799.4 [Amended]

5. Section 779.4 is amended:

a. By revising in paragraph (d)(11) the phrase "ECCNs 1203A, 4203B, 1312A" to read "ECCN 1312A";

b. By removing paragraph (d)(23);

c. By redesignating paragraphs (d)(24) through (d)(28) as paragraphs (d)(23) through (d)(25), respectively; and

d. By revising in paragraph (f)(1)(i)(Q) the phrase "2.1 megabits per second" to read "6.5 megabits per second".

§ 799.8 [Amended]

6. Section 779.8 is amended by revising in paragraph (b)(3)(i)(C) the phrase "CCL entries 1548, 1555, 1559, and 1761" to read "CCL entries 1548A, 1555A, and 1761A".

Supplement No. 3 to Part 779 [Amended]

7. Supplement No. 3 to part 779 (Computer Software) is amended:

a. By revising in paragraph (a)(1)(i) under the heading List of Software the phrase "calculation on invoice control" to read "calculation or invoice control";

b. By revising in paragraph (a)(1)(ii) the phrase "work processing" to read "word processing";

c. By revising paragraph (a)(3)(ii) and the Note immediately following paragraph (a)(3)(ii);

d. By adding a new paragraph (a)(6);

e. By revising paragraph (b)(4)(i);

f. By revising in paragraph (b)(5)(i) the word "applicaions" to read "applications";

g. By revising in paragraph (b)(5)(iv) the phrase "machines" to read " 'digital computers' ";

h. By adding a new paragraph (b)(5)(v) and a new Note following paragraph (b)(5)(v);

i. By revising in paragraph (d)(2) the phrase "ECCN 1075A" to read "ECCN 5075F";

j. By removing paragraphs (d)(6) through (d)(8) and redesignating paragraph (d)(9) as new paragraph (d)(6);

k. By removing paragraphs (d)(10) and redesignating paragraph (d)(11) as new paragraph (d)(7);

l. By redesignating paragraph (d)(12) as new paragraph (d)(8) and removing the phrase "ECCN 1568A and";

m. By redesignating paragraphs (d)(13) and (d)(14) as new paragraphs (d)(9) and (d)(10), respectively;

n. By removing paragraphs (d)(15) and redesignating paragraph (d)(16) as new paragraph (d)(11);

o. By removing paragraphs (d)(17) and redesignating paragraphs (d)(18) through (d)(21) as new paragraphs (d)(12) through (d)(15), respectively;

p. By revising in newly designated paragraph (d)(15) the phrase "ECCN 1532A" to read "ECCN 1099A";

q. By redesignating Advisory Note 5 as new Advisory Note 6 (formerly reserved) and adding a new Advisory Note 5;

r. By revising in the introductory text of Advisory Note 10 the phrase "Advisory Notes 5 and 9" to read "Advisory Note 9";

s. By revising paragraph (a)(3) in Advisory Note 10;

t. By revising in the introductory text of Advisory Note 11 the phrase "are liley to be approved" to read "will receive favorable consideration"; and

u. By adding a new heading "Definitions of Terms" at the end of the Supplement and moving the text of existing Advisory Note 12 to follow the new heading and by adding in alphabetical order new definitions for "Adoptive control" and "Flexible manufacturing unit";

v. By adding a new Advisory Note 12;

w. By removing the Technical Note that precedes the Advisory Note for the People's Republic of China; and

x. By redesignating the Advisory Note for the People's Republic of China as new Advisory Note 13 for the People's Republic of China, as follows:

Supplement No. 3—Computer Software

* * * * *

List of Software Subject to This Supplement to Part 779:

* * * * *

(a) * * *

(3) * * *

(ii) One or more of the functions described in ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M) or for "digital computers" or "related equipment" designed or modified for such functions;

Note: This paragraph (a)(3)(ii) does not control:

(a) "Specially designed software" in machine executable form for "digital computers" and "related equipment" therefor that are excluded from control only by Notes 1 or 2 of the heading to ECCN 1565A(h);

(b) "Software" for equipment described by ECCN 1565 (h)(1)(i)(C) or (h)(1)(i)(M), unless the software performs:

(1) "Multi-data-stream processing" or load sharing functions; *or*

(2) Datagram or "fast select" functions as defined in level III of CCITT X.25 or equivalent.

* * * * *

(8) "Software" specially designed for computer aided design (CAD) of patterned printed circuit board "substrates" that is designed for any of the following:

(i) Automatically transforming schematic functional descriptions into pattern layouts;

(ii) Simulation of the performance of the circuit layout;

(iii) Automatic generation of test string lists (i.e., test vectors) for "substrates" having more than two layers (including the ground plane) of interconnections;

Note: This paragraph (a)(8)(iii) does not control automatic generation of test string lists for continuity testing of "substrates".

(iv) Automatic placement or routing that is designed for performing impedance matching or crosstalk analysis and crosstalk matching;

(b) * * *

(4) * * *

(i) "Operating systems" designed or modified for "digital computers" or "related equipment" exceeding the performance limits in paragraphs (b) (1) and (b) (2) of Advisory Note 12 for ECCN 1565A;

(ii) * * *

* * * * * *

(5) * * *

(v) "Software" to provide "adaptive control" with both of the following characteristics:

(A) For "flexible manufacturing units" (FMUs) that consist at least of equipment described in paragraphs (b) (1) and (b) (2) of the definition for "flexible manufacturing unit" that is listed under the heading "Definitions of Terms" at the end of this Supplement; *and*

(B) Capable of generating or modifying, in "real time processing", "programs", or data by using the signals obtained simultaneously by means of at least two detection techniques, such as:

(1) Machine vision (optical ranging);

(2) Infrared imaging;

(3) Acoustical imaging (acoustical ranging);

(4) Tactile measurement;

(5) Inertial positioning;

(6) Force measurement;

(7) Torque measurement;

Note: This paragraph (b) (5) (v) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using pre-stored part "programs" and a pre-stored strategy for the distribution of the part "programs".

* * * * *

Advisory Note 5: No written assurance is required for exports under General License GTDR, and no individual validated license is needed to export to Country Groups TVQWY, for "software" that is "standard commercially available" "software", provided *all* of the following conditions are met:

(a) The software is designed for installation by the user without further support by the supplier;

(b) The software is designed for use on "digital computers" and "related equipment" therefore that do not exceed the performance limits described in ECCN 1565A(h) (2) (iii).

Note: This paragraph (b) permits exports of "standard commercially availalbe" "software" designed for "digital computers" or "related equipment":

(1) Not exceeding the performance limits described in ECCN 1565A(h)(2)(iii), as modified by this paragraph, even when the "software" can be used on "digital computers" or "related equipment" exceeding these limits; *or*

(2) Belonging to a series containing models exceeding the performance limits described in ECCN 1565A(h)(2)(iii), provided that the "software" can be used on "digital computers" or "rrelated equipment" in series that do not exceed these limits.

(c) The software is generally available to the public through retail selling points, other than those specialized in selling electronic computers to the general public in model series exceeding the limits in paragraph (b) above.

Note: A retail selling point is defined as a facility selling from stock by means of:

(1) Over-the-counter transactions;

(2) Mail order transactions;

(3) Telephone call transactions.

* * * * *

Advisory Note 12: * * *

(a) * * *

(3) "Specially designed software" for equipment approved for export under ECCN 1565A, Advisory Note 9, for one or more of the functions described in ECCN 1565A (h) (1) (i) (A), (h) (1) (i) (B), or (h) (1) (i) (C);

* * * * *

Advisory Note 12: Licenses are likely to be approved to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC), and Afghanistan of "software" controlled by paragraph (b) (5) (v) provided that all of the following conditions are met:

(a) The "software" is limited to machine executable form;

(b) The end-user does not belong to any of the following industrial sectors:

(1) Nuclear industry;

(2) Aerospace industry;

(3) Shipbuilding;

(4) Heavy vehicles manufacturing;

(5) Machine building; *or*

(6) Electronics, including microelectronics industry; *and*

(c) The "flexible manufacturing unit" for which the "software" is specially designed, does not contain more than seven pieces of equipment enumerated in paragraph (b) of the definition for "flexible manufacturing unit" in the Definitions of Terms at the end of this Supplement.

* * * * *

Advisory Note 13 for the People's Republic of China:

* * * * *

Definitions of Terms:

* * * * *

"Adaptive control"—

A control system that adjusts the response from conditions detected during the operation (Ref. ISO 2806–1980).

"Analog computer"— * * *

* * * * *

"Firmware"—* * *

"Flexible manufacturing unit" (sometimes also referred to as 'flexible manufacturing system' (FMS) or 'flexible manufacturing cell' (FMC))—

An entity that includes a combination of at least:

(a) A "digital computer" including its own "main storage" and its own "related equipment"; *and*

(b) Two or more of the following:

(1) A machine tool described in ECCN 1091A(b);

(2) A dimensional inspection machine described in ECCN [1091A(b)], or another digitally controlled measuring machine controlled by ECCN [1091A(d)];

(3) A "robot" controlled by ECCN 1391A;

(4) Digitally controlled equipment controlled by ECCNs 1080A, 1081A, 1086A, or 1088A;

(5) "Stored program controlled" equipment controlled by ECCN 1355A(b);

(6) Digitally controlled equipment controlled by ECCN 1357A;

(7) Digitally controlled electronic equipment controlled by ECCN 1529A.

"High-level language"— * * *

* * * * *

Supplement No. 4 to Part 779 [Amended]

8. Supplement No. 4 to part 779 (Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada) is amended:

a. By removing paragraphs (b)(3) and (b)(5) in the Technical Note that follows paragraph (2)(b) and redesignating paragraphs (b)(4) and (b)(6) through (b)(9) as new paragraphs (b)(3) and (b)(4) through (b)(7), respectively;

b. By removing the phrase "by ECCN 1354A or" from newly designated paragraph (b)(4) in the Technical Note that follows paragraph (2)(b);

c. By republishing the first sentence of paragraph (4), Technical data;

d. By revising in paragraph (4) the heading of the entry for ECCN 1302A to read "*ECCN 4302B*";

e. By revising in paragraph (4) the reference "paragraph (c)" in the entry for ECCN 1516A to read "paragraph (b)".

f. By revising in paragraph (4) the heading of the entry for ECCN 1518A to read "*ECCN 4518B*";

g. By removing in paragraph (4) the entry for ECCN 1519A;

h. By adding in paragraph (4) a new entry for ECCN 4529B immediately following the entry for ECCN 1529A;

i. By revising in paragraph (4) the reference "paragraphs (a) and (c) through (e)" in the entry for ECCN 1531A to read "paragraphs (a), (c), and (d)";

j. By adding in paragraph (4) a new entry for ECCN 4531B immediately following the entry for ECCN 1531A;

k. By adding in paragraph (4) a new entry for ECCN 4568B immediately following the entry for ECCN 1568A;

l. By revising in paragraph (4) the heading of the entry for ECCN 1587A to read "*ECCN 4587B*" and the phrase "Controlled by ECCN 1587A" in newly designated entry ECCN 4587B to read "Controlled by ECCN 4587B"; and

m. By removing in the introductory text of paragraphs (8) and (9) the parenthetical phrase "(including components controlled under ECCN 1372A)",

as follows:

Supplement No. 4—Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada

* * * * *

(4) Technical data, including software, for the design and production of commodities that are listed below in numerical order by their respective Export Control Commodity Number.* * *

* * * * *

ECCN 1529A: * * *

ECCN 4529B: Commodities described under the "List of Equipment Controlled by ECCN 4529B" for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 776.18(a).

ECCN 1531A: * * *

ECCN 4531B: Commodities described in this ECCN 4531B as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 776.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 776.18(a).

* * * * *

ECCN 1568A: * * *

ECCN 4568B: A–D converters described under the "List of Commodities Controlled by ECCN 4568B" when usable in systems described in § 776.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), the following Export Control Commodity Numbers (ECCNs) are removed:

Commodity Group 0 (Metal-Working Machinery)
ECCNs: 1075A and 1093A;
Commodity Group 1 (Chemical and Petroleum Equipment)
ECCN 1129A;
Commodity Group 2 (Electrical and Power-Generating Equipment)
ECCNs: 1203A and 1206A;
Commodity Group 3 (General Industrial Equipment)
ECCNs: 1305A, 1354A, 1356A, 1359A, 1360A, 1365A, and 1372A;
Commodity Group 4 (Transportation Equipment)
ECCN 1425A;
Commodity Group 5 (Electronics and Precision Instruments)
ECCNs: 1514A 1521A, 1532A, 1544A, 1545A, 1547A, 1559A, and 1588A;
Commodity Group 6 (Metals, Minerals, and Their Manufactures)
ECCN 1635A;
Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials)
ECCNs: 1734A, 1749A, and 1760A;

Supplement No. 1 to § 799.1 [Amended]

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Group 0 (Metal-Working Machinery), ECCN 1091A is amended: a. By adding a sentence at the end of the *Validated License Required* paragraph;

b. By adding a *Technical Data and Software* paragraph immediately preceding the *GLV $ Value Limit* paragraph;

c. By adding new Technical Notes 1 through 3 immediately following the *Special Licenses Available* paragraph; and

d. By revising the "List of Commodities Controlled by ECCN 1091A"; and

e. By revising the remainder of the entry as follows:

1091A "Numerical control" units, "numerically controlled" machine tools, components, specially designed parts and sub-assemblies, "specially designed software" and technical data as follows

* * * * *

Validated License Required: * * * See the "Technical Data and Software" paragraph below for license requirements for technical data and software described in this ECCN.

Technical Data and Software: GTDR is available for Country Groups T and V, except the People's Republic of China and Afghanistan, for technical data described in (c)(1) through (c)(10) of the list below.

GLV $ Value Limit: * * *

* * * * *

Special Licenses Available: * * *

Technical Notes: 1. For the purpose of this ECCN, machine tools for removing, cutting or spark eroding metal, ceramics or composites are categorized as follows:

(a) Machine tools for turning, including:

(1) Horizontal turning machines;
(2) Vertical turning machines;
(3) Turning centers, with or without milling or grinding options;
(4) Machines for generating optical quality surfaces;

Note: For non-"numerically controlled" machine tools capable of generating optical quality surfaces, see ECCN 1370A.

(b) Machine tools for milling, including:
(1) Boring machines;
(2) Boring-milling machines;
(3) Milling machines;
(4) Machining centers, with or without turning or grinding options;
(5) Machine tools for routing;
(c) Machine tools for grinding with or without milling or turning options, including:
(1) Jig grinding machines;
(2) Contour grinding machines;
(3) Tool and cutter grinding machines;
(d) Machine tools using electric discharge for machining;
(e) Other machines tools, as follows:
(1) Water and other liquid jet machines;
(2) Electron beam cutting machines; *or*
(3) Laser cutting machines.

Note: For broaching machines, see ECCNs 1060A, 1068A and 1068A.

2. Not counted in the total number of contouring axes are secondary parallel contouring axes, e.g., W-axis on horizontal borning mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis.

3. Axis nonemclature shall be in accordance with International Standard ISO 841, "Numerical Control Machines—Axis and Motion Nomenclature".

Note: Rotary axes do not necessarily have to rotate over 360°. A rotary axis can be driven by a linear device, e.g., a screw or a rack-and-pinion.

List of Commodities Controlled by ECCN 1091A

(a) "Numerical control" units for machine tools, having any of the following characteristics, and "specially designed software" and specifically designed components therefor:

Note: "Software" (including documentation) for "numerical control" units that may be exported under General License GTDR must be:
(a) In machine executable form only;
(b) Limited to the minimum necessary for the use (i.e., installation, operation and maintenance) of these units.

(1) More than three interpolating axes can be coordinated simultaneously for "contouring control"; *or*
(2) Two or three interpolating axes can be coordinated simultaneously for "contouring control" *and* one or more of the following conditions are fulfilled:
(i) The smallest programmable increment, i.e., the input resolution, for any linear axis is less than 0.001 mm;

Note: In case of units with only two linear axes one of them may have a smallest programmable increment of less than 0.001 mm but not less than 0.0005 mm.

(ii) Interpolation of third order or higher is possible (e.g., spline or involute interpolation);
(iii) Word size of more than 32 bit (excluding parity bits);
(iv) Capable of "real-time processing" of data to modify, during the machining operation, tool path, feed rate and spindle data by either:
(A) Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*
(B) "Adaptive Control" with more than one physical variable measured and processing by means of a computing model (strategy) to change one or more machining instructions to optimize the process;
(v) Capable of receiving directly (on-line) and processing computer aided design (CAD) data for internal preparation of machine instructions.

Notes: 1. This sub-paragraph does not control "numerical control" units, if they are either:
(a) Modified for *and* incorporated in machines not described in an ECCN on this List; *or*
(b) Specially designed for machines not described in any ECCN on this List.

2. For "digital computers" not "embedded" in numerical control" units, see ECCN 1565A.

3. This sub-paragraph controls "numerical control" units that, according to the manufacturer's technical specifications, are capable, without modification, of accepting additional boards that would permit increasing the number of interpolating axes, which can be coordinated simultaneously for "contouring control," above the control levels, even if they do not contain these additional boards.

(b) Machine tools, as follows, for removing, cutting or spark eroding metals, ceramics or composites:
(1) Machine tools for turning that:
(i) According to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled by paragraph (a), even when not equipped with such units at delivery;
(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*
(iii) Have one or more of the following characteristics:
(A) Two or more contouring rotary axes;
(B) "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);
(C) "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);
(D) The "positioning accuracies," with all compensations available, are better than:
(*1*) Along any linear axis regarding overall positioning:
(*i*) 0.006 mm for a total length of axis travel L equal to or shorter than 500 mm;
(*ii*) $(0.008+0.001\times(L-500)/500)$ mm if L is longer than 500 mm and shorter than 5,5000 mm;
(*iii*) 0.016 mm if L is equal to or longer than 5,500 mm;
(*2*) Of any rotary axis 0.001°;
(2) Machine tools for milling that:
(i) According to the manufacturer's technical specifications, can be equipped with "numerical control" units controlled by paragraph (a), even when not equipped with such units at delivery;
(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*
(iii) Have one or more of the following characteristics:
(A) Two or more contouring rotary axes;
(B) One or more contouring "tilting spindles";
(C) "Run out" (out-of-true running) in one revolution of the spindle less (better) than $2\times D\times 10^{-6}$ mm total indicator reading (TIR) where D equals the diameter of the axis in mm;
(D) The "positioning accuracies", with all compensations available, are better than:
(*1*) Along any linear axis regarding overall positioning:
(*i*) 0.006 mm in case none of the axes exceeds a total length of axis travel L of 650 mm;
(*ii*) If the total length of axis travel L of any axis is longer than 650 mm, 0.008 mm or $(0.008+0.0015\times(L-500)/500)$ mm whichever is higher, for all axes up to 5,500 mm of travel; *or*
(*iii*) 0.023 mm for any axis the total length L of which is equal to or longer than 5,500 mm;
(*2*) Of any rotary axis 0.001°;
(E) A motor power of any spindle of more than 75 kW;
(3) Machine tools for grinding that:
(i) According to the manufacturer's technical specifications, can be equipped with "numericai control" units controlled by paragraph (a), even when not equipped with such units at delivery;
(ii) Have two or more axes that can be coordinated simultaneously for "contouring control"; *and*
(iii) Have one or more of the following characteristics:
(A) Two or more contouring rotary axes;
(B) One or more contouring "tilting spindles";

(C) "Run out" (out-of-true running) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);
(D) The "positioning accuracies", with all compensations available, are better than:
(*1*) Along any linear axis regarding overall positioning:
(*i*) 0.004 mm for a total length of axis travel L equal to or shorter than 300 mm;
(*ii*) $[0.004+0.001\times(L-300)/300]$ mm if L is longer than 300 mm and shorter than 3,300 mm;
(*iii*) 0.014 mm if L is equal to or longer than 3,300 mm;
(*2*) Of any rotary axis 0.001°;

Note: This sub-paragraph does not control tool or cutter grinding machines having all of the following characteristics:
(a) No more than four axes that can be coordinated simultaneously for "contouring control";
(b) No more than two rotary axes can be coordinated simultaneously for "contouring control";
(c) "Run out" (out-of-true running) in one revolution of the spindle more (worse) than 0.0008 mm total indicator reading (TIR);
(d) The "positioning accuracies", with all compensations available, are not better than:
(1) 0.006 mm along any linear axis regarding overall positioning;
(2) Of any rotary axis 0.001°; *and*
(e) A maximum slide travel along any axis of less than 250 mm;

(4) Electrical discharge machines (EDM) of the wire feed type that have five or more contouring axes and that are capable of being equipped with:
(i) "Numerical control" units controlled by paragraph (a) above; *or*
(ii) Electronic controllers controlled by ECCN 1391A (b);
(5) Electrical discharge machines (EDM) of the non-wire type that have two or more contouring rotary axes and that are capable of being equipped with:
(i) "Numerical control" units controlled by paragraph (a) above; *or*
(ii) Electronic controllers controlled by ECCN 1391A(b);
(6) Machine tools for removing metals, ceramics or composites:
(i) By means of:
(A) Water or other liquid jets, including those employing abrasive additives;
(B) Electron beam; *or*
(C) Laser beam; *and*
(ii) Having all of the following characteristics:
(A) According to the manufacturer's technical specifications, they can be equipped with "numerical control" units controlled by paragraph (a), even when they are not equipped with such units at delivery; *and*
(B) They have two or more rotary axes that:
(*1*) Can be coordinated simultaneously for "contouring control"; *and*
(*2*) Have a "positioning accuracy" of better than 0.01 degree of arc;

Notes: 1. Machines that are controlled by their number of contouring axes are not excluded from control even if the numerical control unit attached to the machine limits it to the allowed number of simultaneously coordinated contouring axes.

2. Machine tools that are capable of performing more than one type of machining (e.g., a turning/milling center) are controlled if they meet or exceed criteria set out for one or more of the types of machining which they are capable of performing.

3. The number of axes on a machine tool that is equipped with the necessary mechanical and electrical interfaces for an optional rotary axis are to be counted as if the machine is equipped with such an axis.

(c) Technical data for:
(1) The development of "numerical control" units described in paragraph (a) above;
(2) The production of "numerical control" units, having any of the following characteristics:
(i) Controlled by paragraph (a) above; *or*
(ii) Containing a microprocessor with:
(A) A word length of 32 bit; *and*
(B) A bus architecture for 32 bit;
(3) The development of "numerically controlled" machine tools described in paragraph (b) above;
(4) The production of "numerically controlled" machine tools, having any of the following characteristics:
(i) Controlled by paragraph (b) above; *or*

Notes: This does not exclude from control technical data for the production of "numerically controlled" machine tools containing tilting tables if that technical data is the same as that for such machine tools when containing "tilting spindles".

(ii) A "positioning accuracy" along any linear axis of better than 20 micrometer;
(5) The development of components described in paragraphs (d) and (e) below;
(6) The production of components or sub-assemblies, having any of the following characteristics:
(i) Controlled by paragraphs (d) or (e)(2) below; *or*

Note: For the control status of the production equipment for printed circuit boards, see ECCN 1355A.

(ii) Not controlled by paragraphs (d)(2) or (d)(3) below;
(7) The development of interactive graphics as an integrated part in "numerical control" units for preparation or modification of part programs;
(8) The development of generators of machine tool instructions (e.g., part programs) from design data residing inside "numerical control" units;
(9) The incorporation of expert systems for advanced decision support of shop floor operations;
(10) Technical data for the development of "flexible manufacturing units" used with the "software" controlled by paragraph (b)(5)(v) in the "List of Software" in Supplement No. 3 to part 770;
(d) Components and specially designed parts, as follows, for machine tools controlled by paragraph (b):
(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, with "run-out" (out-of-true running) less than:
(i) 0.008 mm total indicator reading (TIR also peak-to-peak) for machine tools for turning or grinding; *or*
(ii) $2\times D\times 10^{-6}$ mm total indicator reading (TIR also peak-to-peak), where D equals the diameter of the axis in mm, for machine tools for milling;
(2) Linear position feedback units, e.g., inductive type devices, graduated scales, laser or infrared systems having, with compensation, an overall "accuracy" better than $\pm(0.0015+L\times 10^{-6})$ mm, L equal the effective length in mm of the linear measurement;
(3) Rotary position feedback units, e.g., indicative type devices, graduated scales, laser or infrared systems having, with compensation, an "accuracy" better than ± 0.00025° of arc;
(4) Slide way assemblies consisting of a minimal assembly of ways, bed and slide with all of the following characteristics:
(i) A yaw, pitch or roll of less than 2 seconds of arc, total indicator reading (reference: ISO/DIS 230-1);
(ii) A horizontal straightness of less than 4 micrometer; *and*
(iii) A vertical straightness of less than 4 micrometer;
(5) Ball screws, having all of the following characteristics (reference: ISO/DIS 3408-3):
(i) Sum of tolerance of mean travel deviation (e) and half the travel variation (V_u) less than $(0.0025+5\times 10^{-4}\times L)$ mm, where L is the useful travel in mm of the ball screw;
(ii) Tolerance of travel variation (V300) within 300 mm travel of the ball screw less than 0.004 mm;
(iii) "Run-out" (out-of-true running) of the journal diameter related to the screw shaft outer diameter: less than 0.005 mm TIR (peak-to-peak) at an axial distance of 3 or more times the screw shaft outer diameter from the end of the journal;

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(6) Single point diamond cutting tool inserts having all of the following characteristics:

(i) A flawless and chip-free cutting edge when magnified 400 times in any direction;

(ii) A cutting radius out-of roundness less than 0.002 mm total indicator reading (TIR, also peak-to-peak); *and*

(iii) A cutting radius between 0.1 and 5.0 mm;

(7) Linear induction motors used as drives for slides having all the following characteristics:

(i) A stroke longer than 200 mm for linear slides;

(ii) A nominal force rating above 45 N; *and*

(iii) A minimal controlled incremental movement less than 0.001 mm for linear motion;

(e) Specially designed components or sub-assemblies, as follows, capable of upgrading, according to the manufacturer's specifications, "numerical control" units, machine tools or feed-back devices to or above the levels controlled in paragraphs (a), (b), (d)(2) or (d)(3):

(1) Printed circuit boards with mounted components and "software" therefor;

(2) "Compound rotary tables";

Note: For "sensors", see ECCN 1391A.

Technical Note: Definitions of terms:

Accuracy—Usually measured in terms of inaccuracy, defined as the maximum deviation, positive or negative, of an indicated value from an accepted standard or true value.

Adaptive control—A control system that adjusts the response from conditions detected during the operation (Ref. ISO 2806–1980).

Camming (axial displacement)—Axial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle faceplate, at a point next to the circumference of the spindle faceplate (see ISO 230 Part 1–1986, paragraph 5.63);

Compound rotary table—A table allowing the workpiece to rotate and tilt about two non-parallel axes, which can be coordinated simultaneously for "contouring control".

Contouring control—Two or more "numerically controlled" motions operating in accordance with instructions that specify the next required position and the required feed rates to that position. These feed rates are varied in relation to each other so that a desired contour is generated (Ref. ISO 2806–1980).

Numerical control—The automatic control of a process performed by a device that makes use of numeric data usually introduced as the operation is in progress (Ref. ISO 2382).

Positioning accuracy—Of "numerically controlled" machine tools are to be determined and presented in accordance with ISO/DIS 230/2, paragraph 2.13, in conjunction with the requirements below:

(a) Test conditions (ISO/DIS 230/2, paragraph 3):

(1) For 12 hours before and during measurements, the machine tool and accuracy measuring equipment will be kept at the same ambient temperature. During the premeasurement time the slides of the machine will be continuously cycled in the same manner that the accuracy measurements will be taken;

(2) The machine shall be equipped with any mechanical, electronic, or software compensation to be exported with the machine;

(3) Accuracy of measuring equipment for the measurements shall be at least 4 times more accurate than the expected machine tool accuracy;

(4) Power supply for slide drives shall be as follows:

(i) Line voltage variation shall not be greater than ±10 percent of nominal rated voltage;

(ii) Frequency variation shall not be greater than ±2 Hz of normal frequency;

(iii) *Lineouts* or interrupted service are not permitted.

(b) Test Program (ISO/DIS 230/2, paragraph 4):

(1) Feed rate (velocity of slides) during measurement shall be the rapid traverse rate;

N.B.: In case of machine tools that generate optical quality surfaces the feed rate shall be equal to or less than 50 mm per minute;

(2) Measurements shall be made in an incremental manner from one limit of the axis travel to the other without returning to the starting position for each move to the target position;

(3) Axes not being measured shall be retained at mid travel during test of an axis.

(c) Presentation of test results (ISO/DIS 230/2, paragraph 2):

The results of the measurements must include:

(1) "positioning accuracy" (A); *and*

(2) The mean reversal error (B).

Real-time processing—Processing of data by an electronic computer in response to an external event according to time requirements imposed by the external event.

Run out (out-of-true running)—Radial displacement in one revolution of the main spindle measured in a plane perpendicular to the spindle axis at a point on the external or internal revolving surface to be tested (see ISO 230 Part 1–1986, paragraph 5.61);

Tilting spindle—A tool holding spindle which alters, during the machining process, the angular position of its center line with respect to any other axis.

Advisory Note: 1. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of turning machines controlled by paragraph (b)(1) provided:

(a) They are not intended for use in nuclear related activities; *and*

(b) They have all the following characteristics:

(1) Only two axes which can be coordinated simultaneously for "contouring control";

(2) The "positioning accuracy", with all compensation available, is not better than 2 micrometer per 300 mm of travel;

(3) Geometric alignment of the axes, parallel or perpendicular to each other not better than 1 micro- meter per 300 mm of travel;

(4) Slide travel in both axes not longer than 400 mm.

(5) "Run out" (out-of-true running) in one revolution of the spindle more (worse) than 0.0004 mm total indicator reading (TIR); *and*

(6) "Camming" (axial displacement) in one revolution of the spindle more (worse) than 0.0004 mm total indicator reading (TIR);

(Advisory) Note 2. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of technical data for the production of "numerical control" units not controlled by paragraph (a) of ECCN 1091A which contain a microprocessor with:

(a) A word length of 32 bit; *and*

(b) A bus architecture for 32 bit.

(Advisory) Note 3. Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of technical data for the production of machine tools not controlled by paragraph (b) with a "positioning accuracy" better than 200 micrometer.

(Advisory) Note 4 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "numerical control" units controlled by paragraph (a) having both of the following characteristics, and specially designed components and "specially designed software" therefor:

(a) Four interpolating axes can be coordinated simultaneously for "contouring control"; *and*

(b) Not controlled by paragraph (a)(2)(i) to (a)(2)(v) of this ECCN 1091A.

(Advisory) Note 5 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of machine tools controlled by paragraph (b)(2) having all of the following characteristics:

(a) Along any linear axis that is longer than 650 mm, the "positioning accuracies", with all compensations available, are equal to or more (worse) than:

(1) 0.006 mm for a total length of axis travel L equal to or shorter than 300 mm;

(2) (0.006 + 0.002 × (L−300)/300) mm if L is longer than 300 mm and equal to or shorter than 660 mm;

(3) (0.008 + 0.0015 × (L−500)/300) mm if L is longer than 660 mm and shorter than 5,500 mm; *or*

(4) 0.023 mm if L is equal to or longer than 5,500 mm; *and*

(b) Not controlled by paragraphs (b)(2)(iii)(A), (b)(2)(iii)(C) or (b)(2)(iii)(D)(*2*) of this ECCN 1091A.

Supplement No. 1 to § 799.1 [Amended]

11. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), a new ECCN 5091F is added immediately following the entry for ECCN 1091A to read as follows:

5091F Numerically controlled machine tools and dimensional inspection machines not controlled by ECCN 1091A.

Controls for ECCN 5091F

Unit: Report machines in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for Country Groups S and Z, $5,000 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

List of Commodities for ECCN 5091F

Numerically controlled machine tools and dimensional inspection machines having:

(a) Two or more axes that can be coordinated simultaneously for contouring control; and

(b) One or more of the following characteristics:

(1) Two or more contouring rotary axes;

(2) "Run out" (out-of-true running) in one revolution of the spindles less (better) than 0.0008 mm total indicator reading (TIR);

(3) "Camming" (axial displacement) in one revolution of the spindle less (better) than 0.0008 mm total indicator reading (TIR);

(4) The "positioning accuracies", with all compensations available, are better than:

(i) Along any linear axis regarding overall positioning:

(A) 0.012 mm for a total length of axis travel L equal to or shorter than 300mm;

(B) (0.012 + 0.003 × (L−300)/300) mm if L is longer than 300 mm and shorter than 5,500 mm;

(C) 0.022 mm if L is equal to or longer than 5,500 mm;

(ii) Of any rotary axis 0.002.

Supplement No. 1 to § 799.1 [Amended]

11a. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), a new ECCN 1098A is added to follow ECCN 4098B, as follows:

1098A Dimensional inspection systems or devices, and specially designed components and "specially designed software" therefor.

Controls for ECCN 1098A

Unit: Report machines in "number"; parts and accessories in "value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: TE.

Reason for Control: National security; nuclear non-proliferation. Nuclear non-proliferation controls apply only to items described in paragraphs (c) or (d) of the List below. There are no controls for nuclear non-proliferation reasons on exports to these countries listed Supp. No. 2 or 3 to Part 773.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1098A

(a) Manual dimensional inspection machines with two or more axes, and "measurement uncertainty" equal to or less (better) than (0.25+L/1000) micrometer in any axis (L measured length in mm).

Note: Paragraph (a) of this ECCN 1098A does not control optical comparators.

(b) Computer controlled or "numerically controlled" dimensional inspection machines having both of the following characteristics:

(1) Two or more axes; *and*

(2) A one dimensional (1D) length "measurement uncertainty" equal to or less (better) than (1.5+L/1000) micrometer tested with a probe of an "accuracy" of less (better) than 0.2 micrometer (L measured length in mm) (Ref: VDI/VDE 2617 part 1 and 2);

(c) Linear and angular displacement measuring devices, as follows:

(1) Linear measuring instruments having any of the following characteristics:

(i) Non-contact type measuring systems with a "resolution" equal to or less (better) than 0.2 micrometer within a measuring range up to 0.2 mm;

(ii) Linear voltage differential transformer systems having both of the following characteristics:

(A) "Linearity" equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

(B) Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

(iii) Measuring systems that have both of the following characteristics:

(A) Contain a "laser"; *and*

(B) Maintain for at least 12 hours, over a temperature range of ± 1 K around a standard temperature and at a standard pressure:

(*1*) A "resolution" over their full scale of ± 0.1 micrometer or better; *and*

(*2*) With a "measurement uncertainty" equal to or less (better) than 0.2+L/2000 micrometer (L measured length in mm);

(2) Angular measuring instruments having an "angular position deviation" equal to or less (better) than 0.00025°;

Note: Paragraph (a) of this ECCN 1098A does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

(d) Systems for simultaneous linear-angular inspection of hemishells, having both of the following characteristics:

(1) "Measurement uncertainty" along any linear axis equal to or less (better) than 3.5 micrometer per 5 mm; *and*

(2) "Angular position deviation" equal to or less than 0.02°.

Note: "Specially designed software" for the systems described in paragraph (d) of this ECCN 1098A includes "software" for simultaneous measurements of wall thickness and contour.

Technical Notes: 1. Machine tools that can be used as measuring machines are controlled if they meet or exceed the criteria specified for the machine tool function or the measuring machine function.

2. A machine is controlled if it exceeds the control threshold anywhere within its operating range.

3. The probe used in determining the "measurement uncertainty" of a dimensional inspection system shall be as described in VDI/VDE 2617 part 2.2.4.

4. All parameters or measurement values in this ECCN 1098A represent permissible positive and negative deviations from the target value, i.e., not total band.

Advisory Note: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of equipment controlled by paragraph (c)(1) of this ECCN 1098A to civil end-users not engaged in aerospace or nuclear activities.

[For "numerical control" units, see ECCN 1091A(a).]

Supplement No. 1 to § 799.1 [Amended]

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1302A is amended by revising ECCN "1302A" to read "4302B" in the heading for the ECCN and in the heading "Controls for ECCN" and by revising the phrase "National security; foreign policy." to read "Foreign policy." in the *Reason for Control* paragraph.

Supplement No. 1 to § 799.1 [Amended]

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended:

a. By revising the heading for the ECCN;

b. By revising paragraphs (a) and (b) in the List of Equipment;

c. By adding a new Note immediately following paragraph (b); and

d. By removing the Advisory Note, the Note following the Advisory Note, and the Advisory Note for the People's Republic of China,

as follows:

1312A "Isostatic presses", and specially designed dies and moulds, components, accessories and controls and "specially designed software" therefor.

* * * * *

List of Equipment Controlled by ECCN 1312A

"Isostatic presses", as follows:

(a) Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 127 mm or more; *and*

(b) Having any of the following characteristics:

(1) Maximum working pressure exceeding 207 MPa;

(2) Chamber cavity with an inside diameter (i.e., the maximum inside diameter of the working chamber) exceeding 406 mm, when the controlled thermal environment that can be achieved and maintained exceeds 1,500 °C; *or*

(3) Having a facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

Note: The inside chamber dimension referenced in paragraph (b) is the chamber in which both the working temperature and the working pressure are achieved. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other. The insertion of fixturing leaves a smaller diameter in the chamber for the piece to be pressed.

Technical Note: * * *

Supplement No. 1 to § 799.1 [Amended]

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 5312F is added immediately following ECCN 1312A to read as follows:

5312F Isostatic presses, specially designed dyes and molds, components, accessories, and controls not controlled by ECCN 1312A.

Controls for ECCN 5312F

Unit: Report machines in "number", parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to part 778.

GLV $ Value Limit: $0 for Country Groups S and Z, $5,000 for all other destinations.

Processing Code: TE.

Reason for Control: Nuclear non-proliferation.

List of Equipment Controlled by ECCN 5312F

"Isostatic presses", as follows:

(a) Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 127 millimeters (5 inches) or more; or

(b) Capable of achieving a maximum working pressure of 69 megapascals (10,000 psi) or greater and possessing a chamber cavity with an inside diameter in excess of 254 millimeters (10 inches).

Supplement No. 1 to § 799.1 [Amended]

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1353A is amended:

a. By revising paragraphs (a) through (d) in the List of Equipment and the Note that follows paragraph (d);

b. By removing Note 1 and (Advisory) Note 2; and

c. By redesignating (Advisory) Note 3 for the People's Republic of China as (Advisory) Note and revising the newly designated (Advisory) Note,

as follows:

1353A Manufacturing and testing equipment for optical fiber, optical cable and other cables, and specially designed components therefor.

* * * * *

List of Equipment Controlled by ECCN 1353A

(a) Equipment specially designed to manufacture cable controlled by ECCN 1526A (a) or (d);

(b) Equipment specially designed to manufacture optical fiber controlled by ECCN 1526A;

(c) Equipment specially designed to manufacture "optical fiber preforms" controlled by ECCN 1767A;

(d) Optical fiber and "optical fiber preform" characterization equipment using semiconductor "lasers" for the testing of optical fibers or "optical fibers preforms" at operating wavelengths exceeding 1,000 nm;

Note: The status of optical fiber and "optical fiber preform" characterization equipment that contains "lasers" is defined in this ECCN 1353A.

(Advisory) Note: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y and the People's Republic of China of the following:

(a) Optical fiber or "optical fiber preform" characterization equipment using semiconductor "lasers" with a wavelength of 1,370 nm or less;

(b) Equipment specially designed for the manufacture of silica-based "optical fiber preforms", optical fibers or cables.

Supplement No. 1 to § 799.1 [Amended]

16. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1370A is amended by adding a new Note immediately preceding the heading "Controls for ECCN", as follows:

1370A Machine tools for generating optical quality surfaces, specially designed components and accessories therefor

* * * * *

Note: For "numerically controlled" machine tools capable of generating optical quality surfaces, see ECCN 1081A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

17. Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1358A is amended by removing (Advisory) Note 3 for the People's Republic of China and by adding a new Note 3 to read as follows:

1358A Equipment specially designed for the manufacture or testing of devices and assemblies thereof controlled by ECCN 1558A or magnetic recording media described in ECCN 1572A and specially designed components therefor

* * * * *

Note 3: This ECCN 1358A does not control:

(a) "Automatic" equipment for monitoring, grading, exercising or testing recording media controlled by paragraph (d) of ECCN 1572A having the following characteristics:

(1) For digital recording tape, a maximum recording density of less than 3,937 bits per cm; or

(2) For analog recording tape, a coating thickness greater than 2.54 micrometers;

(b) Diskette unit test equipment.

Supplement No. 1 to § 799.1 [Amended]

18. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1391A is amended:

a. By revising in paragraph (b) of Note 2 that follows paragraph (a)(4) the phrase "16-bit" to read "32-bit";

b. By removing the Note that follows Note 2 that follows paragraph (a)(4);

c. By revising the reference "ECCN 1532A" in paragraph (a)(10) to read "ECCN 1099A";

d. By revising the phrase "numerically controlled" in Note 1 that follows paragraph (b) to read " 'numerically controlled' ";

e. By removing paragraph (b)(3) and redesignating paragraphs (b)(4), (b)(5), (b)(6), and (b)(7) as new paragraphs (b)(3), (b)(4), (b)(5), and (b)(6), respectively;

f. By revising the phrase "16-bit" in newly designated paragraph (b)(4) to read "32-bit" and removing the Note that follows paragraph (b)(4);

g. By revising the reference "(b)(7)" in the Note that follows newly designated paragraph (b)(6)(vi) to read "(b)(6)";

h. By removing paragraph (c)(2) and redesignating paragraph (c)(3) as new paragraph (c)(2);

i. By removing Advisory Note 2 for the People's Republic of China and its two notes and adding a new Note 2; and

j. By adding a new (Advisory) Note 3 for the People's Republic of China,

as follows:

1391A "Robots", "robot" controllers and "robot" end-effectors; and specially designed components therefor

* * * * *

Note 2: This ECCN 1391A does not control:

(a) "Robots" controlled for export by paragraph (a) of this ECCN 1391A that are for civil use and not covered by paragraphs (a)(2) to (a)(6), (a)(10) or (a)(11);

(b) Electronic controllers described in paragraph (b) for the control of "robots" eligible for treatment under this Note;

(c) "End effectors" controlled by paragraph (c) for use with "robots" eligible for treatment under this Note;

(d) Vision systems, limited as follows:

(1) Capable of processing no more than 100,000 pixels using an industrial television camera, or no more than 65,536 pixels using a solid-state camera;

(2) Not programmable by the user *except:*

(i) To input reference images through the system's camera;

(ii) To input values of fixed parameters, including teach-in parameters; *or*

(iii) To select pre-programmed sub-routines;

(3) Not capable of continuous reaction or continuously updating the "robot" position while the "robot" is moving;

Note: This limitation precludes the use of vision systems for weld seam tracking during the welding operation but does not preclude straight-line or single-plane weld seam tracking using a single pass.

(4) Capable of no more than one scene analysis every 0.02 second;

(5) The "software" provided for the vision processor shall be in "object code" only and shall not be capable of full three-dimensional mathematical modeling or full three-dimensional scene analysis.

Note: This scene analysis limitation does not preclude approximation of the third dimension by viewing at a given angle, nor limited gray scale interpretation for the perception of depth or texture for the approved tasks (2½D).

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "robots" equipped with vision systems capable of processing no more than 200,000 pixels using an industrial television camera or a solid-state camera.

Supplement No. 1 to § 799.1 [Amended]

19. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1516A is amended:

a. By removing the parenthetical sentence in the heading of the ECCN;

b. By revising in the *Commodities Not Eligible for GCT* paragraph and in the *Reason for Control* paragraph the reference "paragraph (c)" to read "paragraph (b)" both places it appears;

c. By removing, in the List of Receivers, paragraph (a) and redesignating paragraphs (b) through (d) as new paragraphs (a) through (c), respectively;

d. By revising newly designated paragraphs (a) through (c);

e. By adding a new Note following newly designated paragraph (c);

f. By removing the parenthetical sentence and the Note following Technical Note 2; and

g. By removing the Advisory Note,

as follows:

1516A Receivers, and specially designed components and accessories therefor.

* * * * *

List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A

(a) Digitally controlled radio receivers, whether or not computer controlled, that search or scan automatically a part of the electromagnetic spectrum, in which the switching operation takes less than 4.5 ms, and that indicate or identify the received signals, *except* non-ruggedized, pre-set type radio receivers designed for use in civil communications that have 1,000 selective channels or fewer;

(b) Receivers for "spread spectrum" and "frequency agile" systems having a total transmitted bandwidth that is:

(1) 100 or more time greater than the bandwith of any one information channel; *and*

(2) In excess of 50 kHz;

(c) Receivers that incorporate digital signal processing, *except* receivers specially designed for internationally allocated civil frequency bands only and that do not permit "user-accessible programmability" of the digital signal processing circuits.

Note: (1) For radio frequency spectrum analyzers, see ECCN 1533A;

(2) For field strength meters, see ECCN 1529A; and

(3) For radio relay communications equipment, see ECCN 1520A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

20. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Eletronics and Precision Instruments), ECCN 1518A is amended:

a. By revising ECCN "1516A" to read "4516B" in the ECCN heading and in the heading "Controls for ECCN";

b. By revising the phrase "National security; foreign policy." at the beginning of the *Reason for Control* paragraph to read "Foreign policy."; and

c. By revising the text of the *Special Licenses Available* paragraph to read "None available.".

Supplement No. 1 to § 799.1 [Amended]

21. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended:

a. By revising the *Reason for Control* paragraph;

b. By adding a new Note immediately following the heading "List of Equipment Controlled";

c. By removing the parenthetical phrase in paragraph (a)(1)(i);

d. By revising the Note that follows paragraph (a)(1)(ii);

e. By removing paragraph (a)(2)(i) and redesignating paragraphs (a)(2)(ii) and (a)(2)(iii) as new paragraphs (a)(2)(i) and (a)(2)(ii), respectively;

f. By adding a new paragraph (a)(3) immediately following newly designated paragraph (a)(2)(ii);

g. By redesignating paragraph (b) as new paragraph (c) and adding a new paragraph (b) immediately preceding newly designated paragraph (c);

h. By removing the Technical Note that follows newly designated paragraph (c);

i. By redesignating (Advisory) Notes 3 and 4 for the People's Republic of China as new (Advisory) Notes 4 and 5 for the People's Republic of China and adding a new (Advisory) Note 3;

j. By revising a newly designated (Advisory) Note 5 for the People's Republic of China the phrase "paragraph (a)(2)" to read "paragraph (a)(2)(i);

k. By adding a new (Advisory) Note 6;

l. By adding a new Note and new Notes 1 through 3 immediately following (Advisory) Note 6;

m. By adding new (Advisory) Notes 7 and 8;

n. By adding new Notes 1 and 2 following new (Advisory) Note 8; and

o. By adding a new paragraph designated "Definitions of Terms" at the end of the entry for ECCN 1519A,

as follows:

1519A "Telecommunication transmission equipment", measuring and test equipment, as follows, and specially designed components and accessories therefor.

* * * * *

Controls for ECCN 1518A

* * * * *

Reason for Control: National security.

* * * * *

List of Equipment Controlled by ECCN 1519A

Note: The status of "telecommunications transmission equipment" using lasers is defined by this ECCN 1519A.

(a) * * *
(1) * * *
(ii) * * *

Note: The maximum of 45 million bit/s for the highest multiplex level does not preclude total digital transfer rates of maximally 90 million bit/s to allow for line coding and overhead for:

(a) Line terminating equipment;
(b) Intermediate amplifier equipment;
(c) Repeater equipment;
(d) Regenerator equipment;
(e) Translation encoders (transcoders);

(2) * * *

(3) Employing a laser having a transmission wavelength exceeding 1,000 nm;

Note: * * *

(b) "Telecommunication transmission equipment" employing lasers and having any of the following characteristics:

(1) Employing analog techniques and having a bandwidth that exceeds 45 MHz or having an operating wavelength longer than 1,370 nm;

(2) Employing optical heterodyne or homodyne detection techniques (also called coherent optical transmission techniques); or

(3) Employing wavelength division multiplexing techniques.

* * * * *

(Advisory) Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of equipment controlled by paragraph (a)(3) of this ECCN 1519A when the wavelength does not exceed 1,370 nm.

* * * * *

(Advisory) Note 6: Licenses are likely to be approved for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of the following communication, measuring or test equipment for:

(a) "Telecommunication transmission equipment" provided that it is:

(1) Intended for general commercial traffic in a civil communication system;

(2) Designed for operation at a total digital transfer rate at the highest level multiplex level of 150 million bit/s or less;

(3) Installed under the supervision of the seller in a permanent circuit; and

(4) To be operated by the civilian authorities of the importing country;

(b) Measuring or test equipment necessary for the use (i.e., installation, operation and maintenance) of equipment exported under the conditions of this Note, provided that:

(1) It is designed for use with communication transmission equipment operating at a total digital transfer rate of 150 million bit/s or less; and

(2) It will be supplied in the minimum quantity required for the transmission equipment eligible for export under an Advisory Note.

Note: Where possible, built-in test equipment (BITE) will be provided for installation or maintenance of transmission equipment eligible for administrative exception treatment under this ECCN 1519A rather than individual test equipment.

Notes:

1. The maximum of 150 million bit/s does not preclude total digital transfer rates of maximally 167.2 million bit/s to allow for line coding and overhead for:
(a) Line terminating equipment;
(b) Intermediate amplifier equipment;
(c) Repeater equipment;
(d) Regenerator equipment; or
(e) Translation encoders (transcoders).

2. If the equipment employs a laser the transmission wavelength must not exceed, 1,370 nm.

3. A license application to export any commodities covered by (Advisory) Note 6 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

(Advisory) Note 7: Licenses are likely to be approved for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of modems controlled by sub-paragraph (a)(2) of this ECCN 1519A. A license application to export any commodities covered by this Note shall include an end-use statement from the importing government providing the government's assurance that the export is intended solely for the stated end-use.

(Advisory) Note 8: Licenses will receive favorable consideration for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of technical data controlled by this ECCN 1519A and of instrumentation, test equipment and components and "specially designed software" therefor, and materials and components controlled by this ECCN 1519A or other "A" level entries on the Commodity Control List, for modification or production of "telecommunication transmission equipment" or systems, provided that:

Note: Technical data for general purpose computers is not eligible for consideration under (Advisory) Note 8 of this ECCN 1519A; i.e., it is covered under ECCN 1565A(j).

(a) The characteristics of the "telecommunications transmission equipment" or systems are limited to those that make them free from control or eligible for consideration under (Advisory) Note 6 or (Advisory) Note 7;

(b) Modification of the "telecommunications transmission equipment" or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of (Advisory) Note 6 or (Advisory) Note 7;

(c) Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

Note: Paragraph (c) of (Advisory) Note 8 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilize the transferred technical data, instrumentation and test equipment;

(e) All "software" shall be exported in machine executable form only;

(f) Development technical data is not included;

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another controlled destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the "telecommunications transmission equipment" or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recover source code or upgrade the system beyond the performance threshold or features of (Advisory) Note 6 or (Advisory) Note 7 as applicable;

(i) End-use reporting of the installed "telecommunication transmission equipment" or systems will be provided as per (Advisory) Note 6 or (Advisory) Note 7;

(j) Reserved;

Notes:

1. No export under (Advisory) Note 8 shall establish a precedent for export approval under other "A" level entries in the Commodity Control List.

2. A license application to export any commodities covered by (Advisory) Note 8 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the state end-use; and

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

Definitions of terms:

Bandwidth of one voice channel—

In the case of data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151;

Data signalling rate—

As defined in ITU Recommendation 53-30, taking into account that, for nonbinary modulation, "baud" and "bit per second" are not equal. Bits for coding, checking and synchronization functions are to be included.

Note: When determining the "data signalling rate," servicing and administrative channels shall be excluded.

Telecommunication transmission equipment—

(a) Categorized as follows, or combinations thereof:
(1) Line terminating equipment;
(2) Intermediate amplifier equipment;
(3) Repeater equipment;
(4) Regenerator equipment;
(5) Translation encoders (transcoders);
(6) Multiplex equipment;
(7) Modulators/demodulators (modems);
(8) Transmultiplex equipment (see CCITT Rec. G701); *or*
(9) Stored program controlled digital crossconnection equipment; *and*
(b) Designed for use in single or multi-channel communication via:
(1) Wire (line);
(2) Coaxial cable;
(3) Optical fiber cable; *or*
(4) Electromagnetic radiation.

Supplement No. 1 to § 799.1 [Amended]

22. In Supplement No. 1 to § 799.1 (the Commodity Control List), ECCN 1520A is amended: a. By revising the heading for the ECCN;

b. By removing the Note immediately following the ECCN heading;

c. By adding a new *Technical Data and Software* paragraph following the *Validated License Required* paragraph;

d. By revising the "List of Equipment Controlled"; and

e. By revising the remainder of the entry

as follows:

1520A Radio relay communication equipment, specially designed test equipment and software, and specially designed components and accessories therefor

Controls for ECCN 1520A

* * * * *

Technical Data and Software: GTDR with written assurance applies to specially designed software and to technical data for development or production of equipment controlled by this ECCN 1520A, as well as technical data described in Notes 1 and 2 following paragraph (a), for export to Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations.

* * * * *

List of Equipment Controlled by ECCN 1520A

Note: Associated multiplex equipment is considered separately under the provisions of ECCN 1519A.

(a) Radio relay communication equipment designed for use at frequencies exceeding 960 MHz, *except* when having any of the following sets of characteristics:

(1) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 23.6 GHz, employing analog transmission;

(2) Mircowave radio links:

(i) Employing digital transmission techniques;

(ii) Designed for operation at a total digital transfer rate not exceeding 45 Mbit/s;

(iii) Not employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the total digital transfer rate exceeds 8.5 million bit/s; *and*

(iv) Operating at fixed frequencies not exceeding 23.6 GHz.

Note: The maximum of 45 million bit/s does not preclude total digital transfer rates of maximally 90 million bit/s to allow for line coding and overhead.

(3) Ground communication radio equipment designed for civil use with temporarily fixed services and designed to be used at fixed frequencies not exceeding 23.6 GHz with a power output of not more than 5 W;

(4) They are:

(i) Civil sound or television broadcast receiving stations designed to comply with ITU standards, as described in CCITT or CCIR documents, for satellite reception;

(ii) Specially designed for use at fixed frequencies allocated by the International Telecommunications Union (ITU) for civil television or sound radio satellite broadcasting; *and*

(iii) Operating at frequencies not exceeding 31 GHz;

(5) The equipment is:

(i) Specially designed for the transmission of television signals; *and*

(ii) Operating at frequencies not exceeding 23.6 GHz;

(6) The equipment is:

(i) Specially designed to be installed and operated in:

(A) Communication and direct broadcast satellite earth stations for civil communication and direct broadcast;

(B) Telemetry-tracking-and-command earth stations for civil satellites; *or*

(C) Civil weather or civil meteorological satellite earth stations; *and*

(ii) Designed for an operating frequency not exceeding 31 GHz;

Notes:

1. Nothing in paragraph (a) of this ECCN 1520A permits the export of technical data for equipment employing quadrature-amplitude-modulation (QAM) techniques, *except* technical data for use, i.e., installation, operation or maintenance.

2. Nothing in paragraph (a) of this ECCN 1520A permits the export of technical data for equipment excepted from control by paragraph (a)(6) of this ECCN 1520A, *except* technical data for installation, operation or maintenance.

(b) Tropospheric scatter communication equipment, *except* when having all the following characteristics:

(1) Being designed for fixed civil use;

(2) Operating at fixed frequencies of 2.7 GHz or less;

(3) Using frequency modulation; *and*

(4) Having a power amplifier output of 10 kW or less;

(c) Stand-alone radio transmission media simulators/channel estimators and "specially designed software" therefor, specially designed for testing equipment controlled by paragraphs (a) and (b) of this ECCN 1520A, *except* those in which the adjustments are only made manually.

Note 1: This ECCN 1520A does not control equipment for civil television transmission or for general commercial traffic, or technical data for the installation, operation and maintenance therefor, provided that the equipment:

(a) Is not designed for operation at a total digital transfer rate exceeding 45 million bit/s;

(b) Does not employ quadrature-amplitude-modulation (QAM) techniques; *and*

(c) Has a maximum operating frequency that does not exceed 23.6 GHz.

Note 2: This ECCN does not control analog microwave transmission equipment for civil industrial use, e.g., remote supervision, control and metering of oil and gas pipelines, civil public utility services (e.g., electricity networks) including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunication links, or technical data for the installation, maintenance and operation therefor, provided that the maximum operating frquency does not exceed 23.6 GHz.

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Ground communication radio equipment for use with temporarily fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 30 GHz;

(c) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by paragraph (a) or (b) of this Note;

(d) Power amplifiers not exceeding 10 W and 6/4-GHz transmitters/receivers for communication satellites;

(e) Equipment specially designed to receive civil meteorological data provided that:

(1) The equipment or systems are designed and used for fixed civil meteorological applications;

(2) The equipment has all the following characteristics:

(i) It is specially designed to receive and process Weather Facsimile (WEFAX) or receive and process meteorological data from civil weather satellites such as:

(A) GOES (Geostationary Operating Environmental Satellite);

(B) NOAA (National Oceanic and Atmospheric Administration) polar orbiting satellites; or

(C) The ARGOS meteorological satellite;

(ii) "Frequency agility" techniques are not incorporated; *and*

(iii) The weather satellite ground system frequencies do not exceed 1,750 MHz.

(Advisory) Note 4: Licenses are likely to be approved for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of digital radio relay communications equipment, provided that:

(a) It is for fixed civil installations;

(b) It operates at fixed frequencies not exceeding 23.0 GHz;

(c) It is designed for operation at a total bit rate not exceeding 156 million bit/s; *and*

(d) It does not employ quadrature amplitude modulation techniques above 64 QAM.

Notes:

1. The maximum of 156 million bit/s does not preclude total digital transfer rates of maximally 167.2 million bit/s to allow for line coding and overhead.

2. A license application to export any commodities covered by (Advisory) Note 4 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

(Advisory) Note 5: Licenses will receive favorable consideration for export to satisfactory end-users in Czechoslovakia, Hungary, and Poland of technical data controlled by this ECCN 1520A and of instrumentation, test equipment, and components and "specially designed software" therefor, and materials and components controlled by this ECCN 1520A or other entries on the Commodity Control List, for modification or production of equipment or systems, provided that:

Note: Technical data for general purpose computers is not eligible for consideration under (Advisory) Note 5; i.e., it continues to be controlled under ECCN 1565A.

(a) The characteristics of the equipment or systems are limited to those that make them free from control or eligible for consideration under (Advisory) Note 4;

(b) Modification of the equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of (Advisory) Note 4;

(c) Testing of large scale integrated (LSI) circuits or those with higher components densities is limited to go/no go tests;

Note: Paragraph (c) of (Advisory) Note 5 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilize the transferred technical data, instrumentation and test equipment;

(e) All "software" shall be exported in machine-executable form only;

(f) Development technical data is not included;

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another controlled destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the equipment or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recovery source code or upgrade the system beyond the performance threshold or features of (Advisory) Note 4 as applicable;

(i) End-use reporting of the installed radio relay communications equipment or systems will be provided as per (Advisory) Note 4;

Notes:

1. No export under (Advisory) Note 5 shall establish a precedent for export approval under other entities in the Commodity Control List.

2. A license application to export any commodities covered by (Advisory) Note 5 shall include an end-use statement from the importing government providing the government's assurance that:

(a) The export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

23. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1526A is amended:

a. By revising the heading of the ECCN;

b. By removing paragraphs (a)(1) and (a)(2) in the List of Commodities;

c. By revising the introductory text of paragraph (b) and adding a new Technical Note immediately preceding paragraph (b)(1);

d. By removing the Technical Note that follows paragraph (b)(3);

e. By removing the Technical Note that follows paragraph (c)(2)(ii);

f. By removing Note 3;

g. By redesignating (Advisory) Note 4 as new (Advisory) Note 3;

h. By redesignating (Advisory) Note 5 for the People's Republic of China as new (Advisory) Note 4 for the People's Republic of China;

i. By revising in newly designated (Advisory) Note 4 for the People's Republic of China the phrase "subparagraph (d)(2)" to read "paragraph (c)(2) of this ECCN 1526A"; and

j. By adding a new paragraph designated "Definition of terms" at the end of the entry for ECCN 1526A, as follows:

1526A Cable and optical fibers, and components and accessories

* * * * *

List of Commodities Controlled by ECCN 1526A

* * * * *

(b) Optical-fiber communication cable or optical fibers therefor (except pigtails that are not nuclear radiation hardened), having any of the following characteristics:

Technical Note: "Pigtails" are pieces of optical fiber or cable no longer than 50 m that in some cases are attached to components or instruments.

* * * * *

Definitions of Terms

Beat length

Beat length is defined as the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve 2 pi radian(s) phase difference.

Proof test

"Proof test" consists of on-line or off-line production screen testing that dynamically applies as prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5m/sec. while passing between capstans approximately 15 cm in diameter. The ambient temperature is a nominal 20 °C and relative humidity a nominal 40%.

Supplement No. 1 to § 799.1 [Amended]

24. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1527A is amended by revising the parenthetical phrase in Note 1 to read "(e.g., conversion of an analog, i.e., video or facsimile, signal into a digital signal)".

Supplement No. 1 to § 799.1 [Amended]

25. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended:

a. By removing paragraphs 1. and 2. that follow the *Special Licenses Available* paragraph;

b. By revising in the List of Equipment, paragraph (c) introductory text;

c. By revising paragraph (d) introductory text;

d. By revising paragraph (f) including the Note immediately following paragraph (f)(1);

e. By revising paragraphs (g) and (h) and adding a new Note immediately following paragraph (h);

f. By removing paragraph (i) and the Note immediately following paragraph (i) and redesignating paragraphs (j) and (k) as new paragraphs (i) and (j), respectively;

g. By revising Notes 1 and 2 that follow newly designated paragraph (j);

h. By revising in Notes 3 and 4 that follow newly designated paragraph (j) the reference "paragraph (k)" to read "paragraph (j)" both places it appears;

i. By removing Technical Notes 3 and 4 and redesignating Technical Notes 5 and 6 as new Technical Notes 3 and 4; and

j. By removing (Advisory) Note 2 for the People's Republic of China,

as follows:

1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows

* * * * *

List of Equipment Controlled by ECCN 1529A

* * * * *

(c) Cesium frequency standards having both of the following characteristics:

* * * * *

(d) Equipment containing cesium frequency standards having any of the following characteristics:

* * * * *

(f) Specially calibrated microwave instrumentation receivers capable of measuring amplitude and phase simultaneously and designed for use at frequencies exceeding 1 GHz;

Note: This paragraph (f) includes receivers used in equipment for the near- and far-zone measurement of phase and amplitude patterns of antennae.

(g) Digital counters having any of the following characteristics:

(1) Capable of performing frequency measurements above 20 GHz;

(2) Capable of measuring either the frequency or the change in phase of frequency within a pulse ("Pulse frequency profiling") using either internally or externally gated sampling intervals of 100 ns or less; *or*

(3) Capable of measuring "burst frequencies" exceeding 250 MHz for a burst duration of less than 2 ms.

(h) Digital voltage measuring equipment capable of more than 1,000 readings per second with a resolution of more than 4½ digits, not including changes in range or polarity;

Note: This paragraph (h) does not control:

(a) Visual quantization apparatus capable of providing an average value, displayed or not, of the results of the measurement;

(b) Multichannel analyzers of all types used in nuclear experimentation; or

(c) Industrial telemeasuring devices in which a pre-set storage value is used as a basis for measuring.

* * * * *

Note 1: This paragraph (j) includes accessories specially designed for these microprocessor or microcomputer development instruments or systems such as:

(a) "Cross-hosted" assemblers, "cross-hosted" compilers;

(b) Adapter interfaces for prototypes and/or emulation probes;

(c) Debuggers;

(d) So-called personality modules that contain more than one of the accessories enumerated under paragraphs (a) to (c) of this ECCN 1529A.

Note 2: This paragraph (j) does not control microprocessor or microcomputer development instruments or systems having all of the following characteristics:

(a) They can be used to develop "software" for, or to program a "family" of microprocessor or microcomputer microcircuits not designed within a controlled country.

(b) They can be used only for microprocessor or microcomputer microcircuits having both:

(1) An operand (data) word length of no more than 16 bits; *and*

(2) An arithmetic logic unit (ALU) not wider than 32 bits; *and*

(c) The "family" contains at least one microprocessor or microcomputer microcircuit that is not controlled by ECCN 1564A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

26. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 4529B is added to follow ECCN 1529A, as follows:

4529B Electronic equipment for testing, measuring or for microprocessor/microcomputer development.

Note: For "specially designed software", see Supp. No. 3 to Part 779.

Controls for ECCN 4529B

Unit: Report in "number," parts and accessories in "$ value."

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EK.

Reason for Control: Foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraphs (a) or (b) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 778.18(a).

Special Licenses Available: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 778.18(c)). See Part 773 for special licenses available for commodities defined in ECCN 1529A.

Technical Data: Exports of certain related technical data require a validated license to all destinations (see § 779.4(d)(20)).

List of Equipment Controlled by ECCN 4529B

(a) Frequency standards having both of the following characteristics:

(1) Designed as reference standards for laboratory use; and

(2) Either of the following:

(i) A long-term drift (aging) over a period of 24 hours or more of 1 part in 10^{10} or less; or

(ii) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

(b) Equipment containing frequency standards, having any of the following characteristics:

(1) Designed for mobile use and having a long-term drift (aging) over a period of 24 hours or more of 5 parts in 10^{9} or less;

(2) Designed for fixed ground use and having a long-term drift (aging) over a period of 24 hours or more of 5 parts in 10^{10} or less; or

(3) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;

Supplement No. 1 to § 799.1 [Amended]

27. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended:

a. By revising the heading;

b. By revising in the *Commodities Not Eligible for GCT* paragraph and in the *Reason for Control* paragraph the reference "paragraphs (a) and (c) through (e)" to read "paragraphs (a), (c), and (d)";

c. By revising paragraph (a) in the List of Frequency Synthesizers; by revising paragraphs (b)(3) and (b)(4);

d. By revising paragraph (d);

e. By removing Notes 1 and 2 that follow paragraph (d);

f. By removing paragraph (e) and the Note that precedes paragraph (e)(4);

g. By removing the Note that follows paragraph (e)(6);

h. By removing Advisory Note 2;

i. By redesignating (Advisory) Note 3 for the People's Republic of China as new (Advisory) Note 2 for the People's Republic of China; and

j. By revising in paragraph (d)(2) of newly designated (Advisory) Note 2 for the People's Republic of China the phrase "paragraph (e)(3)(ii)" to read "paragraph (d)(1)(ii)";

k. By removing paragraph (e) in newly designated (Advisory) Note 2 for the People's Republic of China,

as follows:

1531A "Frequency synthesizers", and equipment containing such "frequency synthesizers".

* * * * *

List of Frequency Synthesizers Controlled by ECCN 1531A

* * * * *

(a) "Frequency synthesizers" containing frequency standards covered by ECCN 1529A(c);

(b) * * *

(3) "Electrically programmable in frequency" with a "frequency switching time" of less than 5 ms;

(4) "Electrically programmable in phase" with a switching time from one selected phase value to another of less than 10 ms, *except* equipment incorporating pre-emphasis networks for frequency modulation;

* * * * *

(d) Radio transmitters incorporating transmitter drive units, exciters and master oscillators using frequency synthesis, as follows; specially designed components and accessories therefor:

(1) Having an output frequency of more than 550 MHz, *except:*

(i) Television broadcasting transmitters having all of the following characteristics:

(A) an output frequency not exceeding 960 MHz;

(B) A frequency resolution of not better (less) than 1 kHz; *and*

(C) The manually-operated "frequency synthesizer" incorporated in or driving the transmitter has an output frequency not exceeding 120 MHz;

(ii) Ground communication equipment designed for civil use in the land mobile or marine service, e.g., cellular radio-communication systems, amateur radio or portable radiophone, having all of the following characteristics:

Notes:

1. For equipment containing cryptographic equipment of "software", see ECCN 1527A.

2. Nothing in paragraph (d) of this ECCN 1531A permits the export of technical data for the development or production of digital equipment or "specially designed software" for use in digital civil land mobile networks.

(A) Operating frequency not more than 1.3 GHz;

(B) A power output of 50 W or less for mobile units, or 300 W or less for fixed units;

(C) For cellular radio base stations, use of analog radio transmission only;

(D) A transmitter "frequency switching time" of 4.5 ms or more;

(E) A frequency resolution of not better than 2.5 kHz; *and*

(F) No features controlled by ECCN 1517A(c);

(2) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(3) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated "frequency synthesizer";

(4) "Frequency synthesizers" designed for equipment described in this paragraph (d), whether supplied separately or with the said equipment, exceeding the parameters specified in paragraph (b) of this ECCN 1531A, *except* those specially designed for radio telephones freed from control under paragraph (d)(1)(ii) of this ECCN 1531A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

28. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 4531B is added to follow ECCN 1531A, as follows:

4531B Radio transmitters and specially designed components and accessories therefor.

Controls for ECCN 4531B

Unit: Report equipment in "number"; parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply to nuclear weapons delivery non-proliferation controls on commodities described in this ECCN 4531B as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 776.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 776.18(a).

Special Licenses Available: None.

Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Radio Transmitters Controlled by ECCN 4531B

(a) Digitally-controlled radio receivers, whether or not computer-controlled, that search or scan automatically a part of the electromagnetic spectrum, using frequency synthesizers, as follows:

(1) Digitally-controlled receivers in which the switching operation takes less than 10 milliseconds, *except* non-ruggedized digitally-controlled preset type radio receivers designed for use in civil communications that have 100 selective channels or fewer;

(2) "Frequency synthesizers" designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in sub-paragraph (b) of ECCN 1531A, *except* those specially designed for receivers freed control under paragraph (a)(1) of this ECCN 4531B.

Note: This paragraph (a) does not control "frequency synthesizers" specially designed for use in tuners for entertainment type receivers.

(b) Radio transmitters *not controlled under paragraph (d) of ECCN 1531A* that incorporate transmitter drive units, exciters and master oscillators using frequency synthesis, as follows:

(1) Having an output frequency of up to 32 MHz with a frequency resolution of better (less) than 10 Hz and with a "frequency switching time" of less than 10 milliseconds;

(2) Having an output frequency from 32 MHz to 235 MHz with a frequency resolution of better (less) than 250 Hz and with a "frequency switching time" of less than 10 milliseconds;

(3) Having an output frequency of more than 235 MHz, *except:*

(i) Television broadcasting transmitters having an output frequency from 470 MHz to 960 MHz with a frequency resolution of not better (less) than 1 kHz and where the manually-operated "frequency synthesizer" incorporated in or driving the transmitter has an output frequency not greater than 120 MHz;

(ii) FM and AM ground communication equipment for use in the land mobile service and operating in the 403 to 470 MHz band, with a power output of 50 W or less for mobile units and 300 W or less for fixed units, with a frequency resolution of not better (less) than 6.25 kHz and with a "frequency switching time" of more than 50 milliseconds;

(iii) Portable (personal) or mobile radiotelephones for civil use, e.g., for use with commercial civil cellular radio-communications systems having all of the following characteristics:

(A) Operating in the 403 to 960 MHz range;

(B) A power output of 25 W or less; *and*

(C) A "frequency switching time" of 10 ms or more.

Note: For stored program controlled communications switching equipment used with cellular radio base stations, see ECCN 1567A.

(4) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(5) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated "frequency synthesizer";

(6) "Frequency synthesizers" designed for equipment described in this paragraph (a), whether supplied separately or with the said equipment, exceeding the parameters specified in paragraph (b) of ECCN 1531A; *except* those specially designed for radio telephones freed from control under paragraph (b)(3)(iii) of this ECCN 4531B.

(c) Specially designed components and accessories for digitally-controlled radio receivers or radio transmitters described in paragraph (a) or (b) of this ECCN 4531B.

Supplement No. 1 to § 799.1 [Amended]

29. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended:

a. By revising the *Special Licenses Available* paragraph;

b. By removing the *GFW Eligibility* paragraph;

c. By removing Note 2 that precedes (Advisory) Note 3 and redesignating (Advisory) Note 3 as new (Advisory) Note 2;

d. By adding a new (Advisory) Note 3 for the People's Republic of China; and

e. By removing the bracketed sentence at the end of the entry.

as follows:

1533A "Signal analyzers" (including spectrum analyzers) and network analyzers, as follows, and specially designed components and accessories therefor.

* * * * *

Controls for ECCN 1533A

* * * * *

Special Licenses Available: See part 773.

List of Equipment Controlled by ECCN 1533A

* * * * *

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of swept frequency network analyzers or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely.

Supplement No. 1 to § 799.1 [Amended]

30. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended:

a. By revising the heading of the ECCN;

b. By revising the "List of Equipment Controlled by ECCN 1537A";

c. By removing the Note immediately preceding (Advisory) Note 1;

d. By removing (Advisory) Note 1 and adding a new Note 1;

e. By removing Notes 2 and 3;

f. By redesignating (Advisory) Note 4 for the People's Republic of China as (Advisory) Note 2 for the People's Republic of China; and

g. By removing and reserving paragraph (b) in newly designated (Advisory) Note 2 for the People's Republic of China.

1537A Microwave, including millimetric wave, equipment capable of operating at frequencies over 18.5 GHz.

* * * * *

List of Equipment Controlled by ECCN 1537A

Note: For microwave equipment specially designed for equipment described by ECCNs 1501A, 1517A, 1520A, or 1529A, see these ECCNs.

(a) Rigid and flexible waveguides designed for use at frequencies in excess of 26.5 GHz;

(b) Waveguides having a bandwidth ratio above 1.7 : 1;

(c) Directional couplers having a bandwidth ratio above 1.7 : 1 and directivity over the band of 20 dB or more;

(d) Phased array antennae and sub-assemblies, designed to permit electronic control of beam shaping and pointing (see Supp. No. 2 to part 770 of the Export Administration Regulations), and specially designed components therefor, including duplexers, phase shifters and associated high speed diode switches;

(e) Other antennae specially designed for operation at frequencies above 30 GHz having a diameter of less than 1 m, and specially designed components therefor;

(f) Microwave assemblies and sub-assemblies capable of being used at frequencies above 23.6 GHz and having circuits fabricated by the same processes used in integrated circuit technology, which include active circuit elements;

(g) Microwave assemblies and sub-assemblies that contain band-pass or band-stop filters and are capable of operating at 23.6 GHz or more;

(h) Amplifiers having an instantaneous bandwidth of more than half an octave (i.e., the highest operating frequency is more than 1.5 times the lowest operating frequency).

Note: Paragraph (h) does not control parametric or paramagnetic amplifiers having any of the following characteristics:

(a) Specially designed for medical applications;

(b) Specially designed for use in "simple educational devices" and operate at industrial, scientific or medical (ISM) frequencies; or

(c) An output power of not more than 10 W and specially designed for:

(1) Industrial or civilian intrusion detection and alarm systems;

(2) Traffic or industrial movement control and counting systems;

(3) Systems for the detection of environmental pollution of air or water; or

(4) "Simple education devices";

Technical Note: "Simple education devices" are devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

Note 1: Paragraph (d) of this ECCN 1537A does not control duplexes and phase shifters specially designed for use in civil television systems or in other civil radar or communication systems not controlled elsewhere in the Commodity Control List.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

31. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1541A is amended:

a. By revising the ECCN heading;

b. By revising the heading "Controls for ECCN 1541A";

c. By revising the *Validated License Required* paragraph;

d. By revising the *GLV $ Value Limit* paragraph;

e. By revising the *Reason for Control* paragraph;

f. By revising ECCN "1541A" to read "5541F" in the heading "List of Cathode Ray Tubes Controlled;

g. By removing paragraph (a) and redesignating paragraphs (b) and (c) as new paragraphs (a) and (b), respectively;

h. By revising the phrase "paragraph (c)" in the Note to read "paragraph (b)" as follows:

5541F Cathode-ray tubes.

Controls for ECCN 5541F

* * * * *

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV & Value Limit: $0 for Country Groups S and Z; $3,000 for all other destinations.

* * * * *

Reason for Control: Nuclear nonproliferation.

* * * * *

Supplement No. 1 § 799.1 [Amended]

32. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1542A is removed and a new ECCN 5542F is added to follow ECCN 5541F, as follows:

5542F Triggered spark-gap switches; specially designed parts therefor, and equipment incorporating such devices.

Controls for ECCN 5542F

Unit: Report tubes in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for all destinations.

Processing Code: EE.

Reason for Control: Nuclear nonproliferation.

Special Licenses Available: None.

List of Items Controlled by ECCN 5542F

(a) Triggered spark-gaps, having an anode delay time of 15 microseconds or less and rated for a peak current of 3,000 A or more;

(b) specially designed parts for triggered spark-gaps described in paragraph (a) of this ECCN 5542F;

(c) Equipment incorporating triggered spark-gaps described in paragraph (a) of this ECCN 5542F.

Note: Triggered spark-gaps are tubes with a structure consisting of two opposed anodes with shapes resembling flattened hemispheres, and with one or more triggering probes placed approximately in the center of one anode. The structure is sealed and contains a mixture of gases, principally nitrogen, under less then atmospheric pressure.

Supplement No. 1 §799.1 [Amended]

33. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 5559F is added immediately following ECCN 1558A to read as follows:

5559F Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction, and accessories therefor.

(Specify by name and type number.)

Controls for ECCN 5559F

Unit: Report tubes and semi-conductor devices in "number"; parts and accessories in "$ value."

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for Country Groups S and Z; $3,000 for all other destinations.

Processing Code: EE.

Reason for Control: Nuclear non-proliferation.

Special Licenses Available: See Part 773.

List of Equipment Controlled by ECCN 1559A

Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction having any of the characteristics, and accessories therefor:

(a) A peak pulse power output exceeding 20 MW;

(b) A peak anode voltage greater than 25 kV;

(c) A peak current rating greater than 1.5 kA.

Note: For thyratrons rated for both single-shot (crowbar) and modulator service, the figure for modulator service should be used.

Supplement No. 1 to § 799.1 [Amended]

34. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended:

a. By revising the heading of the ECCN;

b. By removing the phrase "and certain disk drives" in the *Validated License Required* paragraph;

c. By removing the *Disk Drives* paragraph following the *Validated License Required* paragraph;

d. By adding a *Technical Data and Software* paragraph immediately preceding the *GLV $ Value Limit* paragraph;

e. By revising Technical Note 2 that precedes the "List of Controlled Equipment";

f. By revising the parenthetical sentence that follows Technical Note 2;

g. By adding a new paragraph (c)(2)(iii)(B) in the List of Electronic Computers;

h. By revising paragraph (h) introductory text;

i. By removing the Note that follows paragraph (h) introductory text and adding new Notes 1 and 2;

j. By revising in paragraph (h)(1)(i)(F)(*2*) the phrase "ECCN 1501, 1502, 1510, or 1518" to read "ECCN 1501A, 1502A, or 1510A";

k. By removing and reserving paragraph (h)(1)(i)(G) and removing the Note that follows;

l. By removing and reserving paragraphs (h)(1)(i)(K) and (h)(1)(i)(L);

m. By revising paragraph (h)(1)(ii);

n. By removing and reserving paragraphs (h)(2)(i) and (h)(2)(ii);

o. By revising in the introductory text of paragraph (h)(2)(iii) the phrase "paragraph (h)(1)" to read "paragraphs (h)(1)(i)(D) to (h)(1)(i)(M)";

p. By revising the figure "6.5 million bit/s" in paragraph (h)(2)(iii)(D) to read "275 million bit/s";

q. By revising paragraph (h)(2)(iii)(E);

r. By revising paragraph (h)(2)(iii)(F) and removing the Note that follows;

s. By revising paragraphs (h)(2)(iii)(G) and (h)(2)(iii)(H) and removing the Note that follows paragraph (h)(2)(iii)(H);

t. By adding a new paragraph (h)(2)(iii)(I), formerly reserved;

u. By removing paragraphs (h)(2)(iii)(J) and (h)(2)(iii)(K);

v. By revising paragraphs (h)(2)(iv), (h)(2)(v), and (h)(2)(vi);

w. By removing paragraph (h)(2)(vii);

x. By adidng a new paragraph (j);

y. By removing and reserving Advisory Notes 5 and 7;

z. By revising Advisory Notes 9 and 12;

aa. By adding new Advisory Note 15 (formerly reserved);

bb. By adding a new heading "Definitions of Terms" to follow Advisory Note 17 and moving the text of existing Note 16 to follow the new heading;

cc. By adding in the "Definitions of Terms" a new Note immediately following the definition of the term "Main storage";

dd. By revising in the new "Definitions of Terms" the term "Principal Element" and Part A of the Note that follows the definition of the term "Total Connected Capacity";

ee. By revising in the new "Definitions of Terms" Note 2 that follows the term "Execution Time" in the definition of the term "Total Processing Data Rate";

ff. By removing the heading "Note 16" and adding a new Advisory Note 16;

gg. By revising paragraph (b)(1) in Advisory Note 17 (for the People's Republic of China); and

hh. By removing and reserving Advisory Notes 18 to 21,

as follows:

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers, and technical data therefor; and specially designed components for these electronic computers and "related equipment".

* * * * *

Controls for ECCN 1565A

* * * * *

Validated License Required: * * *

Technical Data and Software: Technical data related to items controlled by this ECCN is described in paragraph (j). GTDR with written assurance is available for Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations. Software related to equipment in this ECCN 1565A is controlled by Supplement No. 3 to Part 779.

* * * * *

Technical Notes: 1. * * *

2. This ECCN 1565A includes:

(a) "Assemblies", "modules" or printed circuit boards with mounted components referred to this ECCN 1565A by ECCN 1564A:

(b) Central processing unit—"main storage" combinations;

(c) Processors for stored program control.

(For a complete list of definitions of terms used in this ECCN 1565A, see the "Definitions of Terms" section at the end of the entry.)

List of Electronic Computers and Related Equipment Controlled by ECCN 1565A

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) * * *

(B) Total at 1 kHz: 0.25%;

* * * * *

(h) "Digital computers" and "related equipment" therefor, other than those controlled by paragraphs (e) or (f), even when contained in or "associated" with equipment or systems:

Notes: 1. The control status of these "digital computers" or "related equipment" is governed by the appropriate ECCN, provided that:

(a) The "digital computers" or the "related equipment" are essential for the operation of the other equipment or systems;

(b) The "digital computers" or the "related equipment" are not a "principal element" of the other equipment or systems; *and*

(c) The technical data for the "digital computers" and "related equipment" is governed by paragraph (j) of this ECCN 1565A;

2. "Digital computers" or "related equipment" are not controlled by this ECCN 1565A, provided that:

(a) They are essential for medical applications;

(b) The equipment is substantially restricted to medical applications by the nature of its design and performance;

(c) The equipment does not have "user-accessible programmability" other than that allowing for insertion of the original or modified "programs" supplied by the original manufacturer;

(d) The equipment for "signal processing", "image enhancement" or "multi-data-stream processing":

(1) Is essential for the medical application; *and*

(2) Is designed or modified for the identifiable and dedicated medical application.

(e) Any "digital computer" that is not designed or modified but essential for the medical application does not exceed a "total processing data rate" of 550 million bit per second; *and*

(f) The technical data for the "digital computers" or "related equipment" is governed by paragraph (j) of this ECCN 1565A.

* * * * *

(1) * * *

(ii) "Related equipment", as follows:

Note: "Related equipment" not described in this paragraph (h)(1)(ii) or in paragraph (h)(1)(i) is not controlled by this ECCN 1565A.

(A) Disk drives for rigid magnetic media (hard disks) or non-rigid media (floppy disks), including cartridge type magnetic disk media, exceeding any of the following limits:

(*1*) A "gross capacity" of 185 MByte;

(*2*) "Maximum bit transfer rate":

(*i*) For disk drives for rigid magnetic media (hard disks)—10.3 million bit/s;

(*ii*) For disk drives for non-rigid media (floppy disks) or cartridge type magnetic disk drives—16 million bit/s;

(*3*) An access rate of 50 accesses per second;

(B) Disk drives for optical media (write-once-read multiple-times (WORM) disks) exceeding any of the following limits:

(*1*) A "net capacity" of 3.2 GByte;

(*2*) "Maximum bit transfer rate" of 8 million bit/s;

(*3*) An access rate of 15 accesses per second;

(C) Disk drives for erasable optical or magneto-optical media;

(D) Solid state storage equipment other than "main storage" (also known as solid state disks or RAM disks) exceeding a "net capacity" of 2 MByte;

(E) Input/output control units with any of the following characteristics:

(*1*) Designed for use with equipment controlled by sub-paragraph (h)(1)(ii)(A), (h)(1)(ii)(B), (h)(1)(ii)(C), or (h)(1)(ii)(D) above;

(*2*) Having more than one independent read/write channel;

(*3*) Having "user-accessible programmability" or "user-accessible microprogrammability";

(*4*) Having a transfer rate exceeding 16 million bit/s;

Note: Assuming a configuration of disk drives that would maximize the transfer rate.

(F) Magnetic tape drives exceeding either of the following limits:

(*1*) A "maximum bit packing density" of 246 bit/mm; *or*

(*2*) A "maximum bit transfer rate" of 10 million bit/s;

(G) Streamer tape drives with a "maximum bit transfer rate" exceeding 16 million bit/s;

(H) Input/output control units with any of the following characteristics:

(*1*) Designed for use with tape drives controlled by sub-paragraphs (h)(1)(ii)(F) or (h)(1)(ii)(G) above;

(*2*) Having more than two independent read/write channels;

(*3*) Having "user-accessible programmability" or "user-accessible microprogrammability";

(*4*) Having a transfer rate exceeding 16 million bit/s;

Note: Assuming a configuration of tape drives that would maximize the transfer rate.

(I) Communication control units—directly connected data channel combinations exceeding a "total transfer rate" of 3.8 million bit/s;

(J) Communication control unit—"communication channel" combinations having a maximum "data signalling rate" of any "communication channel" exceeding 9,600 bit/s;

(K) Displays or monitors having more than 1,280 resolvable elements in one dimension and 1,024 resolvable elements in the perpendicular dimension with a maximum of 256 colors or shades of gray;

Notes: 1. This paragraph (h)(1)(ii)(K) does not control displays or monitors not specially designed for electronic computers.

2. This paragraph (h)(1)(ii)(K) does not control monochrome displays for systems specially designed for and limited to graphic arts, desktop publishing, document image publishing (e.g., printing, publishing) that have displays not exceeding 1,800 resolvable elements in one dimension and 1,320 resolvable elements in the perpendicular dimension.

3. The color or shades of gray limits in paragraph (h)(1)(ii)(K) do not apply in the case of direct driven video monitors.

(L) Graphic accelerators or graphic coprocessors;

(2) * * *

(iii) * * *

(E) "Total connected net capacity" of "main storage" not exceeding 32 MByte;

(F) Not including a microprocessor or microcomputer microcircuit with an external data bus width of more than 32 bit or an arithmetic logic unit with an access width of more than 32 bit;

(G) Not including controlled "related equipment" other than input/output control unit-magnetic disk drive (hard disk) combinations having:

(*1*) A total connected "net capacity" not exceeding 2 GByte;

(*2*) A "maximum bit transfer rate" of any disk drive not exceeding 20.6 million bit/s; *and*

(*3*) No more than five independent disk drives exceeding a "maximum bit transfer rate" of 10 million bit/s;

(H) Not having both of the following characteristics:

Note: This does not apply to workstations designed for and limited to graphic arts (e.g. printing, publishing).

(*1*) They are stand-alone graphics work stations designed or modified for the generation, transformation and display of two- or three-dimensional vectors; *and*

(*2*) They exceed either of the following limits:

(*i*) "Block move data rate"—3 million pixels per second; *or*

(*ii*) Maximum bit transfer rate of the channel for direct access to the "main storage" (Direct Memory Access (DMA) channel)—15 million bit/s; *and*

(I) Not including equipment controlled by ECCN 1519A(a)(2) or by ECCN 1567A;

(iv) Graphic accelerators or graphic coprocessors with a "block move data rate" not exceeding 3 million pixels per second;

(v) Equipment for "signal processing" or "image enhancement" or both with an "equivalent multiply rate" not exceeding 0.5 million operations per second;

(vi) Equipment for "local area networks" that do not exceed a "data signalling rate" of 20 million bit/s and that have no "internetwork gateways".

Notes: 1. This paragraph (h)(2)(vi) does not control equipment specially designed for connecting "local area networks" within a "computer using facility".

2. For the controlled status of "software" for "local area networks", see paragraph (a)(3)(ii) in Supplement No. 3 to Part 779.

(i) [Reserved]

(j) Technical Data, as follows:

(1) Technical data applicable to the:

(i) Development, production or use (i.e., installation, operation and maintenance) of electronic computers or "related equipment", even if these electronic computers or "related equipment" are not controlled by this entry; *except*:

(A) Technical data that is unique to "related equipment" not otherwise controlled by any entry on the Commodity Control List identified by the code letter "A";

(B) The minimum technical information necessary for the use of electronic computers or "related equipment" free from control or authorized for export when shipped together with or solely for use with these electronic computers or "related equipment"; *or*

(C) The minimum technical information, as follows, for the production of electronic computers and "related equipment" excepted from control by paragraph (h)(2)(iii) or not controlled by paragraph (h)(1):

(*1*) "Assembling" of prefabricated components or sub-assemblies;

(*2*) Loading of basic diagnostic software; *and*

(*3*) Performing basic go/no go testing of finished products;

Notes: 1. "Assembling" is defined as the testing, and integrating into finished products, of components and sub-assemblies, including mounting components on to printed circuit boards or into other assemblies.

2. This paragraph (j)(1)(i)(C) does not permit the export of technical data or products controlled by other "A" level entries in the Commodity Control List.

(ii) Development, production or use of equipment or systems controlled by paragraphs (b) or (g) in the ECCN 1565A; *or*

(2) Technical data for the integration of:

(i) Controlled electronic computers or controlled "related equipment" into other equipment or systems whether or not the other equipment or systems are embargoed; *or*

Note: Nothing in the above controls' technical data for integration that is unique to the other equipment or systems if they are free from control.

(ii) Non-controlled electronic computers or non-controlled "related equipment" into controlled equipment or systems.

* * * * *

Advisory Note 9: (GFW ELIGIBILITY AVAILABLE, EXCEPT TO THOSE COUNTRIES IN SUPPLEMENT NO. 4 TO PART 778) Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h), provided that:

(a) They will be operated by civil end-users for civil applications;

(b) They are exported as complete systems, or as enhancements, provided that the enhanced system does not exceed the limits of paragraph (g) of this Note;

(c) They have been primarily designed and used for non-strategic applications;

(d) They are not ruggedized above the level required for a normal commercial/civil environment;

(e) They do not have any of the following characteristics identified in paragraphs (h)(1)(i)(D) to (h)(1)(i)(M);

(f) They do not have both of the following characteristics:

Note: This does not apply to workstations designed for and limited to graphic arts (e.g. printing, publishing).

(1) They are stand-alone graphics work stations designed or modified for the generation, transformation and display of two- or three-dimensional vectors; *or*

(2) They exceed either of the following limits:

(i) "Block move data rate"—3 million pixels per second; *or*

(ii) Maximum bit transfer rate of the channel for direct access to the "main storage" (Direct Memory Access (DMA) channel)—15 million bit/s;

(g) They do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—850 million bit/s;

(ii) "Total connected capacity" of "main storage"—64 MByte;

(2) Input/Output control unit—drum or disk drive combinations:

(i) Total connected "net capacity"—6 GByte;

(ii) "Maximum bit transfer rate" of any drum or disk drive—25 million bit/s;

(3) Communication control unit—"communication channel" combinations the maximum "data signalling rate" of which does not exceed the limits in ECCN 1519A(a)(2);

(4) Equipment for "local area networks" that is not controlled by an "A" level entry on the Commodity Control List;

(5) Displays or monitors:

(i) Excepted from control; *or*

(ii) Monochrome displays for systems specially designed for and limited to graphic arts, desktop publishing, document image publishing (e.g., printing, publishing), not exceeding 4,800 resolvable elements in one dimension and 3,600 resolvable elements in the perpendicular dimension;

(6) Equipment for "signal processing" or "image enhancement" that is not controlled by an "A" level entry on the Commodity Control List.

* * * * *

Advisory Note 12: (NOT ELIGIBLE FOR GENERAL LICENSES GFW AND G-COM) Licensees will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of "digital computers" or "related equipment" therefor controlled by paragraph (h) provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Are not described in paragraph (h)(1)(i)(D) to (h)(1)(i)(M);

(2) Are exported as complete systems, or as enhancements to a previously exported system provided that the enhanced system does not exceed the limits of paragraph (b) of this Note;

(3) Have been designed and announced by the manufacturer for identifiable civil use;

(4) Are not ruggedized above the level required for a normal commercial/civil environment; *and*

(5) Do not have both of the following characteristics:

Note: This does not apply to workstations designed for and limited to graphic arts (e.g., printing, publishing).

(i) They are stand-alone graphics work stations designed or modified for the generation, transformation and display of two- or three-dimensional vectors; *and*

(ii) They exceed either of the following limits:

(A) "Block move data rate"—5 million pixels per second; *or*

(B) Maximum bit transfer rate of the channel for direct access to the "main storage" (Direct Memory Access (DMA) channel)—22 million bit/s;

(b) The "digital computers" or "related equipment" therefor do not exceed any of the following limits:

(1) Central processing unit—"main storage" combinations:

(i) "Total processing data rate"—1000 million bit/s;

(ii) "Total connected capacity" of "main storage"—128 MByte;

(2) Input/Output control unit—drum or disk drive combinations:

(i) Total connected "net capacity"—12 GByte;

(ii) "Maximum bit transfer rate" of any drum or disk drive—25 million bit/s;

(3) Communication control unit—"communication channel" combinations the maximum "data signalling rate" of which does not exceed the limits in ECCN 1519(a)(2);

(4) Communication control unit—"local area network" combinations: "data signalling rate" on the common transmission medium not exceeding 20 million bit/s;

(5) Displays or monitors:

(i) Excepted from control; *or*

(ii) Monochrome displays for systems specially designed for, and limited to, graphic arts, desktop publishing, document image publishing (e.g., printing, publishing), not exceeding 4,800 resolvable elements in one dimension and 3,600 resolvable elements in the perpendicular dimension;

(6) "Equivalent multiply rate" for "signal processing" or "image enhancement" equipment—8 million operations per second, provided the equipment does not have:

(i) "user-accessible microprogrammability"; *or*

(ii) "user-accessible programmability";

(c) Exports of "digital computers" or "related equipment" therefor covered by this Advisory Note 12 shall be subject to the following restrictions:

(1) In all cases:

(i) A responsible representative of the end-user(s) or the importing agency must submit a signed statement describing the end-use and certifying that:

(A) The "digital computers" or "related equipment" will:

(*1*) Be used only for civil applications; *and*

(*2*) Not be reexported or otherwise disposed of without authorization from the Office of Export Licensing;

(B) Responsible Western representatives of the supplier will:

(*1*) Have the right of access to the "computer using facility" and all equipment, wherever located, during normal working hours and at any other time the equipment is operating; *and*

(*2*) Be furnished information demonstrating continued authorized application of the equipment; *and*

(C) These Western representatives will be notified of any significant change of application or of other facts, on which the license was based;

(ii) A full description must be provided of:

(A) The equipment; *and*

(B) Its intended application and workload; *and*

(iii) A complete identification of all end-users and their activities must be provided;

(2) [Reserved]

(3) There is no visitation requirement when the "total processing data rate" does not exceed 550 million bit/s;

(4) When the parameters of the equipment exceed the limit in paragraph (c)(3) of this Note, the supplier will:

(i) Have a responsible Western representative visit and inspect the "computer using facility" and all equipment, wherever located, at least quarterly for three years; *and*

(ii) Report periodically to the Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location.

Note: The visitation requirements of paragraph (c)(4) of Advisory Note 12 will be waived for remote "terminal devices" if they consist only of equipment free from control.

* * * * *

Advisory Note 15: (NOT ELIGIBLE FOR GENERAL LICENSES GFW AND G-COM) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups QWY of instrumentation, test equipment, components and "specially designed software" therefor, for the production of electronic computers or "related equipment" not excepted from control by paragraph (h)(2)(iii) or not controlled by paragraph (h)(1), provided that:

Notes: 1. Nothing in this Note precludes the export of equipment free from control.

2. Nothing in paragraphs (a) and (b) of this Note precludes the export of technical data authorized under other ECCNs in the Commodity Control List.

(a) The instrumentation, test equipment, components and "specially designed software" is the minimum necessary to utilize the technical data excepted from control by paragraph (j);

(b) Equipment for testing integrated circuits is limited to go/no-go tests;

(c) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment are not reexported or exported, either directly or indirectly, to another proscribed destination;

(2) The supplier may appoint a representative who is entitled to verify adherence to the licensing conditions;

(3) Modification is permitted only if this does not result in exceeding the technical performance limits or features allowed by this ECCN 1565A;

(4) The Western supplier's personnel have right of access to all the facilities involved in the production of the electronic computers or "related equipment".

Advisory Note 16: Licenses are likely to be approved for export to satisfactory end-users in Country Group QWY of "digital computers" and "related equipment" therefor controlled by paragraph (h), provided that all of the following conditions are met:

(a) The equipment is used for either:

(1) Monitoring or enhancing the safety of water-cooled or moderated civil nuclear reactors; *or*

Note: This sub-paragraph (a)(1) permits the export of training simulators designed for the specific nuclear power plant dealt with in the particular export request, but does not permit the export of any design or development information for the nuclear reactor.

(2) Monitoring or reducing releases from such reactors or plants into the environment;

(b) The "digital computers" and "related equipment" do not exceed the technical performance limits specified in (Advisory) Note 12 of this ECCN 1565A;

(c) A responsible western representative of the exporter will:

(1) Visit and inspect the "computer using facility" and all equipment, wherever located, at least quarterly for three years; *and*

(2) Report periodically to the Office of Export Licensing whether the "digital computers" and "related equipment" therefor are still being used for the approved purposes at the authorized location.

Advisory Note 17 (for the People's Republic of China): * * *

(b) * * *

(1) Central processing unit—"main storage" combinations with a "total processing data rate" of 550 million bit/s; *or*

* * * * *

Definitions of Terms:

The following are definitions of terms used in ECCN 1565A:

* * * * *

Local area network—* * *

Main storage—* * *

Note: For the determination of the size of "main storage" the cache storage may be excluded, provided:

(a) Its size does not exceed 6.25% (1/16th) of the size of "main storage" excluding cache storage; *and*

(b) It is designed to contain only data already contained in "main storage".

* * * * *

Personal computer—* * *

Principal element—

An element is a "principal element" when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for

the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation.

* * * * *

Total connected capacity—* * *

Note: * * *

Part A. Conversion of Byte to bit in computing storage limits:

(a) 1 Byte (B) = 8 bites
(b) 1 KByte (KB) = 1024 Bytes
(c) 1 MByte (MB) = 1024 KBytes
(d) 1 GByte (GB) = 1024 MBytes

* * * * *

Total processing data rate—* * *

Execution Time—* * *

Note 1: * * *

Note 2: When calculating "processing data rate" for computers with cache sizes smaller than 64 KBytes, the "execution time" of the appropriate instructions will be calculated as follows:

(cache hit rate)×("execution time" when both instruction and operand are in cache storage)+(1−cache hit rate)("execution time" when neither instruction nor operand are in cache storage), the cache hit rate being:

1.00 for cache size of 64 KByte or more
0.95 for cache size of 32 KByte or more
0.90 for cache size of 16 KByte or more
0.85 for cache size of 8 KByte or more
0.75 for cache size of 4 KByte or more
0.65 for cache size of 2 KByte or more
0.50 for cache size of 1 KByte or more

But the cache effect will be neglected for computers with cache sizes smaller than 1 KByte.

Total Transfer Rate—* * *

* * * * *

Supplement No. 1 to § 799.1 [Amended]

35. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 6565G is amended by revising the heading and adding a *"Technical Data"* paragraph immediately following the *"Validated License Required"* paragraph to read as follows:

6565G Computers excepted from control by ECCN 1565A

* * * * *

Technical Data: Technical data related to computers in this 6565G is controlled by ECCN 1565A, paragraph (j).

* * * * *

Supplement No. 1 to § 799.1 [Amended]

36. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended:

a. By adding a new *Technical Data and Software* paragraph following the *Validated License Required* paragraph;

b. By revising in Technical Note 3 following the *Special South Africa and Namibia Controls* paragraph and in the Note that follows Technical Note 3 the phrase "ECCN 1519(c)" to read "ECCN 1519A(a)";

c. By removing and reserving paragraph (a)(2);

d. By revising paragraphs (a)(3) and (a)(4);

e. By adding new paragraphs (a)(5) and (a)(6);

f. By removing the parenthetical sentence immediately preceding paragraph (b)(1);

g. By adding new paragraphs (b)(1)(iii) and (b)(1)(iv);

h. By removing and reserving paragraph (b)(2)(ii);

i. By revising paragraph (b)(2)(iii);

j. By adding new paragraphs (b)(2)(vii) and (b)(2)(viii);

k. By revising paragraph (b)(3)(ii);

l. By adding new paragraphs (b)(3)(vii) and (b)(3)(viii), formerly reserved;

m. By adding a new paragraph (b)(4);

n. By adding a new paragraph (c);

o. By adding a new Note 1, formerly Advisory Note 1 (Reserved);

p. By revising Advisory Note 2;

q. By removing the Technical Note that follows Advisory Note 2;

r. By removing and reserving paragraph (c) in Advisory Note 4;

s. By revising paragraphs (d) and (e) in Advisory Note 4;

t. By adding in Advisory Note 4 new paragraphs (j) and (k), formerly reserved;

u. By revising paragraph (m) in Advisory Note 4;

v. By removing and reserving Advisory Note 6;

w. By removing the Note that precedes paragraph (a) in Advisory Note 7;

x. By removing and reserving paragraph (c) in Advisory Note 7;

y. By revising paragraphs (d) and (e) in Advisory Note 7;

z. By adding in Advisory Note 7 new paragraphs (h) and (j), formerly reserved;

aa. By revising paragraph (e)(2) and removing paragraph (e)(3) in Advisory Note 9 (for the People's Republic of China);

bb. By revising paragraph (d)(2) and removing paragraph (d)(3) in Advisory Note 10 (for the People's Republic of China);

cc. By revising in paragraph (e)(6) of Advisory Note 10 (for the People's Republic of China) the phrase "ECCN 1529A(a)(2)" to read "ECCN 1529A(d)";

dd. By revising in paragraph (e)(8)(ii) of Advisory Note 10 (for the People's Republic of China) the phrase "the following" to read "both of the following";

ee. By revising paragraph (d)(2) and removing paragraph (d)(3) in Advisory Note 11 (for the People's Republic of China);

ff. By revising paragraph (e) in Advisory Note 12 (for the People's Republic of China);

gg. By revising in paragraph (g)(6) of Advisory Note 12 (for the people's Republic of China the phrase "ECCN 1529A(a)(2)" to read "ECCN 1529A(d)";

hh. By revising in paragraph (g)(6)(ii) of Advisory Note 12 (for the People's Republic of China) the phrase "all of the following" to read "both of the following";

ii. By revising the introductory text of Advisory Note 15 for the People's Republic of China;

jj. By removing the word *"and"* at the end of paragraph (d) in Advisory Note 15 for the People's Republic of China and revising the word "activities." at the end of paragraph (e) to read "activities; *and*";

kk. By adding a new paragraph (f) immediately following paragraph (e) in Advisory Note 15 (for the People's Republic of China);

ll. By revising the introductory text and paragraph (b) of Advisory Note 17 for the People's Republic of China; and;

mm. By adding a new Advisory Note 18 and a new Note immediately following Advisory Note 18;

nn. By adding new Advisory Notes 19 and 20;

oo. By adding a new Advisory Note 21 and a new Note immediately following Advisory Note 21;

pp. By adding a new Advisory Note 22 and a new Note immediately following Advisory Note 22; and

qq. By adding a new Advisory Note 23.

as follows:

1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor for the use of these equipment or systems.

* * * * *

Controls for ECCN 1567A

* * * * *

Validated License Required: * * *

Technical Data and Software: Technical data related to items controlled by this ECCN is described in paragraph (c). GTDR with written assurance is available for Country Groups T and V, except the People's Republic of China and Afghanistan. A validated license is required for all other destinations.

* * * * *

List of Stored Program Controlled Communication Switching Equipment or Systems, and Specially Designed Components Therefor for the Use of these Equipment or Systems Controlled by ECCN 1567A.

* * * * *

(a) * * *

(2) [Reserved]

(3) The maximum "data signalling rate" of any circuit does not exceed 9,600 bit/s;

(4) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(i) ECCN 1565A(f); *or*

(ii) ECCN 1565A (h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(i)(D) to (h)(1)(i)(J);

(5) The "software" supplied:

(i) Is limited to:

(A) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(B) Machine-executable form; *and*

(ii) Does not include "software":

(A) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Par* 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(B) To permit user-modification of generic "software" or its associated documentation; *and*

(6) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(i) Exported on a temporary basis only; *and*

(ii) Kept under the control of the supplier;

(b) * * *

(1) * * *

(iii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(iv) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(2) * * *

(ii) [Reserved]

(iii) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f); *or*

(B) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

* * * * *

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(3) * * *

(ii) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f) *or*

(B) ECCN 1565 (h)(1)(i)(A) to (h)(1)((i)(M);

* * * * *

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(*2*) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(4) "Stored program controlled telephone circuit switching" equipment or systems, provided that:

(i) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fulfill the definition of "private automatic branch exchanges" ("PABXs");

(ii) The equipment or systems do not have more than 512 ports;

(iii) Do not support any form of Integrated Services Digital Networks (ISDN);

(iv) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(A) ECCN 1565A(f); *or*

(B) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(v) The "PABXs" do not have any of the following features:

(A) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines "trunk circuits" or switches;

Note: This does not preclude single level call pre-emption (e.g., executive override).

(B) "Common channel signalling";

(C) Dynamic adaptive routing;

(D) Reserved;

(E) Reserved;

(F) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(G) Reserved; *or*

(H) Centralized network control having all of the following characteristics:

(*1*) Is based on a network management protocol; *and*;

(*2*) Does all the following:

(*i*) Receives data from the nodes; *and*

(*ii*) Processes these data in order to:

(*A*) Control traffic; *and*

(*B*) Directionalise paths;

(vi) "Communications channels" or "terminal devices" used for administrative and control purposes;

(A) Are fully dedicated to these purposes; *and*

(B) Do not exceed 9,600 bit/s;

(vii) The "software" supplied:

(A) Is limited to:

(*1*) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(*2*) Machine-executable form; *and*

(B) Does not include "software":

(*1*) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(2) To permit user-modification of generic "software" or its associated documentation; *and*

(viii) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(A) Exported on a temporary basis only; *and*

(B) Kept under the control of the supplier;

(c) Technical data applicable to the development, production or use (i.e., installation, operation and maintenance) of stored program controlled communication switching equipment or systems, even if these equipment or systems are not embargoed by this ECCN 1567A, *except* the minimum technical information necessary for the use of stored program controlled communication switching equipment or systems that are free from control.

Note 1: This ECCN 1567A does not control the shipment of the minimum technical data for the use (i.e., installation, operation and maintenance) of stored program controlled communication switching equipment or systems authorized for export, when shipped together with or solely for use with these stored program controlled communication switching equipment or systems.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of spare parts for previously exported stored program controlled communication switching equipment or systems. For the purposes of this ECCN 1567A, however, spare parts to upgrade the performance of the equipment up to the level specified in the relevant Advisory Note shall be permitted.

• • • • •

Advisory Note 4: • • •

(d) The equipment or systems do not contain "digital computers" or "related equipment": controlled by:

(1) ECCN 1565A (f) *or*

(2) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(e) The "PABXs" do not have any of the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: Paragraph (e)(1) of Advisory Note 4 does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) Interconnections that:

(i) Are specially designed for multi-RF channel radio equipment controlled by ECCN 1516A or ECCN 1531A(d);

(ii) Are specially designed for automatic hand-off of cellular radio calls to other cellular switches or to a centralised subscriber data base; *or*

(iii) Contain cryptographic equipment or software controlled ECCN 1527A;

(5) Reserved;

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) Reserved; *or*

(8) Centralised network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does all the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalise paths;

• • • • • •

(j) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation; *and*

(k) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(l) [Reserved]

(m) Licenses to export commodities covered by this Advisory Note 4 must be accompanied by a statement identifying:

(1) The equipment or system to be provided;

(2) The intended application.

• • • • • •

Advisory Note 7: • • •

• • • • • •

(d) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A (f)(1) to (f)(4) or (g);

(e) The equipment or systems do not have any of the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(3) Dynamic adaptive routing;

(4) Interconnections that:

(i) Are specially designed for multi-RF channel radio equipment controlled by ECCN 1516A or ECCN 1531A(d);

(ii) Are especially designed for automatic hand-off of cellular radio calls to other cellular switches or to a centralized subscriber data base; *or*

(iii) Contain cryptographic equipment or "software" controlled by ECCN 1527A;

(5) Digital subscriber line interfaces exceeding 64,000 bit/s;

(6) Digital synchronization circuitry that uses equipment controlled by ECCN 1529A(d);

(7) [Reserved]; *or*

(8) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does both of the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalize paths;

• • • • • •

(h) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions Control List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation; *and*

(i) [Reserved]

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

• • • • • •

Advisory Note 9 (for the People's Republic of China):

• • • • • •

(e) • • •

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

• • • • • •

Advisory Note 10 (for the People's Republic of China):

• • • • • •

(d) • • •

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

• • • • • •

Advisory Note 11 (for the People's Republic of China:

• • • • • •

(d) • • •

(2) ECCN 1565A (h)(1)(i)(A) to (h)(1)(i)(M);

• • • • • •

Advisory Note 12 (for the People's Republic of China):

• • • • • •

(e) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A (f)(1) to (f)(4) or (g);

• • • • • •

Advisory Note 15 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of technical data or repair facilities controlled by this ECCN 1567A for repair of stored program controlled

communication switching equipment or systems, provided that:

• • • • • •

(f) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 15 for the People's Republic of China (i.e., it continues to be controlled under ECCN 1565A(j)).

Note: • • •

• • • • • •

Advisory Note 17 for the People's Republic of China: Licenses will receive favorable consideration for export to satisfactory end-users in the People's Republic of China of technical data controlled by paragraph (c) of this ECCN 1567A, and of instrumentation, test equipment, components or specially designed "software" therefor for modification, production or use of equipment or system, provided that:

• • • • • •

(b) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 17 for the People's Republic of China (i.e., it continues to be controlled under ECCN 1565A(j));

• • • • • •

Advisory Note 18: (Not Eligible for General Licenses GFW or C–COM.) Licenses will receive favorable consideration for export to satisfactory end-users in Country Groups Q, W, and Y of technical data controlled by paragraph (c) of this ECCN 1567A, and of instrumentation, test equipment, and components and "specially designed software" therefor and materials and components controlled by this ECCN 1567A or other entries on the Commodity Control List, for modification or production of "stored program-controlled circuit switching" equipment or systems provided that:

Note: Technical data for general purpose computers is not eligible for consideration under Advisory Note 18 (i.e., it continues to be controlled under ECCN 1565A(j)).

(a) The characteristics of the "stored program controlled circuit switching" equipment or systems are limited to those that make them free from control or eligible for consideration under Advisory Notes;

(b) Modification of the "stored program controlled circuit switching" equipment or systems is not permitted if any aspect of the design would result in exceeding the performance thresholds or features of the relevant Advisory Notes;

(c) Testing of large scale integrated (LSI) circuits or those with higher component densities is limited to go/no go tests;

Note: Paragraph (c) of this Advisory Note 18 does not preclude exports of equipment or technical data that would be possible according to the provisions of other ECCNs.

(d) The "specially designed software" is the minimum necessary "software" to utilise the transferred technical data, instrumentation and test equipment;

(e) The manufacturing of the load tape by the licensee is limited to the addition to the generic software of the specific customer data and site parameters;

(f) Development technical data is not included;

(g) The contract includes explicit conditions to ensure that:

(1) The production technical data or production equipment is not reexported or exported, either directly or indirectly, to another proscribed destination;

(2) The supplier or licensor may appoint a representative who is entitled to verify that the production technical data and production equipment or system serve their intended use;

(3) Any modification of the capabilities or functions of the produced equipment must be approved by the supplier or licensor;

(4) The supplier's or licensor's personnel have right of access to all the facilities directly involved in the production of the "stored program-controlled circuit switching" equipment or systems;

(5) The production technical data, production equipment and produced equipment or systems will be for civil end-use only;

(h) System integration testing will be performed by the supplier or licensor, if it requires test tools that provide the licensee the capability to recover source code or upgrade the system beyond the performance threshold or features of the relevant Advisory Notes;

(i) End-use reporting of the installed switching equipment will be provided as per applicable Advisory Notes;

Note: No export under Advisory Note 18 shall establish a precedent for export approval under other entries in the Commodity Control List.

Advisory Note 19: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "data (message) switching" equipment or systems controlled by paragraph (a) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed to meet the requirements of either:

(1) CCITT Recommendations F.1 to 79 for store-and-forward systems [Volume II—Fascicle II.4, VIIth plenary assembly, 10th–21st November, 1980]; *or*

(2) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed up to and including 14th December, 1981];

(b) The equipment or systems:

(1) Are designed and used for fixed civil "data (message) switching" applications;

(2) Will be used primarily for the specified civil application; *and*

(3) Will be operated in the importing country by:

(i) The Post, Telegraph and Telephone Authority in order to provide public "data (message) switching" services for:

(A) Domestic civil use; *or*

(B) International civil use with Western countries;

(ii) A civil authority, which is a member of an intergovernmental organization including Western countries (e.g., ITU or ICAO), in order to provide an extension of international "data (message) switching" services in the importing country to fulfill a commitment to the intergovernmental organization; *or*

(iii) A civil public service organization, in order to provide "data (message) switching" services in a densely populated, commercial area for:

(A) Private domestic civil use; *or*

(B) Private international civil use with Western countries;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) [Reserved];

(e) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565(f); *or*

(2) ECCN 1565A(h)(1) (A) to (h)(1)(i) (M);

(f) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 of Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(g) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(h) [Reserved];

(i) [Reserved]; *and*

(j) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 20: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "stored program controlled circuit switching" equipment or systems, controlled by paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored program controlled telegraph circuit switching" for data;

(b) the equipment or systems:

(1) Are designed and used for fixed civil "stored program controlled telegraph circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement, certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) [Reserved];

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f); or

(2) ECCN 1565A(h)(1)(i)(A) to (h)(1)(i)(M);

(e) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note: This does not preclude single level call pre-emption (e.g., executive override).

(2) "Common channel signalling";

(f) The maximum internal bit rate per channel does not exceed 9,600 bit/s;

(g) [Reserved];

(h) The "software" supplied:

(1) Is limited to:

(i) "Specially designed software" necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 of the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(i) [Reserved];

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(k) [Reserved];

(l) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 21: Licenses are likely to be approved for export to satisfactory and end-users in Czechoslovakia, Hungary, and Poland of "stored program controlled communication switching" equipment or systems with any of the following features:

(a) "Common channel signalling";

(b) Digital subscriber line interfaces not exceeding a "data signalling rate" of 144,000 bit/s;

(c) Interconnections for cellular radio systems;

(d) "Communications channels" or "terminal devices" used for administrative and control purposes that do not exceed the limits in ECCN 1519A;

(e) Integrated Services Digital Network (ISDN);

Note: A license application to export any commodities covered by Advisory Note 21 must include an end-use statement from the importing government providing the government's assurance that:

(a) That export is intended solely for the stated end-use; *and*

(b) On-site inspections will be permitted at the request of the exporter or the United States Government.

Advisory Note 22: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of technical data or repair facilities controlled by this ECCN 1567A for repair of stored program controlled communications switching equipment or systems; provided that:

(a) Any technical data to be transferred is strictly limited to "operation technical data" as described in § 779.4(b)—(Any technical data that does not meet the requirements of § 779.4(b) for shipment under General License GTDR must be the subject of a separate export license application);

(b) The repair facilities;

(1) Are specifically designed equipment for repair;

(2) Are to be used to repair controlled equipment authorized for export under an Advisory Note, or equipment that is not controlled for export;

(3) Are shipped in reasonable quantities necessary for the types and quantities of exported equipment being serviced;

(4) Do not provide local production facilities; *and*

(5) Do not provide for testing of individual electronic components;

(c) The repair does not upgrade the equipment or systems beyond the performance thresholds approved for export under the conditions of this ECCN 1567A;

(d) All the records of repair activity are kept by a representative of the Western supplier;

(e) Technical data for general purpose computers is not eligible for consideration under this Advisory Note 22 (i.e., it continues to be controlled under ECCN 1565A(j)).

Note: Nothing in Advisory Note 22 overrides controls elsewhere in the Commodity Control List.

Advisory Note 23: Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y of "data (message) switching" equipment or systems controlled by paragraph (a of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use and stored program controlled "packet-mode operation";

(b) The equipment or systems do not have any of the following features:

(1) "Datagram" service;

(2) "Fast select";

(3) Dynamic adaptive routing;

(4) Precedence, priority override or multilevel call preemption;

(5) Centralized network control having all of the following characteristics:

(i) Is based on a network management protocol; *and*

(ii) Does all the following:

(A) Receives data from the nodes; *and*

(B) Processes these data in order to:

(*1*) Control traffic; *and*

(*2*) Directionalize paths;

(c) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software," necessary for the use (i.e., installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A, paragraph (a)(5) of Supplement No. 3 to Part 779, or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 770); *or*

(ii) To permit user-modification of generic "software" or its associated documentation;

(d) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(e) Reserved;

(f) No "internetwork gateways" are provided other than for messages originating from or terminating in Western countries;

Note: Connections of private networks to international destinations must be via public "internetwork gateways".

(g) Node throughout does not exceed 153,600 octets per second;

Note: One octet in, at any port, plus one octet out, also at any port, equals a throughput of one octet. One octet is defined as eight bits residing in the user data field.

(h) Port throughout does not exceed a "data signalling rate" of 9,600 bit/s;

(i) All the applicable conditions enumerated in paragraphs (a) to (d) of this Advisory Note 23 are accomplished by:

(1) Omission or physical removal of equipment or coding;

(2) Over-writing with non-functioning statements; *or*

(3) Reasonably non-reversible modifications.

Supplement No. 1 to § 799.1 [Amended]

37. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1568A is amended by removing the remainder of the entry beginning with the (Advisory) Note for the People's Republic of China that follows paragraph (e) in the "List of Equipment Controlled" and by adding a new Note 1 at the end of the entry, as follows:

1568A Analog-to-digital and digital-to-analog converters, position encoders and transducers, and specially designed components and test equipment therefor

* * * * *

(e) * * *

Technical Note: * * *

Note 1: This ECCN does not control the following analog-to-digital or digital-to-analog converters:

(a) Analog-to-digital converters with more than 200 ns conversion time to a maximum resolution of 12 bit;

(b) Digital-to-analog converters with more than 200 ns settling time for voltage output and a maximum resolution of 12 bit; *or*

(c) Digital-to-analog converters with more than 25 ns settling time for current output and a maximum resolution of 12 bit.

Supplement No. 1 to § 799.1 [Amended]

38. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), a new ECCN 4568B is added following ECCN 1568A, as follows:

4568B Electrical input type analog-to-digital converters and specially designed components therefor

Controls for ECCN 4568B

Unit: Report instruments and equipment in "number" parts and accessories in "$ value".

Validated License Required: Country Groups QSTVWYZ.

GLV $ Value Limit: $3,000 for County Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations.

Processing Code: EE.

Reason for Control: Foreign policy. Foreign policy controls apply to commodities described in this ECCN 4568B for nuclear weapons delivery purposes.

Special Licenses Available: None.

Technical Data: Export of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(20)).

List of Commodities Controlled by ECCN 4568B

(a) Electrical input type analog-to-digital converters that—

(1) Have any of the following characteristics:

(i) A conversion rate of more than 200,000 complete conversions per second at rated accuracy;

(ii) An accuracy in excess of 1 part in more than 10,000 of full scale over the specified operating temperature range; *or*

(iii) A figure of merit 1 X 10^6 or more (derived from the number of complete conversions per second divided by the accuracy); *and*

(2) Have a conversion time of 200 ns or less to a maximum resolution of 12 bit.

(b) Specially designed components for the analog-to-digital converters described in paragraph (a) of this ECCN 4568B.

Supplement No. 1 to § 799.1 [Amended]

39. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1570A is amended:

a. By revising the ECCN heading;

b. By revising the heading "Controls for ECCN";

c. By revising the *Validated License Required* paragraph;

d. By revising the *GLV $ Value Limit* paragraph;

e. By revising the *Reason for Control* paragraph;

f. By revising the ECCN "1570A" to read "5570F" in the heading "List of Thermoelectric Materials and Devices Controlled";

g. By removing paragraphs (b) and (c) and redesignating paragraph (d) as new paragraph (b); and

h. By revising the phrase "sub-paragraph (d)" to read "paragraph (b)" in the Technical Note,

as follows:

5570F Thermoelectric materials and devices.

Controls for ECCN 5570F

* * * * *

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for Country Groups S and Z; $750 for all other destinations.

* * * * *

Reason for Control: Nuclear nonproliferation.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

40. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1584A is amended:

a. By revising the ECCN heading;

b. By revising the heading "Controls for ECCN";

c. By revising the *Validated License Required* paragraph; and

d. By revising the *GLV $ Value Limit* paragraph;

e. By revising the *Reason for Control* paragraph;

f. By revising the ECCN "1584A" to read "5584F" in the heading "List of Equipment Controlled" and in the sentence that follows the heading "Technical Notes",

as follows:

5584F Oscilloscopes, transient recorders and plug-in modules, as follows, and specially designed components, including amplifiers, preamplifiers and sampling devices therefor.

* * * * *

Controls for ECCN 5584F

* * * * *

Validated License Required: Country Groups S and Z, Taiwan, and countries listed in Supplement No. 4 to Part 778.

GLV $ Value Limit: $0 for Country Groups S and Z; $3,000 for all other destinations.

* * * * *

Reason for Control: Nuclear nonproliferation; foreign policy. Foreign policy controls apply to exports and reexports to Iran.

Supplement No. 1 to § 799.1 [Amended]

41. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1585A is amended by revising Advisory Note 4 for the People's Republic of China and by adding a new Note 5, as follows:

1585A Cameras, components and photographic recording media.

* * * * *

(Advisory) Note 4 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of mechanical framing cameras controlled by paragraph (b) of this ECCN that are designed for civil purposes (i.e., non-nuclear uses) with a framing speed of not more than 2 x 10^6 frames per second.

Note 5: Paragraph (a)(1) of this ECCN 1585A does not control non-ruggedized cinema recording cameras for normal civil purposes.

Supplement No. 1 to § 799.1 [Amended]

42. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1587A is amended:

a. By revising the ECCN heading;

b. By revising the heading "Controls for ECCN";

c. By revising the *Reason for Control* paragraph;

d. By revising ECCN "1587A" to read "4587B" in the *Special Licenses Available* paragraph and in the heading "List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled";

e. By removing paragraphs (a) and (b) and the Note that follows paragraph (b);

f. By removing the designation from paragraph (c) and by redesignating paragraphs (c)(1) through (c)(5) as paragraphs (a) through (e), respectively; and

g. By removing the Advisory Note (for the People's Republic of China),

as follows:

4587B Quartz crystals and assemblies thereof in a stage of fabrication (i.e., worked, semi-finished or mounted)

Controls for ECCN 4587B

* * * * *

Reason for Control: Foreign policy. Foreign policy controls apply to commodities described in this ECCN 4587B only when usable as launch and ground support equipment for nuclear weapons delivery systems.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

43. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity

Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1763A is amended by removing the Advisory Note for the People's Republic of China at the end of the entry and by adding a new Note 7, as follows:

1763A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminates and such composite structures and laminates and "specially designed software" therefor

• • • • •

Note 7: Paragraph (b) of this ECCN 1763A does not control discontinuous ceramic fibers having a melting or sublimation point lower than 2,043 K (1,770°C) (3,218°F) in an inert environment.

44. Supplement No. 1 to § 799.2 (Interpretations) is amended by adding a new Interpretation No. 6 (formerly reserved) to read as follows:

Supplement No. 1 to § 799.2—Interpretations

• • • • •

Interpretation 6: Telecommunications Equipment and Systems

Communications equipment and systems capabilities and features have proliferated to the point where it is sometimes impractical to write control parameters to differentiate between specific applications having strategic significance and those eligible for export at lower control levels. COCOM makes these differentiations in documentation not available to the general public. The following interpretations have been made:

(a) Equipment for paging systems (broadcast radio or selectively signalled receiving systems) is not included in the definition of "data (message) switching" of ECCN 1567A.

(b) [Reserved]

• • • • •

Dated: June 25, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-15089 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 636, 638, 675, 677, 678, 679, 680, 684, 685, 686, and 689

RIN 1205-AA54

Redesignation and Revision of Regulations for Job Corps Program Under Title IV-B; and Removal of Comprehensive Employment and Training Act Regulations; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: The Employment and Training Administration is correcting an error in the regulations for the Job Corps Program which appeared in the Federal Register on April 6, 1990 (55 FR 12992). The final rule contained an error which is discussed briefly below and is corrected by this document.

Section 626.2 of 20 CFR part 626 was amended by the final rule to note that the Job Corps regulations under Job Training Partnership Act (JTPA) Title IV-B now are published in the CFR near the other JTPA regulations. 55 FR at 12996. Section 626.2 describes the format of the JTPA regulations, explaining where the various JTPA regulations are published in the CFR. However, the final rule did not reflect an amendment made to 20 CFR 626.2 by the Office of the Assistant Secretary for Veteran's Employment and Training (OASVET), which noted that veterans' employment program regulations under JTPA Title IV-C now are located at 20 CFR part 1005. See 54 FR 39352, 39354 (September 26, 1989). This correction document reflects that OASVET amendment to 20 CFR 626.2.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan at (202) 535-0556 (this is not a toll-free number).

Signed at Washington, DC, this 22 day of June, 1990.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

The following correction is made in FR Doc. 90-7737, the final rule redesignating and revising regulations for the Job Corps Program under Job Training Partnership Act Title IV-B and removing Comprehensive Employment and Training Act regulations, published in the Federal Register on April 6, 1990, (55 FR 12992).

On page 12996, first column, the amendment to 20 CFR 626.2, which reads:

§ 626.2 [Amended]

1. Section 626.2 is amended by deleting from paragraph (a) the phrase ", with the exception of the Job Corps regulations which are set forth in part 684 of title 20."

is revised to read as follows:

§ 626.2 [Amended]

1. Section 626.2 is amended by removing from paragraph (a) the phrase "with the exceptions of the Job Corps regulations which are set forth at part 684 of title 20, chapter V, and the" and adding in lieu thereof the phrase "with the exception of the".

[FR Doc. 90-15236 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Arsenamide Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by Solvay Animal Health, Inc. The NADA provides for the use of thiacetarsamide (arsenamide) sodium aqueous injection for treating canine heartworm disease. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: July 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Solvay Animal Health, Inc.'s, NADA 39-770, which provides for the use of thiacetarsamide (arsenamide) sodium aqueous injection for treating canine heartworm disease. The NADA was formerly held by Fromm Laboratories, Inc. By letter of October 6, 1989, Solvay Animal Health, Inc., on behalf of the sponsor of record, Fromm Laboratories, Inc., requested withdrawal of approval of the NADA because the product is no longer produced or marketed. Because Fromm Laboratories, Inc., is no longer the sponsor of any approved NADA's, 21 CFR 510.600 (c)(1) and (c)(2) are amended to remove the entries for Fromm Laboratories, Inc. FDA is also amending the regulations to remove that portion of 21 CFR 522.144(c) which reflects the approval.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Fromm Laboratories, Inc.," and in paragraph (c)(2) by removing the entry for "020112".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 522.144 is amended by revising paragraph (c) to read as follows:

§ 522.144 Arsenamide sodium aqueous injection.

• • • • •

(c) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

• • • • •

Dated: June 19, 1990

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-15222 Filed 6-28-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Enrofloxacin Injectable Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The NADA provides for the use of enrofloxacin solution for the treatment of susceptible bacterial infections in dogs.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, is the sponsor of NADA 140-913 which currently provides for the intramuscular use of Baytril® (enrofloxacin) Antibacterial Injectable Solution. The product is used to treat susceptible bacterial dermal, respiratory, and urinary tract infections (cystitis) of dogs. The NADA is approved as of May 4, 1990, and the regulations are amended by adding new § 522.812 to reflect the approval. The basis for approval is discussed in the freedom of informaton summary.

Under section 512(c)(2)(F)(ii) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning May 4, 1990, because new clinical or field investigations were required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an abbreviated environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.812 is added to read as follows:

§ 522.812 Enrofloxacin solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 22.7 milligrams of enrofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 2.5 milligrams per kilogram (1.13 milligrams per pound) of body weight as an initial dose only.

(2) *Indications for use.* Dogs for treatment of the following bacterial infections: dermal infections (wounds and abscesses) caused by susceptible strains of *Escherichia coli, Klebsiella pneumoniae, Proteus mirabilis,* and *Staphylococcus aureus*; respiratory infections (pneumonia, tonsillitis, rhinitis) caused by susceptible strains of *Escherichia coli* and *Staphylococcus aureus*; and urinary cystitis caused by susceptible strains of *Escherichia coli, Proteus mirabilis,* and *Staphylococcus aureus.*

(3) *Limitations.* As a single, intramuscular, initial dose followed by use of tablets twice daily for 2 to 3 days beyond cessation of clinical signs to a maximum of 10 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 25, 1990.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 90-15223 Filed 6-28-90; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Correction and technical amendment of final rule.

SUMMARY: The Equal Employment Opportunity Commission has amended its regulations to reflect the change of its Headquarters office address from 2401 E Street NW., Washington, DC 20507 to 1801 L Street NW., Washington, DC 20507, and the change of its Washington, DC field office from the Washington Area Office to the Washington Field Office. Included in the amendments was an updated list of all the field offices, as found in 29 CFR 1610.4(c). The Commission also has amended 29 CFR 1601.74 by adding footnote 2 regarding the Arlington County (VA) Human Relations Commission. The Commission is making corrections to these amendments as they were published in the **Federal Register**.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Wendy L. Adams, Staff Attorney, at (202) 663-4669.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

Accordingly, 29 CFR part 1601 is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read:

Authority: 42 U.S.C. 2000e to 2000e-17.

2. Amendment of part 1601 published August 4, 1989 (54 FR 32061) is corrected by adding amendment 9a. to read as follows:

9a. Remove "Directors, Regional Programs" and insert "Directors, Field Management Programs" throughout this part, where it appears one or more times in each of the following sections:

1601.16(f)
1601.19(b)(2)

§ 1601.74 [Corrected]

3. Amendment of Section 1601.74 published September 20, 1988 (54 FR 38671) is corrected as follows:

In footnote 2, and redesignated footnotes 3., 4, 5, 9 and 13, after "pursuant to 29 CFR", remove "1601.71(3)" and insert "1601.71(b)".

§ 1601.74 [Amended]

4. In addition § 1601.74(a) is amended as follows:

Footnote "12" is renumbered footnote "11".

Footnote "13" is renumbered footnote "12".

[FR Doc. 90-15283 Filed 6-28-90; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-056]

Special Local Regulations; 1990 Boston J-Class Regatta, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the 1990 Boston J-Class Regatta, a sailboat race to be held in Massachusetts Bay off of Nantasket Beach. This event will be held from 8 a.m. to 5 p.m. on June 30, 1990. The event will begin with the J-Class sailing vessels parading out of Boston Harbor to the race course. Upon completion of the race the J-Class sailing vessels will parade back into Boston Harbor. If weather conditions preclude racing on June 30th, the regulations will be in effect on July 1, 1990 from 8 a.m. to 5 p.m. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation becomes effective on June 30, 1990 from 8 a.m. to 5 p.m. In the event of inclement weather, these regulations will be in effect on July 1, 1990 from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, U.S. Coast Guard, (617) 223-6310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received by this office until June 5, 1990 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Ensign L.J. Penney, U.S. Coast Guard, Project Officer, Boating Safety Office and Captain R.A. Brunell, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The 1990 Boston J-Class Sailing Regatta consists of a parade of two J-Class sailing vessels from Boston Harbor out to the race course in Massachusetts Bay off of Nantasket Beach. Upon completion of the race the two J-Class sailing vessels will parade back into Boston Harbor. Regulated areas will be the race course and a 200 yard area around each J-Class sailing vessel for the duration of the event. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated areas. The regulated areas will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols and state and local law enforcement officials.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The Coast Guard certifies that this rule will not, if promulgated have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-01-02T is added to read as follows:

§ 100.35-01-02T 1990 Boston J-Class Sailing Regatta, Boston, MA

(a) *Regulated Area.* The race course is a square area in Massachusetts Bay off of Nantasket Beach and bounded by the following:

Point 1: Longitude 42-30.7 North, Latitude 070-44.8 West
Point 2: Longitude 42-30.7 North, Latitude 070-48.0 West
Point 3: Longitude 42-17.7 North, Latitude 070-48.0 West
Point 4: Longitude 42-17.7 North, Latitude 070-44.8 West

The area two hundred yards around each J-Class sailing vessel is also a regulated area for the duration of the event.

(b) *Special Local Regulations.* (1) The regulated area shall be closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) All race committee vessels will be identified by either a large yellow pennant or a blue triangular flag with a white stripe.

(4) A yellow race mark buoy "ZZ" will be set at 12 p.m. on June 29, 1990 in position 42-20.5N 070-45.12W. The buoy will be removed at approximately 4 p.m. June 30, 1990 after the race has been completed.

(5) The parade of the J-Class sailing vessels out of Boston Harbor will commence at 9:30 a.m. The vessels should arrive at the race course at 11:30 a.m. and should complete the race by 3:30 p.m. The parade back into Boston Harbor should conclude by 5 p.m.

(6) The Patrol Commander reserves the right to cancel the race in its entirety or to suspend the race for safety violations at any time including during the race.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates:* This regulation will be effective from 8 a.m. to 5 p.m. on June 30, 1990. In case of inclement weather this regulation will be effective from 8 a.m. to 5 p.m. on July 1, 1990.

Dated: June 18, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90-15117 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP CHARLESTON Regulation 90-52]

Safety Zone Regulations; Ashley River, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around the river frontage of Brittlebank Park across the width of the Ashley River. The center of the zone is Latitude 32°—47.2' N Longitude 70°—57.8' W. A fireworks display will be launched from this center point out over the river. The zone is needed to protect vessels in the vicinity from the safety hazard associated with the storage, preparation, and launching of the fireworks. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATES: This regulation becomes effective at 8 p.m. e.d.t. July 4, 1990. It terminates at the conclusion of the fireworks display at approximately 10:30 p.m. July 4, 1990, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Steven J. Boyle, Port Operations Officer, U.S. Coast Guard Marine Safety Office, 196 Tradd Street, Charleston, SC 29401-1899, (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making (NPRM) was not published for this regulation. Publishing an NPRM would be contrary to the public interest since immediate action is needed to prevent the exposure of vessles to the hazard of the storage, preparation, and launching of fireworks in the area.

Drafting Information

The drafters of this regulation are LT Steven J. Boyle project officer for the Captain of the Port, and LT Genelle Tanos, project attorney, Seventh Coast Guard District.

Discussion of Regulation

The circumstances requiring this regulation will occur on July 4, 1990, when the organizers of the 1990 Festival of the Fourth sponsor a fireworks display as part of the finale of the one day festival. A safety zone is needed to prevent damage to vessels or injury to personnel from falling fireworks debris and to prevent the accidental discharge of the fireworks prior to their launching. The fireworks will be launched from a barge in the Ashley River.

This regulation is issued pursuant to 33 U.S.C 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the proposed rule making does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water).

Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5

2. A new section number 165.TO752 is added to read as follows:

§ 165.TO752 Safety Zone, Ashley River, Charleston, South Carolina.

(a) *Location.* The following area is a safety zone: An area in the Ashley River across its entire width along the river frontage of Brittlebank Park from the upper/northern U.S. highway 17 Bascule Bridge to red run buoy "6", centering at Latitude 32°47.2' N Longitude 79°57.8' W. The fireworks will be launched from a barge moored in the Ashley River.

(b) *Effective Date.* The safety zone becomes effective on July 4, 1990, at 8 p.m. e.d.t. It terminates at the conclusion of the fireworks display at approximately 10:30 p.m. e.d.t., on July 4, 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulation.* In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, South Carolina.

Dated: June 22, 1990.

R.L. Storch, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 90-15145 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3769-9]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Excess Emission and Malfunction Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This notice approves amendments to the Oklahoma Air Pollution Control Regulation (OAPCR) 1.5 "Excess Emission and Malfunction Reporting Requirements" for incorporation into the Federally approved State Implementation Plan (SIP). One of the amendments makes releases reportable when the release results in an excess emission. The other amendments are administrative in nature. EPA is therefore granting approval. The intended effect of this action is approve the revisions for incorporation into the federally approved SIP.

EFFECTIVE DATE: This action will become effective on August 28, 1990, unless notice is received by July 30, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section of the EPA Region 6, Air Programs Branch (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, telephone (214) 655-7214 or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION:

Background

Originally on February 8, 1983, the Governor of Oklahoma submitted the SIP revision OAPCR 1.5 "Reports Required: Excess Emissions During Startup, Shutdown and Malfunction of Equipment" as revised on June 1, 1981. EPA reviewed the State's submittal in accordance with the criteria established by the EPA policy memorandum dated September 28, 1982 "Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunction" and the clarification memorandum dated February 15, 1983. EPA proposed approval of OAPCR 1.5 on October 12, 1983, at 43 FR 43692. EPA approved OAPCR 1.5 on January 25, 1984, at 40 FR 3084.

On May 8, 1990, the Governor of Oklahoma submitted, after adequate notice and public hearing, revisions to the Federally approved OAPCR 1.5. The changes to OAPCR 1.5 may be summarized as follows:

1. The revision changed the title of OAPCR 1.5 from "Reports Required: Excess Emissions During Startup, Shutdown and Malfunction of Equipment" to "Excess Emission and Malfunction Reporting Requirements".

2. Section 1.5(a)(1) was amended to more clearly identify the purpose of the regulation.

3. Section 1.5(b)(1)(B) was amended by deleting the words "on process" from the definition of malfunction.

4. Section 1.5(b)(1)(E) was added to define the term "release" as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing into the environment of any air contaminant which becomes, or may become, airborne.

5. The title of section 1.5(c) was changed from "Notification Requirements" to "General Requirements".

6. Section 1.5(c)(1) has the following sentence added: "All excess emissions shall be reported as herein provided".

7. Section 1.5(e)(1) was amended to add the term "release" to the malfunction activities which are required to be reported to the Air Quality Service.

8. Section 1.5(e)(2) was amended by deleting the phrase, "of the malfunction", from the first sentence.

EPA reviewed the changes to OAPCR 1.5 and views all of them with the exception of the definition of "release" as administrative in nature. EPA has determined that the administrative revisions plus the definition of "release" will not interfere with the purpose and intent of OAPCR 1.5 and EPA's original approval of January 25, 1984, at 40 FR 3084. EPA is therefore approving the amendments to OAPCR 1.5 "Excess Emission and Malfunction Reporting Requirements".

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective (insert 60 days from the date of publication) unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 28, 1990.

Final Action

The EPA is today approving the amendments to OAPCR 1.5 "Excess Emission and Malfunction Reporting Requirements" as adopted June 23, 1988 and effective March 11, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enfore its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 13, 1990.

Robert E. Layton, Jr.,

Regional Administrator.

40 CFR part 52, subpart LL, is amended as follows:

PART 52—[AMENDED]

Subpart LL—Oklahoma

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.1920 [Amended]

2. Section 52.1920 is amended by adding paragraph (c)(37) to read as follows:

* * * * *

(c) * * *

(37) On May 8, 1990, the Governor submitted Oklahoma Air Pollution Control Regulation 1.5 "Excess Emission and Malfunction Reporting Requirements". This regulation was adopted by the Oklahoma Board of Health on June 23, 1988, and approved by the Oklahoma Legislature on February 24, 1989. The regulation became effective on March 11, 1989.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Air Pollution Control Regulation 1.5 "Excess Emission and Malfunction Reporting Requirements", OAPCR 1.5 title change, § 1.5(a)(1), § 1.5(b)(1)(B), § 1.5(b)(1)(E), § 1.5(c), title, § 1.5(c)(1), § 1.5(e)(1), and § 1.5(e)(2), as adopted by the Oklahoma Board of Health on June 23, 1988, and approved by the Oklahoma Legislature on February 24, 1989.

[FR Doc. 90-15304 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Region II Docket No. 98; FRL-3769-6]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a revision to the New Jersey State Implementation Plan (SIP) for ozone. This revision was prepared by the New Jersey Department of Environmental Protection pursuant to a SIP commitment to implement appropriate actions in order to reduce statewide ozone levels as required under Section 110 and Part D of the Clean Air Act. Today's notice incorporates into the New Jersey SIP a new regulation, title 7, chapter 26, subchapter 2A, "Additional, Specific Disposal Regulations for Sanitary Landfills," which will reduce emissions of volatile organic compounds by regulating the emission of gases from all new landfills and from many existing landfills.

EFFECTIVE DATES: This action will be effective August 28, 1990 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to:

William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278.

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, Trenton, New Jersey 08625.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

In its most recent comprehensive State Implementation Plan (SIP) revision for ozone, which was submitted to the Environmental Protection Agency (EPA) on January 18, 1989 and approved by EPA on November 6, 1985 (48 FR 23173), the State of New Jersey demonstrated that the emission reductions achievable from the implementation of reasonably available control measures were not sufficiently large to attain the ozone standard. Therefore, the State committed to adopt regulations for several control measures that it described as "extraordinary" in order to provide the volatile organic compound (VOC) emission reductions needed for the attainment of the ozone standard. This notice addresses the measures "VOS Emissions from Landfills."

The State Submittal

On October 13, 1987, the State of New Jersey submitted to EPA an adopted regulation, title 7, chapter 26, subchapter 2A of the New Jersey Administrative Code (N.J.A.C. 7:26-2A), "Additional, Specific Disposal Regulations for Sanitary Landfills," effective June 1, 1987. This regulation, which is the subject of today's notice, gives the New Jersey Department of Environmental Protection (NJDEP) the authority to review and regulate, if necessary, gas emissions from all new sanitary landfills and from many existing sanitary landfills. A sanitary landfill is a solid waste facility at which non-hazardous waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months.

The decomposition of organic materials in a sanitary landfill results in the generation of gaseous products including carbon dioxide, methane, and smaller quantities of nonmethane VOCs. Nonmethane VOCs are precursors in the formation of ozone. Venting wells have been used as a means to vent into the atmosphere these gases, which have long been associated with the hazards of spontaneous explosion and asphyxiation of workers at landfill sites. Such vents are already required by the NJDEP under its Division of Waste Management's rules (N.J.A.C. 7:26-2.9, effective March 7, 1983) pertaining to the "Closure and Post-Closure Care of Sanitary Landfills." Subchapter 2A would require that the VOC fraction of this landfill gas be controlled, a measure that will reduce statewide VOC emissions by approximately five tons per day.

Under subchapter 2A, all new or expanding landfills must be designed and constructed with gas venting wells to prevent the accumulation of methane gas. The exact number of wells required at each landfill site will be determined through subsurface gas flow modeling, which is subject to NJDEP review. Controls would be required on any well emitting VOCs at a rate in excess of 3.5 pounds per hour, a limit derived from the exclusion rate in N.J.A.C. 7:27–16.6, "Control and Prohibition of Air Pollution by VOS." These controls which would be permitted in accordance with the rules and regulations of the NJDEP (N.J.A.C. 7:27–8, "Permits and Certificates"), must reduce the VOC emissions by at least 95 percent with the efficiency of the system being determined by sampling and analyzing the landfill gas for VOCs prior to and following processing by the control system.

Existing landfills, either opened or closed, which the NJDEP determine to be harmful to the environment, must submit, within 90 days of notification by the NJDEP, designs for a control system to meet the emission standards set forth in Subchapter 2A. Construction of the system must begin within 90 days of NJDEP approval and full compliance must be achieved within one year.

Finding

EPA finds that the adoption of Subchapter 2A meets the commitment that was made by New Jersey in its SIP. The VOC reductions associated with this regulation are necessary for the State's demonstration of attainment of the ozone standard. However, it is important to note that EPA is considering the development of new source performance standards for air emissions from sanitary landfills. The standards being considered for a number of different gas collection and control techniques would require VOC emissions to be reduced by 98 percent as opposed to the minimum reduction of 95 percent required by the State.

Conclusion

EPA finds that subchapter 2A of chapter 26 of the N.J.A.C. adequately fulfills the SIP commitment made by the State.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 and part D of the Clean Air Act and 40 CFR part 51.

EPA is publishing this SIP revision request without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 28, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If so such comments are received, the public is advised that this action will be effective 60 days from today.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date of publication. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Note: Incorporation by Reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 4, 1989.

William K. Reilly,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, chapter I, subchapter C, part 52, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1570 is amended by adding new paragraph (c)(44) to read as follows:

§ 52.1570 Identification of Plan.

* * * * *

(c) * * *

* * * * *

(44) A revision to the State Implementation Plan for Ozone submitted on October 13, 1987 by the New Jersey Department of Environmental Protection.

(i) Incorporation by reference:

Subchapter 2A of Chapter 26, Title 7 of the New Jersey Administrative Code, "Additional, Specific Disposal Regulations for Sanitary Landfills," effective June 1, 1987.

(ii) Additional materials:

New Jersey Department of Environmental Protection memorandum on landfill gas emissions and control, dated October 7, 1987.

3. Section 52.1605 is amended by adding new entries for title 7, chapter 26, subchapter 2A as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 26 Subchapter 2A, "Additional, Specific Disposal Regulations for Sanitary Landfills."	June 1, 1987	[Date and citation of this *Federal Register*]	

[FR Doc. 90–15262 Filed 6–28–90; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3749–9; EPA Docket No. AM023 DE]

Approval and Promulgation of Implementation Plan; Delaware; Stack Height Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision consists of amendments to Regulation No. XXVII, for Stack Height and Regulation No. XXV, Requirements for Preconstruction Review. EPA has reviewed this revision and has concluded that it conforms to 40 CFR part 51, including the July 8, 1985 stack height amendments (50 FR 27906). EPA takes this action in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on July 30, 1990.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air, Toxics and Radiation Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Ms. Donna J. Abrams (3AM11)

Delaware Department of Natural Resources and Environmental Control, Division of Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, Attn: Mr. Robert R. French

FOR FURTHER INFORMATION CONTACT: Ms. Kelly A. Yost (3AM11) at the EPA Region III address above, or call (215) 597–2746. The commercial and the FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On September 30, 1987 (52 FR 36593), EPA published a Notice of Proposed Rulemaking (NPR) for a revision to the Delaware State Implementation Plan (SIP). The NPR proposed to amend the State's stack height regulations to conform to the Federal stack height regulations as revised July 8, 1985 (50 FR 27892).

A description of the revision was provided in the NPR and will not be restated here. As discussed in the NPR, the State submittal did not include definitions for "emission limitation" and "emission standard". EPA proposed approval with the condition that Delaware adopt definitions for these terms and submit them to EPA prior to final rulemaking. The State committed to amending its definitions to conform with EPA's requirements. The State adopted EPA's definitions for "emission limitation" and "emission standard" as found in 40 CFR 51.100(z) (51 FR 40656), and submitted them to EPA to be included in the State's stack height SIP revision. The State held a public hearing on November 4, 1988, on the incorporation of EPA's 40 CFR 51.100(z) definitions for "emissions limitations" and "emissions standards". This revision to State Regulation XXVII, section 2, was then submitted to EPA on December 21, 1988, as part of the Delaware Order Number 89–A–5. No public comments were submitted during the State's adoption process or EPA's NPR.

Final Action: EPA approves the amendments to Regulation No. XXVII, for Stack Height and Regulation No. XXV, Requirements for Preconstruction Review, as revisions to the Delaware SIP. These revisions were submitted by the State of Delaware on March 6, 1987, and December 21, 1988. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors, and in relation to relevant statutory and regulatory requirements. EPA has reviewed this amendment and believes there will be no adverse affects on air quality if approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1990. This Action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, and Sulfur oxides.

Note: Incorporation by reference of the Implementation Plan for the State of Delaware was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 28, 1990.

Steve R. Wasserburg,

Acting Regional Administrator.

PART 52—[AMENDED]

Subpart I—Delaware

Part 52 of title 40, Code of Federal Regulations is revised as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.420 is amended by adding paragraph (c) (39) as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the State Implementation Plan were submitted by the Delaware Department of Natural Resources and Environmental Control on March 6, 1987 (Secretary's Order No. 87–A–2). Revisions to the State Implementation Plan submitted by the Delaware Department of Natural Resources and Environmental Control on March 21, 1988 (Secretary's Order No. 89–A–5).

(i) Incorporation by reference.

(A) Letter received on March 6, 1987, from the Delaware Department of Natural Resources and Environmental Control submitting revisions to the State Implementation Plan for EPA approval (portions of Secretary Order No. 87–A–2).

(B) Letter dated December 21, 1988, from the Delaware Department of Natural Resources and Environmental Control submitting revisions to the State Implementation Plan for EPA approval

(portions of Secretary Order No. 89–A–5).

(C) Only those portions of Secretary's Order No. 87–A–2 issued on February 18, 1987, which amend Regulation No. II, Stack Heights at sections 2.2, 2.3, 2.4, and 2.5, pertaining to the definitions of the terms excessive concentrations, nearby stack, and stack in existence; and at sections 3.1, 3.2, and 3.3, pertaining to the requirements for new and existing sources.

(D) Only those portions of Secretary's Order No. 88–A–5, issued on December 7, 1988, which amend Regulation No. XXV, Requirements for Preconstruction Review, at section 3.9(A) and Regulation No. XXVII, Stack Heights at section 2 to include definitions of the terms emission limitation and emission standard.

[FR Doc. 90–15282 Filed 6–28–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–1379–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and correction.

SUMMARY: The Iowa Department of Natural Resources has submitted revised regulations to incorporate by reference EPA's Guidelines on Air Quality Models (Revised 1986) (EPA 450/2–78–027R) and Supplement A (1987). EPA is taking final action to approve this revision to establish consistency with EPA's current requirements on air quality models. EPA is also approving a recodification of the Iowa air quality rules. At this time, EPA is correcting final rulemakings published in the Federal Register of August 15, 1989, approving the Iowa PM_{10} State Implementation Plan revision, and the Polk County and Linn County revisions.

DATES: This action will become effective August 28, 1990, unless someone notifies EPA that they wish to make adverse or critical comments by July 30, 1990. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at:

Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603 (FTS 276–7603).

SUPPLEMENTARY INFORMATION: On May 7, 1990, the Iowa Department of Natural Resources submitted an amendment to chapter 22.4 (455B), "Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD)," subrule 22.4(1), which incorporates EPA's Guideline on Air Quality Models (Revised 1986) and Supplement A (1987) to satisfy EPA's modeling requirement in 40 CFR 51.166(1) and 52.21(1) and the rulemaking on the addition of Supplement A which became effective February 5, 1988.

This amendment was adopted by the Iowa Environmental Protection Commission after proper notice and public hearing (see 40 CFR 51.102) and became effective on March 14, 1990. If additional information is desired on EPA's Guideline on Air Quality Models (Revised), the reader can refer to 51 FR 33176 published September 9, 1986, and in reference to Supplement A, 53 FR 392, published January 6, 1988.

EPA is also approving the recodification of the Iowa air quality rules, which was effective on December 3, 1988. The recodification was necessary due to a major reorganization of the Iowa environmental programs and has no practical effect on the rules themselves.

EPA has not reviewed the substance of these regulations at this time, except for subrule 22.4(1) above. These rules were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the state. The EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive rules.

Also, EPA is correcting errors in final rulemakings published in the Federal Register on August 15, 1989. In the Iowa PM_{10} SIP revision (54 FR 33536), the wrong section number was printed in the section that identifies the regulatory text. In the Linn County revision (54 FR 33528) and the Polk County revision (54 FR 33528), the incorporation by reference material that was submitted and approved by the Office of the Federal Register was not printed correctly in the Federal Register.

ACTION: EPA takes final action to approve Iowa's revised rule 22.4(1) which pertains to air quality models as contained in a state submittal on May 7, 1990. EPA also approves the recodification of the Iowa air quality rules.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by August 28, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the state of Iowa was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 18, 1990.

Morris Kay,

Regional Administrator.

I. Part 52 of chapter I, title 40 (40 CFR part 52) is amended as follows:

Subpart Q—Iowa

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.820 is amended by adding paragraph (c)(52) as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(52) Revised chapter 22, subrule 22.4(1), submitted on May 7, 1990, incorporates by reference revised EPA Modeling Guideline Supplement A, July 1987, and recodified air quality rules chapter 20–29.

(i) Incorporation by reference:

(A) Amendment to chapter 22, "Controlling Pollution," Iowa Administrative Code, subrule 22.4(1). Effective March 14, 1990.

(B) Recodification of Iowa Administrative Code, title II—Air Quality, chapters 20–29, effective December 3, 1988.

II. EPA published three final rulemakings in the Federal Register on August 15, 1989. The following corrections are being made by publication of this notice.

On page 33528, second column, under part 52, subpart Q—Iowa, § 52.820 Identification of Plan (c)(50)(i)(A) Linn County chapter 10 Ordinance "Air Pollution Control" adopted by the Linn County Board of Supervisors on September 2, 1987, should be corrected to read:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(50) * * *

(i) Incorporation by reference:

(A) Linn County Chapter 10 Ordinance "Air Pollution Control" sections 10.1 (except for 10.1(50)), 10.2, 10.3, and 10.4, adopted by the Linn County Board of Supervisors on September 2, 1987.

On page 33530, second column, under part 52, subpart Q—Iowa, § 52.820 Identification of Plan (c)(49)(i)(A) Ordinance No. 28, Amendment to Polk County Board of Health Rules and Regulations, chapter V, Air Pollution, adopted by the Polk County Board of Supervisors on September 15, 1987, should be corrected to read:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(49) * * *

(i) Incorporation by reference:

(A) Ordinance No. 28, Amendment to Polk County Board of Health Rules and Regulations chapter V, Air Pollution, Article I, 5–1 and 5–2 (except for variance); Article II, 5–3; and Article X, 5–28 through 5.50–1 (except for 5–49 and 5–50), effective October 8, 1987.

On page 33539, second column, under part 52, subpart Q—Iowa, line 4, correct § 52.920 to § 52.820.

On page 33539, second column, under part 52, subpart Q—Iowa, line 7, correct § 52.920 Identification of plan, to § 52.820 Identification of plan.

[FR Doc. 90–15281 Filed 6–28–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 414

[FRL 3726–6]

Organic Chemicals, Plastics and Synthetic Fibers Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending 40 CFR part 414 to revoke certain portions of the effluent limitations guidelines and pretreatment standards for the organic chemicals, plastics and synthetic fibers (OCPSF) manufacturing point source category. The revocation withdraws the limitations and standards for a certain set of pollutants and discharges as discussed below. All other limitations and standards contained in the rule will remain in effect. The purpose of the withdrawal is to implement a court ruling in *Chemical Manufacturers Association* v. *Environmental Protection Agency*, 870 F.2d 177 (5th Cir.), *modified*, 885 F.2d 253 (5th Cir. 1989).

EFFECTIVE DATE: This amendment was effective as of the date of the order of the court remanding the affected limitations and standards, October 10, 1989.

FOR FURTHER INFORMATION CONTACT: George M. Jett, Project Officer, Chemicals Branch, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (202) 382–7151.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1987, EPA promulgated a regulation establishing effluent limitations guidelines and standards for the organic chemicals, plastics, and synthetic fibers (OCPSF) manufacturing point source category. 40 CFR part 414; 52 FR 42522. These included effluent limitations guidelines attainable by the application of the "best practicable control technology currently available" (BPT) and the "best available technology economically achievable" (BAT); pretreatment standards applicable to existing and new dischargers to publicly owned treatment works (PSES and PSNS, respectively), and new source performance standards (NSPS) attainable by the application of the "best available demonstrated control technology".

Thirty-one separate lawsuits were filed by three industry trade associations (Chemical Manufacturers Association, Synthetic Organic Chemicals Manufacturers Association, and National Paint and Coatings Association), several dozen OCPSF companies, and one environmental interest group (Natural Resources Defense Council). The petitioners raised approximately 63 separate issues. In settlement of an issue raised by one petitioner, EPA revoked the effluent limitations and standards for bis(2-chloroisopropyl) ether. 54 FR 27351; June 29, 1989.

On March 30, 1989, the U.S. Court of Appeals for the Fifth Circuit issued a decision that upheld the regulations against all industry challenges and all but two challenges brought by NRDC. With respect to two challenges brought by NRDC, the Court remanded the regulation to EPA for further rulemaking to determine whether the rule should be made more stringent in certain respects, but left the rule in effect pending further rulemaking. *Chemical Manufacturers Association* v. *Environmental Protection Agency*, 870 F.2d 177 (5th Cir. 1989). The Agency has initiated technical studies to respond to the issues raised by the court's remand.

Six petitioners or groups of petitioners filed petitions for rehearing on about 16 issues. On October 10, 1989, the Court granted rehearing and remanded two parts of the regulations to EPA for further rulemaking proceedings. The first and more significant part consists of the effluent limitations for 19 of the 20 pollutants in BAT Subcategory 2 (40 CFR 414.101) that were based upon in-plant biological treatment technology. (The court left in effect the limitation for acrylonitrile that was based upon this technology.) This aspect of the remand in effect also remands the new source performance standards for these 19 pollutants for discharges that are subject to 40 CFR 414.101 limitations. In addition, it remands the existing and new source pretreatment standards for 13 pollutants that were based upon the remanded BAT Subcategory 2 limitations. The second remanded part of the regulation consists of limitations and standards for pollutants discharged from three metal-bearing waste streams that EPA had erroneously listed in part 414 appendix A.

II. Today's Revocation

In response to the Court's decision, EPA is today withdrawing the limitations and standards remanded by

the Court. All other portions of the OCPSF effluent limitations guidelines and standards remain in effect. The effect of the court's ruling and today's revocation is as follows:

1. All BPT limitations remain in effect.

2. All BAT limitations for BAT Subcategory 1 (40 CFR 414.91) remain in effect.

3. For BAT Subcategory 2 (which EPA estimates to constitute 5–10 percent of all existing direct dischargers subject to BAT) and for NSPS for discharges subject to 40 CFR 414.101, effluent limitations for 39 pollutants remain in effect. For the 19 pollutants subject to the court's remand, the BAT limitations and new source performance standards for discharges subject to 40 CFR 414.101 are withdrawn and are thus no longer in effect. BAT limitations and new source performance standards for these 19 pollutants (and any other pollutants not addressed by the OCPSF regulation) are to be established on a case-by-case basis, using best professional judgment, by the EPA and State permitting authorities. See 40 CFR 125.3(c)(2).

4. For PSES and PSNS, pretreatment standards for 34 toxic pollutants remain in effect. For the 13 pollutants subject to the court's remand, the pretreatment standards are withdrawn and are thus no longer in effect. Discharges of these 13 pollutants (and any other pollutants not addressed by the regulation) remain subject to the pretreatment standards contained in 40 CFR 403.5, including any local limits established by the publicly owned treatment works.

5. The appendix A non-complexed metal-bearing waste stream listings for tetraethyl lead and tetramethyl lead are deleted. (The appendix A listing for anti-knock fuel additives was deleted on June 29, 1989. 54 FR 27351.)

III. Effect of Today's Action on Pending Applications for Fundamentally-Different Factor (FDF) Variances

Pursuant to section 301(n) of the CWA, 33 U.S.C. 1311(n), some OCPSF dischargers have applied for FDF variances from all or portions of the BAT and PSES standards. Some of those FDF variance applications pertain in whole or in part to the remanded limitations and standards that are being withdrawn today. Because the withdrawn limitations and standards no longer are in effect, any application for an FDF variance from such withdrawn limitations and standards is now moot and will be considered by EPA to be withdrawn.

IV. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This action is not a major rule because it merely withdraws certain requirements pursuant to a court order; thus it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule was submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on the reasons discussed in the preceding paragraph, I hereby certify, pursuant to 5 U.S.C. 605(b), that this regulation will not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq., EPA must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. This correction and revocation notice contains no additional information collection requirements, and therefore the Paperwork Reduction Act requirements are not applicable.

List of Subjects in 40 CFR Part 414

Organic chemicals manufacturing, plastics manufacturing, synthetic fibers manufacturing, water pollution control, water treatment and disposal.

Dated: June 20, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble, 40 CFR part 414 is amended as set forth below.

PART 414—ORGANIC CHEMICALS, PLASTICS, AND SYNTHETIC FIBERS

40 CFR part 414 is amended as follows:

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92-500, 86 Stat. 816, Pub. L. 95-217, 91 Stat. 156, Pub. L. 100-4, 101 Stat. 7 (33 U.S.C. 1311, 1304, 1316, 1317, and 1361).

§§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, 414.85 [Amended]

2. In each of §§ 414.25, 414.35, 414.45, 414.55, 414.65, 414.75, and 414.85, the table is amended by removing the names of the following 13 pollutants:

Acenaphthene
2,4-Dimethylphenol
Fluoranthene
Naphthalene
Phenol
Bis(2-ethylhexyl) phthalate
Di-N-butyl phthalate
Diethyl phthalate
Dimethyl phthalate
Anthracene
Fluorene
Phenanthrene
Pyrene

§ 414.101 [Amended]

3. In § 414.101, the table is amended by removing the names of the following 19 pollutants:

Acenaphthene
2,4-Dimethylphenol
Fluoranthene
Naphthalene
Phenol
Bis(2-ethylhexyl) phthalate
Di-N-butyl phthalate
Diethyl phthalate
Dimethyl phthalate
Benzo(a)anthracene
Benzo(a)pyrene
3,4-Benzofluoranthene
Benzo(k)fluoranthene
Chrysene
Acenaphthylene
Anthracene
Fluorene
Phenanthrene
Pyrene

Appendix A [Amended]

4. In Part 414, appendix A, under the heading "Lead," the last two items, which read "Tetraethyl lead/Alkyl halide + sodium-lead alloy," and "Tetramethyl lead/Alkyl halide + sodium-lead alloy" are removed.

[FR Doc. 90-14004 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document corrects a legal citation contained in final regulations establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended, which were published June 12, 1990 (55 FR 23884).

FOR FURTHER INFORMATION CONTACT: Nichole Jenkins, Attorney, Office of Personnel Management, (202) 606–1701.

Accordingly, the Office of Personnel Management is correcting the authority citation for part 801 to read as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs. 7, 8, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-15170 Filed 6-28-90; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-376; RM-6871]

Radio Broadcasting Services; Aitkin, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C3 to Aitkin, Minnesota, in response to a petition filed by Upper Minnesota Broadcasting Corporation, and modifies the license for Station KEZZ, as requested, to specify operation on Channel 232C3 in lieu of Channel 232A. Canadian concurrence has been obtained for the allotment of Channel 232C3 at coordinates 46–36–15 and 93–39–55.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–376, adopted June 18, 1990, and released June 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 366.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Minnesota by removing Channel 232A and adding Channel 232C3 at Aitkin.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-15219 Filed 6-28-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 91050-0019]

Foreign fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) prohibits directed fishing for groundfish in the Gulf of Alaska with a fishing vessel that has hook-and-line gear attached or on board that vessel through December 31, 1990. This action is necessary to limit the prohibited species catch (PSC) allowance of Pacific halibut established for hook-and-line gear to the amount provided for by regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). It is intended to carry out the management objectives of the North Pacific Fishery Management Council.

DATES: Effective at 00:01, Alaska local time (a.l.t.), July 1, 1990, until midnight, a.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The FMP, which governs groundfish fishing in the U.S. exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.92 and part 672. Special consideration is given to the conservation of Pacific halibut (halibut), a valuable species sought in another U.S. fishery, but caught as bycatch in the groundfish fishery. Pacific halibut are managed under authority of the International Pacific Halibut Commission; however, bycatches by United States fishermen are controlled through prohibited species catch (PSC) mortality limits (50 CFR 672.20(f)). The halibut PSC mortality limit for the Gulf of Alaska is allocated, on a quarterly basis, to hook-and-line gear and trawl gear under an emergency interim rule (55 FR 20465, May 17, 1990) as modified (55 FR 23745, June 12, 1990). The apportionments of the halibut PSC mortality limits established for hook-and-line gear and trawl gear for 1990 total 2,000 mt and 750 mt, respectively.

If, during the year, the Regional Director determines that the catch and resulting mortality of halibut by operators of vessels using hook-and-line or trawl gear will reach the quarterly apportionment of the halibut PSC limit established for either hook-and-line or trawl gear, the Regional Director will publish a notice in the Federal Register prohibiting directed groundfish fishing by vessels with hook-and-line or trawl gear, as appropriate, for the remainder of the quarter of which the PSC apportionment applies.

The PSC limits established for hook-and-line gear in 1990 are allocated on a quarterly basis in the following manner:

	Hook-and-line gear Percent (PSC allocation)	
January 1–March 31	20	(150 mt)
April 1–June 30	60	(450 mt)
July 1–remainder of the year	20	(150 mt)
Total	100	(750 mt)

Previously, the Regional Director determined that the first and second quarter mortality limit for hook-and-line gear was reached within the second quarter, and consequently closed that directed groundfish fishery on May 29, 1990 (50 FR 22794, June 4, 1990). Under the emergency interim rule implementing the quarterly PSC limit apportionment system (55 FR 8994; February 21, 1990), if a quarterly apportionment for hook-and-line or trawl gear is exceeded, the amount by which the quarterly apportionment is exceeded will be deducted from the respective PSC apportionment for the next quarter (§ 672.20(f)(5)(iv)).

The Regional Director has determined that the total PSC mortality limit apportioned to the Gulf of Alaska hook-and-line groundfish fisheries (750 mt) for 1990 has been reached. This fishery should not reopen on July 1, because the 150 mt allocation for hood-and-line gear that was originally intended for the period from July 1 through December 31,

1990 has already been attained. Therefore, the Regional Director prohibits directed fishing for groundfish from vessels with hook-and-line gear attached or on board in the Gulf of Alaska from the beginning of the third quarter at 00:01 ALT July 1, 1990, through 12 midnight ALT December 31, 1990.

Classification

The total annual PSC allowance of halibut established for hook-and-line gear has been exceeded. Unless this notice takes effect promptly, the hook-and-line groundfish fisheries will recommence on July 1, 1990, with an ensuing bycatch and wastage of halibut resource in excess of specified PSC allocations. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 25, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-15107 Filed 6-25-90; 4:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 126
Friday, June 29, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 312, 322, 327 and 381

[Docket No. 90-064P]

Imported Canadian Product; Further Implementation of the United States-Canada Free-Trade Agreement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service is proposing to amend the Federal meat and poultry products inspection regulations by exempting Canadian meat and poultry products intended to be imported into the United States from the requirements contained in parts 327 and 381 of those regulations, including the requirement that imported product be subject to reinspection by United States import inspectors. FSIS is also proposing to amend parts 327 and 381 to exempt the Canadian inspection system from various requirements applicable to other foreign countries desiring to obtain and/or maintain their eligibility to export product to the United States, and to relieve USDA officials from conducting certain review activities. FSIS is also proposing the amend part 312 of the regulations by adding a new export stamp to be applied by United States establishments to product intended for export to Canada. In addition, FSIS is proposing to amend part 322 of the regulations by waiving the requirement that an export certificate be issued and accompany product intended for export to Canada and by providing for the use of the new export stamp on product intended for export to Canada. Lastly, FSIS is proposing to amend parts 322, 327 and 381 to provide new procedures applicable to United States establishments exporting product to Canada and to Canadian establishments exporting product to the United States. These proposed provisions, if made final, would be considered to be experimental and would be evaluated during and at the end of the experimental period to determine what form of permanent change in procedures may be appropriate. Utilization of the experimental provisions would not exceed one year's operation. Once the evaluation is complete, further notice and comment rulemaking would be undertaken to reflect any permanent change in the regulations. This proposal would further the goal of the United States-Canada Free-Trade Agreement signed by President Reagan on January 2, 1988, by reducing trade restrictions between the United States and Canada.

DATES: Comments by July 30, 1990.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Ms. Patricia Stolfa at (202) 447-3473. (See also Comments under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made an initial determination that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Agency has made an initial determination that this proposed rule may have a significant effect on a substantial number of small entities. The impact of this proposed rule is expected to be felt by those import inspection establishments located at or near the border, for which the reinspection of Canadian product constitutes all or a majority of their business. The Agency's initial determination is that these establishments are small entities. Therefore, the Agency is developing a Regulatory Flexibility Analysis. The Analysis will be published at the same time the final rule is published.

Paperwork Reduction Act

This proposal would require that United States establishments wishing to export product to Canada and Canadian establishments wishing to export product to the United States to include certain information about each shipment on a form intended to be used jointly by Canadian and United States establishments. The form would be completed each time a shipment is ready for export and would contain the following information about each shipment: (1) Type of product, (2) number of boxes/carcasses, (3) total weight, (4) label registration or approval number, and (5) the authorization number issued by FSIS for United States shipments to Canada or the AGR number issued by Agriculture Canada for Canadian shipments to the United States. The form would accompany product to the border. If the product is Canadian product, the form would be presented to either a Canadian inspector or a Canadian Customs official. If the product is United States product, the form would be presented to either a United States inspector or a United States Customs official. These paperwork requirements will be submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501).

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Ms. Patricia Stolfa so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to the proposal will be available for public inspection in the

Policy Office between 9 a.m. and 4 p.m. Monday through Friday.

Background

On January 2, 1988, President Reagan signed the United States-Canada Free-Trade Agreement (Agreement).[1] Pursuant to Article 2105, the "Agreement shall enter into force on January 1, 1989, upon exchange of diplomatic notes certifying the completion of necessary legal procedures by each party." To implement the United States obligations of the Agreement, the Congress passed and President Reagan signed into law the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100-449. One goal of the Agreement is to facilitate commerce between the two countries. Under certain conditions, the Agreement makes it possible for both countries to minimize inspection procedures applicable to each other's meat and poultry imports. Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Secretary has adequate authority to implement the provisions of the Agreement by modifying the applicable regulations to permit Canadian inspection personnel to conduct reinspections required by the Acts.

In furtherance of that goal, on January 5, 1989, FSIS published an interim rule (54 FR 273), effective immediately, exempting all Canadian product imported into the United States from the requirement of stamping with the official mark of inspection. In addition, the interim rule authorized new "streamlined" reinspection procedures for product from those Canadian establishments that wished to participate in the "streamlined" inspection program. FSIS inspection officials had determined that "streamlined" inspection procedures could be offered and making requirements could be eliminated without compromising product wholesomeness. Such procedures were considered to be consistent with the provisions of the Agreement.

Recently, officials from USDA and their counterparts of Agriculture Canada reviewed the operations under the streamlined procedures for the preceding year. To continue the spirit embodied in the Agreement, the officials have agreed that changes to current import and export requirements may be advisable. Therefore, changes are being proposed to current provisions in the regulations that would be in effect for a period not to exceed one year; these changes would be considered an experiment. After one year's operation, officials from both countries would determine what form of permanent changes could be made. The proposed changes reflect the understanding that the inspection systems of both countries are virtually identical and, as such, may permit significant modifications to current regulations.

It should be emphasized that these proposed changes are a result of the unique and special relationship between the two countries. This unique relationship is based on several factors—the fact that the countries are contiguous to each other; the open border policies in effect for many years; and the fact that there are no significant differences in animal health and meat and poultry product production and processing practices. In addition, unlike the majority of other countries' inspection systems, which provide one standard of inspection for domestic product and one for product intended for export, both Canada and the United States make no distinction between domestic and export product and apply only one standard of inspection to both. These factors present a situation which permits testing of the experimental regulations discussed below.

Concept of Equivalency Under the Free Trade Agreement

The Federal meat and poultry products inspection regulations provide that, if a foreign country's inspection system ensures compliance with requirements at least equal to all of the provisions of the Federal Meat Inspection Act and/or the Poultry Products Inspection Act, such foreign country may, if the inspection system is judged to be "at least equal to" by USDA officials, export meat and/or poultry products to the United States. The United States concept of "at least equal to" is explained in detail in the background of the final rule implementing the provisions of the Food Security Act of 1985, Public Law 99-198, which amended the Poultry Products Inspection Act (54 FR 43948). The procedures used by FSIS to asertain whether a country's inspection program is "at least equal to" are explained in detail in the background to the final rule which added Great Britain to the list of countries eligible to have its poultry products imported into the United States (52 FR 23018).

A number of regulations applicable to inspection systems of other countries eligible to have their products imported into the United States would not apply to Canada. These amendments would exempt the Canadian inspection system from certain requirements and procedures and would relieve USDA officials of certain review responsibilities. Parts 327 and 381 provide detailed requirements and procedures that a foreign country must meet to establish eligibility and to maintain continuing eligibility to export product to the United States; they also provide that USDA representatives perform certain activities with respect to ascertaining a country's initial eligibility or continuing its present eligibility. For example, §§ 327.2 and 381.196 require, among other things, that each foreign country yearly certify establishments as eligible to export product to the United States (9 CFR 327.2(a)(3); 381.196(a)(3)); that USDA representatives periodically review foreign countries' inspection systems in operation to assure that United States requirements are being met (9 CFR 327.2(a)(2)(iii); 381.196(a)(2)(iii)), and that the USDA take action to remove a country from the list of eligible countries under certain conditions (9 CFR 327.2(a)(4); 381.196(a)(4)). Having determined the Canadian inspection system is effectively the same as the United States inspection system, the aforementioned activities would no longer be necessary or appropriate. Therefore, sections 327.2 and 381.196 would be amended to exempt the Canadian inspection system from these specific requirements and procedures and USDA officials from review and delistment activities. However, those United States laws regulations which apply to domestic product in commerce, i.e., that product must be wholesome, unadulterated and properly marked, labeled and packaged, would apply to Canadian product once it enters United States commerce.

Authority to Employ Experimental Regulations

Should this proposal become a final rule, the Administrator would, starting on the effective date, initiate experimentation of the amendments to the regulations described below. During the first year's operation, use of the amended regulations would be evaluated and this evaluation would be used by inspection officials in both countries to ascertain whether these regulations should be modified or remain the same. FSIS would publish, on or before the end of the year's period, a notice proposing changes to the regulations as a result of the experiment or indicating that no permanent changes are proposed.

[1] A copy of the Agreement is available for review in the office of the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Provisions Applicable to Product Intended for Export to Canada

Once United States product is ready for export to Canada, the United States establishment would be required to telephone or fax information to the Export Coordination Division, International Programs, FSIS, Washington, DC, including the type of product to be shipped, the number of boxes or carcasses to be shipped, the weight of the product, and the Canadian label registration number. An authorization number would be issued to the exporting establishment by the Export Coordination Division. The exporting establishment would then use this number when stamping the boxes or attaching the number to the carcasses for export. The information noted above and the authorization number would be recorded on a joint form developed for use by both Canada and the United States. This joint form would accompany the product to the border. When the product reaches the border, the Canadian inspector would check the joint form and would consult the Canadian Import Control System (ICS) to verify issuance of the authorization number. If the authorization number is valid, the product will enter Canadian commerce. If the number appears not to be valid, the Canadian inspector would contact Agriculture Canada for more information, who would then consult with FSIS inspection officials. If it is determined that the number is not valid, the shipment would not be permitted to enter Canadian commerce. If no Canadian inspector is on duty, the carrier will leave the joint form with the Canadian Customs Officer, and the product will enter Canadian commerce. The Canadian inspector will later verify the validity of the authorization number. There are border points where no Canadian inspector will be stationed. At these points, the carrier will leave the joint form with the Canadian Customs Officer. These provisions could be utilized by any federally inspected United States establishment wishing to export product to Canada. That is, any federally inspected United States establishment could ship product to any place within Canada without being subject to Canadian reinspection procedures and requirements.

Under these provisions, neither an export certificate nor a health certificate would be issued. Instead, the boxes or carcasses would be marked with a special, newly developed export stamp containing the authorizing number discussed above for use only on product intended for export to Canada. Therefore, part 322 would be amended to waive the requirement that an export certificate be issued and accompany product intended for export to Canada and part 312 would be amended to provide for the special export stamp. The stamp would be amended to provide for the special export stamp. The stamp would be of the following form and would be considered an official device.



Provisions Applicable to Product Intended for Export to the U.S.

Once Canadian product is ready for export to the United States, Agriculture Canada officials would be required to contact one of three FSIS Import Field Offices (IFO) (Tacoma, WA; Boston, MA; or Detroit, MI), inform the IFO of the type of product to be shipped, the number of boxes or cacasses to be shipped, the weight ot the product, the United States label approval number, and the Canadian export inspection number (AGR number) that will be stamped on the boxes or attached to the carcasses. This information would be recorded on the joint form and the joint form would accompany the product to the border. As in the case of United States product intended for export to Canada, no export certificate or health certificate would accompany the product to the United States. When the product reaches the border, the USDA inspector will check the joint form accompanying the product including the AGR number. The United States import will consult the Automated Import Information System, and if the AGR number is valid, the product will enter United States commerce. If the number appears not to be valid, FSIS inspection officials would contact Agriculture Canada officials for more information. If it is determined the the number is not valid, the shipment would not be permitted to enter United States commerce. If no USDA inspector is on duty when the product arrives at the border, the carrier will leave the joint form with the U.S. Customs Officer, and the shipment will enter U.S. commerce. The USDA inspector will later verify the AGR number. There are no border points where no United States inspector will be stationed. At these points, the carrier will leave the joint form with the United States Customs Officer. These procedures could be utilized by any inspected Canadian establishment wishing to export product to the United States. That is, any inspected Canadian establishment could ship product to any place within the United States without applying for or having the product be subject to reinspection by United States import inspectors.

Canadian inspection personnel would be required to perform reinspection in Canada of Canadian product destined for import into the United States. This would include the random reinspections for residues and species verification required by the Federal Meat Inspection Act and the Poultry Products Inspection Act.

Both Canada and the United States maintain internal review programs to assure that meat and poultry products intended for export meet the laws and regulations of the respective countries. Both countries also review plants in the other country to assure standards are maintained. If the standards are met, each country certifies individual plants as eligible to export to the other country. On occasion, plants have been reviewed that did not meet the reviewing country's standards. These plants have been delisted and therefore prohibited from exporting product to the review country. The inspection service in the reviewed country then takes action to correct the problem areas and then recertifies the plant. There currently exists a small number of plants in each country which are not permitted to export. Since both countries have procedures for reviewing their plants and have procedures for correcting problems, the Agreement will permit each country to deal with its own problems and, when necessary, prohibit exports without using the delistment process.

Therefore, for the reasons discussed in the preamble, FSIS is proposing that parts 327 and 381 of the Federal meat and poultry products inspection regulations be amended to exempt Canadian product from all current requirements in the regulations for importing meat and poultry products, except that Canadian establishments would still be required to follow current product labeling and marking requirements as contained in §§ 327.14, 327.15, 381.205 and 381.206 of the Federal meat and poultry products inspection regulations (9 CFR 327.14, 327.15, 381.205

and 381.206) to assure that United States' product requirements for additives and formulations are followed. United States establishments would also be required to follow current Canadian label approval procedures to assure that Canadian product requirements for additives and formulations are followed. Parts 327 and 381 would also be amended to exempt the Canadian inspection system from various requirements applicable to other foreign countries desiring to obtain and/or maintain eligibility to export product to the United States and to exempt USDA officials from review and delistment activities. In addition, parts 312 and 322 would be amended to provide for a new export stamp to be applied to product intended for export to Canada, and to waive the requirement that an export certificate be issued and accompany product intended for export to Canada. Lastly, parts 322, 327 and 381 would be amended to provide new requirements and procedures to be utilized by United States establishments desiring to export product to Canada and by Canadian establishments desiring to export product to the United States.

Effect of January 5, 1989, Interim Rule

The interim rule, which was published on January 5, 1989 (54 FR 273) and effective on that date, remains in effect except as modified by this proposed rule. Portions of that rule which exempted Canadian product from certain requirements should be changed by this proposal. For example, Canadian product is still exempt from product marking requirements. However, portions of the rule which provided for "streamlined" inspection procedures for participating Canadian establishments would be superseded as provided in this proposed rule.

Proposed Rule

Therefore, FSIS is proposing to amend parts 312, 322, 327 and 381 of the Federal meat and poultry products inspection regulations for a period of one year, as set forth below.

List of Subjects

9 CFR Part 312

Marks and devices; Meat inspection.

9 CFR Part 322

Exports; Meat inspection.

9 CFR Part 327

Imported products; Meat inspection.

9 CFR Part 381

Imported products; Exports; Poultry products inspection.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for part 312 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 312.8 would be amended by revising paragraph (a) to read as follows:

§ 312.8 Official export inspection marks, devices, and certificates.

(a)(1) The official export meat inspection mark required by part 322 of this subchapter to be applied to all product, other than product intended for export to Canada, shall be in the following form as hereinafter specified.[3]



(2) The official export meat inspection mark required by part 322 to be applied to all product intended for export to Canada shall be in the following form as hereinafter specified:[4]



(3) Any rubber stamp approved by the Administrator, in the manner provided for in part 317 of this subchapter, and bearing the official mark prescribed in this paragraph shall be an official device for the purposes of the Act.

* * * * *

PART 322—EXPORTS

3. The authority citation for part 322 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

4. Section 322.1 would be amended by adding the following phrases to the end of paragraphs (a) and (b):

§ 322.1 Manner of affixing stamps and marking products for export.

(a) * * *, or in the case of product intended for export to Canada, marked with an official export stamp as shown in § 312.8(a)(2) of this subchapter bearing an authorization number issued by the Export Coordination Division, International Programs, FSIS.

(b) * * *, or in the case of product intended for export to Canada, marked with an official export stamp as shown in § 312.8(a)(2) of this subchapter bearing an authorization number issued by the Export Coordination Division, International Programs, FSIS.

5. Section 322.4 would be amended by adding the following phrase to the end of the existing text:

§ 322.4 Clearance of vessels and transportation without certificate prohibited; exceptions.

* * *, and except for product intended for export to Canada.

6. Part 322 would be amended by adding a new § 322.8 to read as follows:

§ 322.8 Provisions applicable to establishments intending to export product to Canada.

The following procedures and requirements shall be applicable to any official establishment intending to export product to Canada.

(a) When federally inspected and passed product is ready for export, the establishment shall contact the Export Coordination Division, International Programs, FSIS, shall request an authorization number, and shall provide the following information.

(1) Type of product to be exported;

(2) Number of boxes or carcasses to be exported;

(3) Total weight of the product;

(4) Canadian label registration number.

(b) The Export Coordination Division shall issue an authorization number to the establishment to cover the shipment described in paragraphs (a)(1) through (a)(4) of this section.

(c) The establishment shall stamp product intended for export with the stamp provided in § 312.8(a)(2) of this subchapter and shall include the authorization number issued as provided in paragraph (b) of this section in the body of the stamp.

(d) The establishment shall record the information provided in paragraphs (a)(1) through (a)(4) of this section and the authorization number on the joint USDA-Agriculture Canada form.

(e) The joint form shall accompany the product to the border.

(f)(1) The driver of the transport vehicle shall present the joint form to the Canadian inspector or the Customs agent stationed at the border.

(2) When there is a Canadian inspector present at the border and the authorization number is verified, or when there is no inspector present, the product shall be entered and treated as domestic product as provided in § 327.16(a).

(3) When there is a Canadian inspector present at the border and the authorization is not verified after consultation with FSIS, the product shall be refused entry.

(4) When there is no Canadian inspector present at the border, and the joint form does not accompany the product to the border, the product shall be entered.

PART 327—IMPORTED PRODUCTS

7. The authority citation for part 327 would continue to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

8. Section 327.2 would be amended by adding the following phrase to the beginning of paragraph (a):

§ 327.2 Eligibility of foreign countries for importation of products into the United States

(a)(1) Except for Canada, * * *.

* * * * *

9. Paragraph (b) of § 327.3 would be amended by adding the following phrases to the beginning of the first, second and third sentences of the paragraph:

§ 327.3 No product to be imported without compliance with applicable regulations.

* * * * *

(b) Except for product imported from Canada, * * *. Except for product imported from Canada and * * *. Except for product imported from Canada and * * *.

* * * * *

10. Paragraphs (a) and (b) of § 327.4 would be amended by adding the following phrases to the beginning of each paragraph:

§ 327.4 Imported products; foreign certificate required.

(a) Except for product imported from Canada and as provided in § 327.16, * * *.

(b) Except for product imported from Canada and as provided in § 327.16, * * *.

* * * * *

11. Section 327.5 would be amended by revising the title and by removing paragraph (d).

§ 327.5 Importer to make application for inspection of products for entry; information required; exceptions for product imported from Canada.

12. Section 327.6 would be amended by revising the current phrase in paragraph (a)(1) and by revising paragraph (a)(2) as follows and by adding the following phrases to the beginning of paragraphs (a) (3) and (4):

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) Except as provided in §§ 327.16, 327.17 and product imported from Canada, * * *.

(2) Except for product imported from Canada, every lot of product shall routinely be given visual inspection by a Program import inspector for appearance and condition, and checked for certification and label compliance. Canadian inspection personnel shall conduct random reinspections of product for species verification and for residues.

(3) Except for product imported from Canada, * * *.

(4) Except for product imported from Canada, * * *.

* * * * *

13. Paragraph (a) of § 327.10 would be amended by adding the following phrase to the end of the paragraph:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

(a) * * *, or from product imported from Canada.

* * * * *

14. Section 327.12 would be amended by adding the following phrases to the beginning of paragraphs (b) and (c):

§ 327.12 Foreign canned or packaged products bearing trade labels; sampling and inspection.

* * * * *

(b) Except for product imported from Canada, * * *.

(c) Except for product imported from Canada, * * *.

15. Section 327.23 would be amended by revising the section heading and by adding the following introductory text section:

§ 327.23 Compliance procedure for cured pork products offered for entry; exemption for Canadian product.

The provisions of this section do not apply to cured pork products imported from Canada.

* * * * *

16. Part 327 would be amended by adding a new § 327.28 to read as follows:

§ 327.28 Provisions applicable to Canadian establishments intending to export product to the United States.

(a) When Canadian inspected and passed product is ready for export, a Canadian official shall contact Agriculture Canada and shall request an AGR number.

(b) The AGR number shall be stamped on all product intended for export.

(c) The Canadian official shall include the AGR number and the following information on the joint USDA-Agriculture Canada form:

(1) Type of product to be exported;

(2) Number of boxes or carcasses to be exported;

(3) Total weight of the product;

(4) United States label approval number.

(d) The joint form shall accompany the product to the border.

(e)(1) The driver of the transport vehicle shall present the joint form to the United States import inspector or the United States Customs agent stationed at the border.

(2) When there is a United States inspector present at the border and the authorization number is verified, or when there is no inspector present, the product shall be entered and treated as domestic product as provided in § 327.16(a).

(3) When there is a United States import inspector present at the border and the authorization is not verified after consultation with Agriculture Canada, the product shall be refused entry.

(4) When there is no United States inspector present at the border, and the joint form does not accompany the product to the border, the product shall be entered.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

17. The authority citation for part 381 continues to read as follows:

[3] The number "529893" is given as an example. The number of the official export certificate will be shown in lieu thereof.

[4] The number "12345" is given as an example only. The authorization number issued by the Export Coordination Division, International Programs, FSIS, will be shown in lieu thereof.

Authority: 7 U.S.C. 450; 21 U.S.C. 458-470; 601-695; 33 U.S.C. 1254; 7 CFR 2.15, 2.55.

18. Section 381.104 would be amended by redesignating the existing text as paragraph (a) and revising it and by adding new paragraphs (b) and (c) to read as follows:

§ 381.104 Official export certificates, marks and devices.

(a) The form of certificate described in § 381.106 is an official export certificate, and the mark shown below is the official mark used on outside containers to identify inspected and passed poultry products for export to countries other than Canada.[4]



(b) The mark shown below is the official mark used on outside containers to identify inspected and passed poultry products for export to Canada.[5]



(c) Devices used to apply such marks are official devices.

19. Part 381 would be amended by adding a new § 381.113 to subpart M to read as follows:

[4] The number "529893" is given as an example only. The number of the official export certificate will be shown in lieu thereof.

[5] The number "123456" is given as an example only. The authorization number issued by the Export Coordination Division, International Programs, FSIS, will be used in lieu thereof.

§ 381.113 Provisions applicable to establishments intending to export product to Canada.

The following procedures and requirements shall be applicable to any official establishment intending to export product to Canada.

(a) When federally inspected and passed product is ready for export, the establishment shall contact the Export Coordination Division, International Programs, FSIS, shall request an authorization number, and shall provide the following information.

(1) Type of product to be exported;

(2) Number of boxes or carcasses to be exported;

(3) Total weight of the product;

(4) Canadian label registration number.

(b) The Export Coordination Division shall issue an authorization number to the establishment to cover the shipment described in paragraphs (a)(1) through (a)(4) of this section.

(c) The establishment shall stamp product intended for export with the stamp provided in § 381.104(b) of this part and shall include the authorization number issued as provided in paragraph (b) of this section in the body of the stamp.

(d) The establishment shall record the information provided in paragraphs (a)(1) through (a)(4) of this section and the authorization number on the joint USDA-Agriculture Canada form.

(e) The joint form shall accompany the product to the border.

(f)(1) The driver of the transport vehicle shall present the joint form to the Canadian inspector or the Customs agent stationed at the border.

(2) When there is a Canadian inspector present at the border and the authorization number is verified, or when there is no inspector present, the product shall be entered.

(3) When there is a Canadian inspector present at the border and the authorization is not verified after consultation with FSIS, the product shall be refused entry.

(4) When there is no Canadian inspector present at the border and the joint form does not accompany the product to the border, the product shall be entered.

20. Section 381.196 would be revised by adding the following phrase to the beginning of paragraph (a)(1):

§ 381.199 Eligibility of foreign countries for importation of poultry products into the United States.

(a)(1) Except for Canada, * * *.

21. Section 381.197 would be amended by adding the following phrase to the beginning of paragraph (a):

§ 381.197 Imported products; foreign inspection certificates required.

(a) Except for product imported from Canada and, * * *.

* * * * *

22. Section 381.198 would be amended revising the section heading to read as follows, by revising paragraph (b), adding the following phrase at the beginning of paragraph (a) and by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 381.198 Importer to make application for inspection of poultry products offered for entry; exception for Canadian product; procedures for Canadian officials intending to export product to the United States.

(a) Except those persons wishing to import slaughtered poultry and other products from Canada, * * *.

(b) When product is ready for export, the Canadian official shall contact Agriculture Canada and shall request an AGR number.

(c) The AGR number shall be stamped on all product intended for export.

(d) The Canadian official shall include the AGR number and the following information on the joint form:

(1) Type of product to be exported;

(2) Number of boxes or carcasses to be exported;

(3) Total weight of the product;

(4) United States label approval number.

(e) The joint form shall accompany the product to the border.

(f)(1) The driver of the transport vehicle shall present the joint form to the United States inspector or the Customs agent stationed at the border.

(2) When there is a United States inspector present at the border and the authorization number is verified, or when there is no inspector present, the product shall be entered and treated as domestic product as provided in § 381.206(a).

(3) When there is a United States import inspector present at the border and the authorization is not verified after consultation with Agriculture Canada, the product shall be refused entry.

(4) When there is no United States inspector present at the border, and the joint form does not accompany the product to the border, the product shall be entered.

23. Paragraphs (a)(1), (2), (3), (4), and (b) of § 381.199 would be amended by adding the following phrases to the beginning of the paragraphs, and paragraph (d) would be amended by adding the following phrase to the end of the paragraph:

§ 381.199 Inspection of poultry products offered for entry.

(a)(1) Except for product imported from Canada, and * * *.

(2) Except for product imported from Canada, every lot of product shall routinely be given visual inspection by a program import inspector for appearance and condition, and checked for certification and label compliance. Canadian inspection personel shall conduct random reinspections of product for species verification and for residues.

(3) Except for product imported from Canada, * * *.

(4) Except for product imported from Canada, * * *.

(b) Except for product imported from Canada, * * *.

* * * * *

(d) * * *, except for canned product imported from Canada.

* * * * *

Done at Washington, DC, on: June 4, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90-15082 Filed 6-28-90; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-109-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringer (S)-6L and S-6R and repair, if necessary. This action would delete the option of reinspecting known small cracks in lieu of repairing them before further flight. This proposal is prompted by further FAA consideration of the crack repair deferral option in the existing AD. This condition, if not corrected, could lead to sudden loss of cabin pressurization and the inability of the airplane fuselage to withstand fail-safe loads.

DATES: Comments must be received no later than August 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-109-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-109-AD." The post card will be date/time stamped and returned to the commenter

Discussion

On February 9, 1988, the FAA issued AD 88-05-03, Amendment 39-6146 (54 FR 7367, February 21, 1989), to require inspection of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringers (S)-6L and S-6R for cracks on certain Boeing Model 747 series airplanes. That action was prompted by reports of multiple adjacent cracks on one airplane. This cracking condition, if not corrected, could result in sudden loss of cabin pressurization and the inability of the fuselage to withstand fail-safe loads.

Paragraph E. of AD 88-05-03 provided an option of reinspecting known small cracks in lieu of repairing them before further flight. This option was predicated on crack growth analysis which indicated that inspections could safely monitor cracks until they reached a specified length.

Since issuance of that AD, the FAA has reassessed the advisability of relying on continued inspections to monitor crack growth in this case. It is possible that inspections may fail to detect other small cracks, that a mistake could be made in the record keeping necessary to monitor crack growth, or that other undetected adjacent structural damage may exist. These situations could have an unacceptable effect on structural integrity of the affected lap splice. Therefore, the FAA has determined that the deferment of repair of certain known cracks does not provide an acceptable level of safety. This action proposes to eliminate that option. Failure to detect and repair cracks could lead to sudden loss of cabin pressurization and the inability of the fuselage to withstand fail-safe loads.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, and Revision 1, dated March 29, 1990, which describe inspection procedures to inspect for cracks in the fuselage skin lap splice between BS 400 and BS 520 at S-6L and S-6R on certain Boeing Model 747 airplanes. A modification is described in these service bulletins, which consists of replacing the top row of fasteners with protruding head fasteners or installing an external doubler. Inspections are to continue after the accomplishment of this modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-05-03 with a new airworthiness directive that would require the inspection for cracks in the fuselage skin lap splice between BS 400 and BS 520 at S-6L and S-6R, and repair or modification, if necessary, in accordance with the service bulletin previously described. It would delete the previous optional provision of continued flight with certain small cracks; such

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cracking would be required to be repaired prior to further flight.

There are approximately 628 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 202 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,640.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-05-03, Amendment 39-6146 (54 FR 7397, February 21, 1989), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line number 001 through 628, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a failure of the fuselage skin lap splice betwen body station (BS) 400 and BS 520 at stringer S-6L and S-6R, accomplish the following:

A. Conduct close visual and high frequency eddy current (HFEC) inspection of the fuselage skin lap splice between BS 400 and BS 520, at stringers S-6L and S-6R for cracking, in accordance with Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, at the following thresholds:

1. Within the next 100 landings after March 31, 1989 (the effective date of Amendment 39-6146, AD 89-05-03), for airplanes that have accumulated 16,000 or more landings as of March 31, 1989, unless previously accomplished within the last 4,900 landings.

2. Within the next 1,000 landings after March 31, 1989, or prior to the accumulation of 16,100 landings, whichever occurs first, for airplanes that have accumulated between 12,000 and 16,000 landings, as of March 31, 1989, unless previously accomplished within the last 4,000 landings.

3. Prior to the accumulation of 13,000 landings for airplanes that have accumulated 12,000 or fewer landings as of March 31, 1989, unless previously accomplished within the last 5,000 landings.

Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical stripper, in any situation where the inspector determines that the paint is interfering with the proper functioning of the inspection instrument.

B. On airplanes which have been modified to the stretched-upper-deck configuration, as identified in Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, the accumulated landing threshold for compliance with paragraph A., above, is measured from the time of the stretched-upper-deck modification.

C. If no cracking is detected, repeat the close visual and HFEC inspections required by paragraph A., above, at intervals not to exceed 5,000 landings.

D. If cracks are detected, accomplish the repair or preventive modification of the affected lap splice in accordance with Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, prior to further pressurized flight. If cracks are repaired in local areas without accomplishing preventive modification of the entire affected lap area, continue inspections of the unmodified and unrepaired areas of the affected lap splice in accordance with paragraph C., above.

E. For airplanes incorporating the preventative modification, as described in Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, or Revision 1, dated March 29, 1990, accomplish the inspections required by paragraph A., above, prior to the accumulation of 10,000 landings after the modification and thereafter at intervals not to exceed 5,000 landings. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, prior to further pressurized flight.

F. For purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 1.5 psi.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15180 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-06]

Airworthiness Directives; General Electric Company (GE) CF6-50/-45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would supersede AD 90-06-07, which requires initial and repetitive inspections of the turbine mid-frame (TMF) case installed in GE CF6-50/-45 series engines. The proposed AD is needed to prevent failure of the TMF case which can result in the release of hot gases within the nacelle that may activate the fire warning system and cause an inflight shutdown. The proposed AD would supersede AD 90-06-07 by carrying forth all existing AD inspection requirements, except for the extension of repetitive inspection intervals for certain engines.

DATES: Comments must be received on or before August 28, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to the Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-06, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311, at the above address.

Comments must be marked: Docket No. 89-ANE-06.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletins (SB) may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 89-ANE-06". The postcard will be date/time stamped and returned to the commenter.

Discussion

AD 90-06-07, Amendment 39-6449 (55 FR 6124), was published in the Federal Register on March 7, 1990. The AD established initial and repetitive ultrasonic and visual inspections of certain CF6-50/-45 TMF case assemblies. The above noted AD was promoted by two incidents in which the aircraft takeoff was aborted due to an engine fire warning indication. In one incident, the aircraft overran the runway, sheared off the landing gear, and skidded a short distance on its fuselage and engine nacelles. The second incident was uneventful and no damage occurred to the aircraft. In both cases, engine fire warning indications were the result of hot gas released through a large open crack, 60 and 80 inches in length, respectively, in the TMF aft flange circumferential weld. Additional TMF cases have been found with similarly located cracks, 11 to 35 inches in length. The FAA determined that these large TMF case cracks may result in engine fire warning indications with potentially adverse impact on aircraft operation during critical flight phases. The repetitive inspections can identify TMF cases with cracks and preclude hot gas release into the core compartment.

After issuing Amendment 39-6449, the FAA determined by analysis and service experience that the repetitive inspection intervals for affected engines can be extended. The FAA also determined that TMF case mid-flange reworks are available which can further extend the initial and repetitive inspection intervals for engines incorporating these modifications. Therefore, this AD supersedes Amendment 39-6449 by extending the initial and repetitive inspection intervals for affected engines, and by defining an inspection program with even greater inspection intervals for engines incorporating TMF reworks in accordance with General Electric Service Bulletin 72-673, dated October 31, 1989, or General Electric Services Bulletin 72-676, dated December 21, 1989.

The regulations proposed herein would not have substantial direct effects on the states, on the realtionship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 2,138 engines, and the approximate total cost would be $135,000 annually. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Airworthiness Directive (AD) 90-06-07, Amendment 39-6449 (55 FR 6124), with the following new AD:

General Electric Company

Applies to General Electric Company (GE) CF6-50/-45 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC-10, Boeing 747, and Airbus A300 type aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent turbine mid-frame (TMF) cracks which can cause the release of hot gas, increased nacelle temperature, activation of

the fire warning system, and an inflight shutdown, accomplish the following:

(a) Inspect the TMF, Part Numbers (P/N) 9128M52 and 9137M92 that do not incorporate GE CF6-50/45 Service Bulletin (SB) 72-873 or 72-875, in accordance with GE CF6-50/45 SB 72-857, Revision 2, dated January 9, 1990, as follows:

(1) Inspect TMF cases with 1,050 or greater cycles in service since new (CSN) on the effective date of this AD, a the next shop visit or prior to accumulating the next 450 cycles in service (CIS) after the effective date of this AD, whichever occurs first.

(2) Inspect TMF cases with less than 1,050 CSN on the effective date of this AD, prior to accumulating 1,500 CSN.

(3) Remove from service, prior to further fight, TMF cases which exceed the serviceable limits specified in Tables 1-4 inclusive of GE SB 72-857, Revision 2, dated January 9, 1990.

(4) Therefore, for CF6-50 engines, reinspect TMF cases with no cracks or indications at intervals not to exceed 800 CIS since previous inspection. Reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1-4 inclusive of GE SB 72-857, Revision 2, dated January 9, 1990.

(5) Thereafter, for CF6-45 engines, reinspect TMF cases with no cracks or indications at intervals not to exceed 750 CIS since previous inspection. Reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1-4 inclusive of GE SB 72-857, Revision 2, dated January 9, 1990.

(b) Inspect the TMF, P/N 9128M52 and 9137M92 that incorporate GE CF6-50/45 SB 72-873, dated October 31, 1989, in accordance with GE CF6-50/45 SB 72-857, Revision 2, dated January 9, 1990, as follows:

(1) Inspect TMF cases prior to accumulating 6,000 CIS since incorporation of GE SB 72-873, dated October 31, 1988.

(2) Remove from service, prior to further flight, TMF cases which exceed the serviceable limits specified in Tables 1-4 of GE SB 72-857, Revision 2, dated January 9, 1990.

(3) Thereafter, for CF6-50/-45 engines, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 2,400 CIS since last inspection. Reinspect TMF cases with cracks or indications, in accordance with the schedules and limits specified in Tables 1-4 inclusive of GE SB 72-857, Revision 2, dated January 9, 1990.

(c) Inspect the TMF, P/N 9128M52 and 9137M92 that incorporate GE CF6-50/-45 SB 72-873, dated December 11, 1989, in accordance with GE CF6-50/45 SB 72-857, Revision 2, dated January 9, 1990, as follows:

(1) For CF6-50 engines, inspect TMF cases prior to accumulating 1,200 CIS since incorporation of GE SB 72-875, dated December 11, 1988. Therefore, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 1,200 CIS since last inspection.

(2) For CF6-45 engines, inspect TMF cases prior to accumulating 1,500 CIS since incorporation of GE SB 72-875, dated December 11, 1988. Thereafter, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 1,500 CIS since last inspection.

(3) Remove from service, prior to further flight, TMF cases which exceed the serviceable limits specified in Tables 1-4 of GE SB 72-857, Revision 2, dated January 9, 1990.

(4) For CF6-50/-45 engines, reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1-4 inclusive of GE SB 72-857, Revision 2, dated January 9, 1990.

(d) Inspections performed in accordance with AD 90-08-07, are considered to be in compliance with the requirements of this AD.

(e) For the purpose of this AD, shop visit is defined as the introduction of an engine into a shop for the conduct of maintenance.

(f) For the purpose of this AD, applicable limits are those limits associated with the highest engine rating under which the part has operated.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on June 12, 1990.

Arthur Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-15181 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89-AGL-15]

Proposed Alteration of Jet Route J-18

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 89-AGL-15, which was published in the **Federal Register** on November 21, 1989. The NPRM proposed to alter the description of Jet Route J-18 between St. Joseph, MO, and Joliet, IL. This alignment would have allowed for more efficient handling of air traffic departing the Chicago metropolitan area. This action is no longer necessary because of a change in traffic flow in the area.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

The Proposed Rule

On November 21, 1989, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the description of Jet Route J-18 between St. Joseph, MO, and Joliet, IL (54 FR 48115). The realignment would allow for more efficient handling of air traffic departing the Chicago metropolitan area.

Conclusions

The FAA has decided not to implement the final rule to alter the description of Jet Route J-18 between St. Joseph, MO, and Joliet, IL. A change in traffic flow in the area obviates the realignment of the airway.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 89-AGL-15, as published in the **Federal Register** on November 21, 1989 (54 FR 48115), is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on June 20, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-15182 Filed 6-28-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3416/P513; FRL-3741-6]

Pesticide Tolerances for Linuron

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance of 0.25 part per million (ppm) be established for residues of the herbicide linuron in or on the raw agricultural commodity parsley. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No.4 (IR-4).

DATES: Comments, identified by the document control number [PP 6E3416/P513], must be received on or before July 30, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. Sw., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. Sw., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3416 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida, Ohio, and New Jersey.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodity parsley at 0.25 part per million (ppm). The petitioner proposed that this use of linuron be limited to States east of the Mississippi River based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with levels tested of 0, 25, 125, and 625 ppm (0, 0.625, 3.125, and 15.625 milligrams (mg)/kilogram (kg) body weight/day), with effects (abnormal blood pigment) seen down to 25 ppm (lowest dose tested (LDT)). Therefore, the no-observed-effect level (NOEL) was less than 25 ppm and the lowest-effect level (LEL) equal to 25 ppm (LDT).

2. A 1-year dog feeding study with an NOEL of 25 ppm (0.625 mg/kg/day) and an LEL of 125 ppm (3.125 mg/kg/day) (based on an increase in methemoglobin and sulfhemoglobin levels in the blood). Levels tested were 0, 10, 25, 125, and 625 ppm (0, 0.25, 0.625, 3.125, and 15.625 mg/kg/day).

3. A 1-year rat feeding study with a systemic NOEL of less than 625 ppm (31.25 mg/kg/day).

4. A three-generation reproduction study in rats with a reproductive NOEL of 25 ppm (1.25 mg/kg/day). Levels tested were 25, 125, and 625 ppm (1.25, 6.25, and 31.25 mg/kg/day).

5. A rabbit teratology study with a maternal NOEL of 5 mg/kg/day (165 ppm) and a developmental NOEL of 25 mg/kg/day (825 ppm). Levels tested were 0, 5, 25, and 100 mg/kg/day (0, 165, 825, and 3,300 ppm).

6. A battery of mutagenicity tests including: gene mutation (CHO cells, levels tested were up to 0.5 mM in a nonactivated system, and up to 1.0 mM, S9 activated); Ames assay (without activation up to 5.0 ug/plate, and with S9 activation up to 100 ug/plate); chromosomal aberration (maximum dosage 300 mg/kg); and unscheduled DNA snythesis (levels tested up to 50 mM). All were negative under conditions of the studies.

7. A 2-year feeding/oncogenicity study in rats with a systemic NOEL of less than 50 ppm (2.5 mg/kg/day, lowest dose tested). A statistically significant increase in interstitial cell testicular adenomas was observed at the 125 ppm (6.25 mg/kg/day) dosage level. Levels tested were 0, 50, 125, and 625 ppm (0, 2.5, 6.25, and 31.25 mg/kg/day).

8. A 2-year mouse feeding/oncogenicity study, with levels tested of 1, 50, 150, and 1,500 ppm (0, 7.5, 22.5, and 225 mg/kg/day). In the highest dose group (1,500 ppm), female mice developed a statistically significant increase in hepatocellular adenomas.

In the **Federal Register** of September 28, 1984 (49 FR 37843), the Agency issued a notice of Special Review of Certain Pesticide Products for registrations of products containing linuron. The Special Review was initiated based on laboratory data which indicated that linuron induced statistically significant dose-related tumors in rats and mice. Specifically, in the 2-year rat feeding study, male rats developed interstitial cell testicular adenomas (benign tumors). In the 2-year mouse feeding study, a statistically significant increase in hepatocellular adenomas was observed. The Office of Pesticide Programs' Peer Review Group and the Agency's Carcinogen Assessment Group reviewed the weight of evidence to determine the oncogenic potential of linuron. Both groups agree that linuron should be categorized as Group C. This conclusion is based on the following.

1. Although linuron produced a statistically significant increase in both testicular hyperplasia and adenomas in male rats and a statistically significant increase in the incidence of hepatocellular adenomas in female mice at the highest dose group tested, the tumors observed were benign in nature and showed no progression toward malignancy.

2. The tumors found in the rat oncogenicity study occurred late in the life of the test animals and were not life threatening.

3. Linuron did not test positively in the standard battery of mutagenicity tests.

4. Historically, spontaneous formation of testicular adenomas, a relatively common type of tumor, has been observed in Charles River and Fischer rat strains.

These factors, late-forming benign testicular tumors of a relatively common tumor type in animals with a background rate of similar tumors, and lack of supporting evidence of carcinogenic potential (mutagenicity data) lead to a conclusion that the evidence in this case of human carcinogenic potential is weak. Based upon this, the Agency has concluded that quantification of cancer risk for linuron is inappropriate because of linuron's low human carcinogenic potential. Therefore, linuron has been classified as an unquantifiable Group C

carcinogen (limited evidence of carcinogenicity in animals).

The reference dose (RfD) based on the LEL of 0.625 mg/kg body weight/day from the 2-year dog feeding study and using an uncertainty factor of 300 is calculated to be 0.002 mg/kg body weight/day. The anticipated residue contribution (ARC) from currently established tolerances for the overall U.S. population is calculated to be 0.000159 mg/kg/day (7.96 percent of the RfD). The contribution to the estimated exposure from the proposed tolerance is calculated to be less than 0.000001 mg/kg/day (a negligible increase of less than 0.05 percent of the RfD).

The nature of the residue is adequately understood and an adequate analytical method is available for enforcement purposes which has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since parsley is not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.184 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3416/P513]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 14, 1990.

Anne E. Lindsay,
Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.184 is amended by designating the current text and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.184 Linuron; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) in or on the following raw agricultural commodity:

Commodity	Parts per million
Parsley	0.25

[FR Doc. 90-15196 Filed 6-28-90; 8:45 am]
BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-318, RM-7201]

Radio Broadcasting Services; Oscoda, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by David C. Schaberg proposing the substitution of FM Channel 284C3 for Channel 261A at Oscoda, Michigan, and modification of his construction permit for Channel 261A to specify operation on the higher class channel. Canadian concurrence will be requested for this allotment. The coordinates for Channel 284C3 are 44-30-09 and 83-20-36.

DATES: Comments must be filed on or before August 20, 1990, and reply comments on or before September 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David C. Schaberg, P.O. Box 21055, Lansing, Michigan 48909-1055.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-319, adopted June 18, 1990, and released June 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to his proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-15218 Filed 6-28-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-317, RM-7312]

Radio Broadcasting Services; Nags Head, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coastal Radio, Inc., permittee of Station WNHW, Nags Head, North Carolina, seeking the substitution of Channel 223C3 for Channel 222A at Nags Head, North Carolina, and the modification of its construction permit to specify the higher powered channel. Channel 223C3 can be allotted to Nags Head in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) south to avoid a short-spacing to Station WYFL, Channel 223C, Henderson, North Carolina. The coordinates for this proposed allotment are North Latitude 35-53-22 and West Longitude 75-35-54. In accordance with § 1.420(g) of the Commission's rules, we will not accept competing expressions of interest for use of Channel 223C3 at Nags Head or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 20, 1990, and reply comments on or before September 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Meredith S. Senter, Jr., Esq., Stephen D. Baruch, Esq., Leventhal, Senter & Lerman, 2000 K Street NW., suite 600, Washington, DC 20006-1809 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-317, adopted June 18, 1990, and released June 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-15216 Filed 6-28-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-316, RM-7059]

Radio Broadcasting Services; Rocky Mount, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Radio Triangle East Company, permittee of Station WSAY-FM at Rocky Mount, North Carolina, seeking the substitution of Channel 253C3 for Channel 253A at Rocky Mount and the modification of its construction permit to specify the higher powered channel. Channel 253C3 can be allotted to Rocky Mount in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Station WSAY-FM's construction permit. The coordinates for this allotment are North Latitude 35-54-43 and West Longitude 77-50-06. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 253C3 at Rocky Mount or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 20, 1990, and reply comments on or before September 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Meredith S. Senter, Jr., Esq., Stephen D. Baruch, Esq., Leventhal, Senter & Lerman, 2000 K Street NW., suit 140, Washington, DC 20006-1809 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-316 adopted June 18, 1990, and released June 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suit 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Comission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-15217 Filed 6-28-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-318, RM-7311]

Radio Broadcasting Services; New Washington, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Good News Broadcasting, seeking the allotment of Channel 227A to New Washington, Ohio, as the community's first local FM service. Channel 227A can be allotted to New Washington with a site restriction of 11 kilometers (6.8 miles) northwest to avoid a short-spacing to Stations WQEL, Channel 224A, Bucyrus, Ohio, and WZAK, Channel 226B, Cleveland, Ohio. The coordinates for this allotment are North Latitude 41-02-30 and West Longitude 82-55-43.

DATES: Comments must be filed on or before August 20, 1990, and reply comments on or before September 4, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901-15th Street NW., suite 1100, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-318, adopted June 18, 1990, and released June 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 90-15215 Filed 6-28-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Amendment of proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: This document proposes to amend earlier proposed rules to restrict contract price adjustments under shipbuilding contracts and thereby implement the requirements of 10 U.S.C. 2405. This proposal would amend the original proposal by, among other things, revising several definitions of terms, modifying data submission requirements and deleting a proposed clause.

DATES: Written comments are solicited and should be received by July 27, 1990. A public hearing on the proposed rule will be held on August 23, 1990, commencing 9 a.m. Requests to present oral testimony at the hearing should be received on or before August 9, 1990. Post hearing comments may be submitted until 5 p.m., e.d.t., September 6, 1990.

ADDRESSES: Interested parties should submit written comments and requests to testify at the hearing to: Office of the Assistant Secretary of the Navy (Research, Development and Acquisition) (OASN(RD&A)), ATTN: Richard Moye, CBM-AP, Washington, DC 20360-5000. The public hearing on the proposed rule will be held at the Naval Sea Systems Command, National Center #3, 2531 Jefferson Davis Highway, Arlington, Virginia, in room 3S11.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Moye, OASN(RD&A) CBM-AP, (202) 692-2558.

SUPPLEMENTARY INFORMATION: The Department of the Navy (DoN) published proposed rules on contract price adjustments under shipbuilding contracts in the Federal Register (54 FR 47689, November 16, 1989), providing that interested persons could file comments through January 16, 1990. A correction to the November 16, 1989 notice, which also extended the comment period through February 15, 1990, was published in the Federal Register (55 FR 3603, February 2, 1990). Comments were received on behalf of five corporations, one industry association, one bar association and one law firm. Because the proposed rules are undergoing revision, for which additional public comment is desired, the notice of proposed rules is being revised, and additional time for public comment and a public hearing are being provided. Following is a summary of the comments received from corporations, associations and law firms and the Navy's action relating to those comments.

Comments on Scope of Restriction of Contract Price Adjustments under Shipbuilding Contracts

Two corporations and two associations expressed their objection to the scope of the Navy's application of the restriction on adjustments to shipbuilding contracts. They stated that the distinction between the terms "under" a contract and "relating to" a contract has historically meant different things in Government contracting and that the use of the term "under" in the statute should limit the scope of the adjustments which are subject to the proposed rules. This comment was not adopted. The historical terminology addressed by the comment relates to disputes "arising under the contract" contrasted with disputes "relating to" a contract. The subject statute does not use the phrase "arising under the contract"; nor does a legislative intent appear that Congress employed the term "under" to connote "arising under the contract". In this latter regard, the problem which the legislation addressed involved shipbuilding claims which actually included allegations of breach of contract, *i.e.*, claims "relating to" a contract. The statue was enacted, in part, to require shipbuilders to submit claims, requests for equitable adjustment and demands for payment within 18 months of the occurrence of the event(s) giving rise to these submissions. There is no basis in the legislative history or the statute itself to indicate that the scope of the prohibitions imposed by the statute were to be narrowly construed so as to exclude matters "relating to" shipbuilding contracts.

One corporation suggested that the proposed rules should not be promulgated; instead, informal guidance should be provided contracting officers to permit them greater flexibility in application. This comment was not adopted. The Navy initially implemented the statute with informal guidance; however, such an approach is inconsistent with recent language contained in Congressional committee reports which direct the Navy to promulgate rules to implement the statute. In addition, implementation of the statute is to be uniform. Inconsistent application or errors in interpretation or administration of the statute are not in the best interests of shipbuilders, the Navy or the public. Therefore, it has been determined that the proposed rules should be promulgated.

One corporation suggested that the restriction upon the Secretary's power to make contract price adjustments should not restrict the power of contracting officers in the same department. This suggestion does not have any legal basis and was not accepted.

One corporation expressed an objection to the treatment of shipbuilders more harshly than other Govenment contractors. The Navy notes that this statute is applicable to all shipbuilding contracts entered into by the military departments after December 7, 1983. The scope of the statute cannot be altered by the proposed rule.

Comments on definitions

Three corporations, an association and a law firm objected to the definitions of "claim," "request for equitable adjustment" and "demand for payment" as being overbroad. On commenter requested inclusion of examples of each. In each case, it was suggested that undisputed matters should not be covered. The definition of "claim" was objected to for varying from the Contract Disputes Act (CDA)/ Federal Acquisition Regulation (FAR) definition. The definition of "demand for payment" was objected to for including interest or other amounts not included in the contract price. On commenter also suggested that the definitions should be clarified to indicate that all disputes regarding payments, including progress payments, be included within the definition of these terms. Treatment of definition of maximum-priced modifications solely in the "request for equitable adjustment" definition was also objected to as implying that similar treatment for "claims" and "demands for payment" was not intended. An objection was also raised regarding the lack of a standard for determining divisibility of claims.

The definition of "claim" has not been revised as requested. The proposed language was not necessary to aid in interpreting or applying the proposed rules. As proposed, the rules express the scope of the term "claim" as it is intended to be applied. The definition contained in the proposed regulations is not inconsistent with either the CDA or the FAR. The definitions of "request for equitable adjustment" and "demand for payment" have been revised to exclude routine requests for payment in accordance with contract terms. Further, the rules have been revised to clarify that disputes over routine payments, including progress payments, are not considered to be price adjustments as long as additional amounts are not requested which would result in price increases. In this regard, interest has been deleted, because interest under the CDA would not be payable on any matter which is barred by operation of this statute, and other interest payments, such as that payable under the Prompt Payment Act, are not considered to be price adjustments. Examples of matters which are covered by each of the definitions are not considered necessary and, therefore, have not been included. The language regarding definitization of maximum-priced modifications has been moved to the definition for "price adjustment" to clarify that the application of the statute of maximum-priced modifications will be the same under all situations. Further, although no specific comment was received regarding maximum-priced modifications, the restrictions regarding adequate supporting data and certification relative to entering into this type of modification have been deleted from the proposed rule, because existing procedures define what is required to support entering into a maximum-priced modification, and it was determined that additional requirements were unnecessary. In general, divisibility of claims is adequately described in case law and, therefore, further description is not considered necessary. However, for the purpose of the proposed rule, if there are separate "events", the Navy will apply the statute to each of the "events".

Two corporations and a law firm commented on the definition of "shipbuilding contract". It was suggested that the definition of "shipbuilding contract" be changed to include only contracts for construction of vessels designated as ships in the contract. Also suggested was a limitation of such contracts to Department of Defense-funded contracts. The Navy does not object to the inclusion of a provision in future solicitations which advises the shipbuilders of the applicability of the subject statute and has included such a provision in the proposed rules. Inclusion of 5252.243-9000 in all applicable contract solicitations should satisfy the question of whether a particular contract is considered a shipbuilding contract. However, the inclusion or exclusion of this provision is not the controlling factor; it is the classification of the subject matter of the contract which determines whether the contract is a shipbuilding contract, *i.e.*, if the contract provides for the construction of a ship, it is a shipbuilding contract. Finally, the statutory restriction is not related to the source of funding supporting the contract; therefore, limiting the restriction to contracts funded by the Department of Defense is not appropriate.

Two corporations and an association suggested that the definition of "price adjustment" be changed to delete changes in the fee structure of cost reimbursement contracts, monetary damages, adjustments to sharing ratios or other pricing formulas, and the definition of costs included or excluded from the contract price. These changes have not been incorporated, except as noted below. Adjustments in the fee structure of cost reimbursement contracts and adjustments to contract sharelines, ceiling prices and similar contract pricing formulas effect adjustments in the prices of contracts and, therefore, are considered within the scope of the restriction. The question of whether money damages should be considered within the scope of the restriction actually addresses the scope of the statute discussed above regarding matters "relating to" a contract. The language addresing the definition of costs to be included or excluded from the determination of the final price has been deleted from the proposed rule as unnecessary. In addition, as noted above, interest has been deleted from other definitions and will not be considered a price adjustment unless it is a "cost element" of a claim, request or demand.

One corporation and an association requested identification of occurrences which stop the running of the statute. The Navy does not consider that examples are necessary because the 18 month period stops upon the earlier of the pricing of the matter (including maximum-price modifications) or the submission of a claim, request or demand that is certified, if required, and

is accompanied by the required supporting data.

Four corporations, two associations and a law firm objected to the definition of "event". One commenter suggested that the statute was too vague and ambiguous to be enforceable, because it failed to adequately define "events." Three comenters objected that the definition of "event" did not employ the "known or should have known" standard. It was suggested that defining "event" as "action, inaction, conduct, or occurrence" creates an artificial date for determining when an event occurred. It was further suggested that "event" should be based on written directions only. The Navy does not consider the statute to be ambiguous. The standard of "known or should have known" has not been adopted. The statute uses an objective method for determining the 18 month period which is determinable by both parties of the contract. This approach, which is consistent with the legislative history of the statute, benefits both parties by providing an identifiable point in time from which the 18 month period can be calculated. The "known or should have known" standard, a subjective standard, could result in substantial problems in application and could lead to extensive litigation over the actual or constructive knowledge of a shipbuilder in a particular matter. Such a result would not further the purpose of the statute, the suggestion that the restriction be applied only to written directions was not adopted. Liability of the Government, especially in the area of constructive changes, is not dependent upon written direction and, therefore, it would not be appropriate to delay the operation of the statute to a point in time which does not relate to the occurrence of the event(s) which gives rise to the shipbuilder's submission. The Navy believes that a well managed shipbuilding will be aware of and have adequate time within the 18 month period to identify the occurrence of any "events" and submit a proper proposal.

Six commenters objected that the restriction should apply to "events," meaning a sequence of events, rather than to a single event. Consequently, it was contended that the 18 month period should start with the last identifiable event in such sequence, which it was stated would be contract completion and/or ship delivery. It was argued that the traditional interpretation of statutes of limitations (under which the statutory period runs from the last identifiable event, such as contract completion) should govern and that the subject statute should be applied in the same fashion. It was also argued that quantification of the financial impact on the shipbuilder should be a prerequisite for starting the calculation of the 18 month period. These comments appear to have misunderstood the proposed rules. The proposed rules do not adopt the earliest possible time for the commencement of the running of the statute. In general, the Navy recognizes that, in a particular matter, a sequence of occurrences may be involved. In such a case, the Navy has used the last occurrence in the sequence as commencing the 18 month period. Perhaps the best example of this is the one in the proposed rules regarding defective Government-furnished property. In this example, there are multiple events: the contract schedule, the furnishing of the property by the Government, the storage of the property by the contractor, the unpacking of the property by the contractor, the discovery of the damage by the contractor, the request for instructions regarding the repair or replacement of the property, and the direction by the contracting officer. In this sequence, the last action is deemed to commence the running of the statutory period. (The proposed rules, however, also address the situation in which a shipbuilder takes action to correct or replace the defective poroperty without asking, or waiting, for the contracting officer's direction.) The proposed rules have been amended to use the statutory term "events", *i.e.*, the plural of the word "event", and to clarify that it is the final action, inaction, conduct or occurrence which starts the running of the 18 month period. However, the Navy will review all submissions to determine whether they are based upon a sequence of occurrences or multiple "events". Where there are multiple "events", the 18 month period will apply indsependently to each of the "events". The proposed interpretation of the term "events", as meaning the completion of the contract, as well as other suggestions that the term "events" also includes the consequences, *i.e.*, the quantification of the financial impact, of the action, inaction, conduct or occurence is not incorporated into the proposed regulations. The suggestion that the statutory period does not commence until delivery of the ship(s) under the contract, or upon contract completion, would allow claims, requests or demands to be submitted at a time later in the performance of the contract than the claims which were submitted in the late 1970s. Such a position is not in any manner consistent with the intent of the statute, the legislative history or the express language. The Navy shipbuilding claims of the late 1970s, which gave rise to this legislation, involved many claims submitted prior to delivery of the last ship under the contract. As is discussed in more detail below, the quantification of the claim, request or demand is not considered to be a prerequisite to starting the running of the 18 month period. Consequently, the recommended interpretations would not achieve the goals of the legislation and, therefore, have not been adopted.

Seven commenters objected that the definition of "event" did not allow time for impact quantification. It was contended that such recognition was necessary to permit compliance with the certification and data submission requirements. Reference was made to a dictionary definition of "event" as included both cause and effect. The definition of "events" has not been changed as suggested. Regarding the consequences of an action, inaction, conduct or occurrence, the legislative history of the statute makes it very clear that the 18 month period was a compromise period which Congress believed was adequate for shipbuilders to assess the consequences of an event and submit a documented claim, request or demand. Further, the Navy believes that this 18 month period has been proven to be adequate. Finally, as provided in the proposed regulations, both the amount claimed and the supporting data may be subsequently updated and supplemented, as appropriate, based on subsequently obtained information.

One commenter suggested that subcontractor claims should be specifically addressed at that a longer time was necessary for treatment of subcontractor claims. The commenter suggested that the submission of the claim to the prime contractor is the "event" for purposes of subcontractor claims. This suggestion was not adopted, because the Government contracts solely with the contractor. The statute addresses a price adjustment to the prime contract; whether such a price adjustment also involves a subcontract(s), the "events" occur at the same time and, thus, the 18 month period commences upon the occurrence of the "events". There is no basis in the statutory language or the legislative history to delay the commencement of the running of the statute because a subcontractor is involved.

Comments were also submitted regarding the examples of "events" included in the proposed regulations. Several commenters objected to the inclusion of formal changes as "events", contending that only constructive changes and disputed issues should constitute events. This suggestion was not adopted. The statute addresses price adjustments based on claims, requests for equitable adjustment and demands for payment. Thus, for formal changes for which a contractor is authorized to commence work prior to definitizing the price of the change, the pricing action is an equitable adjustment and is, therefore, covered by the express language of the statute.

Another objection identified an alleged inconsistency in the examples for constructive changes attributable to defective specifications. It was contended that, if the nature of the "event" is an allegation of defective Government-furnished specifications and the Government disagrees that there is a defect, the event could be the date the specification was received by the contractor. The Navy does not consider that there is an inconsistency in the proposed rules. If the Government disagrees that the specification is defective, the response from the contracting officer expressing the Government's position would be the final action which commences the running of the statute, not the receipt of the specification by the contractor. This interpretation has been included in the proposed rules.

Comments on Certification

Three corporations objected to the requirements regarding certification as being too restrictive. The designation of the individuals authorized to sign the certification was objected to as being more restrictive than necessary. Several commenters contended that CDA certification requirements should be sufficient, while others contended that even CDA requirements were too restrictive and that any individual who can legally bind the company should be permitted to execute the required certification. One commenter also suggested that the certification submitted pursuant to DFARS 233.7000 should not be accepted. The Navy considers that the designation of individuals authorized to sign the certification is consistent with the CDA. The DFARS 233.7000 certification is considered to be acceptable to meet the statutory requirement for certification.

Four commeniers also objected to the provision that the contracting officer could reject claims on the basis of failure to comply with certification or supporting data submission requirements. One objection addressed the alleged discretion in the contracting officer to reject compliant claims. Similarly, another commenter suggested that the contracting officer should not be authorized to reject non-compliant claims but only to deny such claims, the latter treatment being appealable to the ASBCA or the Claims Court whereas the former treatment would not be appealable. It was also contended that rejection should be based only on material non-compliances. The Navy recognizes that the determination regarding the propriety of the contractor certification and the adequacy of documentation requires the exercise of judgment by contracting officers; however, the submission of proper certification and adequate supporting data is under the direct control of the shipbuilder making the submission. Selection of the appropriate person within the company to execute a certification is the responsibility of the company. Shipbuilders have been placed on notice of the certification requirements, and there is no reason any shipbuilder should fail to meet the certification requirements. Regarding the adequacy of the supporting data, the proposed rules have been modified to identify the data which will be deemed to constitute adequate supporting data. If this data is not submitted, the contracting officer will be required to exercise judgment, in accordance with the requirements of the CDA, to determine if the submission is adequate. Rejection of claims under these rules is consistent with the CDA and case law thereunder. Any submission which is not adequate, whether due to the certification or the supporting data, is not a claim under the CDA and, therefore, a contracting officer's final decision should not be issued. Regarding the rejection of a matter which is properly a claim, a contractor may appeal the rejection as constituting the failure to issue a decision by the contracting officer under the CDA and have the propriety of the contracting officer's rejection heard in accordance with the procedures of the CDA.

Finally, it was suggested by five commenters that the contracting officer's authority to reject claims should be subject to a time limit for notification to the contractor. Seven, thirty and sixty days were suggested time limits. Also suggested was allowance of a reasonable time to cure deficiencies. These suggestions were not adopted. The requirement for certification and submission of the supporting data is statutory and cannot be waived by a contracting officer. A contracting officer's failure to provide notification within a specific time frame would not affect the operation of the statute. The responsibility for certification and submission of a properly documented claim, request or demand remains with the shipbuilder. Allowance of a period to cure any deficiency was not implemented. The statute does not provide for the time period to be totaled until there is a proper submission. The date of a proper submission is the date of receipt of such proper submission by the contracting officer.

Comments on Supporting Data Requirements

Four corporations, one law firm and one association objected to the requirements for submission of supporting data as being too stringent, particularly the identification of the information "at a minimum" required to be submitted. It was suggested that supporting data submission requirements should be limited to those imposed by the CDA. Use of the term "adequate" in conjuction with the requirement was objected to on the same basis. Similarly, use of the phrase "reasonably available" in describing required information was objected to as being too vague. It was also suggested that language recognizing that the identified data may not be applicable or reasonably available in every instance, included in the clause at 5252.9001, should also be included at 5243.7004. As discussed above, the language of the clause set forth at 5252.9001, and in the requirements of 5243.7004, have been revised to provide that, if the data identified therein is furnished, it will be deemed to constitute adequate supporting data. If this data is not submitted, the contracting officer will be required to exercise judgment, in accordance with the requirements of the CDA, to determine if the submission is adequate. Whether or not the term "adequate" is included to describe required supporting data, the requirement that the submitted data be sufficient to serve the purposes underlying the statute would remain. Therefore, the term adequate has been retained.

Consistent with the Truth in Negotiations Act requirements, one commenter suggested that submission of data should not be the only means of satisfying the supporting data requirement; identification of the supporting data should also be permitted. The Navy notes that the statute requires the submission of the supporting data. Therefore, the physical delivery of all the supporting data is required.

An objection was raised concerning the proposed use of a clause identifying

required supporting data on non-shipbuilding contracts; this proposal practice was alleged to improperly exceed the Federal Register notice. In order to avoid any confusion, the Documentation of Requests for Equitable Adjustments clause has been deleted. However, it is noted that contracting activities have discretion to define the type of data which must be submitted in support of a claim, request for equitable adjustment or demand for payment, and this revision does not in any manner affect or restrict the authority to include such clauses in non-shipbuilding contracts. This clause will continue to be used in Navy shipbuilding contracts, as it has been used in the past; it imposes documentation requirements on a contractual basis. While the clause will continue to be used, its violation may result in contractual remedies, which are independent of 10 U.S.C. 2405.

Other Comments

Several other relatively minor comments were received which are not specifically addressed; however, all comments were considered in revising the proposed rules.

Other Revisions

The definition of events was expanded to address occurrences involving defective Government-furnished property, specifications and drawings which would give rise to claims, requests, or demands based on contractor action in the absence of contracting officer direction.

Public Hearing and Filing Additional Comments

Both oral and written comments may be given at a public hearing. Persons wishing to comment at the public hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" by the close of business on August 9, 1990. In order to ensure that adequate space is available, it is requested that all interested persons desiring to attend the hearing advise the above named person of the name of the interested party, the number of expected attendees and the telephone number for a designated point of contact, in order that each person can be contacted should there be a need to change the date, time or place set for the hearing.

If not previously filed, the filing of a written statement by each person intending to present oral comments at the hearing is requested as it will greatly assist the transcriber. Submission of written comments, including any questions, at least two weeks in advance of the hearing will allow officials to prepare responses to questions. All comments filed in response to the initial request for comment will be considered as part of the record; therefore, it is not necessary to restate the same comment. If any comment previously filed was not addressed above, such comment may be resubmitted.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Paperwork Reduction Act

The proposed rules contain no new information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et. seq.). Supporting data requirements identified in the proposed rules include only data already required to be maintained by shipbuilding contractors.

Regulatory Flexibility Act

The proposed rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et. seq.

List of Subjects in 48 CFR Parts 5243 and 5252

Contract modifications, documentation requirements, Government procurement, Shipbuilding contracts, Solicitation provisions and Contract clauses.

It is proposed to amend title 48 of the Code of Federal Regulations as follows:

1. By adding part 5243 to read as follows:

PART 5243—CONTRACT MODIFICATIONS

Subpart 5243.70 Adjustments to Prices Under Shipbuilding Contracts

Sec.

5243.7001 Adjustments to prices under shipbuilding contracts.
5243.7002 Definitions.
5243.7003 Prohibited actions and procedures.
5243.7004 Documentation and certification requirements.
5243.7005 Solicitation provision and contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 3000.35

Subpart 5243.70—Adjustments to Prices Under Shipbuilding Contracts

5343.7001 Adjustments to prices under shipbuilding contracts.

(a) 10 U.S.C. 2405 prohibits the Secretary of a military department from making a price adjustment to a shipbuilding contract, entered into after December 7, 1963, for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request for equitable adjustment, or demand for payment) arising out of events occurring more than 18 months before the submission of the claim, request for equitable adjustment, or demand for payment.

(b) 10 U.S.C. 2405 provides that a claim, request for equitable adjustment, or demand for payment is submitted on the date the contractor's submission is received by the contracting officer accompanied by the supporting data for the claim, request for equitable adjustment, or demand for payment and the certification required by section 6(c)(1) of the Contract Disputes Act, if the matter is over $50,000.

(c) This subpart implements 10 U.S.C. 2405.

5243.7002 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

Claim means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment to the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

Demand for payment means a written demand for payment, other than routine payment in accordance with the payment terms of the contract.

Events means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which gives rise to the contractor's claim, request for equitable adjustment, or demand for payment. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. The final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are as follows:

(a) Formal changes (including changes based on engineering change proposals (ECPs) and non-engineering change proposals (NECPs)). The final Government action for a formal written change is the contracting officer's authorization or direction to proceed. The date the final Government action occurs is the date of receipt of the contracting officer's authorization or direction to proceed. If the contracting officer unilaterally establishes the price of a previously issued maximum-priced modification, or any other modification which is not fully priced at the time it is issued, the unilateral pricing action is the final Government action. In this latter case, the date the final Government action occurs is the date of receipt of the contracting officer's unilateral price determination by the contractor.

(b) Defective Government-furnished property. The final Government action is the direction from the contracting officer regarding correction, replacement or repair of the property. The date the final Government action occurs is the date of receipt of the contracting officer's direction by the contractor. If a contractor proceeds without direction from the contracting officer regarding the correction, replacement or repair of the property, the final occurrence is the contractor's commencement of the correction, replacement or repair of the property. In this latter cae, the date of the final occurrence is the date the contractor commences the correction, replacement or repair of the property.

(c) Defective Government-furnished specifications. The final Government action occurs when the contracting officer either directs corrective action or notifies the contractor that the specifications are not defective. The date the final action occurs is the date of receipt of the contracting officer's direction or notification by the contractor. If a contractor proceeds to correct a deficiency in a specification without direction or notification from the contracting officer, the final occurrence is the contractor's commencement of the correction. In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(d) Defective Government-furnished drawings. The final Government action is the contractor's receipt of a revised drawing, the contracting officer's direction regarding corrective action or notification that the drawing is not defective. The date the final Government action occurs is the earlier of the date of receipt of the revised drawing, the date of receipt of the contracting officer's direction regarding corrective action or notification that the drawing is not defective by the contractor. If a contractor proceeds to correct a deficiency in a drawing without direction or notification from the contracting officer, or, if applicable, before receipt of a revised drawing, the final occurrence is the contractor's commencement of the correction. In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(e) Late Government-furnished property and information (including Government furnished equipment, material, specifications, drawings and other information). The final Government action is the earlier of the actual delivery of the Government-furnished property or information to the contractor, or the notification from the contracting officer establishing a revised delivery date for the property or information. The date the final Government action occurs is the earlier of the date the property or information is delivered to the contractor or the date of receipt of the contracting officer's notification of the revised delivery date for the property or information.

Price adjustment means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

Request for equitable adjustment means a written request for a price adjustment to the contract in accordance with the provisions of a clause which expressly provides for such a price adjustment.

Shipbuilding contract means a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and such department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract.) A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.

5243.7003 Prohibited actions and procedures.

(a) This subpart does not preclude: (1) Bilateral modifications which are fully priced or maximum-priced prior to the contractor being authorized or directed to proceed by the contracting officer or (2) any pricing action which is either fully priced or maximum-priced, based on events which occurred less than 18 months prior to the execution of the bilateral modification incorporating the pricing action.

(b) Contracting officers shall not make any price adjustment pursuant to any claim, request for equitable adjustment, or demand for payment submitted by a contractor seeking a price adjustment to a shipbuilding contract entered into after December 7, 1963, if the event giving rise to the claim, request for equitable adjustment, or demand for payment occurred more than 18 months prior to the date of receipt by the contracting officer of a claim, request for equitable adjustment, or demand for payment with adequate supporting data and, if the matter is over $50,000, the certification required by section 6(c)(1) of the Contract Disputes Act.

(c) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the matter, or any part of the matter, is subject to the prohibition set forth in paragraph (b) of this section, contracting

officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent Government action(s), Government inaction(s), Government conduct and occurrence(s). Unrelated matters or matters arising out of different events included in a single claim, request for equitable adjustment, or demand for payment shall reviewed based on the events appropriate to each individual matter and a determination of the application of the prohibition set forth in paragraph (b) of this section shall be made for each such matter.

5243.7004 Documentation and certification requirements.

(a) For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over $50,000, the certification required by section 6(c)(1) of the Contract Disputes Act. If either the supporting data or the certification, if the matter is over $50,000, is deficient, the claim, request for equitable adjustment, or demand for payment shall not be considered to be submitted until any such deficiency is corrected.

(b) Adequate supporting data. (1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Supporting data for a claim, request for equitable adjustment, or demand for payment is necessary not only to satisfy the statutory requirement but also to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request for equitable adjustment or demand for payment must be accompanied by supporting data which fulfills these purposes and is otherwise in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(i) A narrative statement of the nature of the event(s), the time when the event(s) occurred, and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(ii) A description of the relevent effort the contractor was required to perform in the absence of the event(s);

(iii) A description of the relevant effort the contractor was actually required or will be required to perform;

(iv) A description of components, equipment, and other property involved;

(v) A cost breakdown of the additional effort by element in accordance with the contracter's normal procedures for pricing of changes;

(vi) A description of all property which will no longer be needed by the contractor;

(vii) A description of any delay caused by the event(s);

(viii) A description of any disruption caused by the event(s).

(2) If any submission does not contain the data listed above, the submission shall be reviewed to determine if the data submitted is adequate to meet the requirements of the Contract Disputes Act. The contractor shall be notified of the nature of any deficiency in the supporting data which results in a determination that the submission is not adequate.

(c) Certification (1) A claim, request for equitable adjustment, or demand for payment in excess of $50,000 must be certified in accordance with the requirements of section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207.) If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.

(2) A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the certification requirements.

(d) Once a claim, request for equitable adjustment, or demand for payment has been properly certified and accompanied by adequate data, the date of proper certification and submission of adequate supporting data shall be operative for purposes of this subpart, even if additional certification(s) or data submission(s) is required of, or provided by, the contractor, unless the additional certification or data submission is required or provided, because the contractor has submitted a new or essentially new claim, request for equitable adjustment, or demand for payment based on different events.

5243.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 5252.243-8000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.

(b) The contracting officer shall insert the clause at 5252.243-8001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment in all shipbuilding solicitations and shipbuilding contracts.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35.

2. Part 5252 is amended by adding new sections 5252.243-8000 and 5252.243-8001 to read as follows:

5252.243-8000 Notification of Applicability of 10 U.S.C. 2405.

As prescribed at 5243.7005(a), insert the following provision:

Notification of Applicability of 10 U.S.C. 2405 (1990)

The contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment seeking a price adjustment to this contract submitted by the contractor is subject to 10 U.S.C. 2405.

(End of Clause)

5252.243-8001 Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment.

As prescribed at 5243.7005(b), insert the following clause in full text:

Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment (1990)

(a) This contract is subject to 10 U.S.C. 2405; therefore, a price adjustment will not be made to this contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment (a) incurred due to the preparation, submission, or adjudication of any such claim, request for equitable adjustment, or demand for payment) arising out of events occurring more than 18 months before the submission of the claim, request for equitable adjustment, or demand for payment.

(b) A claim, request for equitable adjustment, or demand for payment is considered to be submitted on the date the contractor's submission is received by the contracting officer accompanied by adequate supporting data for the claim, request for equitable adjustment or demand for payment and the certification required by section 6(c)(1) of the Contract Disputes Act, if the matter is over $50,000.

(c) Adequate supporting data includes data which is adequate to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. Adequate supporting data is that data which fulfills these purposes and is otherwise in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(1) A narrative statement of the nature of the event(s), the time when the event(s) occurred, and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(2) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(3) A description of the relevant effort the contractor was actually required or will be required to perform;

(4) A description of components, equipment, and other property involved;

(5) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(6) A description of all property which will no longer be needed by the contractor;

(7) A description of any delay caused by the event(s);

(8) A description of any disruption caused by the event(s).

(d) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over $50,000. The certification requirements are those set forth in the clause of this contract entitled Disputes. In order to be a proper certification, the certificate must be executed (1) if the contractor is an individual, by the individual, or (2) if the contractor is not an individual, by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(e) For the purpose of this clause, the following terms have the meanings set forth below.

(1) "Claim" means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment to the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

(2) "Request for equitable adjustment" means a written request for a price adjustment to the contract in accordance with the provisions of a clause which expressly provides for such a price adjustment.

(3) "Demand for payment" means a written demand for payment, other than routine payment in accordance with the payment terms of the contract.

(4) "Events" means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which gives rise to the contractor's claim, request for equitable adjustment, or demand for payment. For the purpose of this clause, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. (For the purpose of this clause, the final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are discussed in NAPS 5243.7002.)

(5) "Price adjustment" means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if the dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this clause, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

(End of Clause)

Jane M. Virga,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-15106 Filed 6-28-90; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub.-No. 25)]

Rail General Exemption Authority; Lumber or Wood Products

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Rule; Corrected service list and extension of time to file comments.

SUMMARY: By its decision served April 1, 1990 (55 FR 12302, April 3, 1990), this Commission sought public comment on whether to exempt from regulation the transportation by rail of certain specified lumber or wood products, set dates by which parties should indicate their intent to participate, set forth a general time schedule for the filing of comments and replies, and indicated that the exact dates for such filing would be specified at the time of publication of the service list. The service list served May 25, 1990 failed specifically to indicate the dates for filing comments and replies. Moreover, some errors were found in the initial list; and since that time some additional parties have expressed a desire to participate in the proceeding. In the interest of full participation, we are reissuing a corrected service list and extending the deadlines for filing comments and replies to 20 days and 40 days, respectively, from the date of publication of this notice. We remind all parties of record that in order to be considered by this Commission, all comments and replies must be timely served on all parties.

DATES: The dates for filing initial comments and replies are hereby extended to July 18 and August 7, respectively.

ADDRESSES: An original and 10 copies of pleadings referring to Ex Parte No. 346 (Sub-No. 25) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael Redisch, or Robert Lundy, at (202) 275-7684.

Decided: June 25, 1990.

By the Commission, Edward J. Philbin, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 90-15172 Filed 6-28-90; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 55, No. 126
Friday, June 29, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Critical Area Treatment, Gabions Wall Road #407 Las Marias, Puerto Rico

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Critical Area Treatment, Gabions Wall Road #407 km. 2.10, 3.15 and 3.70, Las Marias, PR.

FOR FURTHER INFORMATION, CONTACT: Humberto Hernández, Director, Caribbean Area, Soil Conservation Service, Federal Building, Chardon Ave. room 639, San Juan, Puerto Rico 00936, telephone (809) 766–5206.

SUPPLEMENTAL INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Humberto Hernández, Director Caribbean Area, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for critical area treatment protection. The planned work of improvement include Gabions Wall Installation on Road #407 km. 2.10, 3.15 and 3.70.

A copy of the Findings of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, commonwealth, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Humberto Hernández.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: June 12, 1990.

Humberto Hernández,

Director, Caribbean Area.

[FR Doc. 90–15115 Filed 6–28–90; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m., on August 2, 1990 at the Ramada Renaissance Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to obtain information on the status of the implementation of the Hawaiian Homes Commission Act.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 22, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–15141 Filed 6–28–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: North Pacific Fishery Management Council Inshore/Offshore Groundfish Allocation Survey.

Form Number: No form number assigned.

Type of Request: New collection.

Burden: 1,576 respondents; 17,005 reporting hours; average hours per response—10.79 hours.

Needs and Uses: Data will support analyses of fishery management plan amendments allocating groundfish between inshore and offshore sectors of the domestic industry. No alternative source is available. Without these data an adequate impact analysis cannot be performed. The affected public includes U.S. North Pacific and Bering Sea groundfish harvesters and processors.

Affected Public: Business or other for-profit, small businesses or organizations.

Frequency: One time.

Respondents Obligation: Voluntary.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–15080 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1990 Decennial Census—Were You Counted? Program Verification Check.

Form Number(s): D–25(R).

Type of Request: New collection—Expedited Review.

Burden: 225 hours.

Number of Respondents: 4,500.

Avg Hours Per Response: 3 minutes.

Needs and Uses: The "Were You Counted?" (WYC?) campaign provides an opportunity for persons who think they were not included in the census to be counted. Persons can participate in the WYC? campaign by calling an 800 number or completing a WYC? form. The purpose of the WYC? Verification Check is to verify that persons who participated in the WYC? campaign actually lived at the addresses they provided before they are added to the census counts.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510–07–M

OMB No. XXXX-XXXX: Approval Expires XX/XX/XX

FORM D-24 (6-8-90) U.S. DEPARTMENT OF COMMERCE BUREAU OF THE CENSUS

"WERE YOU COUNTED?" VERIFICATION QUESTIONNAIRE

21st Decennial Census — 1990

Section A — HOUSEHOLD IDENTIFICATION

1. Name

2. Address *(House No., street or road/rural route, box No. and Apt. No.)*

City | State | County or foreign country | ZIP Code

3. Telephone number — *Including area code* ( )

4. Sex

5. Date of birth

6. DO | 7. ARA | 8. Block | 9. Map spot | 10. ID

11. Field representative/Telephone clerk name

Section B — RECORD OF CONTACTS

Call/ Visit number (1)	Date (2) Month	Day	Time (3) Began	Ended	Outcome (4)	Comments, callback/appointment, etc. (5)
1			a.m. p.m.	a.m. p.m.		
2			a.m. p.m.	a.m. p.m.		
3			a.m. p.m.	a.m. p.m.		
4			a.m. p.m.	a.m. p.m.		

Section C — RESULTS OF VERIFICATION

1. INTERVIEW STATUS

1 ☐ Interview completed by telephone
2 ☐ Interview completed by personal visit
} *Complete item 2, Verification Status*

Interview not completed —
3 ☐ Unable to locate address
4 ☐ Refusal
5 ☐ Other — *Specify* _____

2. VERIFICATION STATUS

1 ☐ Person lived here on April 1, 1990
2 ☐ Person lives here now, but not on April 1, 1990

Person not known —
3 ☐ Respondent lived at address on April 1, 1990
4 ☐ Respondent did NOT live at address on April 1, 1990

Section D — TELEPHONE INTERVIEW

1. INTRODUCTION

Good (morning/afternoon/evening). I am *(Your name)* from the U.S. Bureau of the Census. We are calling households in the area to make sure everyone was counted in the 1990 census. This survey is authorized by Sections 141 and 193 of Title 13 of the U.S. Code, which protects the confidentiality of your answers. This interview will take about 3 minutes of your time.

2. **Is this** *(Read address in section A, item 2)*?
1 ☐ Yes — *Ask question 3*
2 ☐ No } ***END INTERVIEW*** *and conduct a personal visit*
3 ☐ Refusal }

3. **To whom am I speaking?** Name

CHECK ITEM A — Is person in question 3 the same as person in section A, item 1?
1 ☐ Yes, same person — *SKIP to question 5*
2 ☐ No, NOT same person — *Ask question 4*

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Section D — TELEPHONE INTERVIEW — Continued

4. **Do you know** *(Read name in section A, item 1)*?
1 ☐ Yes — *Ask question 5*
2 ☐ No — *SKIP to question 7*

5. **Did ((Read name in section A, item 1)/you) live here April 1, 1990?**
1 ☐ Yes — *SKIP to section F*
2 ☐ No — *Ask question 6*

6. **(Does** *(Read name in section A, item 1)*/**Do you) live here now?**
1 ☐ Yes
2 ☐ No
} *SKIP to section F*

7. **Did you live here on April 1, 1990?**
1 ☐ Yes
2 ☐ No
} *SKIP to section F*

Section E — PERSONAL VISIT INTERVIEW

1. INTRODUCTION

I am *(Your name)* from the U.S. Bureau of the Census. Here is my identification card. We are visiting addresses to check to see if everyone was counted in the 1990 census. This study is authorized by Sections 141 and 193 of Title 13 of the U.S. Code, which protects the confidentiality of your answers. This interview should take about 3 minutes of your time.

2. **What is your name?** Name

CHECK ITEM A — Is person in question 2 the same person in section A, item 1?
1 ☐ Yes, same person — *SKIP to question 4*
2 ☐ No, NOT same person — *Ask question 3*

3. **Do you know** *(Read name in section A, item 1)*?
1 ☐ Yes — *Ask question 4*
2 ☐ No — *SKIP to question 6*

4. **Did ((Read name in section A, item 1)/you) live here April 1, 1990?**
1 ☐ Yes — *SKIP to section F*
2 ☐ No — *Ask question 5*

5. **(Does** *(Read name in section A, item 1)*/**Do you) live here now?**
1 ☐ Yes
2 ☐ No
} *SKIP to section F*

6. **Did you live here on April 1, 1990?**
1 ☐ Yes
2 ☐ No

Section F — CLOSING STATEMENT

Thank you very much for your cooperation.

As I said at the beginning of this interview, we estimated that this interview would take about 3 minutes. If you have any comments about this estimate, you may send them to:

Associate Director for Management Services
Paperwork Reductions Project (0607-XXXX)
Room 2027, FB 3
Bureau of the Census
Washington, DC 20233

AND

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project (0607-XXXX)
Washington, DC 20503

NOTES

FORM D-24 (6-8-90)

[FR Doc. 90-15229 Filed 6-28-90; 8:45 am]
BILLING CODE 3510-07-C

DRAFT

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Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1990 Panel Wave 4.

Form Number(s): SIPP–10400, SIPP–10403, SIPP–10405.

Agency Approval Number: 0607–0870.

Type of Request: Revision of a currently approved collection.

Burden: 22,575 hours.

Number of Respondents: 45,150.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules." The topical modules for the 1990 Panel Wave 4 are the following: (1) Assets and Liabilities, (2) Retirement Expectations and Pension Plan Coverage, and (3) Real Estate Property and Vehicles. Wave 4 interviews will be conducted from February through May of 1991.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1990.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 90–15230 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1991 Panel Core, Waves 1–8.

Form Number(s): SIPP–11100, SIPP–11001, SIPP–11105.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 29,400 hours.

Number of Respondents: 29,400.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is used by the Bureau of the Census to collect information concerning the distribution of income received directly as money or indirectly as in-kind benefits. The SIPP is designed as a continuing series of national panels of interviewed households which are introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The Wave 1 questionnaire contains the SIPP's core. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as "topical modules."

Affected Public: Individuals or households.

Frequency: Three times a year.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–15231 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held July 24 & 25, 1990, 9:30 a.m., in the Herbert C. Hoover Building, room 1617F, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12350, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: June 25, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Unit.

[FR Doc. 90–15079 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 24–90]

Foreign-Trade Zone 66—Wilmington, NC; Application for Subzone Deere-Hitachi Construction Machinery, Kernersville

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 66, requesting special-purpose subzone status at the hydraulic excavator manufacturing plant of Deere-Hitachi Construction Machinery Corporation (DHCM) (joint venture between Deere and Company and Hitachi Construction Machinery Company, Ltd.) located in Kernersville, North Carolina, adjacent to the Winston-Salem Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 18, 1990.

The new DHCM plant is located at West Mountain Street and Perry Road, Kernersville. Established in 1988, the facility (61 acres, 150 employees) began production of hydraulic excavators in mid-1989. Some 70 percent of the components are currently sourced abroad, including chassis, boom cylinders, bucket cylinders, arm cylinders, swing bearings, front idlers, track assemblies, track rollers, springs, propel motor and center joints. Some 25 percent of the plant's production is exported.

Zone procedures would exempt DHCM from Customs duty payments on foreign items used in its exports. On its domestic sales, the company would be able to choose the finished excavator duty rate (2%). Duty rates on the foreign sourced components range from 2.5 to 11.0 percent. The application indicates that zone procedures will help improve DHCM's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, Inspection and Control, U.S. Customs Service, South Central Region, 909 SE. First Avenue, Miami, FL 33131; and, Lt. Colonel Thomas C. Suermann, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 16, 1990.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, suite 432, 251 N. Main Street, Winston-Salem, NC 27101.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 22, 1990.

John J. Da Ponte, Jr.,

Executive Secretry.

[FR Doc. 90–15076 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 25–90]

Foreign-Trade Zone 45—Portland, OR; Application for Subzone STC Submarine Systems Undersea Cable Plant, Portland

An aplication has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, requesting authority for special-purpose subzone status at the undersea cable manufacturing plant of STC Submarine Systems, Inc. (STC) (subsidiary of STC PLC, UK), located in Portland, Oregon, within the Portland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 20, 1990.

The new 17-acre STC plant site (est. 1989) is located at 15540 W. Lombard Street, Portland. The facility, which will employ 200, will produce undersea telecommunication fiber optic cable. Foreign-sourced components account for some 10 percent of the value of the cable, including copper-clad stainless steel wire, copper, jointing kits, repeaters, heavy oil and ink for coloring fibers. Other materials, including steel wire and sheathing, are purchased from domestic sources. All finished cable would be used for intercontinental undersea cable systems.

Zone procedures are being requested for use on products made for export. STC will be exempt from Customs duty payments on the foreign materials used in such products. The application indicates that zone savings will help improve STC's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Thomas Hardy, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Federal Building, Portland, OR 97209; and, Colonel Charles E. Cowan, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97229.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 18, 1990.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1220 SW. 3rd Avenue, room 618, Portland, OR 97204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 25, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–15235 Filed 6–28–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 11, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The review covers ten producers and/or exporters of this merchandise and the period April 29, 1987 through April 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for one of the ten producers and/or exporters from those presented in our preliminary results of review.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Andrew N. Bowen, or Robert J. Marsnick, Office of Antidumping Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230; telephone (202) 377-3289/3605/5255.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1990, the Department of Commerce ("the Department") published in the Federal Register (55 FR 1071) the preliminary results of its administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426, May 5, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice ("FCOJ"). During the review period such merchandise was classifiable under item 165.29 of the *Tariff Schedules of the United States* ("TSUS"). The merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item 2009.11.00. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. Not included is pulpwash which the Department has determined is outside the scope of the antidumping duty order on FCOJ from Brazil (see Scope Decision, October 25, 1989).

The review covers ten producers and/or exporters of FCOJ from Brazil to the United States and the period April 29, 1987 through April 30, 1988. Eight firms, Citrosuco Paulista, Cargill Citrus Ltda., Coopercitrus Industria Frutesp S.A., Branco Peres Citrus, Citrovale S.A., Citro Mojiana Ltda., Frutropic S.A., and Montecitrus Trading S.A., had shipments to the United States. Two firms, Citro Pectina and Quimicas, failed to respond to the Department's antidumping questionnaire. For these two firms, we used the best information available for assessment and cash deposit purposes. Best information available is the highest rate for a responding firm from the original investigation.

Six firms for which we initiated a review, Industrias Alimenticias Maguary, Industrias J.b. duarte S.A., Central Citrus, Suvalan, Bascitrus, and Makro Atacadista, had no shipments to the United States during the period of review, and there is no evidence that they ever exported this merchandise to the United States. Should any of these firms begin exporting this merchandise to the United States, they will be treated as new exporters.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from the petitioners, Florida Citrus Mutual, Alcoma Packing Co., Berry Citrus Products, Inc., Citrus Belle, Inc., B & W Canning Co., Caulkins Indiantown Citrus Co., and Citrus World, Inc., and one respondent, Cargill Citrus Limitada ("Cacitrus"). We received an untimely comment from one respondent, Citrosuco Paulista, S.A. ("Citrosuco").

Analysis of Comments Received from Petitioners

Comment 1: Petitioners argue that the Department should deduct from Citrosuco Paulista's U.S. price the amounts paid for harbor maintenance, Customs' duties, and Customs' user fees.

Department's Position: We agree. We have deducted all movement expenses, including harbor maintenance and Customs' user fees, from the U.S. price. Citrosuco provided additional information concerning these expenses and we have made the appropriate deductions. Customs' duties were deducted in the preliminary results.

Comment 2: Petitioners argue that the Department should impute a credit expense to Citrosucco's U.S. sales.

Department's Position: We agree. For the final determination, we have calculated a credit expense which reflects the full credit period from the date of shipment to the date of payment for all of Citrosuco's U.S. sales. We made a similar adjustment to Citrosuco's foreign market value.

Comment 3: Petitioners argue that the proper third-country market for the calculation of foreign market value is West Germany or another European market. Despite differences in the physical characteristics of the merchandise sold in the U.S. and European markets, these differences do not result in differences in the cost of manufacture for the two types of FCOJ.

Department's Position: We disagree. We chose Canada because the product sold to Canada was identical to that sold to the United States, while the product sold in European markets had a different brix/acid ratio than that sold to the United States. Moreover, we determined that the volume of sales to Canada was adequate for comparison purposes. This conforms to the Department's regulatory hierarchy for determining an adequate third-country market.

Comment 4: Petitioners argue that the taxes paid on Cacitrus' home market sales must be adjusted to reflect the effects of hyperinflation before being added to the U.S. price.

Department's Position: We disagree. Cacitrus reported three taxes paid on sales of the merchandise in the home market. The ICM and Finsocial taxes were not paid on export sales. The PIS tax was paid on all sales but the amount collected for export sales was either credited against income taxes owed or refunded where the credit exceeded income taxes owed. Section 772(d) of the Tariff Act requires that indirect taxes imposed upon home market merchandise that have not been collected on exported merchandise by reason of its exportation to the United States be added to the U.S. price to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation.

To account for such an adjustment, we applied the tax rates of the three home market taxes to the U.S. price. The foreign market value, including the home market taxes, was converted into U.S. dollars using the exchange rate in effect on the date of the U.S. sale. There is no need to adjust for inflation since the application of the tax rates results in comparable values in both markets.

Comment 5: Petitioners argue that the Department should not permit Cacitrus a difference-in-merchandise adjustment for the addition of a preservative to the FCOJ.

Department's Position: We disagree. We allow an adjustment for physical differences in the merchandise when such differences have been verified. We verified that sodium benzoate is added as a preservative to Cacitrus' FCOJ sales in the home market and for several purchase price transactions ("PP").

None of Cacitrus' reported exporter's sale price transactions ("ESP") involved FCOJ containing sodium benzoate. For comparison purposes, we thus adjusted home market prices for the cost of this physical difference in the merchandise. A small number of Cacitrus' purchase price transactions involved FCOJ containing the preservative. For these sales we adjusted home market prices for the differences in the reported preservative costs for sales in the two markets.

Comment 6: Petitioners argue that the Department should not allow Branco Peres to reduce its constructed value by the revenue earned from the sale of "associated products," such as citrus feed pellets, oil and essences, etc.

Department's Position: We disagree. The product in question is primarily animal feed pellets which are processed from the pulp and rind of the orange. Consistent with our determination in the original investigation (52 FR 8328, March 17, 1987), we have concluded that these are by-products of FCOJ because the production of the pulp and rind was an unavoidable consequence of the production of FCOJ. Therefore, we included all costs incurred for the manufacturing of these products in the cost of production, and we credited the actual revenue from the sale of these by-products against the costs.

Comment 7: Petitioners argue that, for the calculation of Branco Peres' constructed value, the Department should calculate selling, general, and administrative expenses (SG&A) as a percentage of the total cost of manufacturing rather than as a percentage of the cost of manufacturing minus the revenue from by-products.

Department's Position: We disagree. We derived the SG&A figure from the ratio of SG&A expenses to the cost of goods sold as presented on Branco Peres' financial statement. The cost of goods sold on the financial statement is net of the revenue earned from the sale of by-products. Therefore, in the calculation of constructed value we applied this SG&A ratio to the cost of manufacturing minus the by-product revenue. We used this SG&A ratio since it exceeded the statutory minimum of ten percent for general expenses.

Comment 8: Petitioners argue that Branco Peres' reported financial income should be netted against financial expense only to zero, and should not be treated as an overall reduction to cost of production.

Department's Position: We agree. For the calculation of constructed value we offset financial expense with short-term operational income only to zero.

Comment 9: Petitioners argue that the Department should disallow Branco Peres' allocation of current nominal material costs for fruit delivered in prior months. It should continue to calculate material costs on the basis of the actual costs incurred in each month.

Department's Position: We agree. Late payments for fruit purchases were treated as costs in the month they were incurred rather than being deflated to the month in which payment was made.

Comment 10: Petitioners argue that any exchange gains accounted for by the Department in the calculation of Branco Peres' constructed value should be measured against inflation in the home market.

Department's Position: In our calculation of constructed value we did not treat gains from exchange rate variations as a reduction to the cost of production. We considered income accrued from exchange rate variations to be speculative in nature and not directly related to the cost of production.

Comment 11: Petitioners argue that in the calculation of foreign market value the Department should use Frutesp's deliveries during the period of review which were completed pursuant to long-term contracts established outside the review period.

Department's Position: We disagree. In our calculation of Frutesp's foreign market value, we used all sales whose terms were established during the period of review. The deliveries referred to by the petitioners were made pursuant to sales prior to the review period. Because there were contemporaneous sales within the review period, those sales provide a more accurate assessment of whether U.S. sales were dumped during the review period.

Comment 12: Petitioners argue that the Department should revise its calculations of Frutesp's foreign market value to account for a United Kingdom port duty.

Department's Position: We disagree. We verified that Frutesp reported its U.K. sales net of the port duty in question. Thus, no adjustment for this expense is appropriate.

Comment 13: Petitioners are concerned about the potential for "middleman dumping" through intermediate trading companies.

Department's Position: For the calculation of Montecitrus' foreign market value and U.S. price, we used the price at which Montecitrus sold the product to an unrelated offshore trading company, which in turn resold the product to foreign and U.S. customers.

All Montecitrus' report sales were at or above the minimum export price established by the Government of Brazil. There was no indication that the resales by the unrelated offshore trading company during the period of review were at prices less than the minimum export price at which they were purchased.

Comment 14: Petitioners argue that, where appropriate, the Department should calculate an imputed inventory carrying cost incurred in Brazil prior to exportation.

Department's Position: We agree. Where inventory was maintained in Brazil prior to exportation, we imputed an inventory carrying cost.

Comment 15: Petitioners argue that cash deposits should be required for non-responding firms and for new exporters.

Department's Position: We agree that non-responding firms should be required to post a cash deposit; however, we disagree that the same cash deposit rate should be imposed upon future entries from a new exporter.

In its preliminary results of review the Department decided to require a cash deposit of 1.96 for the two non-responding firms, Citro Pectina and Quimicas, because the firms did not provide any information in the review.

We will not require a cash deposit for future entries of this merchandise from a new exporter, not covered in this administrative review or in the original investigation, whose first shipments occurred after April 30, 1988, since this would conflict with the Department's administrative practice (*See Elemental Sulfur from Canada* (50 FR 37880, September 18, 1985) and *Certain Dried Heavy Salted Codfish* from Canada (52 FR 42702, November 6, 1987), in which the Department required cash deposits on shipments by new exporters equal to the highest margin found for a responding firm with shipments in the current review period.) Furthermore, after having reviewed a cross-section of firms in this administrative review it is reasonable to conclude that dumping margins for the industry as a whole are *de minimis* for this period of time. Therefore, they provide an accurate referent for estimating cash deposit requirements.

Comment 16: Petitioners argue that pulpwash should be included witnin the scope of this administrative review.

Department's Position: We disagree. We determined that pulpwash is outside the scope of the antidumping duty order on FCOJ and Brazil (*see* Scope Decision, October 25, 1989).

Comments from Cacitrus

Comment 1: In its calculation of home market credit expenses for purchase price comparisons, the Department mistakenly used the date of sale as the beginning of the credit period , when it should have used the date of shipment. Additionally, the Department neglected to include as part of the credit terms an adjustment for early payment discounts.

Department's Position: We agree. The number of days used to represent the credit period in the home market should be the number of days between the date of shipment and the date of payment. Also, the price upon which the credit expense is based should be the gross price minus the discounts granted for early payment. These changes are reflected in this final determination.

Comment 2: The Department should not use best information available ("BIA") for interest rates to calculate credit expenses for purchase price sales and inventory carrying expenses ("time on water") for ESP transactions. It

should use the verified interest rates reported by Cargill Citro America ("Citro") and Cacique.

Department's Position: We agree that, for "time on water" calculations for ESP transactions we should use the average short-term borrowing rates for Cargill, Inc., as reported in Cargill's July 28, 1989 submission to the Department. However, we disagree that we should not use BIA for interest rates to calculate credit expenses for purchase price transactions. Cargill did not furnish complete and verifiable actual interest rates in the home market. Therefore, we will continue to use ACC rates ("adiantamento sobre contrato de cambio", the interest rates charged for advances on exchange contracts) as the best representation of Brazilian interest rates.

Comment 3: The Department mistakenly disregarded 18 U.S. sales transactions in its preliminary determination.

Department's Position: We agree that we inadvertently omitted these U.S. sales and have included them in this final determination.

Comments from Citrosuco

Comment 1: Citrosuco does not consider Florida Citrus Mutual ("FCM") as a petitioner and urges the Department not to consider any comments by FCM since FCM does not have standing in this review. See *Citrosuco Paulista, S.A. vs. United States*, 704 F. Supp. 1075, 1082 (CIT 1988).

Department's Position: While it is not our practice to respond to late comments, the issue raised by Citrosuco has procedural implications for this administrative review.

Our procedural regulations require parties to raise all arguments relevant to the final results in the case brief. (19 CFR 353.38(c)(2).) In the preliminary determination we required that any written comments or case briefs be filed within 30 days of publication of the preliminary determination (see 55 FR 1071, January 11, 1990). Citrosuco did not file a case brief and challenged FCM's standing in this administrative review for the first time in its rebuttal brief filed on February 20, 1990. Therefore, Citrosuco's argument about FCM's standing is untimely. Furthermore, parties may only respond in rebuttal briefs to issues raised in the case briefs and may not raise issues for the first time. (19 CFR 353.38(d).) Therefore, in this administrative review Citrosuco did not timely raise the issue concerning FCM's standing. Even if Citrosuco had timely raised the issue of FCM's standing, FCM's comments on the preliminary determination were the same as those of other petitioners and cannot be segregated from them. Therefore, FCM's standing in this review is moot and we have addressed the comments in this notice.

Final Results of Review

As a result of the comments received, we have revised our preliminary results for Cargill Citrus Ltda., and we determine the following margins exist for the period April 29, 1987 through April 30, 1988:

Manufacturer/Exporter	Margin (percent)
Citro Pectina	1.96
Quimicas	1.96
Citrosuco Paulista	0.00
Cargill Citrus Ltda	0.06
Coopercitrus Industria Frutesp, S.A.	0.01
Branco Peres Citrus	0.00
Citrovita, S.A.	0.00
Citro Mojiana, Ltda	0.00
Frutropic S.A.	0.34
Montecitrus Trading, S.A.	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. Since the margins for Cargill Citrus Ltda., Coopercitrus Industria Frutesp, S.A., and Frutropic, S.A., are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from those firms. For any future entries of this merchandise from a new exporter, not covered in this administrative review or the original investigation, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm, no cash deposit will be required. These waivers and cash deposit requirements are effective for all shipments of frozen concentrated orange juice from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: June 22, 1990.

Francis J. Sailer

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15236 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Tubeless Steel Disc Wheels From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 30, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tubeless steel disc wheels from Brazil. The review covers one producer and/or exporter of this merchandise to the United States and the period December 19, 1986 through April 30, 1988.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, The Budd Company, Wheel and Brake Division ("Budd"), and from the respondent, Borlem S.A. Empreendimentos Industriais ("Borlem"). Based on our analysis of the comments received and correction of clerical errors, we have changed the margin from 0.57 percent presented in the preliminary results to 0.44 percent.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Richard Rimlinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-0812/1130.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1990, the Department of Commerce ("the Department") published in the Federal Register (55 FR 3079) the preliminary results of its administrative review of the antidumping duty order on tubeless steel disc wheels from Brazil (May 28, 1987, 52 FR 19663). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of tubeless steel disc wheels, designed to be mounted with pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses.

During the review period, such merchandise was classifiable under item 692.3230 of the *Tariff Schedules of the United States Annotated* ("TSUSA"). This merchandise is currently classifiable under *Harmonized Tariff Schedule* ("HTS") item number 8716.90.50. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States and the period December 19, 1986 through April 30, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioner, Budd, and from the respondent, Borlem.

Comment 1: Budd argues that the Department should have used sales prices of home market model 3060, instead of models 3107 and 3108, for comparison to U.S. models 2705 and 2835.

Borlem argues that the 3107 and 3108 wheels are the most appropriate wheels for comparison with the 2705 and 2835 due to greater similarity of steel blank inputs. Borlem also argues that during the period of review there were only sporadic production and sales of the 3046 wheel. Borlem had no production of the 3046 model in six of the 17 months of the period of review and only limited production of the model in nine of the remaining 11 months of the period. Thus, in some months of the review there would be no price as a basis of comparison and it would be virtually impossible to calculate a difference-in-merchandise adjustment because of the limited production. Borlem concludes by arguing that in a hyperinflationary economy it is essential that comparisons and difference-in-merchandise adjustments be based on contemporaneous sales.

Department's Position: The Department's policy is to select the identical, or, in the absence of identical, the most similar home market merchandise for comparison with each U.S. model. Due to the greater similarity of the steel blank inputs the Department concludes that both home market models 3107 and 3108 are more similar to U.S. models 2705 and 2835 than home market model 3060. Therefore, no change is warranted.

Comment 2: Budd challenges the difference-in-merchandise adjustment for differences in cost between wheels sold in the United States and similar wheels sold in the home market. Budd states that we should not allow any difference-in-merchandise adjustments for alleged variations between home market wheels with a 22.5-inch diameter and export wheels with the same diameter, that no difference-in-merchandise adjustment is necessary for a wheel with an 8.25-inch rim (wheel width) because Borlem sells wheels with an 8.25-inch rim in both markets, and that no adjustment should be allowed for differences in manufacturing techniques when merchandise falls within a range of acceptable design tolerances, for differences in number nd placement of bolt holes, for differences in offset (the depth the disc goes into the hoop relative to the edge of the rim), and for additional machining of mounting surfaces and center holes.

In rebuttal to Budd's contention that only differences in physical size, diameter, and rim size merit an adjustment for differences in merchandise, Borlem cites 19 CFR 353.57 which states, "the Secretary will make reasonable allowance for differences in physical characteristics." Borlem argues that such physical characteristics are not limited solely to variations in physical size. Borlem further argues that finished wheels vary in many ways other than their crude dimensions such as in performance standards. Borlem also argues that disparate performance standards (*i.e.*, maximum load capacity) of wheels may require different weights and strength of steel and differing labor costs. Furthermore, Borlem argues that different wheels may have different disc face designs to meet the aesthetic needs of a particular purchaser.

Finally, Borlem argues that its cost adjustment claims are supported by its replacement cost accounting system which the Department has found to be accurate in past verifications, such as the fair value investigation involving this merchandise, and in a recent review of *Steel Wheels from Brazil*.

Department's Position: We agree with Borlem that difference-in-merchandise adjustments are not limited to differences in size or dimensions, but may incorporate claims for all differences in physical characteristics. Since Borlem's difference-in-merchandise adjustments are linked to its actual cost and accounting records, we have adjusted for differences in merchandise attributable to physical characteristics including those other than size. We have made no change in the difference-in-merchandise adjustments from those presented in the preliminary results of review.

Comment 3: Budd challenges Borlem's inclusion of such costs as insurance, water, third-party maintenance costs and rental of capital equipment as variable factory overhead expenses. Budd argues that these are fixed costs and must be allocated between foreign and domestic wheels on a volume basis, as opposed to a production-time basis.

Borlem counters by arguing that costs like those in question are directly associated with Borlem's processing costs and are allocated by the firm to each wheel on the basis of the standard processing time for each particular wheel recorded at each of Borlem's cost centers. Borlem further argues that standard processing time for each wheel is directly related to the physical characteristics of each wheel. Therefore, the differences in standard processing time and, as a result, the differences in processing costs, and directly related to the differences in the merchandise under consideration.

Department's Position: As a general rule, the Department considers factory overhead costs which do not vary as production levels change to be fixed factory overhead costs. It is the Department's practice to make difference-in-merchandise adjustments on the basis of differences in material, labor, and variable factory overhead costs attributable to any physical differences in merchandise.

The Department believes that adjusting for variable factory overhead costs is justified in that such costs will vary in proportion to changes in production time, and that if different items being compared require different amounts of production time (attributable to physical differences), then an adjustment should be made to take into account these cost differences. Fixed factory overhead costs, on the other hand, will not vary as production time increases or decreases.

After publication of the preliminary results the Department requested further information on the expenses in question, namely, water, third-party maintenance and insurance expenses and rental of capital equipment, and whether Borlem could give any justification for considering them as variable factory overhead expenses.

After considering Borlem's response the Department has determined that these expenses, while listed as variable, are actually fixed because they are not affected by increases or decreases in production levels or time, and are simply allocated between foreign and domestic production.

Comment 4: Budd contends that Borlem should not be permitted simply to net ICM and IPI taxes (internal value added taxes paid on input products or raw materials which are rebated or not collected if the finished products are exported) against ICM and IPI taxes paid by Borlem for the sales of finished wheels in the home market. Budd argues that unless Borlem can demonstrate that the home market sales always directly cancel out potential refunds on export sales by Borlem, a full refund is not justified. Budd further argues that if there is any lag between the payment of ICM and IPI taxes on raw materials and the return of those funds to Borlem through credits or rebates, then Borlem experiences a real loss due to inflationary pressures in the Brazilian economy. This loss should be accounted for in the Department's calculations.

Borlem claims that, in calculating its difference-in-merchandise and packing adjustments, the firm properly excluded ICM and IPI taxes from input material costs. In the case of export sales, Borlem receives a credit because the materials were used to produce or pack a product that is exported. In the case of home market sales, the firm receives the credit paid on parts and materials netted against the taxes owed on the sales of the finished products. By deducting the taxes from the input costs, it is reflecting the real cost of the input products used to produce and pack the wheels.

Borlem counters any suggestion by the petitioner that there may not be sufficient home market sales to absorb Borlem's ICM and IPI credits associated with Borlem's export sales by citing the fact that the great majority of its sales of this merchandise are in the home market.

Borlem claims that the argument regarding the delay in the repayment of the taxes is without merit because the tax bill is computed and settled on a monthly basis.

Department's Position: There is no basis for Budd's contention that Borlem incurs a "loss" by making its normal monthly tax payments on its purchases of materials and parts used in the manufacture of wheels. We agree with Borlem that to obtain the real cost of input products, these taxes should be deducted from the input products for exported wheels and netted against the sales of finished wheels in the home market when computing the difference-in-merchandise and packing adjustments. The Department believes that this expense is properly calculated on the basis of Borlem's actual costs.

Comment 5: Budd says that ocean freight should have been calculated on a per-ton basis since a weight allocation would offer a better approximation of the actual financial experience of an importer who deals in different types of wheels. Also, the petitioner argues that insurance costs should have been calculated according to value to account for differences existing between various type of wheels that are shipped at the same time.

Borlem agrees and says that is essentially what it did with respect to the ocean freight allocation. Borlem indicates that the majority of its shipments during the review period consisted of only one wheel type. In such cases, Borlem calculated the per-wheel ocean freight expense by dividing the ocean freight expense for the shipment by the number of wheels in the shipment. In the limited number of cases in which more than one wheel type was shipped, Borlem allocated ocean freight expenses (based on a fixed container expense) to each type of wheel in the shipment based on the relative weights of the wheels in the shipment. After allocating the total ocean freight expense to each product in the shipment, Borlem then divided the allocated amount by the number of each product to obtain a per-wheel ocean freight expense.

With respect to insurance costs, Borlem indicates that it did not calculate a per-wheel home market insurance cost for the firm's home market sales because the amount was considered by Borlem to be insignificant. However, if this adjustment had been made it would have the effect of reducing Borlem's foreign market value and, consequently, Borlem's margin. With respect to U.S. insurance costs, Borlem argues that it did use value to allocate these costs when more than one wheel type was shipped.

Department's Position: We agree with Borlem's freight allocations and are satisfied with these adjustments because they were based on the usual freight allocation methodology, *i.e.*, weight per unit.

We agree that Borlem can choose not to make a claim for home market insurance expenses if it feels that the amount involved is insignificant.

Comment 6: Budd contends that import duties, customs user fees, and harbor maintenance fees should have been deducted from the U.S. price.

Borlem argues that none of these charges were incurred by the firm and, therefore, were not included in the U.S. prices charged to its customers.

Department's Position: Based on information in the record, we determine that, because Borlem did not incur import duties, customs user fees, and harbor maintenance fees, adjustments for these costs are inappropriate.

Comment 7: Budd alleges under 19 U.S.C. 1677b(5) that the Department should compare home market prices during the review period with home market prices during the original fair value investigation to determine whether Borlem has intentionally engaged in the tactic of establishing a fictitious home market in order to evade the antidumping duty order.

Budd argues further that the Department's cost-of-production review should examine closely the prices paid by Borlem for steel inputs used in the production of tubeless steel disc wheels because market prices in Brazil for steel inputs are not reflective of commercial reality. Budd alleges that Borlem benefits from an upstream subsidy provided to producers of the major raw material input, hot-rolled sheet and coil. Therefore, Budd contends that we should substitute the average world price for steel rather than use the prices that Borlem paid for the steel input.

Borlem argues that since an overwhelming percentage of its sales of the subject merchandise are made in the home market in comparison to its U.S. sales, there is no economic incentive for Borlem to suppress prices in its much larger home market to benefit sales in its much smaller U.S. market. Second, Borlem argues that the fictitious market provision in the antidumping law is intended to address the situation in which an exporter has a high volume of U.S. sales and only a few home market sales, the exact opposite of Borlem's sales situation. Borlem also argues that the record clearly contradicts Budd's allegations of price suppression. Borlem cites the weighted-average prices of specific home market models which have increased from the beginning of the administrative review period to the end, and its March 17, 1989 letter indicating that it did have third-country sales during the review period.

Finally, Borlem declares that Budd misunderstands the cost-of-production analysis under the antidumping law. "The purpose of a cost of production investigation is to determine whether a foreign producer has sufficient home market sales in the ordinary course of business (*i.e.*, above cost) to allow the Department to make the statutorily preferred price-to-price comparisons." Borlem argues that the obvious focus of a cost-of-production analysis is on the producer's actual cost, not its theoretical cost. Borlem concludes that neither alleged Brazilian government assistance to its steel industry, nor the average world price of steel inputs, is relevant to a cost-of-production analysis in an antidumping review.

Department's Position: Section 1319 of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act") amended section 773 of the Tariff Act of 1930 to add subsection 773(a)(5) (19 U.S.C. 1677b(5)). This amendment applies only with respect to (1) reviews initiated under sections 736(c) or 751 after the date of enactment of the 1988 Act (August 23, 1988), or (2) reviews initiated under sections 736(c) or 751 pending on the date of enactment when a request for revocation is also pending. Since this review was initiated on June 29, 1988 (53 FR 24470), Budd's claim that section 773(a)(5) applies to this administrative review is incorrect.

Notwithstanding the above error, Budd also fails to support its allegation. Under 19 U.S.C. 773(a)(5), if the Department has reason to believe that a fictitious market is being created by varying movements in the prices of different forms of the merchandise under investigation, the Department is authorized to collect information on the home market sales of all forms of the product, regardless of whether all forms are exported to the United States during the period of review. Budd fails to provide evidence, or even properly to allege, that Borlem has artificially set the home market prices of different forms of the merchandise under investigation.

Finally, based on our examination of the petitioner's allegations and the information submitted by the respondent, we conclude that there is insufficient reason to believe or suspect that sales by Borlem were otherwise intended to establish a fictitious market under 19 U.S.C. 773(a). Budd's allegations contain no specific eidence supporting its claim other than its own vague general conclusions. Moreover, Budd's claim of no third-country sales by Borlem is inaccurate. Finally, Budd's allegations that Borlem benefits from a upstream subsidy on steel inputs is outside the scope of an antidumping duty review.

Comment 8: Budd says that if the Department does consider other domestic models for comparison purposes, then it should investigate whether any of the parts supplied to Borlem were produced by Borlem do Nordeste, a related manufacturer, to see if the difference-in-merchandise adjustments reflected costs normally incurred in transactions between unrelated parties.

Borlem argues that Borlem do Nordeste did not supply any parts for the wheels being reviewed and, moreover, does not have the capacity to make the larger truck sizes.

Department's Position: Since the Department did not consider other domestic models for comparison purposes, we did not need to investigate whether any of the parts supplied to Borlem were produced by Borlem do Nordeste. Moreover, as noted above, Borlem has asserted that all its parts for merchandise under review were purchased from unrelated suppliers.

Comment 9: Borlem says that in the preliminary results the Department made a clerical error by inadvertently switching the comparison of the two U.S. models and the two home market models.

Budd points out that on page 12 of its response Borlem identifies the most similar merchandise differently than it does in the rest of its response.

Department's Position: We agree that in the preliminary results we switched the wheels we used for comparison purposes. The most similar models shown on page 12 of Borlem's response were clearly the result of a clerical error, since the rest of the response indicated that the 3106 model (7.5 x 22.5) was most similar to the 2705 model (8.25 x 25.5) and the 3107 model (7.5 x 22.5) was most similar to the 2835 model (8.25 x 22.5). We have corrected this error and have recalculated the results accordingly.

Final Results of the Review

As a result of the comments received and correction of clerical errors, we have revised our preliminary results and we determine that the weighted-average margin for the period December 12, 1987 through April 30, 1988 for Borlem is 0.44.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for Borlem is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for that firm.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1988, and who is unrelated to the reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Brazilian tubeless steel disc wheels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: June 22, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15078 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-403-802]

Preliminary Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Norway of fresh and chilled Atlantic salmon, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 0.77 Norwegian Kroner (NOK) per kilogram (2.45 percent *ad valorem*) for all producers or exporters in Norway of fresh and chilled Atlantic salmon. If this investigation proceeds normally, we will make a final determination on or before September 4, 1990.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Beth Graham, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3630 or 377-4105.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Norway of fresh and chilled Atlantic salmon. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- Regional Development Fund Loans and Grants

- National Fishery Bank of Norway Loans
- Regional Capital Tax Incentive
- Reduced Payroll Taxes
- Advance Depreciation of Business Assets
- Government-Funded Research and Development

We preliminarily determine the estimated net subsidy to be NOK 0.77 per kilogram (2.45 percent *ad valorem*) for all producers or exporters in Norway of fresh and chilled Atlantic salmon.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (55 FR 11423, March 28, 1990), the following events have occurred. On April 3, 1990, we presented a questionnaire to the Government of Norway in Washington, DC, concerning petitioner's allegations. On May 4, 1990, we postponed the preliminary determination, at the request of petitioner, to no later than June 21, 1990, pursuant to section 703(c)(1)(A) of the Act (55 FR 19787, May 11, 1990). On May 14, 1990, we received a response to our questionnaire from the Government of Norway. On May 25, 1990, we delivered a supplemental/deficiency questionnaire to the Government of Norway. We received a response to this questionnaire on June 12, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-white fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under HTS sub-heading 0302.12.0002.9. Prior to January 1, 1990, Atlantic salmon was provided for under following HTS sub-headings 0302.12.0060.8 and 0302.12.0065.3. Prior to January 1, 1989, Atlantic salmon was classifiable under item 110.2045 of the *Tariff Schedules of the United States Annotated.*

Analysis of Programs

Due to the large number of producers and exporters of salmon in Norway, we have solicited information from the Norwegian Government on an aggregate or industry-wide basis, rather than from the individual companies involved in the production or exportation of salmon from Norway. Consequently, our subsidy calculations are based on the total amount of benefits provided to the salmon industry and the total volume of salmon sales as reported by the Government of Norway.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1989. This review period corresponds to the Government of Norway's fiscal year.

According to the questionnaire responses, it was not possible, given the number of producers in the country, to solicit the requested tax information from every salmon producer. Therefore, to develop information on the usage of the tax programs alleged to benefit producers of Atlantic salmon in Norway, the Government of Norway surveyed producers located in two counties: Rogaland and Nord-Trondelag. The Government of Norway stated that it believes these two counties are representative of the Atlantic salmon industry. To ensure the impartiality of the data used in this preliminary determination, we also requested that the Government of Norway survey an additional county which we selected, Troms. Tax data from salmon producers in all three counties were used as the basis for calculating the countervailable benefits conferred upon the Norwegian Atlantic salmon industry.

Our policy with respect to grants and forgiven loans is to (1) expense recurring benefits to the year of receipt, and (2) allocate nonrecurring benefits over the useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy). For purposes of this preliminarily determination, we have expensed all grants and forgiven loans to the review period since we have inadequate information to determine whether the programs in question provide recurring or nonrecurring benefits.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination. Based on our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to producers or exporters in Norway of fresh and chilled Atlantic salmon under the following programs:

1. Regional Development Fund Loans and Grants

The Regional Development Fund (RDF) was established in 1961 to maintain and strengthen the economic base and to increase employment in regions with low levels of economic activity. Eligibility for RDF assistance is contingent upon geographic location. Only producers or manufacturers located in underdeveloped regions of Norway are eligible for assistance.

The RDF provides loan guarantees, long-term loans and grants. Loan guarantees under the RDF are discussed in the *Programs Preliminarily Determined to be Not Countervailable* section of this notice. RDF loans are provided for capital investment and are made in Norwegian kroner. According to the response of the Government of Norway, the effective interest rate on outstanding loans during the review period was between 12.06 and 12.39 percent.

Loans in the amount of NOK26,240,000 to salmon producers were written off during the review period. Exclusive of those loans written off, there were outstanding loans to salmon producers for which no interest was paid during the review period.

To determine whether loans under this program were provided on terms inconsistent with commercial considerations, we selected as our benchmark the national average long-term interest rate charged by commercial banks for corporate lending. We selected a national average rate because our analysis is on an industry-wide level, rather than on a company-specific basis. We also used a corporate average borrowing rate because, according to the Government of Norway, there are no statistics available on the average cost of borrowing for the salmon industry. During 1989, the effective interest rate on long-term corporate borrowing from commercial banks was 14.9 percent. Comparing this rate to the rate charged under the RDF program, we determine that RDF loans are provided on terms inconsistent with commercial considerations.

Because loans provided under this program are limited to producers and manufacturers located only in specified regions of Norway and are provided on terms inconsistent with commercial considerations, we preliminarily determine them to be countervailable.

Since the interest charged on RDF loans is variable, we could not employ our normal long-term methodology since we cannot calculate a future benefit stream over the term of the loan. Therefore, we used our short-term loan methodology and subtracted interest paid on RDF loans in 1989 from the interest that would have been paid at the benchmark rate of 14.9 percent. The difference is the benefit conferred upon the subject merchandise during the review period.

We are treating the amount of written-off loans as a grant. To calculate the benefit from the loans to salmon producers which the Government of Norway wrote off during 1989, we took the amount written off and deducted from that total the amount of losses recovered by RDF from settlements received in bankruptcy and estate proceedings on loans previously written off. Since we did not have the amount of recovered debts on a salmon-specific basis, we used the recovered losses on a progrm-wide basis as best information available. According to informaton from the 1989 annual report of the RDF, the program incurred losses of NOK336,127,700 in 1989, but recovered NOK8,379,104 in losses on loans and loan guarantees previously written off. The resultant percentage of recovered losses is 2.48 percent. We applied that percentage to the amount of loans to salmon producers which were written off during the review period and subtracted the result from the total amount of written off loans to determine the amount of benefit conferred upon the subject merchandise.

To calculate the benefit for the non-payment of interest on outstanding loans, we treated the amount of interest due and an interest-free, short-term loan. We calculated the benefit in this manner since the interest payments not collected appear to be deferred, not forgiven. Therefore, we calculated the amount of outstanding interest and multiplied that amount by the national average interest rate on commercial short-term loans, which was 14.95 percent during the review period, to calculate the interest savings on those loans. The short-term interest rates for 1989 which we used in calculating the average rate for the year include not only corporate borrowing, but short-term loans to consumers as well. We are using this rate because according to the response, the 1989 average short-term rate for corporate borrowing is not yet available.

We then added: (1) The interest payment differential calculated on outstanding loans; (2) the amount of loans written off (less recovered losses) during the review period; and (3) the calculated interest savings on the loans for which no interest was collected. We divided the result by total volumne of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.279 per kilogram (0.89 percent *ad valorem*). (The *ad valorem* rates cited throughout this notice have been calculated based on the total sales value of fresh and chilled Atlantic Salmon.)

The RDF also provides both investment and development grants. Investment grants may be made for the acquisition of new buildings and equipment. These grants are provided on minimum investments of NOK70,000. Business development grants are provided for surveys and planning, product development, market surveys, marketing, initiation of new business undertakings, training, and financial assistance for new enterprises. These grants are provided at a maximum of 50 percent of the external costs of the project. Both investment and business development grants were provided to salmon producers during the review period.

Because grants under the RDF are limited to producers and manufacturers located only in specified regions of Norway, we preliminarily determine them to be countervailable.

To calculate the benefit from the grants, we divided the amount of grants disbursed during the review period by total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.293 per kilogram (0.93 percent *ad valorem*). The total estimated net subsidy for RDF loans and grants is NOK 0.572 per kilkogram (1.82 percent *ad valorem*).

2. National Fishery Bank of Norway Loans

The National Fishery Bank of Norway (NFB) granted loans for the financing of fish farms from 1974 through 1987. On January 1, 1988, the Norwegian Bank for Industry took over the administration of new loans to the fishfarming industry. (For information on loans from the Norwegian Bank for Industry, see section II.2. of this notice.) Loans which had been granted to fishfarmers through 1987 are still administered by the NFB. The NFB provided long-term loans for investment in production equipment and buildings. The interest rates charged on outstanding loans are set by the Norwegian legislature and can vary over time. In 1989, the interest rate charged on outstanding loans under this program was set at 11.5 percent. According to the response of the Govenment of Norway, there are no other fees or charges, other than interest, associated with loans provided under this program.

In 1989, the NFB wrote off NOK824,000 in loans to salmon producers and NOK136, in interest to salmon producers. Also in that year, there were NOK13,038,386 in loans to salmon producers on which no interest was paid.

To determine whether loans under this program are provided on terms inconsistent with commercial considerations, we used the same benchmark as referred to under the Regional Development Fund program (see section I.1 of this notice). Comparing this benchmark to the interest rate on outstanding loans under this program, we find that loans under this program are provided on terms inconsistent with commercial considerations.

Because the bank's lending was limited to the fishing industry and its loans were provided on terms inconsistent with commercial considerations, we preliminarily determine the program to be countervailable.

We calculated the benefits conferred under this program in the same manner as previously described under the Regional Development Fund program (see section I.1. of this notice). However, unlike written-off loans under the

Regional Development Fund, we did not have information on the percentage of recovered losses of previously written-off loans. Therefore, we were unable to make a recovered loss adjustment on written-off loans under the NFB.

We then added: (1) The interest payment differential calculated on outstanding loans; (2) the amount of loans written off during the review period; and (3) the calculated interest savings on the loans for which no interest was collected. We divided the result by total volume of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.022 per kilogram (0.07 percent *ad valorem*).

c. Regional Capital Tax Incentive

The aim of this program is to encourage investment in regions in northern Norway with a weak industrial base and considerable unemployment. Funds set aside by the taxpayer under this program are deducted from taxable income. These funds must then be invested in capital assets. The maximum amount allowed to be deducted is 35 percent of taxable income. The minimum amount is NOK15,000.

Within five years of setting aside a fund under this program, 100 percent of the fund must be invested. The investment must take place in assets for use in the taxpayer's own business. When setting up the fund, an amount corresponding to 400 percent of the fund must be placed in a special interest-bearing account in a local bank to secure taxes that would have to be paid on the fund in the event that the taxpayer does not meet the obligations for investment under the program. In the year when the fund is wholly or partly invested, a fixed percentage of the invested fund is to be deducted from the depreciable value of the purchased asset. The remaining part of the invested fund is tax-free provided the invested asset is kept in the taxpayer's business for a specified number of years.

Because this program is limited to taxpayers in northern Norway, we preliminarily determine the program to be countervailable. To calculate the benefit, we took the total amount of funds deducted from taxable income by salmon producers and multiplied that amount by the tax rate of 50.8 percent to determine the amount of tax savings provided in 1989 under this program. We divided this amount by total volume of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.015 per kilogram (0.05 percent *ad valorem*).

As is our established policy, we did not take into account the reduction of the depreciable value of purchased assets in this calculation because we consider this to be secondary tax effect. (See, for example, *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada*, 51 FR 10041, March 24, 1986.)

4. Reduced Payroll Taxes

Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. The employer pays this tax six times a year. Since 1975, the amount of contributions have been geographically differentiated depending upon the municipality to which the employee is liable for taxes. The program is aimed at encouraging employment of persons in underdeveloped areas of Norway. In 1989, Norway was divided into four zones. The tax rates in each of the zones was 16.7 percent, 13.2 percent, 10 percent, and 2.2 percent in Zones one, two, three and four, respectively.

Because this program provides a benefit to specific regions in Norway, we preliminarily determine it to be countervailable. To calculate the benefit, we multiplied the amount of wages paid by salmon producers in Zones 2, 3, and 4 by their respective payroll tax rates. We then multiplied the wages paid in each of these zones by the payroll tax rate of 16.7 percent that would have been paid had the producers been located in Zone 1. We took the difference between the payroll taxes paid in Zones 2, 3, and 4 and the amount of payroll taxes they would have paid if they had paid the rate applicable in Zone 1. We divided the result by total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.135 per kilogram (0.49 percent *ad valorem*).

5. Advance Depreciation of Business Assets

The purpose of this program is to encourage investment in less-developed areas of Norway by allowing companies located in selected districts of the country to claim a higher rate of depreciation in the year in which capital assets are acquired. Eligible companies may claim an additional 25 or 40 percent depreciation beyond the standard rate of depreciation all companies in Norway may claim. Whether a company may claim an additional depreciation rate of 25 or 40 percent depends on the company's location. This amount of initial depreciation allows a greater part of the price of acquired assets to be deducted from taxable income in the year of acquisition.

Because only companies located in specific regions of Norway are eligible for this program, we preliminarily determine the program to be countervailable. To calculate the benefit from this program, we divided the tax savings provided under the program to salmon producers by the total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.008 per kilogram (0.01 percent *ad valorem*).

6. Government-Funded Aquaculture Research and Development

Government-funded aquaculture research primarily consists of basic research and research aimed at long-term economic development of aquaculture in Norway. Most of the companies which receive government funding manufacture goods and equipment for fishfarms both in Norway and abroad. Only a small minority of the fund recipients are fishfarmers.

There is no central agency which handles all aquaculture research and development in Norway. Government-funded research is planned, financed and performed through the following organizations: (1) research councils, (2) universities and colleges, (3) government research councils, (4) institutes for commissioned research, and (5) government financial institutions. Government financial institutions assist in funding developmental projects. The recipients of such grants are usually required to contribute 50 percent of the total project costs.

When the results of government-funded research and development are made public to those both within and out of the country, we find that the assistance is not countervailable (see, for example, *Final Affirmative Countervailing Duty Determination: Fresh, Chilled and Frozen Pork Products from Canada*, 54 FR 30774, July 24, 1989). According to the response of the Government of Norway, results of government aquaculture research are normally made publically available both in and outside Norway. There are, however, certain exceptions. During the review period, a grant was disbursed for the funding of one project involving a salmon producer in which publication of the results was not required or could be delayed for a number of years. Because the results of that research project will not be made publically available, we preliminarily determine the funding of that project to be countervailable. To calculate the benefit under this program, we took the amount of the grant disbursed during the review period and divided that amount by the total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.002 per kilogram (0.01 percent *ad valorem*).

II. Programs Preliminarily Determined to be Not Countervailable

1. Regional Development Fund Loan Guarantees

In addition to the RDF loans and grants discussed above, the RDF provides loan guarantees. Guarantees are provided for loans from commercial banks. RDF will guarantee up to a maximum of 50 percent of a loan, thus sharing the risk of the loan with the commercial bank. The RDF charges a guarantee fee of two percent per annum. According to information obtained by the Department, the granting of loan guarantees is a standard commercial practice in Norway. The fees charged for a loan guarantee vary depending on the creditworthiness of the customer but are generally in the range of one to two percent.

Because the fees charged for loan guarantees under the RDF correspond to the fees charged by commercial banks in Norway, we preliminarily determine that loan guarantees provided under the RDF are not made on terms inconsistent with commercial considerations, and thus are not countervailable.

2. Norwegian Bank for Industry Loans

The Norwegian Bank for Industry (NBI) was established in 1977 to provide medium- and long-term financing for the development, modernization and restructuring of Norwegian industry in accordance with the government's industrial policy. In 1988, the NBI began making loans to fishfarmers. The NBI provides loans to new enterprises and for the expansion and improvement of existing enterprises. The majority of shares are held by the Norwegian government. The rate of interest on loans provided under this program is based on the borrowing costs of the NBI.

According to the response of the Government of Norway, eligibility is not contingent upon export performance, geographic location or industrial sector. During the review period, loans under this program were provided throughout Norway to companies in such industries as mining, food processing, textiles, chemical, metals, shipbuilding, and paper and wood industries. Because the outstanding loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine this program to be not countervailable.

3. Government Bank of Agriculture Loans and Grants

The Government Bank of Agriculture administers the Norwegian Fund of Development in Agriculture which was created to provide assistance in establishing supplemental income and employment for farmers. The Fund provides both long-term loans and grants to all agricultural producers.

One of the two loans provided to salmon producers during the review period was provided interest-free. The Government of Norway states that it is standard practice under the program to provide interest-free loans. Interest-free loans will be provided if it is determined that the applicant needs an interest-free loan in order to finish a project. The interest-free loan provided to the salmon farmer was provided based on the applicant's financial situation, according to the regulations of the program.

According to the response of the Government of Norway, the Fund provides loans to all agricultural producers. The Government of Norway also states that it is standard practice to provide interest-free loans under this program. Therefore, we preliminarily determine that the program is not limited to a specific enterprise or industry, or group of enterprises or industries, and not countervailable. This is consistent with our policy that agriculture constitutes more than a specific enterprise or industry, or group of enterprises or industries (see, for example, *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada*, 50 FR 25097, June 16, 1985).

III. Programs Preliminiarily Determined to be Not Used

We preliminarily determine that the following programs were not used by producers or exporters in Norway of fresh and chilled Atlantic salmon during the review period.

1. Norwegian Industrial Fund

The Norwegian Industrial Fund is a government institution established to encourage industrial growth and adaptation in order to strengthen the competitive position of Norwegian industry and tourism. The Fund is authorized to provide grants, loans, and loan guarantees. According to the response of the Government of Norway, no grants, loans, or loan guarantees were provided to producers or exporters of the subject merchandise during the review period.

2. Norwegian Central Bank Loans to Salmon Farmers

By Royal Decree of 26 October 1988, 20 licensees were allocated to farm salmon and trout in Finnmark and 10 were allocated in Nord-Troms. In addition to these licenses, the Ministry of Finance recommended a provisional arrangement by which Norges Bank, the Norwegian central bank, would extend government-guaranteed operational loans to these producers. This program took effect in 1989; however, to date, no loans have been granted or guaranteed under this arrangement.

3. Sales Promotion Assistance

The Norwegian Export Council administers a program aimed at export promotion. Funds for this activity come from the budget of the Foreign Ministry. According to the response of the Government of Norway, no disbursements were made to producers or exporters of the subject merchandise during the review period.

4. Special Tax-Free Reserves for Export Development

Under this program, exporters may set aside funds to cover expenses for market development abroad. A maximum of 20 percent of income computed for municipal income tax purposes might be set aside and deducted from income for that year. This program was designed to allow exporters to set aside profit tax-free for a few years before starting a market research and development project abroad. According to the response of the Government of Norway, no producers or exporters of the subject merchandise have used this program.

IV. Programs Preliminarily Determined to Not Exist

We preliminarily determine that the following programs do not exist or were terminated prior to the period of our review:

1. District Development Bank Loans, Loan Guarantees and Investment Grants

According to the response of the Government of Norway, there are no District Development Banks in Norway. Respondent claims that petitioner's allegation was based on a mistranslation of the Regional Development Fund. (See, section I.1. of this notice for a description of the Regional Development Fund.)

2. Norwegian Export Council Financing

According to the response, the Norwegian Export Council does not

offer export financing to Norwegian companies.

3. Regional Development Fund Transport Subsidies

According to the response of the Government of Norway, prior to 1988, the RDF provided grants for the domestic transport of finished and semi-finished products of a certain processing value in accordance with a specified list of commodities. This list did not include fresh and chilled Atlantic salmon. This grant program was designed to reduce the disadvantages of long distances and poor transport facilities in certain areas.

4. Institute for the Financing of Structural Readaptation

According to the response of the Government of Norway, the Norwegian Bank for Industry has operated the programs of the Institute for the Financing of Structural Readaptation since 1977. (See, section II.2. of this notice for a description of the Norwegian Bank for Industry.)

5. Fund for Industrial Enterprises

According to the response of the Government of Norway, there is no Fund for Industrial Enterprises in Norway. Respondent believes petitioner's allegation was based on a mistranslation of the Norwegian Industrial Fund. (See, section II.1. for a description of the Norwegian Industrial Fund.)

6. State Industry Bank

According to the response of the Government of Norway, there is no State Industry Bank in Norway. Respondent believes that petitioner's allegation was based on a mistranslation of the Norwegian Bank for Industry. (See, section II.2. of this notice for a description of the Norwegian Bank for Industry.)

7. Transportation Subsidy for Salmon Farmers

According to the response, the Government of Norway does not provide any transportation subsidies to salmon farmers.

8. Exchange Rate Guarantees

According to the response, the Government of Norway does not administer any exchange rate guarantee programs.

9. Discounting of Export Bills

According to the response, the Government of Norway does not administer any program which discounts export bills.

10. Ministry of Industry Retraining Funds

According to the response, the Norwegian Ministry of Industry has no funds available to help companies meet the cost of retraining workers nor has it previously had such funds.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of fresh and chilled Atlantic salmon from Norway which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond for all entries of this merchandise equal to NOK 0.77 per kilogram. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC (International Trade Commission) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Commerce Department's regulations, we will hold a public hearing, if requested, on August 23, 1990, at 2 p.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than August 16, 1990. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than August 21, 1990. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. Written argument should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 21, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15077 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determinations: Welding Quality Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain welding quality steel billets.

SHORT-SUPPLY REVIEW NUMBER: 18.

SUMMARY: The Secretary of Commerce ("Secretary") determines that 17,000 metric tons of certain welding quality steel billets are in short supply for June-September 1990 under the U.S.-Finland steel arrangement.

EFFECTIVE DATE: June 22, 1990.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0165 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On May 25, 1990, the Secretary received an adequate short-supply petition from American Steel and Wire Corporation ("ASW") requesting a short-supply allowance for 17,000 metric tons of certain welding quality steel billets. The request was for material during June-September 1990 under Article 8 of the Arrangement Between the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products. ASW is requesting short supply because its regular supplier has exhausted its allotment of regular export licenses. In addition, ASW notes that various U.S. producers are unable to direct cast these billets, have no available capacity, or cannot meet ASW's residual or dimensional requirements. The Secretary conducted this review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act") and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

The requested material meets the following specifications:

Dimensions (and tolerances): 130 mm square (± 2mm) × 9.4-10.3 meters (no shorts);

Surface condition: Free of cracks and mechanical defects, pinholes shall not exceed 2mm depth;

Corner radius: 8mm ± 2mm;

Twist: 5 degree max/length of billets;

Straightness: 13mm max out-of-straight in any 1.5 meters, max 76mm out-of-straight over full billet length, no hooked ends;

Squareness: Rhomboid sections with uneven diagonals more than 8mm are unacceptable;

Ends: Perpendicular to longitudinal axis, free of detachable saw burrs, fins, shear lips, tapered cuts are unacceptable, mushroomed ends must not exceed 6mm/side, no open split ends; *Deoxidization practice and grain size:* Silicon killed, coarse grain;

Grades: 70S-3, 70S-3 (IMP), 70S-6, and ER 70S-7; All billets must be produced form direct cast steel, include controlled and certified product chemical analyses, and possess the following copper residual limits: Grades 70S-3, 70S-3 (IMP), and 70S-6: 0.07 max; Grade ER 70S-7: 0.100 max.

ACTION: On May 25, 1990, the Secretary established an official record on this short-supply request (Case Number 18) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, at the above address. On June 5, 1990, the Secretary published a notice in the Federal Register announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than June 12, 1990, and interested parties were invited to file replies to any comments not later than five days after that date. In order to determine whether this product could be supplied to ASW during June-September 1990, the Secretary sent questionnaires to Inland Steel Industries ("Inland"), Republic Engineered Steels ("Republic"), USX Corporation ("USX"), The Timken Company ("Timken"), Raritan River Steel Company ("Raritan"), Bethlehem Steel Corporation ("Bethlehem"), Georgetown Steel Company ("Georgetown"), and North Star Steel Texas, Inc. ("North Star"). The Secretary received questionnaire responses from all of the parties to which questionnaires were sent (except North Star) and three comments to the Federal Register notice.

QUESTIONNAIRE RESPONSES: Inland, Republic, and Georgetown indicated that they could not supply billets of the type included in this request because they either do not make welding quality billets, or cannot meet ASW's dimensional specifications. Raritan noted that it was not interested in supplying this product to ASW. USX noted that it no longer produces this material. Bethlehem and Timken indicated that they could each supply billets meeting ASW's specifications and could meet its entire tonnage requirements within the noted time frame. Both Bethlehem and Timken noted in their responses that they had produced billets very similar to those required by ASW. However, both companies noted they could supply this material only from a rolling rather than direct cast method.

On June 14, 1990, ASW submitted comments supporting its direct cast specification, noting that all of its short-supply requests in the past for welding quality billets have been for direct cast billets. Also, the direct cast billet requirement "is clearly stated in our specifications and is a requirement of our customers."

On June 15, 1990, the Secretary received comments from National-Standard Company ("National-Standard") and Eagle Wire Company, Incorporated ("Eagle Wire"). Both of these companies are customers of ASW and both indicated that the welding quality wire rod they require from ASW must be manufactured from direct cast billets.

CONCLUSION: Potential domestic suppliers of welding quality steel billets are either unable or unwilling to meet all the specifications required by ASW and its customers. Additionally, ASW has noted that its foreign supplier already has exhausted its supply of regular export licenses for this product. Therefore, the Secretary determines that short-supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Regulations, the Secretary grants a short-supply allowance for 17,000 metric tons of the requested billets for June-September 1990.

Dated: June 22, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15237 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public hearing and provide a comment period to solicit public opinion on a proposed addition to Amendment 1 to the Fishery Management Plan for Atlantic Swordfish. The Council is considering new and alternative means for controlling imports of swordfish from the Western North Atlantic stock as part of Amendment 1. Although several options for restricting imports were previously taken to public hearings on Amendment 1, these specific new and alternative options were not included in prior public hearings.

DATES: The public hearing will be held on July 27, 1990, 1-5 p.m. Written comments will be accepted through August 3, 1990.

ADDRESSES: All written comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699.

The hearing is scheduled to be held at the Department of Commerce Auditorium, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, (803) 571-4366.

SUPPLEMENTARY INFORMATION: The intended effect of controlling imports of

swordfish from the Western North Atlantic stock under Amendment 1 is to discourage U.S. vessels from avoiding domestic regulations by landing swordfish in foriegn ports and to discourage foreign vessels from increasing their catch from the same stock because of a possible reduction in U.S. landings. The Council believes these management objectives are important to ensure the maximum swordfish conservation benefits of Amendment 1.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-15228 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 655]

Marine Mammals; Permit Modification; Dr. Randall S. Wells (P319B)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) Scientific Research Permit No. 655 issued to Dr. Randall S. Wells, Dolphin Biology Research Associates, c/o Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060 on December 20, 1988 (53 FR 53050 is modified as follows:

The following is added to section A:

2. Three (3) of the above authorized dolphins may be attached with satellite-monitored radio transmitters and VHF tags to the dorsal fins.

Section B.3 is deleted and replaced by:

3. The Holder shall submit a death report within 24 hours of the death of any animal during the authorized activities. If two animals die during the course of the research activities the Holder shall suspend field activities and submit a mortality report detailing the circumstances of the events leading to the deaths. NMFS will review and revise the handling procedures and research protocol, if necessary, to ensure that additional mortalities do not occur. If following tagging, there is any uncertainty as to the tagged animal's survival or well-being, the research activities shall be suspended and a report submitted to the Service, for review by the Service, in consultation with the Commission.

This modification becomes effective upon publication in the **Federal Register**.

Documents in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141 or FTS 826-3141);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196 or FTS 795-6196); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (617/281-3600 or FTS 837-9200).

Dated: June 21, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-15105 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Modification #1 to Permit No. 696; Gulf Specimen Marine Laboratories, Inc.

On April 20, 1990, notice was published in the **Federal Register** (55 FR 14993) that an application for modification had been filed by the Gulf Specimen Marine Laboratories, Inc., P.O. Box 237, Panacea, Florida, 32346, to increase the number of Kemp's ridley turtles taken from 20 individuals to 100 individuals, and to modify the exiting permit period from December 22, 1989 - December 22, 1990 to May 1, 1990-April 30, 1991.

Notice is hereby given that on June 13, 1990, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a modification for the above taking, subject to certain conditions set forth in the permit issued on December 22, 1989.

Issuance of this modification, as required by the Endangered Species Act of 1973, is based on the finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the modification; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This modification was also issued in accordance with and is subject to parts 220-222 of title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The original Permit is available for review in the following offices.

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL. 33702.

Dated: June 13, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-15104 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Modification; North Gulf Oceanic

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the regulations governing endangered species permits (50 CFR parts 217-222), Scientific Research Permit No. 618 issued to North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603, published on January 26, 1988 (53 FR 2070) is modified in the following manner:

Section A.1. is changed and A.2. is added:

1. Up to 200 humpback whales (*Megaptera novaeangliae*) may be inadvertently harassed annually for three years while conducting photo-identification studies. Animals may be encountered and photographed more than once; although during any single encounter no more than three attempts may be made to approach a single individual, cow/calf pair, or discrete group of animals within 100 yards.

2. During any single encounter, each approach of an animal within a distance less than 100 yards shall be counted as a take against the authorized number.

Special Condition B.4.f. is added:

f. the number of times each animal was approached, the precise number of cow/calf pairs approached, and the distance(s) of approaches to cow/calf pairs.

This modification becomes effective upon publication in the **Federal Register**.

This modification is being implemented to clarify the nature of the takings authorized under the original permit. It does not authorize any additional taking to what was originally contemplated by the permit holder in his permit application and therefore will not result in any additional risk or disadvantage to the individual whales or their population.

Documents submitted in connection with the permit are available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East

West Highway, suite 7324, Silver Spring, MD 20910

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, AK 99802; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731-7415.

Dated: June 20, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine fisheries Service.

[FR Doc. 90-15103 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a Special Regime Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

June 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit and sublimit.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6481. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated February 9, 1990, establishes a Special Regime limit for Categories 336/636, with a Normal Regime sublimit for products not qualifying for entry under the Special Regime Program, for the period July 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 16250, published on April 23, 1990.

Requirements for participation in the Special Regime are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; and 54 FR 50425, published on December 8, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated February 9, 1990, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 18, 1988, as amended by the Memorandum of Understanding dated February 9, 1990, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Mexico and exported from Mexico during the six-month period which begins on July 1, 1990 and extends through December 31, 1990, in excess of the following levels:

Category	Special regime limit
336/636	200,000 dozen.
336/636	Normal regime sublimit (not subject to the special regime) 100,000 dozen.

Imports charged to Categories 336/636 for the periods beginning on January 1, 1989 and extending through December 31, 1989 and January 1, 1990 and extending through June 30, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the sublimit set forth in this directive.

Textile products in Categories 336/636 which are re-exported from Mexico to the United States under provisions of the Special Regime on and after July 1, 1990 must be accompanied by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in Categories 336/636 covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable sublimit listed in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-15234 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Trinidad and Tobago

June 25, 1990.

AGENCY: Committee for Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing guaranteed access levels.

EFFECTIVE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986, as amended by a Memorandum of Understanding (MOU) dated November 27, 1989, between the Governments of the United States and Trinidad and Tobago establishes guaranteed access levels for certain cotton and man-made fiber textile products, produced or manufactured in Trinidad and Tobago and exported during the period July 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 52 FR 28588, published on July 31, 1987; 54 FR 50425, published on December 6, 1989; and 54 FR 53172, published on December 27, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the November 27, 1989 MOU, but are designed to assist only in the implementation of certain of their provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of section 204 of the Agricultrual Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986, as amended, between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), July 2, 1990, guaranteed access levels are established for properly certified textile products assembled in Trinidad and Tobago from fabric formed and cut in the United States in cotton and man-made fiber textile products in the following categories which are exported from Trinidad and Tobago during the period July 1, 1990 through December 31, 1990:

Category	Guaranteed access level
331/631	100,000 dozen pairs.
342/642	100,000 dozen.
350/650	50,000 dozen.
351/651	50,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of July 28, 1987, as amended, shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-15061 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

June 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-opendings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Government of the United States and the Republic of Turkey establishes limits for the period beginning on July 1, 1990 and extending through June 30, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: June 20, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated October 19, 1988 and November 16, 1988, as amended, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period which begins on July 1, 1990 and extends through June 30, 1991, in excess of the following restraint limits:

Category	12-Mo. limit
219, 313, 314, 315, 317, 326, 617, 625, 626, 627, and 628, as a group.	91,128,852 square meters of which not more than 21,138,136 square meters shall be in 219, 25,835,496 square meters shall be in 313, 15,031,563 square meters shall be in 314, 20,196,863 square meters shall be in 315, 21,138,136 square meters shall be in 317, 2,348,682 square meters shall be in 326, 14,092,091 square meters shall be in 617, 2,348,682 square meters shall be in 625, 2,348,682 square meters shall be in 626, 2,348,682 square meters shall be in 627, 2,348,682 square meters shall be in 628.
Limits not in a group:	
200	764,485 kilograms.
237	140,450 dozen.
300/301	3,722,225 kilograms.
335	104,495 dozen.
336/636	281,820 dozen.
338/339	1,586,880 dozen of which not more than 1,022,476 dozen shall be Categories 338-S/339-S.[1]

Category	12-Mo. limit
340/640	584,084 dozen of which not more than 233,628 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340-Y/640-Y.[2]
341	567,840 dozen of which not more than 198,744 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Category 341-Y.[3]
342/642	315,619 dozen
347/348	1,594,770 dozen of which not more than 744,365 dozen shall be in trousers in Categories 347-T/348-T.[4]
350	167,310 dozen.
351/651	280,800 dozen.
361	561,800 numbers.
369-S [5]	830,740 kilograms.
410/624	950,000 square meters of which not more than 550,000 square meters shall be in Category 410.
448	25,000 dozen.
604	956,918 kilograms.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.02.02065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 347-T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: only 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1560, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[5] Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits, except Categories 410/624 and 448, for the periods July 1, 1989 through June 30, 1990 and December 1, 1989 through June 30, 1990, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for this period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-15233 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Visa Requirements To Include Coverage of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing visa arrangement between the Governments of the United States and the Republic of Turkey is being amended to include the coverage of Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 52 FR 6559, published on March 5, 1987.

Dated: June 26, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 2, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey, for which the Government of the Republic of Turkey has not issued an appropriate visa.

Effective on July 2, 1990, you are directed to amend further the directive of March 2, 1987 to include coverage of Categories 351/651. Merchandise in Categories 351/651, produced or manufactured in Turkey and exported from Turkey on and after July 1, 1990 must be accompanied by either the correct merged category or the correct category corresponding to the actual shipment.

Merchandise exported from Turkey prior to July 1, 1990 shall not be subject to visa requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-15232 Filed 6-28-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1990 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 30, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 27, May 4, 11 and 18, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 17804, 18743, 19772 and 20624) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualifed workshops to produce the commodities, military resale

commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1990:

Commodities

Strap, Webbing
5340-00-128-9011
5340-00-479-2347
Ink, Marking Stencil, Opaque
7510-00-183-7697
7510-00-183-7698
7510-00-469-7910
7510-00-419-9504

Military Resale Item No. and Name

862 Web, Cargo, Large Car Top
863 Web, Cargo, Small Car Top
864 Web, Cargo, Large Truck
865 Web, Cargo, Small Truck

Services

Grounds Maintenance
U.S. Army Reserve Center
Caesar Creek Lake, Ohio

Janitorial/Custodial
Lemma-Whyman U.S. Army Reserve Center
Charlotte Street
Canandaigua, New York

Janitorial/Custodial
Federal Building and Post Office
425 Juliana Street
Parkersburg, West Virginia

Repacking
Mare Island Naval Shipyard
Vallejo, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 90-15227 Filed 6-28-90; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 30, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodities, military resale commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Hood, Operating, Surgical
6532-00-197-8301

Dress, Hospital Duty Uniform
8410-01-277-3651
8410-01-277-3652
8410-01-277-3653
8410-01-277-3654
8410-01-277-3655
8410-01-277-3656
8410-01-277-3657
8410-01-277-3658
8410-01-277-3659
8410-01-277-3660
8410-01-277-3661
8410-01-277-3662
8410-01-277-3663

Trousers, Camouflage
8415-01-102-6285
8415-01-102-6286
8415-01-102-6287
8415-01-102-6288
8415-01-102-6289
8415-01-102-6290
8415-01-102-6291
8415-01-102-6292
8415-01-102-6293
8415-01-102-6294
8415-01-102-6295
8415-01-102-6296
8415-01-102-6297
8415-01-102-6298
8415-01-102-6299

Envelope, Photograph
8460-01-113-7576

Military Resale Item No. and Name
530 Candle, Air Freshening, Christmas Scent
780 Apron, Child, Printed Design
880 Tools, Barbecue
983 Pens, Stick, Air Force
984 Pens, Stick, Army

Services

Grounds Maintenance
Waco Distribution Center
1801 Exchange Drive
Waco, Texas

Janitorial/Custodial
Federal Building and U.S. Post Office
522 North Central Avenue
Phoenix, Arizona

Janitorial/Custodial
Veterinary Services Building 401
Hill Air Force Base, Utah

Microfilm/Microfiche Reproduction
Newark Air Force Base, Ohio

Beverly L. Milkman,
Executive Director.

[FR Doc. 90-15228 Filed 6-28-90; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposed Rule 550 Establishing Post Settlement Session Procedures for All Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new contract market rule.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted to the Commodity Futures Trading Commission ("Commission") a proposed new rule 550 which would establish an additional trading period of no more than three minutes, or a "post settlement session," for all futures and option contracts at the conclusion of their regular trading sessions. During the post settlement session transactions could take place only at a single settlement price established at the close of regular trading. Individual CME members could trade for their own accounts at the settlement price without any other limitation. Other market participants could trade only to the extent that their orders had been received and time-stamped on the trading floor prior to the close of regular trading hours but were not executed at the close. The Commission has determined that publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATES: Comments must be received by July 30, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letter dated December 19, 1989 and received by the Commission on December 20, 1989, the CME submitted for Commission approval a proposed new rule 550 pursuant to Commission Regulation 1.41(b). The proposed new CME Rule would establish an additional three-minute treading period or post settlement session for each futures and option contract at the conclusion of its regular trading session. During the post settlement session, transactions could take place only at a single settlement price established at the close of regular trading. Individual CME members could trade for their own accounts at the settlement price without any other limitation. CME members also could execute non-discretionary orders on behalf of customers so long as they had been received and time-stamped on the trading floor prior to the close of regular trading hours but were not executed at the close. The CME's proposed post settlement session raises many of the same issues raised by a recent Chicago Board of Trade ("CBT") proposal which would establish modified closing call procedures for all futures contracts traded at the CBT.[1] That CBT proposal was published for public comment on September 20, 1989, 54 FR 38719. The Commission is continuing to discuss with the CBT various of the issues raised by CBT's proposed modified closing call procedures.

In support of its proposal, the CME represented that customer market-on-close orders that arrive at the close but are not executed during the regular trading session could be filled at the settlement price during the post settlement session. CME indicated that this situation could occur, for instance, when a customer order has been entered late in the regular trading session in response to changes in the underlying cash markets or when a floor broker has not filled a customer order during regular trading hours due to some oversight. The CME believes that its proposed post settlement session would address these situations and thus facilitate the filling of customer orders.

The CME also contended that its proposal would permit a floor trader to "even up" his position if he wanted to avoid the risk of carrying an open position overnight. The CME has argued that because a floor member would know that he could adjust his position during the post settlement session, he would be better able to provide liquidity during the close because he would not have to be as concerned with managing his own position risk. The Exchange did not provide any data in support of any of these assertions.

CME has indicated that it would take a number of surveillance measures with regard to trading during a post settlement session. The Exchange would have a CME official monitor each post settlement session and determine, in consultation with the pit committee, when the session for each contract should be ended. The CME also would establish a special time bracket for trading card purposes to designate trades executed during the post settlement session. The Exchange believes that surveillance of the proposed session would not be particularly burdensome in that all transactions during the session would be at the single required settlement price.

II. Request for Comments

The Commission requests comments on any aspect of proposed CME rule 550 that members of the public believe may raise issues under the Act or the Commission's regulations. In particular, the Commission has identified the following matter for which comment may be appropriate:

1. Currently, all market participants know or should know when the market closes and how far in advance of that time they should place orders to have a reasonable chance of execution. Why then would it be necessary to establish a post settlement session where late orders would be given an additional opportunity to be filled?

2. Are there benefits or potential abuses flowing from the unfixed length of the proposed post settlement session?

3. Would the establishment of the proposed post settlement session create any potential for floor traders to take advantage of customer orders? If so, would such potential be greater than during regular trading sessions?

4. Would it be appropriate for the Exchange to adopt any particular safeguards or surveillance procedures, other than those described in this release, to prevent and/or detect any trade practice abuses identified in response to the foregoing question?

5. During the proposed post settlement session, individual CME members would be the only market participants permitted to initiate trades for their own accounts. Other market participants could take part only to the extent that they had placed orders during regular trading hours which were executable during the close but not executed. Does this distinction between CME members and other market participants raise any anticompetitive concerns under section 15 of the Act?

[1] The CBT's proposed modified closing call procedures would differ from CME's post settlement session in a limited number of ways. First, CBT's procedures would allow transactions during its closing call to occur at any price within a specified closing range of prices. Second, CBT would establish closing call procedures for futures contracts only. Finally, CBT's closing call sessions would be two minutes long.

6. Would the proposed settlement session contravene any provision of the Act or the Commission's regulations?

7. Would a post settlement session divert volume from the regular trading session? If so, how would this diversion affect the hedging and price discovery functions of the regular trading session?

8. Would there be any other costs or benefits that may result from this proposal that should be considered?

9. Are there alternative means available to achieve the purposes of the CME's proposal?

Copies of the CME's original submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views or arguments on the proposed regulation, or with respect to other materials submitted by the CME in support of its submission, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 25, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-15108 Filed 6-28-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Uniformed Services Identification Card-DEERS Enrollment; DD Form 1172; and OMB Control Number 0704-0020.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 10 minutes.

Frequency of Response: One response per respondent.

Number of Respondents: 45,000.

Annual Burden Hours: 7,500.

Annual Responses: 45,000.

Needs and Uses: DD Form 1172 is the form used by retired members, survivors, and other qualified persons to apply for Uniformed Services Identification Cards and enrollment in the Defense Enrollment Eligibility Reporting System (DEERS) data base. Identification cards are issued to identify the individual's eligibility for military benefits and privileges.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15114 Filed 6-28-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of Proposed Amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586 and 12708. The proposed changes are part of the 1990 annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 109, Professional supervision of judges; R.C.M. 305, Pretrial confinement; R.C.M. 405, Pretrial investigations; R.C.M. 703, Discovery; R.C.M. 704, Immunity; R.C.M. 910, Pleas; R.C.M. 918, Findings; R.C.M. 920, Instructions on findings; R.C.M. 1103, Preparation of records of trial. The proposed changes would also amend the following rules of evidence in part III (Military Rules of Evidence): M.R.E. 311, Evidence obtained from unlawful searches and seizures; M.R.E. 505, Classified information; M.R.E. 609, Impeachment by evidence of conviction of a crime; M.R.E. 1101, Applicability of rules of evidence. The proposed changes would also amend the following Paragraphs, part IV (Punitive Articles): Para. 37(c)—Article 112a (Wrongful use of controlled substances)—definition of use and deliberate ignorance; Para. 37(e)—Article 112a (Wrongful use of controlled substances)—maximum punishment; Para. 43(d)—Article 118 (Murder)—lesser included offenses; Para. 45(d)—Article 120 (Rape)—lesser included offenses; Para. 99a—Article 134 (Wrongful interference with an administrative action)—new paragraph.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantative or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of the Judge Advocate General, Military Justice Division (JAJM), Bolling Air Force Base, Bldg. 5663, Washington, DC 20332-6128. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major John Petrow.

DATE: Comments on the proposed changes must be received not later than September 12, 1990 for consideration by the Joint-Service Committee on Military Justice.

FOR FUTHER INFORMATION CONTACT: Major John Petrow (202) 767-1539.

Dated: June 22, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15113 Filed 6-28-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Meetings; Education Benefits Board of Actuaries

AGENCY: Department of Defense, Education Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of chapter 101, title 10, United States Code (10 U.S.C. 2009(e) et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Benjamin Gottlieb at 696-5669 by July 16, 1990. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 24, 1990, 1 p.m. to 5 p.m.

ADDRESSES: Room 1E801 #7, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Chief Actuary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (202) 696-5669.

Dated: June 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15111 Filed 6-28-90; 8:45 am]

BILLING CODE 3810-01-M

Meetings; Retirement Benefits Board of Actuaries

AGENCY: Department of Defense Retirement Benefits Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Defense Retirement Benefits Board of Actuaries has been scheduled. The Board shall review DoD actuarial methods and assumptions to be used in the valuation of retirement benefits. Persons desiring to (1) attend the DoD Retirement Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Benjamin Gottlieb at 696-5669 by July 17, 1990. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 25, 1990, 9 a.m. to 1 p.m.

ADDRESSES: Room 1E801 #7, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Chief Actuary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209-2593, (202) 696-5669.

Dated: June 25, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15112 Filed 6-28-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 26, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Post Deployment Software Support will meet on July 16-18, 1990 from 8 a.m. to 5 p.m. at the Software Engineering Institute, Pittsburgh, PA.

The purpose of this meeting will be to review Air Force Post Deployment Software Support (PDSS) capabilities and to make recommendations in these areas: Actions that AFLC might take to improve the PDSS process, technology that AFLC might evaluate for possible adoption, and strategy that AFLC might follow to develop and implement a mechanism for estimating cost and schedule. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90-15329 Filed 6-28-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Indian Nations At Risk Task Force; Meeting

AGENCY: Indian Nations At Risk Task Force.

ACTION: Notice of meeting and public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting and public hearing of the Indian Nations At Risk Task Force. This notice also describes the functions of the Task Force. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend the meeting and/or to testify at the public hearing.

DATES AND TIMES:

July 16, 1990 (Public Hearing), 9 a.m. to 5:30 p.m.

July 17, 1990 (Business Meeting), 9 a.m. to 5:30 p.m.

July 18, 1990 (Business Meeting), 8:30 a.m. to noon.

ADDRESSES: *July 16 only:* Centennial Hall Convention Center, Ballroom # 2, 101 Egan Drive, Juneau, Alaska 99801 and *July 17 and 18:* Department of Education Boardroom, Goldbelt Place, 801 West 10th Street, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Alan Ginsburg, Executive Director, Indian Nations At Risk Task Force, room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-4244. Telephone: (202) 401-3132.

SUPPLEMENTARY INFORMATION: The Indian Nations At Risk Task Force was established by the Secretary of Education on March 8, 1990. Its purpose is to advise and make recommendations to the Secretary of Education on the condition of education of American Indians/Alaska Natives in the United States. The Task Force will hold a number of public hearings around the country during its existence, and public notice will be given of all future meetings and hearings. The hearings will provide interested individuals and organizations with the opportunity to present oral and/or written testimony to the Task Force. Such testimony should focus on (1) Educational problems and barriers of American Indian/Alaska Native youth and adults to attaining higher levels of performance and attainment in education, and/or (2) efforts that can be taken to foster higher levels of quality and academic excellence in the nation's schools, colleges and universities that serve significant numbers of American Indians/Alaska Natives. The meetings and hearings of the Task Force are open to the public. The agenda includes:

Monday July 16, 1990, 9 a.m.: Public Hearing, continuing all day. If time remains after all individuals wishing to testify have had an opportunity to do so, the agenda may be altered at the discretion of the co-chairpersons.

Tuesday July 17, 1990, 9 a.m.: Task Force Business Meeting begins. Subjects include: a discussion of the Task Force's activities, papers and analyses to be commissioned, outline and content of the final report, future meeting and hearing dates and sites, and other topics to be determined at the discretion of the Task Force Chairpersons.

BEST COPY AVAILABLE

Wednesday July 18, 1990, 8:30 a.m.: Task Force Business Meeting continues, concluding at noon.

Anyone wishing to present oral testimony should call the Task Force staff at (202) 401–0039, no later than July 9, 1990, and provide the following information:

(1) Name, address and telephone number;

(2) Affiliation (if any); and

(3) A brief statement of the issues that will be addressed.

Testimony for this hearing should address specifically: The educational problems and barriers of American Indian/Alaska Native youth and adults, or (2) examples of innovative programs or practices that have been successful in meeting the educational needs of American Indians/Alaska Natives. Testimony may concern early childhood education, elementary/secondary schooling, postsecondary education and parent and community involvement.

All speakers are asked to bring with them 25 copies of their testimony. Individuals who do not register in advance will be permitted to register and speak at the hearing in order of registration, if time permits. If necessary, the hearings will be extended, at the discretion of the Task Force Chairpersons. Speakers should plan to limit their total remarks to ten minutes. While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. The Task Force will make the final determination on selection and scheduling of speakers. All written statements presented at the hearing or sent to the Task Force prior to the hearing will be incorporated into the public record.

Records are kept of the proceedings of the Task Force and are available for public inspection at the staff offices of the Task Force, from 9 a.m. to 4:30 p.m., on weekdays, excluding Federal holidays, room 4010, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202

Dated: June 25, 1990

George Fisler,

Acting Deputy Under Secretary for Planning, Budget and Evaluation U.S. Department of Education.

[FR Doc. 90–15106 Filed 6–28–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Grant to Compad, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–90CE15353 to Compad, Inc. for a computerized system for aligning the shafts of turbines and generators. The total estimated cost of the Grant award will be paid by DOE in an amount not-to-exceed $61,835.

SCOPE: The two year effort provides funds to design, build and test a prototype of an aligner of steam turbines and generator shafts in power plants. An independent firm will supply components and manage the installation and testing in the field with the assistance of two test engineers who will perform the testing.

The purpose of the project is to develop a computerized turbine aligner for steam turbines that will save energy. It is estimated that up to 160,000 barrels of crude oil could be saved each year.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Compad, Inc., a small corporation specializing in turbine research. The corporation and its president will make facilities and resources available that are not available eleswhere. The president of the firm owns the patent on this technology. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be two years from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 90–15208 Filed 6–28–90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent to Make a Non-Competitive Financial Assistance Award to American Council for Energy Efficient Economy

AGENCY: Department of Energy.

ACTION: Notice of intent to make a non-competitive financial assistance award.

SUMMARY: The Department of Energy announces the proposed award of a non-competitive Grant Number DE–FG01–90CE27506 to the American Council For An Energy Efficient Economy (ACCEC) pursuant to 10 CFR 600.7(b)(2)(i)(D). The ACCEC has previously sponsored biennial summer study conferences with Departmental support for energy efficiency in buildings. The proposed study conference will bring together outstanding researchers, program managers, policy makers, and practitioners in the field of energy conservation in buildings.

SCOPE: The objective of the grant is to, (a) facilitate the exchange of research and implementation results and encourage the advancement of knowledge, (b) publish and distribute the research papers presented at the conference on topics of special interest, and (c) edit and publish follow-up reports on conference topics of special interest. This will allow the Office of Buildings and Community Systems to present, hear and discuss the latest research information on energy efficient buildings.

ELIGIBILITY: ACEE is a widely recognized and highly prestigious professional organization established to gather, evaluate and disseminate information that stimulates the adoption of more energy efficient and economical technologies and practices as well as more effective policies pertaining to energy conservation. There is no other organization that can attract nationally and internationally known experts to participate in a week long summer study conference which is designed to facilitate the exchange of research results and also to encourage interactions among states, individuals and foreign Governments. ACEEE has been very successful in conducting study conferences which are critical for the development of new technologies and concepts in energy efficient economy. The Office of Buildings and Community Systems recommends that consideration for this grant be limited to the ACEEE.

The term of this grant shall be from approximately June 1990 through December 1990. The estimated cost of this grant is $330,395.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, PR–542, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–15207 Filed 6–28–90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award, Intent To Award a Grant to Energy Education Services, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–90CE16031 to Energy Education Services, Inc., National Energy Education Development (NEED) Project. The NEED Project will conduct four National Leadership Training Conferences having a total estimated cost of $207,425 with approximately $40,000 being provided by DOE.

SCOPE: The grant will provide funding for the NEED Project to conduct conferences where up to 500 student and adult leaders representing 100 regions of the United States will be provided the knowledge, training, and motivation to conduct energy education and related activities in their state or community.

The purpose of the project is to contribute significantly to the energy education of the public. It utilizes an existing NEED network which provides training to student and teacher leaders who are able to conduct education campaigns, science experiment fairs and school-wide energy campaigns in their own schools and communities.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the National Energy Education Development (NEED) Project of Energy Education Services, Inc. Past experience has demonstrated the capability of the grantee in achieving its objectives. The NEED Project's exclusive capability is demonstrated by its highly specialized network of state and local NEED coordinators in approximately 25 states and its support, including participation, by members of Congress who serve on the NEED Advisory Board.

It has been determined that this project has high technical merit, representing and innovative and novel idea which has a strong possiblity of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be eighteen months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–15208 Filed 6–28–90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent to Award Grant to Ohio State University

AGENCY: U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it plans to make a non-competitive financial assistance award to Ohio State University (OSU) to fund the completion of the work to develop friction reducing additives for district heating and cooling systems over a 2-year budget and project period under Grant DE–FG01–90CE26605 to OSU in the amount of $104,000.

SCOPE: The objective of this work is to advance the state-of-the-art of friction reducing additives for district heating and cooling systems. Under this grant OSU will (1) identify and test corrosive additives which are complementary with the friction reducing additives, (2) field test the additives in a small system, (3) develop methods to improve the friction reducing additives to reduce application cost, and (4) develop methods and analyze techniques for removing additives from the system.

ELIGIBILITY: The proposed grant is being restricted to OSU, because OSU has an engineering laboratory designed to test for the reduction of pumping energy losses in heating and cooling systems.

Dr. Jacques L. Zakin, the principal investigator, holds a B.A., and an M.S. in chemical engineering and a doctorate in engineering science, specializing in research and development, and has extensive experience in the field of cationic and non-ionic surfactant drag reducing additives. The OSU has an engineering laboratory designed to test for the reduction of pumping energy losses in heating and cooling systems. OSU has tested an innovative additive system which showed great promise covering four important areas involving friction reducing fluids for district heating and cooling systems. The activity to be funded is necessary to the satisfactory completion of an activity recently funded by DOE. Any competition for this activity will have a significant adverse effect on completion of the activity by OSU.

On the basis of the research and analysis results obtained from this activity OSU proposes to commercialize use of the friction reducing additives in district cooling and district heating systems in the United States.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations. *ATTN:* Calvin Lee, PR–542, 1000 Independence Avenue, SW., Washington DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–15209 Filed 6–28–90; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning the Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/IE-(EU)7, for the retransfer of 32.1 kilograms of uranium, enriched to approximately 19.95 percent in the isotope uranium-235, from the Federal Republic of Germany to Indonesia for use in fabrication of fuel elements for the research reactor operated by the National Atomic Energy Agency.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued at Washington, DC on June 12, 1990.
Richard H. Williamson,
Associate Deputy Assistant Secretary for International Affairs.
[FR Doc. 90-15210 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract No. S-EU-061, for the supply to the Commissariat a l'energie Atomique, Saclay, France of 3.02 grams of plutonium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 12, 1990.
Richard Williamson,
Associate Deputy Assistant Secretary for International Affairs.
[FR Doc. 90-15210 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

Office of Environmental Restoration and Waste Management

Solicitation of Comments from the Public on the Environmental Restoration and Waste Management Five-Year Plan, Fiscal Years 1992-1996

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of availability of the Environmental Restoration and Waste Management Five-Year Plan for public review and comment.

SUMMARY: The Department of Energy (DOE) continues to view as one of its most challenging problems the minimization, management, and cleanup of waste materials generated from Departmental operations. With the publication of this Environmental Restoration and Waste Management Five-Year Plan for Fiscal Years 1992-1996, DOE reaffirms its policy that full compliance with the letter and spirit of applicable environmental laws, regulations, and requirements is an integral part of operating DOE facilities. The fundamental goal is to ensure that risks to human health and safety and to the environment posed by the Department's past, present, and future operations are either eliminated or reduced to prescribe, safe levels by the year 2019. The Five-Year Plan for Fiscal Years 1992-1996 has now been completed. The Plan encompasses five discrete areas: Corrective Activities, Environmental Restoration, Waste Management Operations, Technology Development, and Transportation. The Department is making available for interested groups and individuals the Environmental Restoration and Waste Management Five-Year Plan for review and comment. The comment period will be approximately 90 days beginning on June 29, 1990 and will extend through September 30, 1990. All comments received by that date will be considered in the preparation of the updated plan.

DATES: Comments will be accepted through September 30, 1990.

ADDRESSES: Persons requiring a single copy of the Plan should submit their requests to Mr. Paul D. Grimm, Office of Environmental Restoration and Waste Management, EM-2, Attn: Five-Year Plan, Department of Energy, Washington, DC 20585 or call (301) 353-3555. (Multiple copies may be purchased through the Government Printing Office.) Written comments should be addressed to Mr. Grimm at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Grimm on (202) 586-7709.

Paul D. Grimm,
Acting Director, Office of Environmental Restoration and Waste Management.
[FR Doc. 90-15205 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-23-NG]

Boston Gas Co.; Order Granting Authorization to Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Boston Gas Company (Boston Gas) authorization to import natural gas from Canada. The order issued in FE Docket No. 90-20-NG authorizes Boston Gas to import up to 36.5 Bcf of Canadian natural gas per year, not to exceed 100,000 Mcf daily, over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1990.
Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 90-15207 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 90-26-NG]

Cherhill Resources Inc.; Order Granting Authorization to Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Cherhill Resources Inc. (Cherhill) authorization to import natural gas from Canada. The order issued in FE Docket No. 90-26-NG authorizes Cherhill to import up to 100 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1990.
Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 90-15208 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 90-24-NG]

Kimball Energy Corp.; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kimball Energy Corporation blanket authorization in FE Docket No. 90-24-NG to export up to 75 Bcf of domestic gas to Canada over a two-year period beginning on date of first export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 26, 1990.
Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 90-15206 Filed 6-28-90; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF84-503-001]

Pacific-Ultrapower Chinese Station, A Joint Venture; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 22, 1990.

On June 15, 1990, Pacific-Ultrapower Chinese Station, a Joint Venture, of 6055 East Washington Boulevard, City of Commerce, California 90040, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located near Chinese Camp in Tuolumne County, California. The facility consists of fluidized-bed boilers producing steam for steam turbine generators. The net electric power production of the facility is 22 MW. The primary energy source is biomass consisting of lumber mill waste and forest and orchard trimmings.

The certification of the original application was issued to Pacific-Ultrapower Chinese Station on December 18, 1984 (29 FERC ¶ 62,316). The instant recertification is requested due to a change in ownership. The facility will be owned by a partnership consisting of Pacific Energy Resources, Incorporated; Ultrapower Energy Resources, Incorporated; and CII Woodpower I, Inc. (CII). CII is a wholly-owned subsidiary of Baltimore Gas and Electric Company, a gas and electric utility company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 90-15099 Filed 6-28-90; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8900-000, Idaho]

Western Hydro Electric Inc.; Availability of Environmental Assessment

June 25, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Goose Creek Hydroelectric Project located on Goose and Brundage Creeks, in Adams County, near McCall, Idaho, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3008, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.
[FR Doc. 90-15100 Filed 6-28-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. P-8909-011]

Notice of Application Filed with the Commission

June 25, 1990.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Filing:* Transfer of License.
b. *Project No.:* 8909-011.
c. *Date Filed:* June 21, 1990.
d. *Applicant:* Bonneville Pacific Corporation and Big Wood Canal Company (Transferors) and Big Wood Canal Company and BP Hydro Associates (Transferees).
e. *Name of Project:* Dietrich Drop.
f. *Location:* On the Milner Gooding Canal in Lincoln County, Idaho.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791 (a)-825(r).
h. *Applicant Contact:* Bonneville Pacific Corporation and BP Hydro Associates— McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, (202) 371-5785.
Big Wood Canal Company—Cecil D. Hobdey, Hobdey & Hobdey, 125 Fifth Avenue, West, Gooding, ID 83330, (208) 934-4429.
i. *Commission Contact:* Mr. William Roy-Harrison, (202) 357-0845.
j. *Comment Date:* July 6, 1990.
k. *Description of Proposed Action:* On May 22, 1987, a major license was issued to Idaho Renewable Resources, Bonneville Pacific Corporation, and Big Wood Canal Company for the construction, operation, and maintenance of the Dietrich Drop Project, and on May 23, 1989, a transfer of the license was approved to the current Transferors. The proposed transfer will not result in any changes to the development. The Transferees accept all the tems and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.

1. *This notice also consists of the following standard paragraphs:* B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 90–15006 Filed 6–28–90; 8:45am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1586–000, et al.]

Sea Robin Pipeline Company, et al.; Natural gas certificate filings

June 22, 1990.

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP90–1586–000]

Take notice that on June 20, 1990, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP90–1586–000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Adobe Gas Marketing Company (Adobe), under Sea Robin's blanket certificate issued in Docket No. CP88–824–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Sea Robin proposes to transport, on an interruptible basis, up to 25,750 MMBtu of natural gas per day for Adobe. Sea Robin states that construction of facilities would not be required to provide the proposed service.

Sea Robin further states that the maximum day, average day, and annual transportation volumes would be approximately 25,750 MMBtu, 25,750 MMBtu and 9,398,750 MMBtu of natural gas respectively.

Sea Robin advises that service under Section 284.223(a) commenced May 1, 1990, as reported in Docket No. ST90–3153.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. KN Energy, Inc.

[Docket No. CP90–1577–000]

Take notice that on June 20, 1990, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP90–1577–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP89–1043–000 on behalf of Consolidated Fuel Corporation (Consolidated), all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to transport a maximum daily quantity of 10,000 Mcf, for KP&L with estimated annual and average daily quantities of 3,650 Mcf and 10,000 Mcf, respectively.

K N states that transportation service for Consolidated commenced May 16, 1990, as reported in Docket No. ST90–3284–000. K N further states that the gas would be transported from existing receipt points along K N's pipeline system to an existing interconnecting point with other pipeline companies in Kansas and Colorado. K N also indicates that no new facilities will be constructed in order to provide the proposed service.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP90–1579–000]

Take notice that on June 20, 1990, Texas Gas Transmission, Corporation, (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–1579–000, a request pursuant to §§ 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP88–686–000 for PSI, Inc. (PSI), all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport a maximum daily quantity of 150,000 MMBtu for PSI with estimated annual and average daily quantities of 54,750,000 MMBtu and 100,000 MMBtu, respectively.

Texas Gas indicates that the service is being rendered through the use of Texas Gas's existing facilities and that such service commenced May 9, 1990, as reported in Docket No. ST90–3175.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

Green Canyon Pipe Line Company Panhandle Eastern Pipe Line Company

[Docket Nos. CP90–1598–000, CP90–1599–000]

Take notice that Green Canyon Pipe Line Company, P.O. Box 1396, Houston, Texas 77251, and Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251–1642, (Applicants), filed in the above-referenced dockets prior notice requests pursuant §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89–515–000 and Docket No. CP86–585–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

[1] These prior notice requests are not consolidated.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt [2] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90–1598–000 (6–21–90)	Conoco Inc. (Producer)	40,000 40,000 14,600,000	OLA	OLA	11–22–89 FT–GC Firm	ST90–3415–000. 4–15–90.
CP90–1599–000 (6–21–90)	Vesta Energy Company (Marketer).	50,000 50,000 [2] 18,250,000	CO	KS	3–15–90 PT Interruptible	ST90–3171–000. 5–1–90.

[2] Offshore Louisiana is shown as OLA.
[3] Panhandle's quantities are in dekatherms.

5. Panhandle Eastern Pipe Line Company, Panhandle Eastern Pipe Line Company, Williston Basin Interstate Pipeline Company

[Docket Nos. CP90–1563–000,[3] CP90–1564–000, CP90–1562–000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volume, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251.

Filing Date: June 18, 1990.

Blanket Certificate Issued in Docket No.: CP86–585–000.

Information Provided in Prior Notice Request

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (DTH)—Peak day, Average day, Annual	Docket No. associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90–1563–000	PT (interruptible)	BP Oil Company	20,000 4,000 1,460,000	ST90–3141–000	Oklahoma, Kansas, Texas, Colorado, Illinois, Michigan, Ohio.	Ohio	5–1–90
CP90–1564–000	PT (interruptible)	Tri-Power Fuels, Inc.	20,000 10,000 3,650,000	ST90–3172–000	Oklahoma, Colorado, Texas, Kansas.	Kansas	5–1–90

Applicant: Williston Basin Interstate Pipeline Company, 304 East Rosser Avenue, Bismarck, North Dakota 58501.

Filing Date: June 18, 1990.

Blanket Certificate Issued in Docket No.: CP89–1118–000.

Information Provided in Prior Notice Request

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (MMBTU)—Peak day, Average day, Annual	Docket No. associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90–1562–000	IT–1 (interruptible)	Exxon Corporation	10,000 500 182,500	ST90–3260–000	Wyoming, Montana, North Dakota.	Wyoming, Montana, North Dakota.	5–3–90

[3] These prior notice requests are not consolidated.

6. K N Energy, Inc.

[Docket No. CP90-1578-000]

Take notice that on June 20, 1990, K N Energy, Inc. (K N), 12055 West 2nd Place P.O. Box 150265, Lakewood, Colorado 80215-0265, filed in Docket No. CP90-1578-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to construct and operate facilities sales taps for the delivery of natural gas to 7 end-users located along K N's system in Kansas and Nebraska under K N's blanket certificate issued in Docket No. CP83-140-000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

K N proposes to construct and operate sales taps for the customers indicated below:

Customer	Volumes (Mcf)		End use	Cost (dollars)
	Peak day	Annual		
Jenni Harrington.	2	120	Domestic	850
Mark Greene.	24	800	Irrigation.	850
Everett Vogel.	2	120	Domestic	850
Ruth Sonberger.	24	800	Irrigation.	850
Ruth Sonberger.	24	800	Irrigation.	850
Kenneth Ivan.	30	950	Irrigation.	850
Charles Sokolofsky.	2	120	Domestic	850

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Sea Robin Pipeline Company

[Docket No. CP90-1587-000]

Take notice that on June 20, 1990, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No., CP90-1587-00 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Equitable Resources Marketing Company (Equitable), under Sea Robin's blanket certificate issued in Docket No. CP88-824-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Sea Robin proposes to transport, on an interruptible basis, up to 211,150 MMBtu of natural gas per day for Equitable. Sea Robin states that construction of facilities would not be required to provide the proposed service.

Sea Robin further states that the maximum day, average day, and annual transportation volumes would be approximately 211,150 MMBtu, 211,150 MMBtu and 77,069,750 MMBtu of natural gas respectively.

Sea Robin advises that service under § 284.223(a) commenced May 3, 1990, as reported in Docket No. ST90-3311.

Comment date: August 6, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Sea Robin Pipeline Company

[Docket No. CP90-1588-000]

Take notice that on June 20, 1990, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1588-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hadson Gas System (Hadson), under Sea Robin's blanket certificate issued in Docket No. CP88-824-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Sea Robin proposes to transport, on a firm basis up to 5,150 MMBtu of natural gas per day for Hadson. Sea Robin states that construction of facilities would not be required to provide the proposed service.

Sea Robin further states that the maximum day, average day, and annual transportation volumes would be approximately 5,150 MMBtu, and 1,878,750 MMBtu of natural gas respectively.

Sea Robin advises that service under § 284.223(a) commenced April 1, 1990, as reported in Docket No. ST90-2943.

Comment date: August 6, 1990, in accordance with standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15094 Filed 6-28-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-10-22-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 22, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on June 19, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.* and Section 12.9 of the General Terms and conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheet, to Original Volume No. 1 of CNG's FERC Gas Tariff:

Substitute Fourth Revised Sheet No. 160E

This supplemental filing reflects a change in pagination to Fourth Revised Sheet No. 160E filed on June 11, 1990 in this docket. The tariff sheet is proposed to become effective on June 1, 1990.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15097 Filed 6-28-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-000, RP85-69-017, RP86-202-000, Phase I]

El Paso Natural Gas Co.; Further Postheasing Conference

Issued June 25, 1990.

A posthearing conference was held in these proceedings before the Chief Administrative Law Judge on June 22, 1990. At that conference the Chief Judge had a roll call of parties. As will be demonstrated by the official record, each and every party in this proceeding was present and answered the roll call. At the conference, all parties agreed that the public interest will best be served if further attempts at settlement could be undertaken before a final procedure is set. The parties also discussed various avenues that could be followed in the future proceedings in order that all parties might be in a position to present argument on the best method to follow if settlement is not possible. Under the circumstances, the conference was adjourned to be reconvened on July 6, 1990, at 10 a.m., before Chief Judge Curtis L. Wagner, Jr., in a hearing room of the Federal Energy Regulatory Commission at 810 First Street, NE., Washington, DC. Counsel for El Paso Natural Gas Company, Indicated Shippers, the Commission Staff, Southern California Gas Company, Pacific Gas and Electric Company, Conoco, Inc., TOC-Rocky Mountains, Inc., and the California Public Utilities Commission have requested the Chief Judge to advise all parties that one of the matters to be considered at the conference is the issue of whether the parties will waive any and all objections to the issuance of an Initial Decision in this case which was prepared by Presiding Judge Isaac D. Benkin. That request is hereby granted and all parties are hereby noticed that that issue will be considered and ruled upon at the conference on July 6.

All parties are hereby reminded that pursuant to rule 601(b)(3), 18 CFR 385.601(b) (1989), if any party fails to attend the conference on July 6, such will constitute a waiver of any order or ruling, or any agreement reached at the conference. All parties are also reminded that rule 601(b)(2), 18 CFR 385.601(b)(2) (1989) requires that any person appearing at the conference in a representative capacity must be authorized to act on behalf of that person's principal with respect to matters to be addressed at the conference.

Curtis L. Wagner, Jr.,

Chief Administrative Law Judge.

[FR Doc. 90-15095 Filed 6-28-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-134-000]

Northern Natural Gas Co., Division of Enron Corp.; Petition for Permanent Waiver

June 22, 1990.

Take notice that on June 20, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern) filed a petition requesting a permanent waiver of § 154.302(j) of the Commission's regulations and a waiver of such other Commission regulations as may be appropriate to permit it to flow through its Purchase Gas Adjustment (PGA) clause the costs of ethane and/or an ethane mixture purchased by Northern and injected into its system supply during a period commencing May 1, 1990 and extending through April 30, 1991. Northern states that it was granted an extension of the waiver on May 31, 1989 under Docket No. RP89-142-000, which expired April 30, 1990. Northern also states that it has operated pursuant to the limited waiver for two years and has demonstrated the benefits of the ethane inclusion. Northern states that the original intent of its petition remains unchanged from the original order.

Northern states it will purchase ethane only when it is economically prudent to do so based on a consideration of the price of alternate supplies, dependability of the supply, and time required to deliver the supplies to the market. Northern points out that it does not anticipate such ethane purchases will involve any changes or additions to its facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before July 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15096 Filed 6-28-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

[FRL 3792-6]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

EPA ICR #0161.04; Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides; was disapproved 05/10/90.

EPA ICR #1241.04; Suspended and Cancelled Pesticide Products: Claim for Indemnification; was approved 04/25/90; OMB #2070-0071; expires 04/30/93.

EPA ICR #1554.01; Survey of Facilities Performing Surface Coating of Miscellaneous Metal Parts and Products; was approved 04/18/90; OMB #2060-0194; expires 04/30/91.

EPA ICR #0282.03; Emission Defect Information Report/Records; was approved 04/17/90; OMB #2060-0048; expires 04/30/93.

EPA ICR #0116.03; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; was approved 04/17/90; OMB #2060-0060; expires 04/30/91.

EPA ICR #1098.02; NSPS for Onshore Natural Gas Processing Plants/ Equipment Leaks of VOC and Emissions of SO2-Reporting and Recordkeeping; was approved 02/12/90; OMB #2060-0120, expires 04/30/93.

EPA ICR #0097.04; Pesticide Use Survey; was approved 05/10/90; OMB #2070-0115; expires 05/31/93.

EPA ICR #1431.03; Sole Source Aquifer Designation Program; was approved 05/18/90; OMB #2040-0058; expires 05/31/93.

EPA ICR #1431.04; Sole Source Aquifer Demonstration Program; was approved 05/18/90; OMB #2040-0142; expires 05/30/93.

EPA ICR #1427.02; Wastewater Permit Compliance Assessment Information; was approved 06/12/90; OMB #2040-0110, expires 06/30/93.

EPA ICR #0677.03; Environmental Radiation Ambient Monitoring System (ERAMS); was approved 06/12/90; OMB #2060-0015; expires 06/30/93.

EPA ICR #1057.05; Standards of Performance for New Stationary Sources Sulfuric Acid Plants (NSPS subpart H); was approved 06/12/90; OMB #2060-0122; expires 06/30/93.

EPA ICR #0180.03; Emission Recall Audit Program Owner Questionnaire; was approved 05/23/90; OMB #2060-0046; expires 02/28/93.

EPA ICR #0184.03; Vehicle Emission Control Defect Survey was approved 05/23/90; OMB #2060-0047; expires 02/28/93.

EPA ICR #0232.05; Lead Additive Report for Refineries and Importers—Lead Additive Report for Manufacturing Facility or Site; was approved 04/30/90; OMB #2060-0066; expires 04/30/93.

EPA ICR #1054.04; NSPS for Petroleum Refineries (Subpart J): Recordkeeping and Reporting Requirements; was approved 06/12/90; OMB #2060-0022; expires 06/30/93.

EPA ICR #0222.02; Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards; was approved 12/06/89; OMB #2060-0086; expires 12/31/92.

EPA ICR #1427; Wastewater Permit Compliance Assessment Information; expiration date was extended to 05/31/90.

EPA ICR #0002.04; Pretreatment Program Information Requirements; expiration date extended to 07/31/90.

EPA ICR #1028.03; Pesticide Manufacturing Facility Census for 1986; expiration date extended to 07/31/90.

EPA ICR #0909; Information Requirements for Construction Grants Delegation to States; expiration date extended to 07/31/90.

EPA ICR #1191; National Survey of Pesticides in Drinking Water Wells; expiration date extended to 07/31/90.

Non-Renewals

EPA has not renewed the clearance for the following ICRs: National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (Subpart P)—ICR #2060-0042; and NESHAP for Inorganic Arsenic Emissions from Primary Smelters—Reporting and Recordkeeping Requirements—ICR #1089; OMB #2060-0044. The Agency collects the information associated with these ICRs from nine or fewer persons, and therefore the activity is no longer subject to OMB review under the Paperwork Reduction Act.

Dated: June 22, 1990.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 90-15211 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3782-9]

Environmental Impact Statements and Regulations, Availability of EPA Comments

Availability of EPA comments prepared June 11, 1990 through June 15, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register, dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. DS-AFS-C65001-PR, Rating EC2, Caribbean National Forest and Luquillo Experimental Forest, Land and Resource Management Plan, Additional Alternatives, PR.

Summary

EPA expressed concerns about the project because of potential adverse water quality impacts due to soil erosion and the fact that existing conditions have changed as a result of hurricane damage since the document was prepared. EPA requested that the final supplemental address these issues.

ERP No. D-USN-K11039-CA, Rating EC1, San Diego Navy Broadway Complex Redevelopment, Implementation, CA.

Summary

EPA expressed environmental concerns with various aspects of the project. EPA urged the adoption of water conservation and solid waste recycling measures and measures to protect air quality. EPA also asked for additional information and mitigation measures on project features under the Federal laws governing hazardous waste, hazardous substances contamination and control of toxic substances: RCRA, Superfund and TSCA.

Final EISs

ERP No. F-AFS-J65152-MT, Upper Yaak River Drainage Area, Timber Harvest and Road Construction/Reconstruction, Kootenai National Forest, Lincoln County, MT.

Summary

EPA has no oibjection to the preferred alternative.

ERP No. F-AFS-K65122-CA, Penney Ridge Fire Salvage and Resource Recovery Project, Implementation, Shasta-Trinity National Forest, Trinity County, CA.

Summary

EPA has no objection to the proposed action.

ERP No. F-FAA-F51036-OH, Toledo Express Airport Expansion, Airport Layout Plan, Approval and Funding, Lucas County, OH.

Summary

EPA feels FAA has responded affirmatively to EPA's concerns by including additional noise analysis within the final EIS, modifying the scope of the part 150 Noise Compatibility Process to include the Ldn 60 contour, and by addressing the NEPA procedural questions through a cooperative systematic study to be conducted in consultation with the Council on Environmental Quality. In addition, FAA has committed to cary out appropriate wetland delineations and mitigation plan development in response to EPA's concerns.

ERP No. F-NOA-A91055-00, Swim-With-The-Dolphin Programs, Use of Marine Mammals, Implementation.

Summary

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F-UAF-K11036-CA, George Air Force Base Closure, 37th Tactical Fighter Wing, Relocation to Mountain Home AFB, Idaho and Davis Mountain AFB in Arizona, Implementation, San Bernardino County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: June 26, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-15220 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3782-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements

Filed June 18, 1990 Through June 22, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900214, Final, AFS, MT, Wilson Creek Gold Project, Exploration and Mining Operating Plan Approval, Elkhorn Mountain Range, Helena National Forest, Helena County, MT, *Due:* July 30, 1990, *Contact:* Dennis Heffner, (406) 449-5201.

EIS No. 900215, Draft, NPS, VA, Roanoke River/Blue Ridge Parkway Extension, Recreational and Interpretive Facilities, Construction, Roanoke/Vinton City Limits to Smith Mountain Lake, Land Acquisition and Funding, COE section 10 and 404 Permits, Bedford, Frnklin and Roanoke Counties, VA, *Due:* August 13, 1990, *Contact:* Mary McMenimer, (303) 969-2410.

EIS No. 900216, DRevised, FHW, ND, Washington Street Corridor Improvements, Century Avenue to Bismarck Expressway, Burlington Northern Railroad Washington Street Underpass, Funding, Burleigh County, ND, *Due:* August 13, 1990, *Contact:* John C. Kliethermes, (701) 420-0012.

EIS No. 900217, DSuppl, EPA, FL, Tallahassee-Leon County Wastewater Management Plan, Centralization and Decentralization for Wastewater Conveyance and Treatment at Lake Bradford Road Plant and T.P. Smith Facility, Grant, Tallahasse, Leon County, FL, *Due:* August 24, 1990, *Contact:* Heinz J. Mueller, (404) 347-3776.

EIS No. 900218, Draft, USN, NJ, Naval Weapons Station Earle Trestle Replacement, Construction, COE Section 10 Permit, Sandy Hook Bay, Colts Neck, Monmouth County, NJ, *Due:* August 13, 1990, *Contact:* Robert Ostermueller, (215) 597-6282.

EIS No. 900219, LDraft, AFS, WA, Upper Klickitat River Wild and Scenic River Study, Designation or Nondesignation, National Wild and Scenic River System, Yakima Indian Nation, Klickitat County, WA, *Due:* August 13, 1990, *Contact:* Steve Meller, (503) 308-2333.

EIS No. 900220, Final, MAS, FRO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program, Modifications and Implementation, *Due:* July 30, 1990, *Contact:* Dr. Dudley C. McConnell, (202) 453-1587.

EIS No. 900221, Final, USN, GU, TT, Relocatable Over-the-Horizon Radar (ROTHR)/Electronic Installations in the Western Pacific, Construction and Operation, Tinian, Commonwealth of the Northern Mariana Islands and Guam, *Due:* July 30, 1990, *Contact:* P. Hiller, (808) 471-2866.

EIS No. 900222, Final, USA, MA, NJ, AZ, Fort Huachuca, Fort Devens and Fort Monmouth Base Realignment Transfer of Missions and Functions, Implementation, Cochise County, AZ, Worcester and Middlesex Counties, MA and Monmouth County, NJ, *Due:* July 30, 1990, *Contact:* Ron Gemfried, (213) 894-8079.

EIS No. 900223, Final, AFS, WA, Gifford Pinchot National Forest, Land and Resource Management Plan, Implementation, Clark, Lewis, Klickitat, Cowlitz, Skamania and Yakima Counties, WA, *Due:* July 30, 1990, *Contact:* Gregory Cox, (206) 696-7500.

Amended Notices

EIS No. 900130, Draft, AFS, CA, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispensers, Implementation, Plumas and Sierra Counties, CA, *Due:* June 29, 1990, *Contact:* R. C. Bennett, (916) 283-1267.

Published FR 4-27-90—Review period extended.

EIS No. 900199, Final, AFS, WA, Mount Baker-Snoqualmie National Forest, Land and Resource Management Plan, Implementation, King, Pierce, Skagit, Snohomish and Whatcom Counties, WA, *Due:* July 30, 1990, *Contact:* Robert Dunblazier, (206) 442-4688.

Published FR 06-15-90—Review Period reestablished.

Dated: June 26, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-15221 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

[PF-539; FRL-3740-8]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-2386.	1921 Jefferson Davis Hwy., Arlington, VA.
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	Do.
Phil Hutton (PM 17).	Rm. 207, CM #2, 703-557-2600.	Do.
Susan Lewis (PM 21).	Rm. 227, CM#2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 0F3691.* BASF Corp., 300 Cherry Hill Rd., Parsippany, NJ 07054, proposes

to amend 40 CFR 180.412 by establishing a regulation to permit combined residues of the herbicide 2-[(2-ethoxyimino)butyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on strawberries at 10.0 ppm. The proposed analytical method for determining residues of poast herbicide and its metabolites is gas chromatography. (PM 25)

2. *PP 0F3833.* Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.407 by establishing a regulation to permit combined residues of thiodicarb and its metabolite, methomyl (S-methyl N-((methylcarbamoyl)oxy) thioacetimidate) in or on apples at 3.0 ppm. Analytical method used is gas liquid chromatography. (PM 12)

3. *PP 0F3841.* Rhone-Poulenc Ag. Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing a regulation to permit residues of the fungicide aluminum tris (o-ethyl phosphonate) in or on the crop group brassica at 45 ppm. Analytical method used is flame photometric gas chromatography. (PM 21)

4. *PP 0F3842.* ICI Americas, Inc., Concord Pike & New Murphy Rd., Wilmington, DE 19897, proposes to amend 40 CFR 180.411(c) by establishing a regulation to permit combined residues of the herbicide [R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of [R]-butyl-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-P-butyl), all expressed as fluazifop, at 0.05 ppm in or on citrus fruit. Analytical method used is high-performance liquid gas chromatography with ultraviolet detection. (PM 23)

5. *PP 0F3847.* Sandoz Crop Protection Corp., 1300 East Toughy Ave., Des Plaines, IL, proposes to amend 40 CFR 180.427 by establishing a regulation to permit residues of fluvalinate [(RS)-alpha-cyano-3-phenoxybenzyl (R)-2-[2-chloro-4-(trifluoromethyl)-anilino]-3-methylbutanoate] in or on alfalfa hay at 5.5 ppm, alfalfa forage (green) at 1.5 ppm, alfalfa seed at 0.25 ppm; and by increasing residues of fluvalinate in or on fat of cattle, goats, hogs, horses, poultry, and sheep from 0.01 ppm to 0.25 ppm, and milk from .01 ppm to 0.05 ppm. Analytical method used is gas chromatography. (PM 15)

6. *PP 0F3848.* Rhone-Poulenc AG Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.324 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) in or on rice grain and rice straw at 0.10 ppm. Analytical method used is gas chromatography. (PM 25)

7. *PP 0F3851* Concep Membrane, Inc., P.O. Box 6069, Bend, OR 97706, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the insecticide E,E-8,10-dodecadien-1-ol in or on all raw agricultural commodities. (PM 17)

8. *PP 0F3852.* E.I. du Pont and Co., P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.379 by establishing a regulation to permit residues of the pesticide esfenvalerate [S-alpha-cyano-(3-phenoxyphenyl)methyl *S*-4-chloro-alpha(1-methylethyl)benzeneacetate] in or on alfalfa, green forage, and hay at 15.0 ppm; lettuce, head at 5.0 ppm; and alfalfa seed at 1.0 ppm. The analytical method is gas liquid chromatography. (PM 15)

9. *PP 0F3855.* BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709-3258, proposes to amend 40 CFR 180.412 by establishing a regulation to permit combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on tree nuts at 0.2 ppm and almond hulls at 2.0 ppm. The proposed analytical method is gas chromatography using sulfur-specific flame photometric detection. (PM 25)

10. *PP 0F3856.* Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.381 by establishing a regulation to permit combined residues of the herbicide oxyfluorfen, 2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-trifluoromethyl benzene, and its metabolites containing the diphenyl ether linkage in or on citrus fruits at 0.05 ppm. (PM 23)

11. *FAP 0H5594.* BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR Part 186 by establishing a feed additive regulation to permit residues of the herbicide 3,7-dichloroquinolinecarboxylic acid in or on the animal feed rice bran at 15.0 ppm. (PM 25)

12. *FAP 0H5598.* ICI Americas, Inc., Concord Pike & New Murphy Rd., Wilmington, DE 19897, proposes to amend 40 CFR 186.3250 by establishing a regulation for a feed additive tolerance to permit residues of [R]-2-[4-[[5-(trifluoromethyl)]-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of [R]-butyl-2-[4-[[5-trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-P-butyl), all expressed as fluazifop, at 0.10 ppm in or on dried citrus pulp. The analytical method used is high-performance liquid gas chromatography with ultraviolet detection. (PM 23)

Authority: 7 U.S.C. 136a.

Dated: June 12, 1990.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-15197 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-100076; FRL-3767-8]

Midwest Research Institute; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Midwest Research Institute (MRI) has been awarded a contract to perform work for the EPA Office of Air Quality Planning and Standards and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to MRI consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable MRI to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: Midwest Research Institute will be given access to this information no sooner than July 5, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4379, MRI will prepare an Alternative Control Techniques (ACT) document and develop a rule to be referenced by the California Federal Implementation Plan (FIP) for the control of volatile organic compounds (VOC) emitted from pesticides. MRI will provide: (1) The estimation of VOC emissions from the application of pesticides in California, (2) the characterization of the formulation process and the end use patterns for the industry profile, (3) the examination of control options to reduce VOC emissions, and (4) the recommendation of control options to be applied in FIP and ACT (which will include estimates of control efficiency costs). The environmental, economic, and other impacts of the control alternatives to be adopted into the FIP will be analyzed by MRI in detail as they apply to California. MRI will also develop the regulatory language for the implementation of the selected control measures.

The Office of Air Quality Planning and Standards and the Office of Pesticide Programs have jointly determined that Contract No. 68-02-4379, involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with MRI prohibits use of the information for any purpose other than the purposes specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, MRI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Air Quality Planning and Standards. All information supplied to MRI by EPA for use in connection with this contract will be returned to EPA when MRI has completed its work.

Dated: June 20, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-15199 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-36140A; FRL-3768-1]

Inert Ingredients in Pesticide Products; Policy Statement; Revision and Modification of Lists; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is correcting a notice that revised and modified previously published lists of inert ingredients in pesticide products that are of toxicological concern and require priority testing.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs, Registration Support Branch, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Sw., Washington, DC 20460, (703)-557-7700.

SUPPLEMENTARY INFORMATION: In FR doc. 89-27213, appearing in the Federal Register of November 22, 1989 (54 FR 48314), the following corrections are made:

1. In List 2 in the second column of page 48315, correct the CAS No. 5131-66-8 for the chemical 1-Butoxy-2-propanol to read, "5131-66-8."

2. In List 2 in the second column of page 48315, the entry "Isopropyl phenols Petroleum hydrocarbons" with the corresponding CAS No. 25168-06-3 is corrected to specify that the entry is in fact two separate chemicals, Isopropyl phenols with the CAS No. 25168-06-3 and Petroleum hydrocarbons with no corresponding CAS No. listed.

3. In List 2 in the third column of page 48315, the entry "Methyl methacrylate Xylene-range aromatic solvents" with the corresponding CAS No. 80-62-6 is corrected to specify that the entry is in fact two separate chemicals, methyl methacrylate with the corresponding CAS No. 80-62-6 and Xylene-range aromatic solvents with no corresponding CAS No. listed.

Dated: June 11, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-15195 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-D

[PP 9G3700 and 7G3465/T594; FRL 3743-3]

Clofentezine; Initial Filings and Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances and has extended temporary tolerances for clofentezine, in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire April 2, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,Washington, DC 20460. Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703)-557-2386.

SUPPLEMENTARY INFORMATION: EPA gives notice that it has established and extended temporary tolerances relating to the initial filings and extensions of tolerances for clofentezine, in or on certain raw agricultural commodities, as follows:

Initial Filing

1. PP 9G3700 Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, has requested in pesticide petition (PP) 9G3700 the establishment of a temporary tolerance for clofentezine [3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine] in or on the raw agricultural commodity walnut (meat) at 0.02 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 45639-EUP-41, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

Extension

2. PP 7G3465 Nor-Am Chemical Co. requested EPA by a notice issued in the Federal Register of May 11, 1988 (53 FR 16780), to establish temporary tolerances for clofentezine [3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine] in or on the raw agricultural commodities

almond hulls at 15.0 ppm, almond nutmeat at .04 ppm, peaches at 1.0 ppm, nectarines at 1.0 ppm, meat and meat byproducts of cattle at 0.05 ppm, cattle kidney at 0.05 ppm, cattle liver at 0.20 ppm, and milk at 0.05 ppm.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 45639–EUP–33, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire April 2, 1991. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolernnces or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: June 15, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-15200 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-66141; FRL-3772-6]

Pesticide Products Containing Phenylmercury and Other Mercury Compounds; Receipt of Requests for Voluntary Cancellation and Amendments To Delete Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Pesticide cancellations and amendments.

SUMMARY: In response to concerns by EPA regarding the risks associated with use of mercury products in interior paints and coatings, the registrants have applied to amend the registrations for certain mercury products to delete labeling for use in interior paints and coatings and have requested voluntary cancellation of the registrations for certain other mercury products labeled for use in paints and coatings. All stocks of affected products, including stocks in the hands of end-users, must be stickered by August 20, 1990, with language prohibiting use in interior paints and coatings. Existing stocks of cancelled products which have been properly stickered may be sold and used until June 27, 1991.

DATES: The cancellation order and amendments to delete uses incorporated in this notice will become effective July 2, 1990. Use of cancelled and amended mercury products in interior paints and coatings will be unlawful effective on August 20, 1990. Existing stocks of cancelled products which have been properly stickered may be sold and used until June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, 2805 Jefferson Davis Highway, Arlington, VA (703) 308–8010.

SUPPLEMENTARY INFORMATION:

I. EPA Conclusions Concerning Use of Mercury in Interior Paints and Coatings

Following receipt of reports concerning a 4-year old child who developed acrodynia (a rare form of mercury poisoning) after his home was painted with paint containing mercury and a followup investigation by the Centers for Disease Control and the State of Michigan of mercury levels in other homes painted with similar paint, EPA initiated a comprehensive review of the risks and benefits associated with the use of mercurial compounds in paints and coatings. After evaluating the available evidence concerning exposure to mercury resulting from use in paints and coatings, toxicity of mercury and mercury compounds, and availability of alternative biocides, EPA concluded that the continued use of mercurial compounds in the manufacture of interior paints and coatings would present an unreasonable risk of adverse health effects. EPA also concluded that the available data were insufficient to enable full evaluation of the risks and benefits associated with use of mercurial compounds in exterior paints and coatings, and that the registrants should develop and submit additional data concerning this use.

After completing its review, EPA initiated discussions with the registrants of mercury products labeled for use in paints and coatings to determine whether the necessary changes in the legal status of such products could be achieved by voluntary action. The registrants then agreed to submit the amendments to delete uses and the requests for voluntary cancellation described in this notice. This notice is being published to advise the public of the changes in sale, distribution, and use to be implemented for the affected products, and to meet the legal requirements established by FIFRA section 6(f)(1), 7 U.S.C. 136d(f)(1).

II. Conditional Amendments to Delete Use

Cosan Chemical Corporation and Troy Chemical Corporation have applied to conditionally amend pursuant to FIFRA section 3(c)(7)(a) their registrations for certain pesticide products containing phenylmercuric acetate (PMA) which are presently labeled for use in formulation of paints and coatings. The names and EPA registration numbers for these products are as follows:

Cosan PMA–100	EPA Registration No. 8480–5
Trovsan PMA–100	EPA Registration No. 5383–4

EPA intends to grant the applications to amend the registrations for these products on July 2, 1990. The revised labeling required by the amended registrations for these products will: (1) Prohibit use of these products in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limit use of these products to only those exterior paints and coatings which are labeled with a specific warning against interior use, and (3) specify maximum application rates for use of these products in exterior paints and coatings. The registrants have also agreed as a condition of registration to develop and submit additional data pertaining to the risks and benefits associated with continued use of PMA products in exterior paints and coatings.

For each of the products concerning which Cosan Chemical Corporation or Troy Chemical Corporation has submitted an application for conditional amendment, the registrant will be required to affix a sticker incorporating the new label requirements to all stocks of the product distributed or sold by the registrant on or after July 23, 1990. For each product, the registrant will also be required by July 23, 1990, to deliver stickers to all end-users who are holding inventory of the product. Each end-user will be required to affix the stickers on or before August 20, 1990, to all stocks of the product remaining in its inventory. After August 20, 1990, use of any stocks of these products in a manner inconsistent with the amended labeling will be unlawful.

Vikon Chemical Company has also applied to conditionally amend pursuant to FIFRA section 3(c)(7)(a) its registrations for MERKYL MAP, EPA Registration No. 6390–20 and VIKON PMA–30, EPA Registration No. 6390–21, products which are presently labeled for use in manufacture of outdoor fabrics and in paint, to delete all label instructions and claims pertaining to use of these products in paint. EPA intends to grant the applications to amend the registrations for these products on July 2, 1990. Vikon will be required to affix revised labeling to all stocks of these products which are distributed or sold by Vikon on or after July 23, 1990. Vikon will also be required to deliver revised labels to each of its customers holding stocks of these products by July 23, 1990.

III. Requests For Voluntary Cancellation

Akzo Chemicals, Inc., Cosan Chemical Corporation, Huls America, Inc., Thor Chemicals, Inc., and Troy Chemical Corporation have each submitted requests pursuant to FIFRA section 6(f)(1) for voluntary cancellation of the registrations for particular pesticide products which contain phenylmercuric acetate (PMA), di(phenylmercuric) dodecenyl succinate (PMDS), phenylmercuric oleate (PMO), or 3-(chloromethoxy)propylmercuric acetate (CMPA), and which are labeled for use in formulation of paints and coatings. The registrants, product names, and EPA registration numbers for these products are as follows:

Registrant	Product	EPA Registration No.
Akzo Chemicals, Inc.	Intercide 60	34688-24
Cosan Corporation.	Cosan PMO–30.	8480-1
Cosan Corporation.	Cosan PMA–30.	8480-2
Huls America, Inc.	Super Ad-R Fungicide.	1100-37
Huls America, Inc.	PMA–15	1100-56
Huls America, Inc.	PMA–60	1100-60
Thor Chemicals, Inc.	Thor PMA–100.	53034-1
Troy Chemical Corporation.	Troysen PMA–30.	5383-4
Troy Chemical Corporation.	Troysen CMP Acetate.	5383-10
Troy Chemical Corporation.	Troysen PMDS–10.	5383-82

EPA intends to grant the requests for voluntary cancellation of the registrations for the above products on July 2, 1990.

IV. Existing Stocks

EPA has decided that it will permit continued sale and use of existing stocks of voluntarily cancelled products containing PMA, PMDS, PMO, and CMPA, for manufacture and formulation of exterior paints and coatings until June 27, 1991, subject to specific mandatory terms and conditions. FIFRA section 6(a)(1), 7 U.S.C. section 136d(a)(1), provides that EPA may permit continued sale and use of existing stocks of cancelled products for specific uses and subject to specific conditions, if EPA determines "that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment." The terms and conditions which will govern sale and use of existing stocks of cancelled mercury products are essentially identical to the amended terms and conditions which will apply to the specific mercury products that will remain registered for use in exterior paints and coatings. Thus, the analysis of risks and benefits upon which the Agency's decision to permit continued registration is based also provides the basis for the substantive determination required by FIFRA section 6(f)(1).

Each registrant of a voluntarily cancelled mercury product has submitted the text for a sticker which includes provisions that: (1) Prohibit use of the product in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limit use of the product to only those exterior paints and coatings which are labeled with a specific warning against interior use, (3) specify maximum application rates for use of the product in exterior paints and coatings, and (4) provide that sale, distribution, and use of the product will be unlawful after June 27, 1991. Except for the expiration date for use of existing stocks, these are the same provisions included in the revised labeling for PMA paint and coating products with amended registrations.

The cancellation order will require each registrant or other person to affix a sticker incorporating the new label requirements to all stocks of the product distributed or sold by on or after July 23, 1990. The cancellation order also will require each registrant of a cancelled product to deliver stickers by July 23, 1990, to all end-users who are holding inventory of the product, and will provide that stocks of each cancelled product remaining in the inventory of end-users may not be lawfully used after August 20, 1990, unless the end-user has affixed the new sticker to the product and all use of the product is in full conformity with the instructions on the sticker.

V. Cancellation Order

Effective on July 2, 1990, the registrations for the following pesticide products are cancelled pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136d(f)(1):

Registrant	Product	EPA Registration No.
Akzo Chemicals, Inc.	Intercide 60	34688-24
Cosan Corporation.	Cosan PMO–30.	8480-1
Cosan Corporation.	Cosan PMA–30.	8480-2

Registrant	Product	EPA Registration No.
Huls America, Inc.	Super Ad-It Fungicide.	1100-37
Huls America, Inc.	PMA-16	1100-58
Huls America, Inc.	PMA-60	1100-60
Thor Chemicals, Inc.	Thor PMA-100	53034-1
Troy Chemical Corporation.	Troysan PMA-30.	5383-4
Troy Chemical Corporation.	Troysan CMP Acetate.	5383-10
Troy Chemical Corporation.	Troysan PMDS-10.	5383-62

Effective on July 2, 1990, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. sections 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell, or to use for any pesticidal purpose, any of these cancelled products except in full compliance with all of the provisions concerning existing stocks set forth below.

The Agency has determined that existing stocks of each pesticide product cancelled by this order may be sold, distributed, and used until June 27, 1991, subject to all of the following mandatory terms and conditions. For each cancelled product, the registrant has submitted as part of its request for voluntary cancellation under FIFRA section 6(f)(1) the text for a sticker which includes label provisions: (1) Prohibiting use of the product in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limiting use of the product in exterior paints and coatings to only those products which are labeled with a warning against interior use, (3) specifying maximum application rates for use in exterior paints and coatings, and (4) providing that sale, distribution, and use of the product will be unlawful after June 27, 1991. Effective on July 23, 1990, no person shall distribute or sell in any State any quantity of a pesticide product cancelled by this order unless the approved sticker for that product has been affixed to each container of the product. Effective on August 20, 1990, no person shall use in any State any quantity of a pesticide product cancelled by this order unless the approved sticker for that product has been affixed to each container of the product and such use is in full conformity with all of the instructions on the sticker. For each cancelled product, the registrant shall by July 23, 1990, deliver to, and verify receipt by, each customer or other end-user holding inventory of the product: (1) Quantities of the approved sticker for that product which are sufficient to affix the sticker to each container of the product in the customer's or end-user's inventory, and (2) a letter advising the customer or end-user of the effective dates for the revised labeling on the stickers and instructing the customer or end-user to affix the sticker to each container of the product on or before August 20, 1990.

Dated: June 25, 1990.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 90-15089 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-51750; FRL 3772-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 162 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 90-1118, 90-1119, 90-1173, 90-1176, 90-1177, 90-1178, 90-1181, 90-1183, 90-1184, 90-1185, 90-1186, 90-1191, 90-1192, 90-1193, 90-1194, 90-1195, 90-1196, 90-1197, 90-1198, 90-1199, 90-1200, 90-1201, 90-1202, 90-1203, 90-1204, 90-1205, 90-1206, 90-1207, 90-1208, 90-1209, 90-1210, 90-1211, 90-1212, 90-1213, 90-1214, 90-1215, 90-1216, 90-1217, 90-1218, 90-1219, 90-1220, 90-1221, 90-1222, 90-1223, 90-1224, 90-1225, 90-1226, 90-1227, 90-1228, 90-1229, 90-1230, 90-1231, 90-1232, 90-1233, 90-1234, 90-1235, 90-1236, 90-1237, 90-1238, 90-1239, 90-1240, 90-1241, 90-1242, 90-1243, 90-1244, 90-1245, 90-1246, 90-1247, 90-1248, 90-1249, 90-1250, 90-1251, 90-1252, 90-1253, 90-1254, 90-1255, 90-1256, 90-1257, 90-1258, 90-1259, 90-1260, 90-1261, 90-1262, 90-1263, 90-1264, 90-1265, 90-1266, 90-1267, 90-1268, 90-1269, 90-1270, 90-1271, July 21, 1990.

P 90-1272, 90-1273, 90-1274, 90-1275, 90-1276, 90-1277, July 22, 1990.

P 90-1278, August 27, 1990.

P 90-1279, 90-1280, July 22, 1990.

P 90-1281, July 23, 1990.

P 90-1282, 90-1283, 90-1284, 90-1285, July 25, 1990.

P 90-1286, 90-1287, 90-1288, 90-1289, 90-1290, July 28, 1990.

P 90-1291, 90-1292, 90-1294, 90-1295, 90-1296, 90-1297, 90-1298, 90-1299, 90-1300, 90-1301, 90-1302, 90-1303, 90-1304, 90-1305, 90-1306, 90-1307, 90-1308, July 29, 1990.

P 90-1309, 90-1310, 90-1311, 90-1312, July 30, 1990.

P 90-1313, 90-1314, 90-1315, 90-1316, 90-1317, July 31, 1990.

P 90-1318, 90-1319, 90-1320, 90-1321, 90-1322, 90-1323, 90-1324, August 1, 1990.

P 90-1325, August 4, 1990.

P 90-1326, 90-1327, 90-1329, 90-1330, 90-1331, 90-1332, 90-1333, 90-1334, 90-1335, 90-1336, 90-1337, August 5, 1990.

P 90-1338, 90-1339, 90-1340, 90-1341, 90-1342, 90-1343, August 6, 1990.

Written comments by:

P 90-1118, 90-1119, 90-1173, 90-1176, 90-1177, 90-1178, 90-1181, 90-1183, 90-1184, 90-1185, 90-1186, 90-1191, 90-1192, 90-1193, 90-1194, 90-1195, 90-1196, 90-1197, 90-1198, 90-1199, 90-1200, 90-1201, 90-1202, 90-1203, 90-1204, 90-1205, 90-1206, 90-1207, 90-1208, 90-1209, 90-1210, 90-1211, 90-1212, 90-1213, 90-1214, 90-1215, 90-1216, 90-1217, 90-1218, 90-1219, 90-1220, 90-1221, 90-1222, 90-1223, 90-1224, 90-1225, 90-1226, 90-1227, 90-1228, 90-1229, 90-1230, 90-1231, 90-1232, 90-1233, 90-1234, 90-1235, 90-1236, 90-1237, 90-1238, 90-1239, 90-1240, 90-1241, 90-1242, 90-1243, 90-1244, 90-1245, 90-1246, 90-1247, 90-1248, 90-1249, 90-1250, 90-1251, 90-1252, 90-1253, 90-1254, 90-1255, 90-1256, 90-1257, 90-1258, 90-1259, 90-1260, 90-1261, 90-1262, 90-1263, 90-1264, 90-1265, 90-1266, 90-1267, 90-1268, 90-1269, 90-1270, 90-1271, July 21, 1990.

P 90-1272, 90-1273, 90-1274, 90-1275, 90-1276, 90-1277, July 22, 1990.

P 90-1278, August 27, 1990.

P 90-1279, 90-1280, July 22, 1990.

P 90-1281, July 23, 1990.

P 90-1282, 90-1283, 90-1284, 90-1285, July 25, 1990.

P 90-1286, 90-1287, 90-1288, 90-1289, 90-1290, July 28, 1990.

P 90-1291, 90-1292, 90-1294, 90-1295, 90-1296, 90-1297, 90-1298, 90-1299, 90-1300, 90-1301, 90-1302, 90-1303, 90-1304, 90-1305, 90-1306, 90-1307, 90-1308, July 29, 1990.

P 90-1309, 90-1310, 90-1311, 90-1312, July 30, 1990.

P 90-1313, 90-1314, 90-1315, 90-1316, 90-1317, July 1, 1990.

P 90-1318, 90-1319, 90-1320, 90-1321, 90-1322, 90-1323, 90-1324, July 2, 1990.

P 90-1325, July 5, 1990.

P 90-1326, 90-1327, 90-1329, 90-1330, 90-1331, 90-1332, 90-1333, 90-1334, 90-1335, 90-1336, 90-1337, July 6, 1990.

P 90-1338, 90-1339, 90-1340, 90-1341, 90-1342, 90-1343, July 7, 1990.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51749)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 90-1118

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1119

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1173

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1176

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1177

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1178

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1181

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1183

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1184

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1185

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1186

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1191

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1192

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1193

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1194

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1196

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1198

Manufacturer. S.C. Johnson, & Son, Inc.

Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.

Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1197
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1198
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1199
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1200
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1201
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1202
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1203
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1204
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1205
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1206
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1207
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1208
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1209
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1210
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1211
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1212
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1213
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1214
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1215
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1216
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1217
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1218
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1219
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1220
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1221
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1222
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1223
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1224
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1225
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1226
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1227
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1228
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1229
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1230
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1231
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1232
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1233
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1234
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1235
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1236
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1237
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1238
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1239
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1240
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1241
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1242
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1243
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1244
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1245
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1246
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1247
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1248
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1249
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1250
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1251
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1252
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1253
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1254
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1255
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1256
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1257
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1258
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1259
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1260
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1261
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1262
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1263
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1264
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1266
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1267
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1268
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1270
Manufacturer. S.C. Johnson, & Son, Inc.
Chemical. (G) Acrylic copolymers and salts thereof; styrene/acrylic copolymers and salts thereof.
Use/Production. (G) Aqueous emulsion copolymer. Prod. range: Confidential.

P 90-1271
Manufacturer. Dearborn Division, W.R. Grace & Co.
Chemical. (G) Mixture of *N*-substituted (((2-hydroxethyl) imino)bis(methylene))-bis-phosphonic acid and *N*-substituted ((tetrahydro-2-hydroxy) 4*H*-1,4,2-oxazaphosphorin-4-yl)-methylphosphonic acid, *P*-oxide.
Use/Production. (S) Water treatment compound. Prod. range: 3,630–5,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 5.00 mg/kg species (Rat). Static acute toxicity: time LC50 48H 7.04 mg/l species (Daphnia magna). Mutagenicity: negative.

P 90-1272
Manufacturer. Olin Corporation.
Chemical. (G) Polycarboxylated surfactant.
Use/Production. (S) Surfactant - general industrial cleaning, household cleaning, and household laundry. Prod. range: Confidential.

P 90-1273
Importer. Tosch USA, Inc.
Chemical. (G) Polymethacrylate derivative with tetraethyleneglycol.
Use/Import. (S) Packing for liquid chromotography. Import range: Confidential.

P 90-1274
Importer. Tosch USA, Inc.
Chemical. (G) Polymethacrylate derivative with octadecyl group.
Use/Import. (S) Packings for liquid chromography. Import range: Confidential.

P 90-1275
Importer. Tosch USA, Inc.
Chemical. (G) Polymethacrylate derivative with phenyl group.
Use/Import. (S) Packings for liquid chromatography. Import range: Confidential.

P 90-1276
Manufacturer. Bedoukian Research, Inc.
Chemical. (G) Alkyl vinyl carbinol.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 90-1277
Importer. Basf Corporation.
Chemical. (G) Disubstituted aliphatic-terminated silicone.
Use/Import. (G) Leather auxiliary. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Static acute toxicity: time LC50 96H > 10,000 mg/l species (Golden orfe). Eye irritation: none species (Rabbit).Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90-1278
Manufacturer. Confidential.
Chemical. (G) Water dispersible polyurethane.
Use/Production. (S) Glass fiber sizing for use in fiberglass reinforced thermoplastics. Prod. range: Confidential.

P 90-1279
Manufacturer. Confidential.
Chemical. (G) Alkyl ester.
Use/Production. (G) Base stock. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin irritation: negligible species (Rabbit).

P 90-1280
Importer. Tokuyama America Inc.
Chemical. (S) 2,2-Bis(4-(2-(allyloxycarbonyloxy)ethoxy)-3,5-dibromophenyl) propane.

Use/Import. (G) Plastic additive. Import range: 8,000–18,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90–1281
Importer. Sumitomo Corporation of America.
Chemical. (G) Vinyl chloride copolymer.
Use/Import. (G) Binder resin. Import range: Confidential.
Toxicity Data. Mutagenicity: negative.

P 90–1282
Importer. Confidential.
Chemical. (G) Aryl substituted copper phthalocyanine.
Use/Import. (G) Info-red absorber. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg. Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: positive.

P 90–1283
Importer. Confidential.
Chemical. (G) Zinc ammine complex.
Use/Import. (S) Cross linking agent. Import range: Confidential.

P 90–1284
Manufacturer. Finetex, Inc.
Chemical. (G) Inorganic alkali salts of alkyl phosphate esters.
Use/Production. (S) Textile finishing agent. Prod. range: 5,000–15,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90–1285
Importer. DIC Trading (USA), Inc.
Chemical. (S) 2-Propenoic acid, octahydro-4, 7-methano-1*H*-indenyl ester.
Use/Import. (G) UV curable component for coating. Import range: Confidential.

P 90–1286
Manufacturer. Stepan Company.
Chemical. (G) Amidocarboxy benzoate.
Use/Production. (S) Subetance will be used as emulsifiers in manufacture of paint, paper, and textile products. Prod. range: Confidential.

P 90–1287
Manufacturer. Stepan Company.
Chemical. (G) Amidocarboxy benzoate.
Use/Production. (G) Substances will be used as emulsifier in manufacture of paint, paper and textile products. Prod. range: Confidential.

P 90–1288
Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 90–1289
Manufacturer. Confidential.
Chemical. (S) 2-Nitro-4-methoxyphenyl-1-(2 naphthonyl-3 benzo toluidide) azo.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

P 90–1290
Manufacturer. Confidential.
Chemical. (G) Calcium or strontium salt of the azo dye.
Use/Production. (G) Open nondispersive use. Prod. range: Confidential.

P 90–1291
Manufacturer. Brewer Science Inc.
Chemical. (G) Aromatic polyamic acid.
Use/Production. (S) Polyimide coating for use in electronic optoelectronic devices and associated packing. Prod. range: Confidential.

P 90–1292
Manufacturer. Confidential.
Chemical. (S) Poly (oxy-1-methyl-1,3-ethanediyl) poly (oxy-ethanediyl) alpha-(4-aminobenzoyl)-omega-((4-aminobenzoyl)oxy)-.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90–1294
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet exptrusion windows and panels profile. Prod. range: Confidential.

P 90–1295
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1296
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1297
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1298
Manufacturer. The Dow Chemical.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1299
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1300
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1301
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion: windows and panels. Prod. range: Confidential.

P 90–1302
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion/flow molding. Prod. range: Confidential.

P 90–1303
Manufacturer. The Dow Chemical Company.
Chemical. (G) Branched polycarbonate.
Use/Production. (S) Sheet extrusion/flow molding. Prod. range: Confidential.

P 90–1304
Importer. Confidential.
Chemical. (S) Sodium hydroxide; 2-propenoic acid, 2-methyl-; polymer with butyl 2-propenoic and methyl 2-methyl-2-propenoate.
Use/Import. (G) Component in water based emulsion. Import range: Confidential.

P 90–1305
Manufacturer. Confidential.
Chemical. (G) Olefin copolymer.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 90–1306
Manufacturer. Confidential.
Chemical. (G) Brominated olefin polymer.
Use/Production. (G) Tire production component/chemical intermediate. Prod. range: Confidential.

P 90–1307
Manufacturer. Brewer Science Inc.
Chemical. (G) Aromatic polyamic acid.
Use/Production. (S) Polyimide coating. Prod. range: Confidential.

P 90–1308
Importer. Confidential.
Chemical. (G) Dimetridazole.
Use/Import. (G) Cutting fluid-stabilizer. Import range: Confidential.

P 90–1309
Manufacturer. E.I. Du Pont De Neumours & Co. Inc.
Chemical. (G) Styrene/hydroxy acrylic polymer ammonium.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90–1310
Manufacturer. E.I. Du Pont De Neumours & Co. Inc.
Chemical. (G) Imidazoline amine-epoxy adduct.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90–1311
Manufacturer. E.I. Du Pont De Nemours & Co. Inc.
Chemical. (G) Salt of imidazoline amine/epoxy adduct.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90–1312
Manufacturer. Confidential.
Chemical. (G) Rosin ester.
Use/Production. (S) Tackifier for adhesives. Prod. range: Confidential.

P 90–1313
Importer. Triangle Associates.
Chemical. (G) Tire grip adhesive.
Use/Import. (S) Tire grip adhesive. Import range: 100,000 kg/yr.

P 90–1314
Manufacturer. Exxon Chemical Company.
Chemical. (G) Sodium salt of sulfonated rubber.
Use/Production. (S) Viscosifier for oil-based drilling fluids. Prod. range: Confidential.
Toxicity Data. Skin irritation: negligible species (Rabbit).

P 90–1315
Manufacturer. Steadfast, Inc.
Chemical. (G) Xanthene dye.
Use/Production. (G) Coating. Prod. range: Confidential.

P 90–1316
Manufacturer. Confidential.
Chemical. (G) Phenoxy modified epoxy resin.
Use/Production. (G) Open, nondispersive use. Prod. range: 34,000–103,000 kg/yr.

P 90–1317
Manufacturer. Chemco, Inc.
Chemical. (G) Amino resin.
Use/Production. (S) Flame retardant. Prod. range: Confidential.

P 90–1318
Manufacturer. Confidential.
Chemical. (G) Amine salts of dicarboxylic acid.
Use/Production. (S) Lubricant and corrosion inhibitor. Prod. range: Confidential.

P 90–1319
Manufacturer. Confidential.
Chemical. (G) Amine salts of dicarboxylic acid.
Use/Production. (S) Lubricant and corrosion inhibitor. Prod. range: Confidential.

P 90–1320
Manufacturer. Confidential.
Chemical. (G) Amine salts of carboxylic acid.
Use/Production. (S) Lubricant and corrosion inhibitor. Prod. range: Confidential.

P 90–1321
Manufacturer. Confidential.
Chemical. (G) Potassium salts of dicarboxylic acid.
Use/Production. (S) Lubricant and corrosion inhibitor. Prod. range: Confidential.

P 90–1322
Manufacturer. Confidential.
Chemical. (G) Amine salts of carboxylic acid.
Use/Production. (S) Lubricant and corrosion inhibitor. Prod. range: Confidential.

P 90–1323
Manufacturer. Confidential.
Chemical. (G) Substituted alkylsilylurea.
Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: Confidential.

P 90–1324
Importer. Confidential.
Chemical. (G) Urethane modified tall oil fatty acid alkyd.
Use/Import. (G) Component of paint formulations. Import range: Confidential.

P 90–1325
Importer. Confidential.
Chemical. (G) Inorganic aluminum complex.
Use/Import. (G) Surface coating additive (open, nondispersive use). Import range: Confidential.

P 90–1326
Importer. Reichhold Chemicals, Inc.
Chemical. (G) Water dispersible polyurethane.
Use/Import. (S) Glass fiber sizing for use in fiber glass reinforced thermoplastic. Import range: Confidential.

P 90–1327
Manufacturer. Confidential.
Chemical. (S) [3,3'-Bianthra[1,9-cd]pyrazole]-6,6'(2*H*,2'*H*)-dione, potassium salt.
Use/Production. (S) Intermediate for manufacture of vat dye. Prod. range: Confidential.

P 90–1328
Manufacturer. Confidential.
Chemical. (G) Starch graft copolymer latex.
Use/Production. (G) Adhesive binder for paper coatings. Prod. range: Confidential.

P 90–1329
Importer. Basf Corporation.
Chemical. (G) Black polymer of alkane diacid with alkane diamines, polysubstituted cycloalkanes and alkanes diols.
Use/Import. (S) Leather finishing. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,200 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 90-1331
Importer. Hoechst Celanese Corporation.
Chemical. (G) Modified epoxy resin.
Use/Import. (S) Resin for powder coating (metal furniture and applications). Import range: 30,000–75,000 kg/yr.

P 90-1332
Manufacturer. Confidential.
Chemical. (G) Alkyl acid phosphate alkyl amine salt.
Use/Production. (G) Industrial and automotive additives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: strong species (Rabbit).

P 90-1333
Manufacturer. Confidential.
Chemical. (G) Substituted alkysilylurea.
Use/Production. (G) A formulation component for open, nondispersive use. Prod. range: Confidential.

P 90-1334
Manufacturer. Confidential.
Chemical. (G) Substituted borinic acid ester.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 90-1335
Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Crosslinkable butadiene-syrene polymer.
Use/Production. (S) Nonwoven binder. Prod. range: Confidential.

P 90-1336
Importer. MTC America, Inc.
Chemical. (G) Modified epoxy resin.
Use/Import. (S) Anticorrosion primer coating. Import range: Confidential.

P 90-1337
Importer. MTC America, Inc.
Chemical. (G) Poly urethane resin.
Use/Import. (S) UV curing coatings. Import range: Confidential.

P 90-1338
Manufacturer. Confidential.
Chemical. (G) Monofunctional isocyanate.
Use/Production. (G) Destructive use as an intermediate. Prod. range: 1,240–82,550 kg/yr.

P 90-1339
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Nondispersive coating formulatede. Prod. range: 9,250–320,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 2 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: strong. Skin irritation: strong.

P 90-1340
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Nondispersive coating formulation. Prod. range: 9,200–320,000 kg/yr.

P 90-1341
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Nondispersive coating formulation. Prod. range: 9,250–320,000 kg/yr.

P 90-1342
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Nondispersive coating formulation. Prod. range: 9,250–320,000 kg/yr.

P 90-1343
Manufacturer. Confidential.
Chemical. (G) Amine functional polyurethane polyol.
Use/Production. (G) Nondispersive coating formulation. Prod. range: 9,250–320,000 kg/yr.

Dated: June 25, 1990.
Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-15201 Filed 6-28-90; 8:45 am]
BILLING CODE 6560-50-D

[OPTS-51734B; FRL 3773-7]

Certain Chemical; Premanufacture Notice; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA is revoking, effective June 18, 1990, the remaining portion of a 90 day extension of the review period for premanufacture notice (PMN) P 89-711, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). This action follows the signing of a Consent Order for the new chemical substance subject to premanufacture notice (PMN) P-89-711.

FOR FURTHER INFORMATION CONTACT: Heidi A. Siegelbaum, New Chemicals Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 475-8262.

SUPPLEMENTARY INFORMATION: The original review period for P 89-711 was scheduled to expire on February 10, 1990. EPA published a section 5(c) extension notice for the PMN in the **Federal Register** of February 15, 1990 (55 FR 5502), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from importing or domestically manufacturing the PMN substance pending the submission and evaluation of test data addressing the potential risk injury to the enviornment.

The review period, including the extension under section 5(c), is scheduled to expire July 10, 1990. After the 5(c) extension was published, the Company suspended the notice review period and submitted more information. In light of this new information, EPA and the Company agreed to enter into a Consent Order.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: June 25, 1990.
Lawrence E. Culleen,
Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-15196 Filed 6-28-90; 8:45 am]
BILLING CODE 6560-50-D

[FRL: 3792-5]

Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision (PWSS) Primacy Program. Pennsylvania has adopted drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690), and corrected on July 1, 1988 (53 FR 25108). Edwin B. Erickson, Regional Administrator for EPA Region III, has determined that these program revisions are no less stringent than the corresponding federal regulations and has approved these program revisions. This determination shall become effective on July 30, 1990, and was based upon a thorough evaluation of Pennsylvania's PWSS program which has met the requirements stated in 40 CFR 142.10.

Pennsylvania's PWSS program, as presented in its revision package dated May 9, 1989 and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 30, 1990. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Edwin B. Erickson, Regional Administrator, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the Commonwealth of Pennsylvania. A notice will also be sent to the person(s) requesting the hearing as well as to the Commonwealth of Pennsylvania. The hearing notice will incude a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 30, 1990.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the office of the Regional Administrator and at the following location in Pennsylvania: Department of Environmental Resources, Division of Water Supplies, Executive House, room 516, 101 South Second Street, Harrisburg, PA 17120.

FOR FURTHER INFORMATION CONTACT: Patti Kay Wisniewski, EPA Region III, Drinking Water Section (3WM41) at the Philadelphia address given above, telephone (215) 597-9032, (FTS) 597-9032.

Dated: June 19, 1990.
Edwin B. Erickson,
Regional Administrator, EPA, Region III.

[FR Doc. 90-15212 Filed 6-28-90; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Audrey R. Morris, et al.; FM Station Applications

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

I.

Applicant, city and state	File No.	MM docket No.
A. Audrey R. Morris, Pawley's Island, SC.	BPH-890830ME	90-302
B. Fogel Broadcast Limited Partnership, Pawley's Island, SC.	BPH-890830MN	
C. Frank L. Baker & William L. McElveen d/b/a/ Pawley's Island Broadcasting General Partnership, Pawley's Island, SC.	BPH-890830MY	
D. Robert R. Hillier, Pawley's Island, SC.	BPH-890830NA	
E. MGR Limited Partnership, Pawley's Island, SC.	BPH-890830NO	
F. Carolina Communications V Limited Partnership, Pawley's Island, SC.	BPH-890830MJ	
G. Pawley's Island Communications, Inc., Pawley's Island, SC.	BPH-890830OB	

Issue Heading and Applicants

1. Comparative, A-G
2. Ultimate, A-G

II.

Applicant, city and state	File No.	MM docket No.
A. Woody Limited Partnership, Petersburg, VA.	BPH-890830MM	90-306
B. Sandra M. Adair Vaughan, Petersburg, VA.	BPH-890830MQ	
C. Walsh & Partners Communications, Inc., Petersburg, VA.	BPH-890830NT	
D. Petersburg FM Broadcasters Limited Partnership, Petersburg, VA.	BPH-890830NX	
E. Stadeco Broadcasting Limited Partnership, a Virginia Limited Partnership, Petersburg, VA.	BPH-890830OC	

Issue Heading and Applicants

1. See Appendix, C
2. See Appendix, C
3. See Appendix, C
4. Comparative, A-E
5. Ultimate, A-E

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19947, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for

inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

Appendix (Petersburg, Virginia)

1. To determine whether Sonrise Management Services, Inc., is an undisclosed party to the application of C (Walsh).
2. To determine whether C's (Walsh's) organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to issues 1 and 2 above, whether C (Walsh) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-15214 Filed 6-28-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Recourse Arrangements

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The five member agencies of the Federal Financial Institutions Examination Council (the "FFIEC"), which include the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") (collectively, the "Agencies"), are considering issuing regulations or Guidelines to address the regulatory capital treatment of recourse arrangements for depository institutions and bank holding companies. The Agencies are also considering revising the regulatory reporting requirements applicable to asset transfers with recourse and revising the lending limit treatment of recourse arrangements for national banks and savings associations. The Agencies plan to work together to develop common definitions and treatments of recourse arrangements, where appropriate.

"Recourse" refers to a financial institution's acceptance, assumption or retention of some or all of the risk of loss generally associated with ownership of an asset, whether or not the institution owns or has ever owned the asset. As the primary federal supervisors of insured financial institutions and bank holding companies, the Agencies have observed that recourse arrangements are occurring with increasing frequency, particularly in the context of asset securitization programs. The Agencies recognize that recourse arrangements impose risks on financial institutions and believe it appropriate to report the existence of these risks and to include these risks when evaluating capital adequacy.

The federal bank supervisory agencies (the FRB, the FDIC, and the OCC) and the NCUA have not previously provided a comprehensive regulatory definition of "recourse". The OTS, the federal supervisor of savings associations, has a definition of the term "with recourse" which it plans to amend through rulemaking action. See 12 CFR 561.55. In the interest of a uniform treatment, the Agencies are soliciting public comment on the definition of "recourse," and the appropriate reporting and capital treatments to be applied to recourse arrangements. Public comment is also requested on how these arrangements should be treated under the lending limits applicable to banks and savings associations. The Agencies are targeting December 31, 1990, as the date by which resulting changes in the regulatory treatment of recourse arrangements would become effective.

DATES: Comments must be received by August 28, 1990.

ADDRESSES: Comments should be directed to: Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 850B, Washington DC 20006. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: At the FRB: Roger H. Pugh, Manager, Policy Development, Division of Banking Supervision and Regulation (202) 728-5883; Thomas R. Boemio, Senior Financial Analyst, Division of Banking Supervision and Regulation (202) 452-2982. At the FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898-8906. At the NCUA: Alonzo Swann, Director, Department of Operations, Office of Examination and Insurance, (202) 682-9640. At the OCC: Owen Carney, (202) 447-1901; Richard Cleva, Senior Attorney, Legal Advisory Services Division (202) 447-1883; or Laura H. Plaze, Senior Attorney, Legal Advisory Services Division (202) 447-1883. At the OTS: Robert Fishman, Senior Project Manager (202) 906-5672; Carol Wambeke, Financial Economist (202) 906-6758; Deborah Dakin, Regulatory Counsel (202) 906-6445.

SUPPLEMENTARY INFORMATION:

Introduction

In its broadest terms, "recourse" refers to the acceptance, assumption or retention of some or all of the risk of loss generally associated with ownership of an asset. Recourse is not necessarily a function of ownership or prior ownership of an asset, nor does it arise only as an incident of an asset sale. Morever, recourse may arise even without a contractual obligation.

For many financial institutions, recourse is most frequently associated with asset sales, and particularly with asset securitization programs. Loans, receivables or other assets are securitized by first combining similar assets in a pool and then selling to investors either securities that represent ownership interest in the pool or debt obligations that are serviced by the cash flow from the pool. Asset securitization has become increasingly popular, as in some cases it has enabled financial institutions and bank holding companies to remove assets, or portions of assets, from their books. Asset securitization may allow a financial institution to reduce the capital necessary to meet regulatory minimums or to reduce the total amount of outstanding loans to an individual borrower. Further, asset securitization can provide a financial institution a source of funds through the sale of its assets, which enables the institution to increase its liquidity. Asset securitization may also provide an adidtional source of continuing income to a financial institution that acts as servicer of a pool of securitized assets.

Early securititized programs, dating from the 1970's, were usually federally sponsored, and were generally intended to enhance the secondary residential mortgage market. Three federally-sponsored agencies, the Governmental National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), were each provided statutory authority to guarantee the payment of principal and interest to investors in pools of qualifying residential mortgages. Generally, the Federal government may bear some of the risk of loss in these agency asset securitization programs, by providing federal insurance for certain of the underlying mortgages and through the GNMA guarantee, which is backed by the full faith and credit of the United States.

While the sale of loan participations has been a longstanding bank practice, during the 1980's, financial institutions began to securitize and sell an increasing variety of loan portfolios and other assets to a wider group of public investors. These asset securitizations differ from the Federally-sponsored agency programs in that they are not necessarily backed by Federal insurance or Federal guarantees. In order to market these securitized assets to investors, who demand a stable, predictably performing investment product, some finanical institutions have provided assurances against virtually all risk or loss.

The Agencies have observed an increasing use and variety of recourse arrangements in asset securitization programs. Some financial institutions have provided assurances against risks of loss that extend beyond credit risk to include losses due to interest rate and prepayment risk, foreign exchange risk, liquidity and marketability risks, and risks associated with statutory or regulatory compliance or uninsurable hazards. The Agencies have also observed that some financial institutions have assumed risks of loss implicitly, without entering into explicit contractual recourse agreements.

The Agencies believe, and have previously stated their belief, that quantifiable risks to a financial institution should be supported by capital. See, e.g., OCC Final Rule Establishing Risk-Based Capital Guidelines, 54 FR 4168 (January 27, 1989) (codified at appendix A to 12 CFR part 3); FRB Final Rule Establishing Risk-Based Capital Guidelines, 54 FR 4186 (January 27, 1989) (codified at 12 CFR 208.13, appendix A to 12 CFR part 208, and appendix A to 12 CFR part 225); FDIC Final Policy Statement Establishing Risk-Based Capital Guidelines, 54 FR 11500 (March 21, 1989) (codified at appendix A to 12 CFR part 325); and OTS Final Rule or Risk-Based Capital, 54 FR 46845 (November 8, 1989) (codified at 12 CFR part 567) (collectively, the "risk-based capital standards"). While the risk-based capital standards in their current form focus primarily on credit risk, whether or not represented by an asset on the balance sheet, such standards embody the principle that all risks require capital support consistent with the degree to which they expose an institution to potential loss.[1] As recourse arrangements expose a financial institution or bank holding company to the risk of loss generally, the Agencies believe that these arrangements should be supported by capital.

In addition, the Agencies believe that a financial institution's exposure to a particular borrower should be monitored and limited. This fundamental tenet of safety and soundness is a statutory requirement under Federal law for national banks and savings associations [2] and under state law for state-chartered banks. As certain recourse arrangements expose a national bank or savings association to the individual risks of an underlying borrower, the OCC and the OTS believe that these risks should be addressed in the calculation of loans outstanding to one borrower. The staffs of the FRB and the FDIC also believe that the state laws limiting loans outstanding from state-chartered banks to one borrower should address the risks posed by recourse arrangements.

While these positions are not new, the Agencies consider it timely and appropriate to examine the general issue of recourse arrangements and the regulatory treatments they should be accorded. The current reporting and capital treatments accorded recourse arrangements by the various agencies and the lending limit treatments applicable to recourse arrangements of national banks and savings associations are briefly summarized below. Following that discussion, the specific issues for comment are presented. Finally, all questions are listed in a summary section.

I. Current Reporting Treatment of Asset Transfers With Recourse

A. National Banks and Federally-Insured, State-Chartered Banks

National banks and federally-insured, state-chartered member and nonmember banks are required to file quarterly Reports of Condition and Income ("Call Reports"), reporting to the OCC, FRB and FDIC respectively. The FFIEC is responsible for developing the reporting rules. See 12 U.S.C. 3305.

Under the current reporting rules, which are contained in the Instructions for Consolidated Reports of Condition and Income ("Call Report Instructions"), the reporting treatment of an asset transferred subject to a recourse arrangement varies depending on the type of asset sold, whether the transfer is through a federally-sponsored agency program, and, in some cases, on the level of the risk of loss retained. The reporting rules have the effect of allowing some asset transfers with recourse to be reported as sales, while requiring others to be reported as financing transactions with the assets retained on the balance sheet.

The Call Report Instructions include a Glossary of terms and instructions for various supporting schedules, including Schedule RC-L, "Off Balance Sheet Items." [3] Together, the Glossary and Schedule RC-L establish four separate reporting treatments for asset transfers with recourse.

First, a general rule is provided for the transfer of most assets other than transfers involving the issuance of certificates of participation in pools of certain residential or agricultural mortgages. Under the general rule, an asset transfer may be reported as a sale only if two conditions are met: (1) The transferring bank must not retain any risk of loss from the asset transferred; and (2) the transferring bank must have no obligation to any party for the payment of principal or interest on the asset transferred. *See* Glossary, Call Report Instructions (entry for "Sales of Assets").

Next, two different rules are established for transfers involving the issuance of certificates of participation in pools of residential mortgages. *See id.*, "Participations in Pools of Residential Mortgages." If the participations are issued or guaranteed under specified GNMA, FNMA, or FHLMC programs, the Glossary states that a bank disposing of its mortgages through such programs may treat the transaction as a sale of the underlying mortgages. Banks report mortgage transfers through these government agency programs as sales even when the transfers are with 100% recourse. See *id.*, and Schedule RC-L, Item 9(a).[4]

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[1] The risk-based capital guidelines of the OCC, FRB and FDIC are based on the international framework for capital standards established in July 1988, by the Basle Committee on Banking Regulations and Supervisory Practices (since renamed the Basle Committee on Banking Supervision). The international framework is described in a paper entitled the International Convergence of Capital Measurement and Capital Standards dated July 1988.

[2] *See generally*, 12 U.S.C. 84 (limiting the total loans and extensions of credit a national bank may have outstanding to one borrower at one time); 12 U.S.C. 1464(u), as added by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101-73, 301, 103 Stat. 183 (August 9, 1989) ("FIRREA") (providing that the lending limits applicable to national banks under 12 U.S.C. 84 shall apply in the same manner and to the same extent to savings associations).

[3] Schedule RC-L was previously named "Commitments and Contingencies." Effective March 31, 1990, this schedule was renamed "Off-Balance Sheet Items."

[4] Item 9 was numbered Memorandum Item 4 prior to the changes made to Schedule RC-L, effective March 31, 1990.

A different treatment applies if the certificates of participation are privately issued by the bank. For these issuances, the bank's ability to treat the transfer of the underlying mortgages as a sale depends upon the level of risk it has retained. The Glossary provides that "[o]nly when the issuing bank does not retain any significant risk of loss, either directly or indirectly, is the transaction to be reported as a sale of the underlying mortgages by the bank." *Id.* [6]

Finally, Schedule RC–L establishes a fourth reporting treatment for an asset transfer with recourse that applies only to transfers of agricultural mortgage loans through a Farmer Mac certified program.[6] The instructions to Item 9(c)(1) of Schedule RC–L state that transfers of agricultural mortgage loans under a Farmer Mac program in which the bank retains a subordinated participation interest (a form of recourse), may be "reported as sales for Call Report purposes to the same extent that the transactions are reported as sales under generally accepted accounting principles ['GAAP']." In general, this means that the transfer may be reported as a sale only if the bank surrenders control of the future economic benefits from the asset, can reasonably estimate its probable loss under the recourse provision, has no obligation to repurchase the asset except pursuant to the recourse provision, and establishes a liability account or specific reserve to absorb the estimated loss.[7]

B. Savings Associations

The regulatory reporting of savings associations is provided to OTS on the Thrift Financial Report ("TFR"), an OTS form. Unlike the bank supervisory agencies' Call Report, which establishes special supervisory rules for reporting transfers of four different types of assets with recourse, the TFR generally requires savings associations to report these transactions in accordance with GAAP. In general, this means that a savings association may report an asset transfer with recourse as a sale only if the institution surrenders control of the future economic benefits from the asset, is able to reasonably estimate its probable loss under the recourse provision, has no obligation to repurchase the asset except pursuant to the recourse provision, and establishes a liability account or specific reserve to absorb the estimated loss.

II. Capital Treatment of Recourse Arrangements

A. Current Leverage ratio Requirements

Under the current leverage ratio capital requirements of the FRB, the FDIC, and the OCC, the treatment of an asset transferred with recourse is directly related to the reporting treatement of the transfer.[8] Simply speaking, for national banks and federally-insured, state-chartered member and nonmember banks, if an asset transfer is reported as a sale, no capital support is explicitly required for the asset as a function of the current leverage ratios.[9] Consequently, because the Call Report establishes four distinct rules for determining whether an asset transfer with recourse will receive sale treatment, capital support is required for some recourse arrangements but not for others. In addition, the varous captial charges, like the different reporting treatments, do not take into account a bank's relative exposure to risk of loss.

In recognition of off-balance sheet exposures, such as the potential risk of loss from asset transfers with recourse that are reported as sales, the FRB, the FDIC and the OCC have always reserved the right to require banks to increase their capital. However, the regulations require a bank that has limited its recourse exposure on an asset transfer with recourse which cannot be reported as a sale to maintain capital against the full amount of the asset.

The OTS currently requires each savings association to maintain a leverage ratio, which is calculated as a percentage of its adjusted total assets as reported in the "Consolidated Capital Requirement" form, filed with the TFR. For purposes of its leverage ratio, the OTS uses "tangible assets" and "adjusted tangible assets", as defined in its capital regulation. These terms do not include assets that have been reported as sold in accordance with GAAP. The OTS regulation does not refer a savings association to its reported asset base for purposes of calculating its leverage ratio.

B. Risk-Based Capital

The risk-based capital guidelines of the FRB, the FDIC and the OCC establish a uniform definition of capital and a minimum riskbased capital ratio which is intended to enhance competitive equality among financial institutions. The guidelines specifically recognize the relative credit risk of different types of bank assets and off-balance sheet items.

Under the risk-based capital guidelines, a bank will be required to hold capital against an asset transferred with recourse even if the transfer is reported as a sale. For example, in addressing the risk-weighting of off-balance sheet exposures of national banks, the OCC's risk-based capital guidelines state that capital must be held against the full value of "assets sold under an agreement to repurchase and assets sold with recourse, to the extent that these assets are *not* reported on a national bank's statement of condition * * *." Appendix A to 12 CFR part 3, section 3(b)(1)(iii) (emphasis added). The risk-based capital guidelines of the FRB and the FDIC contain similar provisions. *See* Appendix A to 12 CFR part 208, Attachment IV and appendix A to 12 CFR part 325, II(D)(1).[10] Thus, the treatment of a recourse arrangement and the calculation of a bank's minimum risk-based capital ratio under the banking agencies' guidelines is independent of the reporting treatment of an asset transfer.

The OTS currently applies a risk-based capital standard to the recourse arrangements of savings associations. *See* 12 CFR Part 567. These capital standards were adopted pursuant to FIRREA, and became effective on December 7, 1989, subject to a three-year phase-in period.[11] Under the OTS's rules, similar to the bank supervisory agencies' risk-based capital guidelines, any capital charge associated with an asset transfer is determined independently of its reporting treatment. Generally, savings associations that transfer assets with recourse must hold the amount of capital that would be required if they had not transferred the assets. An exception is provided for transactions in which the amount of recourse retained is less than the capital that would be required to support the credit risk associated with the transferred asset. In such cases, the savings association must only maintain capital equal to the amount of the recourse.

C. Proposed New Leverage Ratios for National Banks and Federally-Insured State-Chartered Banks

The OCC and the FRB have recently proposed, and the FDIC expects to propose, new leverage ratios which, in conjunction with the risk-based capital guidelines, would replace the current leverage ratios. As with the current leverage ratios, the new leverage ratios would require a bank to maintain a minimum amount of capital calculated as a percentage of its asset base reported in the Call Report.[12] The FRB, the FDIC and the OCC recognize that any revisions to the Call Report Instructions that would affect the reporting treatment of an asset transfer with recourse might also affect the calculation of the leverage ratio.[13]

III. Current Lending Limit Treatment of Recourse Arrangements

Banks and savings associations are subject to statutory limits on the total loans or extensions of credit that may be outstanding to a borrower at one time.[14] Among other purposes, the lending limit is intended to safeguard depositors by promoting credit risk diversification. Generally, for a national bank or savings association, total unsecured loans or extensions of credit outstanding to any one borrower at one time may not exceed 15% of the institution's unimpaired capital and unimpaired surplus. Amounts up to an additional 10% of unimpaired capital and surplus may be extended for loans and extensions of credit secured by readily marketable collateral.[15] State-chartered banks are subject to state-imposed lending limits which are also expressed as percentages of capital.

The current lending limit calculation for national banks and savings associations measures the amount outstanding to a borrower as a function of the total dollars lent plus, under some circumstances, the amount committed. With respect to loan transfers with recourse, the OCC's regulations provide that when a bank sells a whole loan or loan participation in a transaction that does not result in a pro rata sharing of credit risk between the bank and the purchaser, the total amount of the loan transferred must still be included in the lending limit calculation of the amount outstanding to the underlying borrower.[16] In effect, if a bank transfers a loan with recourse, the lending limit is applied to the full amount of the loan as though it has not been transferred.

The OCC's treatment of loan transfers with recourse under the lending limit is premised on the theory that when a bank transfers a loan with recourse, it may have retained a concentration of the risk of nonpayment from the loan. For example, assume that a bank makes a $100,000 loan. If the bank sells the loan with 10% recourse, it will have retained the risk of the first $10,000 of loss on the entire loan. By accepting the first dollars of loss rather than agreeing to share losses with the purchaser on a pro rata basis, the bank has clearly retained a disproportionate amount of the risk in the whole loan. The current lending limit treatment of recourse arrangements prevent a bank from being able to sell a borrower's loans in order to be able to continue making new loans to that borrower, when the bank has actually retained a disproportionate exposure to that borrower's risk of default. This approach encourages risk diversification by preventing the bank from leveraging and concentrating risk in the same borrower.

IV. Issues for Comment

The Agencies consider it timely and appropriate to review the regulatory treatment of recourse arrangements, particularly in the context of the risk-based capital framework which affords an opportunity for the separate determination of reporting and capital treatments. As the risk-based capital guidelines of the FRB, the FDIC and the OCC become effective as of December 31, 1990, the Agencies are considering using the same fate as the effective date for changes made to the regulatory treatment of recourse arrangements.

As set forth below, the Agencies request comment on how the term "recourse arrangement" should be defined, how such arrangements should be reported, and how the required capital support should be determined. Additionally, comment is requested on how recourse arrangements should be treated for purposes of the lending limit applicable to national banks and savings associations.

A. Definition of "Recourse Arrangement"

The Agencies are considering developing a broad definition of the term "recourse arrangement" that will recognize the potential effects of any arrangement that exposes a financial institution to a risk of loss. The Agencies request comment on how "recourse arrangement" should be defined, including how the issues discussed below should be addressed. The Agencies also request comment on the feasibility and appropriateness of developing a single definition for capital and reporting purposes, and on whether such a single definition could also be

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[6] In March, 1990, the FFIEC issued reporting guidance for certain new items being added to the Call Report's Schedule RC–L, which has now been incorporated in the Call Report Instructions. See pages 7 and 8 of the enclosure to the FFIEC's Bank Letter dated March 9, 1990 (BL–10–90) and Call Report Instructions (Schedule RC–L, Instructions to Item 9(b)(1)). Among other provisions, this guidance clarified the meaning of "significant risk of loss," stating that if "the maximum contractual exposure under the recourse provision (or through the retention of a subordinated interest in the mortgages) at the time of the transfer is greater than the amount of probable loss that the bank has reasonably estimated that it will incur," then the "issuing bank" has retained the entire risk of loss, and the mortgage transfers may not be reported as sales. *Id.*

[6] *See* 12 U.S.C. 2279aa *et seq.* (establishing the Federal Agricultural Mortgage Corporation, known as "Farmer Mac").

[7] See *infra* section IV(B) (1) for discussion of GAAP treatment of asset sales with recourse.

[8] The risk-based capital guidelines issued by the FRB, the FDIC and the OCC in early 1989 will be phased in over a two-year transitional period beginning December 31, 1990. Proposed new leverage ratios are discussed *infra*.

[9] This result stems from the definitions of terms used in each agency's regulations. For example, the OCC's regulations require that national banks maintain total capital equal to at least 6% of "adjusted total assets" and primary capital equal to at least 5.5% of "adjusted total assets." See 12 CFR 3.6. "Adjusted total assets" is defined by reference to the average total assets figure" computed for and stated in a bank's most recent quarterly Call Report. *Id.* at § 3.3(a). Assets that a national bank has not transferred, and asset transfers that are not accorded sale treatment, are included in the average total assets reported in the Call Report. Conversely, asset transfers that are given sale treatment are not reported as part of the bank's asset base, and thus are not factored into the denominator of the primary and total capital ratios.

Similarly, the FRB guidelines and the FDIC regulations for federally-insured state-chartered member and nonmember banks require these institutions to maintain minimum levels of total capital to "total assets" of 6% and of primary capital to "total assets" of 5.5%. See 12 CFR 208.13 and appendix B to 12 CFR part 225. See also 12 CFR 325.3(b). The total assets figure used in calculating these ratios is defined with reference to the quarterly average total assets figure reported on a bank's Call Report. See appendix B to 12 CFR part 225, "Capital Ratios." See also 12 CFR 325.2(k). If an asset is not reported in a federally-insured state-chartered member or nonmember bank's Call Report, the asset is not factored into the calculation of the bank's "total assets."

[10] The explanation of this provision in each of the three agencies' guidelines refers to the Call Report to establish a definition of "asset sales with recourse," and has apparently created some interpretive confusion. The FRB, the FDIC and the OCC intend to publish technical amendments to their risk-based capital guidelines to clarify the scope of this provision.

[11] See FIRREA, section 301 (amending the Home Owners' Loan Act of 1933 by adding a new section 5(t), requiring OTS to establish capital standards "no less stringent than the capital standards applicable to national banks").

[12] See 54 FR 48294 (November 2, 1989) (OCC Notice of Proposed Rulemaking); 55 FR 862 (January 9, 1990) (FRB Notice of Proposed Rulemaking). The OCC proposal would use a national bank's "adjusted total assets" and the FRB proposal would use a state-chartered member bank or bank holding company's "total assets" as the asset base against which the new leverage ratio would be calculated.

[13] By contrast, because the OTS regulations do not require a savings association's leverage ratio to be calculated with reference to its reported asset base, changes in the reporting treatment of an asset transfer with recourse would not affect a savings association's leverage ratio.

[14] See supra note 2 accompanying text.

[15] FIRREA provides certain additional lending authority to savings associations under "Special Rule." See 12 U.S.C. 1464(u).

[16] See 12 CFR 32.107. See also 54 FR 43160 (October 24, 1989) (Notice of Proposed Rulemaking amending 12 CFR part 32, proposing to move the text of 12 CFR 32.107, without substantive change). See also 12 CFR 7.7518 (loan repurchase agreements).

used for purposes of the lending limit applicable to national banks and savings associations.[17]

1. Explicit Recourse

A financial institution may accept or retain recourse pursuant to an explicit and legally binding agreement in many ways. The traditional concept of "recourse" is that of the loan seller's retention of some credit risk. Today, seller assurances against loss are increasingly extended to other types of risk, including interest rate and prepayment risk, foreign exchange risk, liquidity or marketability risks, and risks associated with a borrower's regulatory noncompliance or uninsurable hazards.

The Agencies recognize that asset sales are typically accompanied by certain standard representations and warranties concerning items within the seller's control. For example, the seller may warrant that a loan is not delinquent or is in compliance with consumer protection laws as of the date of the sale. If the triggering event is within the seller's control, the selling institution may be able to adequately protect itself, and it may be inappropriate to regulate the arrangement as a recourse arrangement. The Agencies therefore request comment on what types of standard representations and warranties should be excluded from regulatory treatment as recourse arrangements.

The Agencies are concerned, however, that some financial institutions have also offered unusual warranties and representations in situations that they cannot control. For example, some financial institutions have assumed risks associated with a borrower's failure to maintain loan collateral in compliance with environmental or health and safety laws, or have agreed to substitute loans in the event of prepayment. The Agencies request comment on the extent to which the definition of "recourse arrangement" should include exposure to risks other than credit risk.

The Agencies also recognize that in applying the risk-based capital standards and possibly for other regulatory purposes, it may be appropriate to treat certain limited recourse arrangements differently than full recourse arrangements. The Agencies request comment on the methods available to financial institutions for providing limited recourse and on how to identify those limited recourse arrangements for which separate regulatory treatment might be appropriate.

In addition to recourse arrangements that may arise from a financial institution's sale of its own assets, a financial institution may also provide explicit assurances against the risk of loss associated with a third party's assets. For example, as the servicer of a pool of assets, a financial institution may accept some exposure to credit risk from the pool. As part of a brokering agreement, an institution may provide credit enhancement to ensure the performance of an issue, designed to absorb loss to the extent of the enhancement, or may commit to certain market-making activities. The Agencies request comment on how risks that do not arise from a financial institution's ownership or prior ownership of assets should be addressed in the definition of "recourse arrangement."

2. Implicit Recourse

A financial institution may also effectively assume recourse without an explicit contractual agreement. Implicit recourse is usually demonstrated by an institution's action subsequent to the sale of an asset. Implicit recourse may arise as a result of a loan seller's desire for a continuing relationship with a borrower, or for protection of its reputation with investors. For example, having packaged and sold a portfolio of loans without recourse, a financial institution may elect to rewrite the defaulted loan of a valued borrower that the institution believes is having temporary difficulties in repayment. A financial institution may also be tempted to repurchase assets it has sold into a pool that are not performing well, in order to protect the institution's reputation with investors and the public generally. The Agencies request comment on how the definition of "recourse arrangement" should address implicit recourse.

3. Methods of Providing Recourse

Assurances against loss may be provided through a variety of means. In some cases, recourse is provided through recourse clauses in sales contracts or put options granted in connection with asset sales. Recourse may also be provided through transactions that involve the creation of separate financial products.

For example, subordinated securities issued when loans are pooled and senior and subordinated classes of securities are created can operate analogously to recourse provisions on individual loans. The subordinated securities protect the senior securities by being first in line to absorb losses on the pool. Similarly, a second mortgage might function as a recourse arrangement. If a financial institution originates first and second mortgages on the same property and sells the first mortgage but retains the second mortgage, the financial institution is first in line to absorb losses in the event of the borrower's default. Claims under the second mortgage will only be met after the holder's claims under the first mortgage are satisfied.

A letter of credit intended to absorb losses on an asset or pool of assets originated or pooled by a third party may also effectively constitute recourse. If the third party seller is not obligated to reimburse the institution providing the letter of credit for any payments made under the letter of credit, then the letter of credit institution will have assumed a risk of loss on the assets. Alternatively, if the third party seller must reimburse the letter of credit institution, then that third party seller has effectively retained recourse on the assets sold equal to the amount of the letter of credit. In addition, the letter of credit institution would be exposed to a risk of loss on the assets in the event that the third party should fail to reimburse as required by the contract.[18]

The Agencies request comment on methods available to a financial institution to accept, assume or retain recourse. For example, as discussed herein, the Agencies request comment on whether subordinated securities, second mortgages or letter of credit enhancements should be treated as recourse arrangements, both where these interests are retained or acquired by the seller and where they are purchased or provided by a third party financial institution. With respect to subordinated securities, the Agencies specifically request comment on how the definition of recourse should treat the middle classes, *i.e.*, the higher tier subordinated pieces, of issues that have more than two classes of securities.

B. Reporting Treatment of Asset Transfers With Recourse

As already discussed, the current Call Report treatment of an asset transfer with recourse for national and federally-insured, state-chartered banks varies, depending upon a range of factors. The Call Report requirements differ from the GAAP reporting requirements, which are generally applicable to savings associations. The FRB, the FDIC and the OCC believe that the present Call Report instructions for asset transfers with recourse should be reevaluated. These agencies intend to work through the FFIEC in order to amend the Call Report requirements, as necessary. See 12 U.S.C. 3305(a).

The FRB, the FDIC and the OCC request comment on how assets transferred with recourse should be reported, including (1) Whether these agencies should consider adopting the GAAP approach for asset transfers with recourse, either in part or in its entirety, or some other wholly consistent approach, and (2) how changes to regulatory reporting will or should affect these agencies' leverage ratios.

1. Possible Adoption of GAAP Reporting Treatment of Asset Transfers with Recourse by the FRB, the FDIC, and the OCC

The GAAP definition of "sale" for transfers of receivables with recourse is discussed in the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 77 ("FAS 77").[19] According to FAS 77, a transfer of receivables with recourse is to be reported as a sale if the reporting entity meets three conditions: (1) The transferor must surrender control of the future economic benefits embodied in the asset; (2) the tranferor must be able to reasonably estimate its obligations under the recourse provision; and (3) the transferor must not be obligated to repurchase the assets except pursuant to the recourse provisions.

FAS 77 further provides: "If a transfer qualifies to be recognized as a sale, all probable adjustments in connection with the recourse obligations to the transferor shall be accrued in accordance with FASB Statement No. 5, 'Accounting for Contingencies' ['FAS 5']." FAS 5 requires the transferor of an asset with recourse to accrue by a charge to income an amount sufficient to absorb the transferor's estimated obligations under the recourse provision. The recourse obligation must be accrued as a liability or specific reserve,[20] and may not be included as part of the general allowance for loan and lease losses.[21]

After the Financial Accounting Standards Board adopted FAS 77, the FRB, the FDIC and the OCC, as members of the FFIEC, considered incorporating this accounting standard into their regulatory reporting requirements for assets transferred with recourse. At that time, the FFIEC chose not to follow FAS 77, concluding that it emphasized the transfer of future economic benefits, whereas the agencies were most concerned with a financial institution's retention of a risk of loss. The FFIEC also expressed concern that it might be difficult to reasonably estimate the risk of loss on some assets, such as commercial, construction and international loans.[22]

Although the FRB, the FDIC and the OCC have previously rejected the FAS 77 reporting treatment for most asset transfers with recourse, these agencies are also committed to an ongoing effort to minimize the differences between generally accepted accounting principles and regulatory reporting requirements where possible. For example, one possibility is that the agencies might adopt the GAAP approach for some types of assets, such as loans considered subject to reasonable estimations of loss, but not necessarily for all types of assets.

In addition, the FRB, the FDIC and the OCC note that once their risk-based capital guidelines are implemented, the adoption of the GAAP reporting approach would not affect bank capital ratios to the same extent it would have when the FFIEC originally considered FAS 77 in 1986. The requirement of capital support for an asset transfer at that time depended solely upon its reporting treatment. As discussed above, under the risk-based capital standards, national and federally-insured, state-chartered banks will be required to hold capital against an asset transferred with recourse even when the transfer is reported as a sale.

2. Possible Impact on the FRB, FDIC, and OCC Leverage Ratios

If the FRB, the FDIC and the OCC adopt the FAS 77 approach for reporting asset transfers with recourse, some asset transfers not currently reported as sales for Call Report purposes would qualify for sale treatment. If some other reporting treatment is adopted, it is also possible that some asset transfers currently reported as sales in the Call Report might no longer qualify for sale treatment. Either of these outcomes would potentially affect the capital required to meet the leverage ratios. Removing assets from the Call Report balance sheet would have the effect of lowering the reported asset base against which capital must be held for leverage purposes, thereby lowering the amount of capital required to meet the leverage ratios. Retaining additional assets on the balance sheet would have the effect of increasing the reported asset base, thereby increasing the capital necessary to meet the leverage ratios. The Agencies request comment on whether the leverage ratio calculation should be adjusted to include assets removed from the balance sheet and/or to exclude assets added to the balance sheet as a result of changes in the regulatory reporting treatment of recourse arrangements.

C. Capital Support Required for a Recourse Arrangement

1. Explicit Recourse Arrangements

The Agencies are considering requiring a financial institution that enters into an explicit, contractually binding, recourse arrangement to quantify its maximum possible risk of loss and to hold capital commensurate with that risk. This approach is consistent with the direction taken for asset transfers with recourse in establishing the risk-based capital standards. Nonetheless, the Agencies recognize the possible utility of some adjustments in the application of their risk-based capital standards, as presently drafted, to asset transfers with recourse.

The Agencies request comment on the general approach that they are

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[17] As indicated *infra* at note 28, the application of the lending limit to recourse arrangements is being considered only insofar as these arrangements expose a bank or savings association to credit risk. Thus, to the extent that the definition of recourse arrangement developed for use in the capital or regulatory reporting context includes arrangements that expose institutions to risks other than credit risk, the same definition would not be appropriate for use in the lending limit context. To the extent that the definition covers arrangements that expose an institution on credit risk, comment is requested on whether these same arrangements should be considered recourse for lending limit purposes.

[18] Although letter of credit enhancements may ultimately be found to be "recourse arrangements" for regulatory reporting, capital or lending limit considerations, the OCC does not construe such letters of credit to create "recourse" in connection with sales of credit-enhanced securities for the purposes of section 16 of the Glass-Steagall Act. See 12 U.S.C. 24 (Seventh). This section authorizes national banks to sell "securities and stock without recourse" for their customers. *See, e.g., Securities Industry Association* v. *Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983); *Avotte* v. *Atlas Exchange National Bank*, 295 U.S. 209 (1936); and OCC Interpretive Letter No. 213, *reprinted in* [1981–82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,358 (July 2, 1981).

[19] See Statement of Financial Accounting Standards No. 77, "Reporting by Transferors for Transfers of Receivables with Recourse" (December, 1983). For the purpose of FAS 77 "recourse" is defined as the "right of a transferee of receivables to receive payment from the transferor of those receivables for (a) Failure of the debtors to pay when due, (b) the effects of prepayments, or (c) adjustments resulting from defects in the eligibility of the transferred receivables." See appendix A, FAS 77.

[20] See Statement of Financial Accounting Standards No. 105, "Disclosure of Information about Financial Instruments with Off-Balance-Sheet Risk and Financial Instruments with Concentrations of Credit Risk," (March, 1990), paragraph 62, which states "[t]he [Financial Accounting Standards] Board believes that generally accepted accounting principles proscribe inclusion of an accrual for credit loss on a financial instrument with off-balance-sheet risk in a valuation account (allowance for loan losses) related to a recognized financial instrument."

[21] Because accrued recourse obligations are specifically identifiable to the sold assets, they are not included in capital.

[22] See October 28, 1985 FFIEC letter to Chief Executive Officers of Banks (Appendix).

considering for capital charges against explicit recourse arrangements. As discussed below, the Agencies specifically request comment on the feasibility and appropriateness of (a) Applying consistent capital charges to similar recourse exposures that arise as a result of a financial institution's prior ownership of an asset; (b) requiring equivalent capital charges for comparable recourse exposures that do not arise as a result of the financial institution's prior ownership of an asset; and (c) tailoring the capital charges to the relative exposure of particular recourse arrangements. The Agencies request that commenters give particular focus to ways of addressing limited recourse arrangements. In addition, the Agencies request that commenters address how insured financial institutions and bank holding companies' need for adequate capital should be balanced against their need to compete in markets that include participants subject to less stringent capital standards.

(a) Consistent Capital Charges for Recourse on Previously Owned Assets. The risk-based capital standards do not necessarily apply the same capital treatment to differently structured asset transfers that have the same potential effect on an institution's earnings, assets or capital.

For example, the risk-based capital standards require different capital support for a mortgage transferred with recourse and a second mortgage, which may be used in place of a recourse clause. To illustrate, if a financial institution originates a $100,000 qualifying, first lien residential mortgage, it will be required to hold $4000 in capital support against the loan ($100,000×50% risk-weight×8%) If the originating institution sells this mortgage loan subject to a 10% recourse provision, the capital charge will not change. Alternatively, the same institution might originate two separate mortgages, a frist mortgage for $90,000 and a second mortgage for $10,000. If the institution sells the first mortgage without recourse but retains the second mortgage, there will be no capital charge against the first mortgage and the charge against the second mortgage will only be $800 ($10,000×100%×8%). Because the financial institution will absorb the first $10,000 of losses under either of these arrangements, the maximum possible risk of loss on the two transactions is the same.

As another example of inconsistent capital treatments for asset transfers, the risk-based capital standards treat a seller's retained residual interest in a pool of assets differently than subordinated interests or other forms retained recourse. In general terms, a residual interest in an interest in any excess cash flow stemming from a securitized asset pool over and above the amounts required to pay investors and applicable administrative expenses. Residual interests, like subordinated interests or other recourse arrangements, may absorb more than their pro rata share of loss. However, in certain cases, a financial institution that sells assets and retains a residual interest in them need hold capital only against that interest. By contrast, if the institution sells assets and retains subordinated securities or other forms of recourse it must hold capital against the entire amount of the assets sold.

(b) Equivalent Capital Charges for Recourse on Third Party Assets. The risk-based capital guidelines of the bank supervisory agencies do not explicitly address recourse arrangements that do not arise as a result of a financial institution's prior ownership of an asset. For example, mortgage servicing rights that a financial institution purchases from another party may include various types of recourse, including the requirement that the purchasing institution absorb credit losses on the loans it has agreed to service. It is important that the risks associated with these transactions be understood, quantified and risk-weighted as with any other off-balance sheet credit exposure. The OTS capital rule currently requires savings associations with mortgage servicing rights that include exposure to credit losses to hold capital against the full amount of the underlying loans through the application of the 100% credit conversion factor.

As another example, the risk-based capital guidelines of the bank supervisory agencies treat subordinated interests differently depending upon whether the bank retains a subordinated interest in assets it has owned and transferred, or purchases a subordinated interest in third party assets. The FRB, the FDIC, the OCC and the OTS all require financial institutions retaining the subordinated portion of a senior/subordinated structure to hold capital against the full amount of the assets transferred. However, if a bank purchases subordinated securities representing interests in loans that it has not originated or owned, the FRB, the FDIC and the OCC place only the purchased subordinated securities in a 100% risk-weight category. No capital is required for the senior portions supported by the purchased subordinated portions.[33] By contrast, the OTS treats purchased subordinated securities the same as originated subordinated securities, and thus requires savings associations to hold capital against the whole asset pool.

(c) Capital Charges Tailored to Relative Risks. The risk-based capital standards do not necessarily require capital support commensurate with the relative risk exposure of a particular recourse arrangement.

For example, the risk-based capital guidelines of the bank supervisory agencies, as opposed to those of the OTS, do not distinguish between limited and unlimited recourse arrangements. The bank supervisory agencies require capital to be held against the full amount of an asset transferred with recourse, even if the transferring bank has limited its risk of loss on the recourse provision. The risk-based capital rules of the OTS differ in that they generally permit a savings association to maintain capital equal to the amount of the recourse exposure on an asset transferred with recourse if that exposure is less than the capital charge the asset would otherwise incur.

The Agencies believe that failing to give capital credit for any form of limited recourse may actually create an incentive for financial institutions to maximize their risk of loss in transferring assets with recourse. This is because buyers may pay more for assets sold with greater recourse than for the same assets sold with less recourse. If there are no additional capital charges for sales with full recourse, financial institutions may decide to transfer assets with full rather than limited recourse in order to benefit from higher sale prices.

The risk-based capital guidelines of the bank supervisory agencies also do not permit a reduction in the capital charge when a bank establishes a recourse liability account for its estimated obligations under the recourse provision. Similarly, the risk-based capital standards of the bank supervisory agencies and OTS may not fully address the interaction of third party guarantees or insurance that may be obtained by insured financial institutions to reduce their potential losses on assets they transfer with recourse.

[33] This discussion of the "purchase" of a subordinated security is undertaken solely as an illustration, and should not be viewed as an indication that such securities would be eligible for bank investment under federal or state law, or that bank holdings of such securities would not be subject to examiner criticisms or classifications.

For example, assume that a bank transfers by means of a privately-issued certificate of participation a $1,000,000 pool of qualifying, first lien residential mortgage loans subject to 10% recourse in a transaction that may be treated as a sale for Call Report purposes.[34] Estimating its probable losses on the loans to be only 3%, the bank establishes a recourse liability account for $30,000. Under the risk-based capital guidelines of the bank supervisory agencies, however, the creation of the recourse liability account would not operate to reduce the amount of the loans for determining the capital charge. Thus, notwithstanding the $30,000 recourse liability account, the bank would still be required to maintain capital against the full amount of the loans, or capital of $40,000 ($1,000,000 × 50% risk-weight × 8%). This treatment may actually discourage a bank from establishing an adequate recourse liability account.

By contrast, under the risk-based capital rules of the OTS, a savings association transferring the same pool of loans and establishing the same liability account may net the account against the full amount of the loans transferred. Thus, the total amount of the loans outstanding for capital purposes would be reduced to $970,000, and the net recourse exposure would drop from $100,000 to $70,000. Because the liability account is netted against the total outstanding amount of the loans rather than the capital requirement, the savings association would be required to hold capital of $38,800 ($970,000 × 50% risk-weight × 8%). If the recourse liability account had reduced the net recourse exposure below the capital requirement for the full amount of the loans less the recourse liability account, then the capital charge would have been reduced to the level of the net recourse exposure. For example, if the association had established a recourse liability account of $80,000, then the required capital would have been limited to the amount of the net recourse exposure of $20,000.

The risk-based capital standards also do not necessarily recognize differences in the degree to which an asset transferred with recourse is collateralized.[35] For example, assume that a savings association originated two $100,000 mortgage loans, one with a loan-to-collateral value ratio of 80%, and the other with a loan-to-collateral value ratio of 75%. If the savings association subsequently transferred both loans, each with 10% recourse, it would be required to hold the same minimum captial against each loan, despite the differences in the underlying collateral values.

Another example of a collateralized recourse arrangement involves the lending of customers' securities. Financial institutions that lend their customers' securities to third parties may provide protection against loss to the customers. The degree of such protection may vary from total indemnification to simply a guarantee that the customer will not lose money as a result of a decline in the market value of the pledged collateral should the borrower fail to return the securities. Thus, when a financial institution lends its customer's securities the degree of risk retained can vary from a very low percentage of 100% of the value of the lent securities. Nevertheless, if the financial institution provides any loss protection to the customer, the risk-based capital standards require that capital be held for the entire amount of the securities lent regardless of the level of the guarantee that is provided.

The risk-based capital standards also do not distinguish between recourse arrangements with different probabilities of loss. Thus, if a savings association or bank transfers ten loans, each with a balance of $100,000, subject to 10% recourse per loan, or transfers the same loans with 10% recourse on the pool, the bank's total potential liability in each case is $100,000 (10 loans × $100,000 × 10%). The total capital required in each case would be $80,000 (10 loans × $100,000 × 8%). Nonetheless, the probability of loss in the latter instance is greater. If the recourse is on a "per loan" basis, the institution cannot lose the full $100,000 unless each of the ten loans loses $10,000. By contrast, if the recourse is on a "pool" basis, various combinations of loss, *e.g.*, one loan losing $100,000, or two loans each losing $50,000, may result in the institution's absorbing its total potential loss.

Finally, the risk-based capital standards do not necessarily distinguish between recourse arrangements structured as second dollars of loss and recourse arrangements structured as first dollars of loss. For example, in certain recourse arrangements, a financial institution undertakes to cover losses only after another party has already absorbed some loss. Even though the actual risk of loss is less than if the financial institution were obligated to absorb the first dollars of loss, the risk-based capital standards may require identical treatment of these recourse arrangements, depending on the particular factual situation.

[34] Under the current Call Report instructions, such a transaction would not receive sale treatment because the bank would retain more than a "significant risk of loss" on the loans transferred. However, if the FFIEC were to adopt the GAAP approach for reporting asset transfers with recourse, the issues raised in this example would arise.

[35] This situation is not unique to assets transferred with recourse, but also applies to on-balance sheet assets that are collateralized (other than by so-called "qualifying collateral"). The risk-based capital ratio focuses principally on broad categories of credit risk. The ratio does not take account of many other factors that can affect an institution's financial condition such as the quality of individual loans and investments and the degree to which they are protected by collateral.

2. Implicit Recourse Arrangements

The Agencies believe that financial institutions should not assume implicit recourse unless capital support is provided. The Agencies also recognize that the exposure arising from an implicit recourse arrangement, as opposed to an explicit arrangement, is difficult to quantify, and that it may not be feasible to apply the risk-based capital ratios to implicit arrangements. Accordingly, the Agencies will consider whether alternative approaches should be employed to control financial institutions' use of implicit recourse arrangements.

The Agencies note that existing regulatory constraints may already afford financial institutions some protection against the risks of assuming implicit recourse. For example, the requirement that a financial institution maintain specified capital ratios may limit the degree to which an institution can actually reacquire assets as a result of assuming implicit recourse. Prior to purchasing a poorly performing asset from a pool, the institution ordinarily must determine that it has adequate excess capital to book the asset. In addition, the desire for a particular tax treatment of a trust or single-purpose entity created to issue asset-backed securities may restrict a financial institution's ability to repurchase or exchange poorly performing assets.

The Agencies believe that implicit recourse arrangements are frequently associated with asset transfers, and especially securitized asset sales in which the issuing or selling institution may seek to ensure the issue's performance. To address this problem, the Agencies are considering requiring issuing and selling institutions to provide disclosures to purchasers that disclaim any financial institution's obligation for the performance of the transferred assets (other than obligations that may be explicitly assumed).

In addition, as has been their past practice, the Agencies will seek to

identify implicit recourse arrangements in the course of their examination and supervision of individual institutions.

If the primary federal supervisory agency for an individual financial institution determines that the institution habitually or consistently repurchases or rewrites assets it has sold that subsequently perform poorly, that agency will require that institution to maintain additional capital. The institution may also be required to treat the outstanding amount of other similar assets sold as though transferred with recourse for regulatory reporting purposes. A repetitive pattern of renewals or rewrites may also be determined to be an unsafe and unsound banking practice.[26]

The Agencies request comment on their consideration of a disclosure requirement as one approach to discouraging financial institutions from assuming implicit recourse in connection with securitized asset sales and other asset transfers. The Agencies also request comment on any methods that may be used to estimate exposure arising from implicit recourse arrangements and on any other ways of addressing implicit recourse arrangements. Finally, the Agencies request comment on how the risk-based capital standards should be applied once it is determined that an institution clearly has assumed implicit recourse in a transaction or series of transactions.

D. Lending Limit Treatment of Recourse Arrangements

As discussed above, the lending limit calculation generally requires a national bank or savings association that transfers a loan with recourse to include the full amount of that loan in calculating the total loans and extensions of credit outstanding to the underlying borrower. The OCC and the OTS recognize, however, that other methods of computing the lending limit may be appropriate when an institution transfers a loan with partial recourse or otherwise limits its credit risk exposure from a recourse arrangement.[27] The OCC and the OTS also recognize some inconsistencies in the current application of the lending limit to recourse arrangements. As for federally-insured, state-chartered banks, the staffs of the FRB and the FDIC believe that recourse exposure should be combined in some manner with all loans to one borrower for purposes of applying legal lending limits under state laws.[28]

Comment is requested on how the lending limit calculation for national banks and savings associations should treat recourse arrangements generally, including the questions listed below. Comment is also requested on how lending limit calculations for federally-insured, state-chartered banks should treat such arrangements, including the questions listed below. Comment is also solicited on whether and how to achieve a more uniform treatment of recourse arrangements in lending limit calculations under the various applicable state laws.

1. If an institution transfers a loan with partial recourse, would it be appropriate to include less than the full outstanding amount of the loan transferred in the calculation of loans and extensions of credit outstanding to the borrower? More specifically, should the lending limit recognize that while the institution may have retained a disproportionate amount of the risk of loss in the loan, it has nonetheless shifted the risk of catastrophic loss by reducing its exposure from the full amount of the loan to the amount of the resource provision? Also, should the current treatment for national banks and savings associations be revised to permit an institution which establishes a recourse liability account covering all or part of its recourse exposure to deduct the amount of the account from the calculation of loans outstanding to the borrower? Should the establishment of such a liability account affect the calculation of loans outstanding to one borrower at federally-insured, state-chartered banks?

2. Is it appropriate to require the full outstanding balance of a loan transferred with recourse to be included in the calculation of loans outstanding to the borrower if banks and savings associations must also support the retained risk by holding capital against the full outstanding balance of the asset? This question should be considered in view of the fact that capital requirements are specifically intended to address the risk contained in an institution's assets and off-balance sheet items, whereas the lending limit is designed to promote credit risk diversification.

3. Should the lending limit be applied to achieve a more consistent treatment of different types of transactions that may expose an institution to the same degree of credit risk from an underlying borrower? For example, for national banks and savings associations, there is a discrepancy between the lending limit treatment accorded subordinated loans and the treatment accorded subordinated participations. If an institution originates first and second mortgages, on the same property and sells only the first mortgage, the second mortgage will function as a recourse arrangement on the first mortgage. Yet, the institution is required to include only the amount of the second mortgage in its calculation of loans outstanding to the borrower. By contrast, if the institution made a single loan to the same borrower for the same total amount, and then sold the loan with recourse equal to the amount of the second mortgage, the entire loan would be included in the lending limit calculation. Arguably, despite the differing lending limit treatments, the institution's exposure to the borrower's credit risk in the two transactions is the same.

V. Listing of Questions for Comment

To briefly summarize, the Agencies request comment on the following issues:

The definition of "recourse arrangement":

1. How should "recourse arrangement" be defined? What types of risk should be construed as creating a recourse arrangement? Should the same definition be developed for use in the capital, reporting and, as appropriate, lending limit contexts?

2. What methods are available to a financial institution to accept, assume or retain recourse? For example, should the following items, in some circumstances, be considered "recourse arrangements": (a) Subordinated interests; (b) second mortgages; and (c) letter of credit enhancements?

The regulatory reporting treatment of a "recourse arrangement":

3. Should the FRB, the FDIC and the OCC adopt generally accepted accounting principles, in whole or in part, or adopt some other wholly consistent approach for the reporting treatment of asset transfers with recourse?

4. What effect would a change to the reporting treatment have on the leverage ratios of the FRB, the FDIC and the OCC? Should the reporting treatment of assets transferred with recourse have an effect on the leverage ratio?

The appropriate capital requirement for explicit recourse arrangements:

5. Should the Agencies impose the same capital requirement on transactions structured differently but with the same potential effect on a financial institution's income, assets or capital?

6. Should the risk-based capital standards distinguish between limited and unlimited recourse arrangements?

7. Should the risk-based capital standards take into account an established recourse liability account or third party guarantees or insurance? If so, how?

8. Should application of the risk-based capital standards to recourse arrangements take into account differences in the degree to which an asset transferred with recourse is collateralized?

9. Should the risk-based capital standards fully recognize recourse arrangements that do not arise as a result of a financial institution's prior ownership of an asset?

10. What other types of explicit recourse arrangements not discussed in this solicitation are available to financial institutions?

11. Should the risk-based capital standards distinguish between recourse arrangements with different probabilities of loss?

12. How should the need for insured depository institutions and bank holding companies to maintain adequate capital be balanced against their need to compete in markets that include participants that are subject to less stringent capital standards?

The appropriate treatment of implicit recourse arrangements:

13. Should the Agencies adopt disclosure requirements to discourage implicit recourse arrangements?

14. Are there methods available to estimate potential exposure from implicit recourse arrangements?

15. Are there ways, other than disclosure requirements, to address and discourage implicit recourse?

16. How should the risk-based capital standards be aplied to a financial institution that has clearly assumed implicit recourse in a transaction or series of transactions?

Comment is requested on the following issues concerning the lending limit applicable to banks and savings associations:

17. When a bank or savings associations transfers a loan with limited recourse, should be the lending limit be applied to the full amount of the assets, as though it had not been transferred?

18. Should be lending limit calculation result in the same treatment for transactions structured differently, but with the same potential risk of loss on nonpayment?

19. Is is appropriate to include the full outstanding balance of a loan transferred with recourse in the calculation of loans outstanding to the borrower when banks and savings associations are also required to hold capital against the full amount of the asset?

20. Should the treatment of recourse arrangements in legal lending limit calculations applicable to federally-insured, state-chartered banks under state laws be made more uniform? If so, how?

Dated: June 25, 1990.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 90-15083 Filed 6-28-90; 8:45]

BILLING CODE 6210-01-M

[26] The Agencies emphasize that they do not intend to discourage a financial institution with adequate capital from independently deciding to repurchase or rewrite a sold loan that is performing poorly, when the institution intends to work with the underlying borrower and the accommodation is clearly in the best interests of the institution and the borrower.

[27] Some states apply the lending limit for national banks to state-chartered banks. Therefore, changes in the OCC's lending limit treatment of recourse arrangements could affect some state-chartered banks as well as national banks and savings associations.

[28] This discussion of the lending limit treatment of recourse arrangements is intended to apply only to arrangements that expose a bank or savings association to the credit risk of a borrower. It is not intended that the lending limit would apply to recourse arrangements that expose an institution to other types of risk.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010123-019

Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate.

Parties: A. Bottacchi S.A. De Navegacion C.F.L.e I., American Transport Lines, Inc., A/S Ivaran Rederi, Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Empresa Lineas Maritimas Argentinas S.A., Transportacion Maritimas Mexicana S.A.

Synopsis: The proposed modification would (1) authorize the Conference to enter into loyalty contracts, (2) prohibit member lines of the conference from entering into individual loyalty contracts or taking independent action on any conference loyalty contract and (3) delete Transportacion Maritima Mexicana S.A. from appendix A.

Agreement No.: 203-011288

Title: Leif Hoegh & Co., A/S—Ugland Trading Co. A/S—Ugland Investment Co. A/S—Hoegh-Ugland Auto Liners A/S (HUAL) Partnership (Shareholders) Agreement.

Parties: Leif Hoegh & Co. A/S, Ugland Trading Co. A/S, Ugland Investment Co. A/S, Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed Agreement would provide an administrative structure for HUAL, a company owned by the other three parties to the Agreement, including (1) management organization, (2) allocation of shareholder financial responsibilities, (3) subsidiaries for marketing and/or operations, (4) exclusive or primary areas of operations, (5) a system for provision of tonnage to HUAL and (6) a system for distribution of profit or loss.

By Order of the Federal Maritime Commission.

Dated: June 25, 1990.

Joseph C. Polking,

Secretary.

[FR Doc 90-15080 Filed 6-28-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BanPonce Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the

Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 23, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *BanPonce Corporation*, Hato Rey, Puerto Rico; to acquire 100% of the voting shares of Banco Popular de Puerto Rico, Hato Rey, Puerto Rico.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

1. *Rogers County Bank Holding Company*, Claremore, Oklahoma; to acquire 100 percent of the voting shares of Bank of Oklahoma, Claremore, Oklahoma, and Bank of Oklahoma, Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, June 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR 90-15138 Field 6-28-90; 8:45 am]

BILLING CODE 6210-01-M

Allen W. Buhr; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve BAnk indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 13, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Allen W. Buhr*, Ronan, Montana to acquire 3.36 percent of the voting shares of Valley Holding Company, Ronan, Montana, and thereby indirectly acquire Valley Bank of Ronan, Ronan, Montana.

Board of Governors of the Federal Reserve System, June 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15137 Field 6-28-90; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC and Barclays Bank PLC London, England, Application To Provide Investment Advisory and Brokerage Services on a Combined Basis, Related Securities Credit Activities, and Investment Advisory Services on a Separate Basis

Barclays PLC and Barclays Bank PLC, both of London, England ("Barclays"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage through its subsidiary, Barclays de Zoete Wedd Incorporated, New York, New York ("BZWI"), in providing investment advisory and brokerage services on a combined basis ("full-service brokerage") for institutional customers, related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services and cash management services. Barclays also proposes to engage, through BZWI, in the following financial advisory activities for institutional customers: (a) Providing portfolio investment advice; and (b) furnishing general economic information and advice, general economic statistical forecasting services and industry studies. For the purposes of this application, the term "institutional customers" has the same meaning as in *Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695, 695 n.1 (1988). BZWI would conduct the proposed activities domestically and internationally.

BZWI's current activities are as follows: (i) Merger and acquisition and related advisory services; (ii) making and servicing loans; (iii) providing securities brokerage services on U.S. securities pursuant to § 225.25(b) (15) of Regulation Y (*i.e.*, not in combination with advisory or research services); and (iv) providing services, as agent, with respect to foreign securities pursuant to §§ 211.12(f)(3) and 211.4(e)(7) of Regulation K.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that engaging in full-service brokerage activities is closely related and a proper incident to banking. See, *e.g.*, *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) (*"Natwest"*). *Barclays has committed to conduct these activities subject to the limitations in Natwest*, as they were modified in *The Toronto Dominion Bank*, 76 Federal Reserve Bulletin _____ (1990); *The Bank of Tokyo, Ltd.*, 76 Federal Reserve Bulletin _____ (1990); *Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988); and *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987). Barclays also may have one officer of its New York branch serving as a director of BZWI. The Board has previously permitted a similar interlock. *See The Bank of Tokyo, Ltd.*, 76 Federal Reserve Bulletin _____ (1990).

Barclays also seeks authority for BZWI, within defined parameters established by institutional customers, to exercise discretion in buying and selling securities on behalf of institutional customers. This service would be performed solely for institutional customers subject to the conditions in *J.P. Morgan & Co. Incorporated*, 73 Federal Reserve Bulletin 810, 811 (1987).

The related securities credit activities pursuant to the Board's Regulation T and incidental activities such as offering custodial services and cash management services are authorized by § 225.25(b)(15) of the Board's Regulation Y.

In addition, the Board has previously determined that the proposed investment advisory services are closely related and a proper incident to banking. These activities are permissible nonbanking activities pursuant to § 225.25(b)(4) (iii) and (iv) of Regulation Y and will be conducted pursuant to the limitations of those subsections. (12 CFR 225.25(b) (4) (iii) and (iv)).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Barclays contends that

permitting it to engage in the proposed activities would result in increased competition and greater convenience to customers. Moreover, Barclays believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 17, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governor of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15139 Filed 6-28-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Solvay Animal Health, Inc. (Formerly Fromm Laborstories, Inc.); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Solvay Animal Health, Inc. (formerly Fromm Laboratories, Inc.). The NADA provides for the use of thiacetarsamide sodium injection for treating canine heartworm disease. The firm requested withdrawal of the approval. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the animal drug regulations to remove those portions of the regulations reflecting the approval.

EFFECTIVE DATE: July 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20657, 301-443-4093.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120 (formerly Fromm Laboratories, Inc., Grafton, WI 53024), is the sponsor of NADA 30-770, which provides for the use of thiacetarsamide (arsenamide) sodium aqueous injection for treating canine heartworm disease. The NADA was approved on April 1, 1971.

By letter of October 6, 1989, Solvay Animal Health, Inc., on behalf of the sponsor of record, Fromm Laboratories, Inc., requested withdrawal of the approval of NADA 30-770 because the product is no longer produced or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 30-770 and all supplements thereto is hereby withdrawn, effective July 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600(c) and 522.144(c) to reflect the withdrawal of approval.

Dated: June 25, 1990.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 90-15224 Filed 6-28-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of August 1990.

Name: Faculty Development Review Committee.

Date and Time: August 6-8, 1990, 8:30 a.m.

Place: Conference Rooms K and L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 6, 8:30 a.m.-9:30 a.m.

Closed for remainder of meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan, develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 6, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

* * * * *

Name: Graduate Training in Family Medicine Review Committee

Date and Time: August 21-23, 1990, 8:30 a.m.

Place: Conference Room J, K, & L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 21, 8:30 a.m.-9:30 a.m.

Closed for remainder of meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialise or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 21, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

* * * * *

Name: Residency Training Review Committee.

Date and Time: August 28-29, 1990, 8:30 a.m.

Place: Conference Rooms J, and K, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on August 28, 8:30 a.m.–9:30 a.m.
Closed for Remainder of Meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on August 28, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Councils should contact Mrs. Sherry Whipple, Executive Secretary of the Faculty Development Review Committee, the Graduate Training in Family Medicine Review Committee, and the Residency Training Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6674.

Agenda items are subject to change as priorities dictate.

Dated: June 27, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-15225 Filed 6-28-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Center for Nursing Research; Meeting: Nursing Science Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, July 18–20, 1990, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on July 18 from 9 a.m. to 10 a.m. Agenda items to be discussed will include an overview of NCNR new initiatives.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on July 18 at approximately 10 a.m. to adjournment on July 20 for completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John Chah, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31, room 5B19, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: June 19, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-15120 Filed 6-28-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on July 11, 1990 at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on July 11 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on July 11. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Responses, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Allen Stoolmiller, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, room 3A11, Bethesda, Maryland 20892, telephone (301–496–7042), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 18, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-15121 Filed 6-28-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting of Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications, Prevention and Treatment Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on July 11, 1990 at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 8 a.m. to 8:30 a.m. on July 11 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 8:30 a.m. until adjournment on July 11. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Responses, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Sally A. Mulhern, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, room 3A07, Bethesda, Maryland 20892, telephone (301–496–2550), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 19, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-15122 Filed 6-28-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 30–31, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. The meeting on July 30, from 1 p.m. until recess has been set aside for orientation of new members. The meeting will be open to the public on July 31 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on July 31, from 10:30 a.m. to adjournment on July 31, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7823), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13. 112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-15123 Filed 6-28-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 15, 1990. (Call PHS Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Notice of Participation (21 CFR 12.45)—0910-0191

This regulation specifies information to be provided to the Food and Drug Administration (FDA) relative to a participant's special interest and commitment to participate in a hearing. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 50; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 3 hours; *Estimated Annual Burden:* 150 hours.

2. Advisory Opinions—0910-0192

The regulation prescribes the format and instructions whereby any interested person may request an advisory opinion from the FDA on a matter of general applicability. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 10; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 16 hours; *Estimated Annual Burden:* 160 hours.

3. Infant Formula Quality Control and Labeling—0910-0178

Infant Formula Labeling and Infant Formula Quality Control Procedures are necessary to assure that nutrient levels of infant formula are declared on the label and meet the requirements of the Infant Formula Act. The regulations affect formula manufacturers/consumers. *Respondents:* Businesses or other for-profit.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting: 21 CFR 106.120(a), (b), 107.10(a), (a)(1) & (a)(2), 107.20(a) & (c)	5	5.5 hrs.	2
Recordkeeping: 21 CFR 106.20, 106.25, 106.30(b)(1), (b)(2), (b)(3), (c)(1), (c)(2), 106.100	5	7500 hrs.	

Estimated Annual Burden: 37,555

4. (Petition for) Administrative Stay of Action (21 CFR 10.35)—0910-0194

This regulation gives a format and instructions for petitioning the FDA for an administrative stay of an Agency action. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 8; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 5 hours; *Estimated Annual Burden:* 40 hours.

5. NLM Online Application Packet—0925–0223

The National Library of Medicine (NLM) uses the information provided by organizations and individuals on the forms for MEDLARS online system user code assignments and invoices for system use. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 15,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.0833 hours; *Estimated Annual Burden:* 1,245 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: June 25, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-15081 Filed 6-28-90; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 11, 1990. (Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Request for Waiver of Overpayment Recovery or Change in Repayment Rate—0960–0037

The information on form SSA-632 is used by the Social Security Administration to determine whether an overpaid person has the ability to make repayment, the installment amount of such repayment, or whether the overpayment may be waived. The respondents are individuals who file for waiver of an overpayment, or file this form to adjust the installment amount of such repayment. *Number of Respondents:* 600,000; *Frequency of Response:* 1; *Average Burden Per Response:* 25 minutes; *Estimated Annual Burden:* 125,000 hours.

2. Statement of Care and Responsibility for the Beneficiary—0960–0109

The information on form SSA-788 is used by the Social Security Administration to evaluate the concern that a potential representative payee shows toward the beneficiary. The respondents are individuals or institutions who have custody of a beneficiary for whom someone else has failed to be representative payee. *Number of Respondents:* 130,000; *Frequency of Response:* 1; *Average Burden Per Response:* 10 minutes; *Estimated Annual Burden:* 21,667 hours.

OMB Desk Officer: Allison Herron.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 25, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-15084 Filed 6-28-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3113]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephones numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 22, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of proposed Information Collection to OMB

Proposal: Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing, FR-2450.

Office: Housing.

Description of the need for the information and its proposed use: This rule gives regulatory effect to legislative provisions governing prepayment of HUD-Insured Mortgages. These provisions ensure that affordable multifamily housing units are preserved to the maximum extent practicable for lower-income families and that displacement of such families is minimized while public and private sectors find long term remedies to the potential loss of affordable housing.

Form number: None.

Respondents: Individuals or Households, State or Local Governments, Business or Other For-Profit, and Federal Agencies or Employees.

Frequency of Submission: One-Time.

Reporting burden:

	Number of respondents	×	Frequency of respondents	×	Hours per response	=	Burden hours
Information Collections	35		1		Varies (1–4 hrs)		770

Total estimated burden hours: 770.

Status: Reinstatement.

Contact: Kevin East, HUD, (202) 708-2300, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 22, 1990.

[FR Doc. 90-15146 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-311 4]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephones numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 20, 1990.

John T. Murphy, Director,

Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgage Questionnaire.

Office: Housing.

Description of the Need for the Information and its proposed Use: The Department will use this form to collect information that will provide an overview of the mortgagee's operation for servicing HUD-insured single-family mortgages and to forecast possible weaknesses in a servicing operation prior to an on-site review of the mortgagee's office procedures.

Form number: HUD-9800.

Respondents: Business Or Other For-Profit.

Frequency of Submission: Biennially.

Reporting burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
HUD-9800	2,600		.5		2.5		3,250

Total Estimated Burden Hours: 3,250.

Status: Extension.

Contact: Leslie Bromer, HUD (202) 708-1672, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 22, 1990.

[FR Doc. 90-15147 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3112]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

BEST COPY AVAILABLE

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 21, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Homeownership Assistance Under section 235 of the Housing Act.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Form HUD-93100 will be used to determine a homeowner's eligibility for and amount of financial assistance to be provided under Section 235, Homeowners Assistance Payments Program.

Form Number: HUD-93100.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93100	55,000		1.25		.25		17,187

Total Estimated Burden Hours: 17,187.

Status: Reinstatement.

Contact: Florence B. Brooks, HUD, (202) 755-6640, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 21, 1990.

[FR Doc. 90-15146 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3110]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to sumbit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 13, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Payments, FR-2745.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Under section 801 of the HUD Reform Act of 1989, a one-time contract rent determination and a calculation of retroactive payments must be made for certain owners in the Section 8 Housing Assistance Payments Program. Collecting this information from owners, State agencies, and PHAs is necessary for the Department to be in compliance with this legislation.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions.

Frequency of Submission: One-time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Programs Under Parts 880, 881, 883, 884, 885, 886:							
Owner Request for Rent Determination; Claim for Payment	583		2		.25		292
Owner Documentation of Occupancy Rate	200		1		1.5		300
State Agencies as Contract Administrators-Initial Notification; Notification of Eligibility; Processing of Payments	30		3		.5		46
State Agency Determination of Occupancy Rates; Calculation of Retroactive Payments	30		2		.75		45
Moderate Rehabilitation Program:							
Owner Request for Rent Determinations; Statement of Basis for Certification; Claim for Payment	250		1		.75		188
PHAs as Contract Administrators-Initial Notification; Notification of Eligibility; Processing of Payment	250		3		.5		375
PHA Determination of Occupancy Rates; Calculation of Retroactive Payments	250		2		.75		375

Total Estimated Burden Hours: 1,620

Status: New.

Contact: Michelle McLaurin, HUD, (202) 708-3944, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 13, 1990.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Study-Assessment of HUD-Insured Multifamily Rental Housing Stock.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The purpose of this study is to generate an accurate information data base that will enable the Department to anticipate and systematically assess ongoing policy issues as they relate to HUD-insured multifamily rental housing inventory.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Owner/Manager Form:							
Manager	600		1		1.5		900
Owner and/or Designee	600		1		1.0		600
Physical Inspections:							
Manager or Agent	600		1		8.0		4,800
Market Valuation:							
Public Officials	600		1		0.5		300
PHA Section 8 Directors	600				0.5		300
Real Estate Professionals and Other Community-based Experts	2,400		1		0.5		1,200

Total Estimated Burden Hours: 8,100.

Status: New.

Contact: Laurent Hodes, HUD, (202) 708-0335, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 13, 1990.

[FR Doc. 90-15149 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3115]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 25, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: 24 CFR part 813. Definition of Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Project owners, PHAs, and IHAs may submit request for exceptions in order to admit lower income families who are not very low-income, to units covered by the income limits in Section 323 of the Omnibus Budget Reconciliation Act of 1981. The Department will authorize exceptions on the basis of these requests.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	606		1		1		606

Total Estimated Burden Hours: 606.

Status: Extension.

Contact: James McJimpsey, HUD, (202) 708-4162, Scott Jacobs, OMB, (202) 395-6880.

Dated: June 25, 1990.

[FR Doc. 90-15156 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3111; FR-2946-N-01]

Supplemental Assistance for Facilities to Assist the Homeless (SAFAH); Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program. The announcement contains the names and addresses of the award winners and the amounts of the awards.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: James Forsberg, Director, Special Needs Assistance Program, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; (202) 708-4300; TDD for the hearing- and speech-impaired (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The SAFAH program was authorized by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100-628, approved Nov. 7, 1988). The purpose of the program is to provide: (1) Comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless, and (2) assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and Supportive Housing Demonstration programs. Eligible applicants are State and local governments, tribes, or private nonprofit organizations.

On January 30, 1990 (55 FR 3170), HUD announced the availability of $10,848,973 in SAFAH funds for interest-free advances and grants.

Applications, which were due April 2, 1990, were scored and ranked on criteria contained in 24 CFR part 579. A total of $10.8 million was awarded to 20 homeless shelter providers in 17 communities. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as follows:

	Recipient	Award amount
1	Daystar House, Inc., Cullman, AL, Ms. Mary D. Hughes, Director of Operations, 809 3rd Street, SE., Cullman, AL 35055	$46,644
2	Berkeley Oakland Support Services, Berkeley, CA, Ms. Boona Cheema, Executive Director, 2100 Martin Luther King Jr. Way, Berkeley, CA 94704	472,275
3	Catholic Charities of San Francisco County, CA, Ms. Mary L. Gooks, Executive Director, 1049 Market St., Suite 200, San Francisco, CA 94103	748,858
4	Community of Hope, Washington, DC, Mr. Tom Nees, Executive Director, 1417 Belmont St., NW., Washington, DC 20009	147,000
5	Green Door, Inc., Washington, DC, Ms. Judith Johnson, Executive Director, 1623 16th St., NW., Washington, DC 20009	360,000
6	Associated Catholic Charities, Washington, DC, Ms. Charlotte King, Executive Director, 1133 15th St., NW., Washington, DC 20005	398,789
7	Coalition for the Homeless, Inc., Washington, DC, Mr. Jack M. White, Jr., Executive Director, 2924 Sherman Ave., NW., Washington, DC 20001	905,183
8	Hawkeye Area Community Action Program, Inc., Cedar Rapids, IA, Mr. Don W. Maniccia, Executive Director, 320 11th Ave., SE., Cedar Rapids, IA 52408	1,000,000
9	YWCA of Lewiston-Clarkston, Inc., Lewiston, ID, Ms. Tina Alexanderson, Executive Director, 300 Main Street, Lewiston, ID 83501	301,063
10	Public Action to Deliver Shelter, Inc., Aurora, IL, Sr. Rose Marie Lorentzen BVM, Executive Director, 659 S. River St., Aurora, IL 60506	816,690
11	Shreveport SRO, Inc., Shreveport, LA, Ms. Melissa Flournoy, President, P.O. Box 1808, Shreveport, LA 71162	979,148
12	Elizabeth Stone House, Inc., Jamaica Plain, MA, Ms. Deborah Linnell, Clerk, P.O. Box 15, Jamaica Plain, MA 02130	259,000
13	Wayne County, Detroit, MI, Mr. Edward H. McNamara, County Executive, 600 Randolph, Detroit, MI 48226-2831	1,000,000
14	Family Self Help Center, Joplin, MO, Ms. Susan T. Buchanan, Executive Director, 1909 Connor, Joplin, MO 64802	404,210
15	Warren-Hamilton Housing Corporation, Indian Lake, NY, Ms. Nancy Berkowitz, Executive Director, P.O. Box 695, Indian Lake, NY 12842	368,014
16	Greyston Family Inn, Yonkers, NY, Ms. Sandra Holmes, Executive Director, 114 Woodworth Ave., Yonkers, NY 10701	730,210
17	WSOS Community Action Commission, Inc., Fremont, OH, Mr. Donald F. Stricker, Chief Executive Officer, 109 S. Fremont St., Fremont, OH 43420	196,500

	Recipient	Award amount
18	Lane County, Eugene, OR, Mr. James R. Johnson, County Administrator, 125 East 8th Avenue, Eugene, OR 97401	488,783
19	State of Rhode Island and Providence Plantations, Providence, RI, Mr. Charles R. Mancsillo, Director, State House, Providence, RI 02903	724,000
20	Volunteers of America, Knoxville, TN, Mr. Tom Salter, Executive Director, 414 W. Church Ave., Knoxville, TN 37902	524,848

Dated: June 22, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90-15152 Filed 6-28-90; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-90-1917; FR-2606-N-78]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: June 29, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized or underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized and underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000; (202) 272-1750; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067. (These are not toll-free numbers.)

Dated: June 21, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

Indiana

Cecil M. Harden Lake Project
Rockville, IN, Co: Parke
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Unutilized
Comment: 2.88 acres; narrow triangular shaped area of land.

Texas

Land Saginaw Army Aircraft Plt
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Suitable Buildings (by State)

Maryland

Bldg. 197
Fort George G. Meade
1st and Chisholm Streets
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014848
Status: Unutilized
Comment: 7670 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 308
Fort George G. Meade
Llewelyn Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014849
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; most recent use—storage; secured area with alternate access; possible asbestos.

Bldg. 4901
Fort George G. Meade
Llewelyn Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014850
Status: Unutilized
Comment: 16594 sq. ft.; 2 story concrete block; needs rehab; secured area with alternate access; possible asbestos; most recent use—branch exchange.

Bldg. 3187
Fort George G. Meade
Mac Arthur Road
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014851
Status: Unutilized
Comment: 1914 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 6699
Fort George G. Meade
Zimborski Road
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014852
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access.

Bldg. 378
Fort George G. Meade
Behind Bldg. 368 on 5½ Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014853
Status: Underutilized
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 373
Fort George G. Meade
Behind Bldg. 372 on Chamberlain Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014854
Status: Underutilized
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2815
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014855
Status: Unutilized
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 357
Fort George G. Meade
3rd Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014856
Status: Unutilized
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. T-2357
Fort George G. Meade
Hodges Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014857
Status: Unutilized
Comment: 2360 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 6305
Fort George G. Meade
Rock Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014858
Status: Unutilized
Comment: 2441 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 6212
Fort George G. Meade
Rock Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014859
Status: Unutilized
Comment: 2220 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; most recent use—storage.

Bldg. 2816
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014860
Status: Unutilized
Comment: 1676 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2817
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014861
Status: Underutilized
Comment: 3663 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—storage.

Bldg. T-356
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014862
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2229
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014863
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 649
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014864
Status: Underutilized
Comment: 2594 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; needs rehab; most recent use—storage.

Bldg. 583
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014865
Status: Unutilized
Comment: 3245 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access.

Bldg. 543
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014866
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; possible asbestos; needs rehab; secured area with alternate access.

Bldg. 509
Fort George G. Meade
Llewellyn Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014867
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; secured area with alternate access; most recent use—storage.

Bldg. 369
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014868
Status: Unutilized
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 364
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014869
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. T-359
Fort George G. Meade
5½ and Chisholm Streets
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014870
Status: Unutilized
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 357
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014871
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 353
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014872
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; possible asbestos; secured area with alternate access.

Bldg. 259
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014873
Status: Underutilized
Comment: 3537 sq. ft.; 1 story wood frame; possible asbestos; needs rehab; secured area with alternate access; most recent use—storage.

Bldg. 2408
Fort George G. Meade
Ernnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014874
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2413
Fort George G. Meade
Behind Bldg 2423—Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014875
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2417
Fort George G. Meade
Behind Bldg. 2426 off Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014876
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2418
Fort George G. Meade
Behind Bldg 2427 off Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014877
Status: Unutilized
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.

Bldg. 2419
Fort George G. Meade
Behind Bldg 2427—Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014878
Status: Underutilized
Comment: 2441 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access; most recent use—arms rooms.

Bldg. 2425
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014879
Status: Unutilized
Comment: 1843 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2426
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014880
Status: Unutilized
Comment: 7670 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2427
Fort George G. Meade
Earnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014881
Status: Unutilized
Comment: 8150 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2940
Fort George G. Meade
Earnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014882
Status: Unutilized
Comment: 2250 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access.

Bldg. 2947
Fort George G. Meade
Earnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219014883
Status: Unutilized
Comment: 3883 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—gym.

Oklahoma

Bldg. T-836
Fort Sill
Corner Macomb Road and Burrell Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219014840
Status: Unutilized
Comment: 1341 sq. ft.; 1 story wood frame; possible asbestos; most recent use—storage.

Bldg. T-4540
Fort, Sill
4540 Bragg Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219014841
Status: Unutilized
Comment: 3200 sq. ft.; 2 story wood frame; most recent use—headquarters building.

Bldg. T-4919
Fort. Sill
4919 Post Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. 4914
Fort. Sill
4914 Post Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219014843
Status: Unutilized
Comment: 719 sq. ft.; 1 story mobile home trailer; needs rehab; possible asbestos.

Tennessee

Area Q—Housing Area—Q30
Milan Army Ammunition Plant
Milan, TN, Co: Carroll
Landholding Agency: Army
Property Number: 219014790
Status: Underutilized
Comment: 2506 sq. ft.; 2 story wood frame residence.

Texas

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014815
Status: Unutilized
Comment: 84608 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 4
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014816
Status: Unutilized
Comment: 1350 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 17
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014817
Status: Unutilized
Comment: 88 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 29
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014818

Status: Unutilized
Comment: 6828 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 30
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014819
Status: Unutilized
Comment: 5823 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 18
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014820
Status: Unutilized
Comment: 9680 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 6
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014821
Status: Unutilized
Comment: 1250 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 7
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014822
Status: Unutilized
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 8
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014824
Status: Unutilized
Comment: 171 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.

Bldg. 16
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014825
Status: Unutilized
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 19
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014826
Status: Unutilized
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014827
Status: Unutilized
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014828
Status: Unutilized
Comment: 244 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014829
Status: Unutilized
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014830
Status: Unutilized
Comment: 354 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014831
Status: Unutilized
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014832
Status: Unutilized
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014833
Status: Unutilized
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014834
Status: Unutilized
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant
Landholding Agency: Army
Property Number: 219014835
Status: Unutilized
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Portion of Federal Building
102 W. Lamar Street
McKinney, TX, Co: Collin
Landholding Agency: GSA
Property Number: 549010065
Status: Excess
Comment: 8306 sq ft.—1st floor; 5151 sq ft.—2nd floor; possible GSA NO. 7-G-TX-1003

Universe of Properties:

Total	100
Suitable	64
Suitable Buildings	62
Suitable Land	2
Unsuitable	36
Unsuitable Buildings	33
Unsuitable Land	3
Number of Resubmissions	0

[FR Doc. 90-14965 Filed 6-28-90; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved Tribal-State Compacts between the following tribes and states: the Viejas Band of Mission Indians and the State of California, executed on 4/3/90, and the Mille Lacs Band of Chippewa Indians and the State of Minnesota, executed on 6/5/90.

ADDRESSES: Office of Legislative Affairs, Bureau of Indian Affairs, Department of the Interior, MS-4641, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joel Starr, Bureau of Indian Affairs, Washington, DC, (202) 208-5706; Michael Cox, Office of the Solicitor—Indian Affairs, Washington, DC, (202) 208-4361.

Dated: June 25, 1990.

Stephen A. Gleason,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-15154 Filed 6-28-90; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[NM-030-00-8110-8669]

Las Cruces District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will include a tour of Ft. Cummings, northeast of Deming, New Mexico off of State Highway 26. The itinerary and agenda are:

1. 10 a.m.—Meet at the intersection of State Highway 26 and State Highway 180.
2. 10:15 a.m.—Tour of Ft. Cummings. Leave tour area for Lake Valley School at approximately 11:15 a.m.
3. 12 p.m.—Lunch at Lake Valley School.
4. 1 p.m.—Meeting begins at Lake Valley School with review and approval of minutes from previous meeting.
5. 1:15 p.m.—Discussion of Lake Valley School Historic Site:
   A. Ownership.
   B. Present Management.
   C. Options for Preservation; Use.
6. 1:45 p.m.—Discussion on legislation for Boots and Saddles.
7. 2 p.m.—Discuss proposal of having a 1990 Ft. Cummings Conference.
8. 2:15 p.m.—Poney Hills Rock Art Site: significance, etc.
9. 2:45 p.m.—Discussion of off-road vehicle conflicts in Alamogordo.
10. 3 p.m.—Public Comment.
11. 3:30 p.m.—Adjourn.

DATES: Board members and interested parties should meet at the intersection of State Highway 26 and State Highway 180, northeast of Deming, New Mexico at 10 a.m., Tuesday, July 31, 1990.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District Office, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005 or at (505) 525-8228.

Dated: June 22, 1990.

Robert R. Calkins,

Associate District Manager.

[FR Doc. 90-15142 Filed 6-28-90; 8:45 am]
BILLING CODE 4310-FB-M

[OR-015-00-4212-13; GPO-277]

Realty Action Exchange of Public and Private Lands in Lake and Harney Counties, Oregon OR 45458

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 32 S., R. 23 E., W.M., Oregon
Section 24: E½NE¼.
T. 32 S., R. 24 E., W.M., Oregon
Section 18: All.
Section 20: All.
Section 21: All.
Section 22: SW¼NW¼, W½SW¼.
Section 28: NE¼, W½, N½SE¼.
Section 29: All.
Section 30: Lot 1, NE¼, NE¼NW¼, E½SE¼.
Section 32: E½, NW¼, NE¼SW¼.
Section 33: W½.
T. 33 S., R. 24 E., W.M., Oregon
Section 4: Lot 4, SW¼NW¼, NW¼SW¼.
Section 5: Lots 1 and 2, S½NE¼, N½SE¼.

comprising 4,790.44 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Lynch Brothers:

T. 36 S., R. 24 E., W.M., Oregon
Section 19: E½ of Lot 1, E½, E½W½.
T. 37 S., R. 23 E., W.M., Oregon
Section 25: NE¼NE¼.
T. 37 S., R. 24 E., W.M., Oregon
Section 30: Lots 3 and 4, E½SW¼; 31.
Section 31: NE¼, NE¼.
T. 38 S., R. 23 E., W.M. Oregon
Section 3: SW¼.
Section 5: Lots 3 and 4, SW¼NE¼, S½NW¼, SW¼, W½SE¼.
Section 8: S½.
Section 9: N½NE¼, SW¼NE¼, E½NW¼, NW¼NW¼, W½, SW¼SE¼, SE¼SE¼.
Section 10: SE¼SE¼.
Section 11: SW¼SW¼.
Section 14: SW¼NE¼.
Section 15: E½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, W½SE¼.
Section 16: E½NE¼, NW¼NE¼, NE¼SE¼.
Section 17: S½NE¼, E½SE¼, SW¼SE¼.
Section 21: NW¼SW¼.
Section 22: W½NE¼, E½NW¼.
Section 26: NE¼NE¼.
T. 38 S., R. 24 E., W.M., Oregon
Section 5: SW¼NW¼, SW¼.
Section 6: SE¼NE¼, N½SE¼, SE¼SE¼.

comprising 3,536.09 acres of private land.

The purpose of this exchange is to acquire the non-federal lands which are considered of high public value in terms of recreation and wildlife habitat. The land to be acquired lies within an area heavily used by outdoor recreationists and would compliment the Bureau's Wildlife Management Program. The public interest will be served by completing the exchange.

The value of the lands to be exchanged are considered equal; however, if equalization of values is necessary it will be achieved either by acreage adjustment or payment to the United States by Lynch Brothers of funds in an amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

The land to be transferred from the United States will be subject to the following reservations, terms and conditions.

Reservations:

(1) A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

(2) All minerals in or under the following described lands including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

T.32S., R.24E., W.M., Oregon
Section 28: W½E½, NE¼SE¼.
Section 32: W½NE¼, E½NW¼, NW¼NW¼SE¼.
Section 33: S½SW¼SE¼, SE¼SE¼.

Subject to:

(1) Those rights for road purposes pursuant to BLM right-of-way OR 45517, 60 feet in width, issued under section 507 of the Federal Land Policy and Management Act of October 21, 1976; and

(2) Those rights for reservoir purposes pursuant to BLM right-of-way OR 45518 issued under section 507 of the Federal Land Policy and Management Act of October 21, 1976.

Publication of this notice segregates the public lands from operation under the public land and mining laws for a period of two (2) years from the date of first publication. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of its publication, whichever occurs first.

Further information concerning the exchange, including the Environmental Assessment is available for review at the Bureau of Land Management, Lakeview Resource Area Office, 1000 South Ninth Street, Lakeview, Oregon 97630, telephone (503) 947-2177.

For a period of forty-five (45) days from the date of first publication, interested parties may submit comments to the Lakeview District Manager, Bureau of Land Management at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: June 21, 1990.
Terry H. Sodorff,
Acting Lakeview District Manager.
[FR Doc. 90-15110 Filed 6-28-90; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-FWS01), Washington, D.C. 20503, telephone 202-395-7340.

Title: Regulations for Temporary Subsistence Management for Public Lands in Alaska, 50 CFR subchapter H.

OMB Approval Number: N/A.

Abstract: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), requires the Secretaries of Interior and Agriculture to provide a preference for rural residents of Alaska to harvest fish and wildlife for subsistence on public lands in the absence of a state program. The State of Alaska's subsistence program was ruled unconstitutional by the Alaska Supreme Court in December 1989; therefore, the Secretaries must implement a program to meet ANILCA requirements.

There are three types of information collection requirements contained in the rules: (1) General adoption of the State subsistence regulations concerning licenses and reporting information concerning harvest data; (2) supplemental permits issued by the administering Federal land managing agency for activities where the State subsistence regulations need to be supplemented to afford resident adequate subsistence opportunities; and (3) an appeal procedure for persons desiring relief from, or changes to the regulations.

Service Form Numbers: N/A.

Frequency: On occasion; annually.

Description of Respondents: Individuals and households.

Estimated Completion Time: Adoption of State requirements—license and reporting of harvest data—6 minutes per response; Federal permit requirements—15 minutes per response; Appeal procedures—Average 4 hours per appeal (agencies anticipate an average of 5 appeals annually).

Annual Responses: 100,000 (adoption of State requirements, 100,000 respondents; Federal permit requirements, 2,000 respondents, and appeal procedure, 5 respondents).

Annual Burden Hours: 13,820.

Service Clearance Officer: James R. Pinkerton, 703-358-1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: June 22, 1990.
Leonard P. Tinsley,
Assistant Director—Refuges and Wildlife.
[FR Doc. 90-15160 Filed 6-28-90; 8:45 am]
BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-282]

Review of Mexico's Recent Trade and Investment Liberalization Measures Phase II: Prospects for Future U.S.-Mexican Trade Relations

AGENCY: United States International Commission.

ACTION: Notice of additional public hearing to be held in McAllen, TX

EFFECTIVE DATE: February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202-252-1263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436

Background

Phase II of investigation No. 332-282 will provide a summary of the views of recognized authorities (for example, government officials, scholars, private sector businessmen, and others) on possibilities for the future direction of the U.S.-Mexican bilateral relationship. Such possibilities might include a free trade area, an enhanced dispute settlement mechanism, sectoral approaches, and other options for enhanced bilateral relations. Public hearings were previously held in Las Cruces, New Mexico, on May 5, 1990, and in Tucson, Arizona, on May 8, 1990. The original notice of investigation was published in the **Federal Register** of November 16, 1989 (54 FR 220).

Public Hearing

An additional public hearing in connection with phase II of this investigation will be held on July 16, 1990 beginning at 9:30 a.m., at the Fairway Resort, South 10th Street at Wichita Avenue, McAllen, Texas. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, July 6, 1990. The deadline for filing prehearing briefs (original and 14 copies) is July 6, 1990.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the phase II report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection to interested persons by the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received no later than July 20, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.
Issued: June 20, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-15258 Filed 6-28-90; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Springs Industries, Inc., 205 North White Street, Fort Mill, South Carolina 29715.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(1) Carey-McFall Corporation, incorporated in the State of Delaware, with its principal place of business in Montgomery, Pennsylvania.

(2) Graber Industries, Inc., incorporated in the State of Delaware, with its principal place of business at 7549 Graber Road, Middleton, Wisconsin.

B. 1. Parent corporation and address of principal office: Valley Oil Co., Inc., P.O. Box 12249, 1790 16th Street, Salem, Oregon 97309.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(1) Delk Aviation Fuels Inc. Salem, Oregon, State of incorporation—Oregon.

Noreta R. McGee,
Secretary.
[FR Doc. 90-15173 Filed 6-28-90; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on June 11, 1990, a proposed Consent Decree in *United States* v. *Reedy Creek Improvement District, and the State of Florida* was lodged with the United States District Court for the Middle District of Florida, Orlando Division. This action is being filed pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, to resolve alleged violations of effluent discharge limits contained in a National Pollutant Discharge Elimination System ("NPDES") permit issued to the defendant, the Reedy Creek Improvement District ("Reedy Creek").

Pursuant to the proposed Consent Decree, Reedy Creek will design and construct a spray irrigation system designed to eliminate or minimize violation of its NPDES permit. The spray irrigation system shall be completed by May 1, 1990. In addition, Reedy Creek is required to complete construction of a 1000 acre land application system by April 1, 1991, and demonstrate final compliance with the Act and its NPDES permit. During the design and construction of the spray irrigation and land application systems, Reedy Creek will be required to meet interim effluent limits as set forth in the proposed Consent Decree.

The proposed Consent Decree also requires that Reedy Creek pay a civil penalty of $375,000 for its past violations of its NPDES permit limits. Should Reedy Creek violate any provision of the proposed Consent Decree, it will be subject to stipulated penalties. Termination of the proposed Decree will occur after Reedy Creek has demonstrated compliance with its final effluent limits for a period of twelve months.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Reedy Creek Improvement District et al.*, D.J. Ref 90-5-1-1-3363.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 501 Florida Building, 80 North Hughey Avenue, Orlando, Florida, 32801, and at the Region IV Office of the Environmental Protection Agency 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclosed a check in the amount of $2.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 90-15162 Filed 6-28-90; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984, Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 18, 1990 filed a written notification on behalf of Bellcore and Chisso Corporation (hereinafter referred to as "Chisso") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Chisso is a Japanese corporation having a place of business at 7-3 Marunouchi 2-Chrome, Chiyoda-Ku, Tokyo 100, Japan.

Bellcore and Chisso entered into an agreement effective April 11, 1990 to engage in cooperative research collaboration to better understand the applications for exchange and exchange access services of electron beam resist materials, including demonstrating the feasibility of research concepts by means of experimental materials synthesis, characterization, and use in making experimental prototype devices.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
FR Doc 90-15163 Filed 6-28-90 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 18, 1990 filed a written notification on behalf of Bellcore and Nippon Telegraph and Telephone Corporation (hereinafter referred to as "NTT") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its

general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NTT is a Japanese corporation having a place of business at 3–9–11, Midoricho, Musachinoshi, Tokyo 180, Japan.

Bellcore and NTT entered into an agreement effective March 12, 1990 to engage in research collaboration to better understand the applications for exchange and exchange access services of technology and equipment useful for telecommunications services, systems, interfaces and equipment, including but not limited to technology and equipment for broadband telecommunications, optical communications, digital radio communications, network services, telecommunications software, semiconductor and superconductivity technologies, and reliability.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90–15164 Filed 6–28–90; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 10, 1990 filed a written notification on behalf of Bellcore and Plessey-UK Ltd. ("Plessey") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Plessey is a limited liability company of Great Britain having a place of business at Vicarage Lane, Ilford, Essex, 1G1 4AQ.

Bellcore and Plessey entered into an agreement effective May 1, 1988 to engage in cooperative research collaboration to better understand the applications of integrated optoelectronic technology, including advanced high-speed emitter-coupled logic (ecl) processing technology, and technology and equipment useful in circuits and in optical distribution of clock and data signals, for high-speed telecommunications and data processing, and to demonstrate feasibility of research concepts in exchange and exchange access service application by means of experimental prototypes and experimental systems employing such technologies and equipment.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90–15165 Filed 6–28–90; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 18, 1990 filed a written notification on behalf of Bellcore and Alcatel N.V. (hereinafter referred to as "ANV") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objective of the joint venture. The notification was filed for the purposes of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

ANV is a corporation of the Netherlands having a place of business at 33 Rue Emeriau, 75015 Paris, France.

Bellcore and ANV entered into an agreement effective April 1, 1990 to engage in cooperative research of telecommunications concepts, systems, and services to better understand the applications for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technology.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90–15166 Filed 6–28–90; 8:45 am]
BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on May 15, 1990, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice converning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26285). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990 (55 FR 926). On February 15, 1990 CFI filed an additional written notification. The Department published a notice in response to the further additional notification on April 23, 1990 (55 FR 15295).

The purpose of this notification is to disclose the following changes in the membership of CFI: (1) The addition of corporate members Computervision and Teradyne, Inc.; (2) the addition of associate members Recal-Redac, Inc., Rohini Adhikari, Aart DeGuss, and Albert Kloslterman; (3) Daisy/Cadnetix Inc., and GE Aerospace have not renewed their memberships in CFI; (4) Intergraph, Inc. has changed its membership status in CFI from corporate to associate member; (5) EDA Systems, Inc. has merged with Digital Equipment Corporation, Nixdorf Computer AG has merged with Siemens AG, and Silicon Compiler Systems has merged with Mentor Graphics Corporation; (6) Laboratoires de Marcoussis, a division of corporate member Alcatel NV, is no longer listed separately as a corporate member; (7) IMEC, VZW, listed previously as an associate member, is now represented by an individual associate member, R. Van Overstraeten.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 90–15167 Filed 6–28–90; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–22,952]

Wedge Wireline, Inc.; Termination of Certification of Eligibility to Apply for Worker Adjustment Assistance

In the matter of Wedge Wireline, Inc. Odessa, TX and operating out of locations in the following states:

TA–W–22,952A Texas (Except Odessa, Texas)
TA–W–22,952B Louisiana
TA–W–22,952C Oklahoma

In accordance with section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA–W–22,952, TA–W–22,952A, TA–W–22,952B, and TA–W–22,952C investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in section 223(d) of the Act.

On July 19, 1989 workers at Wedge Wireline, Incorporated with locations in Texas, Louisiana, and Oklahoma were certified as eligible to apply for trade adjustment assistance. The notice of certification was published in the **Federal Register** on August 11, 1989 (54 FR 33096–7).

The investigation regarding termination was initiated on May 18, 1990 to determine whether the workers at the subject firm continue to meet the group eligibility requirements of section 222 of the Act. The Notice of Investigation was published in the **Federal Register** on May 29, 1990 (55 FR 21804). No public hearing was requested and none was held.

Whenever, it becomes evident that any of the Group Eligibility Requirements of section 222 of the Trade Act of 1974 are no longer met, the certification as issued must be revised to include a termination date.

Without regard as to whether the other criteria are satisfied, the investigation reveals that the decreased employment criterion of the Group Eligibility Requirements of the Trade Act of 1974 is no longer being met with respect to workers of Wedge Wireline, Incorporated.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that the total or partial separation of workers at the Texas, Louisiana, and Oklahoma locations Wedge Wireline, Incorporated are no longer attributable to the conditions specified in section 222 of the Trade Act of 1974.

In accordance with section 223(d) of the Act, I hereby revise the certification of July 19, 1989 as follows:

All workers of Wedge Wireline, Incorporated, in Texas, Louisiana, Oklahoma who became totally or partially separated from employment on or after May 1, 1988 or before July 11, 1990 are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of June, 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–15185 Filed 6–28–90; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by

writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut, CT90-1 (Jan. 5, 1990). p. 63, pp. 69-70.
New York:
NY 90-2 (Jan. 5, 1990)..... p. 739, pp. 740, 744.
NY 90-3 (Jan. 5, 1990)..... p. 759, p. 760.
NY 90-4 (Jan. 5, 1990)..... p. 768, pp. 770-771.
NY 90-5 (Jan. 5, 1990)..... p. 777, p. 778.
NY 90-7 (Jan. 5, 1990)..... p. 787, pp. 788-789, 805.
NY 90-8 (Jan. 5, 1990)..... p. 815, p. 816.
NY 90-10 (Jan. 5, 1990)..... p. 831, p. 832.
NY 90-11 (Jan. 5, 1990)..... p. 843, p. 844.
NY 90-12 (Jan. 5, 1990)..... p. 851, p. 852.
NY 90-13 (Jan. 5, 1990)..... p. 861, pp. 862-863.
NY 90-14 (Jan. 5, 1990)..... p. 871, p. 872.
NY 90-15 (Jan. 5, 1990)..... p. 873, p. 874.
NY 90-17 (Jan. 5, 1990)..... p. 881, p. 882.
NY 90-18 (Jan. 5, 1990)..... p. 903, p. 904.
NY 90-20 (Jan. 5, 1990)..... p. 908a, p. 908b.
Pennsylvania:
PA 90-2 (Jan. 5, 1990)..... p. 921, p. 922.
PA 90-7 (Jan. 5, 1990)..... p. 977, pp. 978, 983-984.
PA 90-8 (Jan. 5, 1990)..... p. 987, pp. 988, 993.
PA 90-16 (Jan. 5, 1990)..... p. 1005, p. 1006.
PA 90-17 (Jan. 5, 1990)..... p. 1035, pp. 1037-1038.
PA 90-19 (Jan. 5, 1990)..... p. 1048, pp. 1051-1053.
PA 90-22 (Jan. 5, 1990)..... p. 1067, p. 1069.
Rhode Island, RI90-1 (Jan. 5, 1990). p. 1105, pp. 1106-1108.
Virginia, VA90-33 (Jan. 5, 1990). p. 1293, p. 1294.

Volume II

Ohio, OH90-2 (Jan. 5, 1990). p. 781, pp. 783-794, pp. 799-800, pp. 806-807.
Texas:
TX90-32 (Jan. 5, 1990)..... p. 1069, pp. 1070-1071.
TX90-36 (Jan. 5, 1990)..... p. 1091.

Volume III

California, CA90-4 (Jan. 5, 1990). p. 71, pp. 73-75, 77.
Washington, WA90-6 (Jan. 5, 1990). p. 431, pp. 433-434.

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 22nd day of June 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-14939 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-87-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Young's Branch No. 15 Mine (I.D. No. 44-03264) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Petitioner will be conducting pillaring operations, using a three-cut partial recovery method adjacent to a previously abandoned panel which has been sealed.

3. As an alternate method, petitioner proposes to include examination of the seals within its weekly examination at a bleeder performance evaluation station.

4. In support of this request petitioner states that—

(a) Due to a rock fall, access to the seals has been eliminated;

(b) Blocks adjacent to the seals would not be pillared to help ensure the integrity of the seals; and

(c) Air would be coursed across the face of the seals through the gob areas into the return aircourse.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15186 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-89-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Young's Branch No. 15 Mine (I.D. No. 44-03264) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined during preshift examination to determine if they are functioning properly.

2. Petitioner will be conducting pillaring operations, using a three-cut partial recovery method adjacent to a previously abandoned panel which has been sealed.

3. As an alternate method, petitioner proposes to include preshift examination of the seals within its weekly examination at a bleeder performance evaluation station.

4. In support of this request, petitioner states that—

(a) Due to a rock fall, access to the seals has been eliminated;

(b) Blocks adjacent to the seals would not be pillared to help ensure the integrity of the seals; and

(c) Air would be coursed across the face of the seals through the gob areas into the return aircourse.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15187 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-88-C]

Kannan Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kannan Mining Company, Inc., HC 65, Box 2651, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-15808) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Due to uneven roof and soft or uneven bottom, the use of canopies would result in a diminution of safety because canopies would:

(a) Decrease the equipment operator's visibility;

(b) Strike roof supports; and

(c) Cut, dislodge, or pinch electrical cables; resulting in electrical hazards.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15188 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-77-C]

Kerr-McGee Coal Corp. Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that low- and medium-voltage three-phase alternating-current circuits used underground contain either a direct or derived neutral that is grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, extending along with the power conductors to serve as a grounding conductor for the frames of all electrical equipment supplied from that circuit.

2. Petitioner states that the 150 KW, 480 volt, 3 phase AC generator is mounted on a rubber tired trailer. The generator provides power to continuous miners, roof bolters and ratio feeders. Attaching a grounding conductor to the earth referenced ground system reduces the mobility and effectiveness of the generator.

3. As an alternate method, petitioner proposes to use a diesel powered generator without an earth referenced ground.

4. In support of this request, petitioner states that the neutral of the wye configured generator would have in series between it and the frame of the generator, a 480V rated resistor that would limit phase to frame fault current to 0.5 amp and the power cable between the generator and mining equipment would be shielded.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15189 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-83-C]

Mettiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.329 (bleeder systems) to its Mettiki Mine (I.D. No. 18-00821) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all areas from which pillars have been wholly or partially extracted and abandoned areas, be ventilated by bleeder entries or by bleeder systems or equivalent means, or be sealed.

2. Due to loose roof, sloughing ribs, and a water build-up two bleeder entries cannot be safely traveled. Rehabilitation of these areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to ventilate the bleeder tape and monitor for methane, carbon dioxide, and oxygen by means of remote sensing equipment.

4. In support of this request, petitioner states that the area containing the bleeder entries would be sealed as soon as mining operations have been completed.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15190 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-62-C]

Tanoma Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tanoma Mining Company, Inc., R.D. 1, Box 594, Marion Center, Pennsylvania 15759 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Tanoma Mine (I.D. No. 36-08987) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-90-78-C), petitioner proposes to use air in the belt entry to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses. The petitioner outlines specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard, while compliance with the standard will result in a diminution of safety to the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 30, 1990. Copies of the petition are available for inspection at that address.

Dated: June 22, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-15191 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA) as amended 5 U.S.C. App. I, and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656 (b), will convene on July 18, 1990 at 8:30 a.m., at the Royal Orleans Hotel, 621 St. Louis Street, New Orleans, LA 70140. Telephone (504-529-5333). This meeting will adjourn on July 19, 1990, at approximately 4:00 p.m. The public is encouraged to attend. The agenda is as follows:

I. Call to Order.
II. Review the transcript of April 25-26, 1990 meeting.
III. Old Business Discussion of the following standards:
  (a) Working committee report to full committee on suggested revision to 29 CFR part 1915, subpart Z, Asbestos.
  (b) Special Industries, 29 CFR part 1915, subpart T, including Bakeries, Sawmills and Laundries.
IV. New Business Discussion of the following standards, as time permits.
  (a) 29 CFR part 1915, subpart P, Fire Protection.
  (b) 29 CFR part 1915, subpart C, General Safety and Health Provisions, § 1915.21, Access to Employee Exposure and Medical Records.
  (c) 29 CFR, part 1915, subpart K, Machinery and Machine Guarding, § 1915.251 to § 1915.257.

The Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, July 9, 1990. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

It should be noted that the Committee's current charter expires on July 13, 1990. OSHA is in the process of renewing the charter and expects to complete the process prior to the July 18, 1990 meeting. A notice of the renewal of the charter will be published in the **Federal Register** when it becomes available.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 523-8617.

Signed at Washington, DC, this 25th day of June, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-15692 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-26-M

[V-90-1]

Gannett Outdoor Companies

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Application for Variance.

SUMMARY: This notice announces the application of Gannett Outdoor Companies for a variance from the regulations prescribed in 29 CFR 1910.27 (d)(1)(ii), (d)(2) and (d)(5) concerning fixed ladders.

DATES: The last date for interested persons to submit comments on the variance is August 28, 1990. The last date for affected employees and employers to request a hearing is August 28, 1990.

ADDRESSES: Send comments or request for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
James J. Concannon, Director, Office of Variance Determination, Telephone: (202) 523-7193

Or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 16-18 North Street, 1 Dock Square Building—4th Floor, Boston, Massachusetts 02109

U.S. Department of Labor—OSHA, Federal Office Building, 450 Main Street—room 508, Hartford, Connecticut 06106
U.S. Department of Labor—OSHA, 201 Varick Street—room 670, New York, New York 10014
U.S. Department of Labor—OSHA, Teterboro Airport Professional Building, 500 Route 17, room 206, Hasbrouck Heights, New Jersey 07604
U.S. Department of Labor—OSHA, 32nd Floor—room 3244, 230 South Dearborn Street, Chicago, Illinois 60604
U.S. Department of Labor—OSHA, 6000 West Touby Avenue, Niles, Illinois 60648
U.S. Department of Labor—OSHA, 300 East Michigan—room 202, Lansing, Michigan 48933
U.S. Department of Labor—OSHA, 525 Griffin Square—room 602, Dallas, Texas 75202
U.S. Department of Labor—OSHA, 2320 LaBranch Street—room 1103, Houston, Texas 77004
U.S. Department of Labor—OSHA, 911 Walnut Street—room 406, Kansas City, Missouri 64106
U.S. Department of Labor—OSHA, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120
U.S. Department of Labor—OSHA, Federal Building—room 1576, 1961 Stout Street, Denver, Colorado 80294
U.S. Department of Labor—OSHA, 1244 Speer Boulevard—suite 360, Denver, Colorado 80204
U.S. Department of Labor—OSHA, 71 Stevenson Street—room 415, San Francisco, California 94105
U.S. Department of Labor—OSHA, 3221 North 16th Street—suite 100, Phoenix, Arizona 85016

Notice of Application

Notice is hereby given that Gannett Outdoor Companies (the applicant), a group of subsidiaries of Gannett Company, Inc., 535 Madison Avenue, New York, New York 10022 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, and 29 CFR 1905.11 for a variance prescribed in 1910.27 (d)(1)(ii), (d)(2), and (d)(5) concerning fixed ladders.

The addresses of the places of employment that will be affected by the application are as follows:

Gannett Outdoor Co., Inc., of New Jersey, 183 U.S. Highway 46, Fairfield, NJ 07006
Gannett Outdoor Co. of Colorado, 4847 Ledyen, Denver, CO 80216
Gannett Outdoor Co. of Michigan, 1355 Century Avenue, SW., Grand Rapids, MI 48509
Gannett Outdoor Co. of Michigan, 12711 N. Saginaw Street, Flint, MI 48506
Gannett Outdoor Co. of Michigan, 59 Custer Avenue, Detroit, MI 48202
Gannett Outdoor Co. of Texas, Katy Freeway/1000 Studemont, Houston, TX 77007
Gannett Outdoor Co. of Kansas City, 2459 Summit Street, Kansas City, MO 64108
Gannett Outdoor Co. of Connecticut, 119 Water Street, New Haven, CT 06500
Gannett Outdoor Co. of Kansas City d/b/a, Gannett Outdoor Co. of St. Louis, 6767 N. Hanley Rd., St. Louis, MO 63134
Gannett Outdoor Co. of Kansas City d/b/a, Gannett Outdoor Co. of Chicago, Suite 200, 444 N. Michigan Avenue, Chicago, IL 60611
Gannett Outdoor Co. of Arizona, 2502 North Black Canyon Highway, P.O. Box 934, Phoenix, AZ 85009
Gannett Outdoor Co., Inc., of Southern California, 1731 Workman Street, Los Angles, CA 90031
Gannett Outdoor Co., Inc., of Northern California, 1696 Eastshore Highway, Berkeley, CA 94710

Gannett Outdoor Companies variance request involved multiple locations, including two states—Michigan and Arizona—which has OSHA approved occupational safety and health plans and state standards identical to the Federal standards. Therefore, OSHA has forwarded copies of the application to these state authorities and provided an opportunity for comments as required by 29 CFR 1905.14(b)(3).

The applicant has certified that copies of the application have been provided to the authorized employee representatives and posted in places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant states that it is providing a place of employment as safe as that required by the standards which state that:

Cages and wells shall be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet (1910.27(d)(1)(ii));

Landing platforms shall be provided for each 30 feet of height when a ladder is used to ascend to heights of more than 20 feet except on chimneys where no cages, wells or ladder safety devices are provided. Landing platforms shall be provided for each 20 feet of height (1910.27(d)(2)); and

Ladder safety devices may be used on towers, water tanks and chimney ladders over 20 feet in unbroken length in lieu of cage protection. No landing platform is required when ladder safety devices are used (1910.27(d)(5)).

In lieu of installing cages or wells and landing platforms as required by the above standards, the applicant proposes to equip a climber with an 18 inch lanyard attached to a safety belt for climbs either on fixed ladders of up to 50 feet or at heights up to 65 feet from grade. The applicant states that the 18 inch lanyard provides a ladder rest attachment which is as safe and healthful for the climber as the use of a cage or well and landing platform. For ladders on which the length of climb exceeds 50 feet or which exceed to heights exceeding 65 feet from grade, the applicant proposes to have climbers use a ladder safety device in lieu of cages or wells and landing platforms. Moreover, the applicant will continue to require that all of its employees who routinely climb fixed ladders to undergo training in climbing and demonstrate the physical capability to safely perform the necessary climbs. The applicant also states that it will permit only workers who satisfy the "qualified climber" requirements regarding training and physical ability, found in the proposed revision of 29 CFR part 1910, subpart D (proposed § 1910.32(b)(5); April 10, 1990), to climb fixed ladders. According to the applicant this will result in "additional safety," compared to compliance with the existing standards, because of the assurance that qualified climbers have the training and physical cability to climb ladders safely.

The applicant states that it is engaged in the outdoor advertising business where it uses billboard-type signs, usually on their own structural support, that in most cases are placed well above the ground level. Workers must climb to a work platform at the bottom of the sign face to change the message on the sign or to perform maintenance. While on the work platform, workers wear a safety belt or harness with a lanyard attached to a cable or other anchorage fastened to the sign structure, as a positive means of fall prevention.

The applicant uses two types of signs. The smaller sign, known as a "poster," has a sign face of 12' × 25' on which preprinted messages are posted. The larger sign is known as a "bulletin" or "rotary bulletin." The bulletin has a sign face of 14' × 48' which consists of prepainted plywood panels that are attached to the sign structure, usually with the assistance of a boom truck. The advertising messages on both types of signs are changed at regular intervals. Posters are usually changed monthly and bulletins are usually "rotated" every two months. Gannett Outdoor Companies currently maintains

approximately 15,652 posters and 3,993 bulletins.

Where the work platform is low (usually 15 feet or less above grade), workers use only portable aluminum ladders to gain access to the platform. On higher platforms there is usually a metal ladder permanently attached to the sign structure. To restrict public access to the work platforms, by children and anyone else who might want to climb on a sign, the fixed ladder on most signs start at 12 to 15 feet above grade. Employees climb a portable ladder to reach the bottom of the fixed ladder (hereinafter referred to as the applicant's combination ladders) and then climb the fixed ladder up to the work platform. The average height of the above grade of the sign platform is approximately 23 feet.

The applicant states that the use of fixed ladders on outdoor advertising signs is not mandated by any past or current OSHA standard; therefore, it could substitute the use of OSHA approved portable ladders which may be used to ascend to heights up to 60 feet (§ 1910.26(a)(2)(ii)). The applicant states that the practice of using its combination ladders has and continues to be regarded by the outdoor advertising industry as inherently safer than using portable ladders to reach all sign platforms.

The applicant states that there has never been a safety problem with the use of its combination ladders on outdoor advertising structures. The applicant further states that all available accident records reflect that the risk of falls by workers while climbing the fixed ladder portion of its combination ladder is virtually nonexistent. From 1969 to 1977, for example, the three largest outdoor advertising companies in California with a combined total of 21,000 structures, recorded no falls by employees from fixed ladders. Workers for those three California companies made over 1.5 million climbs during that period without a single fall. The applicant notes that more recent statistics confirm that conclusion. Gannett Outdoor Companies of California, for example, shows no falls from fixed ladders in 1984, 1985, 1986, 1987, and 1988. During that period, workers for Gannett Outdoor Companies of California made over 206,000 climbs. In addition, the records of Gannett Outdoor Companies of Michigan, with over 3,500 signs, show that for the past five years not a single worker has fallen while climbing a fixed ladder on a sign structure. Thus, the applicant states, that its use of fixed ladders, without cages, wells, landing platforms or ladder safety devices does not present a safety hazard. Furthermore, the applicant states that the objectives of those requirements of the standard would not be achieved by application in the outdoor advertising setting, because the cage, well, landing platforms and ladder safety device provisions were never intended to apply to the unique application of the combination ladders on outdoor advertising sign structures.

California has recently reinacted its state plan which includes an exemption for the outdoor advertising industry that is substantially identical to the variance requested herein.

Copies of the application for variance will be made available for inspection and copying upon request at the locations listed above. All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the application no later August 28, 1990. In addition, employers and employees who believe they would be adversely affected by the grant or denial of the variance may request a hearing on the application no later than August 28, 1990, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and request for a hearing should be in quadruplicate and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, DC this 25th day of June 1990.

Gerard Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-15102 Filed 6-28-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreements for Development of State-Level Policy and Planning Arts Education Models and Update of a Special Project Handbook

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of Cooperative Agreements for two projects. (1) The identifying, description, and presentation of existing model evaluation plans of arts education policies and/or programs, one plan which could be used for a larger, more complex state arts education policy/program, and another for a smaller state. (2) The update of a Special Project Handbook. This effort will include development, production, and dissemination of the handbook which would summarize successful projects supported by the Arts in Education Program during fiscal years 1988 and 1989. Those interested in receiving the Solicitation packages should reference Program Solicitation. PS 90-10 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: The Program Solicitations are scheduled for release approximately July 20, 1990 with proposals due on August 20, 1990.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, or Anna Mott, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 90-15168 Filed 6-28-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by July 31, 1990. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7834.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on July 17, 1989.

The applications received are as follows:

1. *Applicant 90-5,* Gerald L. Kooyman, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093.

Activity for which permit requested. Taking, import into USA. The applicant is conducting a study of population dynamics of emperior penguins and leopard seals. He proposes to capture, weigh and release up to 300 birds. Up to 30 birds will be held briefly to attach either a depth recorder, or velocity meter and radio transmitter to each. Instruments will be removed after a few days. Up to 10 carcasses and 20 eggs will be salvaged and returned to the laboratory at Scripps Institution.

Up to 10 leopard seals will be marked for purposes of individual identification. None will be restrained or handled; dye will be applied by means of a squeeze bottle dispenser.

Location. Cape Washington and vicinity, McMurdo Sound, Antarctica.

Dates. October 1990–May 1991.

2. *Applicant 90-6,* Mark A. Chappell, Department of Biology, University of California, Riverside, CA 92521.

Activity for which permit requested. Taking, Import into USA. The applicant is conducting a study of reproductive energetics and foraging behavior of Adelie penguins breeding near Palmer Station, Antarctica. He proposes to measure body composition by capturing up to 140 individuals, weighing them, and taking blood samples.

Birds are injected with non-radioactive isotopes (oxygen-18 and deuterium). In some cases stomach contents samples will be obtained for diet studies in order to calibrate the isotopic measurements. Other studies will involve temporary attachment of time-depth recorders to up to 40 specimens. The recorders are removed after several days. Up to 1000 penguin chicks will be banded and released for a study of long-term survival of chicks. About 20 non-breeding adults and 40 chicks/year will be captured and examined in the laboratory to determine stomach contents. These birds will be kept for 48 hours or less, and then returned to the site of capture.

Location. Palmer Station and vicinity, Antarctica.

Dates. October 1990–March 1992.

3. *Applicant 90-7,* Mary A. Olson, Science Museum of Minnesota, 30 East Tenth Street, St. Paul, Minnesota 55101.

Activity for which permit requested. Import into USA. The applicant proposes to salvage dead specimens of birds and mammals on an opportunity basis. Specimens will be returned to the Science Museum of Minnesota for scientific study and educational display.

Location. Antarctica (various locations).

Dates. October 1990–May 1991.

4. *Applicant 90-8,* Mary Putt, Oceanography Department, Old Dominion University, Norfolk, VA 23529.

Activity for which permit requested. Introduction of non-indigenous species into Antarctica. The applicant proposes to import bacteria (E. coli) and algae (Phaeocystis pouchetti and Mantonella (sp.)) to Antarctica for use in feeding studies at the Eklund Biological Center at McMurdo Station. Cultures will be maintained in the laboratory and will not be released to the outside environment.

Location. McMurdo Station, Antarctica.

Dates. November 1990.

5. *Applicant 90-10,* Wayne Z. Trivelpiece, Pt. Reyes Bird Observatory, Stinson Beach, CA 94970.

Activity for which permit requested. Taking, Import into USA. Enter site of Special Scientific Interest. The applicant is conducting a study of the behavioral ecology and population biology of Adelie, Gentoo, and Chinstrap penguins and the interactions among these species and their avian predators: skuas, gulls, sheathbills and giant petrels. Up to 2000 chicks of each penguin species will be banded. For a study of foraging habits, radio transmitters and time-depth recorders will be attached to up to 50 adults of each penguin species. Recorders will be removed from the birds after a few days.

In addition, carcasses or skeletons of dead birds will be salvaged and returned to the USA for educational and scientific study.

Location. Site of Special Scientific Interest #2, Western Shore of Admiralty Bay, King George Island, Antarctica.

Dates. October 1990–March 1991.

6. *Applicant 90-11,* Richard Rivkin, Horn Point Environmental Laboratories, University of Maryland, Cambridge, MD 21613.

Activity for which permit requested. Import into USA. Introduction of non-indigenous species into Antarctica. The applicant proposes to collect in Antarctica algal cultures of Synechococcus, Dunaliella, Tertiolecta, Skeletonema costatum, Isochrysis galbana, Thalassiosira pseudonana, and Nannochloris sp. for a study of physiological characteristics. Similar cultures will be imported into Antarctica for laboratory studies at the Eklund Biological Laboratory at McMurdo Station. These non-indigenous cultures will not be released into the environment.

Location. McMurdo Station, Antarctica.

Dates. October 1990–January 1991.

7. *Applicant 90-12, John S. Pearse, Institute of Marine Sciences, University of California, Santa Cruz, CA 95064*

Activity for which permit requested. Introduction of non-indigenous Species into Antarctica. The applicant proposes to collect in Antarctica algal cultures of Synechococcus, Dunaliella, Tertiolecta, Skeletonema costatum, Isochtysis galbana, Thalassiosira pseudonana, and Nannochloris sp. for a study of the physiological characteristics. Similar cultures will be imported into Antarctica for laboratory studies at the Eklund Biological Laboratory at McMurdo Station. These non-indigenous cultures will not be releases into the environment.

Location. McMurdo Station, Antarctica.

Dates. August 20–December 15, 1990.

8. *Applicant 90-13, Diana W. Freckman, Department of Nematology, University of California, Riverside, CA 92521*

Activity for which permit requested. Enter site of Special Scientific Interest. The applicant proposes to enter site of Special Scientific Interest No. 19, Linnaeus Terrace to take soil and rock samples for a study of the effect of soil biota on nutrient cycling processes.

Location. Linnaeus Terrace, Victoria Land, Antarctica.

Dates. January–February 1991.

9. *Applicant 90-14, J. Chambers, Antarctic Support Associates (ASA), 61 Inverness Drive East, Suite 300, Englewood, CO 80112*

Activity for which permit requested. Enter site of Special Scientific Interest. The applicant requests permission for ASA personnel to traverse Site of

Special Scientific Interest No. 18, White Island, to the site of an INMARSAT transmitting/receiving station on Black Island for routine and emergency maintenance and repair of equipment. Traverse of the south-west section of SSSI No. 18 is the only safe surface traverse route to Black Island. The traverses will not interfere with Weddell seals.

Location. Site of Special Scientific Interest No. 18, White Island, McMurdo Sound, Antarctica.

Dates. June 1990–March 1990.

10. *Applicant 90–15, Gerald L. Kooyman, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, CA 92093*

Activity for which permit requested. Taking. Enter site of Special Scientific Interest (SSSI). The applicant proposes to enter Cape Crozier SSSI to conduct a census of penguins. This project is part of a long-term study of population dynamics of penguins in the Ross Sea area.

Location. Cape Crozier of site of Special Scientific Interest, McMurdo Sound, Antarctica.

Dates. October 1990–January 1991.

Charles E. Meyers,

Polar Coordination Specialist, Permit Office.

[FR Doc. 90-15101 Filed 6-28-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-445]

Texas Utilities Electric Co.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-87, issued to Texas Utilities Electric Company (the licensee) for operation of the Comanche Peak Steam Electric Station, Unit 1 located in Somervell County, Texas.

The proposed amendment would change Technical Specifications 3.2.1, 4.2.1, and 4.2.2 to allow Base Load Operation as an alternative to the normal operating mode in order to maintain the radial peaking factor within the range assumed by the plant's safety analyses. Technical Specification 6.9.1.6 and the Bases to section 3/4.2.1 have also been revised to reflect the new Base Load mode of operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commisison's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following evaluation of the proposed change with regard to these three standards.

1. The proposed changes do not alter any of the assumptions used in the accident analyses for CPSES Unit 1 since Technical Specification core peaking factors limits (particularly F_q), DNB, and LOCA parameters utilized in the accident analyses remain unchanged. F_{xy} limits in the Radial Peaking Factor Limit Report provide a method for the determination that F_q remains within its limits. However, the F_q value assumed in the accident analyses is not changed.

Therefore, the "Base Load Operation" associated Technical Specification changes do not increase the probability or consequences of an accident previously analyzed.

2. The proposed "Base Load Operation" Technical Specification changes do not involve any plant operations outside the range of those previously allowed or analyzed; specifically, reactor operations such as operating within specified power ranges and/or holding power level for a 24-hour period for xenon stabilization.

Therefore, the proposed Technical Specification changes do not create a new or different kind of accident from those previously analyzed.

3. The "Base Load Operation" provisions in the proposed Technical Specification changes do not alter the Technical Specification limit for F_q. The "Base Load Operation" F_{xy} limits as a function of core height and cycle burnup provides a more exact evaluation to determine that F_q is within its limits. Since the plant operating ranges, core peaking factors, and DNB and LOCA input assumptions of the safety analysis have not changed, the current CPSES Unit 1 Safety Analysis remains valid.

Therefore, there is no significant reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 30, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Docketing and Services Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Christopher I. Grimes: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., suite 1000, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 22, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 25th day of June 1990.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Project Directorate IV-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-15109 Filed 6-28-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of SF 3104; Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, SF 3104, Application for Death Benefits—FERS. This form is used by all survivors (except former spouses applying for a monthly benefit) who apply for FERS

death benefits. The information collected is used by the Office of Personnel Management, Federal Employees' Retirement System, to determine whether a benefit is payable in the event of the death of an employee, a former employee, or an annuitant.

Approximately 1560 forms are completed annually, each requiring approximately 30 minutes to complete, for a total public burden of 780 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606–2261.

DATES: Comments on this proposal should be received by July 30, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3235 Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–15171 Filed 6–28–90; 8:45 am]

BILLING CODE 6325–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This Notice announces a 90-day moratorium on approval of applications for new licenses for Small Business Investment Companies licensed pursuant to sections 301 (c) and (d) of the Small Business Investment Act (15 U.S.C. 681 (c) and (d)).

DATES: This Notice is effective on June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Investment, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20016, (202) 653–6879.

SUPPLEMENTARY INFORMATION: The U.S. Small Business Adminsitration is currently reviewing certain of the criteria under which Small Business Investment Company (SBIC) licenses and section 301(d) or Specialized Small Business Investment Company (Specialized SBIC) licenses are issued. Certain other SBIC and Specialized SBIC program regulations are also under review by the Agency. New regulations may be promulgated to implement any changes deemed necessary by virtue of this review.

As a result, SBA is hereby instituting a 90-day moratorium on the approval and issuance of licenses for new Small Business Investment Companies and section 301(d) or Specialized Small Business Investment Companies pursuant to sections 301 (c) and (d) of the Small Business Investment Act, 15 U.S.C. 681 (c) and (d).

SBIC and Specialized SBIC license applications received prior to the effective date of this notice and not approved prior to such date will continue to be processed by the Agency up to the point of a decision on licensing, which will not be made until the end of the 90-day moratorium period.

The Agency will continue to accept SBIC and Specialized SBIC license applications during the moratorium period. Licensing decisions concerning applications received by the Agency during such period will be determined by criteria in effect at the end of the moratorium.

Authority: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 312, 78 Stat. 147 (15 U.S.C. 687d); sec. 315, 80 Stat. 1364 (15 U.S.C. 687g).

Dated: June 26, 1990.

Susan S. Engeletter,

Administrator.

[FR Doc. 90–15193 Filed 6–28–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90–042]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) members from the recreational boat and associated equipment manufacturers; three (3) members from national recreational boating organizations and from the general public; and two (2) members from State officials responsible for State boating safety programs. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

DATES: Requests for application forms be received no later than September 14, 1990.

ADDRESSES: Requests for application forms should be sent to Commandant (G–NAB), U.S. Coast Guard Headquarters, Washington, DC 20593–0001; telephone: (202) 267–0997.

FOR FURTHER INFORMATION CONTACT: Mr. A.J. Marmo, Executive Director, National Boating Safety Advisory Council (G–NAB), room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–1077.

Dated: June 25, 1990.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90–15116 Filed 6–28–90; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Proposed Advisory Circular 20–131A]

Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular 20–131A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance material for the airworthiness approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S transponders. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 29, 1990.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (206) 431–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 20–131A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

The material provided in this AC addresses the design aspects, characteristics, mechanization, testing, and the criticality of system failure cases for TCAS II and Mode S transponders. The guidance material is directed at systems which provide traffic advisories and resolution advisories in the vertical axis only (TCAS II) and where the operational performance standards are defined in technical documents that were developed by a joint air transport industry/government group (RTCA Special Committee SC–147).

Issued in Seattle, Washington, on June 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 90–15184 Filed 6–28–90; 8:45 am]

BILLING CODE 4910–13–M

[Proposed Advisory Circular 25.1529–1]

Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular 25.1529–1, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to instructions for continued airworthiness of transport category airplanes. The proposed AC addresses approval procedures to follow when making repairs on structure certified to the damage tolerance requirements of § 25.571 of the Federal Aviation Regulations (FAR), Amendment 25–45 and to type designs with supplemental inspection documents (SIDs) which were based on this criteria. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before October 29, 1990.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the above address, telephone (206) 431–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.1529–1 and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

Proposed AC 25.1529–1 provides instructions to ensure continued airworthiness of structural repairs made to damage tolerant structures on transport category airplanes. Approval procedures are needed when making repairs to structure certified to the damage tolerance requirements of § 25.571 of the Federal Aviation Regulations (FAR), Amendment 25–45, to ensure that the structures remain damage tolerant after repairs have been made.

Issued in Seattle, Washington, on June 13, 1990.

Jame V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 90–15183 Filed 6–28–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Availability of Procedural Relief; Notice of Extension

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice extends the availability of procedural relief that was provided by Notice 89–4, 1989–1 C. B. 624. Notice 89–4 provided a settlement procedure in cases involving facts similar to those at issue in *Estate of Howard* v. *Commissioner*, 91 T.C. 329 (1988).

EFFECTIVE DATE: The extension of availability of relief is effective as of January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 343–8554 (not a toll-free number.).

SUPPLEMENTARY INFORMATION:

Background

Under section 2056(b)(7) of the Internal Revenue Code an executor can elect to treat a surviving spouse's income interest in property as "qualified terminable interest property" if certain conditions are satisfied. The property must pass from the decedent and the surviving spouse must have a qualifying income interest for life in the property. The surviving spouse has a qualifying income interest for life if the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to any person other than the surviving spouse. Section 20.2056(b)–7(c)(1) of the Proposed Estate Tax Regulations provides that an income interest will not fail to constitute a qualifying income interest for life solely because income between the date of the last distribution and the date of the surviving spouse's death is not required to be distributed to the surviving spouse or the surviving spouse's estate.

Notice 90-46, I.R.B. 1990-28, July 9, 1990

Estate Tax Marital Deduction—Qualified Terminable Interest Property

Estate of the Howard v. *Commissioner*, 91 T.C. 329 (1988)

This Notice extends the procedural relief provided by Notice 89-4, 1989-1 C.B. 624.

The Internal Revenue Service issued Notice 89-4 in response to *Estate of Howard* v. *Commissioner*, 91 T.C. 329 (1988). In *Howard*, the Tax Court held that a trust does not satisfy the requirements of a qualified terminable interest property (QTIP) trust under section 2056(b)(7) of the Internal Revenue Code unless certain requirements are met. These requirements are satisfied if the trustee is required (1) to distribute the trust income at annual or more frequent intervals and (2) to pay the income accrued between the last distribution date and the surviving spouse's death to the surviving spouse's estate or pursuant to his or her exercise of a general power of appointment.

The Tax Court's opinion is in conflict with § 20.2056(b)-7(c)(1) of the proposed Estate Tax Regulations. Because taxpayers and their representatives were concerned that the Service might abandon the position reflected in the proposed regulations and deny the marital deduction with respect to property passing to a trust that did not meet the requirements set forth by the Tax Court, the Service in Notice 89-4 set forth an interim settlement procedure available with respect to any trust that presented the issue addressed in Howard but otherwise met the requirements of section 2056(b)(7) or 2523(f)(2) of the Code. Under the procedure, the Service and the persons having an interest in the trust could formally acknowledge that the marital deduction is allowable for the property passing to the trust and that the spouse's interest in the trust is a "qualifying income interest for life" for purposes of sections 2044 and 2519.

Under Notice 89-4 the settlement procedure was made available with respect to any transfer in trust for which the applicable period of limitations remained open, including a transfer reported on a return that is the subject of a closing letter issued by the District Director. It was made available with respect any transfer until the later of December 31, 1989, or ninety days after the date the District Director gave the taxpayer written notice of the availability of the procedure. Under the present notice, the period for which the settlement procedure is available is extended and will remain available with respect to any such transfer for which a properly prepared closing agreement is submitted by the taxpayer on or before December 31, 1990.

In cases where the return has not yet been filed, the taxpayer may initiate the procedure by filing a proposed closing agreement with the estate tax or gift tax return. Provided that the trust otherwise meets the requirements of section 2056(b)(7) or 2523(f)(2) of the Code, the filing with the estate tax or gift tax return of the proposed closing agreement (if signed by all persons having an interest in the trust) will ensure that the marital deduction will not be disallowed on the basis that the surviving spouse does not have a right to accrued but undistributed income to death.

In other cases, a closing agreement may be executed in connection with the examination of the return on which the transfer is reported. In the case of a return that was previously examined or was filed and has not yet been examined, either the Service or the taxpayer may initiate the settlement procedure.

The provisions of Notice 89-4 continue to apply with respect to the interim settlement procedure for the extended period provided in this Notice.

Drafting Information

The principal author of this notice is Susan Hurwitz of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information about this notice call Ms. Hurwitz at (202) 343-8554 (not a toll-free call).

Richard Grosgebauer,

Chief, Branch 4, (Passthroughs and Special Industries CC:P&SI:4.

[FR Doc. 90-15087 Filed 6-28-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Mexico: Splendors of Thirty Centuries

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Mexico: Splendors of Thirty Centuries" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum, New York, N.Y., beginning on or about October 10, 1990, to on or about January 13, 1991; at the San Antonio Museum of Art, Texas, beginning on or about April 6, 1991, to on or about August 4, 1991; and the Los Angeles County Museum of Art, California, beginning on or about September 12, 1991, to on or about December 29, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: June 27, 1990.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 90-15292 Filed 6-28-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 14-90, Legal Opinion on the Secretary's Authority To Comply With Certain Conditions Specified in Loan Sale Agreement for AHT VI

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and thir representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Does the Secretary of Veterans Affairs have the authority to transfer, pursuant to the terms of the American Housing Trust VI (AHT VI) loan sale agreement, a portion of the subordinate certificates received as consideration in prior VA vendee sales to a collateral trust which will provide credit and liquidity support for AHT VII; b. May the Secretary agree to terms imposed by the AHT VI loan sale agreement which will require, as a condition to the sale, that within the collateral trust a reserve fund be established, maintained, and replenished by VA?; and c. May VA's loan guaranty obligation include reimbursement to AHT VI for the trust's actual expense for prepayment interest shortfalls?

EFFECTIVE DATE: May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representative in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 14-90, Legal Opinion on the Secretary's Authority to Comply with Certain Conditions Specified in Loan Sale Agreement for AHT VI, requested by Chief Benefits Director (20), is as follows:

Held: In the AHT VI transaction and pursuant to the loan sale agreement, the Secretary of Veterans Affairs has the authority to transfer subordinate certificates to a collateral trust, to agree to establish, maintain, and replenish a reserve fund within the collateral trust, and to include within the VA loan guaranty an obligation to reimburse the trust for prepayment interest shortfalls.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-15124 Filed 6-28-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 3-90, Reduction of Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—may a veteran who has been found "not guilty by reason of insanity" under California law and committed to a state hospital for care and treatment be subject to reduction or cessation of VA benefits pursuant to 38 U.S.C. 505 or 3113.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 3-90, Reduction of Benefits Pursuant to 38 U.S.C. 3113 and 505, requested by VA District Counsel, 344/92, Los Angeles, CA, is as follows:

Held: The provisions of 38 U.S.C. 505 and 3113 do not apply to veterans who, under California law, have been found "not guilty by reason of insanity" and confined to a state hospital for care and treatment.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-15124 Filed 6-28-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 12-90, Waiver of Loan Guaranty Indebtedness Following a Deed in Lieu of Foreclosure

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. Does a veteran have the right to request waiver of a debt evidenced by a promissory note given in connection with a voluntary deed in lieu of foreclosure of a VA guaranteed loan?; and b. If question a. is yes, and the regional office Committee on Waivers and Compromises denies the waiver, is that decision appealable to the Board of Veterans Appeals?

EFFECTIVE DATE: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-6078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefits matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full test of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 12–90, Waiver of Loan Guaranty Indebtedness Following a Deed in Lieu of Foreclosure, requested by VA District Counsel (333/02), Des Moines, Iowa, is as follows:

Held: Veterans who give a voluntary deed in lieu of foreclosure in connection with a defaulted VA guaranteed loan and who also sign a note to VA for the difference between the outstanding debt and the value of the security at the time of this deed do not by virtue of signing such note give up the right to seek waiver of the debt to VA. The regional office Committee on Waivers and Compromises should consider the case in the same manner as any other request for waiver of a loan guaranty debt. This office expresses no opinion on whether or not the Board of Veterans Appeals should consider an appeal of an unfavorable decision by the regional office Committee.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15133 Filed 6–28–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 10–90, Disability pay under 37 U.S.C. 204 (g), (h) and (i)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—in view of the prohibition contained in 38 U.S.C. 3104(c) against payment of pension, compensation, and retirement pay to an individual for any period during which he or she receives active service pay, does compensation payable under 37 U.S.C. 204 (g), (h) and (i) to members of a reserve component of the uniformed services, who are disabled during a period of active duty of inactive-dity training, represent active service pay?

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statutre or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinion in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 10–90, Disability pay under 37 U.S.C. 204 (g), (h) and (i), requested by Acting Chief Benefits Director (20), is as follows:

Held: Payments made to reservists, including members of the Army and Air Force National Guards, pursuant to the provisions of 37 U.S.C. 204 (g), (h) and (i) are in the nature of temporary disability compensation and are not intended to represent payment of duty performed, as described in 10 U.S.C. 684. The statutes creating, and modifying, this benefit do not contain a provision prohibiting concurrent payment of these benefits with pension, VA compensation or retirement pay. *See* Public Law No. 99–611, 100 Stat. 3875 (1986) and Public Law No. 100–456, 102 Stat. 1918 (1988). While previously viewed by the General Counsel as representing "active service pay" and, therefore, subject to the prohibition in 38 U.S.C. 3104(c) against concurrent payment with other benefits, statutory changes in the nature of these payment leads us to conclude that there is no longer legal authority for that interpretation. Instead, we conclude that payments to reservists under the provisions of 37 U.S.C. 204 (g), (h) and (i) are made at a time when reservists are no longer in an "active duty" status and do not otherwise represent "active service pay." Therefore, the prohibition against concurrent payment of benefits contained in 38 U.S.C. 3104(c) is not applicable to these payments.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15131 Filed 6–28–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 7–90, Improved Pension Rate for Estranged Married Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—1. Does 38 U.S.C. 521(f) require the application of a combined improved pension rate when veterans married to one another are estranged and neither spouse is reasonably contributing to the support of the other? and 2. When an estranged veteran is reasonably contributing to the support of a veteran spouse, does 38 U.S.C. 521(f) require the application of the combined rate?

EFFECTIVE DATE: April 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 7–90, Improved Pension Rate for Estranged Married Veterans, requested by Chief, Benefits Director (2), is as follows:

Held: 1. When veterans married to one another are estranged and neither veteran is reasonably contributing to the other's support, the combined improved pension rates applicable under 38 U.S.C. 521(f) to veterans married to one another do not apply.

2. When the special combined rate does not apply because the married veterans are estranged and neither is reasonably contributing to the other's support, the pension rate for each veteran is based upon 38 U.S.C. 521(b) (or section 521 (d)(1) or (e) in the case of certain severely disabled veterans), which specified pension rates for single veterans and veterans who are married but not living with or reasonably contributing to the support of their spouse.

3. When veterans married to one another are estranged, but one veteran is making a reasonable contribution to the support of the other, the combined improved pension rates in section 521(f) apply.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15128 Filed 6–28–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 4–90, Offset of Medal of Honor Pension for Purposes of Collecting Debts Due the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. this interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—do the provisions of 38 U.S.C. 3114(a), requiring the offset of future benefit payments to recover certain indebtedness to the United States, authorize VA to offset Medal of Honor Pension in order to collect a loan guaranty debt due this Department?

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 4–90, Offset of Medal of Honor Pension for Purposes of Collecting Debts Due the Department of Veterans Affairs, requested by Acting Chief Benefits Director (20), is as follows:

Held: VA may not set off indebtedness created due to a VA loan guaranty against Congressional Medal of Honor pension. Under 38 U.S.C. 560–62, the function of VA concerning payment of Medal of Honor pension is ministerial in that VA merely pays the pension authorized, once the name of the veteran has been placed on the Medal of Honor Roll by the Secretary of the service department concerned. The Medal of Honor pension statutes are therefore not laws administered by VA, and thus payments under those statutes are not subject to the offset requirement of 38 U.S.C. 3114.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15125 Filed 6–28–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 13–90, Application of Recoveries from Health Insurance to Category C Debts

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—What is the correct application of a reimbursement from a third party health insurer representing the cost of VA health care when there is also a Category C "means test" copayment debt?

EFFECTIVE DATE: May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in

adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 13–90, Application of Recoveries from Health Insurance to Category C Debts, requested by the Chief Medical Director (10), is as follows:

Held: Where a Category C veteran also has health insurance, recovery from which is subject to 38 U.S.C. 629, payments by the health insurer should be applied to satisfy the means test copayment debt to the extent that the insurance provides coverage, and the remainder should be applied to the third party debt, with the third party claim being adjusted accordingly.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15133 Filed 6–28–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 5–90, Waiver of Indebtedness—was O.G.C. Advisory Opinion 8–89 dated 3–21–89

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—may VA consider a veteran's request for a waiver of the recovery of a loan guaranty indebtedness if at the foreclosing lender's suggestion, subsequent to foreclosure, the veteran redeems the property securing the mortgage, and simultaneously transfers title to a third party purchaser?

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 5–90, Waiver of Indebtedness, requested by Chairman, Board of Veterans Appeals (01), is as follows:

Held: In this particular case the veteran and spouse for all intents and purposes lost their entire interest in the property as a result of the loan termination, as defined in the VA manual. A waiver request may be considered in this situation, notwithstanding the veteran and spouse's redemption of the property after foreclosure.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15128 Filed 6–28–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 6–90, Transfer of Residential Properties Acquired Under the Loan Guaranty Program to VHS&RA

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—a. are properties acquired by the Secretary of Veterans Affairs, pursuant to the home loan program, available for transfer to the Veterans Health Service and Rehabilitation Administration (VHS&RA) for use as medical related facilities and b. upon transfer, should VA impose restrictions on the use of such properties similar to the restrictions imposed when vendee properties are transferred to nonprofit organizations assisting homeless veterans?

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of

opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 6–90, Transfer of Residential Properties acquired under the Loan Guaranty Program to VHS&RA, requested by Director, Loan Guaranty Service (26), is as follows:

Held: The Secretary has the authority to acquire properties held in the vendee property inventory for use by VHS&RA as medical related facilities. Transfer of such properties must include appropriate consideration, and conveyancing documents need not contain any use restrictions as conditions to the transfers.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15127 Filed 6–28–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 9–90, Definition of Radiogenic Disease as used in 38 U.S.C. 312(c)(2) and 38 CFR 3.311(b)(2)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—1. Does 38 U.S.C. 313(a) preclude the establishment of presumptive service connection under 38 U.S.C. 312(c)(2) for a cancer listed therein which developed as a result of metastasis of a nonradiogenic cancer, i.e., a cancer not listed in section 312(c)(2)? and 2. Does 38 CFR 3.311b(g) preclude the establishment of service connection under 38 CFR 3.311b for a cancer listed therein which developed as a result of metastasis of a nonradiogenic cancer, i.e., in this situation, a cancer not listed in 38 CFR 3.311b?

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA published summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 9–90, Definition of Radiogenic Disease as used in 38 U.S.C. 312(c)(2) and 38 CFR 3.311(b)(2), requested by Chief Benefits Director (211C), is as follows:

Held: 38 U.S.C. 313(a) precludes establishment of presumptive service connection under 38 U.S.C. 312(c)(2) for a cancer listed therein which developed as a result of metastasis of a nonradiogenic cancer, i.e., a cancer not listed in section 312(c)(2). 38 CFR 3.311b(g) precludes establishment of service connection under 38 CFR 3.311b for a cancer listed therein which developed as a result of metastasis of a nonradiogenic cancer, i.e., in this situation, a cancer not listed in section 3.311b.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–15130 Filed 6–28–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 10–90, VA Disposition of Residential Real Property Owned by Other Federal Agencies or Related entities

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—is it legally permissible for the Secretary of Veterans Affairs to agree to manage and dispose of single-family residential properties on behalf of other Federal agencies or related entities?

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 8–90, VA Disposition of Residential Real Property Owned by Other Federal Agencies or Related Entities, requested by Director, Loan Guaranty Service (263), is as follows:

Held: The Department of Veterans Affairs may enter, under the provisions of title 31 U.S.C. 1535, into agency agreement with other Federal entities in which VA would agree to manage and dispose of residential properties under

the jurisdiction of the requesting entities on behalf of such entities.

Dated: June 12, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-15129 Filed 6-28-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 15-90, Benefit Determination Involving Validity of Marriage of Transsexual Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is a transsexual veteran, who undergoes sexual reassignment surgery and then marries a member of the veteran's original gender, entitled to the additional VA benefits normally provided on account of a spouse?

EFFECTIVE DATE: May 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Ferris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6442.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's intrepretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The future text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 15-90, Benefit Determinations Involving Validity of Marriage of Transsexual Veterans, requested by VA District Counsel (362/02), Houston, TX, is as follows:

Held: Under Texas law, where a veteran has anatomically changed his/her sex by undergoing sexual-reassignment surgery and has thereafter legally married a member of his/her former sex, his/her marriage partner may be considered the veteran's spouse for the purpose of determining entitlement to additional vocational rehabilitation allowance payable on account of a dependent spouse.

Dated: June 12, 1990

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-15135 Filed 6-28-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 126
Friday, June 29, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 2 p.m., Thursday, July 12, 1990.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing and discussion of the Board's fiscal year 1991 research agenda.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: June 27, 1990.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 90-15302 Filed 6-27-90; 1:34 p.m.]

BILLING CODE 7400-01-M

federal register

Friday
June 29, 1990

Part II

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; Illinois; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3787-8]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is today promulgating Federal revisions to the Reasonably Available Control Technology (RACT) rules for volatile organic compounds (VOC) contained in the Illinois State Implementation Plan (SIP) for ozone. These Federal revisions correct certain noted deficiencies in the existing RACT rules adopted by the State of Illinois. USEPA is promulgating the rules for the following six counties in the Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will. In addition, USEPA is taking final rulemaking on revisions to the Illinois ozone SIP submitted by the State.

DATES: The effective date of this rulemaking is July 30, 1990, for all sources located in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

The date by which, and after which, these rules apply to all sources is the effective date, with the following exceptions:

These rules do not apply to Allsteel in Kane County and Viskase in Cook County until January 1, 1991.

The four perfluorocarbon classes listed below shall not be considered as volatile organic compounds or volatile organic material for the 3M Bedford Park facility in Cook County for a period of time not to exceed one year from the date USEPA acts on 3M's petition which seeks to have these perfluorocarbon classes designated as exempt compounds: (1) Cyclic, branched, or linear, completely fluorinated alkanes, (2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations, (3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations, and (4) sulfur containing perfluorocarbons with unsaturations and with sulfur bonds only to carbon and fluorine. USEPA will provide public notice in the Federal Register of its action on this petition.

The date by which all sources must achieve final compliance with these rules is July 1, 1991, with the following exceptions:

The four perfluorocarbon classes listed below shall not be considered as volatile organic compounds or volatile organic material for the 3M Bedford Park facility in Cook County for a period of time not to exceed one year from the date USEPA acts on 3M's petition which seeks to have these perfluorocarbon classes designated as exempt compounds: (1) Cyclic, branched, or linear, completely fluorinated alkanes, (2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations, (3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations, and (4) sulfur containing perfluorocarbons with unsaturations and with sulfur bonds only to carbon and fluorine. USEPA will provide public notice in the Federal Register of its action on this petition.

Petroleum Refining and Related Industries: Asphalt Materials must submit to USEPA: (1) By September 1, 1990, a monitoring plan consistent with subpart R (section 215.446) of Illinois Administrative Code 215, and (2) by October 1, 1990, the first monitoring report pursuant to subpart R (section 215.449) of Illinois Administrative Code 215.

The incorporation by reference of certain publications in these rules is approved by the Director of the Office of the Federal Register (OFR) as of July 30, 1990.

ADDRESSES: The docket for the final Federal regulations (Docket No. 5A–89–1), which contains the public comments and the complete support documentation, is located for public inspection and copying at the following addresses. (It is recommended that you telephone Randolph O. Cano at (312) 886–6036 before visiting the Region V office.) A reasonable fee may be charged for copies.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, Twenty Sixth Floor, Southeast, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. 5A–89–1, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

A file on the Federal regulations is available at the following location: Illinois Environmental Protection Agency, Division of Air Pollution Control, 1340 North Ninth Street, Springfield, Illinois 62702.

In addition, a file related to USEPA's rulemaking action on the revisions to the Illinois ozone SIP submitted by the State has been prepared. The file, which contains copies of the SIP revisions, public comments, and support documentation, is available at the addresses identified above.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

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I. Background

A. Wisconsin v. *Reilly*

On January 18, 1989, pursuant to a complaint filed by the State of Wisconsin, Judge Evans of the United States District Court for the Eastern District of Wisconsin ordered USEPA to promulgate ozone implementation plans for northeastern Illinois and northwestern Indiana within 14 months (*Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis., January 18, 1989). On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed pending performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model (*i.e.*, a photochemical reactive grid model), allows more time for USEPA to promulgate a Federal Implementation Plan (FIP) using this model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of revised VOC RACT rules for Illinois and, if necessary, for Indiana to remedy deficiencies in the States' regulations. Specifically, the settlement agreement requires USEPA to: (a) Propose as federal measures by December 31, 1989, RACT rules, in accordance with the May 25, 1990, document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (also known as the "Blue Book"), for Illinois which remedy the deficiencies described in Exhibit B of the settlement agreement, and (b) promulgate by March 16, 1990, those rules for which Illinois fails to meet any of the 1989 interim milestones specified in Exhibit C of the settlement agreement; or six months after any 1990 interim milestone specified in Exhibit C, those rules for which Illinois fails to meet any of the 1990 interim milestones, but no later than December 31, 1990.[1][2] Exhibit C establishes the following milestones for the State: (a) by September 30, 1989—the Illinois Environmental Protection Agency (IEPA) proposals must be filed with the Illinois Pollution Control Board (IPCB), (b) by December 22, 1989—the IPCB must decide the Economic Impact Study question and publish the first notice, (c) by March 16, 1990—the IPCB must hold hearings and publish the second notice, and (d) by May 25, 1990—the Joint Committee on Administrative Rules must complete action and IPCB must adopt the final rule.

On December 27, 1989 (54 FR 53060), USEPA proposed to promulgate Federal revisions to the VOC RACT rules to correct all of the deficiencies described in Exhibit B. These deficiencies apply to nine different rules: Solvent Metal Cleaning, Surface Coating, Printing and Publishing Operations, Synthetic Organic Chemical Manufacturing Industry (SOCMI) Leaks, Petroleum Refinery Leaks, Pharmaceutical Manufacturing, Bulk Gasoline Plants, Major Non-CTG (Control Techniques Guidelines) Generic Rules, and General Provisions (which include definitions, test methods and procedures, a requirement that any alternative emission limitation or variance must be submitted to USEPA for approval, and procedures for determining the vapor pressure of organics). In the Federal Register notice, USEPA also proposed rulemaking on revisions to the Illinois ozone SIP submitted by the State.

It should be noted that pursuant to the settlement agreement, IEPA submitted to the IPCB on September 29, 1989, a proposal for revisions to the State rules to correct some of the deficiencies described in Exhibit B. The IEPA proposal consisted of revisions which correct all of the deficiencies contained in three rules (SOCMI Leak, Bulk Gasoline Plant, and Solvent Metal Cleaning), but only some (or none) of the deficiencies contained in the other six rules. Thus, the State met the first milestone for some of the deficiencies. For the six rules containing deficiencies which are not included in IEPA's September 29, 1989, proposal, the settlement agreement, as modified by the Court's order of May 1, 1990, currently requires USEPA to promulgate these rules by June 8, 1990.

On October 5, 1989, the IPCB adopted IEPA's proposal for first notice. On October 5, 1989, the IPCB adopted IEPA's proposal for first notice. On October 27, 1989, the IPCB decided that an Economic Impact Study need not be prepared, thereby satisfying the second milestone with respect to the rules included in IEPA's proposal. Public hearings on these rules were held in December 1989 and January 1990.

On February 8, 1990, however, the IPCB removed two of the rules in IEPA's proposal (i.e., the Generic Rule and the SOCMI Leak Rule) and placed them in a subdocket. As a result of this separation of dockets, IEPA must under State law procedural requirements repropose the rule amendments to the IPCB. The IPCB's action means that it would not meet the third milestone for these two rules and that USEPA must federally promulgate the SOCMI Leak Rule by September 16, 1990 (i.e., six months after the missed 1990 milestone date).

On March 16, 1990, the IPCB issued its second notice on the remaining rules in IEPA's proposal. The second notice, however, stated that the IPCB will only proceed with a minor amendment to the Surface Coating Rule and some of the amendments to the General Provisions Rule; it will not proceed with the bulk of IEPA's proposal. Thus, the third milestone has been met for only a few of the deficiencies described in Exhibit B. The few rule revisions still alive in the State's rulemaking process are, however, too fragmented to be approved by USEPA as stand alone rules. Consequently, the IPCB's action means that USEPA must federally promulgate the Solvent Metal Cleaning Rule and Bulk Gasoline Plant Rule also by September 16, 1990 (i.e., six months after the missed 1990 milestone date). Because the State has not corrected (and will not, in the near future, be able to correct) completely any of the deficient rules, USEPA must promulgate rules which correct all of the deficiencies. The expeditiousness demanded by the Court orders, necessitates USEPA to move forward with its promulgation at this time.

[1][2] On March 13, 1990, USEPA filed a Motion to Modify Settlement Agreement to Allow More Time to Promulgate Certain Interim Measures with the District Court. In its motion, USEPA asked that the March 16, 1990, promulgation date be extended to June 8, 1990. For several reasons, the March 16, 1990, deadline for final rulemaking has proved impossible to meet (i.e., rulemaking is very complex and raises a number of technical and legal issues; voluminous comments were received only shortly before the deadline; and coordinated review of and response to the comments among various USEPA Regional and Headquarters' offices is necessary). On May 1, 1990, the District Court granted USEPA's motion.

B. Summary of Today's Action

Today's final rulemaking addresses the Part D requirement for RACT for the Chicago portion of the Illinois SIP.[3] Today, USEPA is taking final action: (a) to adopt Federal RACT rules for inclusion in the Illinois plan, (b) to approve certain pending State RACT rules for inclusion in the Illinois plan, and (c) to disapprove certain State RACT rules. In total, today's notice establishes a comprehensive set of RACT rules applicable to the sources in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

USEPA is promulgating these Federal RACT rules to replace part or all of the federally approved individual State rules in the SIP. The resultant plan for Illinois consists of some federally approved (State) rules and some federally promulgated (Federal) rules. This mixed Federal-State rule approach provides the best model for the State to secure eventually a total federally approved State plan by indicating the corrections Illinois must make in its rules, and is consistent with the District Court's orders. USEPA hopes that this mixed Federal-State plan is only temporary. USEPA strongly encourages the State to adopt these Federal rules and submit them to USEPA for approval as a SIP revision.

In the spirit of establishing the State rules in the implementation plan, USEPA directs any source seeking a revision to the Federal rules to apply to the State initially to obtain a SIP revision. Upon submittal to and approval by USEPA, the revised State rule would replace the applicable Federal rule and would become the federally enforceable rule for that source. USEPA believes that it has met its responsibilities under section 110 with this notice of final rulemaking. Section 110(c) only requires the Administrator to "* * * promptly prepare and publish proposed regulations setting forth an

[3] USEPA will address the RACT rules for Indiana, pursuant to the District Court's order, in a future Federal Register notice.

implementation plan * * *" and, if necessary, "* * * promulgate any such regulations * * *". It does not require the Administrator to be responsible also for promulgating subsequent revisions to this plan. Consequently, USEPA believes that a SIP revision, and not a FIP revision, is the appropriate way to initiate changes to the rules being promulgated today. Should the State fail to respond adequately to such a proposed SIP revision, the source may then pursue revision of the Federal rules through USEPA.

Finally, the State should also be aware that while RACT rules are an integral part of a part D plan, there are other equally important requirements that still need to be addressed in order to provide for attainment. USEPA expects the State to take the lead in adopting rules necessary to satisfy the remaining requirements of part D, regardless of USEPA's own efforts to develop an attainment FIP for the Chicago area.

II. Review of Public Comments

On December 27, 1989 (54 FR 53060), a notice of the proposed Federal rules and on USEPA's proposed action on certain State rules was published in the **Federal Register**. A public hearing on the proposed Federal rules was held in January 17, 1990. In response to requests made at the public hearing for additional time to comment on the proposed rules, on January 30, 1990, (55 FR 3073), USEPA extended the public comment period from February 16, 1990 until March 2, 1990.

Under the Administrative Procedures Act (APA) and the USEPA is responsible, following the public hearing and the public comment period, for considering seriously each piece of information submitted by the public and, based upon the comments making decisions on the final rules, including modifying the proposed rules, if appropriate. USEPA has carried out that duty. Modifications to the proposed rules, which are discussed below, have been made in response to the public comments. None of these modifications, however, has altered substantially the character of the original regulatory scheme and the Administrator has, therefore, determined that there is no need for further hearings or comments.

During the comment period, USEPA received 28 different sets of comments, including the public hearing transcript. A summary of the significant comments, criticisms, and new data submitted in written or verbal presentations during the public comment period, and USEPA's full responses are provided below. A more thorough listing of the comments, along with USEPA's responses, is contained in the docket for this rulemaking (see "Public Comments and USEPA Responses on Notice of Proposed Rulemaking (54 FR 53060, December 27, 1989)", April 1990).

A. Procedural Issues

Comment: Several commentors stated that USEPA failed to give adequate notice for the public hearing (*i.e.*, at least 30 days notice) and, thus, has violated the requirements of the CAA, the APA, and 40 Code of Federal Regulations (CFR) 51.102. Consequently, the commentors charged that the hearing held on January 17, 1990, is insufficient, and that a new hearing is required. One commentor notified USEPA that he may now bring suit to require a proper public hearing. In conclusion, the commentors claimed that they were prejudiced by USEPA's failure to provide proper notice and that any rules subsequently adopted are void.

Response: Since April 1989, USEPA has solicited interest in the development of a FIP for ozone for the Chicago area. Such solicitation has included public meetings, publication of an advance notice of proposed rulemaking (ANPR) (see 54 FR 29063, July 11, 1989), maintaining a list of interested parties (note, there are over 180 names/parties currently on this list), and routinely notifying each person on its mailing list of significant developments. In the latest of a series of these public notifications, USEPA sent a letter on December 15, 1989, to each person on the mailing list concerning the January 17, 1990, public hearing. Contrary to the objections of the commentors that this notification was limited on scope and did not represent a prominent advertisement, USEPA believes that this letter did properly inform those expected to be most concerned with USEPA's rulemaking of the upcoming hearing. In fact, almost all of the parties that presented oral testimony at the hearing or presented written comments during the comment period were on USEPA's mailing list in December and were sent copies of the December 15 letter. Consequently, by directly notifying the known parties concerned with development of FIP rules, USEPA has more than satisfied any claim that it must publish an advertisement of the hearing in the area. (As noted below, such an advertisment is not required of USEPA to satisfy the public notice requirements.)

According to section 307(d)(5) of the CAA, the Administator is required to "* * * give interested persons an opportunity for the oral presentation * * *" of information.[4] Beyond that, section 110(c)(1) of the CAA requires that, if the State held no "public hearing" on the plan, USEPA shall provide the "opportunity for such hearing". Neither of these sections, however, identifies a specific time period for public notice of such opportunity for "oral presentation" or "public hearing". The Federal Register Act (44 U.S.C. chapter 15, section 1506), however, states that a "* * * notice of hearing or of opportunity to be heard, required or authorized to be given by an Act of Congress * * *" shall be deemed to have been given, * * * when the notice is published in the **Federal Register** at such a time that the period between the publication and the date fixed in the notice for the hearing * * * is (1) not less than the time specifically presented for the publication of the notice by the appropriate Act of Congress; or (2) not less than fifteen days when time for publication is not specifically prescribed by the Act, without prejudice, however to the effectiveness of a notice less than fifteen days where the shorter period is reasonable." Because the CAA specifies no time for publication of the notice, the applicable standard is "not less than fifteen days", unless some shorter period would be reasonable. USEPA believes that the December 27 publication of its hearing notice fulfills the requirement for at least 15 days prior notice.

The public hearing requirements of § 51.102 only apply to States (*e.g.*, "* * * States must conduct * * *"; "* * * (the State must prepare and return * * *"; and "* * * (t)he State must submit * * *"). There is no provision in § 51.102 which imposes the requirements of this section on USEPA when it is required to promulgate a plan pursuant to section 110(c). Even if § 51.102 did apply to USEPA, then it should be noted that § 51.102(g)(2) allows the Administrator

[4] The procedural requirements of the APA, rather than the CAA, apply to the portions of this rulemaking involving approval of the State rules. It should be noted that section 553(b) of the APA states that the NPR shall include "* * * statement of the time, place, and nature of public rule making proceedings * * *". In addition, it requires that "* * * the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." Thus, informal (or notice-and-comment) rulemaking under the APA does not require the Agency to hold any oral hearings. Consequently, USEPA believes that its holding of a public hearing (with prior notice), and its acceptance of public comments for more than two months after publication of the NPR, fully satisfies the requirements of the APA to the extent they apply here.

to accept procedures different from those identified in § 51.102(d) (*e.g.*, with respect to 30 days prior notice), if these alternate procedures ensure public participation and provide "* * * adequate public notification of the opportunity to participate." As discussed above, USEPA believes it has provided adequate notification.

Comment: Two commentors pointed out that it was inappropriate for USEPA to simply receive comments at the hearing and not explain or clarify its proposed actions. One commentor claimed that the opportunity for rebuttal presumes the Agency will answer questions at the hearing. Another commentor stated that USEPA should schedule an additional hearing, giving proper notice, at which it provides testimony or information regarding the effect and scope of these rules and answers industry's questions regarding these rules and their implementation.

Response: USEPA feels that the public hearing held on January 17, 1990, fulfilled the obligations in the CAA to "give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions." The appropriate forum for responding to public comments is the final rulemaking notice published in the **Federal Register**, which USEPA has done here. Congress considered and rejected a requirement in the CAA that USEPA be subject to cross-examination at its public hearings. (See *Small Refinery Lead Phase-Down Task Force v. USEPA*, 705 F. 2d 506, 521–522 (D.C. Cir. 1983) citing H.R. 6161, 95th Cong., 1st session Section 305(a), 307(d)(5)(B) (1977).)

Comment: Several commentors felt that the comment period was not sufficient. Some felt that once the record is complete, a minimum of 30 additional days from then is appropriate. Some felt that the 65 days provided was not enough time to review the record and submit comments. One commentor had just received information in response to a Freedom of Information Act (FOIA) request at the end of the comment period and did not have time to review the information and prepared comments.

Response: Section 307 of the CAA requires USEPA to "allow any person to submit written comments, data, or documentary information * * *" No time period is specified. Typically, the comment period is 30–60 days. USEPA provided as much time as possible within the court-sanctioned schedule. The comment period was extended once in response to concerns expressed at the public hearing. Providing additional time would further hinder USEPA's ability to comply with the Court orders. In the case of the commentor who had just received a response to its FOIA request, an extension is also unwarranted because USEPA did not directly consider the information received under the FOIA request in the development of the proposal. Furthermore, section 307(d)(5)(A)(iv) specifically states that "the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information." USEPA believes that the 45-day post-hearing period for comments meets this requirement.

Comment: Several commentors stated that USEPA was required to perform a Regulatory Impact Analysis (RIA) because the expected cost impacts shown in the technical support document (TSD) exceeded $100 million per year (e.g., the annual impacts associated with only the generic rule were estimated in the initial draft TSD to be $168.5 million).

Response: The annual costs of the regulation have been reviewed and revised, and are still estimated at less than $100 million/yr; thus, no RIA is required. The draft technial support document presented impacts on two different baselines, the SIP baseline and the State rule baseline. The SIP baseline approach did not recognize any State regulations which had not been previously approved as part of Illinois' ozone SIP. Therefore, it assumed that all sources which would be regulated by a proposed Federal rule (which had no comparable federally approved SIP rule, such as the generic rule) were uncontrolled sources. The second approach was that of the State rule baseline, which recognized that many sources were already subject to a State regulation and required to have controls in place.

USEPA clearly stated in the TSD that it "* * * believes that the actual impact of the proposed Federal rules is closer to those calculated with respect to the State rule baseline." Most sources which have controls in place to comply with the State rule may not need to replace or alter their control equipment or operating procedures to comply with the comparable Federal rule. Therefore, the true impacts would be best estimated by considering the incremental impacts attributed to the sources subject to the proposed Federal rule which were not subject to the State rule.

The $168.5 million annual cost cited by the commentor represents the compliance cost of the generic non-CTG rule under the SIP baseline. The true impact of the generic rule which USEPA expects is that calculated on the State rule baseline, which is considerably less (on the order of $9 million annually). USEPA recognizes that the dual impact approach had the potential to cause confusion, but feels that the TSD clearly outlined the rationale regarding the impacts presented. However, to avoid further confusion, the final version of the TSD only displays impacts on one basis, that of the State rule baseline.

Comment: Several commentors believed that USEPA had not provided a sufficient statement of basis and purpose as required by section 307(d) of the CAA. Objections include the absence of "sufficient factual data" in the notice and the docket, no analysis or interpretation of the data provided, no explanation of the reasoning, and no legal or technical basis for many of the proposed rules. Another felt that USEPA had not clearly articulated its objectives in advancing this proposal. One of the commentors believed that USEPA improperly delegated its statutory duty to prepare a statement of basis and purpose to a private contractor.

Response: Section 307(d)(3) of the CAA requires that the NPR shall be published in the **Federal Register**, shall be accompanied by a statement of its basis and purpose, and shall specify the period available for public comment. The statement of basis and purpose shall include a summary of: (a) The factual data on which the proposed rule is based, (b) the methodology used in obtaining the data and in analyzing the data, and (c) the major legal interpretations and policy considerations underlying the proposed rule.

Because the requirements of section 307(d)(3) (*e.g.*, statement of basis and purpose) apply to the promulgation of an implementation plan by the Administrator under section 110, USEPA needs to ensure that a statement of basis and purpose is provided for the proposed Federal rules. The preamble in the NPR is intended to serve as the statement of basis and purpose for the Federal rules, as noted in the "Document Drafting Handbook", OFR, April 1988. The preamble appeared on pages 53061–53094 of the December 27, 1989, **Federal Register**. These 14 pages: (1) Present the background for the proposed rulemaking; (2) address USEPA's proposed action on various State submitted rules; (3) address USEPA's proposed Federal rules; (4) present a tabular summary of the VOC rules for Illinois; (5) summarize the environmental and economic impacts of the proposed Federal rules; and (6) review various regulatory analyses (*e.g.*,

impact on small entities, and reporting and recordkeeping requirements).

The factual data on which the proposed rule is based, as well as the methodology used to obtain and analyze these data, are summarized on pages 53081–53085, and 53089–53091. On these pages, USEPA addressed its RACT guidance, the application of this guidance to identify deficiencies with the State's RACT rules, and the reasons for the proposed Federal revisions. USEPA believes that these pages summarize the basis for its proposed rules.

The major legal interpretations and policy underlying the proposed rule are reviewed on pages 53081–53083 and 53087–53089. On these pages, USEPA discussed its CAA authority for promulgating Federal rules, the history of Illinois' efforts to adopt a SIP, the lawsuit and subsequent court orders directing USEPA to promulgate these RACT rules, the need for stationary source RACT control, the applicability of the proposed rules to specific nonattainment and attainment counties in the Chicago area, and the relationship of the Federal rules to the existing federally approved State rules. USEPA believes that these pages summarize the major legal and policy issues involved in this rulemaking.

Finally, the use of contractor assistance by the Agency in carrying out its mandates is not unusual and was proper in this instance. Although the contractor prepared a draft of the preamble, USEPA reviewed and revised it, as necessary. Nothing in section 307(d) of the CAA prohibits USEPA from delegating initial drafting work to a contractor.

Comment: One commentor stated that the TSD appears to have been finalized after the proposal was received at the OFR for publication. Therefore, USEPA could not have considered the TSD in preparing the NPR, even though the TSD is supposed to be the statement of basis and purpose for the NPR.

Response: The NPR was sent to the OFR on December 18 and was scheduled for publication during the week of December 24. The TSD included in the docket, although dated December 26, was essentially completed by December 5.[8] The only reason the date of December 26 appeared on the TSD was to match the TSD with the NPR by date. In retrospect, USEPA admits that assuming the earliest possible publication date of the NPR (during the week of December 24) as the date of the TSD has created some confusion, and realizes now that it should have simply maintained the December 5 date.

Comment: Several commentors claimed that USEPA has violated section 307(d)(6) of the CAA because it failed to have a complete rulemaking record available for public inspection prior to the public hearing. Items which were cited as missing included: (a) Previous SIP revision proposals and USEPA's disapproval process, (b) supporting documentation for CTGs and the Blue Book, (c) information related to the draft guideline on capture efficiency testing, (d) background documents for post-87 policy, (e) State proceedings that interpret the CTGs and their applicability to Illinois industries, and (f) dockets from IPCB rulemaking.

Response: All information relied upon by USEPA in developing its proposed rules were included in the docket at the time of the proposal. Several items, although not relied upon by the Agency for proposal, have been subsequently place in the docket at the request of these commentors. Additional information, such as public comments, were included promptly upon receipt. Regarding the specific items reported missing, USEPA wishes to note that the relevant CTGs, the post-1989 policy, and the draft guideline on capture efficiency were included in the docket. USEPA believes, however, that it is not necessary to include background information on all of these documents, as well as previous State SIP revision proposals or proposals, because USEPA is not rulemaking on the background material and these SIP proposals or proceedings at this time. Also, although the complete IPCB rulemaking dockets were not available to USEPA, the full IEPA submittals (which contained much of the IPCB dockets) were included in the docket for this rulemaking (section XIX: Additional Information About Illinois State Rules) and were available upon request at the Region V office.

B. General Issues

1. Statutory Authority

Comment: Several commentors believed that there is inadequate statutory support for USEPA's proposal. They felt that to propose Federal rules simultaneously with section to propose disapproval of State rules is inconsistent with the spirit and letter of the CAA; that USEPA must allow the State the opportunity to revise its own rules, pursuant to the provisions of section 110(c); and that USEPA may promulgate its own FIP only when a SIP fails to satisfy the requirements of section 110(a)(2) (A)–(H), the revision is disapproved by USEPA in final rulemaking, and the State is notified of the deficiency by USEPA and the State fails to remedy the deficiency in a timely manner.

Response: The commentors fail to grasp the significance of the District Court's January 18, 1989, and November 6, 1989, orders. Very simply, Judge Evans has found that the Chicago area is not in attainment of the ozone National Ambient Air Quality Standards (NAAQS), the statutory attainment date has past, the State has failed to submit a plan meeting the requirements of part D of the CAA, and USEPA is now required by the terms of the CAA to promulgate a plan which must provide for attainment. Although Judge Evans initially ruled on January 18, 1989, that USEPA must promulgate a full attainment plan by March 18, 1990, his order of November 6, 1989, anticipates that only certain interim control measures need be adopted (either by Federal promulgation or by State submittal) by that date. It should, therefore, be understood that the expeditious promulgation of RACT rules as Federal measures is proceeding as an alternative to the promulgation of a full attainment FIP within this same timeframe, as initially ordered by Judge Evans. Furthermore, the timeframes and procedures referred to by the commentors were those envisioned to be effective prior to the statutory attainment date of December 31, 1987, before which it was assumed that the States were making reasonable efforts towards attainment. Because attainment of the ozone NAAQS was not achieved in Northeast Illinois by that date, Judge Evans found that USEPA must act expeditiously to meet its legal obligations under the CAA. The contemporaneous proposal to disapprove certain State rules and to promulgate substitute Federal rules is in keeping with the expeditious manner in which the Agency must act in the post-1987 era in order to meet its obligations under the CAA and the Court orders.

USEPA's proposal and promulgation of RACT rules for Illinois is consistent with and mandated by its responsibility under section 110(c)(1)(B) and section 110(c)(1)(C) of the CAA. Section 110(c)(1)(B) of the CAA states that the Administrator shall promulgate such a Federal plan if "* * * the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section." In its January 18, 1989, order, the Court stated that "once a State plan is disapproved, the Administrator has a nondiscretionary duty to formulate a Federal plan * * *". In view of USEPA's September 30, 1988, disapproval of the Illinois SIP, the Court found that "* * * an order requiring the Administrator to perform his statutory task is appropriate." As noted above, on November 6, 1989, the Court vacated its original order, allowing an ozone implementation plan to be set in place under the terms of the settlement agreement entered into by the parties. One of USEPA's interim requirements (prior to promulgating the full plan) under the settlement agreement is to adopt VOC RACT rules for Illinois in the event that the State fails to adopt and submit to USEPA approvable rules itself. Thus, these RACT rules are being promulgated by USEPA pursuant to its authority under section 110(c)(1)(B) to promulgate a plan that will provide for attainment and maintenance of the ozone NAAQS in northeastern Illinois. In that the settlement agreement identified the RACT deficiencies, and accounted for their correction, the Court has already acknowledged that pursuant to section 110(c)(1)(B), Federal promulgation of rules to correct certain RACT deficiencies is necessary.

Furthermore, on May 26, 1988, pursuant to section 110(a)(2)(H) of the CAA, the USEPA Region V Regional Administrator, Valdas V. Adamkus, notified Illinois Governor James R. Thompson that the Illinois SIP (including portions of the SIP that USEPA has approved) was substantially inadequate to attain and maintain the ozone NAAQS in the Chicago-Gary-Lake County (IL), IL–IN–WI consolidated metropolitan statistical area (CMSA). USEPA called upon Illinois to revise its SIP to correct a number of deficient VOC RACT rules, and to adopt a number of other rules deemed necessary by USEPA. These rules were to be promulgated and submitted to USEPA by August 1989. Because Illinois did not complete these actions, and thus failed to respond adequately to USEPA's SIP Call, section 110(c)(1)(C) provides further authority for USEPA to promulgate RACT rules.

In addition, USEPA believes that the settlement agreement provided the State with sufficient notice of deficiencies in its implementation plan which must be revised by a certain date. It specifically commits Illinois to submit to USEPA "* * * some or all of the reasonable available control technology (RACT) rules and RACT rule improvement specified for Illinois in Exhibit B." Although the settlement agreement was signed in late September 1989, USEPA provided Illinois with information regarding all of the Exhibit B deficiencies as early as June 1989. Thus, not only was Illinois informed and aware of those portions of its plan which needed revision, but it agreed to the timeframe for revising its plan. In other words, USEPA (and the State) clearly established the period for the State to revise its implementation plan (pursuant to section 110(c)(1)(C)).

Given the short timeframe for Federal promulgation, USEPA decided to propose all revisions even though Illinois was attempting to adopt some of the RACT rule revisions. As noted in the NPR, if the State adopts these proposed revisions according to the schedule set forth in the settlement agreement, then USEPA would approve State rules (and promulgation of related Federal rules may not be necessary for some of these rules). However, as noted above, the IPCB recently deferred action on all but a few "partial" rules. These "partial" rules are too fragmented to be accepted as stand-alone Federally-approved rules. Therefore, USEPA must proceed with Federal promulgation on rules which correct all of the deficiencies. USEPA, of course, still encourages and expects the State to adopt rules meeting these Federal requirements as its own and submit them to USEPA for approval as SIP revisions.

With regard to the new rules Illinois has submitted for approval, USEPA would normally first disapprove deficient State rules and then allow the State a short period of time to adopt corrected rules. In this case, however, USEPA is under court order to promulgate RACT rules by June 8, 1990. In addition, for many of the deficient rules, USEPA has already informed Illinois either verbally or in writing of the specific deficiencies in the rules. Further, USEPA has not seen any indication for Illinois that it intends to proceed promptly to promulgate RACT rules either in response to USEPA's SIP Call or USEPA's proposal to promulgate Federal RACT rules pursuant to Judge Evans' order. Thus, it appears that providing Illinois a short time to correct the noted deficiencies would not be productive in this case. Nothing in the CAA requires USEPA to give the State additional time under these circumstances.

Comment: Several commentors felt that USEPA had exceeded its authority by proposing a Federal plan that goes beyond the scope of the SIP Call and the settlement agreement. One commentor stated that they had supported the settlement agreement with the understanding that: (a) No additional rules would be adopted until the modeling study was completed, (b) enhancements to the State's motor vehicle inspection and maintenance program were adopted, (c) only the deficiencies listed in USEPA's SIP Call were corrected, and (d) USEPA would only promulgate rules to correct deficiencies which Illinois did not adopt through its current rulemaking effort before the IPCB.

The commentors felt that the proposed rules go far beyond the settlement agreement in many areas and the USEPA should limit this rulemaking to just those deficiencies listed in its SIP Call. Specifically, 7 of the 22 deficiencies listed in Exhibit B of the settlement agreement (coke oven by-product plant rule, 80CMI leak rule, specialty high gloss catalyzed coatings rule, power driven fastener coatings rule, pharmaceutical manufacturing rule, generic rule, and heavy off-highway vehicle products/diesel electric locomotive coating rule) were not listed in the SIP Call and, thus, should not be included in this rulemaking. Furthermore, five issues raised in the NPR are not even mentioned in Exhibit B (internal offset rule, marine propulsion equipment coatings rule, pharmaceutical manufacturing rule, printing and publishing rule, and heatset web offset rule) and, thus, should not be included in this rulemaking.

The commentor believed that USEPA is using the settlement agreement as a means to promulgate a FIP for northeastern Illinois. Promulgation of rules beyond the correction of specific RACT rule revisions before completion of the new modeling study is inappropriate. If these rules are later found to be unnecessary, then it will be difficult, if not impossible, to un-do them.

One commentor noted there is no reason to conduct the modeling study if USEPA adopts such extensive rules that it renders the purpose of the study moot. That commentor believed that the settlement agreement intended that the Federal rules be in effect only until the modeling study is completed.

The State of Wisconsin stated that the proposed Federal rules address the objectives and commitments of the settlement agreement, and encouraged expeditious adoption and implementation of the proposed rule changes.

Response: Here, too, most of the commentors fail to grasp the

[8] The first draft of the TSD was delivered by the contractor to USEPA on October 20, 1989. Subsequent revised drafts were delivered on November 17, 1989, and December 5, 1989. USEPA considers the December 5, 1989, draft, along with a few subsequent minor revisions, to represent the final TSD for the proposed rulemaking.

significance of the District Court's January 18, 1988, and November 6, 1989, orders. As noted above, Judge Evans has found that the Chicago area is not in attainment of the ozone NAAQS, the statutory attainment date has past, the State has failed to submit an approvable part D plan, and USEPA is now required to promulgate a plan which must provide for attainment. Consistent with the Judge's orders, USEPA must expeditiously promulgate certain interim control measures as indentified in Exhibit B while it is also developing a full attainment plan. This plan, as provided for by the settlement agreement, is to be based on a more sophisticated air quality modeling analysis. Available air quality analyses (*e.g.*, see the July 11, 1990, ANPR) indicate that the ultimate emission reduction needed for attainment is so large that these rules are necessary, although not sufficient, to provide for attainment. As noted in the NPR, reductions beyond the level of control in the CTGs may even be necessary. These rules do, however, provide for progress towards attainment, while a full attainment plan is being developed. These rules are necessary to comply with the RACT and reasonable further progress (RFP) requirements of section 172(b)(3) of the CAA, unless and until the subsequent air quality modeling indicates that they are not needed to demonstrate attainment, which is an unlikely result given the available information.

The commentors' claim that only those deficiencies specifically identified in the June 17, 1988, letter associated with the May 1988 SIP Call to Illinois should be corrected lacks merit because, as stated in the June 17, 1988, letter: (a) Deficiencies were specified in that letter only for previously approved rules, (b) the State must modify those previously submitted rules, for which USEPA had not yet completed its review, should USEPA determine these rules do not satisfy Federal requirements, and (c) the State was told to review independently its rules against USEPA's RACT guidance and correct any other deficiencies. Thus, USEPA maintains that the scope of the SIP Call is broader than the 16 specified deficiencies. In any case, USEPA believes that the proposed rules are, for the most part, consistent with Exhibit B of the settlement agreement.

The commentor's objection to USEPA's consideration of certain outstanding rules is inconsistent and partially incorrect. The commentors have not objected to the inclusion of certain other rules not cited in Exhibit B which USEPA has proposed to approve in this rulemaking. The commentors also have not recognized that deficiencies with the internal offset, pharmaceutical manufacturing, printing and publishing, and heatset web offset rules are cited in Exhibit B. Although the marine propulsion equipment coating rule was not cited in Exhibit B, USEPA believes both that it would be inappropriate to include this subsequently identified deficiency in its comprehensive Federal coating rule that it can promulgate a rule which corrects this deficiency pursuant to its authority under section 110(c)(1)(B), which provide for USEPA promulgation of a plan when the submitted State plan does not comply with the CAA.

Comment: One commentor believed that, since Illinois is in compliance with the settlement agreement, most of the proposed rules are not necessary. One commentor asked which of the proposed rules USEPA will take action on by March 16, 1990, and how IPCB approvals will affect the FIP proposal.

Response: Pursuant to the settlement agreement, the State of Illinois agreed to submit to the USEPA, "* * * some or all of the reasonably available control technology (RACT) rules and RACT rule improvements specified for Illinois in Exhibit B * * *". As noted above, IEPA proposed only some of the deficiencies to the IPCB by the required date. Thus, most of the deficiences remain unaddressed by the State. Furthermore, the IPCB has not adopted enough of IEPA's proposal to correct completely even one rule. Consequently, as above, USEPA cannot defer to the State any longer and it is, therefore, necessary for USEPA to move forward now with promulgation of Federal rules to correct all of the deficiencies, in order to satisfy its obligation to the court under the CAA.

2. Federal/State Rule Mix

Comment: Most commentors objected to the alternate proposal of a comprehensive set of Federal rules, stating that this option exceeded USEPA's statutory authority and its obligations under the settlement agreement. One commentor did not understand the role of the existing State rules and questioned whether they would continue to be in effect, and whether the proposed generic rule would replace the existing State generic rule. The commentor felt that the overlap of Federal/State rules was confusing. Another commentor expressed support for a mixed Federal/State plan, but felt it should comprise, as much as possible, federally approved State provisions, since the CAA places the obligation for attaining and maintaining the NAAQS upon each individual State. One commentor stated, however, that in no instance could they support either a permanent mix of Federal and State rules or a comprehensive set of Federal rules. The mix would only complicate compliance matters for the regulated community, and the comprehensive plan would ignore the years of State rulemaking proceedings.

Still another commentor stated that they supported a Federal/State rule mix, but a very temporary and limited one, and not permanent Federal rules in any case. However, the commentor noted that the Federal/State rule mix will leave the regulated community in a State of confusion regarding what is the applicable rule.

IEPA supported the mixed Federal/State combination of rules. IEPA cited several problems with a comprehensive set of Federal rules (*i.e.*, needless duplication of effort, enforcement difficulties, conflicting language, needless duplicate regulation, and inconsistency with the terms of the settlement agreement). IEPA did, however, urge USEPA to limit applicability of the Federal definitions to the Federal rules being promulgated to avoid any alteration of State rules, and Federal interpretations which would violate the decision by the United States Court of Appeals of the Seventh Circuit in the case of *Bethlehem Steel Corp.* v. *Gorsuch*, 742 F.2d 1028 (7th Cir. 1984), described more fully below.

Response: After reviewing the public comments on this issue, USEPA shares the position with the majority of commentors that the mix-match approach is the best option as the interim approach, until Illinois submits and USEPA approves substitute SIP rules. The resultant plan for Illinois will now consist of some federally approved (State) rules and some federally promulgated (Federal) rules. USEPA believes that this approach provides the best model for the State to secure eventually a total federally approved SIP, by highlighting the changes Illinois must make to its rules to gain full USEPA approval. To clarify which rules are federally promulgated rules (i.e., FIP rules) and which rules are federally approved State rules (i.e., SIP rules) under this mixed Federal-State plan approach, USEPA has included a document with the complete set of rules in the docket for this rulemaking action. This document contains all of the RACT rules for the Chicago area and indicates which rules are Federal rules and which are State rules. USEPA believes that this document is sufficiently clear to avoid any confusion as to which provisions apply to a particular source.

In the NPR, USEPA specifically requested public comment on an alternative approach (i.e., a comprehensive Federal plan) because of the effect of several changes proposed, by USEPA, including changes to the definitions, the test methods and procedures, and the exemptions, variances, and alternative means of control portions of the General Provisions section. The General Provisions section applies to each of the individual source category rules. It could, therefore, be argued that changes to the General Provisions section result (indirectly) in changes to the individual source category rules. If USEPA relied on its previous approval of the State rules for the individual source categories (while changing portions of the General Provisions section), then USEPA may be making the original State rules more stringent as a matter of Federal law than Illinois had initially intended. This may conflict with a decision by the United States Court of Appeals for the Seventh Circuit in the *Bethlehem* case.

The Circuit Court, in the *Bethlehem* case, ruled that USEPA could not, through its authority to partially approve or disapprove a plan revision, make a plan more stringent than the State had ever intended it to be. The Court did, however, indicate that USEPA could modify the plan through formal rulemaking under section 110(c) rather than through partial SIP approval. USEPA believes that its adherence to the procedural requirements of sections 110(c) and 307(d) of the CAA in proposing and promulgating the Federal RACT rule revisions avoids the procedural issue identified in *Bethlehem* and hence is consistent with the Court's ruling.

Furthermore, in its comments, IEPA endorsed the mix-match approach. Although it is not clear whether IEPA's letter represents "State intent", USEPA recognizes it as the only comment received on this matter from any State agency or office. IEPA did, however, urge USEPA to limit the applicability of the Federal definitions to the Federal rules. IEPA believed that such a limitation would avoid any alteration of State rules contrary to State intent and would result in compliance with the *Bethlehem* decision. The Court in *Bethlehem* was primarily concerned with federalism issues and the adverse effect of USEPA's partial approval in altering State rules contrary to State intent. USEPA has limited applicability of its definitions to the final Federal rules. By restricting the applicability of its definitions, per the State's recommendation, USEPA believes that the federalism concerns raised in the *Bethlehem* decision will not be implicated. In fact, federalism is served by the mix-match approach (with the limitation on the Federal definitions) by allowing many State rules to remain in effect under the SIP.

Comment: Two commentors believed that under either approach, USEPA's proposal would serve to supplant the entire Illinois regulatory system. USEPA's rules will in effect put the State entirely out of the business of making and enforcing regulations. The commentors maintained that this is contrary to the structure and intent of the CAA for a Federal-State partnership.

Response: Once again, the commentors fail to grasp the significance of the District Court's January 18, 1988, and November 6, 1989, orders. As noted above, Judge Evans has found that the Chicago area is not in attainment of the ozone NAAQS, the statutory attainment date has past, the State has failed to submit an approvable Part D plan, and USEPA is now required to promulgate a plan which must provide for attainment. Pursuant to the judge's orders, USEPA must expeditiously promulgate certain interim control measures while it is also developing a full attainment plan.

The Federal-State partnership envisioned by the CAA did not result in attainment of the ozone NAAQS for Northeast Illinois by December 31, 1987. The State's failure to submit an approvable SIP resulted in litigation, the result of which was a court order directing USEPA to assume control of ozone planning for Northeast Illinois. This burden shifted from the State to USEPA when USEPA disapproved in final the Illinois SIP on September 20, 1988. In its January 18, 1989, order, the District Court found that USEPA was "* * * now under an obligation to formulate a federal plan."

USEPA's need to move forward on a Federal plan (and to no longer defer to the State) is further supported by the absence of State corrections for the deficiencies identified in the 1988 SIP Call and in Exhibit B of the settlement agreement (i.e., formal notification under section 110(a)(2)(H) of the CAA and court orders have not been enough to prompt the State to act). Because the State has not revised its own plan, the Court has found that the CAA mandates that USEPA step in and do the State's job.

3. General Comments Regarding Federal Rulemaking

Comment: The Illinois Environmental Regulatory Group (IERG) stated that its March 2, 1990, comments represent its notice, pursuant to section 304(b) of the CAA, of its intent to file a citizen's suit in Federal District Court if USEPA fails to cure the deficiencies noted in its comments.

Response: USEPA acknowledges IERG's notice, but believes that any such notice is premature until USEPA has taken final action. USEPA wishes to point out that it has addressed each pertinent comment, but does not agree with many of the comments. Thus, USEPA will not be modifying its proposed rules or rulemaking procedures as desired by the commentor. IERG's recourse after final action is to seek review from the United States Court of Appeals for the Seventh Circuit under section 307(b) of the CAA. Section 304(b) of the CAA does not give district courts jurisdiction to review final agency actions.

Comment: Two commentors felt that USEPA is "tilting the playing field" against Illinois. One commentor stated that this cannot be justified and is not intended under either the CAA or the settlement agreement. Deficiencies were noted in the settlement agreement for Indiana and Wisconsin, but USEPA has not initiated action on these deficiencies. There appears no certainty that the Wisconsin RACT deficiencies will be corrected any time in the near future.

Response: Both Indiana and Wisconsin submitted draft regulations to USEPA, during 1989, addressing virtually all of their deficiencies. All of Indiana's and Wisconsin's rule corrections have now been submitted to USEPA in final (or near final) form. There is no indication that Illinois is close to finalizing (or even proposing) approvable RACT rules. Thus, Federal promulgation is the surest means of "leveling the playing field" in the near term. The commentor should also realize that pursuant to the settlement agreement, USEPA is responsible for ensuring that the Indiana RACT rules are corrected (either through federal promulgation or approval of an adequate SIP revision), but that Wisconsin is solely responsible for ensuring that its RACT rules are corrected.

Comment: One commentor believed that the proposed regulations are unduly burdensome and provide little or no benefit in terms of VOC reductions or progress toward attainment. Another

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commentor claimed there was no documented air quality benefit and the NPR is regulation for regulation sake. On the other hand, another commentor noted that this proceeding does not deal with air quality; RACT is based on technical feasibility, economic reasonableness, and other factors; and air quality is not a direct consideration of RACT under the CAA.

Response: Once again, the commentors fail to grasp the significance of the District Court's January 18, 1989, and November 6, 1989, orders. As noted above, Judge Evans has found that the Chicago area is not in attainment of the ozone NAAQS, the statutory attainment date has past, the State has failed to submit an approvable Part D plan, and USEPA is now required to promulgate a plan which must provide for attainment. Pursuant to the Judge's orders, USEPA must expeditiously promulgate certain interim control measures while it is also developing a full attainment plan. These rules are necessary requirements of section 172(b)(3) of the CAA, pending development of the full attainment plan.

USEPA believes that the impacts associated with the Federal regulations are reasonable for these source categories in general, although the regulations will impact individual companies differently. Due to the lack of specificity, the argument provided by the commentor is not convincing that impacts are excessive or unreasonable. USEPA did give attention and consideration to those companies that contended that the regulation was unreasonable for their situation and that provided information to support their assertion. These companies are discussed in section E below.

The ultimate emission reduction needed for attainment is so large that these rules are necessary, although not sufficient, to provide for attainment. As noted in the NPR, reductions beyond the level of control in the CTGs may even be necessary. These rules do, however, provide for progress towards attainment, while a full attainment plan is being developed. In addition, the CAA requires implementation of RACT for these sources without regard to the extent of emission reductions attributable to such technology.

Comment: One commentor believed that USEPA must attempt to minimize the cost and distribute the regulatory burden in connection with demonstrating attainment in the Chicago area, and consider the reductions that could occur in mobile source emissions. The commentor cited an analysis which purports to show that the Federal Motor Vehicle Control Program is likely to provide significant VOC reduction over the next 5 years and that such automobile emission reductions are very likely to be enough for attainment of the NAAQS.

Also, IPCB recently took steps to reduce volatility from mobile sources by adopting Gasoline Volatility Rules. Illinois is investigating even more stringent controls on mobile sources in order to reduce ozone. The stationary source controls proposed in the NPR clearly would result in overcontrol and unreasonable total cost.

Response: As a first step towards promulgating a complete FIP pursuant to the Court orders, and in addition to it being a condition of the settlement agreement, USEPA believes that it is appropriate to take rulemaking action now on RACT rules for the greater Chicago area for the following reasons. First, the CAA requires that States submit SIPs that implement all reasonably available control measures as expeditiously as practicable and make reasonable further progress toward attainment through the implementation of RACT at a minimum on existing sources in nonattainment areas. These rules will provide interim emission reductions while USEPA and the States develop a full attainment demonstration and other necessary control requirements. USEPA has maintained this interpretation of the RACT requirement in these circumstances since 1979 (see 44 FR 20372, April 4, 1979, and 46 FR 7182, January 22, 1981).

Second, traditional stationary source RACT rules are easier to both develop and implement than innovative areawide controls and transportation control measures. Thus, they represent a logical way to achieve reasonable further progress during the period before USEPA can develop a full-scale attainment FIP. Furthermore, the legislative history of the CAA demonstrates Congress' desire that transportation/motor vehicle controls be dealt with by State and local governments. Accordingly, Congress adopted part D sanctions to create a new means of inducing such State/local planning.[9] Thus, Federal promulgation of motor vehicle controls as a first step towards attainment does not seem appropriate.

Third, USEPA is confident that given the large emission reduction shortfall in the Chicago area, as described in the July 11, 1989 ANPR (54 FR 29063), all of these requirements plus numerous other areawide and transportation controls (and perhaps tightening of stationary source controls beyond RACT) will be necessary to support any attainment demonstration for the Chicago area.

Finally, Illinois has already completed rulemaking and submitted several RACT rules. It is appropriate for USEPA to act on these rules as SIP revisions and at the same time promulgate Federal measures to enhance the RACT provisions as necessary to meet the statutory and regulatory requirements.

In addition, the analysis cited by the commentor suffers from several faults. First, no quantitative estimate of the reduction in VOC emissions required to attain and maintain the ozone NAAQS has been made by the commentor. The commentor's conclusion is based on a qualitative guess using improperly adjusted (as noted below) ambient air quality data trends. Thus, no supportable attainment demonstration has been provided.

Second, the analysis appears to assume that reduction in VOC emissions will provide an equivalent reduction in ambient zone concentrations. This assumption is inconsistent with the nonlinearity of the photochemical system.

Third, no justification has been provided for the projected reduction in future VOC emission levels. It is not clear how these reductions were determined.

Finally, the analysis dismisses the high ozone concentrations which occurred during the summer of 1988 because of "abnormal" meteorology. USEPA has previously considered and rejected the argument that the above normal temperature conditions which occurred during recent summers, such as 1983 and 1988, qualify as exceptional events. Year-to-year variability in meteorological conditions should be expected, and there is no guarantee that such conditions will not happen again. The occurrence of comparable, above normal temperature conditions during two other recent summers, 1983 and 1987, further invalidates any claim that 1988 was "abnormal". Thus, it is inappropriate to dismiss 1988 ambient data on the basis of meteorological conditions.

Comment: Two commentors felt it was "incomprehensible" that the proposal did not contain a provision requiring Stage II vapor recovery equipment at gasoline stations. Emissions from motor vehicle refueling are one of the largest, if not the largest, uncontrolled sources of ozone precursors in northeastern Illinois. The Agency's failure to deal with such an important aspect of the problem makes its proposal unsustainable. The commentors maintained that the CAA requires the Agency to implement Stage II vapor recovery because it is a reasonable available control measure. USEPA's failure to require its implementation is a violation of the CAA.

Response: As noted above, USEPA believes that numerous area, mobile, and point source controls will be needed to provide for attainment here. This rulemaking does not, however, represent the complete attainment plan for the Chicago areas. USEPA, at this time, is only promulgating Federal rules to correct specific deficiencies with certain Illinois stationary source rules. Because USEPA has not notified the State either pursuant to the settlement agreement or a Notice of SIP Deficiency that its plan is deficient with respect to Stage II vapor controls and because the interim emission reductions required by the settlement agreement do not include Stage II controls, adopting such a rule change in this final rulemaking without prior notice raises difficult legal and procedural concerns. USEPA does, however, recognize the viability of Stage II controls and will consider it for inclusion in the full attainment plan (required by the settlement agreement to be promulgated by 1993 and 1994). The CAA does not prohibit USEPA from adopting certain RACT rules in advance of other control measures.

Comment: One commentor felt that USEPA should delay final action on this proposal until Congress provides definitive guidance in the pending Amendments to the CAA. Another commentor noted that USEPA may not disregard the requirements of an existing statue on the chance that Congress may later amend it.

Response: USEPA is not able to wait for this anticipated action on the part of Congress because it is under a court order to act at this time. The settlement agreement is based on the current CAA and USEPA must act in accord with existing law.

Comment: One commentor noted that some of the rules proposed are in direct conflict with existing federally-approved State rules and USEPA failed to provide a satisfactory method of dealing with the conflict. USEPA would require that if the existing federally-approved regulations and the new regulations conflict in such a way that a source would violate the existing rule while moving toward compliance with the new rules, then the source must apply for a site-specific variance from the existing State rule. In view of USEPA's past failure to act promptly on SIP revisions, this would put companies in jeopardy of enforcement.

Response: The existing federally approved SIP rules for any source continue to apply and to be fully enforceable, until the date on which the source is required to comply with a revised rule. The existing SIP will continue in force if there is any delay or lapse in the applicability of the revised rule. To allow a gap in compliance for CTG and major non-CTG sources when the statutory attainment date has past and the area is still nonattainment is environmentally unacceptable. If the existing and revised rules conflict so that a source cannot comply with the existing SIP while moving toward compliance with the revised rule, however, then the source may apply for a site-specific exemption from the existing SIP from the State. All such exemptions granted by the State must, in turn, be submitted to and approved by USEPA before such exemption from the SIP is effective.

No commentors identified any cases where the proposed Federal rules would create any such obvious conflicts. Thus, while USEPA appreciates the commentor's concern about political conflicts, USEPA believes based on the lack of any specific examples that the practical effect of requiring site-specific SIP revisions for this reason may not be significant. Because obtaining a site-specific plan revision the State and subsequent approval from USEPA can take a while, USEPA encourages any such affected plant to initiate the process with the State as soon as possible. It is unlikely that either the State or USEPA would initiate enforcement action against a company based on a conflict between State and Federal rules while such a variance proceeding is pending.

Comment: One commenter questioned how USEPA would handle enforcement of the Federal RACT rules.

Response: USEPA would have primary responsibility to enforce the rules. In the interest of having the State assume control of the plan, the Agency hopes the State will develop adequate legal authority to supplement USEPA's enforcement responsibility with its own in the interim period until the State can submit a complete set of approvable RACT rules.

4. Potential to Emit and Operating Permits

Comment: Several commentors objected to the use of potential emission rates in determining the applicability of certain regulations. One commentor believed that the use of a potential emissions applicability requirement for printing facilities could greatly overstate actual emission due to the nonuniform nature of typical printing operations. One commentor contended that requiring emission levels to be determined prior to add-on controls was contrary to past rulings in the courts (i.e., a facility's potential to emit must take into consideration not only the effect of pollution control equipment on the emission levels but also any federally enforceable permit conditions which restrict hours of operation or amounts of materials combusted or produced). (see *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1980) and *U.S.* v. *Louisiana Pacific Corp.*, 682 F. Supp. 1122 (D.Colo. 1987) and 682 F. Supp. 1141 (D.Colo. 1988).] The commentor added that requiring potential to emit to be used fails to consider that many sources do not operate 24 hours/day or 365 days/year and never will do so.

Response: USEPA has historically used a source's "potential to emit" as a benchmark for deciding whether it is appropriate to require RACT for the source under the RACT requirement of section 172(b)(3) of the CAA. According to USEPA's past interpretation of "potential to emit" (44 FR 20376), this term means the maximum capacity of a source to emit a pollutant absent control equipment. In reviewing the comments received on this issue, USEPA acknowledges that some confusion could result from the use of the same term with a different meaning in the context of the new source review (NSR) provisions of the CAA. Consequently, USEPA has decided to use a different term for purposes of these RACT rules. USEPA will use the term "maximum theoretical emissions" to describe those sources subject to these RACT requirements. This term will have the same meaning as USEPA historically gave to the term "potential to emit" in the RACT context. Maximum theoretical emissions will be used only to determine applicability for purposes of RACT rules. As discussed in the Blue Book, the RACT exemption levels for printing operations and major non-CTG sources shall be based on the maximum theoretical tons per year emissions calculated assuming design capacity (or maximum production), 8760 hours of operation per year (or maximum capacity), and no add-on controls (or absent control equipment).[9] Because

[9] On November 2, 1988, (54 FR 46271), USEPA proposed to limit highway funding in Cook, DuPage, Kane, and Lake Counties based on the State's failure to make reasonable efforts to submit a revised plan with enhanced motor vehicle inspection and maintenance program.

[9] For printing and major non-CTG sources, USEPA's RACT guidance (as discussed in the Blue

Continued

control efficiency is somewhat variable and possibly uncertain, USEPA believes that subject and exempt facilities can be better identified if add-on controls are not accounted for in the calculation of maximum theoretical emissions. Furthermore, although USEPA realizes that most sources will not in fact operate continually year round, USEPA believes that because maximum theoretical emissions represent what a source is capable of emitting, it provides a more stable characterization of the source than actual emissions, which may also be quite variable and are often extremely difficult to ascertain. Thus, a source's maximum theoretical emissions is a measure for determining whether a source is of sufficient size, and, therefore, has the ability to apply controls at a reasonable cost.

USEPA recognizes that this definition of the term "maximum theoretical emissions" is defined differently from the term "potential to emit" in the NSR program, which was the subject of the court rulings referred to by the commentor. USEPA acknowledges that for purposes of the NSR program, USEPA must consider federally enforceable physical or operational limitations on the capacity of a source, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed (see, for example, 40 CFR 51.15(a)(3)). USEPA believes, however, that it is not improper to use a similar term here with a different definition, provided that its use is clearly defined. While the D.C. Circuit Court of Appeals found that the CAA mandates the consideration of pollution controls in determining the potential to emit for the NSR program, the Court explicitly relied on Congress' desire to limit the NSR program to "major" sources of air pollution and its finding that Congress specifically intended USEPA to take into account the anticipated functioning of air pollution control equipment in determining which sources are "major" (see *Alabama Power Co.* v. *Costle*, 636 F.2d at 352–355).[8] There is a different statutory directive for the purposes of establishing emission limitations and standards pursuant to section 110 and RACT requirements of section 172(b)(3). Unlike section 169(1) of the CAA, the definition of RACT in section 172(b)(3) contains no express considerations regarding applicability. Thus, the court cases cited by the commentors are not relevant here. USEPA concludes that it is reasonable to require RACT for all sizeable VOC sources based on maximum theoretical emissions, as described above.

Finally, it should be noted that sources subject to these regulations, based on the use of maximum theoretical emissions as the applicability criteria, may apply for an alternative RACT determination if they believe that the emission limitations and standards of the Federal regulations are not technologically or economically reasonable.

Comment: Two commentors believed that the exemption provisions for several categories, in which the 100 TPY emission rate as limited by a federally enforceable construction permit can be used to determine applicability, should be expanded to include construction and operating permits. This would be consistent with Illinois' system and would prevent a totally new permit system from having to be developed. They believed that there was no reason to differentiate between operating permits and construction permits when determining limitations on the potential to emit. One commentor felt that the provision for exemption based on a federally enforceable construction permit or FIP or SIP revision limiting emissions was unclear and too complex. Another commentor maintained that the use of SIP or FIP revisions to limit potential emissions is administratively impractical and that operating permits should also be an acceptable means of limiting the potential to emit. The commentor suggested that USEPA establish legal and administrative standards needed to make operating permits federally enforceable.

Response: USEPA believes that IEPA's operating permit program is neither federally enforceable, nor consistent with USEPA requirements set forth in a June 28, 1989, **Federal Register** policy statement (54 FR 27274) concerning federal enforceability of State operating permits. According to this policy statement, State operating permits will be considered federally enforceable if issued pursuant to permitting programs that meet five specified criteria. Furthermore, the operating permit program must first be approved by USEPA as meeting these criteria before USEPA will consider such permits to be federally enforceable. Although USEPA approved the State's operating permit program on May 31, 1972 (37 FR 10862) and again in modified form on February 21, 1980 (45 FR 11477), it has yet to approve it as meeting the criteria of its June 28, 1989, policy statement. A brief assessment of the State's program, however, indicates that it does not satisfy all of these criteria (e.g., there is no provision requiring compliance with the condition in the State operating permit). Consequently, USEPA does not recognize State operating permits in Illinois as being federally enforceable.

IEPA appears to concede that Illinois operating permits are not federally enforceable by acknowledging two procedural flaws in its current operating permit program: (a) Lack of public comments on draft permits, and (b) failure to label the permit as being federally enforceable. IEPA's suggestion that USEPA correct deficiencies in its operating permit program in this rulemaking is inappropriate because USEPA has not identified the State's operating system as being deficient (e.g., this was not included in either the May 26, 1988, SIP Call, the settlement agreement, or the December 27, 1989, NPR). Thus, promulgating a Federal operating permit program in this final rulemaking without prior proposal raises difficult legal and procedural concerns. The proper method for revising the IEPA permit system is through a separate rulemaking action, which the State may elect to do. If so, then the revised program must be consistent with USEPA's June 28, 1989, policy statement.

Finally, because Illinois's operating permits are not federally enforceable, conditions and limitations in those permits cannot be accepted in lieu of federally enforceable conditions and limitations in the RACT rules now being promulgated.

Comment: One commentor believed that an IEPA operating permit is federally enforceable and that this is the preferred method of site-specific determinations and that USEPA must confront the question of whether operating permits are federally enforceable. Two commentors questioned the role of State permits in USEPA's enforcement of the FIP. Another commentor stated that there is no basis for precluding the emission limitations in operating permits. In *People of State of Illinois* v. *Commonwealth Edison Company*, 490 F. Supp. 1145 (1980), the court held that the requirement that an operating permit be obtained constituted an emission limitation under the CAA, and therefore is federally enforceable. In *Citizens for a Better Environment* v. *EPA* (649 F. 2d 522 (7th Cir. 1981)), the court held that State operating permits were federally enforceable to the extent their requirements were intended to require compliance with the SIP. Another commentor believed that operating permits are federally enforceable because the operating permit requirements have been part of the Illinois SIP since 1971. Consequently, failure to have a permit is a violation of Federal law.

Response: At issue here is how a particular permit is to be used. The exemptions allowed in the RACT rules being promulgated today are being allowed only for those sources whose permit conditions are federally enforceable and, thus, are viewed by USEPA as being equivalent to the conditions of the rule which would otherwise be applicable. Illinois SIP Rule 103(b), which was approved by USEPA as part of the SIP on May 31, 1972 (37 FR 10862) and again in modified form on February 21, 1980 (45 FR 11477), governs operating permits. This rule makes it a condition of operation that a source so governed obtain a permit, but contains no provision requiring compliance with the conditions in the permit. Because there is no requirement in SIP Rule 103(b) that a source with an operating permit shall not operate unless it is in compliance with all conditions of the operating permit, the conditions of the operating permit cannot be accepted as equivalent to the conditions of the promulgated RACT rule. In the case of *Illinois* v. *Comm. Ed.*, 490 F. Supp. 1145 (1980), Commonwealth Edison was operating without the operating permit required by SIP Rule 103(b). An enforcement action was brought, and Commonwealth Edison defended on grounds that the requirement that it obtain an operating permit was not "an emission standard or limitation" under the CAA and, therefore, was not enforceable under the CAA. The Court found that the requirement was "an emission standard or limitation" and was enforceable under the CAA. The Court merely stated that if a source did not obtain an operating permit, a Federal action could be brought to have it ordered to do so; nothing was stated about the enforceability of the conditions of the operating permit. In *CBE* v. *USEPA*, 649 F.2d 522 (1981), Illinois had submitted, and USEPA had approved, Rule 203(f) as a part of the SIP. CBE challenged USEPA's approval of the rule as being arbitrary and capricious. The rule required owners or operators of potential sources of fugitive particulate matter to submit to the State "operating programs" to "significantly reduce" fugitive particulate emissions, and required that the source "shall be operated" under the provisions of the operating program. CBE argued that because "significant reduction" was not defined, the standard could not be enforced. The Court found that argument "premature", and concluded that a source which "does not comply with the operating program required" was subject to an enforcement action of USEPA, the State, or any citizen. The Illinois operating permit rule, however, unlike Rule 203(f) has no "shall be operated" language, and places no conditions on the operation of the source; it only requires a source to have a permit. *CBE* v. *USEPA* is, therefore, inapplicable to the enforceability of the Illinois operating permit rule (Rule 103(b)). As noted above, operating permits are only federally enforceable if issued under a federally approved permitting system, and USEPA has never approved Illinois' program on that basis.

C. Federal Rules

1. General Provisions

a. *Geographic applicability—Comment:* Several commentors questioned the rationale for including McHenry and Will counties in the regulated area, while another commentor objected only to the inclusion of Will County. Another commentor supported the six-county applicability for the RACT rules on the basis that it was consistent with the existing State VOC control in the Chicago area.

In particular, one of the commentors maintained that USEPA's argument regarding emissions is improper in light of emission inventory errors and USEPA's reliance on past modeling is ill-founded. The commentor further noted that it was improper and a violation of the *Bethlehem* decision to reject every other part of the State's regulations, but them to select one part for preservation in a different context. Another commentor claimed that the inclusion of McHenry and Will Counties is inconsistent with USEPA's November 2, 1989, proposed Federal highway funding sanctions (and proposed enhancement to I/M program) for northeast Illinois, which did not apply to those counties, and with the understanding in the settlement agreement that new modeling is needed.

Response: USEPA stands by the rationale cited in the NPR for applying the Federal rules to the attainment counties of McHenry and Will, as well as the nonattainment counties of Cook, DuPage, Kane, and Lake. In brief, USEPA believes that requiring RACT for certain VOC sources in McHenry and Will Counties is important for several reasons. First, Illinois has recognized the contribution of these counties to the ozone nonattainment problem in the Chicago area by including emission sources located in them in the area for which the State constructed its Chicago attainment demonstration in both its 1979 and 1982 part D ozone SIPs. Second, as USEPA has stated on previous occasions subsequent to its redesignation of McHenry and Will Counties as attainment for ozone, that redesignation was based on several incorrect assumptions. Third, USEPA believes that stationary sources of VOC located in McHenry and Will Counties make a significant contribution to the ozone nonattainment problem in the greater Chicago area, and that the ozone NAAQS cannot reasonably be attained unless RACT rules are applied in these two counties. Thus, USEPA is requiring these rules in McHenry and Will Counties in order to meet the attainment related requirements of the CAA for the designated Chicago nonattainment area. Finally, the State has also, in its public comments, endorsed the inclusion of McHenry and Will Counties in the area to be regulated.[9]

USEPA's decision to apply the RACT rules now in McHenry and Will Counties, but not in Grudy and Kendall Counties (which are also in the Chicago CMSA), does not mean that the application of RACT in the latter two counties might not be appropriate in the future. Rather, the Agency believes that in the first phase of correcting existing ozone SIPs in the absence of a modeled attainment demonstration, only those counties in the historical Chicago demonstration area, and that were subject to the 1988 SIP call by USEPA to correct deficiencies in VOC RACT rules, should be subject to the RACT corrections.

The commentor's objection based on perceived errors in the emissions inventory for these two counties and

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Book] allows federally enforceable operating restrictions (except air pollution control equipment) to be taken into account when determining applicability. Sources may voluntarily apply for such restrictions.

[8] The Court of Appeals for the Seventh Circuit recently decided a case involving the term "potential to emit" in the context of the NSR provisions of the CAA (*Wisconsin Electric Power Company* v. *Reilly*, Nos. 89-2284, 89-2339, 7th Cir., slip opinion, January 19, 1990). For the reasons described in the text above, this case has no applicability to the RACT rules USEPA is promulgating today.

[9] USEPA's action to subject all six counties to the same level of control [RACT] through this rulemaking will not necessarily require the State to control emissions beyond RACT in these counties equally as part of its future, revised "attainment" SIP. The State may control these emissions to the extent necessary beyond RACT, provided the revised plan produces progress and attainment in accordance with the requirements of the CAA.

USEPA's reliance on past modeling results is not persuasive. With respect to the emissions inventory, a comparison of the current State data base (which the commentor endorsed) and the FIP inventory indicates very good agreement, when certain factors such as biogenic emissions and rule effectiveness for point sources are accounted for. With respect to prior modeling results, it should be noted that USEPA's determination that these counties were upwind on days when the NAAQS was exceeded was based primarily on a qualitative assessment of actual ambient data, not on any mathematical modeling analyses. As noted in the TSD, existing modeling results do not permit a quantitative assessment of the contribution from McHenry and Will Counties and, consequently, a qualitative assessment was necessary. USEPA recognizes that pursuant to the settlement agreement, a state-of-the-art modeling analysis will be conducted.

Comment: One commentor stated that USEPA has no authority to change Will County from attainment to nonattainment for ozone. Another commentor recommended that if McHenry and Will were mistakenly redesignated to attainment, the USEPA should correct the designation.

Response: USEPA is not redesignating Will County, which is currently classified as an attainment county.[10] In fact, the United States Court of Appeals for the Seventh Circuit has previously found that USEPA cannot unilaterally redesignate an area. Furthermore, USEPA is not requiring that these counties develop the full panoply of rules as required by part D. For instance, these counties are not required to ban the construction of all major sources or major modifications of ozone precursors or to implement a motor vehicle I/M program. Rather, USEPA is requiring that McHenry and Will Counties implement RACT, which is admittedly one component of the part D planning obligations, although USEPA is not requiring it in those counties under part D. USEPA has determined that the implementation of RACT in McHenry and Will Counties is necessary under section 110 to provide for attainment and maintenance of the ozone NAAQS in the Chicago area. Furthermore, pursuant to section 110, USEPA has found the existing Illinois implementation plan to be deficient. Consequently, USEPA is adopting RACT rules pursuant to section 110, which applies to attainment and nonattainment areas, not part D.

Comment: One commentor questioned USEPA's authority to promulgate RACT rules in attainment counties.

Response: Judge Evans, in his order of January 16, 1980, found that the USEPA Administrator, on disapproving a State plan, has a nondiscretionary duty to formulate a Federal plan for ozone control, under section 110 of the CAA. (42 U.S.C. 7410(c)(1)(B)). Section 110 is the basis of the legal authority for Judge Evans' orders, and USEPA's CAA obligation. The FIP is to provide for attainment of the ozone NAAQS in the Northeast Illinois nonattainment area.

USEPA's interpretation of the CAA is that the Act does not restrict the application of controls to those counties designated as nonattainment. To the extent necessary to "insure attainment in any area" (section 110(a)(2)(B)) and to "provide for attainment in a nonattainment area" (section 172(a)) controls are incorporated in areas with sources of contributing emissions irrespective of their status under section 107 of the CAA. In these circumstances, for purposes of determining which sources in which areas must reduce their emissions in order to provide for attainment in the Chicago area, USEPA is relying substantially upon prior actions by the State of Illinois which indicate that Will and McHenry counties are properly part of the control strategy demonstration area. These actions include previous SIP submittals by the State which are convincing to USEPA that emissions in these two counties must be controlled to enable attainment of the ambient air quality standards in Chicago. In addition and as a result, USEPA identified these two counties when the notice of SIP deficiency was issued with respect to the Chicago area on May 26, 1988. During the intervening time between this action and the redesignation of these two counties, Illinois has not taken any action or presented any information to indicate that these counties should not be considered as part of the demonstration area.

With respect to the application of RACT in these counties, under these limited circumstances, USEPA believes that the Federal imposition of RACT under the authority of sections 110(a)(2)(B) and 172(a) [11] is the appropriate alternative for achieving emission reductions in these two counties in the interim period before the State and USEPA produce a reliable modeling demonstration of attainment for the Chicago area. These reductions will ensure progress toward attainment of the ozone NAAQS in the Chicago area. The State may, when submitting an approvable SIP, determine that more or less stringent controls are appropriate in these counties in accordance with USEPA guidance.

b. *Definitions—Comment:* One commentor felt that the proposed definition of coating, which includes adhesives, should be revised so that operations specifically regulated under the State generic rule for miscellaneous fabricated product manufacturing are excluded. The commentor noted that adhesive use was regulated by the State under its generic rule. Another commentor said that the coating definition does not make clear the meaning of "functional" coatings, and it is unclear what new types of operations USEPA intends to regulate with this change in the definition. Specifically, the commentor wondered whether adhesives applied to a plastic frame so that fabric can be applied to the frame and paint applied to plastic articles, such as automobile components, would be regulated. If so, the USEPA should repropose and provide an understandable statement of basis and purpose with respect to such applications.

Response: The definition of coating proposed in the Federal rule is "a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents, and inks." This definition is compatible with national USEPA guidance, and a similar definition is being applied in all States as ozone SIPs are updated. The terms "protective" and "decorative" are by themselves too limiting in the context of the example coatings listed in the definition. For example, adhesives and inks normally are not applied in order to protect or decorate. Therefore, the broad term "functional" is included to encompass the other potential purposes for which a coating may be applied. The dictionary definition of functional is adequately clear and, as a result, USEPA does not consider the term "functional coating" to be ambiguous. All operations that apply coatings as described by this definition, and that satisfy the other applicability criteria, will be subject to regulation under this implementation plan.

Major non-CTG rules such as the "Generic Rule" are only intended to cover sources not included within a CTG category. The first consideration is whether a coating belongs within a CTG category. If an adhesive as used in a given application does not belong within a CTG category, it should then be considered for regulation as a non-CTG source. However, the status of such coatings when used in applications covered by a CTG is not affected by inclusion of the coating in a non-CTG generic rule.

With regard to the application of adhesives to a plastic frame so that a fabric can be applied to the frame, USEPA believes that such operations appear to be covered by the fabric coating limitations. The commentor failed to provide any source-specific information which would be needed to consider this matter further. For the application of paint to plastic articles, USEPA believes that such operations are not covered by the coating rule, but rather by the generic rule.

Comment: One commentor objected to the proposed modification to the definition of paper coating because there is no technical basis for including saturation operations in the definition and thereby subjecting saturation operations to the paper coating regulations. Both the Blue Book and the NPR only give conclusory statements that paper coating should cover saturation operations. However, they do not provide any justification or give any technical basis for this modification. A commentor added that the TSD fails to mention that saturation operations need to be regulated and that there would be no benefit in emission reduction from regulating saturation operations.

Response: The basis for the clarification in the paper coating definition was, as noted by the commentor, made in response to national USEPA guidance as provided in the Blue Book. The commentor has provided no basis to cause USEPA to change the proposed definition. The technical basis for regulating saturation operations as papercoaters is discussed at length in section E.5 below.

Comment: IEPA suggested several refinements to the proposed Federal definitions to clarify them and make them consistent with the RACT rules before the IPCB. Another commentor supported IEPA's suggested revisions with respect to the definitions used in the pharmaceutical manufacturing rule.

Response: Based on these comments and upon further consideration, USEPA has decided to modify the following definitions: actual emissions, afterburners, air dried coatings, allowable emissions, as applied, automobile or light-duty truck assembly (manufacturing) plant, binders, bulk gasoline plant, can, coating applicator, coating line, coating plant, condensate, control device, emission source, enclose, exterior base coating (coat), exterior end coating (coat), federally enforceable, final repair coat, fixed roof tank, gasoline, heavy liquid, interior body spray coating (coat), magnet wire coating, maximum theoretical emissions (potential emissions/potential to emit), metal furniture coating, overvarnish, petroleum refinery, plant, prime coat, printing line, publication rotogravure printing line, roll coater, roll printer, sealer, source, specified air contaminant, submerged loading pipe (submerged fill pipe), topcoat, vapor recovery system, vinyl coating, volatile organic material, and volatile organic compound. The following definitions have been added: Accelacota, air suspension coater/dryer, airless spray, air-assisted airless spray, brush or wipe coating, capture, capture device, capture efficiency, control device efficiency, electrostatic bell or disc spray, electrostatic spray, gas/gas method, heated airless spray, hood, hood capture efficiency, liquid/gas method, lithographic printing line, magnet wire, multiple package coatings, organic compound, overall control, pharmaceutical coating operation, printing, refrigerated condensor, roller coating, and tablet coating operation. These definitions, added at the request of the commentors, serve only to clarify (and not to modify the intent of) the proposed rules. As such, USEPA believes that including these new definitions in the promulgated rule is appropriate (i.e., reproposal is unnecessary). In addition, the following definitions are not used, or are redundant, in the Federal rules and, thus, have been deleted: actual heat input, agency, ambient air, British thermal unit, building, structure, facility, or installation, emission rate, emissions unit, can-seam spray, complete combustion, electrostatic application, electrostatic coating, excess air, flow coating, furniture coating application line, graphic arts coating facility, graphic arts coating line, gross heating value, heavy off-highway vehicle, interior base coating, liquid-mounted primary seal, petroleum liquid, photochemically reactive material, pressure tanks, reasonably available control technology, refinery, vapor-mounted primary seal, varnishes, and volatile petroleum liquid. The resulting definitions are now more consistent with those in the existing State rules. USEPA hopes that these changes will enhance Illinois's ability to adopt (in total) the Federal rules as soon as possible. It should be noted that the applicable definitions in the implementation plan will consist of the federally approved definition portions of the State rule (201.102, 211.122, and 215.104) and the definitions in the Federal General Provisions rule. The Federal definitions will supersede, for the purposes of the Federal rules, the definitions for the corresponding terms included in 201.102, 211.122, or 215.104 and will be the federally enforceable definition for these terms.

c. *Test methods and procedures—Comment:* Several commentors objected to the inclusion of the draft document on capture efficiency protocol in the proposed test methods, since it had not been finalized or subject to public review. One of them believed that the temporary total enclosure test method described in the draft guideline document for measuring capture efficiency is not economically feasible for the flexible packaging converting industry, and that no data have been provided to show that the temporary total enclosure test method is more effective or reproducible than methods already in use to demonstrate capture efficiency. Another commentor felt it is clear that USEPA failed to review any technical support for the protocol before including it in the proposal. Still another commentor stated that the use of draft guidance documents for determining compliance with a regulation should not be allowed because the test procedures establish the regulatory limits. Without knowing the content of the finalized version of the guidance document one cannot adequately evaluate the compliance status of the facility or know the precise requirements of the regulation.

Response: USEPA's standard procedure is to propose test methods with regulations, as done in connection with the New Source Performance Standards (NSPS). The proposal of these capture efficiency protocols with the Chicago area Federal RACT rules provided an adequate opportunity for public comment on the protocols. As noted, many commentors objected to the inclusion of the draft protocols, but very few provided specific technical comments on them. The final capture efficiency protocols were issued on

[10] On June 6, 1988 (53 FR 20729), pursuant to the Mitchell-Conte Amendment of December 22, 1987, (contained in the Budget Reconciliation Act of 1987, Pub. L. 100-202), USEPA proposed to redesignate certain counties as nonattainment for ozone, including McHenry and Will Counties.

[11] USEPA is not relying on the RACT requirements of part D, title I of the CAA (section 172(b)(3)) for purposes of applying these rules to sources in McHenry and Will Counties. Although the part D requirements do not apply to these two counties, the SIP must retain all existing requirements (RACT and otherwise) and be supplemented by any additional requirements as necessary to provide for attainment and maintenance both in these counties and in nearby designated nonattainment areas.

April 16, 1980 (see "Guidelines for Developing Capture Efficiency Protocols"). Because USEPA received no comments justifying a change from using the draft protocols, and because the draft and final protocols contain few differences (as discussed below), the final document has been used as the basis for the promulgated RACT rules, as indicated in the proposed rules.

The commentor that mentioned the temporary total enclosure test method and its feasibility for the flexibile packaging converting industry should note that this is not the only recommended method in the final protocols. Capture efficiency may be measured using the building or room in which the affected source is located as the enclosure.

The technical support for the protocols was carefully reviewed before the protocols were included in the Federal rules. A comparison of the draft protocols and the final protocols shows that there are few differences. The final protocols recommend four procedures: gas/gas using temporary total enclosure, liquid/gas using temporary total enclosure, gas/gas using the building or room as the enclosure, and liquid/gas using the building or room as the enclosure.[18] If the building or room meets the requirements specified for a permanent total enclosure, then it is exempt from capture efficiency testing requirements. A few of the procedures in the draft protocols are not recommended in the final protocols: gas/gas with and without temporary total enclosure (draft protocol 1b), gas/gas with building as enclosure operating with and without affected facility operating (draft protocol 1c, option B), liquid/gas mass balance (draft protocol 2), and liquid/gas with building as enclosure operating with and without affected facility operating (draft protocol 3b, option B).[19] Draft protocols 1c, 2, and 3b were not recommended because they are highly sensitive to measurement errors and have high error propagation. These methods should only be used after careful consideration of the error in the measurements and the resultant uncertainty in capture efficiency. These draft protocols are not included in the final FIP rule and, as such, can only be used if approved as a site-specific SIP or FIP revision. The final document and FIP rule also contain Procedure T, which includes criteria and verification of a permanent or temporary total enclosure. These criteria are the same as those in the draft document, but for clarity have been included as Procedure T.

In light of the few differences between the draft and the final protocols, USEPA believes that the public had an adequate opportunity to comment on the use of the protocols in this FIP. The draft stated that "* * * the guideline and procedures will be updated based on any comments and as more details and information are gathered." USEPA did not receive any specific comments indicating that any given procedures should be retained in the final protocol. The final protocol still includes several test method procedures which USEPA believes are comparable in cost to the procedures deleted from the final protocol. Thus, USEPA concludes that the final protocol provides sources with reasonable flexibility in selecting procedures to demonstrate compliance.

Comment: One commentor noted specific problems which have arisen with the temporary enclosure method contained in the draft guideline capture efficiency document.

(1) Room air currents which are normally experienced may be shielded from the process by the temporary enclosure, giving false capture results.

(2) While the guidance specifies the flow rate design of natural draft openings, the specifications may not entirely preclude flow channeling within the enclosure, which in turn could cause toxic or explosive concentrations of the VOC species to be experienced. This concern may pose liability considerations for the company and regulating agency.

(3) Total enclosures may be difficult, if not impossible, to construct given the area and operating constraints of some coating lines.

(4) It is difficult to maintain the integrity of the capture enclosure throughout the test if material transport and operating personnel access is constantly required.

(5) If a final and acceptable vapor-vapor capture testing method can be developed, it will take years before local regulatory agencies and professional testing firms develop expertise in all aspects of temporary enclosure construction, safety considerations, and potential flaws in the methodology.

It appears unreasonable that the current regulatory proposal should consider this the sole method of available VOC emissions capture testing.

Response: USEPA is aware of, and considered, these specific concerns before finalizing the protocols. USEPA offers the following responses to each concern.

(1) Although shielding of room air currents is a potential problem, USEPA believes that this may actually boost the capture efficiency measured. The protocol attempts to compensate for this by obtaining a concentration from the ducts going to the control device before constructing the temporary total enclosure, then monitoring the concentration in the ducts after construction. If the concentration is different, then the air flow should be adjusted to maintain the initial concentration. If this can be accomplished, then it would eliminate the bias associated with the situation described by the commentor.

(2) There is a requirement to monitor the concentration of organics within the enclosure to ensure that it does not exceed the Occupational Safety and Health Administration limits. This would occur well before an explosive limit would be reached.

(3) USEPA acknowledges that it may be difficult for all facilities to construct total enclosures, although USEPA did study a number of facilities and did not find an instance where this was the case. The final rule, however, allows for case-by-case relief in such situations through a SIP or FIP revision.

(4) USEPA believes that access should be a consideration in the design of the enclosure to minimize any problems.

(5) USEPA disagrees with the comment concerning gas/gas methods. all the measurements required by the gas/gas method are standard, routine procedures with which testing firms and regulatory agencies are familiar. Furthermore, the amount of time to develop expertise in the construction of temporary total enclosures is exaggerated by the commentor.

Comment: One commentor agreed that Methods 24 and 24A and the other referenced test methods for determining the VOC content of coatings, inks, and fountain solutions are appropriate for determining the VOC content of these materials, but felt that these methods are not suitable for determining the quantity of VOC emitted from a process. In many printing processes, there is significant solvent retention in the product, causing actual emissions to be much less than the amount determined from these test methods.

Response: USEPA believes that the solvent retained in a printed product generally is eventually released and becomes air emissions, and that owners and operators should be held responsible for such retained solvents. Exceptions can be made in the form of a site-specific SIP or FIP revision only if the owner/operator can provide sufficient evidence that the solvent becomes chemically or otherwise permanently bonded to the coating as it cures and that no VOC will be emitted from the product after it leaves the plant.

Comment: One commentor felt that the proposed continuous emission monitoring (CEM) requirements for catalytic afterburners and carbon adsorbers are inappropriate. In catalytic control systems, temperature rise across the catalytic bed varies with VOC input, and so is not a meaningful indicator of performance. Carbon adsorbers consist of multiple units which cycle and undergo variable emission rates at various points in the cycle. Further, the requirement that CEMs operate at all times is unreasonable because it is difficult to keep these systems on-line, and it does not make sense to shut down a process due to a monitor malfunction. Finally, the application of monitoring requirements to the printing industry, especially small printers, is unnecessary, infeasible, and extremely expensive.

Response: USEPA believes that the monitoring requirements are feasible and necessary to ensure that controls maintain their intended level of operation. USEPA intends for monitoring equipment to be used whenever the monitored process is in operation. Any deviations are more appropriately considered in the enforcement process, where discretion can be exercised as considered appropriate.

A requirement must be in place to assure that catalytic beds continue to maintain adequate control efficiency. An alternative to monitoring temperature rise across the bed would be to monitor the VOM concentration of each catalytic afterburner bed exhaust. The proposed requirements in § 52.741(a)(4)(iv)(B) have been revised in the final rules to reflect this alternative.

The portion of a carbon adsorber cycle just prior to desorption is a time of increased emissions. As the adsorber approaches saturation, the exhaust VOC concentration will increase as the available retention sites are reduced. However, the maximum exhaust concentration from a well-operated system should not exceed some low level of about 20 to 100 ppm. USEPA maintains that VOC concentration is a useful indicator of the regeneration cycle. The continuous monitor will be used to indicate whether adsorbers are being properly operated and maintained.

Finally, USEPA disagrees that the proposed monitoring requirements for the printing industry will pose the problems raised by the commentor. The printing industry has a higher applicability cut-off level than other coating sources (i.e., 100 ton per year maximum theoretical versus 15 pounds per day actual). Thus, "small" printers will be exempt from the Federal rules. The subject printing plants are considered to be a sizeable source and should have continuous monitors to ensure that their control equipment is operating properly. These larger sources should be able to absorb the costs of such monitoring.

Comment: One commentor had several comments on the proposed compliance testing requirements as they relate to printing operations. The commentor stated that there is no need to perform efficiency testing of individual units if the overall efficiency of the system, as determined by the liquid/liquid test protocol (i.e., the NSPS 30-day overall materials mass balance), has been found to meet the overall control requirements. For publication rotogravure printing, the commentor asserted that 30-day overall materials mass balance technique would be the most representative approach. Any short-term non-continuous test method is inappropriate for the determination of the performance of a complex, variable flow emissions control system. Since the detection limit for Method 25 is 50 ppm, the required efficiency for systems measured by this method should be 90 percent or 50 ppm, whichever is greater. Finally, USEPA should consider the use of screening tests to identify situations where more in-depth testing is warranted, because formal compliance testing is very expensive, and could be burdensome for smaller businesses.

Response: USEPA requires that compliance determinations be based upon daily or shorter time frames. Therefore, the liquid/liquid protocol may only be used, for purposes of demonstrating compliance with these Federal rules, if it is performed in accordance with the general procedures in 40 CFR 60.433, as revised by the restrictions in § 52.741(a)(iii). USEPA's test methods (e.g., Reference Methods 16 and 25) are appropriate for short-term variable flow emission control systems.

USEPA will not be including a 50 ppm control device efficiency limit in the final Federal rules because: (1) The Agency's long-standing RACT guidance is 90 percent control device efficiency, (2) no specific cases where 90 percent efficiency cannot be determined have been presented, and (3) use of a ppm standard could encourage dilution without control. The testing specified in the final rules is the only way compliance can be assured.

Finally, USEPA wishes to emphasize that the testing specified in the regulations, and not a screening test, is the only way a source's compliance can be assured.

Comment: The same commentor questioned the need for extensive daily records of the VOM content of materials for operations using add-on controls such as carbon adsorption equipment. The commentor believed that it should be sufficient to maintain the records that are required to calculate VOM input into the process and the volume of solvent recovered from the control system for the 30-day averaging period.

The commentor gave the following example for heatset web offset operations. For heatset web offset operations utilizing incineration for control, the recordkeeping requirements impose a burden with no discernible benefits, since the system is required to operate at 90 percent control efficiency regardless of materials input. In fact, the recordkeeping requirement for offset operations with incinerators operating at 90 percent are actually more stringent than those for facilities using condensation recovery systems that are required to remove only 75 percent of the non-isopropyl alcohol emissions.

Response: The recordkeeping requirements specified in cases where control equipment is employed are necessary to assure that the control device is maintained and performing adequately, so that emissions are controlled to the required level.

USEPA agrees that the daily VOM content of each coating and ink is not necessary for printing lines complying solely by the use of add-on control. The recordkeeping requirements specified in § 52.741(h)(4)(iv)(B)(*1*) of the proposed rules have, therefore, been deleted. USEPA disagrees that the recordkeeping requirements for offset operations with incinerators is more stringent than for those using condensation recovery systems. Although offset operations using incinerators are required to record control device monitoring data, they are not required to record the VOM content of the fountain solution used for each day on each printing line.

Comment: One commentor had several comments concerning the

[18] If a source uses a control device that recovers VOC, an explicit measurement of capture efficiency may not be necessary. The liquid/liquid recovery method may be used.

[19] In addition, the gas/gas and liquid/gas protocols which allocated measured fugitive emissions by the capacity of operating facilities (draft protocols 1c, option C and 3b, option C) have been deleted from the final protocol document. These protocols were deleted because they involved crossline averaging and, thus, necessitated compliance with the Emissions Trading Policy Statement. This presented many administrative and enforceability problems which are unnecessary and burdensome for the facility and USEPA.

proposed test methods as they apply to auto coating operations. In § 52.741(a)(3), under the definition of volatile organic compound, USEPA has proposed that the VOC for compliance will be measured by the approved test methods. To be consistent with USEPA's "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" (December 1988), the commentor suggested that test procedure for determining VOC should only be applicable to the coatings being exposed to the cure ovens since the test method measures cure volatiles as well as formulation volatiles. Further, according to the commentor, the formulation VOC content should be used for the paint overspray in the application areas. Also, the commentor claimed that provision in § 52.741(a)(4)(i)(B)(*1*) covering the analytical method (i.e., Methods 24 will govern if there is any inconsistency between a Method 24 result and the formulation data) is inconsistent with the USEPA Automobile Topcoat Protocol, which allows the use of formulation data for the overspray coatings in the application areas and only requires Method 24 for the coating actually experiencing the cure oven.

Response: USEPA acknowledges that the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" (December 1988) does allow the use of formulation data for the determination of VOC content for paint overspray.[14] USEPA agrees that automobile or light-duty truck topcoat operations using the protocol should be able to use formulation data to determine VOC content of overspray rather than having to demonstrate compliance using Method 24, as implied by the proposed rule. To clarify the applicable compliance procedures for automobile or light-duty truck topcoat operations, USEPA has both changed the title of § 52.741(a)(i)(4)(ii) from "Transfer Efficiency Test Protocol" to "Automobile or Light-Duty Truck Test Protocol", and the text to cover testing in general, not just transfer efficiency. Consequently, compliance for automobile or light-duty truck coating operations will be determined with USEPA's Topcoat Protocol. USEPA believes that this change should resolve any inconsistency in the applicable test procedures.

Comment: A commentor suggested that the specification of the size (one liter) of the container for the collection of samples (see § 52.741(a)(4)(A)) is unnecessary. It is recommended that instead the section be revised to indicate that one liter of sample should be collected as a minimum—the size of the container is irrelevant.

Response: The one-liter container size is specified for two reasons: (1) To ensure that enough material is available for analysis, and (2) to provide standardization, throughout industry, for the quantity of material to be analyzed. USEPA believes that, to ensure that samples are collected on an as-applied basis and are not simply a container of paint directly from the shelf, the one-liter size requirement is useful and has retained it in the final regulation.

Comment: One commentor noted that § 52.741(a)(4)(ii) references the procedures outlined in "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" (protocol), as a method for determining coating applicator transfer efficiency for topcoat coating operations. The referenced protocol was developed for calculating emission rates for compliance demonstration. Transfer efficiency is only one component of the calculation. The commentor recommended that paragraph (a)(4)(ii) be revised to include a statement that compliance with the topcoat limitation should be demonstrated in accordance with the emission rate calculations defined in the referenced protocol (as stated in § 52.741(e)(2)(ii) on alternative emission limitations) and that the use of the referenced protocol (a)(4)(ii) for compliance demonstration should be stated in § 52.741(e)(6)(ii)(A).

Response: In order to resolve any inconsistency in the applicable test procedures, USEPA has changed the title of § 52.741(a)(4)(ii) from "Transfer Efficiency Test Protocol" to "Automobile or Light-Duty Truck Test Protocol". Consequently, compliance for automobile or light-duty truck topcoat operations will be determined with USEPA's Topcoat Protocol. Because the protocol was originally intended to provide guidance in demonstrating compliance and does not contain regulatory language, however, the protocol (as written) connot be inserted into the regulation as a method of demonstrating compliance. This is because it includes latitude in the manner in which the source will demonstrate compliance. Therefore, the regulation has been revised to include a requirement that the owner or operator of coating line subject to the topcoat limitation must submit a proposal specifying how it will demonstrate compliance in accordance with the Topcoat Protocol. Recordkeeping and reporting requirements were also included in the regulation. These requirements have been added to strengthen the enforceability of the regulation.

Comment: One commentor questioned the applicability of the test procedures for movable bed carbon adsorption systems to fixed bed carbon adsorption systems.

Response: The test procedures defined in § 52.741(a)(4)(vi)(A) (*1*) and (*2*) are applicable to any carbon adsorption system, and the sections have been revised in the final regulation by deleting the term "fixed-bed".

Comment: One commentor strongly disagreed with the requirement that transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision for prime surface coating. The commentor recommended the adoption of a prime surfacer coat limit of 15.1 lbs VOC/gallon of solids applied, which is equivalent to 2.8 lbs VOC/gallon coating (minus water and non-VOC organic compounds) based on a transfer efficiency (TE) of 30 percent and a volume solids of 26 percent. By defining the limit at 15.1 lbs VOC/gallon solids applied (as the topcoat limit is defined in § 54.721(e)(1)(i)(A)(*3*)) an appropriate equivalency option is provided based on the process transfer efficiency without the unnecessary step of a SIP or FIP revision. Another commentor agreed with the basis of this comment.

Response: USEPA believes that the use of transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision on a case-by-case basis, unless the approved plan includes both a transfer efficiency test method and an established baseline for the source category in question, as is the case with the Topcoat Protocol. For prime surfacer, there is an established baseline (30 percent), but there is no approved test method. As indicated by its name, the Automobile Topcoat Protocol as currently written is only appropriate for evaluating the transfer efficiency for topcoat operations. It should be noted, however, that the procedures in the Topcoat Protocol could be used as a basis for a prime surfacer transfer efficiency test method. In the absense of a transfer efficiency method approved by USEPA for prime surfacer, site-specific SIP or FIP revisions are required for the use of transfer efficiency credits for prime surface coating.

[14] This is because cure volatiles are not generated from oversprayed paint that does not cure. Methods 24 includes a 1-hour bake which generates cure volatiles. Therefore, use of Method 24 is appropriate only for coatings which go through an oven.

d. *Compliance dates—Comment:* Several commentors stated that the compliance date of April 1, 1991 was arbitrary and unreasonable for some sources. Two commentors contended that the compliance period of the generic rule does not allow enough time for compliance, and that a three-year period is more realistic. One commentor cited generally the time required for design, fabrication, and installation of control equipment, and for alteration of the plant, as justifying a compliance date of between two and two and a half years.

Response: USEPA appreciates that the proposed compliance date of the proposed Federal rules may be very difficult, if not impossible, for certain sources to meet. To provide all affected sources some additional time, therefore, the Agency has set a later general compliance date of July 1, 1991. This date allows approximately one year from the effective date of the Federal rules. None of the commentors provided detailed information substantiating the need for more than one year to comply. USEPA notes that sources have been aware of these requirements since the proposal of these rules. Thus, the compliance period is actually closer to one and a half years. Although USEPA would not expect sources to install control equipment based upon proposed rules, USEPA believes it is reasonable to expect sources to initiate contact with potential suppliers based upon such rules. This is routinely done in the context of the NSPS, which apply to sources commencing construction after the date USEPA proposes those standards. If additional time is needed to comply, then a source may apply for a delayed compliance order. Any compliance schedule must meet the CAA requirements for expeditiousness. The Agency has considered relaxed compliance dates for certain site-specific rules, and individual discussions of such rules are contained in section V of this document. In addition, although not addressed directly by any of the comments, USEPA has decided to extend the compliance date of the Federal rule for heatset web offset lithographic printing, paint and ink manufacturing, miscellaneous fabricated product manufacturing, miscellaneous formulation manufacturing, and miscellaneous organic chemical manufacturing for sources subject to the current State rule for these categories. The revision also extends the compliance date for these sources from the date of promulgation to July 1, 1991. Because the commentors felt that requiring compliance one year from the promulgation date would be too soon in some cases, then it is apparent that requiring compliance upon promulgation would also be too soon in those cases. Thus, USEPA believes it is appropriate to extend this compliance date also.

e. *Afterburners—Comment:* One commentor felt that the rules are unreasonable and are not RACT because they do not contain the provision for seasonal use of incinerators as contained in the Illinois SIP regulations. Also, USEPA should add a provision which allows for seasonal use of incinerators using more than one fuel. The commentor specifically cited an incinerator that uses both natural gas and electricity. Another commentor stated that they respected the energy efficient approach of this seasonal use of incinerators.

Response: The Federal RACT regulations do contain a provision for seasonal use of natural gas incinerators. Section 52.741(a)(6) states "The operation of any natural gas fired afterburner and capture system used to comply with § 52.741 is not required during the period of November 1 of any year to April 1 of the following year provided that the operation of such devices is not required for purposes of occupational safety or health, or for the control of toxic substances, odor nuisances, or other regulated pollutants." This differs from the Illinois SIP regulation which also allows seasonal use of oil-fired incinerators. National RACT guidance, however, limits this exemption only to natural gas-fired afterburners. USEPA acknowledges the support of the second commentor and will maintain this provision in the final rules. With regard to the natural gas/electric incinerator mentioned by the commentor, the exemption in the Federal rule only applies to the use of natural gas.

USEPA issued a policy in 1980 stating its intent to approve SIP provisions that exempt natural gas-fired afterburner systems from having to operate during the period of the year not prone to the formation of ozone in the ambient air. The policy was based primarily on the existence of a natural gas shortage and the unlikelihood of ozone violations during the winter months. USEPA has implemented this intent through the course of rulemakings on SIP submittals.

The suggestion by the first commentor that USEPA expand the use of seasonal exemptions to other types of afterburners has prompted the Agency to take another look at the basis for the current policy. The Agency's initial conclusion is that it sees no basis, such as an oil or electricity shortage, for exempting non-gas-fired afterburners from the FIP requirements during the winter months. For that reason, USEPA is not providing such an exemption. Moreover, the Agency is now reexamining whether the exemption included in the FIP rules (quoted above) is appropriate in light of today's energy-supply conditions.

Because owners of facilities that would operate gas-fired afterburners received no notice in USEPA's proposal that the Agency was considering deleting the exemption from the FIP rules, and because the commentors were not suggesting such a deletion, USEPA is for purposes of today's rules retaining the exemption, pending further analysis.

f. *Exemptions, variances, and alternative means of control—Comment:* Two commentors requested an explanation of the role of alternative compliance strategies, SIP revisions, and site-specific revisions in the Federal RACT rules. One commentor stated that USEPA's proposal does not provide an Adjusted Standard mechanism similar to that provided by the IPCB. One commentor suggested that wherever possible, the Federal rules should allow for alternative standards based on routine records, testing, and reports to demonstrate approvability, rather than requiring SIP or FIP revisions. One commentor objected to the proposed requirement that any variance, exemption, or alternative compliance strategy be submitted for USEPA approval. Another commentor believed that the language of the proposed rule is not clear as to whether plants currently operating under a permit allowing daily weighted averaging would be required to obtain a FIP revision or whether they would be "grandfathered in" so that only plants applying for permits to allow averaging after the promulgation of the rule would be required to obtain FIP revisions. This ambiguity should be clarified.

Response: According to section 110(i) of the CAA, the only way to revise the implementation plan is by a plan revision under section 110(a)(3), a plan promulgation under section 110(c), an order under section 113(d), an exemption under section 118, a suspension under section 110(f) or (g), or a primary nonferrous smelter order under section 119. Except for these six approaches, "* * * no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be

taken . . . by the State or by the Administrator." Thus, unless the applicable implementation plan provides a State with the authority to modify the plan, such as with a federally approved generic bubble rule, a SIP revision under section 110(a)(3) is required to change the applicable plan.

USEPA policy, as described in the Blue Book, requires modifications of the implementation plan to be submitted to USEPA as a proposed SIP revision. The current State rules allow modifications without USEPA approval. This discretion was cited by USEPA as a deficiency in its May 26, 1988, SIP Call and June 17, 1988, follow-up letter to Illinois. Such State discretion renders the plan inadequate to ensure attainment and maintenance of the NAAQS.

Section 52.741(a)(7) of the proposed Federal regulations clearly states that "Notwithstanding the provisions of any other paragraphs of this section, any exemptions, variances, or alternatives to the control requirements, emission limitations, or test methods in the Illinois SIP or FIP can only be allowed if approved by the Administrator as a SIP or FIP revision". Regardless of whether a source is seeking a revision to a Federal rule or a State rule, USEPA encourages all sources to work through the State to obtain a SIP revision. If submitted to and approved by USEPA, then the SIP revision would replace that portion of the FIP. This would serve to both provide the source with the relief it seeks and to establish the State rule as the applicable rule; thereby restoring the State to its proper role as the lead planning agency.

A SIP or FIP revision is not required for any single line employing daily weighted averaging because this is an acceptable means of complying with the Federal limits. All plants employing averaging across lines (cross-line averaging), however, must have such averaging approved as a SIP or FIP revision. This requirement cannot be grandfathered because cross-line averaging must be demonstrated to satisfy USEPA's Emissions Trading Policy Statement (ETPS), and Illinois does not have an approved generic bubble rule. It should also be noted that several SIP and FIP provisions contain alternative emission limitations and alternative compliance sections which allow options of compliance methods which do not need to be approved as SIP or FIP revisions. The following subparts contain such alternative compliance sections: 52.741(e): Coating Operations (FIP), Subpart K: Use of Organic Material (SIP), and Subpart S: Rubber and Miscellaneous Plastic Products (SIP).

Comment: Two commentors asked whether alternative test methods must be approved through a SIP revision process. The commentors felt that this method was time-consuming and that a quicker approval process should be available. Another commentor noted that § 52.741(a)(4)(i)(B)(*4*) allows the Administrator to specify or allow the use of alternate test methods to determine the VOC content of the coatings. This should not be allowed since the test procedure establishes the regulatory limits. Changing the test procedure in effect can change the regulatory limit. Allowing the Administrator to arbitrarily specify alternate test methods would in effect allow the Administrator to arbitrarily change the emission limitations without appropriate public comment periods and without following the necessary rulemaking procedures.

Response: Sections 52.741(a)(4)(i)(B)(*4*) and 52.741(a)(4)(vi)(G) allow the Administrator to accept adaptations to the analytical method and test methods, if adequately documented. It is frequently necessary to make relatively minor changes to an approved test method so it can be applied to a source being tested. It is not practical to require that such minor changes be approved as a SIP or FIP revision.

Note: 52.741(a)(4)(vi)(G) has been added by USEPA in the final rules to provide the additional flexibility requested by the commentor. Similar provisions for the other test methods and procedures in 52.741(a)(4) were also considered, but were determined to be unnecessary.

An alternative to an existing test method must be approved as revision to the Illinois implementation plan. The chief purpose of these provisions is to allow companies to use more appropriate methods, if the specified method would give inaccurate results.

With respect to the timeliness of the SIP revision process, USEPA will to the extent possible classify such revisions as Table 3 SIP actions (see 54 FR 2214, January 9, 1989). Consequently, these revisions will be processed at the Regional Office level; thus, expediting USEPA's rulemaking.

Comment: One commentor noted that current USEPA policy states that SIP relaxations cannot be approved in nonattainment areas. Based on this policy, the commentor wondered if any variance that constituted a relaxation would be disapprovable. The commentor requested clarification on the procedures for obtaining a site-specific revision.

Response: The CAA requires that SIPs for areas not in attainment of the NAAQS by August 7, 1977, must provide for the implementation of RACT as expeditiously as practicable. 42 U.S.C. 7502(b)(2). USEPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 FR 53762 (September 17, 1979).

Through the issuance of CTGs, USEPA has identified pollutant control levels that USEPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm.

States may develop case-by-case RACT determinations independently of USEPA's recommendation. USEPA will approve these RACT determinations as long as the State shows they will satisfy the CAA's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated.[16]

In light of these requirements, USEPA will approve an alternative RACT requirement only if the State demonstrates that the requirement does in fact constitute RACT.[16] To make this demonstration, the State must show first that in fact the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not (and is not expected to be) reasonably available, and second that the alternative limit is the most stringent limit that is technically feasible and economically reasonable. USEPA will determine whether the State makes this demonstration on a case-by-case basis, taking into account all the relevant facts and circumstances concerning each case. The demonstration requirements to support an alternative RACT limitation are discussed in more detail in appendix A of the November 9, 1988, notice of proposed rulemaking for Easco Aluminum Corporation (53 FR 45285).

[16] More specifically USEPA has described RACT and the obligations of the States as follows:

Along with information, each CTG contains recommendations to the States of what USEPA calls the "presumptive norm" for RACT, based on USEPA's current evaluation of the capabilities and problems general to the industry. Where the States finds [sic] the presumptive norm applicable to an individual source or group of sources, USEPA recommends that the State adopt requirements consistent with the presumptive norm level in order to include RACT limitations in the SIP.

However, recommended controls are based on capabilities and problems which are general to the industry; they do not take into account the unique circumstances of each facility. In many cases appropriate controls would be more or less stringent. States are urged to judge the feasibility of imposing the recommended controls on particular sources, and adjust the controls accordingly.

The presumptive norm is only a recommendation. For any source or group of sources, regardless of whether they fall within the industry norm, the States may develop case-by-case RACT requirements independently of USEPA's recommendation. USEPA will propose to approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT based on the economic and technical circumstances of the particular sources being regulated. 44 FR 53763-63 (September 17, 1979).

[16] Generally, USEPA does not allow relaxations in nonattainment areas where there is no approved attainment demonstration. USEPA wishes to clearly

Continued

2. Surface Coating

Comment: Several commentors objected to the change to the coating rules which made the coating applicator instead of the coating line the affected source. They felt this made the rule more stringent than the NSPS, inconsistent with Agency RACT guidance, and inconsistent with the SIP Call.

Response: Three compliance options are available for coating operations: use of only complaint coatings, daily weighted averaging of coatings, and add-on controls. For sources electing to comply through the use of compliant coatings, the Federal rules specify that the regulated unit is the coating applicator. This is consistent with the concept that each coating used meets the applicable emission limit. Alternatively, sources may elect to comply by either daily weighted averaging or add-on controls. In both of these cases, the Federal rules clearly state that the regulated unit is the coating line. Thus, USEPA believes its rules, as proposed, are consistent with established regulatory practice and that the commentors simply misunderstood the regulation.

Comment: One commentor felt that there is an apparent conflict between the stated deficiency regarding exemptions for coating facilities and the coating rules as proposed. Whereas the exemption cutoff is supposed to be 3 lb/hr or 15 lb/day actual emissions before add-on control or 10 TPY maximum theoretical emissions, the regulation contains an exemption level of 15 lb/day actual emissions. The commentor believed that this made the rule vague and confusing.

Response: Section 52.741(e)(3), Exemptions from Emission Limitations, states that "The limitations of paragraph (e) shall not apply to coating lines within a facility, that otherwise would be subject to the same subparagraph of paragraph (e)(1)(i) (because they belong to the same source category, e.g. can coating), provided that combined actual emissions of VOM from all lines at the facility subject to that subparagraph do not and will not exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices." USEPA's choice of a single exemption level is entirely consistent with the stated deficiency and Federal guidance. The exemption level is not calculated after controls as the commentor seems to believe, and, thus, does not make the rule vague or confusing.

Comment: One commentor felt that daily weighted averaging should not be restricted to a single coating line, but should be allowed across several lines. Elimination of the crossline averaging provision could require that some items be coated twice, resulting in increased emissions. A second commentor found the daily wieghted averaging proposal to be ambiguous. While a USEPA official at the public hearing stated that such provisions would not have to go through the SIP revision process, the NPR indicates otherwise.

Response: Intraline averaging (i.e., daily weighted averaging) is acceptable because the regulated unit is a coating line. Interline (i.e., cross-line) averaging constitutes a bubble which must be submitted for USEPA approval as a SIP or FIP revision. Interline averaging is permissible and, therefore, would be approved if the request meets the requirements of the ETPS—see 51 FR 43814, December 4, 1986. Because Illinois does not have a federally approved generic bubble rule, which ensures conformance with the ETPS, cross-line averaging is allowed only if approved as a site-specific SIP or FIP revision. Finally, USEPA does not believe that its position on cross-line averaging will result in items being coated twice and an increase in emissions. These Federal rules are primarily directed towards regulating the level of control technology and not production levels. Furthermore, it has not been demonstrated that the Federal rules will necessitate a source to coat some items twice. Even if this was the case, however, then USEPA believes that an increase in emissions can still be prevented (*e.g.*, through the use of add-on controls or the use of a federally approve SIP or FIP revision allowing cross-line averaging).

Comment: The proposal defines an acceptable averaging time for VOM compliance demonstrations to be either instantaneous or as daily weighted averages. For many facilities where complex material usage allocation schemes, production schedules, and equipment operations are experienced, compliance demonstrations on a 24-hour basis would be unreasonable. While past policy and guidance documents suggested that hourly or 24-hour averaging times were most appropriate, consideration was given in these documents to monthly averaging times under extenuating circumstances. In addition, Federal NSPS specify 30-day compliance averaging periods.

Response: USEPA policy states that averaging periods in excess of 24 hours are not allowed generically. Longer term averaging of emission control requirements, in general, may not be consistent with protecting the short-term ozone NAAQS. A facility can only obtain greater than daily averaging as a site-specific SIP revision if the elements of USEPA's January 20, 1984, policy memorandum are satisfied. Key elements of this policy are a demonstration that daily recordkeeping is infeasible, and a demonstration that there is an approved attainment demonstration for the area. The elements of the 1984 policy are necessary to assure that affected sources meet the requirement to apply RACT and not interfere with reasonable further progress toward attainment of the ozone NAAQS.

Comment: One commentor claimed that cetain coating/ink emission limits in the proposed rules are not based on the amount of solids applied, as is required when an averaging method or add-on controls are being used. Also, the commentor suggested that the actual density of the VOC in the coating, rather than the default value of 7.36 lb/gal, should be used in the equation given in (e)(1)(iii) if its value is known. Another commentor pointed out that equation in § 52.741(e)(1)(ii)(C)(2) contained an error.

Response: Allowable emissions are determined on a solids applied basis,

state, however, its intent to revise (and possibly relax) the Federal plan, if found to be appropriate, for at least two sources (Allsteel in Kane County and Viskase in Cook County). The need to promulgate Federal regulations under the tight timeframe ordered by the Court has prevented USEPA from being able to consider fully the merits of proposed, alternative site-specific limits. Although for environmental and equity reasons, USEPA believes that it is necessary to establish emission limitations and standards for all sources at this time, USEPA will continue to consider the need to adopt as Federal measures site-specific limits for these two sources. As such, USEPA is deferring the effective date of these Federal rules for Allsteel and Viskase until January 1, 1991, in order to allow additional time for its consideration of this matter. If determined to be appropriate, then USEPA will propose revised Federal limits in the near future.

and actual emissions are determined on a volume of coating basis. USEPA maintains that this is properly reflected in the proposed rules. USEPA contends that the solvent density used in developing the CTG coating limits (7.36 lbs/gal) must be used in the equation given in (e)(1)(iii), for the purposes of determining allowable emissions. Also, the typographical error that existed in the equation has been corrected.

Comment: In § 52.741(e)(6)(ii)(C)(*1*), the proposed regulations require the submittal of any records showing violation of § 54.721(e)(1)(i) within 30 days following the occurrence of violation. This would be impossible for a source subject to § 52.741(e)(1)(i)(A)(*3*) to comply with since the emission calculations for the month cannot be completed until the data for the entire month have been compiled. Final emission calculation results would not be available until approximately 10 days after the last day of the month to allow for necessary data review and calculation time. If a violation occurred during the first week of the month, the 30 day time requirement could not be met. It was recommended that this requirement be revised.

Response: The rules presume that 30 days is sufficient both to identify and to report any violation. Because certain companies may have monthly recordkeeping practices, however, timely identification of violations may not occur. Therefore, for any source subject to § 52.741(e)(1)(i)(A)(*3*) the regulation has been modified to require that notification be provided within 15 days from the end of the month during which the violation has occurred.

3. Generic Rule

Comment: Two commentors asked whether the specific generic sources had been identified, and whether sewage treatment plants would be covered by the generic rule. Other commentors objected to the proposed generic source rule, believing that the affected industries should be stated, the rule is unsupported, and the rule appeared to exceed the guidance in the Blue Book as well as the terms of the litigation and the settlement agreement.

Response: USEPA feels that it has addressed the deficiencies cited in Exhibit B of the settlement agreement with regard to the generic rule and has not exceeded these or Federal USEPA guidance. A memo dated December 21, 1989, was prepared (and placed in the docket) which identified, based on the emissions inventory, companies which may be affected by the generic rule.[17] This is not a formal determination of affected facilities but may be used to gain some idea of which facilities may be affected. The cover sheet on this memorandum states:

> The review discussed in this memorandum is intended to provide a best estimate of the number of facilities affected by the proposed rule. It is not intended to be a formal determination of the exempt or subject status of each facility. While this review may assist USEPA in preliminarily indentifying the status of several facilities, this determination will be made in the future pursuant to the certification provisions of the proposed rule.

With regard to sewage treatment facilities, USEPA acknowledges that it did not intend, due to the lack of available technical justification, to subject these facilities to the generic rule. USEPA has, therefore, added sewage treatment plants to the list of exempt source categories specified in § 52.741(x). As such, sewage treatment plants are exempt from the Federal generic rule and, consequently, will not be regulated at this time.[18]

Comment: Two commentors felt that the provision requiring control of "Other Emission Sources" ignores earlier IPCB efforts and determinations as to the definition of RACT for these sources in Illinois. Another commentor added that USEPA's attempt to document the rational for the "catch-all" generic rule (§ 52.741(x)) is devoid of logic. The commentor contended that neither the TSD nor the NPR contain sufficient analysis or justification for the Federal rule. USEPA has improperly calculated the cost of this rule and has failed to consider the State's determination that coverage of "other emission sources" is simply not RACT in Illinois. Another commentor believed that § 52.741(x) goes beyond the Blue Book requirements, is more stringent than USEPA is requiring of other States, and is inconsistent with the terms of the settlement agreement. Another commentor felt that § 52.741(x) cannot effectively or fairly regulate diverse emission sources which may be covered by this requirement, and that USEPA should take the time to develop specific source type regulations. This commentor was especially concerned with the rule's applicability to aluminum cold rolling processes.

Response: USEPA wishes to point out that a "catch-all" generic rule is needed for the regulatory approach chosen by the State. This is because the Illinois category-specific approach may not cover all major non-CTG sources for the following reasons. First, the existing emission inventories may not be accurate with respect to actual emissions or maximum theoretical emissions, before add-on controls. Second, USEPA guidance clarifying existing policy on major non-CTG applicability was not established until May 25, 1988, when the Blue Book was released. This date is after the date when non-CTG rules were developed for many areas. Third, there is no compelling incentive for states to ensure that they have identified and developed RACT regulations for all major non-CTG sources. Consequently, a backstop generic major non-CTG rule is needed for Illinois. This rule would apply to all sources that should be subject to a major non-CTG rule, based upon Blue Book applicability criteria, only if the source is not already covered by a non-CTG source category rule. To be consistent with RACT, the control requirement of this rule should be at least as stringent as 3.5 pounds of VOC per gallon of coating or 81 percent overall control. Adoption of such a rule presents virtually no administrative drawbacks (sources covered by an existing non-CTG rule will not be affected) and produces potentially significant environmental benefits.

USEPA believes that it is being responsive to claims by individual companies or facilities that the regulations are not reasonable for their situation. Such cases are addressed in section E for facilities which provided detailed information supporting their argument. In the case of aluminum cold rolling processes, the commentor failed to provide any information which supported the claim that the control requirements of the generic rule are unrealistic for the cited industry. Consequently, USEPA has made no change in the proposed rule as it applies to this source category.

Comment: One commentor was concerned that sources employing a hexane extraction process for producing vegetable oil might be regulated under USEPA's proposed generic rule. Such sources are currently covered by subpart N of the Illinois regulations, and as such are specifically exempted from the State's generic rule. The commentor pointed out that no other States appear to be regulating this type of source, and USEPA itself has in the past found that no control technology is available for controlling these emissions.

Response: USEPA was informed by IEPA that there were no major non-CTG vegetable oil processing plants in the Chicago area. There was, therefore, no reason for USEPA to document control technology for this source category. In view of the commentor's admission that it is a major source and a vegetable oil processing facility, however, USEPA has reconsidered its prior position. USEPA believes, however, that additional control technology for vegetable oil processing cannot be identified at this time and has abandoned efforts to do so either for NSPS or RACT (CTG) purposes. Therefore, the final rules include vegetable oil processing in the list of exempt source categories specified in § 52.741(x). As such, vegetable oil processing will be exempt from the Federal generic rule.

Comment: One commentor was concerned that the generic rule might impact a number of currently unpermitted sources. The commentor noted that bakeries had been specifically exempted from the rule, and felt that other food and food derivative processes in which VOM is not added and is not a primary product of the process, but is emitted secondarily, should also be exempted.

Response: The commentor did not describe in any more detail which specific processes would be included in this group of food and food derivative processes, other than bakeries which are already exempted. Therefore, USEPA has no basis for considering an appropriate categorical exemption beyond the bakery exemption. Any major non-CTG sources that are not exempted must apply reasonable controls, either as specifically stated in the regulation or through an approved alternative control plan. For example, a source that could not achieve an overall emission reduction of 81 percent as otherwise required would have to develop a reasonable control plan and submit it for approval as a SIP or FIP revision.

4. Implementation and Administration

Comment: IEPA foresaw problems regarding the implementation and administration of the proposed regulations. Their comments addressed daily weighted averaging for coating operations, alternative emission limitations for coating operations, compliance procedures, limitations on production (or capacity) to reduce emissions below 100 tons per year, notices of violation, recordkeeping, and State authority.

Response: In response to these comments, the following revisions to the proposed rules have been made: (a) Afterburners have been added to the list of control devices in § 52.741(e)(2)(i)(B), (b) the weight of VOM per volume of coating solids on a daily basis need only be recorded (in § 52.741(e)(6)(iv)(B)(*1*)) when complying pursuant to § 52.741(e)(2)(i)(B), and (c) the word "initial" has been added to all references to the start-up of new sources. Further discussion of USEPA's review of these comments and the subsequent revisions to the proposed rules is provided in the USEPA's comment/response document contained in the docket.

5. Technical Support for Proposed Federal Rules

Comment: Several commentors felt that USEPA had not provided sufficient justification for many of the proposed measures, either in the **Federal Register** notice or the technical support document. One of them said that there was no evidence to support the contention that there would be any air quality benefit from many of the regulations. One commentor believed that USEPA was considering the CTG guidance and the Blue Book not as presumptive norms, but as absolute limits, without providing the necessary demonstration that they represent RACT. Several commentors stated that the Blue Book, the post-87 policy, and the ETPS were only guidance documents and questioned the importance given to them. As a result, the commentor suggested that USEPA has totally ignored questions of economic reasonableness, technical feasibility, or fairness.

Response: USEPA believes that sufficient justification was provided for the proposed measures. Two major sources were used to support the regulations. The first of these was Federal guidance material containing presumptive norms for RACT. For the most part, this guidance material consisted of CTGs and the Blue Book. The other major source was information provided to USEPA regarding State rulemaking in Illinois. All applicable CTGs and the Blue Book are present in the rulemaking docket. It should also be noted that the commentors have overlooked the significance of the Blue Book, as called for by the settlement agreement. As noted previously, the settlement agreement requires USEPA to propose and, if necessary, promulgate revised RACT rules in accordance with the Blue Book. Thus, the Blue Book is the court-sanctioned standard for these rule revisions.

USEPA maintains that it included in the docket all relevant supporting material, including the main guidance documents, which it considered directly in developing its proposal. These documents include the technical support for USEPA's RACT determinations. The State rulemaking records provided additional information and support for regulations which in some instances followed the same guidance used by USEPA, and in other instances deviated from these norms. USEPA examined these State proceedings and determined if such deviations were warranted.

Thus, the proposed Federal rules were based on USEPA guidance material and, where justified based on specific information applicable to Illinois, deviated from these norms. Examples of these deviations are the high-temperature aluminum coating limitation for General Motors Electro-Motive Division (GM–EMD) and the Pharmaceutical Manufacturing regulations. However, in many instances, USEPA did not believe the State's proposed variation from the national guidance was justified. The support for USEPA's position on State rule submittals is contained in various Technical Support Documents contained in section XII of the rulemaking docket. In these cases, USEPA did not feel the information provided by the State fully supported a departure from Federal guidance. It should be noted that the burden of proof is on the State to convince USEPA of the necessity of the rule departure from national RACT guidance. In the absence of this satisfactory evidence, USEPA has returned to its basic RACT guidance.

Several commentors fulfilled this burden of proof obligation and provided appropriate technical support for their case which USEPA considered and found to be valid. Therefore, the final regulations were changed to reflect these comments, and discussed below.

Comment: Two commentors felt that USEPA's action in proposing RACT rules is clearly inconsistent with its own policy, which provides for the consideration of technological and economic factors in RACT determinations. Other commentors stated that USEPA has the burden of demonstrating RACT, and that USEPA has not sustained this burden. The commentors believed that there was no evidence that USEPA analyzed these RACT factors or the pertinent IPCB information in developing its proposed rules and USEPA must grant deference to the States' RACT determinations. A third commenter thought USEPA had relied on the concepts generally

[17] It should be noted that a reanalysis of the impact of the Federal generic rule was performed by USEPA's contractor to account for the additional exempt source categories. The list of affected facilities and estimated impacts in the reanalysis and the initial analysis are comparable.

[18] USEPA is currently working on control guidance for sewage treatment plants, which may result in the development of control requirements at some time in the future.

associated with best available control technology (BACT), not RACT, determinations. This commentor also stated that the CAA does not empower USEPA to reject a State's rules because they do not meet a presumptive guideline of RACT. Another commentor stated that it is not clear what criteria USEPA uses in determining what is "reasonable". Also, one commentor stated that the State of Illinois has attempted to submit approvable rules (such as the generic rule), but USEPA keeps redefining what constitutes RACT.

One commentor stated that a plan proposed by USEPA in place of a State plan must be in accordance with RACT. A FIP cannot go beyond RACT, it can only be as stringent as reasonably necessary to assure timely attainment and maintenance.

Response: USEPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility, 44 FR 53762 (September 1979).

Through the issuance of CTGs and related guidance such as that contained in the Blue Book, USEPA has identified pollution control levels representing or presumed to be RACT for various categories of sources. Because the Federal rules are consistent with this guidance, USEPA does not believe that these rules go beyond RACT. It should also be noted that these rules are not consistent with NSPS, which would be the case if USEPA were relying on BACT concepts.

USEPA determines RACT on a case-by-case basis taking into account many factors, including the costs of controls, the age and size of the facility, and the feasibility of controls at similar facilities. The determination of what technology constitutes RACT for a given source category can, and does, change over time, with the determination being made at a given time that the selected technology represents the most stringent technology that is technologically feasible and economically reasonable for the source category.

USEPA will approve alternative RACT determinations provided that a demonstration is made that: (1) The presumptive norm is not technologically feasible or not economically feasible for the source in question, and (2) that the proposed limit is the most stringent limit that is technologically and economically feasible. Because the individual source has a greater knowledge of its own operations that USEPA, it simply makes more sense that it come forward with any information showing that what USEPA proposed as RACT for its facility is not technologically feasible or economically reasonable, rather than placing this initial burden on USEPA.

An important part of this analysis is an examination of the level of control in place at similar facilities (including, but not limited to the same CTG category). A detailed discussion of what USEPA considers to be an acceptable alternative RACT investigation is contained in appendix A of the November 9, 1988, notice of proposed rulemaking for Essco Aluminum Corporation (53 FR 45285).

USEPA's technical support document, and appendices, do demonstrate consideration of the facts presented in the IPCB hearing record. The principles stated above were used by USEPA in evaluating RACT for the Chicago ozone FIP. USEPA can only accept proposed State rules if they constitute RACT. The State must provide support for RACT determinations that differ from national guidance.

Finally, it should be noted that the ultimate emission reduction needed for attainment is so large that these rules are necessary, although not sufficient, to provide for attainment. As noted in the NPR, reductions beyond the level of control in the CTGs may even be necessary.

Comment: Two commentors felt that the TSD does not analyze the costs of compliance with the proposed rule to any particular industry, and thus, USEPA has not followed its own policy on source-by-source determinations of RACT. The commentors felt that it is necessary and appropriate for USEPA to determine the actual economic impact of the remaining proposals on Illinois industry.

Response: Determination of impacts on an individual facility basis was neither feasible within the court-ordered time frame nor practical given the large number of sources in the six-county area covered by the Federal rules. USEPA, therefore, found it necessary to rely upon general category data and to focus on the entire source category (rather than individual facilities) for the purposes of assessing the impact of the proposed rules. USEPA expected that where its general category assumptions were invalid for a specific facility, that facility would so notify USEPA during the comment period. In fact, several companies did submit site-specific information which USEPA reviewed. This material is discussed on a site-specific basis in section E of this notice. Also, the regulations allow a company to apply for a site-specific SIP or FIP revision if they do not believe that the general category assumptions are applicable to their situation.

Comment: One commentor believed, based on discussions with IEPA staff, that the FIP emissions inventory is incorrect because USEPA's contractor did not meet with IEPA to discuss the origins of the State inventory that was provided to USEPA. As a result, the commentor concluded that the environmental benefits of, and need for, the FIP had been greatly overstated.

Response: USEPA has attempted to use the State's emissions inventory data, to the extent that these data are consistent with national policy for post-1987 emissions inventories. IEPA originally provided USEPA, and its contractor, with a copy of its inventory of carbon monoxide, nitrogen oxide, and VOC emissions in May 1989. Numerous discussions were held between USEPA, and its contractor, and IEPA to resolve various questions and concerns related to this version of the State's inventory. USEPA relied on that inventory in its July 11, 1989, ANPR on the Chicago ozone FIP. In response to public comments on the ANPR by IEPA (and other parties), USEPA made certain changes to the inventory. On December 31, 1989, IEPA submitted an updated version of its emissions inventory. Any questions concerning the IEPA's submittal were discussed and resolved with IEPA. Where relevant, USEPA has attempted to rely on this latest version of the inventory in assessing the impacts of the Federal rules. Thus, contrary to commentor's claim, USEPA believes that it has used the best data available and, as such, has not overestimated the impact of the Federal rules.

Comment: Several commentors claimed that the high cost effectiveness values (cost per ton VOC reduced) cited by USEPA for many source categories, such as large appliance coating, could not be justified as RACT.

Response: Although the cost effectiveness for large appliance coating (and other surface coating categories) initially identified in the TSD for the NPR appeared to be unreasonably high, it must be remembered that this initial cost estimate conservatively assumed that compliance would be achieved primarily through the use of add-on controls. As noted above, USEPA has reevaluated its assessment of affected facilities and the compliance costs. This reevaluation, which has been incorporated in the TSD for this final rulemaking, indicates much lower costs and more reasonable cost effectiveness, based upon compliance primarily through other techniques.

Comment: One commentor believed that no serious effort has been made by USEPA to estimate the potential cost impact of the proposed generic rule, and that the cost to a single facility might actually be as high as $20 million. Another commentor felt that USEPA's reliance on cost data from the IPCB hearing record was inappropriate in view of the differences between the State and proposed Federal generic rules. In particular, one commentor objected to the use of the $5000 per ton figure to determine impacts for sources which are exempt from the State rule, but subject to the proposed Federal rule.

Resonse: The economic impacts reported in the TSD for the NPR were based on information from the State proceedings regarding the approximate cost for the average affected facility. The cost for a single facility could be more or less than any average value. Public comments were also received from many companies which considered the proposed generic rules to be unreasonable for their company. USEPA's review and response to these concerns are addressed in section E below.

As noted in the TSD, USEPA has exempted certain source categories from its generic rule on the basis of documentation from the IEPA and the IPCB. USEPA has attempted to exempt from its generic rule the same categories as the State, as well as a few other categories in response to the public comments.

Finally, in performing the economic assessment, USEPA has attempted to determine the basic economic impact of these rules. For some of the sources, which are subject only to the Federal generic rule, a higher cost was included to be more conservative in the analysis.

D. State Rules

Comment: Several commentors claimed that USEPA had not provided sufficient support for its action on the State rules. The commentors felt that USEPA had only made conclusory statements regarding the State rules without any justification.

Response: Documentation for USEPA's proposed rulemaking is contained, in summary fashion, in individual TSDs prepared by Region V and, in more detail, in the file. USEPA believes that its action on the State rules is supported by this material.

Comment: Several commentors believed that USEPA did not analyze or respond to the information in the State rulemaking record. The commentor noted that section 110(c)(1) requires USEPA to consider any State hearing record prior to promulgation of any Federal rules. One commentor claimed that the Illinois process worked, and that the Illinois system produced a set of RACT rules which controlled emissions while not burdening any particular industry with a requirement that was technically infeasible economically unreasonable.

Response: USEPA has considered the IPCB record. USEPA's TSDs (which are included in USEPA's record and in the appendices to USEPA's TSD for its proposed rulemaking) on individual State rules were prepared after careful and thorough review of all of the State rulemaking record that was submitted to it by IEPA. USEPA must independently evaluate any RACT determinations submitted to it for its approval to ensure that they are consistent with the requirements of the CAA and related USEPA policy.

Comment: One commentor noted that the State has adopted and submitted to USEPA numerous RACT rules which have yet to be acted on by USEPA. These delays are in violation of the CAA requirement that SIP submittals be acted upon within four months. It is improper and contrary to the CAA to hold these submittals "hostage" and then to promulgate a FIP to fill the void created by USEPA's failure to approve a SIP.

Response: USEPA notes that the requirement in section 110(a)(2) for the Administrator to approve or disapprove a plan (or portion thereof) within four months of the required submittal date applies solely to the initial plan submittal in response to the promulgation of a NAAQS or a revision of the NAAQS, as noted in section 110(a)(1). Revisions to an approved plan are not contemplated in section 110(a)(1) except in response to a NAAQS revision. Thus, the four months processing requirements is not relevant in this situation. Instead, USEPA is required to act generally on SIP revisions within a "reasonable time". This issue is considered in *United States v. General Motors Corp.*, 89-368, which is pending before the United States Supreme Court.

USEPA recognizes that the State has submitted several revised rules to USEPA for incorporation in the SIP. USEPA has attempted to deal with most of these SIP revision requests as part of this rulemaking. The few remaining revisions not included here, such as revisions to the SOCMI Leak rule and site-specific RACT determinations for Allsteel and Viskase, will be addressed in a future Federal Register notice. USEPA has delayed the effective date of these rules for Allsteel and Viskase to allow for further consideration of the pending submissions. If USEPA concludes that those submissions are adequate to justify revisions to the rules being promulgated today for those two sources, then it will endeavor to make those revisions as soon as possible.

With respect to prior rulemaking, USEPA reviewed the history of past rulemaking action in the NPR and will not repeat it here. This review demonstrated USEPA's efforts to process various SIP revisions on a timely basis, yet allowing the State enough time and flexibility to revise portions of its submittals which were not acceptable. As noted above, however, USEPA can no longer defer to the State and must move forward to federally promulgate the necessary revisions at this time pursuant to the court's order on this matter.

Comment: One commentor questioned the status of pending alternative compliance requests, and wondered whether the process of obtaining Federal approval would have to be repeated. Another commentor believed that requests for adjusted RACT standards pending before the IPCB had not been considered or addressed by USEPA in developing this proposal. These submittals would seem to correct the deficiency cited by USEPA that alternative plans be submitted for USEPA approval. USEPA should approve these submittals rather than proposing a FIP to replace the deficient rule.

Response: As discussed earlier, there are SIP submittals provided to USEPA which were not discussed in the NPR because USEPA had yet to complete its review. These State submittals need not be resubmitted. The submittals are currently undergoing analysis by USEPA and will be addressed in future rulemaking. USEPA maintains that site-specific revisions need to be submitted individually for USEPA approval and the State is responsible for continuing to submit site-specific revisions in the future.

Comment: One commentor felt that USEPA should apply its 5 percent equivalency rule (i.e., a demonstration that there is a 5 percent or less difference in allowable emissions under the rule consistent with RACT guidance and the rule proposed by the State for a given source category) to the State rules before considering their disapproval. Another commentor added that there is no indication in the docket that USEPA examinod whether the 5 percent rule might be applicable, and, if so, might be applied to avoid the need for Federal promulgation.

Response: The basic purpose of the 5 percent rule is to provide a mechanism for allowing States flexibility in developing their regulations. Also, the procedure can only be employed to justify minor source exemptions or the selection of differing cutpoints for regulatory coverage within a CTG category. The deficiencies with the rules cited by the commentor did not involve just a change in the exemption level, so the procedure would not be applicable in these cases. Further, USEPA is not required to apply the 5 percent procedure for rules it promulgates as federal measures. The commentor did not provide any evidence that they or the State had performed any calculations which led to their conclusions. It should be added that when the State submits its SIP rules to replace the Federal RACT rules, it has the opportunity at that time to perform the 5 percent procedure and show that the exemption levels in the State rule cause no "substantive difference" between the State rule and the Federal rule.

Comment: Several commentors claimed that USEPA had preliminarily approved the substance of the State's proposed generic rule, and felt that no reason has been given for the Agency's change of position on this issue. Another commentor felt that USEPA should approve the well-documented State generic rule rather than adopting its own "poorly-documented" rule.

Response: The commentors provided no basis for their claim that USEPA had preliminarily approved the State's generic rule. Therefore, USEPA is unable to respond in full to that portion of the comment. Even if USEPA had suggested that the generic rule as originally submitted for review seemed to be approvable, the final rule formally submitted as a SIP rule was different from the earlier version.

The reasons for disapproving the State's generic rule are provided in the January 23, 1989, USEPA Region V TSD. This TSD is also located in Appendix I of the TSD for the proposed Federal rules. In addition, the deficiencies are listed in Exhibit B of the settlement agreement. Therefore, USEPA maintains that reasons for the disapproval of the generic rule are well documented.

Furthermore, USEPA's generic rule is well documented. To the extent possible, it is consistent with the Illinois generic rule. The differences between USEPA's and Illinois' generic rules are based upon the deficiencies with Illinois's rule cited in USEPA's January 23, 1988, Technical Support Document and Exhibit B of the settlement agreement. Therefore, USEPA's generic rule is simply Illinois' generic rule modified to conform with USEPA guidance.

Comment: One commentor objected to the manner in which the disapproval of the internal offset rule was conducted. USEPA has not identified what problems exist, if any, with the Illinois internal offset provisions with respect to satisfying the requirements for generic approval outlined in the Blue Book and the ETPS. USEPA should inform the State of the changes needed to qualify the internal offset rule as a generic rule, rather than declaring that all determinations made by the State pursuant to the rule must be submitted for SIP approval and cannot become effective until that approval is granted. The Illinois internal offset rule is a generic emission trading rule within the meaning of the ETPS. If USEPA believes it fails to meet the requirements of the ETPS, then it is obliged by its own policy to publish a Federal Register notice identifying the deficiencies in the rule and means for correcting them.

Response: USEPA does not believe that the State intended its internal offset provisions ("Aggregation of Emission Sources") to be a generic rule and, thus, never reviewed it as such. In any case the internal offset provisions would not be approvable as a generic bubble rule because, for example, it does not require the use of lowest of actual or SIP/RACT allowable emission baselines for all sources involved in the trade, and it does not require that the baseline be further reduced by 20 percent. In addition, the rule does not contain many of the procedural requirements (*e.g.*, notification and public comment) specified in the ETPS. Should Illinois wish to have its internal offset rule approved as a generic rule, then it must comply with all requirements of the ETPS and submit the rule for approval under that policy.

Comment: Two commentors felt that the internal offset provision, which allows daily weighted averaging of coatings in determining compliance, cannot be a RACT deficiency since it has been approved by USEPA. The commentors cited a recent court decision (i.e., *U.S. v. Allsteel*, No. 87, C4638 [ND IL 1989]) as support for their position. Another commentor believed that USEPA's bases for disapproving Illinois' Aggregation of Emission Sources (internal offset) rule [Section 215.207] (that compliance arrangements are embodied in State operating permits that have expiration dates and the need to submit offsets for USEPA approval) are unfounded, inconsistent with prior USEPA guidance, and not relevant. The commentor pointed out that if a permit expires without renewal, the authorization to use section 215.207 also terminates. If necessary, then USEPA should add a requirement such as:

> No person shall comply with 35 Ill. Adm. Code Part 215, Subpart F, by means of Section 215.207 without having a current operating permit pursuant to part 201 specifying the compliance procedures to be used to determine emissions for purposes of Section 215.207.

Response: USEPA acknowledges that on February 21, 1980 (45 FR 11472), it approved rule 205(N)(4), "Internal Offsets", as part of the Illinois SIP. (Note, the SIP approved rule, 205(N)(4), is significantly different than the internal offset provision, 215.207, in the current State rules.) On December 4, 1986, however, USEPA published its final ETPS. The ETPS established uniform criteria for "generic bubble" rules which allow States to approve certain types of individual source transactions without the need for case-by-case SIP revisions or associated Federal review prior to approval. As part of its national review in early 1988 of SIPs to determine conformance with the Agency's RACT guidance, USEPA determined that SIP rule 205(N)(4) does not meet the requirements of the ETPS. As such, USEPA informed the State that the internal offset rule was deficient as a generic bubble rule and that all internal offsets must be submitted as SIP revisions, until Illinois has an approved generic bubble rule, and must comply with USEPA's ETPS. Because Illinois has failed to respond adequately to this notification, USEPA is proceeding with federal promulgation pursuant to section 110(c)(1)(C) of the CAA.

Section 52.741(a)(7) states that:

> "Notwithstanding the provisions of any other paragraphs of this section, any exemptions, variances, or alternatives to the control requirements, emission limitations, or test methods in the Illinois SIP or FIP can only be allowed if approved by the Administrator as a SIP or FIP revision." This approach is consistent with the mandate of section 110 to provide for attainment and maintenance of the NAAQS, as well as USEPA's ETPS.

USEPA disagrees with the commentor as to the breadth of the decision in *U.S. v. Allsteel*, and that it in any way constrains the Agency in this rulemaking. To the extent that the Court based its decision on any ambiguity in USEPA's February 21, 1980, rulemaking on Illinois' internal offset provision, this rulemaking resolves such ambiguity and provides an approach which is consistent with the CAA and USEPA policy.

Finally, USEPA has reviewed the commentor's suggested rule modification, but believes that such a change is inappropriate in this rulemaking. Undertaking such a rule change in this final action without prior proposal raises difficult legal and procedural concerns. Furthermore, in view of the other problems noted above, USEPA believes that the State's internal offset rule is not approvable, even with such a change. Thus, USEPA will not modify the rule as suggested and will, instead, proceed with final rulemaking on the rule submitted by the State.

Comment: A commentor noted that USEPA had not taken action on Illinois' subpart N: Vegetable Oil Processing because of an erroneous negative declaration made by the State for this source category. The commentor said that its process could comply with a shorter (30-day) compliance averaging period than the 180-day period specified in subpart N, if that change would make the State's rule approvable by USEPA. The commentator stated that USEPA should promulgate subpart N in the FIP (amended to correct the averaging period), rather than include vegetable oil processing under the generic rule.

Response: On October 2, 1986, Illinois notified USEPA that it had carefully reviewed its emission inventory and found no vegetable oil processing sources with VOM emissions equal to or greater than 100 TPY located in Illinois' nonattainment areas. On July 10, 1987, USEPA approved Illinois' negative declaration for vegetable oil processing. Illinois' 1988 inventory, as submitted on December 31, 1989, however, indicates actual plantwide emissions (adjusted for rule effectiveness) and plantwide maximum theoretical emissions greater than 100 TPY for at least one such source. It, therefore, appears that the State's negative declaration is no longer correct. Nevertheless, in view of USEPA's decision to exempt vegetable oil processing from the Federal generic rule, the effect of the previous negative declaration is moot. Also, USEPA does not believe that promulgation of a Federal rule for vegetable oil processing is justified at this time. Consequently, such sources are exempt from the generic rule and are not currently subject to a federally approved SIP rule.

Comment: One commentor questioned the basis for changes made to the State's rule covering pharmaceutical manufacturing, stating that the rulemaking record did not provide this rationale.

Response: Page 8-1 of the draft TSD states that the principal deficiencies for the State pharmaceutical rules were the methodology for determining vapor pressure and the unenforceable portions of the rule. The draft TSD also states that; "There are additional differences between Illinois' adopted rule and the proposed Federal rule. These differences are generally based on the Illinois EPA's March 1989 proposed rule and the June 7, 1989, letter from USEPA Region V to IEPA addressing enforceability concerns. These items are contained in Appendix G.1." USEPA feels that the reasons for the changes in the pharmaceutical manufacturing regulation were adequately described in the TSD and appendix G prior to proposal.

Comment: Two commentors stated that if the Agency is going to rely on comparisons with another company in its determination of RACT, then it should use its authority under section 114 to gather such information and make all resultant information available in the record.

Response: In evaluating RACT for certain source categories, USEPA has in some instances obtained information on other companies within those categories. This information-gathering process included the use of the Agency's section 114 authority in one instance. The company providing the information has made a claim of confidentiality and, pursuant to USEPA regulations at 40 CFR part 2, subpart B, that information must, therefore, be treated for now as confidential pending a final determination by USEPA as to that claim.

E. Site-Specific Issues

1. Duo-Fast

Comment: Duo-Fast raised the following issues in its comments: (a) USEPA's proposed disapproval of the Illinois coating rule "power driven fastener coatings" is unsupported and contrary to the extensive State rulemaking record. If USEPA is to subject the "power driven fastener" industry to a more stringent regulation, it must have a complete basis in the record for determining that the proposed limitations constitute RACT. This would include an analysis that the limitations are economically and technically feasible for the sources in question. Reliance on general RACT guidance is not sufficient.

(b) USEPA has not demonstrated that the two other facilities which allegedly comply with more stringent miscellaneous metal parts or products (MMPP) rules are comparable to those at Duo-Fast.

(c) The minimum reduction in ozone precursor emissions which will result from the implementation of these rules cannot be justified in a RACT proceeding.

(d) USEPA should consider other environmental impacts of these proposed rules. It would be environmentally counter-productive to impose a more stringent VOC regulation on Duo-Fast, if the only reasonable way of achieving it is substitution of methylene chloride, a proposed air toxic in Illinois, for non-exempt solvents.

Response: USEPA believes that the disapproval of the State rule, and subsequent proposal of the Federal rule for MMPP (with the absence of special limits for power driven fastener coating), was appropriate and its rationale well documented (*e.g.*, see July 19, 1988, Region V TSD). In general, USEPA intends to rely on its GTGs to identify the control levels which it presumes to be RACT for various source categories. Because the CTGs have been prepared based on a careful and thorough evaluation of the capabilities and problems associated with the control approaches for a particular industry, USEPA believes that it may rely (and, in the past, has relied) solely on the CTGs to define RACT. Where a State finds the presumptive norm may not be applicable to an individual source, for economic or technological reasons, it may develop a site-specific RACT requirement. Such alternative RACT requirements would be acceptable if the State demonstrates first that the presumptive norm is not economically reasonable or technologically feasible and second that the alternative limit is the most stringent limit that is economically reasonable and technologically feasible.

For Duo-Fast, USEPA has relied on the CTG for MMPP as the general basis for disapproving Illinois' rule and for promulgating the applicable Federal limit. As further support for its actions, USEPA considered whether comparable companies were complying with the MMPP coating or equivalent limitations. USEPA policy states that "In determining RACT for an individual source or group of sources, the control agency, using the available guidance, should select the best available controls, deviating from those controls only where local conditions are such that they cannot be applied there and imposing even tougher controls where conditions allow." (see December 9, 1976 memorandum from Roger Strelow). USEPA believes that if control technology is available to a comparable facility and that no unique "local conditions" are identified which would prohibit this technology at the subject facility, then RACT for the two

companies is the same. The issue for Duo-Fast is whether these other companies are comparable and whether any "local conditions" would prohibit them from applying the same control technology present at the other facilities (assuming these facilities are meeting a more stringent limitation). Upon further review, USEPA has concluded that, for the purpose of defining RACT for Duo-Fast, these companies are comparable and that there are no unique local circumstances which would prohibit Duo-Fast from implementing the same technology being utilized at these facilities.

USEPA began by reviewing the State record in detail once again. USEPA especially examined the efforts made by Duo-Fast to attempt to comply with the miscellaneous metals parts and products coating limitations as described in the State record. USEPA's examination of the State record found that for the most part, it contained arguments by Duo-Fast which were conclusory statements not supported by any technical information provided by the company.

USEPA also examined the feasibility of both compliant coatings and adhesives, and add-on control for Duo-Fast. USEPA believes that compliant coatings are readily available based on the fact that neither of the comparable facilities studied were experiencing difficulty meeting the MMPP coating limitation for these types of coatings, and conversations with coating suppliers which indicated that compliant lubricity and withdrawal resistance coatings are available and in use for these purposes. On the other hand, contact with various coating suppliers indicates that compliant adhesives which meet Duo-Fast's specifications may not be readily available. In summary regarding compliant coatings and adhesives, USEPA rejects Duo-Fast's claim that compliant coatings which are used for lubricants and withdrawal resistance are not reasonably available. However, USEPA agrees that compliant adhesives suitable for use in the power driven fastener manufacturing industry are not available. Add-on controls (incineration) are used by the other two comparable facilities to comply with the applicable limitations for fastener adhesives. Therefore, add-on control is technologically feasible for the power driven fastener manufacturing process. Furthermore, it has not been demonstrated to USEPA that this technology is economically infeasible. Thus, USEPA maintains that it is economically reasonable for Duo-Fast to control emissions from their adhesive operations through the use of add-on control.

To summarize, USEPA believes that RACT for Duo-Fast is identified by the proposed MMPP emission limitation. USEPA believes that compliant coatings are available for the lubricant and withdrawal resistance functions and that add-on control is reasonable to control the adhesive operations.

Finally, with respect to the expected emission reduction and the concern over other environmental impact, USEPA wishes to note that RACT is based on technological and economic considerations, not environmental impacts. It should be noted, however, that the estimated emissions from Duo-Fast's conventional and multiwire machines alone are approximately 190 tons per year. USEPA does not believe that it is unreasonable to require more RACT-level control on a source of this magnitude. In addition, USEPA does not believe that the only reasonable way of achieving the limitation is through the substitution of methylene chloride for non-exempt solvents. Rather, USEPA believes either compliant coatings or add-on controls are reasonably available as discussed above. Furthermore, Duo-Fast has not demonstrated that compliance through the use of methylene chloride, which USEPA would accept, is technologically infeasible or economically unreasonable. Therefore, USEPA believes that this is a moot point.

2. Stepan Company

Comment: Stepan Company, which owns and operates a plant manufacturing soaps and detergents and certain other materials, raised the following issues regarding its volatile organic liquid (VOL) storage operations in its comments:

(a) USEPA has overestimated VOC emissions from Stepan's Will County plant near Millsdale. Actual annual VOC emissions are one-third of those calculated by USEPA. Stepan submitted control efficiencies and emission data (maximum theoretical tons per year based on permits) showing that emissions at 21 of 38 points in the October 1989 FIP inventory were wrong.

(b) USEPA should consider the economic and technical difficulties presented by the proposed generic rule for currently exempt sources such as Stepan's. If storage tanks are covered under the generic rule, Stepan might have to control over 200 sources, the majority of which have emissions below 0.1 TPY but in the aggregate exceed the 5 TPY exemption level. A requirement for storage tanks to meet 81 percent control would make the RACT rule more stringent than the storage tank NSPS, which includes volume and vapor pressure applicability cutoffs, and would make the Illinois rules the most stringent in the nation for storage tanks. It would be expensive, unsafe, and impractical to combine these emissions given their large spatial separation and small individual emissions and control them with a common control device.

Response: When compiling the October 1989 FIP emissions inventory, USEPA used the latest available data tape from IEPA. IEPA has revised their 1988 emissions inventory subsequent to submittal to USEPA and the revised IEPA data do include the control information presented by Stepan. These IEPA data are being used to revise the USEPA FIP inventory and result in a plantwide total of 182 tons (versus Stepan's estimate of 170 tons) in the annual emission estimate prior to application of rule effectiveness guidelines.

USEPA also acknowledges that the proposed generic rules, as written, would appear to require that: (1) Emissions from categories exempt from a number of specified regulations (including VOL storage) be counted toward the determination of whether a source qualifies as a major non-CTG source, and (2) these otherwise exempt categories be subject to the emission limitations contained in the generic rules. Although USEPA intended for emissions from these exempt categories to be included in the total emissions to determine if a source was a major non-CTG source, it did not intend that these categories be actually subject to the emission limitations of the generic rule. This is because if these sources are exempt from USEPA approved rules (primarily CTG rules), then they should also be exempt from the generic rules. Therefore, USEPA has changed the language in the final rule to clearly indicate that the emissions from these exempt categories should be counted in the determination of a 100 TPY non-CTG source, but that these exempt categories are not subject to the emission limitations in the generic rules. Consequently, the issues raised by the commentor regarding the infeasibility of controlling the storage tanks at Stepan are moot points.

3. General Motors Corporation, Electromotive Division (GM–EMD)

Comment: GM–EMD raised the following issues in its comments: (a) GM–EMD objected to USEPA's proposed disapproval of Illinois rule 215.204(m), which sets limits of 4.3 lb/gal and 4.8 lb/gal for locomotive topcoat and final repair coating operations, respectively. USEPA has not provided any reliable data to support its proposed emission limitations for GM–EMD's locomotive topcoat and final repair operations of 3.5 lb/gal. USEPA's reliance on the CTG for the MMPP category is improper because the CTGs were developed as general guidance, and did not specifically consider the unique problems and requirements involved in coating a fully assembled locomotive. GM–EMD felt that the burden should be on USEPA to show that its proposed limits represent RACT for locomotive coating operations, and not on GM–EMD to show that the proposed limits are not RACT.

(b) GM–EMD requested that USEPA use its authority under Section 114 of the CAA to obtain up-to-date, comprehensive data on the locomotive coating operations at General Electric (GE) in Erie, Pennsylvania, and provide those data to GM–EMD in time to allow for review and comment.

(c) The reason for USEPA's reversal of its initial decision to approve the Illinois topcoat limit of 4.3 lb/gal applicable to GM–EMD (i.e., a 1988 SIP Call to the State of Pennsylvania identifying the State's topcoat limit of 4.3 lb/gal for locomotives and heavy-duty trucks as a deficiency) is improper. This is because: (i) A SIP Call is "an act of limited consequence preliminary to other events anticipated by the Act * * *. The notice only informs and requests. It does not "order * * *" and * * * is not a final agency action * * *", (ii) the basis for the SIP Call is unclear, and (iii) the supposed intention of the State to revise its topcoat limit to 3.5 lb/gal for the GE locomotive plant cannot be taken as a demonstration that this limit is RACT for GM–EMD.

(d) As a result of extensive research and development to identify lower VOC content coatings since 1983, GM–EMD has reduced the VOC content of its coatings to meet the applicable State emission limitations. GM–EMD stated, however, that lower VOC coatings will create certain problems (i.e., unacceptable finish quality, excessive dry-to-tape times (for masking), unacceptably short "pot life", excessive film builds (leading to cracking), inability to produce an acceptable color match) and, thus, should not be required. These problems affect both production schedules and the quality of the finished product as delivered to the customer.

(e) The proposed 3.5 lb/gal limit would result in emission reductions of less than 3 TPY at current production levels (67 or fewer locomotives per year). Furthermore, the use of 3.5 lb/gal coatings could actually result in a net environmental detriment because a greater amount of solids would have to be applied.

(f) USEPA should apply its 5 percent equivalency rule to GM–EMD's situation. GM–EMD estimates that application of the Illinois topcoat and final repair rules would cause total emissions for the MMPP category to depart from those allowed under the CTG (3.5 lb/gal emission limit) by 0.77 percent, well under USEPA's guideline for judging which requirements "deviate imperceptibly from the recommended presumptive norm."

(g) GM–EMD manufactures a rubberized insulating tape using a fiberglass fabric substrate. USEPA's proposed rules would revise the definition of fabric coating to include such impregnation operations, making this operation potentially subject to a 2.9 lb/gal emission limit. GM–EMD believes that these operations should be regulated as non-CTG sources subject to § 52.741(x), with a limit of 6.0 lb/gal. A quotation for a carbon adsorption system indicates that the annualized cost of such control would be unreasonable.

(h) GM–EMD has eight separate coating lines that apply electrical insulating varnishes to various components of alternators and traction motors. These operations do not properly fit under the Magnet Wire or MMPP category. GM–EMD believes these operations should be regulated as non-CTG sources subject to 52.741(x), with a limit of 5.2 lb/gal. Quotes for add-on controls on these coating lines indicate that the annualized cost of such control would be unreasonable.

(i) The applicability of Illinois rule 215.204(m) was limited to the coating of assembled locomotives. USEPA's proposal appears to alter the scope of this rule to encompass all operations at the GM–EMD facility. As a result of this change, a number of non-locomotive non-CTG coating operations may now inadvertently be subject to a limit of 3.0 lb/gal.

Response: USEPA believes that the disapproval of the State rule, and subsequent proposal of the Federal rule for diesel-electric locomotive coating was appropriate and its rationale well documented. In general, USEPA intends to rely on its CTGs to identify the control levels which it presumes to be RACT for various source categories. Because the CTGs have been prepared based on a careful and thorough evaluation of the capabilities and problems associated with the control approaches for a particular industry, USEPA believes that it may rely (and, in the past, has relied) solely on the CTGs to define presumptive RACT. Where a State finds the presumptive norm may not be applicable to an individual source, for economic or technological reasons, it may develop a site-specific RACT requirement. Such alternative RACT requirements would be acceptable if the State demonstrates first that the presumptive norm is not economically reasonable or technologically feasible and second that the alternative limit is the most stringent limit that is economically reasonable and technologically feasible.

For GM–EMD, USEPA has relied on the CTG for MMPP (which specifically covers facilities that manufacture locomotives and, as such, are included within Major Group 37 of the Standard Industrial Classification Code) as the general basis for disapproving Illinois' rule and for promulgating the applicable Federal limit.[10] As further support for its actions, USEPA considered whether comparable companies were complying with the MMPP coating or equivalent limitations. USEPA policy states that "In determining RACT for an individual source or group of sources, the control agency, using the available guidance, should select the best available controls, deviating from those controls only when local conditions are such that they cannot be applied there and imposing even tougher controls where conditions allow." USEPA believes that if control technology is available to comparable facilities and that no unique "local conditions" are identified which would prohibit this technology at the subject facility, then RACT for these sources is the same. At issue for GM–EMD is whether the only other locomotive coating plant in the United States (i.e., GE) is comparable and whether any "local conditions" would prohibit GM–EMD from applying the same control technology present at GE (assuming this facility is meeting a mroe stringent limitation).

Upon further review, USEPA has concluded that, for the purpose of defining RACT for GM–EMD, the GE plant is comparable and that there are no unique local circumstances which

[10] In reviewing State plans and promulgating Federal plans, USEPA is not obligated to evaluate various alternative rules for equivalency using its 5 percent rule. The basic purpose of the 5 percent rule is to provide a mechanism for allowing States flexibility in developing their regulations. Furthermore, the commentors use of the 5 percent rule here is incorrect. The 5 percent rule can only be used to justify the selection of differing cutpoints for regulatory coverage within a CTG category. It cannot be used, as attempted by the commentor, to justify a relaxed emission limitation for an individual source.

would prohibit GM–EMD from implementing the same technology being utilized at the GE plant.

Note: GM–EMD has not demonstrated that the criteria its topcoat and final repair coatings must meet are unique or exceptional with respect to GE's operations.

This determination is based primarily on information supplied by two air pollution control offices (Region III and the State of Pennsylvania) and by GE. Both Region III and Pennsylvania agency personnel have affirmed GE's ability to perform its locomotive coating operations using coatings at or below the 3.5 lb/gal limit. As a result of this conclusion, the State of Pennsylvania has proposed to lower the VOC emission limit for locomotive and heavy-duty truck topcoats from 4.3 to 3.5 lb/gal (minus water). The information supplied by GE demonstrates that topcoat paints applied to final assembled locomotives and repair coats applied for the final repair of assembled locomotives are 3.5 lb/gal or less.

Note: The GE information was supplied pursuant to a section 114 letter from USEPA. GE has made a claim of confidentiality and, pursuant to USEPA regulations at 40 CFR part 2, subpart B, that information must, therefore, be treated as confidential for now (and, thus, cannot be provided to GM–EMD for review and comment) pending a final determination by USEPA as to that claim.

USEPA's proposed action also refers to the May 20, 1988, Pennsylvania SIP Call letter and June 14, 1988, follow-up letter, which noted that the State's regulation allowed the use of 4.3 lb/gal coatings for topcoating of heavy-duty trucks, whereas the applicable CTG specified a limit for this operation of 3.5 lb/gal. This deficiency was also applicable to locomotive topcoating operations. Although USEPA does not dispute the commentor's characterizations of a SIP Call, it should be noted that USEPA is not relying on this SIP Call to set RACT limits for GM–EMD, but instead refers to the SIP Call only as evidence that USEPA is consistently concluding that the CTG limit is RACT for locomotive coating operations, like GM–EMD's locomotive topcoating and final repair coating operations. Whether or not Pennsylvania changes its rules pursuant to this SIP Call, both Pennsylvania and GE's data support the conclusion that 3.5 lb/gal is RACT for GM–EMD.

With respect to the technical problems cited by the commentor, USEPA believes that the dry-to-tape time and pot life problems can be minimized through relatively minor scheduling adjustments, the short pot life problem can be counteracted with smaller batches of coating mixed in several pots in a staggered schedule, and a greater number of batches to coat each locomotive. The other problems could be due to a number of factors other than the VOC content of the coatings. As discussed in USEPA's April 7, 1989, Technical Support Document, the data submitted by GM–EMD does not support its claim that increased film thickness leads to film cracking. It should be noted that GE's ability to achieve satisfactory finish quality and durability using high solids topcoat and final repair coatings indicates that these problems can be overcome.

USEPA does not agree that compliance with the proposed limits will cause the application of greater film thicknesses, thereby resulting in a net environmental detriment. These Federal rules are primarily directed towards regulating the level of control technology and not production levels. Furthermore, it has not been demonstrated that the Federal rules will necessitate GM–EMD to apply coatings with greater film thicknesses.

With respect to the operations for rubberized insulating tape using a fiberglass fabric substrate and the eight separate coating lines that apply electrical insulating varnishes to various components of alternators and traction motors, insufficient information was provided by the commentor to support the adoption of their alternative emission limits. Consequently, the Federal rule as proposed will apply to these sources. GM–EMD may submit a request for a site-specific SIP revision for these sources complete with technological and economic data to support its claims that some alternative limits would be RACT for these sources.

Finally, the proposed Federal rule was intended to apply to locomotive coating operations, and not to all of the other coating operations that are carried out at GM–EMD. USEPA has retitled § 52.741(e)(1)(i)(M) to refer solely to the locomotive coating operations to clarify this point. It should be noted, however, that other metal (non-locomotive) coating operations will be subject to the MMPP coating limitations.

4. Allsteel, Inc.

Comment: Allsteel raised the following issues in its comments: (a) USEPA has no authority at this time to challenge the internal offset in the State operating permit (to require that offsets must be approved as a SIP revision) because USEPA approved the State internal offset rule in 1982.

(b) USEPA's proposal to allow offsets within coating lines is consistent with cross-line averaging which USEPA has cited as a deficiency. IEPA submitted the offset to USEPA for review as a SIP revision in November 1987, and this submittal has not been acted upon.

(c) Allsteel pointed out that the company had obtained an adjusted standard for its adhesive curing ovens from the State in PCB AS88–3, and this record was submitted to USEPA for approval as a SIP revision. USEPA should act on that submission.

(d) The new proposed definition of coating includes adhesives, yet adhesives have previously been regulated under the State's generic rule. Allsteel believes that this change may have been inadvertent, and requested an amendment to the definition to exclude operations specifically regulated as miscellaneous fabricated product manufacturing.

(e) The company has demonstrated to the State that alternative adhesives are not available and that other controls would exceed the requirements of RACT due to difficulty of installation, safety concerns, and very high costs. USEPA may not simply reject these showings and impose the generic rule limits on Allsteel without some showing that those limits are RACT in this case. The data in the FIP record do not support a conclusion that sources previously exempted because of excessive control costs should now be regulated.

Response: USEPA is still considering the need to establish site-specific emission limitations and standards, as alternative to the Federal Generic Rule, for Allsteel in response to their public comments. The highly technical, source-specific nature of these comments (*e.g.*, the feasibility of compliant adhesives for metal furniture manufacturing operations such as Allsteel has not yet been established) will take additional time for USEPA to review and respond to. The need to promulgate Federal regulations under the tight timeframe ordered by the Court has prevented USEPA from being able to consider fully the merits of the proposed, alternative site-specific limits. Although for environmental and equity reasons, USEPA believes that it is necessary to establish emission limitations and standards for all sources at this time, USEPA will continue to consider the need to adopt as Federal measures site-specific limits for Allsteel. As such, USEPA is deferring the effective date of these Federal rules for Allsteel until January 1, 1991, in order to allow additional time for its consideration of this matter. If determined to be appropriate, then USEPA will propose revised Federal limits at a later date.

In response to Allsteel's comments concerning the internal offset issue and the appropriate regulations for adhesives, USEPA offers the following responses. First, as discussed in more detail in section D above, internal offsets must be approved as a SIP revision, until such time as Illinois has an approved generic bubble rule, to ensure that cross-line averages satisfy USEPA's ETPS. Although USEPA did approve a prior version of the State's internal offset rule, USEPA subsequently identified this rule as a deficiency in its June 13, 1988, SIP Call follow-up letter to the State. Second, USEPA agrees that metal furniture adhesives are more appropriately considered as non-CTG coatings than as metal furniture coatings, based upon the regulatory history of this source category, and has modified the definition of metal furniture coating accordingly.

Finally, it should be noted that during its review of Allsteel's comments, USEPA discovered that the VOC emissions data cited by Allsteel differed from the data in USEPA's inventory. USEPA obtained the most current emissions data for Allsteel from IEPA and revised the FIP inventory accordingly. The revised plantwide VOC emission total for Allsteel is now approximately 204 tons per year. USEPA will rely on these revised emissions in its evaluation of the need for and, if appropriate, establishment of a site-specific Federal limitation for Allsteel.

5. Riverside Laboratories

Comment: Riverside raised the following issues in its comments:

(a) No support has been provided for the change in the definition of paper coating to include saturation operations. The process used by Riverside is unique and is not described in any of USEPA's CTGs or in the technical support documents. There is no technical basis in the record for the proposed change to include Riverside's saturation operation within the paper coating definition.

(b) It is not clear from the TSD and other data in the docket that USEPA is trying to regulate Riverside's saturation operations. Regulation Riverside as a papercoater is contrary to rulings by the IPCB and the State and Federal courts.

(c) Due to the technical differences between coating and saturation processes, the VOM control technologies that apply to paper coating are infeasible for this type of saturation operations. There are additional difficulties in controlling Riverside's emissions because they contain silicone.

(d) There is no basis for regulating Riverside under the paper coating limitation rather than the existing Illinois Generic Rule. The installation of the water-based technology and the corresponding decrease in the rate of VOM emissions from the plant supports a determination that Riverside should not be regulated under the 2.9 lbs./gal. limitation. Indeed, a greater emission reduction in VOM emissions from the plant may be realized over the next five years through the use of water-based production and the market conditions already occurring. Thus, Riverside should continue to be subject to the 3.5 lbs./gal. limitation of the Generic Rule for the next five years.

(e) USEPA has overestimated the VOC emissions from Riverside. Actual annual emissions are approximately one-quarter of the value listed in USEPA's emissions inventory.

(f) It is unfair and unreasonable to require a small business such as Riverside, which has just made a substantial investment in order to reduce its rate of emissions, to place add-on controls on production lines which may be shut down in the near future.

Response: The Agency considers the change in the definition of paper coating, to now explicitly include "saturation" operations, to be a clarification; that is, the change was made to clarify what was covered by the original definition, not to expand the coverage of the definition. Because it is a clarification, the Agency relied on conclusions that were in turn based on previous investigations or determinations.

The original document affecting paper coaters is the CTG. Although the CTG does not mention saturation operations as one of the methods used to apply coating to paper, this omission was not intentional. The relative infrequency of this type of coating application in the paper coating industry was the most likely reason for its not being mentioned. Saturation operations of paper coaters were identified after the CTG was written and during the development of the Pressure Sensitive Tapes and Labels (PST&L) NSPS.

The paper coating CTG explicitly covered, among others, pressure sensitive tapes and labels (PST&L). During the technical development phase of the PST&L NSPS, three types of application techniques were identified. One of the three was the use of a dip tank to saturate the web. Saturation operations were found to be of similar design to other types of coating processes, the only basic difference being the use of a dip tank to apply the coating. The PST&L NSPS recognized explicitly saturation processes as one of the application methods in use in the PST&L industry, a subcategory of paper coaters.

USEPA intends, by this definitional modification, to subject Riverside's facility to the paper coating rule. This modification is intended to correct a perceived ambiguity in the 1980 regulation. On January 5, 1989, the IPCB held that Riverside is not a paper coater under the 1980 regulation. USEPA believes that the IPCB's decision is in direct conflict with the facts regarding what constitutes paper coating and clearly demonstrates the need to clarify the paper coating definition. Today's rulemaking is, therefore, intended to ensure the proper interpretation of the "paper coating" definition.

USEPA disagrees that this modification is contrary to the IPCB and State and Federal court rulings. Those tribunals merely interpreted the 1980 definition. They did not conclude that an impregnator was incapable of complying with the paper coating emission limitation. Under the clarified definition, these tribunals would find that Riverside is subject to the rule. Moreover, the Federal courts have never reached the issue of whether Riverside is a paper coater. Those courts merely deferred to the State's interpretation of the 1980 regulation. Thus, today's rulemaking is not contrary to the previous rulings.

The Agency has carefully considered each of the four control options identified by the commentor. The Agency agrees that coating solution reformulation, catalytic incinerators, and carbon adsorbers are not at this time reasonably available control technology for Riverside's processes. (USEPA, however, encourages Riverside and other paper coaters to pursue reformulation as a pollution prevention technique.)

In contrast to the above three control techniques, thermal incinerators are a proven control technology notwithstanding Riverside's claims to the contrary. Thermal incinerators have been used on operations that emit silicone, in some instances in amounts much greater than might be expected at Riverside. While it is true that silicone will foul heat exchanger surfaces, this is more of an inconvenience than proof of technological infeasibility or even uncertainty.

Having determined that thermal incinerators are technically feasible, USEPA then evaluated the cost of using thermal incinerators. USEPA performed their own cost estimated based upon recuperative and regenerative thermal incinerators for facilities similar to Riverside which have installed such

controls. These cost estimates do not indicate that the controls are not economically feasible.

In conclusion, the Agency disagrees that there is no control technology that is technically feasible and Riverside has not presented sufficient information to justify a finding of economic infeasibility.

Installation of water-based technology does not necessarily support a determination that the proposed limit should be waived. All paper coating operations are subject to the same limit. Riverside may choose to meet that limit using water-based technology or add-on control techniques. Although their compliance practice may result in greater emission reductions than required by the rule, this should not dictate the applicable emission limit. The Agency has determined that paper coating regulations should cover saturation operations. Thus, Riverside's saturation operations are covered by the paper coating limitation.

The commentor's claim that the amount of VOC emissions is expected to decline by perhaps as much as 80 percent over the next five years is based on a projection that market-trends would lead to a phase-down in polyester's (solvent-based) share of the laminated products market over the next five years and an increase in melamine's (water-based) share of that market. This projection may or may not occur. In fact, market conditions could change such that Riverside does not discontinue their solvent-based process lines, as acknowledged by Riverside. In any event, this is not a factor in determining whether Riverside is a paper coater and whether control technologies are technically feasible.

With respect to the emissions inventory for Riverside, USEPA wishes to note that the October 1989 version of the FIP emissions inventory was based on the latest available data tape from IEPA. IEPA has since revised their 1988 emissions inventory. These IEPA data are being used to revise the USEPA FIP inventory and result in a plantwide total of 312 tons for Riverside in the annual emission estimate prior to application of rule effectiveness guidelines.

Finally, USEPA also is concerned about the economic impacts that controls may have on small businesses. In order to evaluate individual cases, the Agency must have sufficient data on each business seeking to be exempted based on "unreasonable" economic impacts. The commentor has not provided the Agency with such information to make this determination, but is free to do so in the future in connection with a site-specific SIP revision request. Furthermore, as stated in an earlier response, the possibility that production lines "may be shut down in the near future" is an insufficient basis to conclude it is unfair to require add-on controls at this time.

6. 3M

Comment: 3M raised two issues in its comments. First, the FIP inventory for 3M's Bedford Park plant is more than twice the actual emissions. Total emissions from coating lines at the plant during calendar years 1988 and 1989 were submitted. Second, 3M asked that certain perfluorocarbon compounds be treated as exempt from regulation under the CAA, as part of USEPA's rulemaking for the Chicago area.

Response: USEPA agrees that the information provided by 3M suggests that the estimate of plantwide emissions for the Bedford Park plant in USEPA's inventory is overstated. While a more typical summer daily emission rate appears to be on the order of 50,000–60,000 pounds (rather than about 112,000 pounds, as contained in the current USEPA and IEPA inventory), USEPA cannot revise its inventory yet for the following reasons: (a) USEPA's inventory is process source-specific and 3M has only provided plantwide emissions, not process source-specific, and (b) the basis for 3M's data is unclear (*e.g.*, how was percent "EVAP" determined, how was the daily average lb/gal calculated, what is the daily operating rate). Because this rulemaking does not depend on the exact magnitude of 3M's emissions, USEPA does not believe that it is necessary to resolve these issues at this time. As USEPA and the States move forward with their planning efforts, per the Settlement Agreement and the Memorandum of Agreement, the establishment of an accurate, representative emissions inventory is critical. USEPA will continue to work with Illinois and 3M to establish an accurate emission inventory for 3M, and will require emission reductions with reference to that level.

With respect to 3M's request concerning exempt compounds, USEPA's Office of Air Quality Planning and Standards has received and is currently reviewing 3M's petition. The petition presents sufficient information to warrant USEPA's further consideration. USEPA is not prepared now, however, to determine whether to grant the petition. USEPA's decision whether the compounds at issue should be exempted from the definition of VOM, for purposes of SIP regulations and other CAA requirements, depends on several factors. USEPA must decide not only whether the compounds are reactive at all, but also whether their rate of reactivity is sufficiently slow, and the degree of reactivity sufficiently small, to warrant exemption from regulation for purposes of attaining the ozone NAAQS. This will entail the exercise of scientific and policy judgment.

USEPA fully intends to make these judgments, and act on 3M's petition, within the next year. Because the petition merits further consideration and may ultimately be granted, USEPA is extending, to one year from the date USEPA acts on 3M's petition, the date by which 3M's Bedford Park facility must comply with today's rules, to the extent the rules apply by virtue of emissions of those compounds.[**] USEPA has modified the definition of volatile organic material and volatile organic compound to reflect this extension of the effective date of the Federal regulations for these compounds. To the extent the rules would apply even excluding consideration of emissions of those compounds, the compliance date for 3M's Beford Park facility would remain July 1, 1991.

In this way, 3M's Bedford Park facility will be able to put off compliance, to the extent emissions of those compounds make it subject to the rules, until USEPA determines whether the Bedford Park facility will even need to comply with respect to those compounds. Should USEPA not act on 3M's petition within one year, it will adjust the compliance date for the Bedford Park facility further to account for that delay.

8. Abbott Laboratories

Comment: Abbott raised several concerns at the public hearing and in its initial written comments on the proposed Federal rule for pharmaceutical manufacturing. Abbott subsequently submitted a joint IEPA-Abbott proposal being introduced into the State rulemaking process and urged USEPA to modify the Federal rules consistent with the joint IEPA-Abbott proposal.

Note: IEPA also submitted a copy of the joint IEPA-Abbott proposal and expressed its desire that the final Federal rule reflect this proposal.

A number of concerns raised by Abbott at the public hearing and in its initial written comments are now moot in light of Abbott's supplemental comments,

[**] In the interim, these perfluorocarbon classes will be treated as water for the purposes of calculating the "less water" part of the coating or ink composition.

and, thus, need not be addressed here. The remaining significant issues raised by Abbott are as follows:

(a) Abbott objected to the proposed exemption levels for the air suspension coater/dryer and tunnel dryers and requested that these levels be revised. Abbott claimed that USEPA failed to justify its proposed levels for these sources.

(b) Pharmaceutical manufacturing should be listed in the generic rules as one of the exempt sources for these non-CTG categories.

(c) Abbott "questioned" USEPA's emissions inventory, but did not cite any specific concerns.

(d) Abbott expressed confusion in distinguishing between references to the letter "(l)" and the number "(1)" in the pharmaceutical manufacturing rule.

Response: USEPA has carefully evaluated the joint IEPA-Abbott proposal, which is based on the proposed Federal pharmaceutical manufacturing rule, and has concluded that it is approvable. The joint proposal is substantially similar to the proposed Federal rule. USEPA believes that the changes, as described below, are either responsive to the commentor's concerns or serve to clarify (and not to modify the intent of) the proposed rule. Consequently, USEPA believes that making these changes in the promulgated rule is appropriate (*i.e.*, reproposal is unnecessary).

The revisions being made to the proposed Federal rule for pharmaceutical manufacturing include relabeling this rule as paragraph (m) (rather than paragraph (l)), adding several definitions in paragraph (e) relevant to the pharmaceutical manufacturing rule, modifying the exemption levels for tunnel dryers and the air suspension coater/dryer, and modifying some of the recordkeeping requirements, including the addition of a provision addressing how compliance with the tons-per-year and pounds-per-day applicability criteria will be determined. USEPA acknowledges that the technical support for the proposed exemption levels was incomplete and has determined that the revised levels are appropriate based on the statement of reasons provided Abbott. The inclusion of provisions dealing with the calculation of annual emissions for the purposes of determining applicability is an important clarification, given that the test methods identified in the proposed rule only provide an estimate of short-term emissions. In addition, the list of exempt source categories in the generic rule for other emission sources at § 52.741(x) has been clarified to refer to "pharmaceutical manufacturing" and to cover a number of the other generic rules at § 52.741 (u), (v), (w), and (x).

Finally, with respect to the emissions inventory for Abbott, USEPA wishes to note that the October 1989 version of the FIP emissions inventory was based on the latest available data tape from IEPA. IEPA has since revised their 1988 emissions inventory. These IEPA data are being used to revise the USEPA FIP inventory and result in a plantwide total of 306 tons for Abbott in the annual emission estimate prior to application of rule effectiveness guidelines.

8. Allied Tube and Conduit

Comment: Allied noted that it has an existing State operating permit which allows for the use of cross-line averaging and asked USEPA to either adopt a site-specific FIP limitation for Allied, or recognize and grandfather Allied's existing operating permit, as part of the SIP.

Response: As noted above, a site-specific SIP or FIP revision is required for any daily-weighted average that includes coatings subject to different emission limits and coatings applied on different lines (*i.e.*, cross-line averaging) to ensure that the requirements of the ETPS are satisfied. Allied's comments and supporting information were reviewed and were not found to support an alternative RACT emission limitation. This information does not demonstrate that Allied's proposed limits are the most stringent limits that are technologically and economically feasible. In addition, this information does not contain an analysis indicating that Allied's operating permit includes measures requiring compliance with the provisions of the ETPS.

There is no basis for grandfathering a permit limit, based upon a daily-weighted average that is required to comply with the requirements in the ETPS, and that had not previously been submitted as a SIP revision. Allied must either present and support an alternative RACT limit through the State, based upon considerations of economic and technological feasibility, or it must propose a bubble that satisfies USEPA's ETPS. An alternative RACT limitation or bubble must be approved as part of the implementation plan.

Finally, it should be noted that Allied's State operating permit is based upon compliance with Illinois Rule 215.207, which allows compliance by the use of internal offsets. This rule is no longer part of the implementation plan with the promulgation of these Federal rules (*i.e.*, the Federal coating rule supercedes the State coating rule, which included Rule 215.207, in the implementation plan). Thus, sources may no longer comply through the use of internal offsets, absent approval of a site-specific SIP revision allowing such compliance.

9. Dietzgen

Comment: Dietzgen noted that it had an approved alternative emission limitation under the existing SIP rule. Under a 1988 Consent Decree, the company installed a carbon absorption system on two transparentizing lines. Dietzgen asked USEPA to either clarify that the alternative emission limitation demonstration provided by Dietzgen pursuant to the Consent Order would be acceptable under the proposed rules, grandfather the alternative emission limitation demonstration, or establish in the final FIP a site-specific exemption for the two transparentizing lines.

Response: It appears, based on the limited information regarding Dietzgen provided by the commentor, that the alternative emission limitation calulated by procedures contained in the Consent Order will be essentially equivalent to that calculated under § 52.741 (e)(2). Although there are several minor differences, none of these are expected to have a significant impact on the actual alternative limitation. Because of differences in the compliance methods (measuring capture efficiency), however, the demonstration of compliance by alternative emission limitations as contained in Dietzgen's Consent Order is not acceptable under the new Federal rules. Dietzgen, along with all other subject facilities, must provide USEPA with a demonstration of compliance by July 1, 1991. Therefore, although the previous alternative limitation demonstration provided by Dietzgen pursuant to the Consent Order would not be acceptable under the Federal rules, Dietzgen has until July 1, 1991, to submit and obtain USEPA approval of an adequate demonstration. In addition, USEPA does not feel it is appropriate to grandfather Dietzgen's alternative emission limitation from the new alternative emission limitation rules because all other facilities in the same situation will have to submit new demonstrations and there is no reason to establish a site-specific exemption for the two transparentizing line because the carbon adsorber which controls emissions from these lines appears to be adequate to comply with Federal rules.

10. Viskase Corporation

Comment: Viskase raised the following issues in its comments:

(a) The proposed generic rule in the FIP would apply an 81 percent control requirement to emissions at Viskase's

Bedford Park facility. There is no information in the record that considers the technical feasibility or economic reasonableness of such controls.

(b) Viskase referred to a pending SIP revision before the IPCB which concludes that add-on controls for carbon disulfide emissions from the company's viscose casing manufacturing process are not RACT. RACT, as determined by the IPCB, consists of reductions of carbon disulfide emissions by 33 percent from the 1988 permitted emissions level of 1476 TPY, and a seasonal reduction of 45 percent during the peak ozone season months. These reductions would be achieved through a combination of process changes, controls on minor emission sources, and production scheduling and emission source shutdowns.

(c) A recent BACT analysis performed for Viskase's only domestic competitor, also located in Illinois, demonstrated that best control technology for this company's new casing line would not consist of add-on controls. This conclusion was based on a finding that the technology was unproven and too expensive on a cost per ton of control basis to represent BACT. Because RACT is on the lowest rung of the control ladder, no control as BACT means no control as RACT. In another control technology evaluation for a related viscose process (NSPS for new rayon manufacturing plants), USEPA found that thermal incineration control would be "exorbitantly costly" for controlling carbon disulfide emissions. On the basis of this finding, USEPA decided not to proceed with the development of a rayon NSPS.

(d) Thermal incineration, the only VOC control technology that is potentially feasible for controlling carbon disulfide emissions at Viskase, is not economically reasonable. Viskase stated that the costs for incineration are of such magnitude that they could not be borne by the Bedford Park facility and, rather than incur such excessive capital and operating costs, Viskase would close the plant and move production to other plants located outside the United States.

(e) Many of the reasons cited by USEPA for exempting certain source categories from the Federal generic rule are also applicable to the viscose cellulose casing process.

(f) Calculation of the cost effectiveness of emission controls at full production grossly underestimates the actual cost effectiveness for a typical production year.

(g) Viskase believes that USEPA should either act to approve the RACT determination now pending, which would constitute an alternative plan that has been approved by USEPA as a SIP or FIP revision, or delete the viscose cellulose casing process from the scope of the Federal generic rule.

Response: USEPA is still considering the need to establish site-specific emission limitations and standards, as alternative to the Federal Generic Rule, for Viskase in response to their public comments. The highly technical, source-specific nature of these comments (*e.g.*, there is only one other company which manufactures cellulose food casings besides Viskase in the United States) will take additional time for USEPA to review and respond to. The need to promulgate Federal regulations under the tight timeframe ordered by the Court has prevented USEPA from being able to consider fully the merits of the proposed, alternative site-specific limits. Although for environmental and equity reasons, USEPA believes that it is necessary to establish emission limitations and standards for all sources at this time, USEPA will continue to consider the need to adopt as Federal measures site-specific limits for Viskase. As such, USEPA is deferring the effective date of these Federal rules for Viskase until January 1, 1991, in order to allow additional time for its consideration of this matter. Among other factors, USEPA will consider whether Viskase has demonstrated, consistent with USEPA's "Analytical Methods Manual", its claim that add-on controls are not affordable. If determined to be appropriate, then USEPA will propose revised Federal limits at a later date.

11. Outboard Marine Corporation

Comment: Outboard Marine Corporation (OMC) stated that USEPA has improperly deleted the exemption for OMC, which was previously proposed for approval, without providing any justification.

Response: USEPA's rationale was provided in the NPR and the docket (see Blue Book and the Region V's Response to Comments document). In brief, the State's proposed exemption level of 35 tons per year is not consistent with the exemption level in USEPA's RACT guidance for coating operations (*i.e.*, 10 tons per year based on maximum theoretical emissions before add-on controls, 15 pounds per day based on actual emissions before add-on controls, or 3 pounds per hour based on actual emissions before add-on controls) and the State has not provided a 5 percent analysis to demonstrate that there is no significant difference between its exemption level and the exemption level in USEPA's RACT guidance.[1] The commentor provided no information to support its objection, but is free to do so in the future in connection with a site-specific SIP revision request. Consequently, USEPA will be taking final action to disapprove the State's coating rule for marine propulsion equipment.

III. Action on State Rules

Illinois has submitted several revisions to its ozone SIP in USEPA in recent years. The revisions have been prompted either by Federal guidance and notices (to correct deficiencies in existing federally approved rules or to provide rules for certain source categories for which no federally approved rule exists), or by industry petitions to the State for alternative emission limitations. A summary of these submittals and USEPA's final rulemaking actions is provided below. A more detailed explanation of the State rules and more detailed justification for USEPA's action on them are contained in the Technical Support Documents and in the information contained in the file for this rulemaking.

A. Final Disapproval

1. High Gloss Catalyzed Coatings (Subpart F, Section 215.204(c))

On March 20, 1988, Illinois submitted a revised surface coating rule which relaxes the existing federally approved SIP emission limitations from 2.9 to 3.5 pounds per gallon for "specialty high gloss catalyzed coatings". The rule currently applies to Classic Finishing Company in Chicago. The State has not demonstrated that the revised limit is consistent with RACT. No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is disapproving the revised rule in final.

2. Marine Propulsion Equipment (Subpart F, Section 215.206(b))

On June 25, 1987, Illinois submitted a revised surface coating rule which deleted the exemption for the exterior of airplanes and marine propulsion equipment in the definition of "miscellaneous metal parts and products". The revised rule also provides an exemption for the Outboard Marine Corporation's (OMC) Waukegan facility so long as its VOC emissions from miscellaneous metal coating operations do not exceed 35 tons per year. As noted above, USEPA disapproved the revised rule because the State's exemption level is not consistent with USEPA's RACT guidance and the State did not provide a 5 percent analysis to support its alternative exemption level. One commentor objected to USEPA's proposed action on this rule, but did not provide any information that would justify approving the existing State rule. Therefore, USEPA is disapproving the State rule in final.

3. Power Driven Fastener Coating (Subpart F, Section 215.204(j)(4))

On March 28, 1988, Illinois submitted a revised surface coating rule which treats exempt solvents the same as water (*i.e.*, emission limits have been changed from pounds VOC per gallon of coating less water, to pounds VOC per gallon less water and exempt solvents) and relaxes the emission limitations for "power driven fastener coatings" from the emission limitations in the otherwise applicable miscellaneous metal parts and products rule. The rule currently applies only to Duo-Fast Corporation in Franklin Park. Although the treatment of exempt solvents is acceptable, the State has not demonstrated that the revised limits are consistent with RACT. One set of public comments was received from Duo-Fast on USEPA's proposed action on this rule. Based on its review of these comments (see "Duo-Fast" in section II.), USEPA maintains that the existing State rule is not consistent with RACT and, therefore, cannot be approved. Consequently, USEPA is disapproving the State rule in final.

4. Generic Rule (Subparts AA, I, PP, QQ, RR)

On July 21, 1988, Illinois submitted a "generic" rule which establishes control requirements for major sources not currently subject to CTG regulations. The State rule is not acceptable because the method of determining what constitutes a major non-CTG source is not consistent with USEPA RACT guidance. For example, the State rule applies only to sources which emit 100 tons or more per year of VOC if no air pollution control equipment were used. According to the RACT guidance, the emissions levels must be based on the maximum theoretical emissions (design capacity or maximum production), not actual emissions, before add-on controls. Several public comments were received on USEPA's proposed action on this rule. Based on its review of these comments (see section II), USEPA still believes that the existing State rule is not consistent with RACT and, therefore, cannot be approved. Consequently, USEPA is disapproving the State rule in final.

5. Synthesized and non-CTG Pharmaceutical Manufacturing (Subpart A, Section 215.102 and Subpart T)

On May 26, 1988, Illinois submitted a rule which establishes control requirements for synthesized and non-CTG pharmaceutical manufacturing. The rule currently applies only to Abbott Laboratories in North Chicago and Abbott Park. The rule is not acceptable because the method for determining the vapor pressure of mixtures is both sufficiently ambiguous so as to be unenforceable and allows an interpretation that would include the contribution of water vapor (which is contrary to USEPA's RACT guidance). In addition, there are other unenforceable provisions within subpart T. One set of public comments was received from Abbott on USEPA's proposed action on this rule. Based on its review of these comments (see "Abbott" in section II.), USEPA still believes that the existing State rule is not consistent with RACT and, therefore, cannot be approved. Consequently, USEPA is disapproving the State rule in final.

6. Printing and Publishing (Subpart H, Section 215.245)

On March 3, 1988, Illinois submitted a revised rule for printing and publishing (graphic arts) for the nonattainment counties. The revised rule lowers the exemption level for rotogravure and flexographic printing presses to 100 tons per year when averaged over the preceding 3 calendar years and requires packaging rotogravure printing presses (wishing to comply by installing add-on control equipment) to have a combined capture and control system reduction of at least 65 percent. For the reasons discussed previously, 3-year averaging is not consistent with the RACT requirements. In addition, applicability must be based on maximum theoretical, not actual, emissions (in the absence of add-on control equipment). One set of public comments was received on USEPA's proposed action on this rule. Based on its review of these comments (see section II), USEPA still believes that the existing State rule is not consistent with RACT and, therefore, cannot be approved. Consequently, USEPA is disapproving the State rule in final.

7. Internal Offset Rule (Subpart F, Section 215.207)

On March 28, 1988, Illinois submitted a revised internal offset rule which attempts to correct the deficiencies cited by USEPA in its July 11, 1985, proposed disapproval of the rule. In the revised rule, allowable emissions are now determined on a solids basis and the formula for determining actual and allowable emissions has been corrected. The revised rule still suffers from two problems: (1) The methods or procedures used to determine emissions are contained only in operating permits which are not federally enforceable and have an expiration date (*i.e.*, it cannot be assured that the methods or procedures will continue to be used after the operating permit expires), and (2) the rule does not explicitly ensure that the emission plans for internal offsets must meet the principles of USEPA's ETPS and must be submitted to USEPA for approval as a SIP revision. Several sets of public comments were received on USEPA's proposed action on this rule. Based on its review of these comments (see section II), USEPA still believes that the existing State rule cannot be approved for the reasons noted above. Consequently, USEPA is disapproving the State rule in final.

8. Clarification of 3-Year Averaging (Subpart A, Section 215.107)

On August 21, 1987, Illinois submitted a revision to the applicability section of its rules which clarified the 3-year averaging criterion used in the rules for graphic arts (subparts H and P) and bulk gasoline plants (subpart Y). Because 3-year averaging is not consistent with the RACT requirements, this revision, as well as the relevant portions of the rules for graphic arts and bulk gasoline plants, is not acceptable. No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is disapproving the revised rule. (As noted below, USEPA is promulgating revisions to correct this deficiency in the graphic arts and bulk gasoline plant rules.)

9. Diesel-Electric Locomotive Coating (Subpart F, Section 215.204(m))

On July 29, 1988, Illinois submitted a revised surface coating rule which relaxes the emission limitations for "existing diesel-electric locomotive coating lines in Cook County" from the emission limitations in the otherwise

[1] As noted in the NPR, OMC previously provided a demonstration which purports that it is infeasible for it to comply with the emission limitations for MMPP. Because USEPA previously proposed to approve the State rule based on this demonstration, USEPA believes that there is merit to OMC's claim that compliance with the applicable MMPP limitation in this case may not be reasonable and encourages the State to consider a site-specific emission limitation and standard for the OMC Waukegan facility. The State should submit adequate technical and economic data to support the claim that any alternative limitation is RACT for OMC, and that such alternative RACT limit will not adversely effect the State's efforts to demonstrate attainment of the ozone NAAQS in the Chicago area.

applicable miscellaneous metal parts and products rule. The rule currently applies to GM–EMD in Cook County. USEPA proposed to disapprove the State rule because the State had not demonstrated that the revised limits are consistent with RACT. Several public comments were received on USEPA's proposed action on this rule (see "GM–EMD" in section II). Based on its review of these comments, USEPA still believes that the existing State rule is not consistent with RACT and, therefore, cannot be approved. Consequently, USEPA is disapproving the State rule in final.

B. Final Approval

1. Definitions (Part 211, Subpart B, Section 211.122)

On January 8, 1988, Illinois submitted definitions for gas service, liquid service, volatile organic liquid, and volatile organic material. The definitions for gas service, liquid service, and volatile organic liquid are consistent with USEPA's RACT guidance. The revised definition of volatile organic material eliminates the reference to any vapor pressure cutoff and identifies seven additional exempt compounds with negligible photochemical reactivity and is generally consistent with the model definition in USEPA's RACT guidance. No public comments were received on USEPA's proposed action on this rule. Thus, USEPA is approving these definitions. Although USEPA is approving the State definitions, USEPA is also promulgating a comprehensive set of definitions in the General Provisions section of the Federal rule, which includes these same terms. As noted in section II, the applicable definitions in the implementation plan will then consist of the federally approved definition portions of the State rule (§§ 201.102, 211.122, and 215.104) and the Federal General Provisions sections. The Federal definitions will supersede, for the purposes of the Federal rules, the definitions for terms included in §§ 201.102, 211.122, or 215.104 where the same term is defined. Thus, the Federal definitions for these terms, which is substantially similar to the revised State definition, is the federally enforceable definition for this term for the purposes of the Federal rules.

2. SOCMI Air Oxidation (Subpart V)

On December 22, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for SOCMI air oxidation processes. The new rule is consistent with the December 1984 CTG document entitled "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry". No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving the revised rule in final.

3. SOCMI Leaks (Part 211, Subpart B, Section 211.122, Part 215, Subpart A, Section 215.104, and Part 215, Subpart Q)

On May 2, 1988, Illinois submitted a revised rule for leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, including definitions for component, in-vacuum service, open-ended valve, and repaired. Except for certain monitoring provisions, the revised rule is consistent with USEPA's RACT guidance and is, therefore, approvable. Because certain monitoring exemptions in section 215.432 are not appropriate and an alternative monitoring program in section 215.436 is authorized without USEPA approval, USEPA cannot approve these portions of the rule. No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving in final the revised SOCMI leak rule, except for §§ 215.432 and 215.436 which USEPA is disapproving in final.[22] USEPA is promulgating a Federal rule covering monitoring for SOCMI leaks.

4. Polystyrene Plants (Subpart A, Section 215.104 and Subpart BB)

On October 2, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for polystyrene plants. The rule also included definitions for continuous process, material recovery section, polystyrene plant, polystyrene resin, styrene devolatizer unit, and styrene recovery unit. The new rule is consistent with the November 1983 CTG document entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" and the January 9, 1986, memorandum entitled "Clarification of CTG RACT Recommendation for High-Density Polyethylene, Polypropylene, and Polystyrene". No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving the revised rule in final.

[22] On September 25, 1989, Illinois submitted a revision to its SOCMI leak rule. This revision will be addressed by USEPA in a future Federal Register notice.

5. Heatset Web Offset (Subpart P, Section 215.406)

On September 28, 1987, Illinois submitted emission limitations and compliance schedules for heatset web offset lithographic printing. The applicability criteria, emission limits, and compliance schedule are consistent with the August 1981 draft CTG document entitled "Control of Volatile Organic Compound Emissions from Full-Web Process-Color Heatset Web Offset Lithographic Printing" and other USEPA guidance on RACT for major non-CTG sources in nonattainment areas. No public comments were received on USEPA's proposed action on this rule. Although USEPA is approving the State rule for heatset web offset printing, USEPA is also promulgating a comprehensive Federal rule for graphic arts. The Federal rule will include a heatset web offset regulation substantially similar to the State rule. The Federal rule will represent the applicable federally enforceable rule. This is appropriate because the heatset web offset provisions are inextricably linked to other graphic arts provisions that USEPA is promulgating.

6. Alternative Emission Limitations (Subpart F, Section 215.205)

On January 8, 1988, and March 28, 1988, Illinois submitted a revised rule concerning alternative emission limitations for coating operations. The revision establishes an overall control efficiency requirement of 81 percent, except for can coating operations (where the control requirement remains at 75 percent). This revision is supported by the April 1981 study entitled "Determination of Capture and Destruction Efficiencies of Selected Volatile Organic Compound Control Devices in the State of Illinois" and generally satisfies the concerns cited by USEPA in its prior conditional approval of Illinois' RACT I regulations (45 FR 11494). No public comments were received on USEPA's proposed action on this rule. Although USEPA is approving the revised State rule, USEPA is also promulgating a comprehensive Federal rule for coating operations. The Federal rules will include a provision for alternative emission limitations similar to the State rule. The Federal rule will represent the applicable federally enforceable rule. This is appropriate because the alternative emission limitation provisions are inextricably linked to other coating operation provisions that USEPA is promulgating.

7. External Floating Roofs (Subpart H, Sections 215.240, 241, 249 and Subpart B, Section 215.124)

On August 21, 1987, Illinois submitted a revised rule which modified the exemption for stationary crude oil storage tanks equipped with an external floating roof regarding the requirement to use secondary seals. The revised rule limits the exemption to tanks used to store crude oil with a pour point of 50 °F or higher as determined by ASTM Standard D97–66. This revision is consistent with the December 1978 CTG document entitled "Control of Volatile Organic Emissions for Petroleum Liquid Storage in External Floating Roof Tanks". No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving the revised rule in final.

8. Gasoline Tank Trucks and Vapor Collection Systems (Part 211, Subpart B, Section 211.122 and Part 215. Subpart Y, Sections 215.582–215.584)

On August 21, 1987, Illinois submitted revised rules for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing stations; a new rule for gasoline delivery vessels; and a definition for vapor collection system. These rules establish requirements for leak prevention from gasoline tank trucks and vapor collection systems. These regulations satisfy USEPA guidance for leak testing and repair of gasoline tank trucks and vapor collection systems. The State has also adopted USEPA-approved test methods for use with these rules. The revised rule for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing facilities establishes operating and repair requirements for vapor collection systems consistent with the December 1978 CTG document entitled "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems". No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving the revised rule in final.

9. Petroleum Dry Cleaning (Subpart Z, Sections 215.607–613)

On June 25, 1987, Illinois submitted a rule which establishes control requirements, testing and monitoring provisions, and compliance dates for large petroleum dry cleaners. The new rule is consistent with the September 1982 CTG document entitled "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners" and relevant USEPA guidance on test methods and expeditiousness. No public comments were received on USEPA's proposed action on this rule. Consequently, USEPA is approving the revised rule in final.

10. Miscellaneous

Compliance Dates, Geographical Areas, and Compliance Plans: On July 11, 1985 (50 FR 28224), USEPA proposed to approve a portion of the State's RACT rules, including several sections related to compliance dates, geographical areas covered by the rules, and compliance plans (i.e., subpart B, sections 215.125 and 215.126; subpart R, section 215.453, subpart S, sections 215.465 and 215.466; and subpart Z, sections 215.604, 215.606, 215.612, and 215.613). USEPA is approving these sections in final at this time. Because the compliance dates have long passed, the geographical areas are consistent with the remainder of the State's RACT rules and the Federal rules, and the requirement to submit compliance plans to the State has been in place for several years, USEPA believes that its final approval of these portions of the State rule will not impose any significant impact.

11. Miscellaneous

Definitions: On July 11, 1985 (50 FR 28224), USEPA proposed to approve 28 definitions related to the State's RACT II rules, including rules for petroleum refining fugitive emissions, rubber tire manufacturing, and perchloroethylene dry cleaning. In the notice of final rulemaking on these three rules (52 FR 45333, November 27, 1987), USEPA inadvertently omitted the definitions from the codification of the revised plan. USEPA is approving 13 of these definitions in final at this time. The approved definitions are bead-dipping; dry cleaning facility; external floating roof; green tire spraying; green tires; heavy liquid; liquid mounted seal; pneumatic rubber tire manufacturing; refinery unit, process unit, or unit; tread end cementing; undertread cementing; valves not externally regulated; and vapor mounted primary seal. Further action on 11 of the definitions (air dried coating, clear coating, extreme performance coating, flexographic printing, heavy off-highway vehicle products, low solvent coating, packaging rotogravure printing, publication rotogravure printing, roll printing, rotogravure printing, and transfer efficiency) is unnecessary at this time. All of these terms relate to either the surface coating or the printing and publishing rules. Because USEPA's promulgation of comprehensive Federal rules for surface coating and printing and publishing includes these definitions, the State's definitions are not relevant. (Note, the remaining definitions—component, gas service, liquid service, and volatile organic material—have been superseded by later State submittals, as noted above.)

IV. Federal Rules

A. Overview of Rules

USEPA is promulgating Federal rules under section 110(c) to correct all of the deficiencies described in Exhibit B of the settlement agreement. These Federal rules modify the following stationary source category rules to bring them into conformance with RACT requirements as interpreted by USEPA guidance:

Solvent Metal Cleaning;
Coating Operations, including automobile or light duty truck, can, paper, coil, fabric, vinyl, metal furniture, large appliance, magnet wire, MMPP, diesel-electric locomotive (i.e., GM–EMD), heavy off-highway vehicle products, and wood furniture;
Printing and Publishing Operations, including flexographic and rotogravure printing, and heatset web offset lithographic printing;
SOCMI Leaks;
Petroleum Refinery Leaks;
Pharmaceutical Manufacturing;
Bulk Gasoline Plants; and
Major Non-CTG Sources (Generic Rules), including paint and ink manufacturing, miscellaneous fabricated product manufacturing, miscellaneous formulation manufacturing, miscellaneous organic chemical manufacturing, and other emission sources.

In addition to the Federal rules promulgated for these stationary source categories, USEPA is promulgating revised General Provisions. This section includes new or revised definitions, revised test methods and procedures, a seasonal exemption only for gas-fired afterburners, a requirement that any alternative emission limitation or variance must be submitted to and approved by USEPA, and more specific procedures for determining the vapor pressure of organics.

The approach followed by USEPA today consists of new Federal rules which replace part or all of the individual State rules that have been federally approved. These new Federal rules would just correct the RACT deficiencies identified previously. The resultant plan for Illinois consists of some federally approved (State) rules and some federally promulgated (Federal) rules. USEPA believes that this approach provides the best model for the State to secure eventually a total federally approved SIP by highlighting the changes Illinois must make to its rules.

It should be noted that under section 110(d) of the CAA and USEPA's

Continuity Policy the existing federally-approved SIP regulations for any source will continue to apply, and be fully enforceable, until the date on which the source is required to comply with the new regulations. Further, the existing SIP will continue in force if there is any delay or lapse in the applicability of the new regulations. However, if (but only if) the existing and new regulations conflict, so that a source cannot comply with the existing SIP while moving toward compliance with the new regulations, the source may apply for a site-specific exemption from the existing SIP from the State. All such exemptions granted by the State must be submitted to and approved by USEPA before such exemption from the SIP is in effect.

A summary of each rule being promulgate today is provided below.

1. Solvent Metal Cleaning

The Federal rule eliminates the exemption for solvent metal cleaning operations that emit less than 6.8 kg/day (15 lbs/day) and 1.4 kg/hr (3 lbs/hour). As noted previously, such an exemption is inconsistent with USEPA's RACT guidance. Because elimination of this exemption will subject some new sources to the solvent metal cleaning rule, new compliance schedules will be added which require these newly subject facilities to be in compliance by July 1, 1991. A section on test methods has also been added which specifies the most current USEPA-approved test methods.

2. Coating Operations

The Federal rule establishes a complete rule for the following coating operations: paper coating, fabric coating, can coating, coil coating, miscellaneous metal parts and products coating, automobile or light-duty truck assembly-line coating, vinyl coating, magnet wire coating, metal furniture coating, wood furniture coating, large appliance coating, existing diesel-electric locomotive coating (i.e., GM–EMD), and heavy off-highway vehicle products coating. The rule applies to coating operations (except wood furniture coating) with actual emissions more than 15 pounds per day before add-on control. (Wood furniture coating operations with maximum theoretical emissions greater than 100 TPY, in the absence of add-on control equipment, are subject to the rule.) The rule provides a restricted exemption (which the State rule does) for equipment used for both printing and paper coating. (The equipment must be subject to either the paper coating or graphics rule, but not both.) According to the Federal rule, emission limitations are expressed in units of VOC per gallon of coating (minus water and exempt solvents) and reflect either instantaneous or daily-weighted averages. In addition, the rule requires that alternative emission limitations (for sources wishing to comply using add-on controls) be expressed as pounds of VOC per gallon of solids. Sources wishing to comply using internal offsets or cross-line averaging are required to satisfy the requirements of the ETPS, including the submittal of a site-specific plan revision to USEPA. Improved recordkeeping and reporting requirements are also included in the Federal rule.

3. Printing and Publishing (Graphic Arts)

The Federal rule requires printing and publishing operations to use instantaneous or daily averaging in calculating emissions, along with the most current test methods. Exemption levels are based on single calendar year maximum theoretical emissions, not a 3-year average of actual emissions, as in the current State rule. Improved recordkeeping and reporting requirements are included in the Federal rule.

4. SOCMI Leaks

The Federal rule requires synthetic organic chemical and polymer manufacturers to monitor additional equipment components with low accessibility for VOC leaks on an annual basis. The rule also requires that any alternative leak detection program undergo prior USEPA approval as a plan revision, so USEPA can ensure that the alternative program is indeed equivalent in effect to the otherwise applicable program.

5. Petroleum Refinery Leaks

The Federal rule requires petroleum refineries to monitor "inaccessible" valves (*i.e.*, valves with difficult accessibility) annually and to monitor certain components more frequently than is required under the State rule. The rule also requires that any alternative leak detection program undergo prior USEPA approval as a plan revision, so USEPA can ensure that the alternative program is indeed equivalent in effect to the otherwise applicable program. In addition, the rule establishes dates for the submittal of a revised monitoring program plan and of the first monitoring report.

6. Pharmaceutical Manufacturing

The Federal rule for pharmaceutical manufacturing specifies applicability provisions, testing and monitoring, control equipment, and recordkeeping requirements for both synthetic and non-CTG pharmaceutical manufacturing operations. The rule generally applies to sources emitting either: (a) More than both 6.8 kg/day (15 lbs/day) and 2,268 kg/yr (2.5 TPY), or (b) more than 45.4 kg/day (100 lbs/day). Control equipment other than surface condensers must achieve reductions of at least 61 percent.

7. Bulk Gasoline Plants

The Federal rule changes the gasoline throughput exemption for bulk gasoline plants from 350,000 gallons per year and 1,000,000 gallons per year averaged over the preceding 3 calendar years to 4,000 gallons per day on a 30-day rolling average.

8. Major Non-CTG (Generic) Rules

USEPA's interpretation of the stationary source RACT requirements calls for the control of all major facilities (*i.e.*, greater than 100 TPY). All major sources covered by a CTG are discussed above. To cover all major non-CTG sources, USEPA has developed five generic non-CTG rules based on the State's rules. These five rules would regulate VOC emissions from paint and ink manufacturing processes, miscellaneous fabricated product manufacturing processes, miscellaneous formulation manufacturing processes, miscellaneous organic chemical manufacturing processes, and other major non-CTG emission sources. (Note: USEPA's pharmaceutical manufacturing rules include non-CTG pharmaceutical manufacturing operations and USEPA's coating rules include non-CTG source category (*i.e.*, wood furniture coating).)

The Federal rule for paint and ink manufacturing operations would apply to plants that have maximum theoretical emissions of 100 TPY or more of VOC emissions from non-CTG sources, or that produce more than 7,570,820 liters (2,000,000 gallons) per year of paints and inks which contain less than 10 percent by weight of water, and ink formulations not containing as the primary solvents water, Magie oil, or glycol. In addition, storage tanks containing volatile organic liquids with a vapor pressure greater than 10 kilopascals (kPa) would have to be equipped with pressure/vacuum conservation vents, and tanks larger than 946 liters (250 gallons) would have to be submerged filled or bottom filled.

The rules for miscellaneous formulation manufacturing processes, miscellaneous fabricated product manufacturing processes, and miscellaneous organic chemical manufacturing processes apply to such processes that are not regulated under any of the other specific source categories. Facilities with total maximum theoretical emissions of 100 TPY or more from both non-CTG sources and unregulated CTG sources would be regulated, with an exemption for smaller individual sources. A provision for determining compliance based on current USEPA methods has also been added.

The rule for "other emission sources" is similar to the rules for the three miscellaneous categories. The rule is intended as a catch-all for any other major non-CTG source which may not be subject to the four generic rules discussed above. Consistent with the State's rule, the Federal rule exempts sewage treatment plants, vegetable oil processing facilities, coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), production of polystyrene foam insulation board (not including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.[23]

Finally, USEPA is also promulgating specific recordkeeping and reporting requirements which would apply to the three miscellaneous category rules, and the other emision source rule.

9. General Provisions

The General Provisions section in the Federal rule contains requirements and clarifications which affect the other sections of the VOC rule. The main elements of this section are: Definitions, Test Methods, Determination of Vapor Pressure, Compliance Dates, and Alternative Compliance Determinations. A comprehensive list of definitions is contained, including definitions which correct the relevant deficiencies in the State rule and which clarify the Federal rule.

Note: definitions not included in the Federal rule, but which are contained in the existing federally approved State rule remain as part of the implementation plan.

Test methods and procedures are specified for coatings, inks, and fountain solutions; automobile or light-duty truck coating operations (including a transfer efficiency test protocol); capture system efficiency test protocols; control device efficiency testing and monitoring; overall efficiency; VOC gas phase source test methods; VOC leak detection methods; bulk gasoline delivery system test protocols; and solvent metal cleaning VOC emissions. Specific procedures for determining vapor pressure have also been added to the Federal rule. Compliance with the promulgated rules is required by July 1, 1991, unless otherwise indicated in the individual source category rules. Any exemptions, variance, or alternatives to the control requirements or test methods are federally effective only if submitted to and approved by USEPA as a plan revision.

In addition, the General Provision section contains a seasonal exemption for afterburners. In the Federal rule, an exemption is provided only for natural gas-fired afterburners during the period of November 1 through April 1.

C. Summary of Changes to Proposed Rules

Based on the public comments and upon further consideration, USEPA has determined that certain changes to the proposed rules are appropriate, as discussed above. A summary of the significant changes is provided below:

(a) General Provisions

**Revised:* References to ASTM methods to reflect current version:

(1) Abbreviations and Conversion Factors

**Deleted* BTU and RACT (see Definitions)

(2) Applicability

(3) Definitions

**The applicability of the Federal definitions will be limited to the Federal rules.

**Revised:* Actual emissions, afterburners, air dried coatings, allowable emissions, as applied, automobile or light-duty truck assembly (manufacturing) plant, binders, bulk gasoline plant, can, coating applicator, coating line, coating plant, condensate, control device emission source, enclose, exterior base coating (coat), exterior end coating (coat), federally enforceable, final repair coat, fixed roof tank, gasoline, heavy liquid, interior body spray coating (coat), magnet wire coating, maximum theoretical emissions (potential emissions/potential to emit), metal furniture coating, overvarnish, petroleum refinery, plant, prime coat, printing line, publication rotogravure printing line, roll coater, roll printer, sealer, source, specified air contaminant, submerged loading pipe (submerged fill pipe), topcoat, vapor recovery system, vinyl coating, volatile organic compound, and volatile organic material.

**Added:* Accelacota, air suspension coater/dryer, airless spray, air-assisted airless spray, brush or wipe coating, capture, capture device, capture efficiency, control device efficiency, electrostatic bell or disc spray, electrostatic spray, gas/gas method, heated airless spray, hood, hood capture efficiency, liquid/gas method, lithographic printing line, magnet wire, multiple packaging coatings, organic compound, overall control, pharmaceutical coating operation, printing, refrigerated condenser, roller coating, and tablet coating operation.

**Deleted:* Actual heat input, agency, ambient air, British thermal unit, building, structure, facility, or installation, emission rate, electrostatic application, electrostatic coating, emissions unit, can-seam spray, complete combustion, excess air, flow coating, furniture coating application line, graphic arts coating facility, graphic arts coating line, gross heating value, heavy off-highway vehicle, interior base coating, liquid-mounted primary seal, petrolem liquid, photochemically reactive material, pressure tanks, reasonably available control technology, refinery, vapormounted primary seal, varnishes, and volatile petroleum liquid.

(4) Testing Methods and Procedures

*(ii) Has been retitled "Automobile or Light-Duty Truck Test Protocol"

*Specific procedures for determining capture efficiency have been included in (iii) based on the final guidance document.

*The provision for alternative, equivalent test methods in (i)(B)(*4*) has been clarified and a comparable provision has been added in (vi) for VOM Gas Phase Source Test Methods.

*Reference to "fixed-bed carbon adsorption system" in (vi)(A) has been

[23] USEPA is still considering the need to establish site-specific emission limitations and standards, as alternative to the Federal Generic Rule, for two plants (Allsteel in Kane County and Viskase in Cook County) in response to the public comments received from these companies. The highly technical, source-specific nature of these comments (*e.g.*, there is only one other company which manufactures cellulose food casings besides Viskase in the United States and the feasibility of complaint adhesives for metal furniture manufacturing operations such as Allsteel has not been established) will take additional time for USEPA to review and respond to. As noted above, the need to promulgate Federal regulations under the tight timeframe ordered by the Court has prevented USEPA from being able to consider fully the merits of these two proposed, alternative site-specific limits. Although for environmental and equity reasons, USEPA believes that it is necessary to establish emission limitations and standards for all sources at this time, USEPA will continue to consider the need to adopt as Federal measures site-specific limits for these two sources. USEPA has delayed the effective date of these rules until January 1, 1991, for these two sources to allow the Agency time to fully analyze the proposed alternative limits. If determined to be appropriate, then USEPA will propose revised Federal limits at a later date.

changed to simply "carbon adsorption system".

*(iv)(B)(*2*) has been modified to allow the VOM concentration of exhaust to be monitored, as alternative to the temperature rise across the catalytic afterburner bed.

*Deleted (ix), not necessary for the Federal rules

*Clarification on use of liquid/liquid test protocol in (v)(A) has been added

(5) Compliance Dates

*The compliance date for these Federal rules has been revised from April 1, 1991, (and in certain cases, the date of promulgation), to July 1, 1991

(6) Afterburners

(7) Exemptions, Variances and Alternative Means of Control

*Retitled to cover "Compliance Determinations" also

(8) Vapor Pressure of Volatile Organic Liquids

(9) Vapor Pressure of Organic Material or Solvent

(10) Vapor Pressure of Volatile Organic Material

(b)–(c) [Reserved]

(d) Solvent Cleaning

(1) Solvent Cleaning in General

(2) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991.

(3) Test Methods

(e) Coating Operations

(1) Emission Limitations for Manufacturing Plants

*(i)(M) has been retitled "Existing Diesel-Electric Locomotive Coating Lines in Cook County"

*More definitive compliance provisions for automobile or light-duty truck coating operations have been noted in (i)(A)(*3*)

*The term "C_i" has been corrected to be "L_i" in the denominator in the equation in (ii)(C)(*2*)

(2) Alternative Emission Limitations

*Afterburners have been added to the list of control devices in (i)(B)

(3) Exemptions from Emission Limitations

(4) Exemption from General Rule on Use of Organic Material

(5) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991.

(6) Recordkeeping and Reporting

*All references to April 1, 1991, have been revised to July 1, 1991.

*All references to the "start-up of a new coating line" have been revised to the "initial start-up of a new coating line"

*The requirement to collect and record the weight of VOM per volume of coating solids as applied each day on each coating line has been changed to only apply to sources complying pursuant to (2)(i)(B)

*More explicit recordkeeping requirements have been added in (ii)(A) and (ii)(B) and the reporting provisions of (ii)(C)(*1*) have been modified for sources subject to (i)(A)(*3*). A recertification provision has been added for sources subject to (i)(A)(*3*).

(f)–(g) [Reserved]

(h) Printing and Publishing

(1) Flexographic and Rotogravure Printing

*Definition of "V_{VOM}" in (ii) has been corrected

(2) Applicability

(3) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991. Also, the requirement for immediate compliance in (v) has been deleted.

*(ii), (iii), (iv) have been modified to include reference to (1)(i), (1)(ii), and (1)(iii), respectively

(4) Recordkeeping and Reporting

*The requirement in (iv)(B)(*1*) has been deleted

*All references to the "start-up of a new printing line" have been revised to the "initial start-up of a new printing line"

(5) Heatset Web Offset Lithographic Printing

*All references to the "start-up of a new printing line" have been revised to the "initial start-up of a new printing line"

*All references to April 1, 1991, have been revised to July 1, 1991. Also, the requirement for immediate compliance in (iv)(D) has been deleted.

*(iv)(B) and (iv)(C) have been modified to include reference to (ii)(A) and (ii)(B), respectively.

(i) Leaks From Synthetic Organic Chemical and Polymer Manufacturing Equipment

(1) Inspection Program for Leaks

(2) Alternative Program for Leaks

(j) Petroleum Refining and Related Industries: Asphalt Materials

(1) Monitoring Program for Leaks

(2) Alternative Program for Leaks

(3) Compliance Schedule for Leaks

*Revised dates from June 1, 1990, to September 1, 1990, and from July 1, 1990, to October 1, 1990

(k)–(l) [Reserved]

(m) Pharmaceutical Manufacturing

*Revised to "(m) PHARMACEUTICAL MANUFACTURING

(1) Applicability

*Revised exemption levels for air suspension coater/dryer and tunnel dryer

*Added requirements in (vi) that sources be controlled at all times and in (vii) that controls be operated at all times

*Added method in (viii) for calculating daily and annual emissions for applicability purposes

(2) Control of Reactors, Distillation Units, Crystallizers, Centrifuges, and Vacuum Dryers

*Clarified enclosure restriction

(3) Control of Air Dryers, Production Equipment, Exhaust Systems, and Filters

*Clarified enclosure restriction

*Deleted (iii), in view of addition in (1)(vi)

(4) Material Storage and Transfer

*Deleted provision in (ii) concerning alternative control devices

*Deleted provision in (iii), in view of addition in (1)(vii)

(5) In-Process Tanks

(6) Leaks

(7) Other Emission Sources

*Revised "capsule coating operation" to "tablet coating operation"

*Deleted (iii), in view of addition in (1)(vi)

(8) Testing

*Revised reference to test methods from (m)(8)(iii), which has been deleted, to (a)(vi)(A)

(9) Monitoring and Recordkeeping for Air Pollution Control Equipment

*Revised wording in (i)(A)(2), (ii)(A)(1), and (ii)(A)(2)

*Revised recordkeeping requirements for leaks and in-process tanks

*Added provision in (ii)(D) concerning the calculation of daily and annual emissions for applicability purposes

(n)–(p) [Reserved]

(q) Gasoline Distribution

(1) Bulk Gasoline Plants

*All references to "throughput" have been revised to "gasoline throughput"

(r) [Reserved]

(s) Paint and Ink Manufacturing

(1) Applicability

(2) Exemption for Waterbase Material and Heatset-Offset Ink

(3) Permit Conditions

(4) Open-top Mills, Tanks, Vats, or Vessels

(5) Grinding Mills

(6) Storage Tanks

(7) Leaks

(8) Clean Up

(9) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991, for all affected facilities.

(10) Recordkeeping and Reporting

(t) [Reserved]

(u) Miscellaneous Fabricated Product Manufacturing Processes

(1) Applicability

*Revised "regulated by" in first sentence in (i) to "included within any of the source categories specified in"

*References to other rules have been clarified

(2) Permit Conditions

(3) Control Requirements

(4) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991, for all affected facilities.

(5) Testing

(v) Miscellaneous Formulation Manufacturing Processes

(1) Applicability

*Revised "regulated by" in first sentence in (i) to "included within any of the source categories specified in"

*References to other rules have been clarified

(2) Permit Conditions

(3) Control Requirements

(4) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991, for all affected facilities.

(5) Testing

(w) Miscellaneous Organic Chemical Manufacturing Processes

(1) Applicability

*Revised "regulated by" in first sentence in (i) to "included within any of the source categories specified in"

*References to other rules have been clarified

(2) Permit Conditions

(3) Control Requirements

(4) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991, for all affected facilities.

(5) Testing

(x) Other Emission Sources

(1) Applicability

*Revised "regulated by" in first sentence in (i) to 'included within any of the source categories specified in"

*References to other rules have been clarified

*Added sewage treatment plants and vegetable oil processing plants to the list of exempt facilities

*Replaced "non-synthetic pharmaceutical manufacturing" with "pharmaceutical manufacturing" in list of exempt facilities

*Clarified coverage of the list of exempt source categories

(2) Permit Conditions

(3) Control Requirements

(4) Compliance Schedule

*The compliance date has been revised from April 1, 1991, to July 1, 1991, for all affected facilities.

(5) Testing

(y) Recordkeeping and Reporting for Non-CTG Sources

(1) Exempt Emission Source

(2) Subject Emission Sources

(z) [Reserved]

USEPA believes that these changes are supported by the information in the rulemaking docket, which has been open for public review and comment, and are responsive to the public comments. Consequently, USEPA believes that it can make these changes in this final rulemaking action without having to repropose.

V. Summary of Rules

Today's notice takes final action on Illinois rules which have been submitted by the State, and promulgates Federal rules to amend all deficiencies not corrected by Illinois. Table 1 provides a summary of the Federal rules being promulgated, the State rules being approved, and the State rules which have been approved and are not changing. It should be noted that the format of Table 1 is modeled after the Illinois RACT rules (*i.e.*, see the June 1989 version of Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board of the Illinois Administrative Code [IAC]). The State rules are identified by their IAC designation (*i.e.*, the 215 series). When approved as part of the SIP, some of these rules were identified by an earlier IPCB number (*i.e.*, the 205 series). A comparison between the "205" and "215" versions indicates only minor differences. Consequently, USEPA is recodifying the existing SIP rules to reflect the version and number in the IAC. The following designations are used in Table 1:

FED—Federal Rule
SIP—Federally approved State rule

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS

State No.	Rule	Federal No.
	Subpart A: General Provisions	52.741(a).
¹ 215.103	Abbreviations and Conversion Factors (FED)	
¹ 215.107	Applicability (FED)	
	Definitions (FED)	
215.104	Definitions (SIP)-partial	
201.102	Definitions (SIP)-partial	
211.122	Definitions (SIP)-partial	
¹ 215.102	Testing Methods and Procedures (FED)	
	Compliance Dates (FED)	
¹ 215.106	Afterburners (FED)	
	Exemptions, Variances and Alternative Means of Control (FED)	
	Vapor Pressure of Volatile Organic Liquids (FED)	
	Vapor Pressure of Organic Material or Solvent (FED)	
	Vapor Pressure of Volatile Organic Material (FED)	
	Subpart B: Organic Emissions from Storage and Loading Operations	
215.121	Storage Containers (SIP)	
215.122	Loading Operations (SIP)	
215.123	Petroleum Liquid Storage Tanks (SIP)	
215.124	External Floating Roofs (SIP)	
215.125	Compliance Dates and Geographical Areas (SIP)	
215.126	Compliance Plan (SIP)	
	Subpart C: Organic Emissions from Miscellaneous Equipment	
215.141	Separation Operations (SIP)	
215.142	Pumps and Compressors (SIP)	
215.143	Vapor Blowdown (SIP)	
215.144	Safety Relief Valves (SIP)	
¹ 215.181	Solvent Cleaning in General (FED)	52.741(d)(1).

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
215.182	Cold Cleaning (SIP)	
215.183	Open Top Vapor Degreasing (SIP)	
215.184	Conveyorized Degreasing (SIP)	52.741(d)(2).
¹ 215.185	Compliance Schedule (FED)	52.741(d)(3).
	Test Methods (FED)	52.741(e).
	Subpart F: Coating Operations	
¹ 215.204	Emission Limitations for Manufacturing Plants (FED)	
¹ 215.205	Alternative Emission Limitations (FED)	
¹ 215.206	Exemptions from Emission Limitations (FED)	
¹ 215.209	Exemption from General Rule on Use of Organic Material (FED)	
¹ 215.211	Compliance Schedule (FED)	
	Recordkeeping and Reporting (FED)	
	Subpart H: Special Limitations for Sources in Major Urbanized Areas Which are Nonattainment for Ozone	
215.240	Applicability (SIP)	
215.241	External Floating Roofs (SIP)	
215.249	Compliance Dates (SIP)	
	Subpart K: Use of Organic Material	
215.301	Use of Organic Material (SIP)	
215.302	Alternative Standard (SIP)	
215.303	Fuel Combustion Emission Sources (SIP)	
215.304	Operations with Compliance Program (SIP)	52.741(h).
	Subpart P: Printing and Publishing	
¹ 215.401	Flexographic and Rotogravure Printing (FED)	
¹ 215.403	Applicability (FED)	
¹ 215.405	Compliance Schedule (FED)	
¹ 215.404	Recordkeeping and Reporting (FED)	
¹ 215.406	Heatset-Web-Offset Lithographic Printing (FED)	
	Subpart Q: Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment	
215.420	Applicability (SIP)	
215.421	General Requirements (SIP)	
215.422	Inspection Program Plan for Leaks (SIP)	
215.423	Inspection Program for Leaks (SIP)	
215.424	Repairing Leaks (SIP)	
215.425	Recordkeeping for Leaks (SIP)	
215.426	Reporting for Leaks (SIP)	
215.427	Alternative Program for Leaks (SIP)	
215.428	Compliance Dates (SIP)	
215.429	Compliance Plan (SIP)	
215.430	General Requirements (SIP)	
215.431	Inspection Program Plan for Leaks (SIP)	
¹ 215.432	Inspection Program for Leaks (SIP)	52.741(i)(1).
215.433	Repairing Leaks (SIP)	
215.434	Recordkeeping for Leaks (SIP)	
215.435	Reporting for Leaks (SIP)	
¹ 215.436	Alternative Program for Leaks (FED)	52.741(i)(2).
215.437	Open-Ended Valves (SIP)	
215.438	Compliance Date (SIP)	
	Subpart R: Petroleum Refining and Related Industries; Asphalt Materials	
215.441	Petroleum Refinery Waste Gas Disposal (SIP)	
215.442	Vacuum Producing Systems (SIP)	
215.443	Wastewater (Oil/Water) Separator (SIP)	
215.444	Process Unit Turnarounds (SIP)	
215.445	Leaks: General Requirements (SIP)	
215.446	Monitoring Program Plan for Leaks (SIP)	
¹ 215.447	Monitoring Program for Leaks (FED)	52.741(j)(1).
215.448	Recordkeeping for Leaks (SIP)	
215.449	Reporting for Leaks (SIP)	
¹ 215.450	Alternative Program for Leaks (FED)	52.741(j)(2).
215.451	Sealing Device Requirements (SIP)	52.741(j)(3).
¹ 215.452	Compliance Schedule for Leaks (FED)	
215.453	Compliance Dates and Geographical Areas (SIP)	
	Subpart S: Rubber and Miscellaneous Plastic Products	
215.461	Manufacture of Pneumatic Rubber Tires (SIP)	
215.462	Green Tire Spraying Operations (SIP)	
215.463	Alternative Emission Reduction Systems (SIP)	
215.464	Testing and Monitoring (SIP)	
215.465	Compliance Dates and Geographical Areas (SIP)	
215.466	Compliance Plan (SIP)	
	Subpart T: Pharmaceutical Manufacturing	52.741(m).
¹ 215.480	Applicability (FED)	
¹ 215.481	Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers (FED)	
¹ 215.482	Control of Air Dryers, Production Equipment Exhaust Systems and Filters (FED)	
¹ 215.483	Material Storage and Transfer (FED)	
¹ 215.484	In-Process Tanks (FED)	
¹ 215.485	Leaks (FED)	

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
¹ 215.486	Other Emission Sources (FED)	
¹ 215.487	Testing (FED)	
¹ 215.488	Monitoring and Recordkeeping for Air Pollution Control Equipment (FED)	
	Subpart V: Air Oxidation Processes	
215.520	Applicability (SIP)	
215.521	Definitions (SIP)	
215.525	Emission Limitations for Air Oxidation Processes (SIP)	
215.526	Testing and Monitoring (SIP)	
215.527	Compliance Date (SIP)	
	Subpart W: Agriculture	
215.541	Pesticide Exception (SIP)	
	Subpart X: Construction	
215.561	Architectural Coatings (SIP)	
215.562	Paving Operations (SIP)	
215.563	Cutback Asphalt (SIP)	
	Subpart Y: Gasoline Distribution	
¹ 215.581	Bulk Gasoline Plants (FED)	52.741(q)(1).
215.582	Bulk Gasoline Terminals (SIP)	
215.583	Gasoline Dispensing Facilities (SIP)	
215.584	Gasoline Delivery Vessels (SIP)	
	Subpart Z: Dry Cleaners	
215.601	Perchloroethylene Dry Cleaners (SIP)	
215.602	Exemptions (SIP)	
215.603	Testing and Monitoring (SIP)	
215.604	Compliance Dates and Geographic Areas (SIP)	
215.605	Compliance Plan (SIP)	
215.606	Exception to Compliance Plan (SIP)	
215.607	Standards for Petroleum Solvent Dry Cleaners (SIP)	
215.608	Operating Practices for Petroleum Solvent Dry Cleaners (SIP)	
215.609	Program for Inspection and Repair and Leaks (SIP)	
215.610	Testing and Monitoring (SIP)	
215.611	Exemption for Petroleum Solvent Dry Cleaners (SIP)	
215.612	Compliance Dates and Geographical Areas (SIP)	
215.613	Compliance Plan (SIP)	
	Subpart AA: Paint and Ink Manufacturing	52.741(s).
¹ 215.620	Applicability (FED)	
¹ 215.621	Exemption for Waterbase Material and Heatset-Offset Ink (FED)	
¹ 215.623	Permit Conditions (FED)	
¹ 215.624	Open-top Mills, Tanks, Vats, or Vessels (FED)	
¹ 215.625	Grinding Mills (FED)	
¹ 215.626	Storage Tanks (FED)	
¹ 215.628	Leaks (FED)	
¹ 215.630	Clean Up (FED)	
¹ 215.636	Compliance Schedule (FED)	
	Recordkeeping and Reporting (FED)	
	Subpart BB: Polystyrene Plants	
215.875	Applicability of Subpart BB (SIP)	
215.877	Emissions Limitations at Polystyrene Plants (SIP)	
215.879	Compliance Date (SIP)	
215.881	Compliance Plan (SIP)	
215.883	Special Requirements for Compliance Plan (SIP)	
215.886	Testing and Monitoring (SIP)	
	Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes	52.741(u).
¹ 215.920	Applicability (FED)	
¹ 215.923	Permit Conditions (FED)	
¹ 215.926	Control Requirements (FED)	
¹ 215.927	Compliance Schedule (FED)	
¹ 215.928	Testing (FED)	
	Subpart QQ: Miscellaneous Formulation Manufacturing Processes	52.741(v).
¹ 215.940	Applicability (FED)	
¹ 215.943	Permit Conditions (FED)	
¹ 215.946	Control Requirements (FED)	
¹ 215.947	Compliance Schedule (FED)	
¹ 215.948	Testing (FED)	
	Subpart RR: Miscellaneous Organic Chemical Manufacturing Processes	52.741(w).
¹ 215.960	Applicability (FED)	
¹ 215.963	Permit Conditions (FED)	
¹ 215.966	Control Requirements (FED)	
¹ 215.967	Compliance Schedule (FED)	
¹ 215.968	Testing (FED)	
	Other Emission Sources	52.741(x).
	Applicability (FED)	
	Permit Conditions (FED)	
	Control Requirements (FED)	

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
	Compliance Schedule (FED) Testing (FED) Recordkeeping and Reporting for Generic Rules Exempt Emission Sources (FED) Subject Emission Sources (FED)	52.741(y).

[1] Presented for information purposes only. Federal number is applicable for this rule.

VI. Impacts

The Federal rules are expected to provide an additional reduction in VOC emissions of about 7,600 tons per year (TPY) and to result in an additional cost of $24 million beyond the existing State rules. The emission reductions and costs were calculated assuming general compliance with all existing State rules, including State rules which have not been federally approved. Because these State rules have been in effect and enforceable at the State level for several years, the emission reductions and costs associated with these rules should have already occurred and should not be double-counted in estimating the impact of the Federal rules. Thus, USEPA believes that the reductions and costs are on the order of 7,600 TPY and $24 million, respectively.

VI. Regulatory Analysis

A. Administrative Designation and Regulatory Analysis

The Administrator has determined that this action does not constitute a major regulation, as defined in section 1(b) of Executive Order 12291. Specifically, costs under the rule will total less than $100 million annually. Accordingly, a Regulatory Impact Analysis (RIA) containing a detailed assessment of the FIP RACT rules for Illinois is not required. Nevertheless, a preliminary evaluation of the potential emission reductions and the costs associated with the Federal rules has been prepared. A copy of this preliminary evaluation has been included in the docket for this rulemaking. The regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB, and USEPA responses to those comments, have been placed in the public docket for this rulemaking.

B. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. According to section 605(b) of the RFA, this requirement may be waived if the Administrator certifies that the regulations will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdictions over populations of less than 50,000. USEPA's study on the impact on small entities, which has been included in the docket for this rulemaking action, indicates that for certain source categories, for which sufficient data were available to estimate the economic impact, the rules would not impose a significant impact. For one source category, there would not be a substantial number of small entities which would incur a significant impact. For the remaining source categories, the economic impact was considered to be insignificant, or there were no small entities affected. No public comments were received on USEPA's study. Consequently, the Administrator finds that the Federal rules will not have a significant economic impact on a substantial number of small entities.

C. Reporting and Recordkeeping Requirements

The information collection provisions relating to the final rules have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A copy of the Information Collect on Request document prepared by USEPA may be obtained from the Information Policy Branch; USEPA, 401 M Street, SW., [PM–223], Washington, DC 20460, or by calling (202) 382–2706. Public comments on USEPA's proposed information collection requirements are addressed in section II. It should be noted that no public comments were received on USEPA's analysis of the impact of these requirements (i.e., the SF–83 Supporting Statement).

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the Administrator's action in approving and promulgating this implementation plan under section 110 is available only by filing a petition for review in the United States District Court of Appeals for the Seventh Circuit within 60 days of today's publication of this notice. Under section 307(b)(2) of the CAA, the requirements of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 8, 1990.

William K. Reilly,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. 40 CFR part 52 is amended by adding a new § 52.741, subpart O to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

(a) *General Provisions*—(1) *Abbreviations and conversion factors.* (i) The following abbreviations are used in § 52.741:

ASTM	American Society for Testing and Materials.
bbl	barrels (42 gallons).
°C	degrees Celsius or centigrade.
cm	centimeters.
cu in.	cubic inches.
°F	degrees Fahrenheit.
FIP	Federal implementation plan.
ft	feet.
ft²	square feet.
g	grams.
gpm	gallons per minute.
g/mole	grams per mole.
gal	gallons.
hr	hours.
in	inches.
K	degrees Kelvin.
kcal	kilocalories.
kg	kilograms.
kg/hr	kilograms per hour.
kPa	kilopascals; one thousand newtons per square meter.
l	liters.
l/sec	liters per second.
lbs	pounds.
lbs/hr	pounds per hour.
lbs/gal	pounds per gallon.
LEL	lower explosive limit.
m	meters.
m²	square meters.
m³	cubic meters.
mg	milligrams.
Mg	Megagrams, metric tons or tonnes.
ml	milliliters.
min	minutes.
MJ	megajoules.
mm Hg	millimeters of mercury.
ppm	parts per million.
ppmv	parts per million by volume.
psi	pounds per square inch.
psia	pounds per square inch absolute.
psig	pounds per square inch gauge.
scf	standard cubic feet.
scm	standard cubic meters.
sec	seconds.
SIP	State implementation plan.
sq cm	square centimeters.
sq in	square inches.
USEPA	United States Environmental Protection Agency.
VOC	volatile organic compounds.
VOL	volatile organic liquids.
VOM	volatile organic materials.

(ii) The following conversion factors are used in § 52.741.

English	Metric
1 gal	3.785 l.
1,000 gal	3.785 l or 3.785 m³.
1 psia	6.897 kPa (51.71 mm Hg).
2.205 lbs	1 kg.
1 bbl	158.0 l.
1 cu in	16.39 ml.
1 lb/gal	119.800 mg/l.
1 ton	0.907 Mg.

(2) *Applicability.* The provisions of § 52.741 shall apply to all sources located in Cook, DuPage, Kane, Lake, McHenry or Will County.

(3) *Definitions.* The following terms are defined for the purpose of § 52.741.

Note: The Federal definitions supersede the State definitions for these terms, which were previously approved by USEPA as part of the SIP. The federally approved definitions for all other terms remain in effect and applicable to these Federal rules.

Accelacota means a pharmaceutical coating operation which consists of a horizontally rotating perforated drum in which tablets are placed, a coating is applied by spraying, and the coating is dried by the flow of air across the drum through the perforations.

Accumulator means the reservoir of a condensing unit receiving the condensate from a surface condenser.

Actual emissions means the actual quantity of VOM emissions from an emission source during a particular time period.

Adhesive means any substance or mixture of substances intended to serve as a joining compound.

Administrator means the Administrator of the USEPA or that person's designee.

Afterburner means a control device in which materials in gaseous effluent are combusted.

Air contaminant means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

Air dried coatings means any coatings that dry by use of air or forced air at temperatures up to 363.15 K (194 °F).

Air pollution means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Air pollution control equipment means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

Air suspension coater/dryer means a pharmaceutical coating operation which consists of vertical chambers in which tablets or particles are placed, and a coating is applied and then dried while the tablets or particles are kept in a fluidized state by the passage of air upward through the chambers.

Air-assisted airless spray means a spray coating method which combines compressed air with hydraulic pressure to atomize the coating material into finer droplets than is achieved with pure airless spray. Lower hydraulic pressure is used than with airless spray.

Airless spray means a spray coating method in which the coating is atomized by forcing it through a small opening at high pressure. The coating liquid is not mixed with air before exiting from the nozzle.

Allowable emissions means the quantity of VOM emissions during a particular time period from a stationary source calculated using the maximum rated capacity of the source (unless restricted by federally enforceable limitations on operating rate, hours of operation, or both) and the most stringent of:

(A) The applicable standards in 40 CFR parts 60 and 61;

(B) The applicable implementation plan; or

(C) A federally enforceable permit.

Ambient air quality standards means those standards designed to protect the public health and welfare codified in 40 CFR part 50 and promulgated from time to time by the USEPA pursuant to authority contained in Section 108 of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended from time to time.

Application means a device used in a coating line to apply coating.

As applied means the exact formulation of a coating during application on or impregnation into a substrate.

Asphalt means the dark-brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

Automobile means a motor vehicle capable of carrying no more than 12 passengers.

Automobile or light-duty truck assembly plant means a facility where parts are assembled or finished for eventual inclusion into a finished automobile or light-duty truck ready for sale to vehicle dealers, but not including customizers, body shops, and other repainters.

Automobile or light-duty truck refinishing means the repainting of used automobiles and light-duty trucks.

Baked coatings means any coating which is cured or dried in an oven where the oven air temperature exceeds 90°C (194°F).

Binders means organic materials and resins which do not contain VOM's.

Bituminous coatings means black or brownish coating materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude oils or of low grades of coal.

Brush or wipe coatings means a manual method of applying a coating using a brush, cloth, or similar object.

Bulk gasoline plant means a gasoline storage and distribution facility with an average throughput of 76,000 l (20,000 gal) or less on a 30-day rolling average that distributes gasoline to gasoline dispensing facilities.

Can means any metal container, with or without a top, cover, spout or handles, into which solid or liquid materials are packaged.

Can coating means any coating applied on a single walled container

that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.).

Can coating facility means a facility that includes one or more can coating line(s).

Can coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

Capture means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack of sent to a control device. The overall abatement of emissions from a process with an add-on control device is a function both of the capture efficiency and of the control device.

Capture device means a hood, enclosed room floor sweep or other means of collecting solvent or other pollutants into a duct. The pollutant can then be directed to a pollution control device such as an afterburner or carbon adsorber. Sometimes the term is used loosely to include the control device.

Capture efficiency means the fraction of all VOM generated by a process that are directed to an abatement or recovery device.

Capture system means all equipment (including, but not limited to, hoods, ducts, fans, ovens, dryers, etc.) used to contain, collect and transport an air pollutant to a control device.

Clean Air Act means the Clean Air Act of 1963, as amended, including the Clean Air Act Amendments of 1977, (42 U.S.C. 7401 *et seq.*).

Clear coating means coatings that lack color and opacity or are transparent using the undercoat as a reflectant base or undertone color.

Clear topcoat means the final coating which contains binders, but not opaque pigments, and is specifically formulated to form a transparent or translucent solid protective film.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

Coating means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents, and inks.

Coating applicator means equipment used to apply a coating.

Coating line means an operation consisting of a series of one or more coating applicators and any associated flash-off areas, drying areas, and ovens wherein a surface coating is applied, dried, or cured. (It is not necessary for an operation to have an oven, or flash-off area, or drying area to be included in this definition.)

Coating plant means any plant that contains one or more coating line(s).

Coil means any flat metal sheet or strip that is rolled or wound in concentric rings.

Coil coating means any coating applied on any flat metal sheet or strip that comes in rolls or coils.

Coil coating facility means a facility that includes one or more coil coating line(s).

Coil coating line means a coating line in which any protective, decorative or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

Cold cleaning means the process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

Component means, with respect to synthetic organic chemical and polymer manufacturing equipment, and petroleum refining and related industries, any piece of equipment which has the potential to leak VOM including, but not limited to, pump seals, compressor seals, seal oil degassing vents, pipeline valves, pressure relief devices, process drains, and open ended pipes. This definition excludes valves which are not externally regulated, flanges, and equipment in heavy liquid service. For purposes of paragraph (i) of this section, this definition also excludes bleed ports of gear pumps in polymer service.

Concrete curing compounds means any coating applied to freshly poured concrete to retard the evaporation of water.

Condensate means volatile organic liquid separated from its associated gases, which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

Continuous process means, with respect to polystyrene resin, a method of manufacture in which the styrene raw material is delivered on a continuous basis to the reactor in which the styrene is polymerized to polytstyrene.

Control device means equipment (such as an afterburner or adsorber) used to remove or prevent the emission of air pollutants from a contaminated exhaust stream.

Control device efficiency means the ratio of pollution prevented by a control device and the pollution introduced to the control device, expressed as a percentage.

Conveyorized degreasing means the continuous process of cleaning and removing soils from surfaces utilizing either cold or vaporized solvents.

Crude oil means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

Crude oil gathering means the transportation of crude oil or condensate after custody transfer between a production facility and a reception point.

Custody transfer means the transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

Daily-weighted average VOM content means the average VOM content of two or more coatings as applied on a coating line during any day, taking into account the fraction of total coating volume that each coating represents, as calculated with the following equation:

$$VOM_{av} = \frac{\sum_{i=1}^{n} V_i C_i}{V_T}$$

where:

VOM_{av} = The average VOM content of two or more coatings as applied each day on a coating line in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

n = The number of different coatings as applied each day on a coating line,

V_i = The volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

C_i = The VOM content of each coating as applied each day on a coating line in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

V_T = The total volume of all coatings (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

Day means the consecutive 24 hours beginning at 12:00 a.m. (midnight) local time.

Degreaser means any equipment or system used in solvent cleaning.

Delivery vessel means any tank truck or trailer equipped with a storage tank that is used for the transport of gasoline to a stationary storage tank at a gasoline dispensing facility, bulk gasoline plant, or bulk gasoline terminal.

Dip coating means a method of applying coatings in which the part is submerged in a tank filled with the coating.

Electrostatic bell or disc spray means an electrostatic spray coating method in which a rapidly-spinning bell- or disc-shaped applicator is used to create a fine mist and apply the coating with high transfer efficiency.

Electrostatic spray means a spray coating method in which opposite electrical charges are applied to the substrate and the coating. The coating is attracted to the object due to the electrostatic potential between them.

Emission source and source mean any facility from which VOM is emitted or capable of being emitted into the atmosphere.

Enamel means a coating that cures by chemical cross-linking of its base resin. Enamels can be distinguished from lacquers because enamels are not readily resoluble in their original solvent.

Enclose means to cover any VOL surface that is exposed to the atmosphere.

End sealing compound coat means a compound applied to can ends which functions as a gasket when the end is assembled onto the can.

Excessive release means a discharge of more than 295 g (0.65 lbs) of mercaptans and/or hydrogen sulfide into the atmosphere in any 5-minute period.

Exterior base coat means a coating applied to the exterior of a can body, or flat sheet to provide protection to the metal or to provide background for any lithographic or printing operation.

Exterior end coot means a coating applied to the exterior end of a can to provide protection to the metal.

External-floating roof means a cover over an open top storage tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

Extreme environmental conditions means exposure to any or all of the following: ambient weather conditions; temperatures consistently above 95 °C (203 °F); detergents; abrasive and scouring agents; solvents; or corrosive atmospheres.

Extreme performance coating means any coating which during intended use is exposed to extreme environmental conditions.

Fabric coating means any coating applied on textile fabric. Fabric coating includes the application of coatings by impregnation.

Fabric coating facility means a facility that includes one or more fabric coating lines.

Fabric coating line means a coating line in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into a textile fabric.

Federally enforceable means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51 subpart I and 40 CFR 51.166.

Final repair coat means the repainting of any topcoat which is damaged during vehicle assembly.

Firebox means the chamber or compartment of a boiler or furnace in which materials are burned, but not the combustion chamber or afterburner of an incinerator.

Fixed-roof tank means a cylindrical shell with a permanently affixed roof.

Flexographic printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

Flexographic printing line means a printing line in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

Floating roof means a roof on a stationary tank, reservoir, or other container which moves vertically upon change in volume of the stored material.

Fountain solution means the solution which is applied to the image plate to maintain hydrophilic properties of the non-image areas.

Fuel combustion emission source means any furnace, boiler, or similar equipment used for the primary purpose of producing heat or power by indirect heat transfer.

Fuel gas system means a system for collection of refinery fuel gas including, but not limited to, piping for collecting tail gas from various process units, mixing drums and controls, and distribution piping.

Gas/gas method means either of two methods for determining capture which rely only on gas phase measurements. The first method requires construction of a temporary total enclosure (TTE) to ensure that all would-be fugitive emissions are measured. The second method uses the building or room which houses the facility as an enclosure. The second method requires that all other VOM sources within the room be shut down while the test is performed, but all fans and blowers within the room must be operated according to normal procedures.

Gas service means that the component contains process fluid that is in the gaseous state at operating conditions.

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kPa or greater which is used as a fuel for internal combustion engines.

Gasoline dispensing facility means any site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

Gross vehicle weight means the manufacturer's gross weight rating for the individual vehicle.

Gross vehicle weight rating means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

Heated airless spray means an airless spray coating method in which the coating is heated just prior to application.

Heatset means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

Heatset-web-offset lithographic printing line means a lithographic printing line in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

Heavy liquid means liquid with a true vapor pressure of less than 0.3 kPa (0.04 psi) at 294.3 K (70 °F) established in a standard reference text or as determined by ASTM method D2879–86 (incorporated by reference as specified in 40 CFR 52.742); or which has 0.1 Reid Vapor Pressure as determined by ASTM method D323–82 (incorporated by reference as specified in 40 CFR 52.742); or which when distilled requires a temperature of 421.95 K (300 °F) or greater to recover 10 percent of the liquid as determined by ASTM method D86–82 (incorporated by reference as specified in 40 CFR 52.742).

Heavy off-highway vehicle products means, for the purpose of paragraph (e) of this section, heavy construction, mining, farming, or material handling equipment; heavy industrial engines;

diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

Heavy off-highway vehicle products coating facility means a facility that includes one or more heavy off-highway vehicle products coating line(s).

Heavy off-highway vehicle products coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

High temperature aluminum coating means a coating that is certified to withstand a temperature of 537.8 °C (1000 °F) for 24 hours.

Hood means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

Hood capture efficiency means the emissions from a process which are captured by the hood and directed into a control device, expressed as a percentage of all emissions.

Hot well means the reservoir of a condensing unit receiving the condensate from a barometric condenser.

Hour means a block period of 60 minutes (*e.g.*, 1 a.m. to 2 a.m.).

In vacuum service means, for the purpose of paragraph (i) of this section, equipment which is operating at an internal pressure that is at least 5 kPa (0.73 psia) below ambient pressure.

In-process tank means a container used for mixing, blending, heating, reacting, holding, crystallizing, evaporating or cleaning operations in the manufacture of pharmaceuticals.

Incinerator means a combustion apparatus in which refuse is burned.

Indirect heat transfer means transfer of heat in such a way that the source of heat does not come into direct contact with process materials.

Ink means a coating used in printing, impressing, or transferring an image onto a substrate.

Interior body spray coat means a coating applied by spray to the interior of a can body.

Internal-floating roof means a cover or roof in a fixed-roof tank which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

Lacquers means any clear wood finishes formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction, including clear lacquer sanding sealers.

Large appliance means any residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

Large appliance coating means any coating applied to the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

Large appliance coating facility means a facility that includes one or more large appliance coating line(s).

Large appliance coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of large appliances.

Light liquid means VOM in the liquid state which is not defined as heavy liquid.

Light-duty truck means any motor vehicle rated at 3,850 kg gross vehicle weight or less, designed mainly to transport property.

Liquid/gas method means either of two methods for determining capture which require both gas phase and liquid phase measurements and analysis. The first method requires construction of a TTE. The second method uses the building or room which houses the facility as an enclosure. The second method requires that all other VOM sources within the room be shut down while the test is performed, but all fans and blowers within the room must be operated according to normal procedures.

Liquid service means that the equipment or component contains process fluid that is in a liquid state at operating conditions.

Lithographic printing line means a printing line, except that the substrate is not necessarily fed from an unwinding roll, in which each roll printer uses a roll where both the image and non-image areas are essentially in the same plane (planographic).

Magnet wire means aluminum or copper wire formed into an electromagnetic coil.

Magnet wire coating means any coating or electrically insulating varnish or enamel applied to magnet wire.

Magnet wire coating facility means a facility that includes one or more magnet wire coating line(s).

Magnet wire coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of a magnet wire.

Malfunction means any sudden and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

Manufacturing process means a method whereby a process emission source or series of process emission sources is used to convert raw materials, feed stocks, subassemblies, or other components into a product, either for sale or for use as a component in a subsequent manufacturing process.

Maximum theoretical emissions means the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or ink(s) with the highest volatile organic material content actually used in practice by the source.

Metal furniture means a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers.

Metal furniture coating means any non-adhesive coating applied to any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating line coating miscellaneous metal parts or products.

Metal furniture coating facility means a facility that includes one or more metal furniture coating line(s).

Metal furniture coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

Metallic shoe-type seal means a primary or secondary seal constructed of metal sheets (shoes) which are joined together to form a ring, springs, or levers which attach the shoes to the floating roof and hold the shoes against the tank wall, and a coated fabric which is suspended from the shoes to the floating roof.

Miscellaneous fabricated product manufacturing process means:

(A) A manufacturing process involving one or more of the following applications, including any drying and curing of formulations, and capable of emitting VOM:

(*1*) Adhesives to fabricate or assemble components or products.
(*2*) Asphalt solutions to paper or fiberboard.
(*3*) Asphalt to paper or felt.
(*4*) Coatings or dye to leather.
(*5*) Coatings to plastic.
(*6*) Coatings to rubber or glass.
(*7*) Disinfectant material to manufactured items.
(*8*) Plastic foam scrap or "fluff" from the manufacture of foam containers and packaging material to form resin pallets.
(*9*) Resin solutions to fiber substances.
(*10*) Viscose solutions for food casings.

(B) The storage and handling of formulations associated with the process described above, and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

Miscellaneous formulation manufacturing process means:

(A) A manufacturing process which compounds one or more of the following and is capable of emitting VOM:

(*1*) Adhesives.
(*2*) Asphalt solutions.
(*3*) Caulks, sealants, or waterproofing agents.
(*4*) Coatings, other than paint and ink.
(*5*) Concrete curing compounds.
(*6*) Dyes.
(*7*) Friction materials and compounds.
(*8*) Resin solutions.
(*9*) Rubber solutions.
(*10*) Viscose solutions.

(B) The storage and handling of formulations associated with the process described above, and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

Miscellaneous metal parts or products means any metal part or metal product, even if attached to or combined with a nonmental part or product, except cans, coils, metal furniture, large appliances, magnet wire, automobiles, ships, and airplane bodies.

Miscellaneous metal parts and products coating means any coating applied to any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, and magnet wire. Prime coat, prime surfacer coat, topcoat, and final repair coat for automobiles and light-duty trucks are not miscellaneous metal parts and products coatings. However, underbody anti-chip (*e.g.*, underbody plastisol) automobile, and light-duty truck coatings are miscellaneous metal parts and products coatings. Also, automobile or light-duty truck refinishing coatings, coatings applied to the exterior of marine vessels, coatings applied to the exterior of airplanes, and the customized topcoating of automobiles and trucks if production is less than 35 vehicles per day are not miscellaneous metal parts and products coatings.

Miscellaneous metal parts or products coating facility means a facility that includes one or more miscellaneous metal parts or products coating lines.

Miscellaneous metal parts or products coating line means a coating line in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

Miscellaneous organic chemical manufacturing process means:

(A) A manufacturing process which produces by chemical reaction, one or more of the following organic compounds or mixtures of organic compounds and which is capable of emitting VOM:

(*1*) Chemicals listed in appendix A of this section.
(*2*) Chlorinated and sulfonated compounds.
(*3*) Cosmetic, detergent, soap, or surfactant intermediaries or specialties and products.
(*4*) Disinfectants.
(*5*) Food additives.
(*6*) Oil and petroleum product additives.
(*7*) Plasticizers.
(*8*) Resins or polymers.
(*9*) Rubber additives.
(*10*) Sweeteners.
(*11*) Varnishes

(B) The storage and handling of formulations associated with the process described above and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

Monitor means to measure and record.

Multiple package coating means a coating made from more than one different ingredient which must be mixed prior to using and has a limited pot life due to the chemical reaction which occurs upon mixing.

Offset means, with respect to printing and publishing operations, use of a blanket cylinder to transfer ink from the plate cylinder to the surface to be printed.

Opaque stains means all stains that are not semi-transparent stains.

Open top vapor depressing means the batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

Open-ended valve means any valve, except pressure relief devices, having one side of the valve in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Organic compound means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

Organic material means any chemical compound of carbon including diluents and thinners which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents, but excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbonic acid, metallic carbide, metallic carbonates, and ammonium carbonate.

Organic vapor means the gaseous phase of an organic material or a mixture of organic materials present in the atmosphere.

Oven means a chamber within which heat is used for one or more of the following purposes: Dry, bake, cure, or polymerize a coating or ink.

Overall control means the product of the capture efficiency and the control device efficiency.

Overvarnish means a transparent coating applied directly over ink or coating.

Owner or operator means any person who owns, operates, leases, controls, or supervises an emission source or air pollution control equipment.

Packaging rotogravure printing means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

Packaging rotogravure printing line means a rotogravure printing line in which surface coatings are applied to paper, paperboard, foil, film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

Paint manufacturing plant means a plant that mixes, blends, or compounds enamels, lacquers, sealers, shellacs, stains, varnishes, or pigmented surface coatings.

Paper coating means any coating applied on paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. Paper coating includes the application of coatings by impregnation and/or saturation.

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Paper coating facility means a facility that includes one or more paper coating lines.

Paper coating line means a coating line in which any protective, decorative, or functional coating is applied on, saturated into, or impregnated into paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes.

Parts per million (volume) means a volume/volume ratio which expresses the volumetric concentration of gaseous air contaminant in a million unit volume of gas.

Person means any individual, corporation, partnership, association, State, municipality, political subdivision of a State; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Petroleum refinery means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

Pharmaceutical means any compound or mixture, other than food, used in the prevention, diagnosis, alleviation, treatment, or cure of disease in man and animal.

Pharmaceutical coating operation means a device in which a coating is applied to a pharmaceutical, including air drying or curing of the coating.

Pigmented coatings means opaque coatings containing binders and colored pigments which are formulated to conceal the wood surface either as an undercoat or topcoat.

Plant means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any marine vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (*i.e.*, which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1987" (incorporated by reference as specified in 40 CFR 52.742).

Plasticizers means a substance added to a polymer composition to soften and add flexibility to the product.

Prime coat means the first of two or more coatings applied to a surface.

Prime surfacer coat means a coating used to touch up areas on the surface of automobile or light-duty truck bodies not adequately covered by the prime coat before application of the top coat. The prime surfacer coat is applied between the prime coat and topcoat. An anti-chip coating applied to main body parts (*e.g.*, rocker panels, bottom of doors and fenders, and leading edge of roof) is a prime surfacer coat.

Primers means any coatings formulated and applied to substrates to provide a firm bond between the substrate and subsequent coats.

Printing means the application of words, designs, and pictures to a substrate using ink.

Printing line means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and ovens wherein one or more coatings are applied, dried, and/or cured.

Process means any stationary emission source other than a fuel combustion emission source or an incinerator.

Production equipment exhaust system means a system for collecting and directing into the atmosphere emissions of volatile organic material from reactors, centrifuges, and other process emission sources.

Publication rotogravure printing line means a rotogravure printing line in which coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

Reactor means a vat, vessel, or other device in which chemical reactions take place.

Refiner means any person who owns, leases operates, controls, or supervises a refinery.

Refinery unit, process unit or unit means a set of components which are a part of a basic process operation such as distillation, hydrotreating, cracking, or reforming of hydrocarbons.

Refrigerated condenser means a surface condenser in which the coolant supplied to the condenser has been cooled by a mechanical device, other than by a cooling tower or evaporative spray cooling, such as refrigeration unit or steam chiller unit.

Repair coatings means coatings used to correct imperfections or damage to furniture surface.

Repaired means, for the purpose of paragraph (l) of this section, that equipment component has been adjusted, or otherwise altered, to eliminate a leak.

Roll coater means an apparatus in which a uniform layer of coating is applied by means of one or more rolls across the entire width of a moving substrate.

Roll printer means an apparatus used in the application of words, designs, or pictures to a substrate, usually by means of one or more rolls each with only partial coverage.

Roll printing means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or metal rolls each with only partial coverage.

Roller coating means a method of applying a coating to a sheet or strip in which the coating is transferred by a roller or series of rollers.

Rotogravure printing means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is recessed relative to the non-image area.

Rotogravure printing line means a printing line in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

Safety relief valve means a valve which is normally closed and which is designed to open in order to relieve excessive pressures within a vessel or pipe.

Sanding sealers means any coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer a coating must be clearly labelled as such.

Sealer means a coating containing binders which seals wood prior to the application of the subsequent coatings.

Semi-transparent stains means stains containing dyes or semi-transparent pigments which are formulated to enhance wood grain and change the color of the surface but not to conceal the surface, including, but not limited to, sap stain, toner, non-grain raising stains, pad stain, or spatter stain.

Set of safety relief valves means one or more safety relief valves designed to open in order to relieve excessive pressures in the same vessel or pipe.

Sheet basecoat means a coating applied to metal when the metal is in sheet form to serve as either the exterior or interior of a can for either two-piece or three-piece cans.

Side-seam spray coat means a coating applied to the seam of a three-piece can.

Single coat means one coating application applied to a metal surface.

Solvent means a liquid substance that is used to dissolve or dilute another substance.

Solvent cleaning means the process of cleaning soils from surfaces by cold cleaning, open top vapor degreasing, or conveyorized degreasing.

Specified air contaminant means any air contaminant as to which this Section contains emission standards or other specific limitations.

Splash loading means a method of loading a tank, railroad tank car, tank truck, or trailer by use of other than a submerged loading pipe.

Standard conditions means a temperature of 70 °F and a pressure of 14.7 psia.

Standard cubic foot (scf) means the volume of one cubic foot of gas at standard conditions.

Standard Industrial Classification Manual means the Standard Industrial Classification Manual (1987), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (incorporated by reference as specified in 40 CFR 52.742).

Start-up means the setting in operation of an emission source for any purpose.

Stationary emission source and *Stationary source* mean an emission source which is not self-propelled.

Storage tank or storage vessel means any stationary tank, reservoir or container used for the storage of VOL's.

Submerged loading pipe means any discharge pipe or nozzle which meets either of the following conditions:

(A) Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is 15 cm (6 in.) above the bottom of the tank.

(B) Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is 46 cm (18 in.) above the bottom of the tank.

Substrate means the surface onto which a coating is applied or into which a coating is impregnated.

Surface condenser means a device which removes a substance from a gas stream by reducing the temperature of the stream, without direct contact between the coolant and the stream.

Tablet coating operation means a pharmaceutical coating operation in which tablets are coated.

Thirty-day rolling average means any value arithmetically averaged over any consecutive thirty-days.

Three-piece can means a can which is made from a rectangular sheet and two circular ends.

Topcoat means a coating applied in a multiple coat operation other than prime coat, final repair coat, or prime surfacer coat.

Topcoat operation means all topcoat spray booths, flash-off areas, and bake ovens at a facility which are used to apply, dry, or cure the final coatings (except final off-line repair) on components of automobile or light-duty truck bodies.

Transfer efficiency means the ratio of the amount of coating solids deposited onto a part or product to the total amount of coating solids used.

True vapor pressure means the equilibrium partial pressure exerted by a volatile organic liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From Floating Roof Tanks," second edition, February 1980 (incorporated by reference as specified in 40 CFR 52.742).

Two-piece can means a can which is drawn from a shallow cup and requires only one end to be attached.

Undercoaters means any coatings formulated for and applied to substrates to provide a smooth surface for subsequent coats.

Unregulated safety relief valve means a safety relief valve which cannot be actuated by a means other than high pressure in the pipe or vessel which it protects.

Vacuum producing system means any reciprocating, rotary, or centrifugal blower or compressor or any jet ejector or device that creates suction from a pressure below atmospheric and discharges against a greater pressure.

Valves not externally regulated means valves that have no external controls, such as in-line check valves.

Vapor balance system means any combination of pipes or hoses which creates a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

Vapor collection system means all piping, seals, hoses, connections, pressure-vacuum vents, and other possible sources between the gasoline delivery vessel and the vapor processing unit and/or the storage tanks and vapor holder.

Vapor control system means any system that limits or prevents release to the atmosphere of organic material in the vapors displaced from a tank during the transfer of gasoline.

Vapor recovery system means a vapor gathering system capable of collecting all VOM vapors and gases discharged from the storage tank and a vapor disposal system capable of processing such VOM vapors and gases so as to prevent their emission to the atmosphere.

Vehicle means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

Vinyl coating means any topcoat or printing ink applied to vinyl coated fabric or vinyl sheets. Vinyl coating does not include plastisols.

Vinyl coating facility means a facility that includes one or more vinyl coating line(s).

Vinyl coating line means a coating line in which any protective, decorative or functional coating is applied onto vinyl coated fabric or vinyl sheets.

Volatile organic liquid means any substance which is liquid at storage conditions and which contains volatile organic compounds.

Volatile organic material (VOM) or volatile organic compound (VOC) means any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds: methane, ethane, methyl chloroform (1,1,1,-trichloroethane), CFC–113 (trichlorotrifluoroethane), methylene chloride (dichloromethane), CFC–11 (trichlorofluoromethane), CFC–12 (dichlorodifluoromethane), CFC–22 (chlorodifluoromethane), FC–23 (trifluoromethane), CFC–114 (dichlorotetrafluoroethane), CFC–115 (chloropentafluoroethane), HCFC–123 (dichlorotrifluoroethane), HFC–134a (tetrafluoroethane), HCFC–141b (dichlorofluoroethane) and HCFC–142b (chlorodifluoroethane). These compounds have been determined to have negligible photochemical reactivity. In addition, for the 3M Bedford Park facility in Cook County, the following compounds shall not be considered as volatile organic material or volatile organic compounds (and are, therefore, to be treated as water for the purpose of caculating the "less water" part of the coating or ink composition) for a period of time not to exceed one year after the date USEPA acts on 3M's petition, pending as of the date of promulgation of this rule, which seeks to have these compounds classified as exempt compounds: cyclic, branched, or linear, completely fluorinated alkanes, cyclic, branched, or linear, completely fluorinated ethers with no unsaturations, cyclic, branched, or linear, completely fluorinated teriary amines with no unsaturations, and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon

and fluorine. For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Wash coat means a coating containing binders which seals wood surfaces, prevents undesired staining, and controls penetration.

Web means a substrate which is printed in continuous roll-fed presses.

Wood furniture means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

Wood furniture coating facility means a facility that includes one or more wood furniture coating line(s).

Wood furniture coating line means a coating line in which any protective, decorative, or functional coating is applied onto wood furniture.

Woodworking means the shaping, sawing, grinding, smoothing, polishing, and making into products of any form or shape of wood.

(4) *Testing methods and procedures*—(i) Coatings, inks and fountain solutions. The following test methods and procedures shall be used to determine compliance of as applied coatings, inks, and fountain solutions with the limitations set forth in § 52.741.

(A) *Sampling.* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOM added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOM added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C) of this section. For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(*1*) ASTM D3925–81 (Reapproved 1985) Standard Practice for Sampling Liquid Paints and Related Pigment Coating. This practice is incorporated by reference as specified in 40 CFR 52.742.

(*2*) ASTM E300–86 Standard Practice for Sampling Industrial Chemicals. This practice is incorporated by reference as specified in 40 CFR 52.742.

(B) *Analyses.* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(*1*) Method 24 of 40 CFR part 60, appendix A, shall be used to determine the VOM content and density of coatings. If it is demonstrated to the satisfaction of the Administrator that plant coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern.

(*2*) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOM content and density of rotogravure printing inks and related coatings. If it is demonstrated to the satisfaction of the Administrator that the plant coating formulation data are equivalent to Method 24A results, formulation data may be used. In the event of any inconsistency between a Method 24A test and a facility's formulation data, the Method 24A test will govern.

(*3*) The following ASTM methods are the analytical procedures for determining VOC:

(*i*) ASTM D1475–85: Standard Test Method for Density of Paint, Varnish, Lacquer and Related Products. This test method is incorporated by reference as specified in 40 CFR 52.742.

(*ii*) ASTM D2369–87: Standard Test Method for Volatile Content of Coatings. This test method is incorporated by reference as specified in 40 CFR 52.742.

(*iii*) ASTM D3792–86: Standard Test Method for Water Content of Water-reducible Paints by Direct Injection into a Gas Chromatograph. This test method is incorporated by reference as specified in 40 CFR 52.742.

(*iv*) ASTM D4017–81 (Reapproved 1987): Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Method. This test method is incorporated by reference as specified in 40 CFR 52.742.

(*v*) ASTM D4457–85: Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOM.) This test method is incorporated by reference as specified in 40 CFR 52.742.

(*vi*) ASTM D2697–86: Standard Test Method for Volume Non-Volatile Matter in Clear or Pigmented Coatings. This test method is incorporated by reference as specified in 40 CFR 52.742.

(*vii*) ASTM D3980–87: Standard Practice for Interlaboratory Testing of Paint and Related Materials. This practice is incorporated by reference as specified in 40 CFR 52.742.

(*viii*) ASTM E180–85: Standard Practice for Determining the Precision of ASTM Methods for Analysis of and Testing of Industrial Chemicals. This practice is incorporated by reference as specified in 40 CFR 52.742.

(*ix*) ASTM D2372–85: Standard Method of Separation of Vehicle from Solvent-reducible Paints. This method is incorporated by reference as specified in 40 CFR 52.742.

(*4*) Use of an adaptation to any of the analytical methods specified in paragraphs (a)(4)(i)(B)(*1*), (*2*) and (*3*) may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the analytical methods specified in paragraphs (a)(4)(i)(B)(*1*), (*2*) and (*3*) will yield inaccurate results and that the proposed adaptation is appropriate.

(C) *Calculations.* Calculations for determining the VOM content, water content and the content of any compounds which are specifically exempted from the definition of VOM of coatings, inks and fountain solutions as applied shall follow the guidance provided in the following documents.

(*1*) "A Guide for Surface Coating Calculation" EPA–340/1–86–016 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(*2*) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings" (revised June 1988) EPA–450/3–84–019 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(*3*) "A Guide for Graphic Arts Calculations" August 1988 EPA–340/1–88–003 (which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(ii) *Automobile or light-duty truck test protocol.* The protocol for testing, including determining the transfer efficiency, of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" December 1988 EPA–450/3–88–018 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(iii) *Capture system efficiency test protocols*—(A) *Applicability.* The requirements of paragraphs (a)(4)(iii)(B) of this section shall apply to all VOM emitting processes employing capture equipment (*e.g.*, hoods, ducts), except those cases noted below.

(*1*) If a source installs a permanent total enclosure (PTE) that meets USEPA specifications, and which directs all VOM to a control device, then the source is exempted from the requirements described in paragraph (B). The USEPA specifications to determine whether a strucutre is considered a PTE are given in Procedure T of appendix B of this section. In this instance, the capture efficiency is assumed to be 100 percent and the source is still required to measure control efficiency using appropriate test methods as specified in (a)(4)(iv) of this section.

(*2*) If a source uses a control device designed to collect and recover VOM (*e.g.*, carbon adsorber), an explicit measurement of capture efficiency is not necessary provided that the conditions given below are met. The overall control of the system can be determined by directly comparing the input liquid VOM to the recovered liquid VOM. The general procedure for use in this situation is given in 40 CFR 60.433, with the following additional restrictions:

(*i*) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average, within 72 hours following the 24-hour period. In addition, one of the following two criteria must be met:

(*ii*) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (*e.g.*, one process line venting to a carbon adsorber system), or

(*iii*) If the solvent recovery system controls multiple process lines, then the source must be able to demonstrate that the overall control (*i.e.*, the total recovered solvent VOM divided by the sum of liquid VOM input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) *Specific requirements.* The capture efficiency of a process line shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then the source must present an alternative capture efficiency protocol and obtain approval for it by the Administrator as a SIP or FIP revisions.

(*1*) Gas/gas method using temporary total enclosure (TTE). The USEPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of this section. The capture efficiency equation to be used for this protocol is:

$CE = Gw/(GW + Fw)$

where:

CE = capture efficiency, decimal fraction.

Gw = mass of VOM captured and delivered to control device using a TTE.

Fw = mass of fugitive VOM that escapes from a TTE.

Procedure G.2 contained in appendix B of this section is used to obtain Gw. Procedure F.1 in appendix B of this section is used to obtain Fw.

(*2*) *Liquid/gas method using TTE.* The USEPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T of appendix B of this section. The capture efficiency equation to be used for this protocol is:

$CE = (L - F)/L$

where:

CE = capture efficiency, decimal fraction.

L = mass of liquid VOM input to process.

Fw = mass of fugitive VOM that escapes from a TTE.

Procedure L contained in appendix B of this section is used to obtain L. Procedure F.1 in appendix B of this section is used to obtain Fw.

(*3*) Gas/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "G" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE = G/(G + F_g)$

where:

CE = capture efficiency, decimal fraction.

G = mass of VOM captured and delivered to control device.

F_g = mass of fugitive VOM that escapes from building enclosure.

Procedure G.2 contained in appendix B of this section is used to obtain G. Procedure F.2 in appendix B of this section is used to obtain F_g.

(*4*) Liquid/gas method using the building or room (building or room enclosure) in which the affected source is located as the enclosure and in which "F" and "L" are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:

$CE = (L - F_g)/L$

where:

CE = capture efficiency, decimal fraction.

L = mass of liquid VOM input to process.

F_g = mass of fugitive VOM that escapes from building enclosure.

Procedure L contained in appendix B of this section is used to obtain L. Procedure F.2 in appendix B of this section is used to obtain F_g.

(C) *Recordkeeping and reporting.* (*1*) All affected facilities must maintain a copy of the capture efficiency protocol submitted to USEPA on file. All results of the appropriate test methods and capture efficiency protocols must be reported to USEPA within sixty (60) days of the test date. A copy of the results must be kept on file with the source for a period of three (3) years.

(*2*) If any changes are made to capture or control equipment, then the source is required to notify USEPA of these changes and a new test may be required by USEPA.

(*3*) The source must notify the Administrator 30 days prior to performing any capture efficiency or control test. At that time, the source must notify the Administrator which capture efficiency protocol and control device test methods will be used.

(*4*) Sources utilizing a PTE must demonstrate that this enclosure meets the requirement given in Procedure T (in appendix B of this section) for a PTE during any testing of their control device.

(*5*) Sources utilizing a TTE must demonstrate that their TTE meets the requirements given in Procedure T (in appendix B of this section) for a TTE during testing of their control device. The source must also provide documentation that the quality assurance criteria for a TTE have been achieved.

(iv) *Control device efficiency testing and monitoring.* (A) The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOM concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi) of this section.

(B) Any owner or operator that uses an afterburner or carbon adsorber to comply with any paragraph of § 52.741 shall use USEPA approved continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications at all times the afterburner or carbon adsorber is in use. The continuous monitoring

equipment must monitor the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed or VOM concentration of exhaust.

(3) The VOM concentration of each carbon adsorption bed exhaust.

(v) *Overall efficiency.* (A) The overall efficiency of the emission control system shall be determined as the product of the capture system efficiency and the control device efficiency or by the liquid/liquid test protocol as specified in 40 CFR 60.433 (and revised by paragraph (a)(4)(iii)(A)(2) of this section for each solvent recovery system. In those cases in which the overall efficiency is being determined for an entire line, the capture efficiency used to calculate the product of the capture and control efficiency is the total capture efficiency over the entire line.

(B) For coating lines which are both chosen by the owner or operator to comply with paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), (e)(2)(v), or (e)(2)(vi) of this section by the alternative in paragraph (e)(2)(i)(B) of this section and meet the criteria allowing them to comply with paragraph (e)(2) of this section instead of paragraph (e)(1) of this section, the overall efficiency of the capture system and control device, as determined by the test methods and procedures specified in paragraphs (a)(4) (iii), (iv) and (v)(A) of this section, shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E = ([VOM_a - VOM_t]/VOM_a) \times 100$$

Where:

E = Equivalent overall efficiency of the capture system and control device as a percentage,

VOM_a = Actual VOM content of a coating, or the daily-weighted average VOM content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) of this section in units of kg VOM/l (lb VOM/gal) of coating solids as applied,

VOM_t = The VOM emission limit specified in paragraph (e)(2) (i) or (ii) of this section in units of kg VOM/l (lb VOM/gal) of coating solids as applied.

(vi) *Volatile organic material gas phase source test methods.* The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Method 18, 25 or 25A, as appropriate to the conditions at the site, shall be used to determine VOM concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A)(1) and (2) of this section, the test shall consist of three separate runs, each lasting a minimum of 60 min, unless the Administrator determines that process variables dictate shorter sampling times.

(1) When the method is to be used to determine the efficiency of a carbon adsoption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3 shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, 2D, 3 and 4 shall be performed, as applicable, at least twice during each test run.

(G) Use of an adaptation to any of the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section may be approved by the Administrator on a case-by-case basis. An owner or operator must submit sufficient documentation for the Administrator to find that the test methods specified in paragraphs (a)(4)(vi) (A), (B), (C), (D), (E), and (F) of this section will yield inaccurate results and that the proposed adaptation is appropriate.

(vii) *Leak detection methods for volatile organic material.* Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) *Leak detection monitoring.* (1) Monitoring shall comply with 40 CFR part 60, appendix A. Method 21.

(2) The detection instrument shall meet the performance criteria of Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but no less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4) (vii)(A)(1) through (vii)(A)(5) of this section shall apply.

(2) The background level shall be determined as set forth in Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 controlling Volatile Organic Compound Emissions from Leaking Process Equipment" EPA 450/2-82-015 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Portable Instrument User's Manual for Monitoring VOC Sources" EPA-340/1-86-015 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(3) "Protocols for Generating Unit-Specific Emission Estimates for Equipment Leaks of VOC and VHAP" EPA-450/3-88-010 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(4) "Petroleum Refinery Enforcement Manual" EPA-340/1-80-008 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(viii) *Bulk gasoline delivery system test protocol.* (A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR part 60, subpart XX, § 60.503.

(B) Other tests shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: Appendix D" EPA-340/1-80-012 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: Appendix A" EPA-450/2-77-026 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161)

(5) *Compliance dates.* Compliance with the requirements of all rules is required by July 1, 1991, unless otherwise indicated by compliance dates contained in specific rules. This paragraph shall not operate to provide additional time for compliance under section 113(d) of the Act, 42 U.S.C. 7413(d), for sources subject to compliance upon promulgation.

(6) *Afterburners.* The operation of any natural gas fired afterburner and capture system used to comply with § 52.741 is not required during the period of November 1 of any year to April 1 of the following year provided that the operation of such devices is not required for purposes of occupational safety or health, or for the control of toxic substances, odor nuisances, or other regulated pollutants.

(7) *Exemptions, variances, and alternative means of control or compliance determinations.* Notwithstanding the provisions of any other paragraphs of this section, any exemptions, variances or alternatives to the control requirements, emission limitations, or test methods in the Illinois SIP or FIP can only be allowed if approved by the Administrator as a SIP or FIP revision.

(8) *Vapor pressure of volatile organic liquids.* (i) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973); Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984); CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87); and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol} = Total vapor pressure of the mixture,

n = Number of components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a component determined in accordance with paragraph (a) of this section

X_i = Mole fraction of the component in the total mixture.

(9) *Vapor pressure of organic material or solvent.* (i) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973); Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984); CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87); and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{om} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{om} = Total vapor pressure of the portion of the mixture which is composed of organic material,

n = Number of organic material components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of an organic material component determined in accordance with paragraph (a) of this section,

X_i = Mole fraction of the organic material component of the total mixture.

(iii) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or by the above equation.

(10) *Vapor pressure of volatile organic material.* (i) If the VOM consists of only a single compound, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973); Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984); CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87); and Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOM is in a mixture made up of both VOM compounds and compounds which are not VOM, the vapor pressure shall be determined by the following equation:

$$P_{vom} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{vom} = Total vapor pressure of the portion of the mixture which is composed of VOM,

n = Number of VOM components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a VOM component determined in accordance with paragraph (a) of this section,

X_i = Mole fraction of the VOM component of the total mixture.

(iii) If the VOM is in a mixture made up of only VOM compounds, the vapor pressure shall be determined by ASTM Method D2879-86 (incorporated by reference as specified in 40 CFR 52.742) or by the above equation.

(b)—(c) [Reserved]

(d) *Solvent cleaning*—(1) *Solvent cleaning in general.* The requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) shall apply to all cold cleaning, open top vapor degreasing, and conveyorized degreasing operations.

Note: for Federal purposes, paragraph (d)(1) supersedes subpart E (section 215.181) of 35 Ill. Adm. Code 215.)

(2) *Compliance schedule.* Every owner or operator of an emission source which was previously exempt from the requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) because it satisfied the criteria in either (d)(a)(i) or (d)(2)(ii) of this section, shall comply with the requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215

(incorporated by reference as specified in 40 CFR 52.742) on and after July 1, 1991. A source which did not satisfy the criteria in either (d)(a)(i) or (d)(2)(ii) of this section, shall comply with the requirements of subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) upon promulgation.

(i) If emissions of VOM exceed neither 6.8 kg (15 lbs) in any one day, nor 1.4 kg (3 lbs) in any one hour, or

(ii) If the source is used exclusively for chemical or physical analysis or for determination of product quality and commercial acceptance, provided that the operation of the source is not an integral part of the production process, the emissions of VOM from the source do not exceed 363 kg (800 lbs) in any calendar month, and the exemption had been approved in writing by the Illinois Environmental Protection Agency.

(3) *Test methods.* The following test methods shall be used to demonstrate compliance with subpart E (sections 215.182–215.184) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742):

(i) Vapor pressures shall be determined by using the procedure specified in paragraph (a)(9) of this section.

(ii) Exhaust ventilation rates shall be determined by using the procedures specified in paragraph (a)(4)(vi)(C) of this section.

(iii) The performance of control devices shall be determined by using the procedures specified in paragraph (a)(4)(vi) of this section.

(e) *Coating operations*—(1) *Emission limitations for manufacturing plants.* (i) Except as provided in paragraph (e)(3) of this section, no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the following emission limitations for the specified coating. The following emission limitations are expressed in units of VOM per volume of coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied at each coating applicator, except where noted. Compounds which are specifically exempted from the definition of VOM should be treated as water for the purpose of calculating the "less water" part of the coating composition. Compliance with this paragraph must be demonstrated through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) of this section and the recordkeeping and reporting requirements specified in paragraph (e)(6)(ii) of this section. As an alternative to compliance with this paragraph, the owner or operator of a coating line may meet the requirements of paragraph (e)(1)(ii) or paragraph (e)(2) of this section. The equation presented in paragraph (e)(1)(iii) of this section shall be used to calculate emission limitations for determining compliance by add-on controls, credits for transfer efficiency, emissions trades and cross-line averaging.

	kg/l	lb/gal
(A) Automobile or Light-Duty Truck Coating		
(1) Prime coat	0.14	(1.2)
(2) Prime surfacer coat	0.34	(2.8)
NOTE: The prime surfacer coat limitation is based upon a transfer efficiency of 30 percent. Transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision.		
(3) Topcoat	1.81	(15.1)
NOTE: The topcoat limitation is in units of kg (lbs) of VOM per 1 (gal) of coating solids deposited. Compliance with the limitation shall be based on the daily-weighted average VOM content from the entire topcoat operation (all topcoat spray booths, flash-off areas and bake ovens). Compliance shall be demonstrated in accordance with the topcoat protocol for automobiles and light-duty trucks referenced in paragraph (a)(4)(ii) of this section. Paragraph (e)(1)(ii) of this section does not apply to the topcoat limitation.) At least 180 days prior to the initial compliance date, the owner or operator of a coating line subject to the topcoat limitation shall submit to the Administrator a detailed proposal specifying the method of demonstrating compliance with the protocol. The proposal shall include, at a minimum, a comprehensive plan (including a rationale) for determining the transfer efficiency at each booth through the use of in-plant, or pilot testing; the selection of coatings to be tested (for the purpose of determining transfer efficiency) including the rationale for coating groupings; and the method for determining the analytic VOM content of as applied coatings and the formulation solvent content of as applied coatings. Upon approval of the protocol by the Administrator, the source may proceed with the compliance demonstration.		
(4) Final repair coat	0.58	(4.8)
(B) Can Coating		
(1) Sheet basecoat and overvarnish	0.34	(2.8)
(2) Exterior basecoat and overvarnish	0.34	(2.8)
(3) Interior body spray coat	0.51	(4.2)
(4) Exterior end coat	0.51	(4.2)
(5) Side seam spray coat	0.66	(5.5)
(6) End sealing compound coat	0.44	(3.7)
(C) Paper Coating	0.35	(2.9)
NOTE: The paper coating limitation shall not apply to any owner or operator of any paper coating line on which printing is performed if the paper coating line complies with the emissions limitations in paragraph (h)(1) of this section: Printing and Publishing.		
(D) Coil Coating	0.31	(2.6)
(E) Fabric Coating	0.35	(2.9)
(F) Vinyl Coating	0.45	(3.8)
(G) Metal Furniture Coating	0.36	(3.0)
(H) Large Appliance Coating	0.34	(2.8)
NOTE: The limitation shall not apply to the use of quick-drying lacquers for repair of scratches and nicks that occur during assembly, provided that the volume of coating does not exceed 0.95 l (1 quart) in any one rolling eight-hour period.		
(I) Magnet Wire Coating	0.20	(1.7)
(J) Miscellaneous Metal Parts and Products Coating		
(1) Clear coating	0.52	(4.3)
(2) Air-dried coating	0.42	(3.5)
(3) Extreme performance coating	0.42	(3.5)
(4) All other coatings	0.36	(3.0)

	kg/l	lb/gal
(K) Heavy Off-Highway Vehicle Products Coating		
(1) Extreme performance prime coat	0.42	(3.5)
(2) Extreme performance top-coat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) All other coatings are subject to the emission limitations for miscellaneous metal parts and products coatings in paragraph (e)(1)(i)(J) of this section.		
(L) Wood Furniture Coating		
(1) Clear topcoat	0.67	(5.6)
(2) Opaque stain	0.56	(4.7)
(3) Pigmented coat	0.60	(5.0)
(4) Repair coat	0.67	(5.6)
(5) Sealer	0.67	(5.6)
(6) Semi-transparent stain	0.79	(6.6)
(7) Wash coat	0.73	(6.1)
NOTE: An owner or operator of a wood furniture coating operation subject to this paragraph shall apply all coatings, with the exception of no more than 37.8 l (10 gal) of coating per day used for touch-up and repair operations, using one or more of the following application systems: airless spray application system, air-assisted airless spray application system, electrostatic spray application system, electrostatic bell or disc spray application system, heated airless spray application system, roller coating, brush or wipe coating application system, or dip coating application system.		
(M) Existing Diesel-Electric Locomotive Coating Lines in Cook County		
(1) Extreme performance prime coat	0.42	(3.5)
(2) Extreme performance top-coat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) High-temperature aluminum coating	0.72	(6.0)
(5) All other coatings	0.36	(3.0)

(ii) *Daily-weighted average limitations.* No owner or operator of a coating line subject to the limitations of paragraph (e)(1)(i) of this section and complying by means of paragraph (e)(1)(ii) of this section shall operate the subject coating line unless the owner or operator has demonstrated compliance with paragraph (e)(1) (ii)(A), (ii)(B), (ii)(C), (ii)(D), (ii)(E) or (ii)(F) of this section (depending upon the source category) through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) of this section and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iii) of this section.

(A) No owner or operator of a coating line subject to only one of the limitations from among paragraph (e)(1)(i)(A)*(1)*, (i)(A)*(2)*, (i)(A)*(4)*, (i)(C), (i)(D), (i)(E), (i)(F), (i)(G), (i)(H), or (i)(I) of this section shall apply coating on any such coating line, during any day, whose daily-weighted average VOM content exceeds the emission limitation to which the coatings are subject.

(B) No owner or operator of a miscellaneous metal parts and products coating line subject to the limitations of paragraph (e)(1)(i)(J) of this section shall apply coatings to miscellaneous metal parts or products on the subject coating line unless the requirements in paragraph (e)(1)(ii)(B) (*1*) or (*2*) of this section are met.

(*1*) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(J) of this section, during the same day (*e.g.*, all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(*2*) For each coating line which applies coatings from more than one of the four coating categories in paragraph (e)(1)(i)(J) of this section, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(C) No owner or operator of a can coating facility subject to the limitations of pargraph (e)(1)(i)(B) of this section shall operate the subject coating facility using a coating with a VOM content in excess of the limitations specified in paragrpah (e)(1)(i)(B) of this section unless all of the following requirements are met:

(*1*) An alternative daily emission limitation shall be determined according to paragraph (e)(1)(ii)(C)(*2*) of this section. Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation.

$$E_a = \sum_{i=1}^{n} V_i C_i$$

where:

E_a = Actual VOM emissions for the day in units of kg/day (lbs/day),

i = Subscript denoting a specific coating applied,

n = Total number of coatings applied in the can coating operation,

V_i = Volume of each coating applied for the day in units of 1/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

C_i = The VOM content of each coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

(*2*) The alternative daily emission limitaiton (A_a) shall be determined on a daily basis as follows:

$$A_a = \sum_{i=1}^{n} \frac{V_i L_i (D_i - C_i)}{(D_i - L_i)}$$

where:

A_a = The VOM emissions allowed for the day in units of kg/day (lbs/day),

i = Subscript denoting a specific coating applied,

n = Total number of surface coatings applied in the can coating operation,

C_i = The VOM content of each surface coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

D_i = The density of VOM in each coating applied. For the purposes of calculating A_a, the density is 0.882 kg VOM/l VOM (7.36 lbs VOM/gal VOM),

V_i = Volume of each surface coating applied for the day in units of 1 (gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

L_s = The VOM emission limitation for each surface coating applied as specified in paragraph (e)(1)(i)(B) of this section in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

(D) No owner or operator of a heavy off-highway vehicle products coating line subject to the limitations of paragraph (e)(1)(i)(K) of this section shall apply coatings to heavy off-highway vehicle products on the subject coating line unless the requirements of paragraph (e)(1)(ii)(D) (*1*) or (*2*) of this section are met.

(*1*) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K) of this section, during the same day (*e.g.*, all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(*2*) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(K) of this section, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(E) No owner or operator of a wood furniture coating line subject to the limitations of paragraph (e)(1)(i)(L) of this section shall apply coatings to wood furniture on the subject coating line unless the requirements of paragraph (e)(1)(ii)(E) (*1*) or (*2*) of this section, in addition to the requirements specified in the note to paragraph (e)(1)(i)(L) of this section, are met.

(*1*) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L) of this section, during the same day (e.g., all coatings used on the line are subject to 0.67 kg/l [5.6 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(*2*) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(L) of this section, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(F) No owner or operator of an existing diesel-electric locomotive coating line in Cook County, subject to the limitations of paragraph (e)(1)(i)(M) of this section shall apply coatings to diesel-electric locomotives on the subject coating line unless the requirements of paragraph (e)(1)(ii)(F) (*1*) or (*2*) of this section are met.

(*1*) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M) of this section, during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(*2*) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(M) of this section, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(iii) Limitations in terms of kg (lbs) of VOM emissions per 1 (gal) of solids as applied at each coating applicator shall be determined by the following equation:

$$S = \frac{C}{1-(C/D)}$$

where:

S = The limitation on VOM emissions in terms of kg VOM/l (lbs VOM/gal) of solids.

C = The limitation on VOM emissions in terms of kg/l (lbs/gal) of coating (minus water and any compounds which are specifically excluded from the definition of VOM) specified in paragraph (e)(1)(i) of this section.

D = The density of VOM in the coating. For the purposes of calculating S, the density is 0.882 kg VOM/l VOM (7.36 lbs VOM/gal VOM).

(2) *Alternative emission limitations.* Any owner or operator of a coating line subject to paragraph (e)(1) of this section may comply with this paragraph, rather than with paragraph (e)(1) of this section, if a capture system and control device are operated at all times and the owner or operator demonstrates compliance with paragraphs (e)(2) (ii), (iii), (iv), (v), (vi) or (vii) of this section (depending upon the source category) through the applicable coating analysis and capture system and control device efficiency test methods and procedures specified in paragraph (a)(4) of this section and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iv) of this section; and the control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv) of this section and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use. The use of a capture system and control device, which does not demonstrate compliance with paragraph (e)(2) (ii), (iii), (iv), (v), (vi), or (vii), may only be used as an alternative to compliance with paragraph (e)(1) of this section if approved as a FIP revision.

(i) *Alternative add-on control methodologies.* (A) The coating line is equipped with a capture system and control device that provides 81 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency, or

(B) The system used to control VOM from the coating line is demonstrated to have an overall efficiency sufficient to limit VOM emissions to no more than what is allowed under paragraph (e)(1) of this section. Use of any control system other than an afterburner, carbon absorption, condensation, or absorption scrubber system can only be allowed if approved by the Administrator as a SIP or FIP revision. Transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision. Baseline transfer efficiencies and transfer efficiency test methods must be approved by the Administrator.

Such overall efficiency is to be determined as follows:

(*1*) Obtain the emission limitation from the appropriate paragraph in (e)(1) of this section,

(*2*) Calculate "S" according to the equation in paragraph (e)(1)(iii) of this section,

(*3*) Calculate the overall efficiency required according to paragraph (a)(4)(v) of this section. For the purposes of calculating this value, according to the equation in (a)(4)(v)(B) of this section VOM_i is equal to the value of "S" as determined above in (i)(B)(*2*).

(ii) No owner or operator of a coating line subject to only one of the emission limitations from among paragraph (e)(1)(i)(A)(*1*), (e)(1)(i)(A)(*2*), (e)(1)(i)(A)(*4*), (e)(1)(i)(C), (e)(1)(i)(D), (e)(1)(i)(E), (e)(1)(i)(F), (e)(1)(i)(G), (e)(1)(i)(H), or (e)(1)(i)(I) of this section and equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) of this section are met. No owner or operator of a coating line subject to paragraph (e)(1)(i)(A)(*3*) of this section and equipped with a capture system and control device shall operate the coating line unless the owner or operator demonstrates compliance with the topcoat limitation in accordance with the topcoat protocol for automobile or light-duty trucks referenced in paragraph (a)(4)(ii) of this section.

(iii) No owner or operator of a miscellaneous metal parts and products coating line which applies one or more coatings during the same day, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(J) of this section (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]), and which is equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) of this section are met.

(iv) No owner or operator of a heavy off-highway vehicle products coating line which applies one or more coatings during the same day, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K) of this section (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]), and which is equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) of this section are met.

(v) No owner or operator of an existing diesel-electric locomotive coating line in Cook County which applies one or more coatings during the same day, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M) of this section (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gals]), and which is equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) of this section are met.

(vi) No owner or operator of a wood furniture coating line which applies one or more coatings during the same day, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L) (*e.g.*, all coatings used on the line are subject to 0.67 kg/l [5.6 lbs/gal]), and which is equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) of this section are met. If compliance is achieved by meeting the requirements in paragraph (e)(2)(i)(B) of this section, then the provisions in the note to paragraph (e)(1)(i)(L) of this section must also be met.

(vii) No owner or operator of a can coating facility and equipped with a capture system and control device shall operate the subject coating facility unless the requirements in paragraph (e)(2)(vii) (A) or (B) of this section are met.

(A) An alternative daily emission limitation shall be determined according to paragraph (e)(1)(ii)(C)(*2*) of this section. Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation:

$$E_a = \sum_{i=1}^{n} V_i C_i (1 - F_i)$$

where:

E_a = Actual VOM emissions for the day in units of kg/day (lbs/day),

i = Subscript denoting the specific coating applied,

n = Total number of surface coatings as applied in the can coating operation,

V_i = Volume of each coating as applied for the day in units of l/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

C_i = The VOM content of each coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

F_i = Fraction, by weight, of VOM emissions from the surface coating, reduced or prevented from being emitted to the ambient air. This is the overall efficiency of the capture system and control device.

(B) The coating line is equipped with a capture system and control device that provide 75 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency.

(3) *Exemptions from emission limitations*—(i) *Exemptions for all source categories except wood furniture coating.* The limitations of paragraph (e) of this section shall not apply to coating lines within a facility, that otherwise would be subject to the same subparagraph of paragraph (e)(1)(i) of this section (because they belong to the same source category, e.g. can coating), provided that combined actual emissions of VOM from all lines at the facility subject to that subparagraph never exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices. (For example, can coating lines within a plant would not be subject to the limitations of subparagraph (e)(1)(i)(B) of this section if the combined actual emissions of VOM from the can coating lines never exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices.) Volatile organic material emissions from heavy off-highway vehicle products coating lines must be combined with VOM emissions from miscellaneous metal parts and products coating lines to determine applicability. Any owner or operator of a coating facility shall comply with the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) of this section and the recordkeeping and reporting requirements specified in paragraph (e)(6)(i) of this section if total VOM emissions from the subject coating lines are always less than or equal to 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices and, therefore, are not subject to the limitations of paragraph (e)(1) of this section. Once a category of coating lines at a facility is subject to the limitations in paragraph (e)(1) of this section, the coating lines are always subject to the limitations in paragraph (e)(1) of this section.

(ii) *Applicability for wood furniture coating.* (A) The limitations of paragraph (e) of this section shall apply to a plant's wood furniture coating lines if the plant contains process emission sources, not regulated by paragraphs (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1), or subparts B, Q (excluding sections 215.432 and 215.436), R (excluding sections 215.447, 215.450, and 215.452), S, V, X, Y (sections 215.582–215.584), or Z of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), which as a group both:

(*1*) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM per calendar year if no air pollution control equipment were used, through production or capacity limitations contained in a federally enforceable construction permit or SIP or FIP version.

(B) If a plant ceases to fulfill the criteria of paragraph (e)(3)(ii)(A) of this

section, the limitations of paragraph (e)(1)(i)(L) of this section shall continue to apply to any wood furniture coating line which was ever subject to the limitations of paragraph (e)(1)(i)(L) of this section.

(C) For the purposes of paragraph (e)(3)(ii) of this section, an emission source shall be considered regulated by a subpart (of the Illinois rules), section, or paragraph if it is subject to the limitations of that subpart (of the Illinois rules), section, or paragraph. An emission source is not considered regulated by a subpart (of the Illinois rules), section, or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(D) Any owner or operator of a wood furniture coating line to which the limitations of paragraph (e) of this section are not applicable due to the criteria in paragraph (e)(3)(ii) of this section shall, upon request by the Administrator, submit records to the Administrator within 30 calendar days from the date of the request that document that the coating line is exempt from the limitations of paragraph (e) of this section.

(4) *Exemption from general rule on use of organic material.* No owner or operator of a coating line subject to the limitations of paragraph (e)(1) of this section is required to meet the limitations of subpart K (section 215.301 or 215.302) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), after the date by which the coating line is required to meet paragraph (e)(1) of this section.

(5) *Compliance schedule.* Every owner or operator of a coating line (of a type included within paragraph (e)(1)(i) of this section) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section in accordance with the appropriate compliance shedule as specified in paragraph (e)(5) (i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section. Wood furniture coating lines are not subject to paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

(6) *Recordkeeping and reporting.* The VOM content of each coating and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section to establish the records required under paragraph (e)(6) of this section.

(i) Any owner or operator of a coating line which is exempted from the limitations of paragraph (e)(1) of this section because of paragraph (e)(3)(i) of this section shall comply with the following:

(A) By July 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) of this section shall certify to the Administrator that the facility is exempt under the provisions of paragraph (e)(3)(i) of this section. Such certification shall include:

(*1*) A declaration that the facility is exempt from the limitations of paragraph (e)(1) of this section because of paragraph (e)(3)(i) of this section; and

(*2*) Calculations which demonstrate that the combined VOM emissions from all coating lines at the facility never exceed 6.8 kg (15 lbs) per day before the application of capture systems and control devices. The following equation shall be used to calculate total VOM emissions:

$$T_o = \sum_{j=1}^{m} \sum_{i=1}^{n} (A_i B_i)_j$$

where:

T_o = Total VOM emissions from coating lines at a facility each day before the application of capture systems and control devices in units of kg/day (lbs/day),

m = Number of coating lines at the facility,

j = Subscript denoting an individual coating line,

n = Number of different coatings as applied each day on each coating line at the facility,

i = Subscript denoting an individual coating,

A_i = Weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of kg VOM/l (lbs VOM/gal), and

B_i = Volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of l/day (gal/day). The instrument or method by which the owner or operator accurately measured or calculated the volume of each coating as applied on each coating line each day shall be described in the certification to the Administrator.

(B) On and after July 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) of this section shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(C) On and after July 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (e)(1) of this section because of paragraph (e)(3)(i) of this section shall notify the Administrator of any record showing that total VOM emissions from the coating facility exceed 6.8 kg (15 lbs) in any day before the application of capture systems and control devices shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedance occurs.

(ii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) of this section and complying by means of paragraph (e)(1)(i) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new coating line, or upon changing the method of compliance from an existing subject coating line from paragraph (e)(1)(ii) or paragraph (e)(2) to paragraph (e)(1)(i) of this section; the owner or operator of a subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(i) of this section on and after July 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*3*) For coating lines subject to paragraph (e)(1)(i)(A)(*3*) of this section, certification shall include:

(*i*) The name and identification number of each coating line which will comply by means of paragraph (e)(1)(i)(A)(*3*) of this section,

(*ii*) The name and identification number of each coating as applied on each coating line,

(*iii*) The weight of VOM per volume of each coatng as applied on each coating line,

(*iv*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line,

(*v*) The method by which the owner or operator will create and maintain records each day as required in paragraph (e)(6)(ii)(B) of this section for coating lines subject to paragraph (e)(1)(i)(A)(*3*) of this section,

(*vi*) An example format in which the records required in paragraph (e)(6)(ii)(B) of this section for coating lines subject to paragraph (e)(1)(i)(A)(*3*) of this section.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) of this section and complying by means of paragraph (e)(1)(i) of this section shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*3*) For coating lines subject to paragraph (e)(1)(i)(A)(*3*) of this section, the owner or operator shall maintain all records necessary to calculate the daily-weighted average VOM content from the coating line in accordance with the proposal submitted, and approved by the Administrator, pursuant to paragraph (e)(1)(A)(*3*) of this section.

(C) On and after July 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (e)(1)(i) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation, except that any record showing a violation of paragraph (e)(1)(i)(A)(*3*) of this section shall be reported by sending a copy of such record to the Administrator within 15 days from the end of the month in which the violation occurred.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (e)(1) of this section from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2) of this section, the owner or operator shall comply with all requirements of paragraph (e)(6) (iii)(A) or (iv)(A) of this section, respectively. Upon changing the method of compliance with paragraph (e)(1) of this section from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2) of this section, the owner or operator shall comply with all requirements of paragraph (e)(6) (iii) or (iv) of this section, respectively.

(*3*) For coating lines subject to paragraph (e)(1)(i)(A)(*3*) of this section, the owner or operator shall notify the Administrator of any change to the topcoating operation at least 30 days before the change is effected. The Administrator shall determine whether or not recertification testing is required. If the Administrator determines that recertification testing is required, then the owner or operator shall submit a proposal to the Administrator to test within 30 days and retest within 30 days of the Administrator's approval of the proposal.

(iii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) of this section and complying by means of paragraph (e)(1)(ii) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new coating line, or upon changing the method of compliance for an existing subject coating line from paragraph (e)(1)(i) or paragraph (e)(2) to paragraph (e)(1)(ii) of this section; the owner or operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(ii) of this section on and after July 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating line which will comply by means of paragraph (e)(1)(ii) of this section.

(*2*) The name and identification number of each coating as applied on each coating line.

(*3*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*4*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(*5*) The method by which the owner or operator will create and maintain records each day as required in paragraph (e)(6)(iii)(B) of this section.

(*6*) An example of the format in which the records required in paragraph (e)(6)(iii)(B) of this section will be kept.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) of this section and complying by means of paragraph (e)(1)(ii) of this section, shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*3*) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (a)(3) of this section.

(C) On and after July 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (e)(1)(ii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2) of this section, the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2) of this section, the owner or operator shall comply with all

requirements of paragraph (e)(6)(ii) or (iv), respectively.

(iv) Any operator or owner of a coating line subject to the limitations of paragraph (e)(2) of this section and complying by means of paragraph (e)(2)(ii), (iii), (iv), (v), (vi) or (vii) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new coating line, or upon changing the method of compliance for an existing coating line from paragraph (e)(1) (i) or (ii) to paragraph (e)(2) of this section; the owner or operator of the subject coating line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject coating line will be in compliance with paragraph (e)(2) of this section on and after July 1, 1991, or on and after the initial start-up date.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(2) of this section and complying by means of paragraph (e)(2) (ii), (iii), (iv), (v), (vi) or (vii) of this section shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The weight of VOM per volume of coating solids as applied each day on each coating line, if complying pursuant to paragraph (e)(2)(i)(B) of this section.

(*2*) Control device monitoring data.

(*3*) A log operating time for the capture system, control device, monitoring equipment and the associated coating line.

(*4*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after July 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (e)(2) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii) of this section, the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iii)(A) of this section, respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii) of this section, the owner or operator shall comply with all requirements of paragraph (e)(6)(ii) or (iii) of this section, respectively.

(f)—(g) [Reserved]

(h) *Printing and publishing*—(1) *Flexographic and rotogravure printing.* (i) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply at any time on any coating or ink unless the VOM content does not exceed the limitation specified in either paragraph (h)(1)(i)(A) or (B) of this section. Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in paragraph (a)(4)(i) of this section and the recordkeeping and reporting requirements specified in paragraph (h)(4)(ii) of this section. As an alternative to compliance with paragraph (h)(1)(i) of this section, a subject printing line may meet the requirements of paragraph (h)(1)(ii) or (iii) of this section.

(A) Forty percent VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or

(B) Twenty-five percent VOM by volume of the volatile content in the coating and ink.

(ii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply coatings or inks on the subject printing line unless the weighted average, by volume, VOM content of all coatings and inks as applied each day on the subject printing line does not exceed the limitation specified in either paragraph (h)(1)(i)(A) (as determined by paragraph (h)(1)(ii)(A) or (h)(1)(i)(B) (as determined by paragraph (h)(1)(ii)(B) of this section. Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in paragraph (a)(4)(i) of this section and the recordkeeping and reporting requirements specified in paragraph (h)(4)(iii) of this section.

(A) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(A) of this section.

$$VOM_{(d)(a)} = \frac{\sum_{i=1}^{n} C_i L_i (V_s + V_{was})}{\sum_{i=1}^{n} L_i (V_s + V_{was})}$$

where:

$VOM_{(d)(a)}$ = The weighted average VOM content in units of percent VOM by volume of all coatings and inks (minus water and any compounds which are specifically exempted from the definition of VOM) used each day.

i = Subscript denoting a specific coating or ink as applied.

n = The number of different coatings and/or inks as applied each day on a printing line.

C_i = The VOM content in units of percent VOM by volume of each coating or ink as applied (minus water and any compounds which are specifically exempted from the defintion of VOM).

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal).

V_s = The volume fraction of solids in each coating or ink as applied, and

V_{was} = The volume fraction of VOM in each coating or ink as applied.

(B) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(B) of this section.

$$VOM_{(d)(a)} = \frac{\sum_{i=1}^{n} C_i L_i V_{ws}}{\sum_{i=1}^{n} L_i V_{ws}}$$

where:

$VOM_{(d)(a)}$ = The weighted average VOM content in units of percent VOM by volume of the volatile content of all coatings and inks used each day.

i = Subscript denoting a specific coating or ink as applied.

n = The number of different coatings and/or inks as applied each day on each printing line.

C_i = The VOM content in units of percent VOM by volume of the volatile matter in each coating or ink as applied.

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal).

V_{ws} = The volume fraction of volatile matter in each coating or ink as applied.

(iii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line equipped with a capture system and control device shall operate the subject printing line unless the owner or operator meets the requirements in paragraph (h)(1)(iii) (A), (B) or (C) and paragraphs (h)(1)(iii) (D), (E) and (F) of this section.

(A) A carbon adsorption system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(B) An incineration system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(C) An alternative VOM emission reduction system is demonstrated to have at least a 90 percent control device efficiency and the alternative emission reduction system is approved by the Administrator as a SIP or FIP revisions, and

(D) The printing line is equipped with a capture system and control device that provides an overall reduction in VOM emissions of at least:

(*1*) 75 percent where a publication rotogravure printing line is employed, or

(*2*) 65 percent where a packaging rotogravure printing line is employed, or

(*3*) 60 percent where a flexographic printing line is employed, and

(E) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(F) The capture system and control device are operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with this paragraph by using the applicable capture system and control device test methods and procedures specified in paragraphs (a)(4) (iii) through (vi) of this section and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(4)(iv) of this section.

(2) *Applicability.* (i) The limitations of paragraph (h)(1) of this section apply to all flexographic and rotogravure printing lines at a subject facility. All facilities with flexographic and/or rotogravure printing lines are subject facilities unless:

(A) Total maximum theoretical emissions of VOM from all flexographic and rotogravure printing line(s) at the facility never exceed 90.7 Mg (100 tons) per calendar year before the application of capture systems and control devices, or

(B) A federally enforceable construction permit or SIP or FIP revision for all flexographic and rotogravure printing line(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all flexographic and rotogravure printing line(s) to 90.7 Mg (100 tons) or less per calendar year before the application of capture systems and control devices.

(ii) Upon achieving compliance with paragraph (h) of this section, the emission source is not required to meet subpart K (sections 215.301 or 215.302) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742). Emission sources exempt from paragraph (h) of this section are subject to subpart K (sections 215.301 or 215.302). Rotogravure or flexographic equipment used for both roll printing and paper coating are subject to paragraph (h) of this section.

(iii) Once subject to the limitations of paragraph (h)(1) of this section, a flexographic or rotogravure printing line is always subject to the limitations of paragraph (h)(1) of this section.

(iv) Any owner or operator of any flexographic or rotogravure printing line that is exempt from the limitations of paragraph (h)(1) of this section because of the criteria in paragraph (h)(2) of this section is subject to the recordkeeping and reporting requirements specified in paragraph (h)(4)(i) of this section.

(3) *Compliance schedule.* Every owner or operator of a flexographic and/or rotogravure printing line shall comply with the applicable requirements of paragraph (h)(1) of this section and paragraph (h)(4) of this section in accordance with the applicable compliance schedule specified in paragraph (h)(3) (i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a flexographic or rotogravure printing line which is exempt from the limitations of paragraph (h)(1) of this section because the criteria in paragraph (h)(2) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(i) of this section.

(ii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(i) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (h)(1)(i) and (h)(4)(ii) of this section.

(iii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(ii) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (h)(1)(ii) and (h)(4)(iii) of this section.

(iv) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(iii) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (h)(1)(iii) and (h)(4)((iv) of this section.

(4) *Recordkeeping and reporting.* The VOM content of each coating and ink and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section to establish the records required under paragraph (h)(4) of this section.

(i) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(1) of this seciton because of the criteria in paragraph (h)(2) of this section shall comply with the following:

(A) By July 1, 1991, the owner or operator of a facility to which paragraph (h)(4)(i) of this section is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(2) of this section. Such certification shall include:

(*1*) A declaration that the facility is exempt from the limitations of the criteria in paragraph (h)(1) of this section because of paragraph (h)(2) of this section, and

(*2*) Calculations which demonstrate that total maximum theoretical emissions of VOM from all flexographic and rotogravure printing lines at the facility never exceed 90.7 Mg (100 tons) per calendar year before the application of capture systems and control devices. Total maximum theoretical emissions of VOM for a flexograhpic or rotogravure printing facility is the sum of maximum theoretical emissions of VOM from each flexographic and rotogravure printing line at the facility. The following equation shall be used to calculate total maximum theoretical emissions of VOM per calendar year before the application of capture systems and control devices for each flexographic and rotogravure printing line at the facility:

$$E_o = A \times B$$

where:

E_o = Total maximum theoretical emissions of VOM from one flexographic or rotogravure printing line in units of kg/year (lbs/year).

A = Weight of VOM per volume of solids of the coating or ink with the highest VOM content as applied each year on the printing line in units of kg VOM/1 (lbs VOM/gal) of coating or ink solids, and

B = Total volume of solids for all coatings and inks that can potentially be applied each year on the printing line in units of 1/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each coating and ink as applied and the amount that can

potentially be applied each year on the printing line shall be described in the certification to the Administrator.

(B) On and after July 1, 1991, the owner or operator of a facility referenced in paragraph (h)(4)(i) of this section shall collect and record all of the following information each year for each printing line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content and the volume of each coating and ink as applied each year on each printing line.

(C) On and after July 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(1) of this section because of the criteria in paragraph (h)(2) of this section shall notify the Administrator of any record showing that total maximum theoretical emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year before the application of capture systems and control devices, shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedance occurs.

(ii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(i) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new printing line, or upon changing the method of compliance from an existing subject printing line from paragraph (h)(1) (ii) or (iii) of this section to paragraph (h)(1)(i) of this section the owner or operator of a subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(i) of this section on and after July 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(i) of this section shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(C) On and after July 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(i) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) of this section from paragraph (h)(1)(i) of this section to paragraph (h)(1) (ii) or (iii) of this section, the owner or operator shall comply with all requirements of paragraph (h)(4) (iii)(A) or (iv)(A) of this section respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(i) to paragraph (h)(1) (ii) or (iii) of this section the owner or operator shall comply with all requirements of paragraph (h)(4) (iii) or (iv) of this section, respectively.

(iii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(ii) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new printing line, or upon changing the method of compliance for an existing subject printing line from paragraph (h)(1) (i) or (iii) of this section to paragraph (h)(1)(ii) of this section, the owner or operator of the subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(ii) of this section on and after July 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each printing line which will comply by means of paragraph (h)(1)(ii) of this section.

(*2*) The name and identification number of each coating and ink available for use on each printing line.

(*3*) The VOM content of each coating and ink as applied each day on each printing line.

(*4*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating and ink as applied each day on each printing line.

(*5*) The method by which the owner or operator will create and maintain records each day as required in paragraph (h)(4)(iii)(B) of this section.

(*6*) An example of the format in which the records required in paragraph (h)(4)(iii)(B) of this section will be kept.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(ii) of this section shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content and the volume of each coating and ink as applied each day on each printing line.

(*3*) The daily-weighted average VOM content of all coatings and inks as applied on each printing line.

(C) On and after July 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(ii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) of this section from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii) of this section, the owner or operator shall comply with all requirements of paragraph (h)(4)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4)(ii) or (iv) of this section, respectively.

(iv) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(iii) of this section shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(1)(i) or (ii) of this section to paragraph (h)(1)(iii) of this section, the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(1)(iii) of this section on and after July 1, 1991, or on and after the initial start-up date.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) of this section and complying by means of paragraph (h)(1)(iii) of this section shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*1*) Control device monitoring data.

(*2*) A log of operating time for the capture system, control device, monitoring equipment and the associated printing line.

(*3*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after July 1, 1991, the owner or operator of a subject printing line shall notify the Administration in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(iii) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii), the owner or operator shall comply with all requirements of paragraph (h)(4) (ii)(A) or (iii)(A) of this section, respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii) of this section, the owner or operator shall comply with all requirements of paragraph (h)(4) (ii) or (iii) of this section, respectively.

(5) *Heatset-web-offset lithographic printing*—(i) *Applicability.* (A) The limitations of paragraph (h)(5)(ii) of this section apply to all heatset-web-offset lithographic printing lines at a subject facility. All facilities with heatset-web-offset lithographic printing lines are subject facilities unless:

(*1*) Total maximum theoretical emissions of VOM from all heatset-web-offset lithographic printing lines at the facility never exceed 90.7 Mg (100 tons) per calendar year in the absence of air pollution control equipment, or

(*2*) A federally enforceable construction permit or SIP or FIP revision for all heatset-web-offset lithographic printing line(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all heatset-web-offset lithographic printing line(s) to 90.7 Mg (100 tons) per calendar year or less in the absence of air pollution control equipment, and

(B) Any owner or operator of any heatset-web-offset lithographic printing line that is exempt from the limitations in paragraph (h)(5)(ii) of this section because of the criteria in paragraph (h)(5)(i)(A) of this section shall be subject to the recordkeeping and reporting requirements in paragraph (h)(5)(iii)(A) of this section.

(ii) *Specific provisions.* No owner or operator of a subject heatset-web-offset printing line may cause or allow the operation of the subject heatset-web-offset printing line unless the owner or operator meets the requirements in paragraph (h)(5)(ii) (A) or (B) of this section and the requirements in paragraphs (h)(5)(ii) (C) and (D) of this section.

(A) An afterburner system is installed and operated that reduces 90 percent of the VOM emissions from the dryer exhaust, or

(B) The fountain solution contains no more than 8 percent, by weight, of VOM and a condensation recovery system is installed and operated that removes at least 75 percent of the non-isopropyl alcohol organic materials from the dryer exhaust, and

(C) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) of this section and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(D) The control device is operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with paragraph (h)(5) of this section by using the applicable test methods and procedures specified in paragraphs (a)(4) (i), (iv), and (vi) of this section and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(5)(iii) of this section.

(iii) *Recordkeeping and reporting.* The VOM content of each fountain solution and ink and the efficiency of each control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) of this section to establish the records required under paragraph (h)(5)(iii) of this section.

(A) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(5)(ii) of this section because of the criteria in paragraph (h)(5)(i) of this section shall comply with the following:

(*1*) By July 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) of this section is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(5)(i) of this section. Such certification shall include:

(*i*) A declaration that the facility is exempt from the limitations of paragraph (h)(5)(ii) of this section because of the criteria in paragraph (h)(5)(i) of this section, and

(*ii*) Calculations which demonstrate that total maximum theoretical emissions of VOM from all heatset-web-offset lithographic printing lines at the facility never exceed 90.7 Mg (100 tons) per calendar year before the application of air pollution control equipment. Total maximum theoretical emissions of VOM for a heatset-web-offset lithographic printing facility is the sum of maximum theoretical emissions of VOM from each heatset-web-offset lithographic printing line at the facility. The following equation shall be used to calculate total maximum theoretical emissions of VOM per calendar year in the absence of air pollution control equipment for each heatset-web-offset lithographic printing line at the facility.

$$E_o = (A \times B) + \frac{(C \times D)}{100}$$

where

E_o = Total maximum theoretical emissions of VOM from one heatset-web-offset printing line in units of kg/year (lbs/year),

A = Weight of VOM per volume of solids of ink with the highest VOM content as applied each year on the printing line in units of kg VOM/l (lbs VOM/gal) of solids, and

B = Total volume of solids for all inks that can potentially be applied each year on the printing line in units of l/year (gal/year). The instrument or method by which the owner or operator accurately measured or calculated the volume of each ink as applied and the amount that can potentially be applied each year on the printing line shall be described in the certification to the Administrator.

C = The weight percent VOM of the fountain solution with the highest VOM content.

D = The total volume of fountain solution that can potentially be used each year on the printing line in units of l/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each fountain solution used and the amount that can potentially be used each year on the printing line shall be described in the certification to the Administrator.

(*2*) On and after July 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) of this section is applicable shall collect and record all of

the following information each year for each printing line and maintain the information at the facility for a period of three years:

(*i*) The name and identification of each fountain solution and ink as applied on each printing line.

(*ii*) The VOM content and the volume of each fountain solution and ink as applied each year on each printing line.

(*3*) On and after July 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(5)(ii) of this section because of the criteria in paragraph (h)(5)(i) of this section shall notify the Administrator of any record showing that total maximum theoretical emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year in the absence of air pollution control equipment shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedance occurs.

(B) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) of this section and complying by means of paragraph (h)(5)(ii)(A) of this section shall comply with the following:

(*1*) By July 1, 1991, or upon initial start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5) (ii)(B) to (ii)(A) of this section, the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(A) of this section on and after July 1, 1991, or on and after the initial start-up date.

(*2*) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) of this section and complying by means of paragraph (h)(5)(ii)(A) of this section shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*i*) Control device monitoring data.

(*ii*) A log of operating time for the control device, monitoring equipment and the associated printing line.

(*iii*) A maintenance log for the control device and monitoring equipment detailing all routine and nonroutine maintenance performed including dates and duration of any outages.

(*3*) On and after July 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*i*) Any record showing violation of paragraph (h)(5)(ii)(A) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*ii*) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) of this section from paragraph (h)(5) (ii)(A) to (ii)(B), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C)(*1*) of this section. Upon changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5) (ii)(A) to (ii)(B) of this section the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C) of this section.

(C) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) of this section and complying by means of paragraph (h)(5)(ii)(B) of this section shall comply with the following:

(*1*) By July 1, 1991, or upon initial start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5) (ii)(A) to (ii)(B) of this section, the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(B) of this section on and after July 1, 1991, or on and after the initial start-up date.

(*2*) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) of this section and complying by means of paragraph (h)(5)(ii)(B) of this section shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(*i*) The VOM content of the fountain solution used each day on each printing line.

(*ii*) A log of operating time for the control device and the associated printing line.

(*iii*) A maintenance log for the control device detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(*3*) On and after July 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*i*) Any record showing violation of paragraph (h)(5)(ii)(B) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*ii*) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) of this section from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A) of this section, the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B)(*1*) of this section. Upon changing the method of compliance with paragraph (h)(5)(ii) of this section from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A) of this section, the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B) of this section.

(iv) *Compliance schedule.* Every owner or operator of a heatset-web-offset lithographic printing line shall comply with the applicable requirements of paragraphs (h)(5) (ii) and (iii) of this section in accordance with the applicable compliance schedule specified in paragraph (h)(5)(iv) (A), (B) or (C) of this section.

(A) No owner or operator of a heatset-web-offset lithographic printing line which is exempt from the limitations of paragraph (h)(5)(ii) of this section because of the criteria in paragraph (h)(5)(i) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (h)(5)(iii)(A) and (h)(5)(ii)(A) of this section.

(B) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(A) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (h)(5)(iii)(B) and (h)(5)(ii)(B) of this section.

(C) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(B) of this section shall operate said printing line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(C) of this section.

(i) *Leaks from synthetic organic chemical and polymer manufacturing equipment*—(1) *Inspection program for leaks.* The owner or operator of a synthetic organic chemical or polymer manufacturing plant subject to paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) shall, for the purposes of detecting leaks, conduct a component inspection program using the test methods specified in Method 21, 40 CFR part 60, appendix A, consistent with the following provisions:

(i) Test annually those components operated near extreme temperature or pressure such that they would be unsafe to routinely monitor and those components which would require the elevation of monitoring personnel higher than two meters above permanent worker access structures or surfaces.

(ii) Test quarterly all other pressure relief valves in gas service, pumps in light liquid service, valves in light liquid service and in gas service, and compressors.

(iii) If less than or equal to 2 percent of the valves in light liquid service and in gas service tested pursuant to paragraph (i)(1)(ii) of this section are found not to leak for five consecutive quarters, no leak tests shall be required for three consecutive quarters. Thereafter, leak tests shall resume for the next quarter. If that test shows less than or equal to 2 percent of the valves in light liquid service and in gas service are leaking, then no tests are required for the next three quarters. If more than 2 percent are leaking, then tests are required for the next five quarters.

(iv) Observe visually all pump seals weekly.

(v) Test immediately any pump seal from which liquids are observed dripping.

(vi) Test any relief valve within 24 hours after it has vented to the atmosphere.

(vii) Routine instrument monitoring of valves which are not externally regulated, flanges, and equipment in heavy liquid service, is not required. However, any valve which is not externally regulated, flange or piece of equipment in heavy liquid service that is found to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable but no later than 30 days after the leak is found.

(viii) Test immediately after repair any component that was found leaking.

(ix) Within one hour of its detection, a weatherproof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected must be affixed on the leaking component and remain in place until the leaking component is repaired.

(x) The following components are exempt from the monitoring requirements in paragraph (i)(1) of this section:

(A) Any component that is in vacuum service, and

(B) Any pressure relief valve that is connected to an operating flare header or vapor recovery device.

(2) *Alternative program for leaks.* The Administrator shall approve an alternative program of monitoring, recordkeeping, or reporting to that prescribed in paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), upon a demonstration by the owner or operator of such plant that the alternative program will provide plant personnel and USEPA personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(j) *Petroleum refining and related industries: asphalt materials*—(1) *Monitoring program for leaks.* (i) The owner or operator of a petroleum refinery subject to subpart R (section 215.445) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) shall, for the purpose of detecting leaks, conduct a component monitoring program consistent with the following provisions:

(A) Test once between March 1 and June 1 of each year, by methods referenced in paragraph (a)(4)(vii) of this section, all pump seals, pipeline valves in liquid service and process drains.

(B) Test once each quarter of each calendar year, by methods referenced in paragraph (a)(4)(vii) of this section, all pressure relief valves in gaseous service, pipeline valves in gaseous service and compressor seals.

(C) Inaccessible valves may be tested once each calendar year instead of once each quarter of each calendar year.

(D) Observe visually all pump seals weekly.

(E) Test immediately any pump seal from which liquids are observed dripping.

(F) Test any relief valve within 24 hours after it has vented to the atmosphere, and

(G) Test immediately after repair any component that was found leaking.

(ii) Storage tank valves and pressure relief devices connected to an operating flare header or vapor recovery device are exempt from the monitoring requirements in paragraph (j)(1)(i) of this section.

(iii) The Administrator may require more frequent monitoring than would otherwise be required by paragraph (j)(1)(i) of this section for components which are demonstrated to have a history of leaking.

(2) *Alternative program for leaks.* The Administrator may approve an alternative program of monitoring, recordkeeping or reporting to that prescribed in paragraph (j)(1) of this section and subpart R (sections 215.446, 215.448, and 215.449) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), upon a demonstration by the owner or operator of a petroleum refinery that the alternative program will provide refinery and USEPA personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(3) *Compliance schedule for leaks.* The owner or operator of a petroleum refinery shall adhere to the increments of progress contained in the following schedule:

(i) Submit to the Administrator a monitoring program consistent with subpart R (section 215.446) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) prior to September 1, 1990.

(ii) Submit to the Administrator the first monitoring report pursuant to subpart R (section 215.449) of Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) prior to October 1, 1990.

(k)–(l) [Reserved]

(m) *Pharmaceutical manufacturing*—(1) *Applicability.* (i) The rules of paragraph (m) of this section, except for paragraphs (m)(4) through (m)(6) of this section, apply to all emission sources of VOM, including but not limited to reactors, distillation units, dryers, storage tanks for VOL, equipment for the transfer of VOL, filters, crystallizers, washers, laboratory hoods, pharmaceutical coating operations, mixing operations and centrifuges used in manufacturing, including packaging, of pharmaceuticals, and emitting more than 6.8 kg/day (15 lbs/day) and more than 2,268 kg/year (2.5 tons/year) of VOM. If an emission source emits less than 2,268 kg/year (2.5 tons/year) of VOM, the requirements of this paragraph still apply to the emission source if VOM emissions from the emission source exceed 45.4 kg/day (100 lbs/day).

(ii) Notwithstanding paragraph (m)(1)(i) of this section, the air suspension coater/dryer, fluid bed dryers, tunnel dryers, and Accelacotas located in Libertyville Township, Lake County, Illinois shall be exempt from the rules of paragraph (m) of this section, except for paragraphs (m)(4) through (m)(6) of this section, if emissions of VOM not vented to air pollution control equipment do not exceed the following levels:

(A) For the air suspension coater/dryer: 2,268 kg/year (2.5 tons/year);

(B) For each fluid bed dryer: 4,535 kg/year (5.0 tons/year);

(C) For each tunnel dryer: 6,803 kg/year (7.5 tons/year); and

(D) For each Accelacota: 6,803 kg/year (7.5 tons/year).

(iii) Paragraphs (m)(4) through (m)(6) of this section apply to a plant having one or more emission sources that:

(A) Are used to manufacture pharmaceuticals, and

(B) Emit more than 6.8 kg/day (15 lbs/day) of VOM and more than 2,268 kg/year (2.5 tons/year) of VOM, or, if less than 2,268 kg/year (2.5 tons/year), these paragraphs still apply if emissions from one or more sources exceed 45.4 kg/day (100 lbs/day).

(iv) No owner or operator shall violate any condition in a permit when the condition results in exclusion of an emission source from paragraph (m) of this section.

(v) Any pharmaceutical manufacturing source that becomes subject to the provisions of paragraph (m) of this section at any time shall remain subject to the provisions of paragraph (m) of this section at all times.

(vi) Emissions subject to paragraph (m) of this section shall be controlled at all times consistent with the requirements set forth in paragraph (m) of this section.

(vii) Control devices required pursuant to paragraph (m) of this section shall be operated at all times when the source it is controlling is operated.

(viii) Determinations of daily and annual emissions for purposes of paragraph (m)(1) of this section shall be made using both data on the hourly emission rate (or the emissions per unit of throughput) and appropriate daily and annual data from records of emission source operation (or material throughput or material consumption data). In the absence of representative test data pursuant to paragraph (m)(8) of this section for the hourly emission rate (or the emissions per unit of throughput), such items shall be calculated using engineering calculations, including the methods described in appendix B of "Control of Volatile Organic Emissions from Manufacturing of Synthesized Pharmaceutical Products" (EPA–450/2–78–029). (This subparagraph shall not affect the Administrator's authority to require emission tests to be performed pursuant to paragraph (m)(8) of this section.)

(2) *Control of reactors, distillation units, crystallizers, centrifuges and vacuum dryers.* (i) The owner or operator shall equip all reactors, distillation units, crystallizers, centrifuges and vacuum dryers that are used to manufacture pharmaceuticals with surface condensers or other air pollution control equipment listed in paragraph (m)(2)(i)(B) of this section.

(A) If a surface condenser is used, it shall be operated such that the condenser outlet gas temperature does not exceed:

(*1*) 248.2 K (−13 °F) when condensing VOM of vapor pressure greater than 40.0kPa (5.8 psi) at 294.3K (70 °F), or

(*2*) 258.2 K (5 °F) when condensing VOM of vapor pressure greater than 20.0 kPa (2.9 psi) at 294.3 K (70 °F), or

(*3*) 273.2 K (32 °F) when condensing VOM of vapor pressure greater than 10.0 kPa (1.5 psi) at 294.3 K (70 °F), or

(*4*) 283.2 K (50 °F) when condensing VOM of vapor pressure greater than7.0 kPa (1.0 psi) at 294.3 K (70 °F), or

(*5*) 298.2 K (77 °F) when condensing VOM of vapor pressure greater than 3.45 kPa (0.5 psi) at 294.3 K (70 °F).

(B) If a scrubber, carbon adsorption, thermal afterburner, catalytic afterburner, or other air pollution control equipment other than a surface condenser is used, such equipment shall provide a reduction in the emissions of VOM of 90 percent or more.

(ii) The owner or operator shall enclose all centrifuges used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294.3 K (70 °F), except as production, sampling, maintenance, or inspection procedures require operator access.

(3) *Control of air dryers, production equipment exhaust systems and filters.* (i) The owner or operator of an air dryer or production equipment exhaust system used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by air pollution control equipment which reduces by 90 percent or more the VOM that would otherwise be emitted into the atmosphere.

(ii) The owner or operator shall enclose all rotary vacuum filters and other filters used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294 K (70 °F), except as production, sampling, maintenance, or inspection procedures require operator access.

(4) *Material storage and transfer.* The owner or operator of a pharmaceutical manufacturing plant shall:

(i) Provide a vapor balance system that is at least 90 percent effective in reducing VOM emissions from truck or railcar deliveries to storage tanks with capacities equal to or greater than 7.57 m^3 (2,000 gal) that store VOL with vapor pressures greater than 28.0 kPa (4.1 psi) at 294.3 K (70 °F), and

(ii) Install, operate, and maintain pressure/vacuum conservation vents set at 0.2 kPa (0.03 psi) or greater on all storage tanks that store VOL with vapor pressures greater than 10 kPa (1.5 psi) at 294.3 K (70 °F).

(5) *In-process tanks.* The owner or operator shall install covers on all in-process tanks used to manufacture pharmaceuticals and containing a VOL at any time. These covers must remain closed, except as production, sampling, maintenance or inspection procedures require operator access.

(6) *Leaks.* The owner or operator of a pharmaceutical manufacturing plant shall repair any component from which a leak of VOL can be observed. The repair shall be completed as soon as practicable but no later than 15 days after the leak is found. If the leaking component cannot be repaired until the process unit is shut down, the leaking component must then be repaired before the unit is restarted.

(7) *Other emission sources.* The owner or operator of a washer, laboratory hood, tablet coating operation, mixing operation or any other process emission source not subject to paragraphs (m)(2) through (m)(6) of this section, and used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by:

(i) Air pollution control equipment which reduces by 81 percent or more the VOM that would otherwise be emitted to the atmosphere, or

(ii) A surface condenser which captures all the VOM which would otherwise be emitted to the atmosphere and which meets the requirements of paragraph (m)(2)(i) of this section.

(8) *Testing.* (i) Upon request by the Administrator, the owner or operator of any VOM emission source subject to paragraph (m) or exempt from paragraph (m) of this section by virtue of the provisions of paragraph (m)(1) of this section shall, at his own expense, demonstrate compliance to the Administrator by the methods or procedures listed in paragraph (a)(vi)(A) of this section.

(ii) A person planning to conduct a VOM emissions test to demonstrate compliance with paragraph (m) of this section shall notify the Administrator of that intent not less than 30 calendar days before the planned initiation of the test.

(9) *Monitoring and recordkeeping for air pollution control equipment*—(i) *Monitoring.* (A) At a minimum, continuous monitors for the following parameters shall be installed on air pollution control equipment used to control sources subject to paragraph (m) of this section:

(*1*) Destruction device combustion temperature.

(*2*) Temperature rise across a catalytic afterburner bed.

(*3*) VOM concentration on a carbon adsorption unit to determine breakthrough.

(*4*) Outlet gas temperature of a refrigerated condenser.

(*5*) Temperature of a non-refrigerated condenser coolant supply system.

(B) Each monitor shall be equipped with a recording device.

(C) Each monitor shall be calibrated quarterly.

(D) Each monitor shall operate at all times while the associated control equipment is operating.

(ii) *Recordkeeping.* (A) The owner or operator of a pharmaceutical manufacturing facility shall maintain the following records:

(*1*) Parameters listed in paragraph (m)(9)(i)(A) of this section shall be recorded.

(*2*) For sources subject to paragraph (m)(2) of this section, the vapor pressure of VOM being controlled shall be recorded for every process.

(B) For any leak subject to paragraph (m)(6) of this section which cannot be readily repaired within one hour after detection, the following records shall be kept:

(*1*) The name of the leaking equipment,

(*2*) The date and time the leak is detected,

(*3*) The action taken to repair the leak, and

(*4*) The data and time the leak is repaired.

(C) The following records shall be kept for emission sources subject to paragraph (m)(5) of this section which contain VOL:

(*1*) For maintenance and inspection:

(*i*) The date and time each cover is opened,

(*ii*) The length of time the cover remains open, and

(*iii*) The reason why the cover is opened.

(*2*) For production and sampling, detailed written procedures or manufacturing directions specifying the circumstances under which covers may be opened and the procedures for opening covers.

(D) For each emission source used in the manufacture of pharmaceuticals for which the owner or operator of a pharmaceutical manufacturing plant claims emission standards are not applicable, because the emissions are below the applicability cutoffs in paragraph (m)(1)(i) of this section or paragraph (m)(1)(ii) of this section the owner or operator shall:

(*1*) Maintain a demonstration including detailed engineering calculations of the maximum daily and annual emissions for each such emission source showing that the emissions are below the applicability cutoffs in paragraph (m)(1)(i) or paragraph (m)(1)(ii) of this section, as appropriate, for the current and prior calendar years;

(*2*) Maintain appropriate operating records for each such emission source to identify whether the applicability cutoffs in paragraph (m)(1)(i) or paragraph (m)(1)(ii) of this section, as appropriate, are ever exceeded; and

(*3*) Provide written notification to the Administrator within 30 days of a determination that such an emission source has exceeded the applicability cutoffs in paragraph (m)(1)(i) or paragraph (m)(1)(ii) of this section, as appropriate.

(E) Records required under paragraph (m)(9)(ii)(A) of this section shall be maintained by the owner or operator for a minimum of two years after the date on which they are made.

(F) Copies of the records shall be made available to the Administrator upon verbal or written request.

(n)—(p) [Reserved]

(q) *Gasoline distribution—(1) Bulk gasoline plants.* (i) Subject to paragraph (q)(1)(v) of this section, no person may cause or allow the transfer of gasoline from a delivery vessel into a stationary storage tank located at a bulk gasoline plant unless:

(A) The delivery vessel and the stationary storage tank are each equipped with a vapor collection system that meets the requirements of paragraph (q)(1)(iv)(D) of this section,

(B) Each vapor collection system is operating,

(C) The delivery vessel displays the appropriate sticker pursuant to the requirements of sections 215.584 (b) or (d) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742),

(D) The pressure relief valve(s) on the stationary storage tank and the delivery vessel are set to release at no less than 0.7 psi or the highest pressure allowed by state or local fire codes or the guidelines of the National Fire Prevention Association, and

(E) The stationary storage tank is equipped with a submerged loading pipe.

(ii) Subject to paragraph (q)(1)(vi) of this section, no person may cause or allow the transfer of gasoline from a stationary storage tank located at a bulk gasoline plant into a delivery vessel unless:

(A) The requirements set forth in paragraphs (q)(1)(i)(A) through (1)(i)(D) of this section are met, and

(B) Equipment is available at the bulk gasoline plant to provide for the submerged filling of the delivery vessel or the delivery vessel is equipped for bottom loading.

(iii) Subject to paragraph (q)(1)(v) of this section, each owner of a stationary storage tank located at a bulk gasoline plant shall:

(A) Equip each stationary storage tank with a vapor control system that meets the requirements of paragraph (q)(1)(i) or (1)(ii) of this section, whichever is applicable,

(B) Provide instructions to the operator of the bulk gasoline plant describing necessary maintenance operations and procedures for prompt notification of the owner in case of any malfunction of a vapor control system, or

(C) Repair, replace or modify any worn out or malfunctioning component or element of design.

(iv) Subject to paragraph (q)(1)(v) of this section, each operator of a bulk gasoline plant shall:

(A) Maintain and operate each vapor control system in accordance with the owner's instructions,

(B) Promptly notify the owner of any scheduled maintenance or malfunction requiring replacement or repair of a major component of a vapor control system, and

(C) Maintain gauges, meters or other specified testing devices in proper working order,

(D) Operate the bulk plant vapor collection system and gasoline loading equipment in a manner that prevents:

(*1*) Gauge pressure from exceeding 45.7 cm (18 in.) of water and vacuum from exceeding 15.2 cm (6 in.) of water, as measured as close as possible to the vapor hose connection, and

(*2*) A reading equal to or greater than 100 percent of the lower explosive limit (LEL measured as propane) when tested in accordance with the procedure described in "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", Appendix B, EPA 450/2–78–051 (which is available for purchase from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia, 22161), and

(*3*) Avoidable leaks of liquid during loading or unloading operations.

(E) Provide a pressure tap or equivalent on the bulk plant vapor collection system in order to allow the determination of compliance with

paragraph (q)(1)(iv)(D)(*1*) of this section, and

(F) Within 15 business days after discovery of any leak by the owner, operator, or the Administrator, repair and retest a vapor collection system which exceeds the limits of paragraph (q)(1)(iv)(D)(*1*) or (*2*) of this section.

(v) The requirements of paragraphs (q)(1)(i), (1)(iii) and (1)(iv) of this section, shall not apply to:

(A) Any stationary storage tank with a capacity of less than 2,177 l (575 gal), or

(B) Any bulk gasoline plant whose daily gasoline throughtput is less than 15,140 l (4,000 gal/day) on a thirty-day rolling average.

(vi) The requirements of paragraph (q)(1)(ii) of this section shall only apply to bulk gasoline plants:

(A) Whose daily gasoline throughput is greater than or equal to 15,140 l (4,000 gal/day) on a thirty-day rolling average, and

(B) That either distribute gasoline to gasoline dispensing facilities subject to the requirements of section 215.583(a)(2) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742) or that are in Cook, DuPage, Kane, Lake, McHenry or Will County.

(vii) Any bulk gasoline plant which is ever subject to paragraphs (q)(1) (i), (ii), (iii) or (iv) of this section shall always be subject to these paragraphs.

(2) [Reserved]

(r) [Reserved]

(s) *Paint and ink manufacturing*—(1) *Applicability.* (i) Paragraph (s) shall apply to all paint and ink manufacturing plants which:

(A) Include process emission sources not subject to subparts (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or to paragraphs (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1) of this section; and which as a group both:

(*1*) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision, or

(B) Produce more than 7,570,820 l (2,000,000 gal) per calendar year of paint or ink formulations, which contain less than 10 percent (by weight) water, and ink formulations not containing as the primary solvents water, Magie oil or glycol.

(ii) For the purposes of paragraph (s) of this section, uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Exemption for waterbase material and heatset-offset ink.* The requirements of paragraphs (s)(4) and (s)(5) of this section and paragraph (s)(7)(i) of this section shall not apply to equipment while it is being used to produce either:

(i) Paint or ink formulations which contain 10 percent or more (by weight) water, or

(ii) Inks containing Magie oil and glycol as the primary solvent.

(3) *Permit conditions.* No person shall violate any condition in a federally enforceable permit when the condition results in exclusion of the plant or an emission source from paragraph (s).

(4) *Open-top mills, tanks, vats or vessels.* No person shall operate an open-top mill, tank, vat or vessel with a volume of more than 45 l (12 gal) for the production of paint or ink unless:

(i) The mill, tank, vat or vessel is equipped with a cover which completely covers the mill, tank, vat or vessel opening except for an opening no larger than necessary to allow for safe clearance for a mixer shaft. Such cover shall extend at least 1.27 cm (0.5 in.) beyond the outer rim of the opening or be attached to the rim.

(ii) The cover remains closed except when production, sampling, maintenance or inspection procedures require access.

(iii) The cover is maintained in good condition such that, when in place, it maintains contact with the rim of the opening for at least 90 percent of the circumference of the rim.

(5) *Grinding mills.* (i) No person shall operate a grinding mill for the production of paint or ink which is not maintained in accordance with the manufacturer's specifications.

(ii) No person shall operate a grinding mill fabricated or modified after the effective date of paragraph (s) which is not equipped with fully enclosed screens.

(iii) The manufacturer's specifications shall be kept on file at the plant by the owner or operator of the grinding mill and be made available to any person upon verbal or written request during business hours.

(6) *Storage tanks.* (i) The owner or operator shall equip tanks storing VOL with a vapor pressure greater than 10 kPa (1.5 psi) at 20 °C (68 °F) with pressure/vacuum conservation vents set as a minimum at +/−0.2 kPa (0.029 psi). These controls shall be operated at all times. An alternative air pollution control system may be used if it results in a greater emission reduction than these controls. Any alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(ii) Stationary VOL storage containers with a capacity greater than 946 l (250 gal) shall be equipped with a submerged-fill pipe or bottom fill. These controls shall be operated at all times. An alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(7) *Leaks.* The owner or operator of a paint or ink manufacturing plant shall, for the purpose of detecting leaks, conduct an equipment monitoring program as set forth below:

(i) Each pump shall be checked by visual inspection each calendar week for indications of leaks, that is, liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, the pump shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) Any pump, valve, pressure relief valve, sampling connection, open-ended valve and flange or connector containing a fluid which is at least 10 percent VOM by weight which appears to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(iii) A weather proof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected shall be attached to leaking equipment. The tag may be removed upon repair, that is, when the equipment is adjusted or otherwise altered to allow operation without leaking.

(iv) When a leak is detected, the owner or operator shall record the date of detection and repair and the record shall be retained at the plant for at least two years from the date of each detection or each repair attempt. The record shall be made available to any person upon verbal or written request during business hours.

(8) *Clean up.* (i) No person shall clean paint or ink manufactering equipment with organic solvent unless the equipment being cleaned is completely covered or enclosed except for an opening no larger than necessary to allow safe clearance for proper operation of the cleaning equipment, considering the method and materials being used.

(ii) No person shall store organic wash solvent in other than closed containers, unless closed containers are demonstrated to be a safety hazard, or dispose of organic wash solvent in a manner such that more than 20 percent by weight is allowed to evaporate into the atmosphere.

(9) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (s) of this section shall comply with the requirements of paragraph (s) of this section on and after July 1, 1991.

(10) *Recordkeeping and reporting.* (i) Upon request by the Administrator, the owner or operator of an emission source which claims to be exempt from the requirements of paragraph (s) of this section shall submit records to the Administrator within 30 calendar days from the date of the request which document that the emission source is in fact exempt from paragraph (s) of this section. These records shall include (but are not limited to) the percent water (by weight) in the paint or ink being produced and the quantity of Magie oil, glycol and other solvents in the ink being produced.

(ii) Every owner or operator of an emission source which is subject to the requirements of paragraph (s) of this section shall maintain all records necessary to demonstrate compliance with those requirements at the facility for three years.

(t) [Reserved]

(u) *Miscellaneous fabricated product manufacturing processes*—(1) *Applicability.*

(i) The requirements of paragraph (u) of this section shall apply to a plant's miscellaneous fabricated product manufacturing process emission sources which are not included within any of the source categories specified in subparts (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or specified in paragraph (d), (e), (h), (i), (j), or (q)(1) of this section; if the plant is subject to paragraph (u) of this section. A plant is subject to paragraph (u) of this section if it contains process emission sources, not regulated by subparts (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1) of this section; which as a group both:

(A) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (u)(1)(i) of this section, the requirements of paragraph (u) of this section shall continue to apply to a miscellaneous fabricated products manufacturing process emission source which was ever subject to the control requirements of paragraph (u)(3) of this section.

(iii) No limits under paragraph (u) of this section shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year if the total emissions from such sources not complying with paragraph (u)(3) of this section does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (u) of this section, an emission source shall be considered regulated by a subpart (of the Illinois rules) or paragraph if it is subject to the limits of that subpart (of the Illinois rules) or paragraph. An emission source is not considered regulated by a subpart (of the Illinois rules) or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (u) of this section, uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (u) of this section.

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (u) of this section shall comply with the requirements of paragraph (u)(3) (i), (ii) or (iii) of this section:

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/l (3.5 lbs VOM/gal) of coating as applied (minus water and any compounds which are specifically exempted from the definition of VOM) during any day. Owners and operators complying with this paragraph are not required to comply with § 215.301 of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or

(iii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (u) of this section shall comply with the requirements of paragraph (u) of this section on and after July 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (u) of this section shall demonstrate compliance with paragraph (u)(3) of this section by using the applicable test methods and procedures specified in paragraph (a)(4) of this section.

(v) *Miscellaneous formulation manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (v) of this section shall apply to a plant's miscellaneous formulation manufacturing process emission sources, which are not included within any of the source categories specified in subpart (B), (Q) (excluding §§ 215.432 and 215.436), (R) (excluding §§ 215.447, 215.450, and 215.452),(S), (V), (X), (Y) (§§ 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or specified in paragraph (d), (e), (h), (i), (j), or (q)(1) of this section; if the plant is subject to paragraph (v) of this section. A plant is subject to paragraph (v) of this section if it contains process emission sources, not regulated by subpart (B), (Q) (excluding §§ 215.432 and 215.436), (R) (excluding §§ 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (§§ 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1) of this section; which as a group both:

(A) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations

contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (v)(1)(i) of this section, the requirements of paragraph (v) of this section shall continue to apply to a miscellaneous formulation manufacturing process emission source which was ever subject to the control requirements of paragraph (v)(3) of this section.

(iii) No limits under paragraph (v) of this section shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (v)(3) of this section does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (v) of this section, an emission source shall be considered regulated by a subpart (of the Illinois rules) or paragraph if it is subject to the limits of that subpart (of the Illinois rules) or paragraph. An emission source is not considered regulated by a subpart (of the Illinois rules) or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (v) of this section uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (v) of this section.

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (v) of this section shall comply with the requirements of paragraph (v)(3) (i) or (ii) of this section.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (v) of this section shall comply with the requirements of paragraph (v) of this section on and after July 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (v) of this section shall demonstrate compliance with paragraph (v)(3) of this section by using the applicable test methods and procedures specified in paragraph (a)(4) of this section.

(w) *Miscellaneous organic chemical manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (w) of this section shall apply to a plant's miscellaneous organic chemical manufacturing process emission sources which are not included within any of the source categories specified in subparts (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or specified in paragraph (d), (e), (h), (i), (j), or (q)(1) of this section; if the plant is subject to paragraph (w) of this section. A plant is subject to paragraph (w) of this section if it contains process emission sources, not regulated by subparts (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1) of this section; which as a group both:

(A) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (w)(1)(i) of this section, the requirements of paragraph (w) of this section shall continue to apply to a miscellaneous organic chemical manufacturing process emission source which was ever subject to the control requirements of paragraph (w)(3) of this section.

(iii) No limits under paragraph (w) of this section shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year if the total emissions from such sources not complying with paragraph (w)(3) of this section does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (w) of this section, an emission source shall be considered regulated by a subpart (of the Illinois rules) or paragraph if it is subject to the limits of that subpart (of the Illinois rules) or paragraph. An emission source is not considered regulated by a subpart (of the Illinois rules) or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (w) of this section, uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusions of the plant or an emission source from paragraph (w) of this section.

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (w) of this section shall comply with the requirements of paragraph (w)(3)(i) or (ii) of this section.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (w) of this section shall comply with the requirements of paragraph (w) of this section on and after July 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (w) shall demonstrate compliance with paragraph (w)(3) of this section by using the applicable test methods and procedures specified in paragraph (a)(4) of this section.

(x) *Other emission sources*—(1) *Applicability.* (i) The requirements of paragraph (x) of this section shall apply to a plant's VOM emission sources, which are not included within any of the source categories specified in subpart (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or specified in paragraph (d), (e), (h), (i), (j), (q)(1), (s), (u), (v) or (w) of this section; if the plant is subject to paragraph (x) of this section . A plant is subject to paragraph (x) of this section if it contains process emission sources, not regulated by subpart (B), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or by paragraph (d), (e) of this section (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), (i), (j), or (q)(1) of this section; which as a group both:

(A) Have maximum theoretical emissions of 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (x)(1)(i) of this section, the requirements of paragraph (x) of this section shall continue to apply to an emission source which was ever subject to the control requirements of paragraph (x)(3) of this section.

(iii) No limits under paragraph (x) of this section shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (x)(3) of this section does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (x) of this section, an emission source shall be considered regulated by a subpart (of the Illinois rules) or paragraph if it is subject to the limits of that subpart (of the Illinois rules) or paragraph. An emission source is not considered regulated by a subpart (of the Illinois rules) or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) The control requirements in paragraphs (u), (v), (w), and (x) of this section shall not apply to sewage treatment plants, vegetable oil processing plants, coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), production of polystyrene foam packaging (*not* including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (x) of this section.

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (x) of this section shall comply with the requirements of paragraph (x)(3) (i), (ii) or (iii) of this section.

(i) Emission capture and control equipment which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/l (3.5 lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied during any day. Owners and operators complying with this paragraph are not required to comply with section 215.301 of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742), or

(iii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emissions source which is subject to paragraph (x) of this section shall comply with the requirements of paragraph (x) of this section on and after July 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (x) of this section shall demonstrate compliance with paragraph (x)(3) of this section by using the applicable test methods and procedures specified in paragraph (a)(4) of this section.

(y) *Recordkeeping and reporting for non-CTG sources*—(1) *Exempt emission sources.* Upon request by the Administrator, the owner or operator of an emission source which is exempt from the requirements of paragraphs (u), (v), (w), (x), or (e)(3)(ii) of this section shall submit records to the Administrator within 30 calendar days from the date of the request that document that the emission source is exempt from those requirements.

(2) *Subject emission sources.* (i) Any owner or operator of a VOM emission source which is subject to the requirements of paragraph (u), (v), (w) or (x) of this section and complying by the use of emission capture and control equipment shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new emission source, the owner or operator of the subject VOM emission source shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject emission source will be in compliance on and after July 1, 1991, or on and after the initial start-up date.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a subject VOM emission source shall collect and record all of the following information each day and maintain the information at the facility for a period of three years:

(*1*) Control device monitoring data.

(*2*) A log of operating time for the capture system, control device, monitoring equipment and the associated emission source.

(*3*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after July 1, 1991, the owner or operator of a subject VOM emission source shall notify the Administrator in the following instances:

(*1*) Any record showing a violation of the requirements of paragraphs (u), (v), (w), or (x) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraphs (u) or (x) of this section from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(ii)(A) of this section. Upon changing the method of compliance with paragraphs (u) or (x) of this section from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(ii) of this section.

(ii) Any owner or operator of a coating line which is subject to the requirements of paragraphs (u) or (x) of this section and complying by means of the daily-weighted average VOM content limitation shall comply with the following:

(A) By July 1, 1991, or upon initial start-up of a coating line subject to paragraph (u) or (x) of this section; the owner or operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance on and after July 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating line which will comply by means of the daily-weighted average VOM content limitation.

(*2*) The name and identification number of each coating as applied on each coating line.

(*3*) The weight of VOM per volume and the volume of each coating (minus

water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(4) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(5) The method by which the owner or operator will create and maintain records each day as required in paragraph (y)(2)(ii)(B) of this section.

(6) An example of the format in which the records required in paragraph (y)(2)(ii)(B) of this section will be kept.

(B) On and after July 1, 1991, or on and after the initial start-up date, the owner or operator of a subject coating line shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(3) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (a)(3) of this section.

(C) On and after July 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of the requirements of paragraph (u) or (x) of this section shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (u) or (x) of this section from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i)(A) of this section. Upon changing the method of compliance with paragraphs (u) or (x) of this section from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i) of this section.

(iii) Any owner or operator of a VOM emission source which is subject to the requirements of paragraphs (u), (v), (w) or (x) of this section and complying by means of an alternative control plan which has been approved by the Administrator as a SIP or FIP revision shall comply with the recordkeeping and reporting requirements specified in the alternative control plan.

(z) [Reserved]

Appendix A—List of Chemicals Defining Synthetic Organic Chemical and Polymer Manufacturing

OCPDB No.[1]	Chemical
20	Acetal.
30	Acetaldehyde.
40	Acetaldol.
50	Acetamide.
65	Acetanilide.
70	Acetic acid.
80	Acetic anhydride.
90	Acetone.
100	Acetone cyanohydrin.
110	Acetonitrile.
120	Acetophenone.
125	Acetyl chloride.
130	Acetylene.
140	Acrolein.
150	Acrylamide.
160	Acrylic acid & esters.
170	Acrylonitrile.
180	Adipic acid.
185	Adiponitrile.
190	Alkyl naphthalenes.
200	Allyl alcohol.
210	Allyl chloride.
220	Aminobenzoic acid.
230	Aminoethylethanolamine.
235	p-aminophenol.
240	Amyl acetates.
250	Amyl alcohols.
260	Amyl amine.
270	Amyl chloride.
280	Amyl mercaptans.
290	Amyl phenol.
300	Aniline.
310	Aniline hydrochloride.
320	Anisidine.
330	Anisole.
340	Anthranilic acid.
350	Anthraquinone.
360	Benzaldehyde.
370	Benzamide.
380	Benzene.
390	Benzenedisulfonic acid.
400	Benzene-sulfonic acid.
410	Benzil.
420	Benzilic acid.
430	Benzoic acid.
440	Benzoin.
450	Benznonitrile.
460	Benzophenone.
480	Benzotrichloride.
490	Benzoyl chloride.
500	Benzyl chalcohol.
510	Benzyl amine.
520	Benzyl benzoate.
530	Benzyl chloride.
540	Benzyl dichloride.
550	Biphenyl.
560	Bisphenol A.
570	Bromobenzene.
580	Bromonaphtahlene.
590	Butadiene.
592	1-butene.
600	n-butyl acetate.
630	n-butyl acrylate.
640	n-butyl alcohol.
650	s-butyl alcohol.
660	t-butyl alcohol.
670	n-butylamine.
680	s-butylamine.
690	t-butylamine.
700	p-pert-butyl benzoic acid.
750	n-butyraldehyde.
760	Butyric acid.
770	Butyric anhydride.
780	Butyronitrile.
785	Caprolactam.
790	Carbon disulfide.
800	Carbon tetrabromide.
810	Carbon tetrachloride.
820	Cellulose acetate.
840	Chloroacetic acid.
850	m-chloroaniline.
860	o-chloroaniline.
870	p-chloroaniline.
880	Chlorobenzaldehyde.
890	Chlorobenzene.
900	Chlorobenzoic acid.
905	Chlorobenzotrichloride.
910	Chlorobenzoyl chloride.
920	Chlorodifluoroethane.
921	Chlorodifluoromethane.
930	Chloroform
940	Chloronaphthalene.
950	o-chloronitrobenzene.
951	p-chloronitrobenzene.
960	Chlorophenols.
964	Chloroprene.
965	Chlorosulfonic acid.
970	m-chlorotoluene.
980	o-chlorotoluene.
990	p-chlorotoluene.
992	Chlorotrifluoromethane.
1000	m-cresol.
1010	o-cresol.
1020	p-cresol.
1021	Mixed cresols.
1030	Cresylic acid.
1040	Crontonaldehyde.
1050	Crontonic acid.
1060	Cumene.
1070	Cumene hydroperoxide.
1080	Cyanoacetic acid.
1090	Cyanogen chloride.
1100	Cyanuric acid.
1110	Cyanuric chloride.
1120	Cychohexane.
1130	Cyclohexanol.
1140	Cyclohexanone.
1150	Cyclohexene.
1160	Cyclohexylamine.
1170	Cyclooctadiene.
1180	Decanol.
1190	Diacetone alcohol.
1200	Diaminobenzoic acid.
1210	Dichloroaniline.
1215	m-dichlorobenzene.
1216	o-dichlorobenzene.
1220	p-dichlorobenzene.
1221	Dichlorodifluoromethane.
1240	Dichloroethyl ether 1,2-dichloroethane.
1250	Dichlorohydrin
1270	Dichloropropene.
1280	Dicyclohexylamine.
1290	Diethylamine.
1300	Diethylene glycol.
1304	Diethylene glycol diethyl ether.
1305	Diethylene glycol dimethyl ether.
1310	Diethylene glycolmonobutyl ether.
1320	Diethylene glycolmonobutyl ether acetate.
1330	Diethylene glycolmonoethyl ether.
1340	Diethylene glycolmonoethyl ether acetate.
1360	Diethylene glycolmonomethyl ether.
1420	Diethyl sulfate.
1430	Difluoroethane.
1440	Diisobutylene.
1442	Diisodecyl phthalate.
1444	Diisooctyl phthalate.
1450	Diluetane.
1460	Dimethylamine.
1470	N,N-dimethylaniline.
1480	N,N-dimethylether.
1490	N,N-dimethylformamide.
1495	Dimethylhydrazine.

OCPDB No.[1]	Chemical
1500	Dimethyl sulfate.
1510	Dimethyl sulfide.
1520	Dimethylsulfoxide.
1530	Dimethylterephthalate.
1540	3,5-dinitrobenzoic acid.
1545 [2]	Dinitrophenol.
1560	Dioxane.
1570	Dioxolane.
1580	Diphenylamine.
1590	Diphenyl oxide.
1600	Diphenyl thiourea.
1610	Dipropylene glycol.
1620	Dodecene.
1630	Dodecylaniline.
1640	Dodecylphenol.
1650	Epichlorohydrin.
1660	Ethanol.
1661	Ethanolamines.
1670	Ethyl acetate.
1680	Ethyl acetoacetate.
1690	Ethyl acrylate.
1700	Ethylamine.
1710	Ethylbenzene.
1720	Ethyl bromide.
1730	Ethylcellulose.
1740	Ethyl chloride.
1750	Ethyl chloroacetate.
1760	Ethylcyanoacetate.
1770	Ethylene.
1780	Ethylene carbonate.
1790	Ethylene chlorohydrin.
1800	Ethylenediamine.
1810	Ethylene dibromide.
1830	Ethylene glycol.
1840	Ethylene glycol diacetate.
1870	Ethylene glycol dimethyl ether.
1890	Ethylene glycol monobutyl ether.
1900	Ethylene glycol monobutyl ether acetate.
1910	Ethylene glycol monoethyl ether.
1920	Ethylene glycol monoethyl ether acetate.
1930	Ethylene glycol monoethyl ether.
1940	Ethylene glycol monomethyl ether acetate.
1960	Ethylene glycol monophenyl ether.
1970	Ethylene glycol monopropyl ether.
1980	Ethylene oxide.
1990	Ethyl ether.
2000	2-ethylhexanol.
2010	Ethyl orthoformate.
2020	Ethyl oxalate.
2030	Ethyl sodium oxalacetate.
2040	Formaldehyde.
2050	Formamide.
2060	Formic acid.
2070	Fumaric acid.
2073	Furfural.
2080	Glycerol (Synthetic).
2091	Glycerol dichlorohydrin.
2100	Glycerol triether.
2110	Glycine.
2120	Glyoxal.
2145	Hexachlorobenzene.
2150	Hexachloroethane.
2160	Hexadecyl alcohol.
2165	Hexamethylenediamine.
2170	Hexamethylene glycol.
2180	Hexamethylentetramine.
2190	Hydrogen cyanide.
2200	Hydroquinone.
2210	p-hydroxy-benzoic acid.
2240	Isoamylene.
2250	Isobutanol.
2260	Isobutyl acetate.
2261	Isobutylene.
2270	Isobutyraldehyde.
2280	Isobutyric acid.
2300	Isodecanol.
2320	Isooctyl alcohol.
2321	Isopentane.
2330	Isophorone.
2340	Isophthalic acid.
2350	Isoprene.
2360	Isopropanol.
2370	Isopropyl acetate.
2380	Isopropylamine.
2390	Isopropyl chloride.
2400	Isopropylphenol.
2410	Ketene.
2414	Linear alkylsulfonate.
2417	Linear alkylbenzene.
2420	Maleic acid.
2430	Maleic anhydride.
2440	Malic acid.
2450	Mesityl oxide.
2455	Metanilic acid.
2460	Methacrylic acid.
2490	Methallyl chloride.
2500	Methanol.
2510	Methyl acetate.
2520	Methyl acetoacetate.
2530	Methylamine.
2540	n-methylaniline.
2545	Methyl bromide.
2550	Methyl butynol.
2560	Methyl chloride.
2570	Methyl cyclohexane.
2580	Methyl cyclohexanone.
2620	Methylene chloride.
2630	Methylene dianiline.
2635	Methylene diphenyl diisocyanate.
2640	Methyl ethyl ketone.
2644	Methyl formate.
2650	Methyl isobutyl carbinol.
2660	Methyl isobutyl ketone.
2665	Methyl methacrylate.
2670	Methyl pentynol.
2680	a-methyl styrene.
2709	Morpholine.
2710	a-napthalene sulfonic acid.
2720	B-napthalene sulfonic acid.
2739	a-naphthol.
2740	B-naphthol.
2750	Neopentanoic acid.
2756	o-nitroaniline.
2757	p-nitroaniline.
2760	o-nitroanisole.
2762	p-nitroanisole.
2770	Nitrobenzene.
2780	Nitrobenzoic acid (o, m & p).
2790	Nitroethene.
2791	Nitromethane.
2792	Nitrophenol.
2795	Nitropropane.
2800	Nitrotoluene.
2819	Nonene.
2820	Nonyl phenol.
2830	Octyl phenol.
2849	Paraldehyde.
2850	Pentaerythritol.
2851	n-pentane.
2855	i-pentane.
2860	Perchloroethylene.
2882	Perchloromethylmercaptan.
2890	o-phenetidine.
2900	p-phenetidine.
2910	Phenol.
2920	Phenolsulfonic acids.
2930	Phenyl anthranilic acid.
2940	Phenylenediamine.
2960	Phthalic anhydride.
2970	Phthalimide.
2973	b-picoline.
2976	Piperazine.
3000	Polybutenes.
3010	Polyethylene glycol.
3025	Polypropylene glycol.
3063	Propionaldehyde.
3066	Propionic acid.
3070	n-propyl alcohol.
3075	Propylamine.
3080	Propyl chloride.
3090	Propylene.
3100	Propylene chlorohydrin.
3110	Propylene dichloride.
3111	Propylene glycol.
3120	Propylene oxide.
3130	Pyridine.
3140	Quinone.
3150	Resorcinol.
3160	Resorcylic acid.
3170	Salicylic acid.
3180	Sodium acetate.
3181	Sodium benzoate.
3190	Sodium carboxymethylcellulose.
3191	Sodium chloroacetate.
3200	Sodium formate.
3210	Sodium phenate.
3220	Sorbic acid.
3230	Styrene.
3240	Succinic acid.
3250	Succinitrile.
3251	Sulfanilic acid.
3260	Sulfolane.
3270	Tannic acid.
3280	Terephthalic acid.
3290 & 3291	Tetrachloroethanes.
3300	Tetrachlorophthalic anhydride.
3310	Tetraethyllead.
3320	Tetrahydronaphthalene.
3330	Tetrahydrophthalic anhydride.
3335	Tetramethyllead.
3340	Tetramethylenediamine.
3341	Tetramethylethylenediamine.
3349	Toluene.
3350	Toluene-2,4-diamine.
3354	Toluene-2,4-diisocyanate.
3355	Toluene diisocyanates (mixture).
3360	Toluene sulfonamide.
3370	Toluene sulfonic acids.
3380	Toluene sulfonylchloride.
3381	Toluidines.
3389	Trichlorobenzenes.
3395	1,1,1-trichloroethane.
3400	1,1,2-trichloroethane.
3410	Trichloroethylene.
3411	Trichlorofluoromethane.
3420	1,2,3-trichloropropane.
3430	1,1,2-trichloro-1,2,2-trifluoroethane.
3450	Triethylamine.
3460	Triethylene glycol.
3470	Triethylene glycoldimethyl ether.
3480	Triisobutylene.
3490	Trimethylamine.
3510	Vinyl acetate.
3520	Vinyl chloride.
3530	Vinylidene chloride.
3540	Vinyl toluene.
3541	Xylene (mixed).
3560	o-xylene.
3570	p-xylene.
3580	Xylenol.
3590	Xylidine, 1,3-butylene glycol, Dinitrotoluene, Methyltertbutyl ether, Phosgene, Polyethylene, Polypropylene, Polystyrene, Urea.

[1] The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by the USEPA.

Appendix B—VOM Measurement Techniques for Capture Efficiency

Procedure G.1—Captured VOC Emissions

1. Introduction

1.1 *Applicability.* This procedure is applicable for determining the volatile organic compounds (VOC) content of captured gas streams. It is intended to be used as a segment in the development of liquid/gas or gas/gas protocols for

determining VOC capture efficiency (CE) for surface coating and printing operations. The procedure may not be acceptable in certain site-specific situations, *e.g.*, when: (1) Direct fired heaters or other circumstances affect the quantity of VOC at the control device inlet; and (2) particulate organic aerosols are formed in the process and are present in the captured emissions.

1.2 *Principle.* The amount of VOC captured (G) is calculated as the sum of the products of the VOC content (C_{oj}), the flow rate (Q_{oj}), and the sample time (T_c) from each captured emissions point.

1.3 *Estimated measurement uncertainty.* The measurement uncertainties are estimated for each captured or fugitive emissions point as follows: $Q_{oj} = \pm 5.5$ percent and $C_{oj} = \pm 5.0$ percent. Based on these numbers, the probable uncertainty for G is estimated at about ±7.4 percent.

1.4 *Sampling requirements.* A capture efficiency test shall consist of at least three sampling runs. The sampling time for each run should be at least 8 hours, unless otherwise approved.

1.5 *Notes.* Because this procedure is often applied in highly explosive areas, caution and care should be exercised in choosing appropriate equipment and installing and using the equipment. Mention of trade names or company products does not constitute endorsement. All gas concentrations (percent, ppm) are by volume, unless otherwise noted.

2. Apparatus and Reagents

2.1 *Gas VOC concentration.* A schematic of the measurement system is shown in Figure 1. The main components are described below:

2.1.1 *Sample probe.* Stainless steel, or equivalent. The probe shall be heated to prevent VOC condensation.

2.1.2 *Calibration valve assembly.* Three-way valve assembly at the outlet of sample probe to direct the zero and calibration gases to the analyzer. Other methods, such as quick-connect lines, to route calibration gases to the outlet of the sample probe are acceptable.

2.1.3 *Sample line.* Stainless steel or Teflon tubing to transport the sample gas to the analyzer. The sample line must be heated to prevent condensation.

2.1.4 *Sample pump.* A lead-free pump, to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The components of the pump that contact the gas stream shall be constructed of stainless steel or Teflon. The sample pump must be heated to prevent condensation.

2.1.5 *Sample flow rate control.* A sample flow rate control valve and rotameter, or equivalent, to maintain a constant sampling rate within 10 percent. The flow rate control valve and rotameter must be heated to prevent condensation. A control valve may also be located on the sample pump bypass loop to assist in controlling the sample pressure and flow rate.

2.1.6 *Sample gas manifold.* Capable of diverting a portion of the sample gas stream to the flame ionization analyzer (FIA), and the remainder to the bypass discharge vent. The manifold components shall be constructed of stainless steel or Teflon. If captured or fugitive emissions are to be measured at multiple locations, the measurement system shall be designed to use separate sampling probes, lines, and pumps for each measurement location and a common sample gas manifold and FIA. The sample gas manifold and connecting lines to the FIA must be heated to prevent condensation.

2.1.7 *Organic concentration analyzer.* An FIA with a span value of 1.5 times the expected concentration as propane; however, other span values may be used if it can be demonstrated that they would provide more accurate measurements.

The system shall be capable of meeting or exceeding the following specifications:

2.1.7.1 *Zero drift.* Less than ±3.0 percent of the span value.

2.1.7.2 *Calibration drift.* Less than ±3.0 percent of the span value.

2.1.7.3 *Calibration error.* Less than ±5.0 percent of the calibration gas value.

2.1.7.4 *Response time.* Less than 30 seconds.

2.1.8 *Integrator/data acquisition system.* An analog or digital device or computerized data acquisition system used to integrate the FIA response or compute the average response and record measurement data. The minimum data sampling frequency for computing average or integrated values is one measurement value every 5 seconds. The device shall be capable of recording average values at least once per minute.

2.1.9 *Calibration and other gases.* Gases used for calibration, fuel, and combustion air (if required) are contained in compressed gas cylinders. All calibration gases shall be traceable to NIST standards and shall be certified by the manufacturer to ±1 percent of the tag value. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ±2 percent from the certified value. For calibration gas values not generally available, alternative methods for preparing calibration gas mixtures, such as dilution systems, may be used with prior approval.

2.1.9.1 *Fuel.* A 40 percent H_2/60 percent He or 40 percent H_2/60 percent N_2 gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

2.1.9.2 *Carrier gas.* High purity air with less than 1 ppm of organic material (as propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

2.1.9.3 *FIA Linearity calibration gases.* Low-, mid-, and high-range gas mixture standards with nominal propane concentrations of 20–30, 45–55, and 70–80 percent of the span value in air, respectively. Other calibration values and other span values may be used if it can be shown that more accurate measurements would be achieved.

2.1.10 *Particulate filter.* An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated to prevent any condensation unless it can be demonstrated that no condensation occurs.

2.2 *Captured emissions volumetric flow rate.*

2.2.1 *Method 2 or 2A apparatus.* For determining volumetric flow rate.

2.2.2 *Method 3 apparatus and reagents.* For determining molecular weight of the gas stream. An estimate of the molecular weight of the gas stream may be used if it can be justified.

2.2.3 *Method 4 apparatus and reagents.* For determining moisture content, if necessary.

3. Determinations of Volumetric Flow Rate of Captured Emissions

3.1 Locate all points where emissions are captured from the affected facility. Using Method 1, determine the sampling points. Be sure to check each site for cyclonic or swirling flow.

3.2 Measure the velocity at each sampling site at least once every hour during each sampling run using Method 2 or 2A.

4. Determinations of VOC Content of Captured Emissions

4.1 *Analysis duration.* Measure the VOC responses at each captured emissions point during the entire test run or, if applicable, while the process is operating. If there are multiple captured emission locations, design a sampling system to allow a single FIA to be used to determine the VOC responses at all sampling locations.

4.2 *Gas VOC concentration.*

4.2.1 Assemble the sample train as shown in Figure 1. Calibrate the FIA according to the procedure in section 5.1.

4.2.2 Conduct a system check according to the procedure in section 5.3.

4.2.3 Install the sample probe so that the probe is centrally located in the stack, pipe, or duct, and is sealed tightly at the stack port connection.

4.2.4 Inject zero gas at the calibration valve assembly. Allow the measurement system response to reach zero. Measure the system response time as the time required for the system to reach the effluent concentration after the calibration valve has been returned to the effluent sampling position.

4.2.5 Conduct a system check before and a system check after each sampling run according to the procedures in sections 5.2 and 5.3. If the drift check following a run indicates unacceptable performance, the run is not valid. The tester may elect to perform system drift checks during the run not to exceed one drift check per hour.

4.2.6 Verify that the sample lines, filter, and pump temperatures are 120±5°C.

4.2.7 Begin sampling at the start of the test period and continue to sample during the entire run. Record the starting and ending times and any required process information as appropriate. If multiple captured emission locations are sampled using a single FIA, sample at each location for the same amount of time (*e.g.*, 2 minutes) and continue to switch from one location to another for the entire test run. Be sure that total sampling time at each location is the same at the end of the test run. Collect at least 4 separate measurements from each sample point during each hour of testing. Disregard the measurements at each sampling location until two times the response time of the measurement system has elapsed. Continue sampling for at least 1 minute and record the concentration measurements.

4.3 *Background concentration.*

4.3.1 Locate all NDO's of the TTE. A sampling point shall be centrally located outside of the TTE at 4 equivalent diameters from each NDO, if possible. If there are more than 6 NDO's, choose 6 sampling points evenly spaced among the NDO's.

4.3.2 Assemble the sample train as shown in Figure 2. Calibrate the FIA and conduct a system check according to the procedures in sections 5.1 and 5.3.

Note: This sample train shall be a separate sampling train from the one to measure the captured emissions.

4.3.3 Position the probe at the sampling location.

4.3.4 Determine the response time, conduct the system check and sample according to the procedures described in sections 4.2.4 to 4.2.7.

4.4 *Alternative procedure.* The direct interface sampling and analysis procedure described in section 7.2 of Method 18 may be used to determine the gas VOC concentration. The system must be designed to collect and analyze at least one sample every 10 minutes.

5. Calibration and Quality Assurance

5.1 *FIA calibration and linearity check.* Make necessary adjustments to the air and fuel supplies for the FIA and ignite the burner. Allow the FIA to warm up for the period recommended by the manufacturer. Inject a calibration gas into the measurement system and adjust the back-pressure regulator to the value required to achieve the flow rates specified by the manufacturer. Inject the zero- and the high-range calibration gases and adjust the analyzer calibration to provide the proper responses. Inject the low- and mid-range gases and record the responses of the measurement system. The calibration and linearity of the system are acceptable if the responses for all four gases are within 5 percent of the respective gas values. If the performance of the system is not acceptable, repair or adjust the system and repeat the linearity check. Conduct a calibration and linearity check after assembling the analysis system and after a major change is made to the system.

5.2 *Systems drift checks.* Select the calibration gas that most closely approximates the concentration of the captured emissions for conducting the drift checks. Introduce the zero and calibration gas at the calibration valve assembly and verify that the appropriate gas flow rate and pressure are present at the FIA. Record the measurement system responses to the zero and calibration gases. The performance of the system is acceptable if the difference between the drift check measurement and the value obtained in section 5.1 is less than 3 percent of the span value. Conduct the system drift checks at the end of each run.

5.3 *System check.* Inject the high range calibration gas at the inlet of the sampling probe and record the response. The performance of the system is acceptable if the measurement system response is within 5 percent of the value obtained in section 5.1, for the high range calibration gas. Conduct a system check before and after each test run.

5.4 *Analysis audit.* Immediately before each test analyze an audit cylinder as described in section 5.2. The analysis audit must agree with the audit cylinder concentration within 10 percent.

6. Nomenclature

A_i = area of NDO i, ft².

A_N = total area of all NDO's in the enclosure, ft².

C_{ai} = corrected average VOC concentration of background emissions at point i, ppm propane.

C_a = average background concentration, ppm propane.

C_{oj} = corrected average VOC concentration of captured emissions at point j, ppm propane.

C_{om} = average measured concentration for the drift check calibration gas, ppm propane.

C_{oo} = average system drift check concentration for zero concentration gas, ppm propane.

C_{ss} = actual concentration of the drift check calibration gas, ppm propane.

C_i = uncorrected average background VOC concentration measured at point i, ppm propane.

C_j = uncorrected average VOC concentration measured at point j, ppm propane.

G = total VOC content of captured emissions, kg.

$K_1 = 1.830 \times 10^{-6}$ kg/(m³-ppm).

n = number of measurement points.

Q_{oj} = average effluent volumetric flow rate corrected to standard conditions at captured emissions point j, m³/min.

T_c = total duration of captured emissions sampling run, min.

7. Calculations

7.1 *Total VOC captured emissions.*

$$G = \frac{\sum_{j=1}^{n} (C_{oj} - C_a) Q_{oj} T_c K_1}{}$$

7.2 *VOC concentration of the captured emissions at point j.*

$$C_{oj} = (C_j - C_{oo}) \frac{C_{ss}}{C_{sm} - C_{oo}} \quad \text{Eq. 2}$$

7.3. *Background VOC concentration at point i.*

$$C_{ai} = (C_i - C_{oo}) \frac{C_{ss}}{C_{sm} - C_{oo}} \quad \text{Eq. 3}$$

7.4 *Average background concentration.*

$$C_a = \frac{\sum_{i=1}^{n} C_{ai} A_i}{n A_N} \quad \text{Eq. 4}$$

Note: If the concentration at each point is with in 20 percent of the average concentration of all points, the terms "A_i" and "A_N" may be deleted from Equation 4.

Procedure G.2—Captured VOC Emissions (Dilution Technique)

1. Introduction

1.1 *Applicability.* This procedure is applicable for determining the volatile organic compounds (VOC) content of captured gas streams. It is intended to be used as a segment in the development of a gas/gas protocol in which fugitive emissions are measured for determining VOC capture efficiency (CE) for surface coating and printing operations. A dilution system is used to reduce the VOC concentration of the captured emission to about the same concentration as the fugitive emission. The procedure may not be acceptable in certain site-specific situations, *e.g.*, when: (1) Direct fired heaters or other circumstances affect the quantity of VOC at the control device inlet; and (2) particulate organic aerosols are formed in the process and are present in the captured emissions.

1.2 *Principle.* The amount of VOC captured (G) is calculated as the sum of the products of the VOC content (C_{ej}), the flow rate (Q_{ej}), and the sampling time (T_c) from each captured emissions point.

1.3 *Estimated measurement uncertainty.* The measurement uncertainties are estimated for each captured or fugitive emissions point as follows: $Q_{ej} = \pm 5.5$ percent and $C_{ej} = \pm 5$ percent. Based on these numbers, the probable uncertainty for G is estimated at about ±7.4 percent.

1.4 *Sampling requirements.* A capture efficiency test shall consist of at least three sampling runs. The sampling time for each run should be at least 8 hours, unless otherwise approved.

1.5 *Notes.* Because this procedure is often applied in highly explosive areas, caution and care should be exercised in choosing appropriate equipment and installing and using the equipment. Mention of trade names or company products does not constitute endorsement. All gas concentrations (percent, ppm) are by volume, unless otherwise noted.

2. Apparatus and Reagents

2.1 *Gas VOC concentration.* A schematic of the measurement system is shown in Figure 1. The main components are described below:

2.1.1 *Dilution system.* A Kipp in-stack dilution probe and controller or similar device may be used. The dilution rate may be changed by substituting different critical orifices or adjustments of the aspirator supply pressure. The dilution system shall be heated to prevent VOC condensation.

Note: An out-of-stack dilution device may be used.

2.1.2 *Calibration valve assembly.* Three-way valve assembly at the outlet of sample probe to direct the zero and calibration gases to the analyzer. Other methods, such as quick-connect lines, to route calibration gases to the outlet of the sample probe are acceptable.

2.1.3 *Sample line.* Stainless steel or Teflon tubing to transport the sample gas to the analyzer. The sample line must be heated to prevent condensation.

2.1.4 *Sample pump.* A leak-free pump, to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The components of the pump that contact the gas stream shall be constructed of stainless steel or Teflon. The sample pump must be heated to prevent condensation.

2.1.5 *Sample flow rate control.* A sample flow rate control valve and rotameter, or equivalent, to maintain a constant sampling rate within 10 percent. The flow control valve and rotameter must be heated to prevent condensation. A control valve may also be located on the sample pump bypass loop to assist in controlling the sample pressure and flow rate.

2.1.6 *Sample gas manifold.* Capable of diverting a portion of the sample gas stream to the flame ionization analyzer (FIA), and the remainder to the bypass discharge vent. The manifold components shall be constructed of stainless steel or Teflon. If captured or fugitive emissions are to be measured at multiple locations, the measurement system shall be designed to use separate sampling probes, lines, and pumps for each measurement location and a common sample gas manifold and FIA. The sample gas manifold and connecting lines to the FIA must be heated to prevent condensation.

2.1.7 *Organic concentration analyzer.* An FIA with a span value of 1.5 times the expected concentration as propane; however, other span values may be used if it can be demonstrated that they would provide more accurate measurements.

The system shall be capable of meeting or exceeding the following specifications:

2.1.7.1 *Zero drift.* Less than ±3.0 percent of the span value.

2.1.7.2 *Calibration drift.* Less than ±3.0 percent of the span value.

2.1.7.3 *Calibration error.* Less than ±5.0 percent of the calibration gas value.

2.1.7.4 *Response time.* Less than 30 seconds.

2.1.7.5 *Integrator/data acquisition system.* An analog or digital device or computerized data acquisition system used to integrate the FIA response or compute the average response and record measurement data. The minimum data sampling frequency for computing average or integrated values is one measurement value every 5 seconds. The device shall be capable of recording average values at least once per minute.

2.1.9 *Calibration and other gases.* Gases used for calibration, fuel, and combustion air (if required) are contained in compressed gas cylinders. All calibration gases shall be traceable to NIST standards and shall be certified by the manufacturer to ±1 percent of the tag value. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ±2 percent from the certified value. For calibration gas values not generally available, alternative methods for preparing calibration gas mixtures, such as dilution system, may be used with prior approval.

2.1.9.1 *Fuel.* A 40 percent H_2/60 percent He or 40 percent H_2/60 percent N_2 gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

2.1.9.2 *Carrier gas and dilution air supply.* High purity air with less than 1 ppm of organic material (as propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

2.1.9.3 *FIA linearity calibration gases.* Low-, mid-, and high-range gas mixture standards with nominal propane concentrations of 20–30, 45–55, and 70–80 percent of the span value in air, respectively. Other calibration values and other span values may be used if it can be shown that more accurate measurements would be achieved.

2.1.9.4 *Dilution check gas.* Gas mixture standard containing propane in air, approximately half the span value after dilution.

2.1.10 *Particulate filter.* An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated to prevent any condensation unless it can be demonstrated that no condensation occurs.

2.2 *Captured emissions volumetric flow rate.*

2.2.1 *Method 2 or 2A apparatus.* For determining volumetric flow rate.

2.2.2 *Method 3 apparatus and reagents.* For determining molecular weight of the gas stream. An estimate of the molecular weight of the gas stream may be used if it can be justified.

2.2.3 *Method 4 apparatus and reagents.* For determining moisture content, if necessary.

3. Determination of Volumetric Flow Rate of Captured Emissions

3.1 Locate all points where emissions are captured from the affected facility. Using Method 1, determine the sampling points. Be sure to check each site for cyclonic or swirling flow.

3.2 Measure the velocity at each sampling site at least once every hour during each sampling run using Method 2 or 2A.

4. Determination of VOC Content of Captured Emissions

4.1 *Analysis duration.* Measure the VOC responses at each captured emissions point during the entire test run or, if applicable, while the process is operating. If there are multiple captured emissions locations, design a sampling system to allow a single FIA to be used to determine the VOC responses at all sampling locations.

4.2 *Gas VOC concentration.*

4.2.1 Assemble the sample train as shown in Figure 1. Calibrate the FIA according to the procedure in section 5.1.

4.2.2 Set the dilution ratio and determine the dilution factor according to the procedure in section 5.3.

4.2.3 Conduct a system check according to the procedure in section 5.4.

4.2.4 Install the sample probe so that the probe is centrally located in the stack, pipe, or duct, and is sealed tightly at the stack port connection.

4.2.5 Inject zero gas at the calibration valve assembly. Measure the system response time as the time required for the system to reach the effluent concentration after the calibration valve has been returned to the effluent sampling position.

4.2.6 Conduct a system check before and a system drift check after each sampling run according to the procedures in sections 5.2 and 5.4. If the drift check following a run indicates unacceptable performance, the run is not valid. The tester may elect to perform system drift checks during the run not to exceed one drift check per hour.

4.2.7 Verify that the sample lines, filter, and pump temperatures are 120±5°C.

4.2.8 Begin sampling at the start of the test period and continue to sample during the entire run. Record the starting and ending times and any required process information as appropriate. If multiple captured emission locations are sampled using a single FIA, sample at each location for the same amount of time (*e.g.*, 2 minutes) and continue to switch from one location to another for the entire test run. Be sure that total sampling time at each location is the same at the end of the test run. Collect at least 4 separate measurements from each sample point during each hour of testing. Disregard the measurements at each sampling location until two times the response time of the measurement system has elapsed. Continue sampling for at least 1 minute and record the concentration measurements.

4.3 *Background concentration.*

4.3.1 Locate all NDO's of the TTE. A sampling point shall be centrally located outside of the TTE at 4 equivalent diameters from each NDO, if possible. If there are more than 6 NDO's, choose 6 sampling points evenly spaced among the NDO's.

4.3.2 Assemble the sample train as shown in Figure 2. Calibrate the FIA and conduct a system check according to the procedures in sections 5.1 and 5.4.

4.3.3 Position the probe at the sampling location.

4.3.4 Determine the response time, conduct the system check and sample according to the procedures described in sections 4.2.4 to 4.2.8.

4.4 *Alternative procedure.* The direct interface sampling and analysis procedure described in section 7.2 of Method 18 may be used to determine the gas VOC concentration. The system must be designed to collect and analyze at least one sample every 10 minutes.

5. Calibration and Quality Assurance

5.1 *FIA Calibration and linearity check.* Make necessary adjustments to the air and fuel supplies for the FIA and ignite the burner. Allow the FIA to warm up for the period recommended by the manufacturer. Inject a calibration gas into the measurement system after the dilution system and adjust the back-pressure regulator to the value required to achieve the flow rates specified by the manufacturer. Inject the zero- and the high-range calibration gases and adjust the analyzer calibration to provide the proper responses. Inject the low- and mid-range gases and record the responses of the measurement system. The calibration and linearity of the system are acceptable if the responses for all four gases are within 5 percent of the respective gas values. If the performance of the system is not acceptable, repair or adjust the system and repeat the linearity check. Conduct a calibration and linearity check after assembling the analysis system and after a major change is made to the system.

5.2 *Systems drift checks.* Select the calibration gas that most closely approximates the concentration of the diluted captured emissions for conducting the drift checks. Introduce the zero and calibration gas at the calibration valve assembly and verify that the appropriate gas flow rate and pressure are present at the FIA. Record the measurement system responses to the zero and calibration gases. The performance of the system is acceptable if the difference between the drift check measurement and the value obtained in section 5.1 is less than 3 percent of the span value. Conduct the system drift check at the end of each run.

5.3 *Determination of dilution factor.* Inject the dilution check gas into the measurement system before the dilution system and record the response. Calculate the dilution factor using Equation 3.

5.4 *System check.* Inject the high range calibration gas at the inlet to the sampling probe while the dilution air is turned off. Record the response. The performance of the system is acceptable if the measurement system response is within 5 percent of the value obtained in section 5.1 for the high range calibration gas. Conduct a system check before and after each test run.

5.5 *Analysis audit.* Immediately before each test analyze an audit cylinder as described in section 5.2. The analysis audit must agree with the audit cylinder concentration within 10 percent.

6. Nomenclature

A_t = area of NDO i, ft^2.

A_N = total area of all NDO's in the enclosure, ft^2.

C_A = actual concentration of the dilution check gas, ppm propane.

C_{ei} = corrected average VOC concentration of background emissions at point i, ppm propane.

C_b = average background concentration, ppm propane.

C_{DM} = average measured concentration for the drift check calibration gas, ppm propane.

C_{DO} = average system drift check concentration for zero concentration gas, ppm propane.

C_M = actual concentration of the drift check calibration, gas, ppm propane.

C_i = uncorrected average background VOC concentration measured at point 1, ppm propane.

C_j = uncorrected average VOC concentration measured at point j, ppm propane.

C_M = measured concentration of the dilution check gas, ppm propane.

D_f = dilution factor.

G = total VOC content of captured emissions, kg.

$K_1 = 1.830 \times 10^{-9}$ kg/(m^3·ppm).

n = number of measurement points.

Q_{ej} = average effluent volumetric flow rate corrected to standard conditions at captured emissions point j, m^3/min.

T_c = total duration of capture efficiency sampling run, min.

7. Calculations

7.1 *Total VOC captured emissions.*

$$G = \sum_{j=1}^{n} C_{ej}\, Q_{ej}\, T_c\, K_1 \qquad \text{Eq. 1}$$

7.2 *VOC concentration of the captured emissions to point j.*

$$C_{ej} = DF(C_j - C_{bo}) \frac{C_M}{C_{DM} - C_{DO}} \qquad \text{Eq. 2}$$

7.3 *Dilution factor.*

$$DF = \frac{C_A}{C_M} \qquad \text{Eq. 3}$$

7.4 *Background VOC concentration at point i.*

$$C_{ei} = (C_i - C_{bo}) \frac{C_M}{C_{DM} - C_{DO}} \qquad \text{Eq. 4}$$

7.5 *Average background concentration.*

$$C_b = \frac{\sum_{i=1}^{n} C_{ei}\, A_i}{n\, A_N} \qquad \text{Eq. 5}$$

Note: If the concentration at each point is within 20 percent of the average concentration of all points, the terms "A_i" and "A_N" may be deleted from Equation 4.

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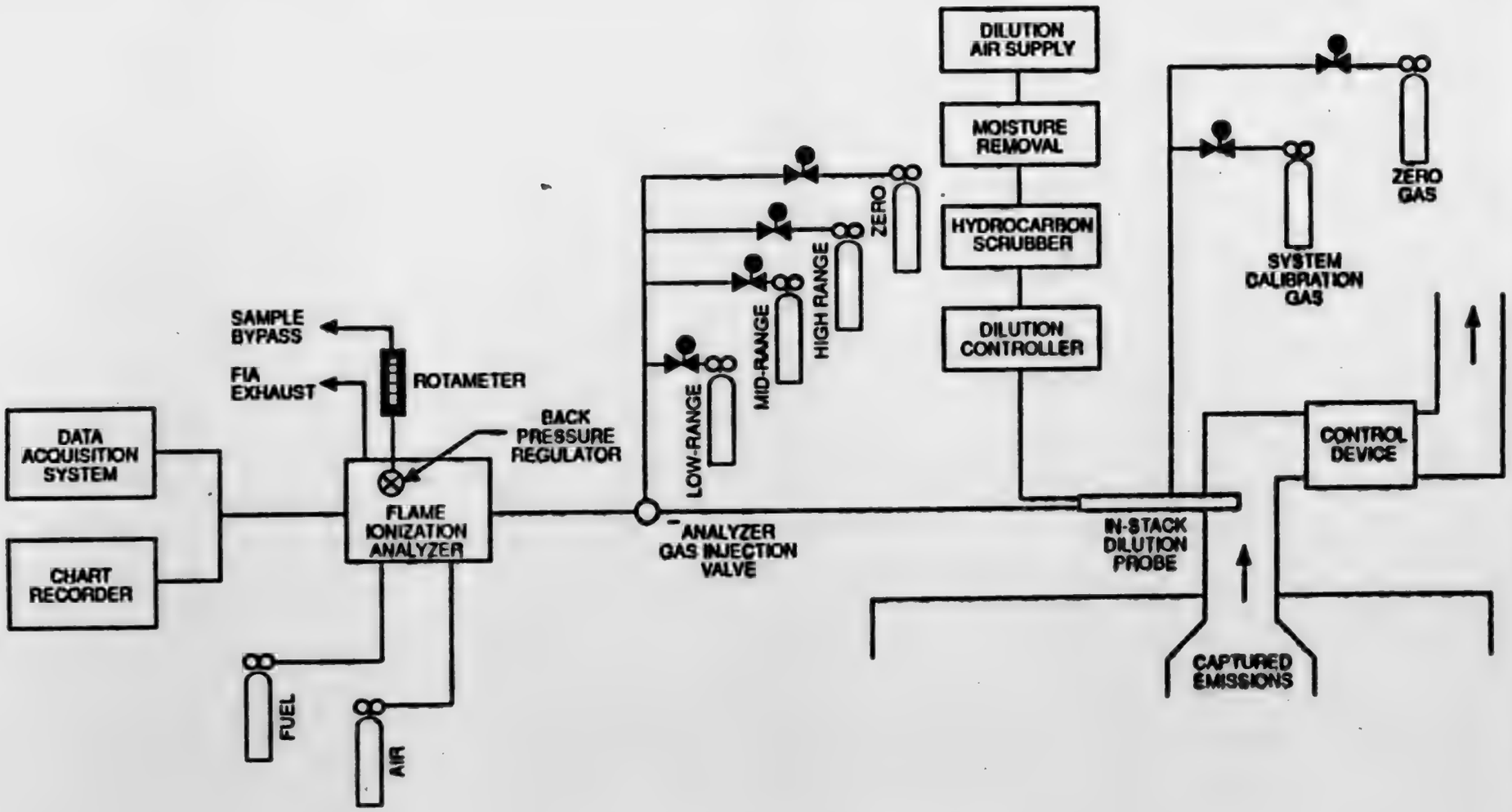


Figure 1. Captured emissions measurement system.

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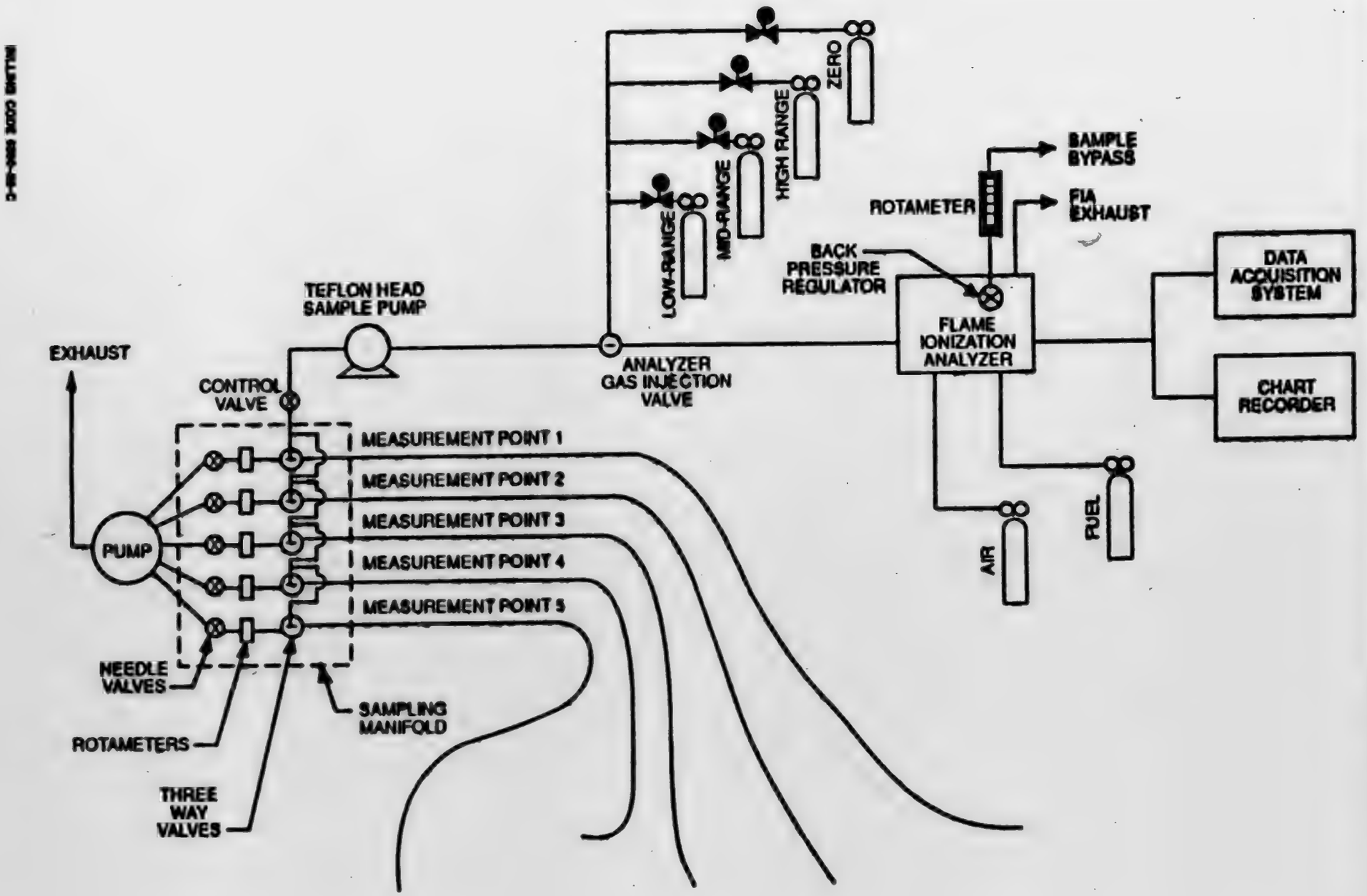


Figure 2. Background measurement system.

Procedure F.2—Fugitive VOC Emissions from Building Enclosures

1. Introduction

1.1 *Applicability.* This procedure is applicable for determining the fugitive volatile organic compounds (VOC) emissions from a building enclosure (BE). It is intended to be used as a segment in the development of liquid/gas or gas/gas protocols for determining VOC capture efficiency (CE) for surface coating and printing operations.

1.2 *Principle.* The total amount of fugitive VOC emissions (F_B) from the BE is calculated as the sum of the products of the VOC content (C_{fj}) of each fugitive emissions point, its flow rate (Q_{fj}), and time (T_F).

1.3 *Measurement uncertainty.* The measurement uncertainties are estimated for each fugitive emissions point as follows: $Q_{fj} = \pm 5.0$ percent and $C_{fj} = \pm 5.0$ percent. Based on these numbers, the probable uncertainty for F_B is estimated at about ± 11.2 percent.

1.4 *Sampling requirements.* A capture efficiency test shall consist of at least three sampling runs. The sampling time for each run should be at least 8 hours, unless otherwise approved.

1.5 *Notes.* Because this procedure is often applied in highly explosive areas, caution and care should be exercised in choosing appropriate equipment and installing and using the equipment. Mention of trade names or company products does not constitute endorsement. All gas concentrations (percent, ppm) are by volume, unless otherwise noted.

2. Apparatus and Reagents

2.1 *Gas VOC concentration.* A schematic of the measurement system is shown in Figure 1. The main components are described below:

2.1.1 *Sample probe.* Stainless steel, or equivalent. The probe shall be heated to prevent VOC condensation.

2.1.2 *Calibration valve assembly.* Three-way valve assembly at the outlet of sample probe to direct the zero and calibration gases to the analyzer. Other methods, such as quick-connect lines, to route calibration gases to the outlet of the sample probe are acceptable.

2.1.3 *Sample line.* Stainless steel or Teflon tubing to transport the sample gas to the analyzer. The sample line must be heated to prevent condensation.

2.1.4 *Sample pump.* A leak-free pump, to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The components of the pump that contact the gas stream shall be constructed of stainless steel or Teflon. The sample pump must be heated to prevent condensation.

2.1.5 *Sample flow rate control.* A sample flow rate control valve and rotameter, or equivalent, to maintain a constant sampling rate within 10 percent. The flow rate control valve and rotameter must be heated to prevent condensation. A control valve may also be located on the sample pump bypass loop to assist in controlling the sample pressure and flow rate.

2.1.6 *Sample gas manifold.* Capable of diverting a portion of the sample gas stream to the flame ionization analyzer (FIA), and the remainder to the bypass discharge vent. The manifold components shall be constructed of stainless steel or Teflon. If emissions are to be measured at multiple locations, the measurement system shall be designed to use separate sampling probes, lines, and pumps for each measurement location and a common sample gas manifold and FIA. The sample gas manifold must be heated to prevent condensation.

2.1.7 *Organic Concentration Analyzer.* An FIA with a span value of 1.5 times the expected concentration as propane; however, other span values may be used if it can be demonstrated that they would provide more accurate measurements. The system shall be capable or exceeding the following specifications:

2.1.7.1 *Zero drift.* Less than ± 3.0 percent of the span value.

2.1.7.2 *Calibration drift.* Less than ± 3.0 percent of the span value.

2.1.7.3 *Calibration error.* Less than ± 5.0 percent of the calibration gas value.

2.1.7.4 *Response time.* Less than 30 seconds.

2.1.8 *Integrator/data acquisition system.* An analog or digital device or computerized data acquisition system used to integrate the FIA response or compute the average response and record measurement data. The minimum data sampling frequency for computing average or integrated values is one measurement value every 5 seconds. The device shall be capable of recording average values at least once per minute.

2.1.9 *Calibration and other gases.* Gases used for calibration, fuel, and combustion air (if required) are contained in compressed gas cylinders. All calibration gases shall be traceable to NIST standards and shall be certified by the manufacturer to ± 1 percent of the tag value. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. For calibration gas values not generally available, alternative methods for preparing calibration gas mixtures, such as dilution systems, may be used with prior approval.

2.1.9.1 *Fuel.* A 40 percent H_2/60 percent He or 40 percent H_2/60 percent N_2 gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

2.1.9.2 *Carrier gas.* High purity air with less than 1 ppm of organic material (propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

2.1.9.3 *FIA linearity calibration gases.* Low-, mid-, and high-range gas mixture standards with nominal propane concentrations of 20–30, 45–55, and 70–80 percent of the span value in air, respectively. Other calibration values and other span values may be used if it can be shown that more accurate measurements would be achieved.

2.1.10 *Particulate filter.* An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated to prevent any condensation unless it can be demonstrated that no condensation occurs.

2.2 *Fugitive emissions volumetric flow rate.*

2.2.1 *Flow direction indicators.* Any means of indicating inward or outward flow, such as light plastic film or paper streamers, smoke tubes, filaments, and sensory perception.

2.2.2 *Method 2 or 2A apparatus.* For determining volumetric flow rate. Anemometers or similar devices calibrated according to the manufacturer's instructions may be used when low velocities are present. Vane anemometers (Young-maximum response propeller), specialized pitots with electronic manometers (*e.g.*, Shortridge Instruments Inc., Airdata Multimeter 860) are commercially available with measurement thresholds of 15 and 8 mpm (50 and 25 fpm), respectively.

2.2.3 *Method 3 apparatus and reagents.* For determining molecular weight of the gas stream. An estimate of the molecular weight of the gas stream may be used if it can be justified.

2.2.4 *Method 4 apparatus and reagents.* For determining moisture content, if necessary.

3. Determination of Volumetric Flow Rate of Fugitive Emissions

3.1 *Preliminary determinations.* The purpose of this exercise is to determine which exhaust points should be measured for volumetric flow rates and VOC concentrations.

3.1.1 *Forced draft openings.* Identify all forced draft openings. Determine the volumetric flow rate according to Method 2.

3.1.2 *NDO's exhaust points.* The NDO's in the roof of a facility are considered to be exhaust points. Determine volumetric flow rate from these NDO's. Divide the cross-sectional area according to Method 1 using 12 equal areas. Use the appropriate velocity measurement devices, *e.g.*, propeller anemometers.

3.1.3 *Other NDO's.*

3.1.3.1 This step is optional. Determine the exhaust flow rate, including that of the control device, from the enclosure and the intake air flow rate. If the exhaust flow rate divided by the intake air flow rate is greater than 1.1, then all other NDO's are not considered to be significant exhaust points.

3.1.3.2 If the option above is not taken, identify all other NDO's and other potential points through which fugitive emissions may escape the enclosure. Then use the following criteria to determine whether flow rates and VOC concentrations need to be measured:

3.1.3.2.1 Using the appropriate flow direction indicator, determine the flow direction. An NDO with zero or inward flow is not an exhaust point.

3.1.3.2.2 Measure the outward volumetric flow rate from the remainder of the NDO's. If the collective flow rate is 2 percent, or less, of the flow rate from sections 3.1.1 and 3.1.2, then these NDO's, except those within two equivalent diameters (based on NDO opening) from VOC sources, may be considered to be non-exhaust points.

3.1.3.2.3 If the percentage calculated in section 3.1.3.2.2 is greater than 2 percent, those NDO's (except those within two equivalent diameters from VOC sources) whose volumetric flow rate totals 2 percent of the flow rate from sections 3.1.1 and 3.1.2 may be considered as non-exhaust points. All remaining NDO's shall be measured for volumetric flow rate and VOC concentrations during the CE test.

3.1.3.2.4 The tester may choose to measure VOC concentrations at the forced exhaust points and the NDO's. If the total VOC emissions from the NDO's are less than 2 percent of the emissions from the forced draft and roof NDO's, then these NDO's may be eliminated from further consideration.

3.2 *Determination of flow rates.*

3.2.1 Measure the volumetric flow rate at all locations identified as exhaust points in section 3.1. Divide each exhaust opening into 9 equal areas for rectangular openings and 8 for circular openings.

3.2.2 Measure the velocity at each site at least once every hour during each sampling run using Method 2 or 2A, if applicable, or using the low velocity instruments in section 2.2.2.

4. Determination of VOC Content of Fugitive Emissions

4.1 *Analysis duration.* Measure the VOC responses at each fugitive emission point during the entire test run or, if applicable, while the process is operating. If there are multiple emissions locations, design a sampling system to allow a single FIA to be used to determine the VOC responses at all sampling locations.

4.2 Gas VOC concentration.

4.2.1 Assemble the sample train as shown in Figure 1. Calibrate the FIA and conduct a system check according to the procedures in sections 5.1 and 5.3, respectively.

4.2.2 Install the sample probe so that the probe is centrally located in the stack, pipe, or duct, and is sealed tightly at the stack port connection.

4.2.3 Inject zero gas at the calibration valve assembly. Allow the measurement system response to reach zero. Measure the system response time as the time required for the system to reach the effluent concentration after the calibration valve has been returned to the effluent sampling position.

4.2.4 Conduct a system check before and a system drift check after each sampling run according to the procedures in sections 5.2 and 5.3. If the drift check following a run indicates unacceptable performance, the run is not valid. The tester may elect to perform drift checks during the run not to exceed one drift check per hour.

4.2.5 Verify that the sample lines, filter, and pump temperatures are 120 ± 5°C.

4.2.6 Begin sampling at the start of the test period and continue to sample during the entire run. Record the starting and ending times and any required process information as appropriate. If multiple emission locations are sampled using a single FIA, sample at each location for the same amount of time (*e.g.*, 2 minutes) and continue to switch from one location to another for the entire test run. Be sure that total sampling time at each location is the same at the end of the test run. Collect at least 4 separate measurements from each sample point during each hour of testing. Disregard the response measurements at each sampling location until two times the response time of the measurement system has elapsed. Continue sampling for at least 1 minute and record the concentration measurements.

4.3 *Alternative procedure.* The direct interface sampling and analysis procedure described in section 7.2 of Method 18 may be used to determine the gas VOC concentration. The system must be designed to collect and analyze at least one sample every 10 minutes.

5. Calibration and Quality Assurance

5.1 *FIA calibration and linearity check.* Make necessary adjustments to the air and fuel supplies for the FIA and ignite the burner. Allow the FIA to warm up for the period recommended by the manufacturer. Inject a calibration gas into the measurement system and adjust the back-pressure regulator to the value required to achieve the flow rates specified by the manufacturer. Inject the zero- and the high-range calibration gases and adjust the analyzer calibration to provide the proper responses. Inject the low- and mid-range gases and record the responses of the measurement system. The calibration and linearity of the system are acceptable if the responses for all four gases are within 5 percent of the respective gas values. If the performance of the system is not acceptable, repair or adjust the system and repeat the linearity check. Conduct a calibration and linearity check after assembling the analysis system and after a major change is made to the system.

5.2 *System drift checks.* Select the calibration gas that most closely approximates the concentration of the captured emissions for conducting the drift checks. Introduce the zero and calibration gas at the calibration valve assembly and verify that the appropriate gas flow rate and pressure are present at the FIA. Record the measurement system responses to the zero and calibration gases. The performance of the system is acceptable if the difference between the drift check measurement and the value obtained in section 5.1 is less than 3 percent of the span value. Conduct a system drift check at the end of each run.

5.3 *System check.* Inject the high range calibration gas at the inlet of the sampling probe and record the response. The performance of the system is acceptable if the measurement system response is within 5 percent of the value obtained in section 5.1 for the high range calibration gas. Conduct a system check before each test run.

5.4 *Analysis audit.* Immediately before each test analyze an audit cylinder as described in section 5.2. The analysis audit must agree with the audit cylinder concentration within 10 percent.

6. Nomenclature

C_{ma} = average measured concentration for the drift check calibration gas, ppm propane.

C_{bo} = average system drift check concentration for zero concentration gas, ppm propane.

C_{fj} = corrected average VOC concentration of fugitive emissions at point j, ppm propane.

C_a = actual concentration of the drift check calibration gas, ppm propane.

C_j = uncorrected average VOC concentration measured at point j, ppm propane.

F_B = total VOC content of fugitive emissions from the building, kg.

$K_i = 1.830 \times 10^{-9}$ kg/(m³-ppm).

n = number of measurement points.

Q_{fj} = average effluent volumetric flow rate corrected to standard conditions at fugitive emissions point j, m³/min.

T_F = total duration of capture efficiency sampling run, min.

7. Calculations

7.1 *Total VOC fugitive emissions from the building.*

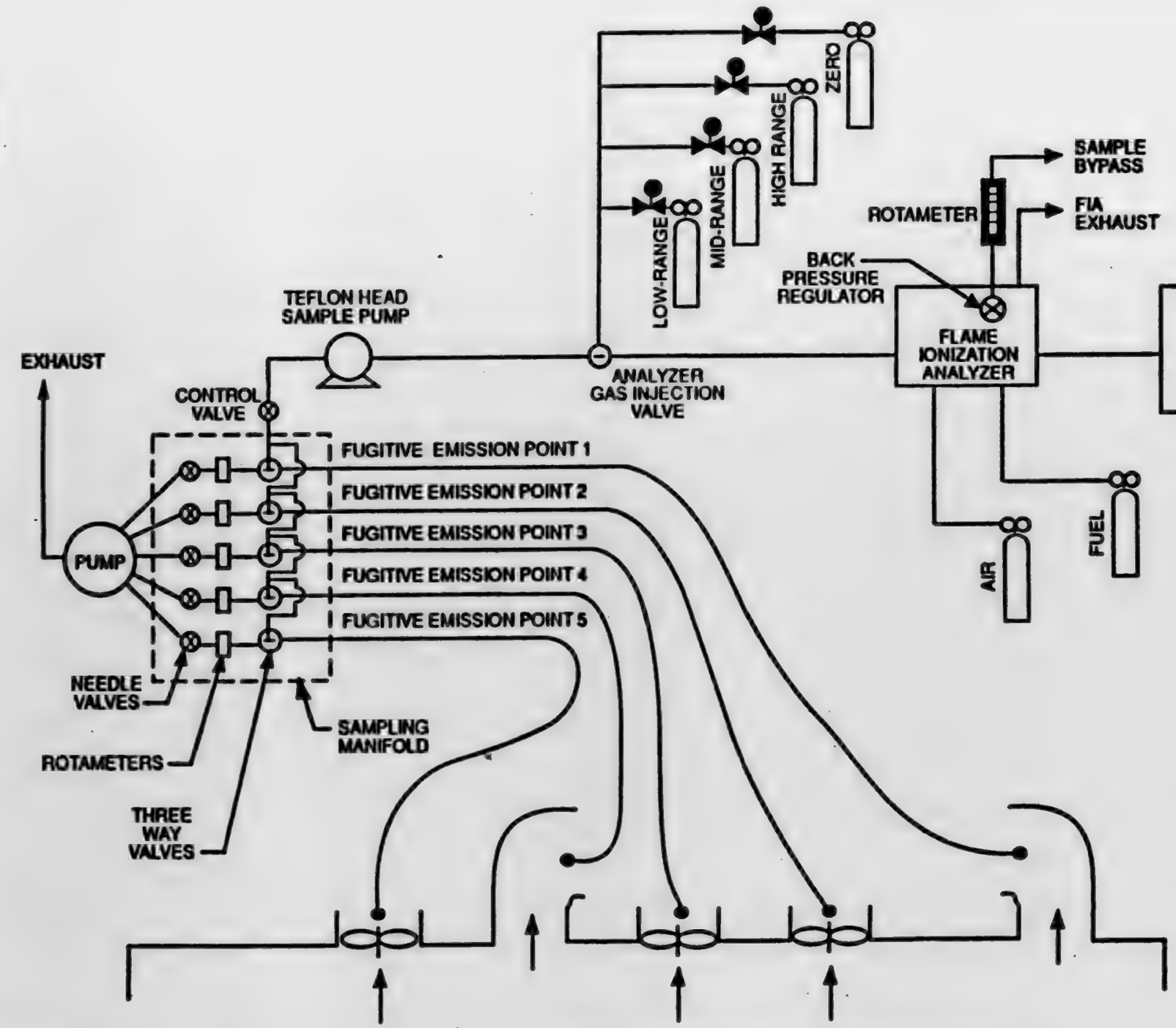
$$F_B = \sum_{j=1}^{n} C_{fj} Q_{fj} T_F K_i \qquad \text{Eq. 1}$$

7.2 *VOC concentration of the fugitive emissions at point j.*

$$C_{fj} = (C_j - C_{bo}) \frac{C_a}{C_{ma} - C_{bo}} \qquad \text{Eq. 2}$$

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Figure 1. Fugitive emissions measurement system.

Procedure F.1—Fugitive VOC Emissions From Temporary Enclosures

1. Introduction

1.1 *Applicability.* This procedure is applicable for determining the fugitive volatile organic compounds (VOC) emissions from a temporary total enclosure (TTE). It is intended to be used as a segment in the development of liquid/gas or gas/gas protocols for determining VOC capture efficiency (CE) for surface coating and printing operations.

1.2 *Principle.* The amount of fugitive VOC emissions (F) from the TTE is calculated as the sum of the products of the VOC content (C_{fi}), the flow rate (Q_{fi}), and the sampling time (T_f) from each fugitive emissions point.

1.3 *Estimated measurement uncertainty.* The measurement uncertainties are estimated for each fugitive emission point as follows: Q = ±5.5 percent and C_{fi} = ±5.0 percent. Based on these numbers, the probable uncertainty for F is estimated at about ±7.4 percent.

1.4 *Sampling requirements.* A capture efficiency test shall consist of at least three sampling runs. The sampling time for each run should be at least 8 hours, unless otherwise approved.

1.5 *Notes.* Because this procedure is often applied in highly explosive areas, caution and care should be exercised in choosing appropriate equipment and installing and using the equipment. Mention of trade names or company products does not constitute endorsement. All gas concentrations (percent, ppm) are by volume, unless otherwise noted.

2. Apparatus and Reagents

2.1 *Gas VOC concentration.* A schematic of the measurement system is shown in Figure 1. The main components are described below:

2.1.1 *Sample probe.* Stainless steel, or equivalent. The probe shall be heated to prevent VOC condensation.

2.1.2 *Calibration valve assembly.* Three-way valve assembly at the outlet of sample probe to direct the zero and calibration gases to the analyzer. Other methods, such as quick-connect lines, to route calibration gases to the outlet of the sample probe are acceptable.

2.1.3 *Sample line.* Stainless steel or Teflon tubing to transport the sample gas to the analyzer. The sample line must be heated to prevent condensation.

2.1.4 *Sample pump.* A leak-free pump, to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The components of the pump that contact the gas stream shall be constructed of stainless steel or Teflon. The sample pump must be heated to prevent condensation.

2.1.5 *Sample flow rate control.* A sample flow rate control valve and rotameter, or equivalent, to maintain a constant sampling rate within 10 percent. The flow control valve and rotameter must be heated to prevent condensation. A control valve may also be located on the sample pump bypass loop to assist in controlling the sample pressure and flow rate.

2.1.6 *Sample gas manifold.* Capable of diverting a portion of the sample gas stream to the flame ionization analyzer (FIA), and the remainder to the bypass discharge vent. The manifold components shall be constructed of stainless steel or Teflon. If emissions are to be measured at multiple locations, the measurement system shall be designed to use separate sampling probes, lines, and pumps for each measurement location and a common sample gas manifold and FIA. The sample gas manifold and connecting lines to the FIA must be heated to prevent condensation.

2.1.7 *Organic concentration analyzer.* An FIA with a span value of 1.5 times the expected concentration as propane; however, other span values may be used if it can be demonstrated that they would provide more accurate measurements. The system shall be capable of meeting or exceeding the following specifications:

2.1.7.1 *Zero drift.* Less than ±3.0 percent of the span value.

2.1.7.2 *Calibration drift.* Less than ±3.0 percent of the span value.

2.1.7.3 *Calibration error.* Less than ±5.0 percent of the calibration gas value.

2.1.7.4 *Response time.* Less than 30 seconds.

2.1.8 *Integrator/data acquisition system.* An analog or digital device or computerized data acquisition system used to integrate the FIA response or compute the average response and record measurement data. The minimum data sampling frequency for computing average or integrated values is one measurement value every 5 seconds. The device shall be capable of recording average values at least once per minute.

2.1.9 *Calibration and other gases.* Gases used for calibration, fuel, and combustion air (if required) are contained in compressed gas cylinders. All calibration gases shall be traceable to NIST standards and shall be certified by the manufacturer to ±1 percent of the tag value. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ±2 percent from the certified value. For calibration gas values not generally available, alternative methods for preparing calibration gas mixtures, such as dilution systems, may be used with prior approval.

2.1.9.1 *Fuel.* A 40 percent H_2/60 percent He or 40 percent H_2/60 percent N_2 gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

2.1.9.2 *Carrier gas.* High purity air with less than 1 ppm of organic material (as propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

2.1.9.3 *FIA linearity calibration gases.* Low-, mid-, and high-range gas mixture standards with nominal propane concentrations of 20–30, 45–55, and 70–80 percent of the span value in air, respectively. Other calibration values and other span values may be used if it can be shown that more accurate measurements would be achieved.

2.1.10 *Particulate filter.* An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated to prevent any condensation unless it can be demonstrated that no condensation occurs.

2.2 *Fugitive emissions volumetric flow rate.*

2.2.1 *Method 2 or 2A apparatus.* For determining volumetric flow rate.

2.2.2 *Method 3 apparatus and reagents.* For determining molecular weight of the gas stream. An estimate of the molecular weight of the gas stream may be used if it can be justified.

2.2.3 *Method 4 apparatus and reagents.* For determining moisture content, if necessary.

2.3 *Temporary total enclosure.* The criteria for designing a TTE are discussed in Procedure T.

3. Determination of Volumetric Flow Rate of Fugitive Emissions

3.1 Locate all points where emissions are exhausted from the TTE. Using Method 1, determine the sampling points. Be sure to check each site for cyclonic or swirling flow.

3.2 Measure the velocity at each sampling site at least once every hour during each sampling run using Method 2 or 2A.

4. Determination of VOC Content of Fugitive Emissions

4.1 *Analysis duration.* Measure the VOC responses at each fugitive emission point during the entire test run or, if applicable, while the process is operating. If there are multiple emission locations, design a sampling system to allow a single FIA to be used to determine the VOC responses at all sampling locations.

4.2 *Gas VOC concentration.*

4.2.1 Assemble the sample train as shown in Figure 1. Calibrate the FIA and conduct a system check according to the procedures in sections 5.1 and 5.3, respectively.

4.2.2 Install the sample probe so that the probe is centrally located in the stack, pipe, or duct, and is sealed tightly at the stack port connection.

4.2.3 Inject zero gas at the calibration valve assembly. Allow the measurement system response to reach zero. Measure the system response time as the time required for the system to reach the effluent concentration after the calibration valve has been returned to the effluent sampling position.

4.2.4 Conduct a system check before and a system drift check after each sampling run according to the procedures in sections 5.2 and 5.3. If the drift check following a run indicates unacceptable performance, the run is not valid. The tester may elect to perform system drift checks during the run not to exceed one drift check per hour.

4.2.5 Verify that the sample lines, filter, and pump temperatures are 120 ± 5 °C.

4.2.6 Begin sampling at the start of the test period and continue to sample during the entire run. Record the starting and ending times and any required process information as appropriate. If multiple emission locations are sampled using a single FIA, sample at each location for the same amount of time (e.g., 2 minutes) and continue to switch from one location to another for the entire test run.

Be sure that total sampling time at each location is the same at the end of the test run. Collect at least 4 separate measurements from each sample point during each hour of testing. Disregard the response measurements at each sampling location until two times the response time of the measurement system has elapsed. Continue sampling for at least 1 minute and record the concentration measurements.

4.3 *Background concentration.*

4.3.1 *Determination of VOC background concentration.*

4.3.1.1 Locate all NDO's of the TTE. A sampling point shall be centrally located outside of the TTE at 4 equivalent diameters from each NDO, if possible. If there are more than 6 NDO's, choose 6 sampling points evenly spaced among the NDO's.

4.3.1.2 Assemble the sample train as shown in Figure 2. Calibrate the FIA and conduct a system check according to the procedures in sections 5.1 and 5.3.

4.3.1.3 Position the probe at the sampling location.

4.3.1.4 Determine the response time, conduct the system check and sample according to the procedures described in sections 4.2.3 to 4.2.6.

4.4 *Alternative procedure.* The direct interface sampling and analysis procedure described in section 7.2 of Method 18 may be used to determine the gas VOC concentration. The system must be designed to collect and analyze at least one sample every 10 minutes.

5. Calibration and Quality Assurance

5.1 *FIA calibration and linearity check.* Make necessary adjustments to the air and fuel supplies for the FIA and ignite the burner. Allow the FIA to warm up for the period recommended by the manufacturer. Inject a calibration gas into the measurement system and adjust the back-pressure regulator to the value required to achieve the flow rates specified by the manufacturer. Inject the zero- and the high-range calibration gases and adjust the analyzer calibration to provide the proper responses. Inject the low- and mid-range gases and record the responses of the measurement system. The calibration and linearity of the system are acceptable if the responses for all four gases are within 5 percent of the respective gas values. If the performance of the system is not acceptable, repair or adjust the system and repeat the linearity check. Conduct a calibration and linearity check after assembling the analysis system and after a major change is made to the system.

5.2 *Systems drift checks.* Select the calibration gas concentration that most closely approximates that of the fugitive gas emissions to conduct the drift checks. Introduce the zero and calibration gas at the calibration valve assembly and verify that the appropriate gas flow rate and pressure are present at the FIA. Record the measurement system responses to the zero and calibration gases. The performance of the system is acceptable if the difference between the drift check measurement and the value obtained in section 5.1 is less than 3 percent of the span value. Conduct a system drift check at the end of each run.

5.3 *System check.* Inject the high range calibration gas at the inlet of the sampling probe and record the response. The performance of the system is acceptable if the measurement system response is within 5 percent of the value obtained in section 5.1 for the high range calibration gas. Conduct a system check before each test run.

5.4 *Analysis audit.* Immediately before each test analyze an audit cylinder as described in section 5.2. The analysis audit must agree with the audit cylinder concentration within 10 percent.

6. Nomenclature

A_i = area of NDO i, ft².
A_T = total area of all NDO's in the enclosure, ft².
C_{ai} = corrected average VOC concentration of background emissions at point i, ppm propane.
C_a = average background concentration, ppm propane.
C_{ma} = average measured concentration for the drift check calibration gas, ppm propane.
C_{ao} = average system drift check concentration for zero concentration gas, ppm propane.
C_{fj} = corrected average VOC concentration of fugitive emissions at point j, ppm propane.
C_a = actual concentration of the drift check calibration gas, ppm propane.
C_i = uncorrected average background VOC concentration at point i, ppm propane.
C_j = uncorrected average VOC concentration measured at point j, ppm propane.
F = total VOC content of fugitive emissions, kg.
$K_1 = 1.830 \times 10^{-6}$ kg/(m³−ppm).
n = number of measurement points.
Q_{fj} = average effluent volumetric flow rate corrected to standard conditions at fugitive emissions point j, m³/min.
T_f = total duration of fugitive emissions sampling run, min.

7. Calculations

7.1 *Total VOC fugitive emissions.*

$$F = \sum_{j=1}^{n} (C_{fj} - C_{ao})\, Q_{fj}\, T_f\, K_1 \qquad \text{Eq. 1}$$

7.2 *VOC concentration of the fugitive emissions at point j.*

$$C_{fj} = (C_j - C_{ao}) \frac{C_a}{C_{ma} - C_{ao}} \qquad \text{Eq. 2}$$

7.3 *Background VOC concentration at point i.*

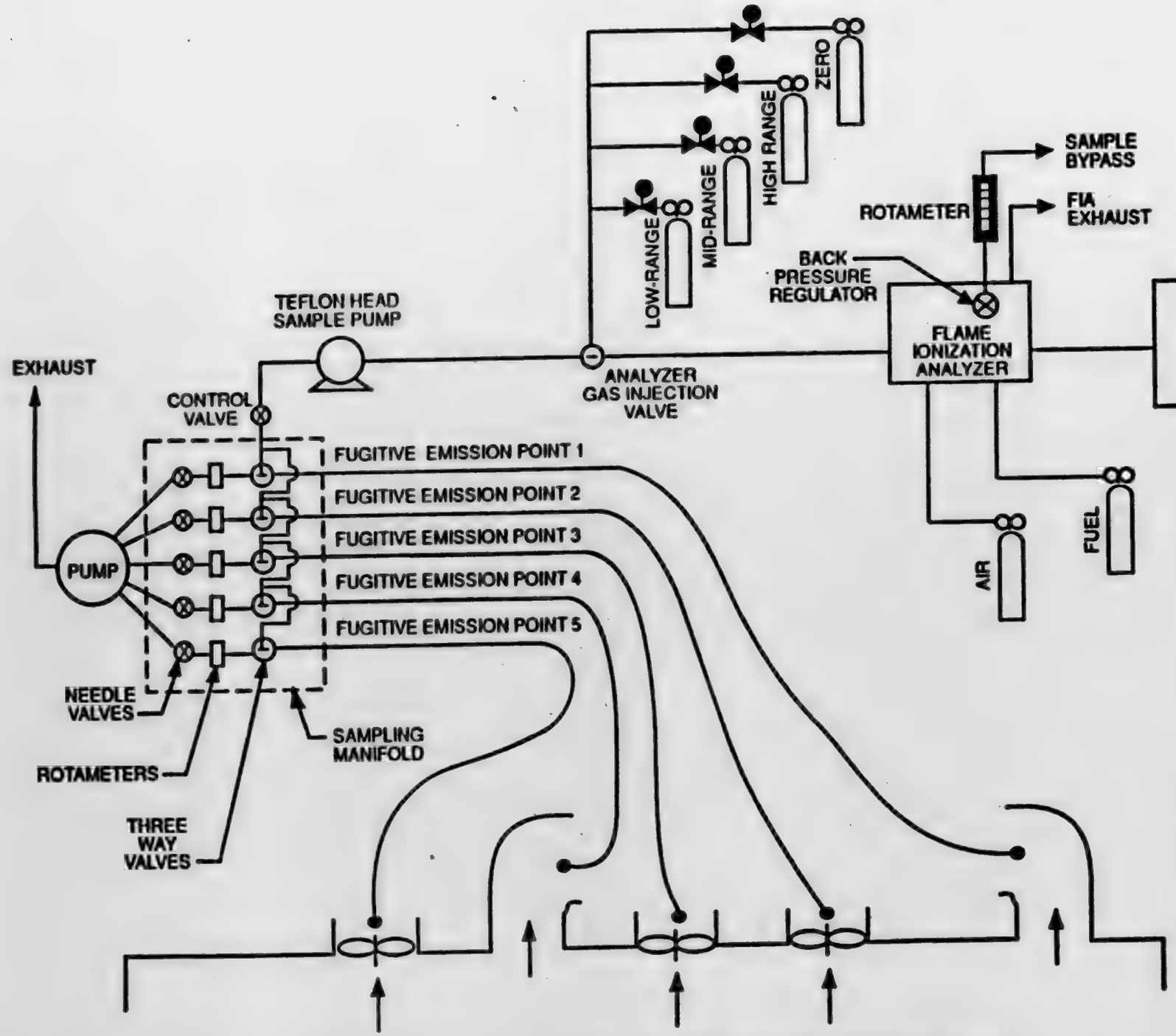
$$C_{ai} = (C_i - C_{ao}) \frac{C_a}{C_{ma} - C_{ao}} \qquad \text{Eq. 3}$$

7.4 *Average background concentration.*

$$C_a = \frac{\sum_{i=1}^{n} C_{ai}\, A_i}{n\, A_T} \qquad \text{Eq. 4}$$

Note: If the concentration at each point is within 20 percent of the average concentration of all points, the terms "A_i" and "A_T" may be deleted from Equation 4.

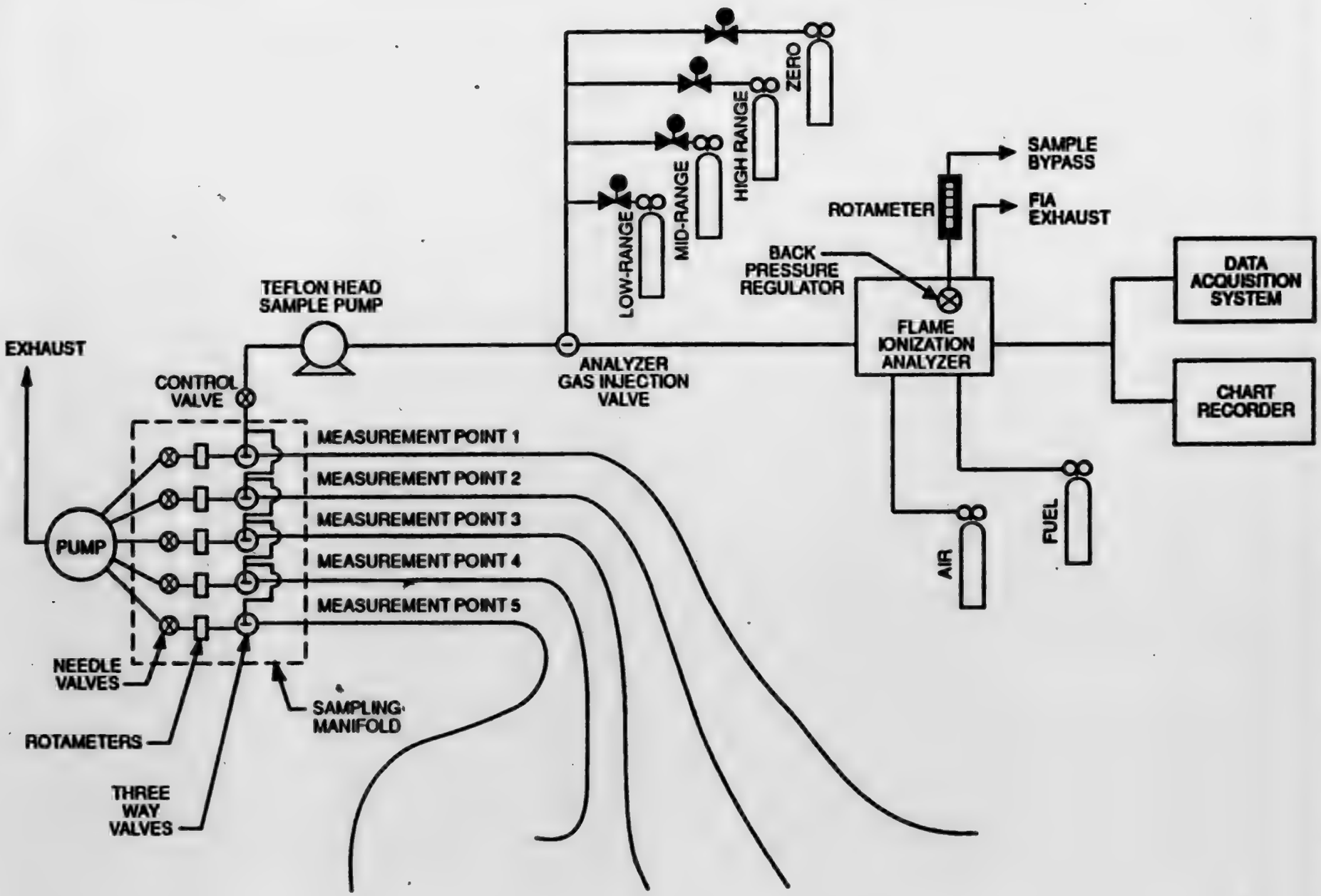
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Figure 1. Fugitive emissions measurement system.

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VOC 2/90

Figure 2. Background measurement system.

Procedure L—VOC Input

1. Introduction

1.1 *Applicability.* This procedure is applicable for determining the input of volatile organic compounds (VOC). It is intended to be used as a segment in the development of liquid/gas protocols for determining VOC capture efficiency (CE) for surface coating and printing operations.

1.2 *Principle.* The amount of VOC introduced to the process (L) is the sum of the products of the weight (W) of each VOC containing liquid (ink, paint, solvent, etc.) used and its VOC content (V). A sample of each VOC containing liquid is analyzed with a flame ionization analyzer (FIA) to determine V.

1.3 *Estimated measurement uncertainty.* The measurement uncertainties are estimated for each VOC containing liquid as follows: W = ±2.0 percent and V = ±12.0 percent. Based on these numbers, the probable uncertainty for L is estimated at about ±12.2 percent for each VOC containing liquid.

1.4 *Sampling requirements.* A capture efficiency test shall consist of at least three sampling runs. The sampling time for each run should be at least 8 hours, unless otherwise approved.

1.5 *Notes.* Because this procedure is often applied in highly explosive areas, caution and care should be exercised in choosing appropriate equipment and installing and using the equipment. Mention of trade names or company products does not constitute endorsement. All gas concentrations (percent, ppm) are by volume, unless otherwise noted.

2. Apparatus and Reagents

2.1 *Liquid weight.*

2.1.1 *Balances/digital scales.* To weigh drums of VOC containing liquids to within 0.2 lb.

2.1.2 *Volume measurement apparatus (alternative).* Volume meters, flow meters, density measurement equipment, etc., as needed to achieve same accuracy as direct weight measurements.

2.2 *VOC content (flame ionization analyzer technique).* The liquid sample analysis system is shown in Figures 1 and 2. The following equipment is required:

2.2.1 *Sample collection can.* An appropriately sized metal can to be used to collect VOC containing materials. The can must be constructed in such a way that it can be grounded to the coating container.

2.2.2 *Needle valves.* To control gas flow.

2.2.3 *Regulators.* For carrier gas and calibration gas cylinders.

2.2.4 *Tubing.* Teflon or stainless steel tubing with diameters and lengths determined by connection requirements of equipment. The tubing between the sample oven outlet and the FIA shall be heated to maintain a temperature of 120±5 °C.

2.2.5 *Atmospheric vent.* A tee and 0- to 0.5-liter/min rotameter placed in the sampling line between the carrier gas cylinder and the VOC sample vessel to release the excess carrier gas. A toggle valve placed between the tee and the rotameter facilitates leak tests of the analysis system.

2.2.6 *Thermometer.* Capable of measuring the temperature of the hot water bath to within 1 °C.

2.2.7 *Sample oven.* Heated enclosure, containing calibration gas coil heaters, critical orifice, aspirator, and other liquid sample analysis components, capable of maintaining a temperature of 120±5 °C.

2.2.8 *Gas coil heaters.* Sufficient lengths of stainless steel or Teflon tubing to allow zero and calibration gases to be heated to the sample oven temperature before entering the critical orifice or aspirator.

2.2.9 *Water bath.* Capable of heating and maintaining a sample vessel temperature of 100±5 °C.

2.2.10 *Analytical balance.* To measure ±0.001 g.

2.2.11 *Disposable syringes.* 2-cc or 5-cc.

2.2.12 *Sample vessel.* Glass, 40-ml septum vial. A separate vessel is needed for each sample.

2.2.13 *Rubber stopper.* Two-hole stopper to accommodate 3.2-mm (⅛-in.) Teflon tubing, appropriately sized to fit the opening of the sample vessel. The rubber stopper should be wrapped in Teflon tape to provide a tighter seal and to prevent any reaction of the sample with the rubber stopper. Alternatively, any leak-free closure fabricated of non-reactive materials and accommodating the necessary tubing fittings may be used.

2.2.14 *Critical orifices.* Calibrated critical orifices capable of providing constant flow rates from 50 to 250 ml/min at known pressure drops. Sapphire orifice assemblies (available from O'Keefe Controls Company) and glass capillary tubing have been found to be adequate for this application.

2.2.15 *Vacuum gauge.* 0- to 760-mm (0- to 30-in.) Hg U-Tube manometer or vacuum gauge.

2.2.16 *Pressure gauge.* Bourdon gauge capable of measuring the maximum air pressure at the aspirator inlet (e.g., 100 psig).

2.2.17 *Aspirator.* A device capable of generating sufficient vacuum at the sample vessel to create critical flow through the calibrated orifice when sufficient air pressure is present at the aspirator inlet. The aspirator must also provide sufficient sample pressure to operate the FIA. The sample is also mixed with the dilution gas within the aspirator.

2.2.18 *Soap bubble meter.* Of an appropriate size to calibrate the critical orifices in the system.

2.2.19 *Organic concentration analyzer.* An FIA with a span value of 1.5 times the expected concentration as propane; however other span values may be used if it can be demonstrated that they would provide more accurate measurements. The system shall be capable of meeting or exceeding the following specifications:

2.2.19.1 *Zero drift.* Less than ±3.0 percent of the span value.

2.2.19.2 *Calibration drift.* Less than ±3.0 percent of span value.

2.2.19.3 *Calibration error.* Less than ±5.0 percent of the calibration gas value.

2.2.20 *Integrator/data acquisition system.* An analog or digital device or computerized data acquisition system used to integrate the FIA response or compute the average response and record measurement data. The minimum data sampling frequency for computing average or integrated values is one measurement value every 5 seconds. The device shall be capable of recording average values at least once per minute.

2.2.21 *Chart recorder (optional).* A chart recorder or similar device is recommended to provide a continuous analog display of the measurement results during the liquid sample analysis.

2.2.22 *Calibration and other gases.* For calibration, fuel, and combustion air (if required) contained in compressed gas cylinders. All calibration gases shall be traceable to NIST standards and shall be certified by the manufacturer to ±1 percent of the tag value. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ±2 percent from the certified value. For calibration gas values not generally available, alternative methods for preparing calibration gas mixtures, such as dilution systems, may be used with prior approval.

2.2.22.1 *Fuel.* A 40 percent H_2/60 percent He or 40 percent H_2/60 percent N_2 gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

2.2.22.2 *Carrier gas.* High purity air with less than 1 ppm of organic material (as propane) or less than 0.1 percent of the span value, whichever is greater.

2.2.22.3 *FIA linearity calibration gases.* Low-, mid-, and high-range gas mixture standards with nominal propane concentrations of 20–30, 45–55, and 70–90 percent of the span value in air, respectively. Other calibration values and other span values may be used if it can be shown that more accurate measurements would be achieved.

2.2.22.4 *System calibration gas.* Gas mixture standard containing propane in air, approximately the undiluted VOC concentration expected for the liquid samples.

3. Determination of Liquid Input Weight

3.1 *Weight difference.* Determine the amount of material introduced to the process as the weight difference of the feed material before and after each sampling run. In determining the total VOC containing liquid usage, account for: (a) The initial (beginning) VOC containing liquid mixture; (b) any solvent added during the test run; (c) any coating added during the test run; and (d) any residual VOC containing liquid mixture remaining at the end of the sample run.

3.1.1 Identify all points where VOC containing liquids are introduced to the process. To obtain an accurate measurement of VOC containing liquids, start with an empty fountain (if applicable). After completing the run, drain the liquid in the fountain back into the liquid drum (if possible), and weigh the drum again. Weigh the VOC containing liquids to ±0.5 percent of the total weight (full) or ±0.1 percent of the total weight of VOC containing liquid used during the sample run, whichever is less. If the residual liquid cannot be returned to the drum, drain the fountain into a preweighted empty drum to determine the final weight of the liquid.

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3.1.2 If it is not possible to measure a single representative mixture, than weigh the various components separately (*e.g.*, if solvent is added during the sampling run, weigh the solvent before it is added to the mixture). If a freee drum of VOC containing liquid is needed during the run, then weigh both the empty drum and fresh drum.

3.2 *Volume measurement (alternative).* If direct weight measurements are not feasible, the tester may use volume meters and flow rate meters (and density measurements) to determine the weight of liquids used if it can be demonstrated that the technique produces results equivalent to the direct weight measurements. If a single representative mixture cannot be measured, measure the components separately.

4. Determination of VOC Content in Input Liquids

4.1 *Collection of liquid samples.*

4.1.1 Collect a 100-ml or larger sample of the VOC containing liquid mixture at each application location at the beginning and end of each test run. A separate sample should be taken of each VOC containing liquid added to the application mixture during the test run. If a fresh drum is needed during the sampling run, then obtain a sample from the fresh drum.

4.1.2 When collecting the sample, ground the sample container to the coating drum. Fill the sample container as close to the rim as possible to minimize the amount of headspace.

4.1.3 After the sample is collected, seal the container so the sample cannot leak out or evaporate.

4.1.4 Label the container to identify clearly the contents.

4.2 *Liquid sample VOC content.*

4.2.1 Assemble the liquid VOC content analysis system as shown in Figure 1.

4.2.2 Permanently identify all of the critical orifices that may be used. Calibrate each critical orifice under the expected operating conditions (i.e., sample vacuum and temperature) against a volume meter as described in section 5.3.

4.2.3 Label and tare the sample vessels (including the stoppers and caps) and the syringes.

4.2.4 Install an empty sample vessel and perform a leak test of the system. Close the carrier gas valve and atmospheric vent and evacuate the sample vessel to 250 mm (10 in.) Hg absolute or less using the aspirator. Close the toggle valve at the inlet to the aspirator and observe the vacuum for at least one minute. If there is any change in the sample pressure, release the vacuum, adjust or repair the apparatus as necessary and repeat the leak test.

4.2.5 Perform the analyzer calibration and linearity checks according to the procedure in section 5.1. Record the responses to each of the calibration gases and the back-pressure setting of the FIA.

4.2.6 Establish the appropriate dilution ratio by adjusting the aspirator air supply or substituting critical orifices. Operate the aspirator at a vacuum of at least 25 mm (1 in.) Hg greater than the vacuum necessary to achieve critical flow. Select the dilution ratio so that the maximum response of the FIA to the sample does not exceed the high-range calibration gas.

4.2.7 Perform system calibration checks at two levels by introducing compressed gases at the inlet to the sample vessel while the aspirator and dilution devices are operating. Perform these checks using the carrier gas (zero concentration) and the system calibration gas. If the response to the carrier gas exceeds ±0.5 percent of span, clean or repair the apparatus and repeat the check. Adjust the dilution ratio as necessary to achieve the correct response to the upscale check, but do not adjust the analyzer calibration. Record the identification of the orifice, aspirator air supply pressure, FIA back-pressure, and the responses of the FIA to the carrier and system calibration gases.

4.2.8 After completing the above checks, inject the system calibration gas for approximately 10 minutes. Time the exact duration of the gas injection using a stopwatch. Determine the area under the FIA response curve and calculate the system response factor based on the sample gas flow rate, gas concentration, and the duration of the injection as compared to the integrated response using Equations 2 and 3.

4.2.9 Verify that the sample oven and sample line temperatures are 120±5 °C and that the water bath temperature is 100±5 °C.

4.2.10 Fill a tared syringe with approximately 1 g of the VOC containing liquid and weigh it. Transfer the liquid to a tared sample vessel. Plug the sample vessel to minimize sample loss. Weigh the sample vessel containing the liquid to determine the amount of sample actually received. Also, as a quality control check, weigh the empty syringe to determine the amount of material delivered. The two coating sample weights should agree within ±0.02 g. If not, repeat the procedure until an acceptable sample is obtained.

4.2.11 Connect the vessel to the analysis system. Adjust the aspirator supply pressure to the correct value. Open the valve on the carrier gas supply to the sample vessel and adjust it to provide a slight excess flow to the atmospheric vent. As soon as the initial response of the FIA begins to decrease, immerse the sample vessel in the water bath. (Applying heat to the sample vessel too soon may cause the FID response to exceed the calibrated range of the instrument, and thus invalidate the analysis.)

4.2.12 Continuously measure and record the response of the FIA until all of the volatile material has been evaporated from the sample and the instrument response has returned to the baseline (i.e., response less than 0.5 percent of the span value). Observe the aspirator supply pressure, FIA back-pressure, atmospheric vent, and other system operating parameters during the run; repeat the analysis procedure if any of these parameters deviate from the values established during the system calibration checks in Section 4.2.7. After each sample perform the drift check described in Section 5.2. If the drift check results are acceptable, calculate the VOC content of the sample using the equations in Section 7. Integrate the area under the FIA response curve, or determine the average concentration response and the duration of sample analysis.

5. Calibration and Quality Assurance

5.1 *FIA calibration and linearity check.* Make necessary adjustments to the air and fuel supplies for the FIA and ignite the burner. Allow the FIA to warm up for the period recommended by the manufacturer. Inject a calibration gas into the measurement system and adjust the back-pressure regulator to the value required to achieve the flow rates specified by the manufacturer. Inject the zero- and the high-range calibration gases and adjust the analyzer calibration to provide the proper responses. Inject the low- and mid-range gases and record the responses of the measurement system. The calibration and linearity of the system are acceptable if the responses for all four gases are within 5 percent of the respective gas values. If the performance of the system is not acceptable, repair or adjust the system and repeat the linearity check. Conduct a calibration and linearity check after assembling the analysis system and after a major change is made to the system.

5.2 *Systems drift checks.* After each sample, repeat the system calibration checks in Section 4.2.7 before any adjustments to the FIA or measurement system are made. If the zero or calibration drift exceeds ±3 percent of the span value, discard the result and repeat the analysis.

5.3 *Critical orifice calibration.*

5.3.1 Each critical orifice must be calibrated at the specific operating conditions that it will be used. Therefore, assemble all components of the liquid sample analysis system as shown in Figure 3. A stopwatch is also required.

5.3.2 Turn on the sample oven, sample line, and water bath heaters and allow the system to reach the proper operating temperature. Adjust the aspirator to a vacuum of 380 mm (15 in.) Hg vacuum. Measure the time required for one soap bubble to move a known distance and record barometric pressure.

5.3.3 Repeat the calibration procedure at a vacuum of 406 mm (16 in.) Hg and at 25-mm (1-in.) Hg intervals until three consecutive determinations provide the same flow rate. Calculate the critical flow rate for the orifice in ml/min at standard conditions. Record the vacuum necessary to achieve critical flow.

6. Nomenclature

A_L = area under the response curve of the liquid sample, area count.
A_s = area under the response curve of the calibration gas, area count.
C_s = actual concentration of system calibration gas, ppm propane.
$K = 1.830 \times 10^{-4}$ g/(ml-ppm).
L = total VOC content of liquid input, kg.
M_L = mass of liquid sample delivered to the sample vessel, g.
q = flow rate through critical orifice, ml/min.
RF = liquid analysis system response factor, g/area count.
T_s = total gas injection time for system calibration gas during integrator calibration, min.
V_{fj} = final VOC fraction of VOC containing liquid j.
V_{ij} = initial VOC fraction of VOC containing liquid j.

V_{Aj} = VOC fraction of VOC containing liquid j added during the run.
V = VOC fraction of liquid sample.
W_{fj} = weight of VOC containing liquid j remaining at end of the run, kg.
W_{ij} = weight of VOC containing liquid j at beginning of the run, kg.
W_{Aj} = weight of VOC containing liquid j added during the run, kg.

7. Calculations

7.1 *Total VOC content of the input VOC containing liquid.*

7.2 *Liquid sample analysis system response factor for systems using integrators, grams/area counts.*

$$L = \sum_{j=1}^{n} V_{ij} W_{fj} - \sum_{j=1}^{n} V_{fj} + \sum_{j=1}^{n} V_{Aj} W_{Aj} \quad \text{Eq. 1}$$

$$RF = \frac{C_s\, q\, T_s\, K}{A_s} \quad \text{Eq. 2}$$

7.3 VOC content of the liquid sample.

$$V = \frac{A_L RF}{M_L} \quad \text{Eq. 3}$$

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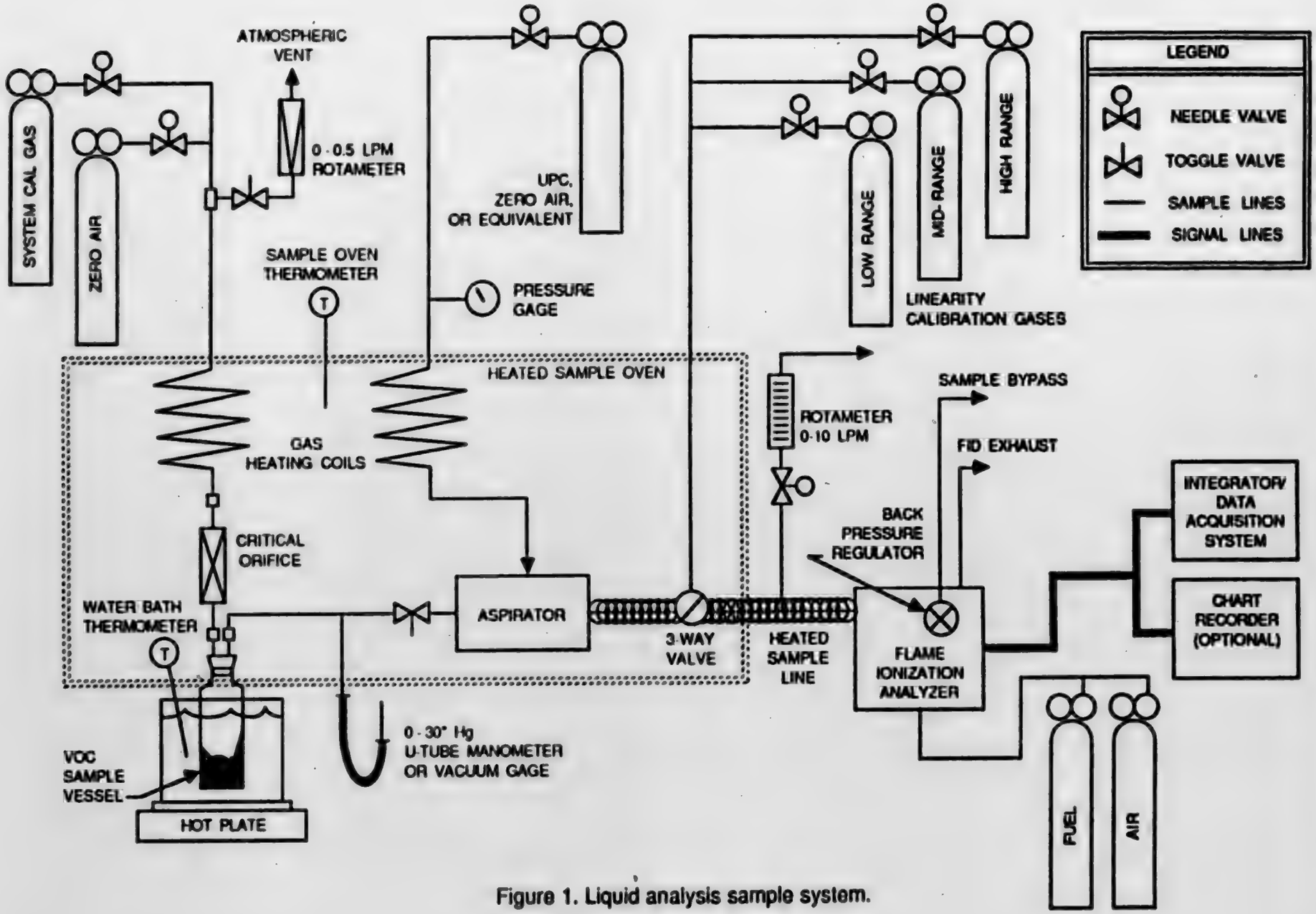


Figure 1. Liquid analysis sample system.

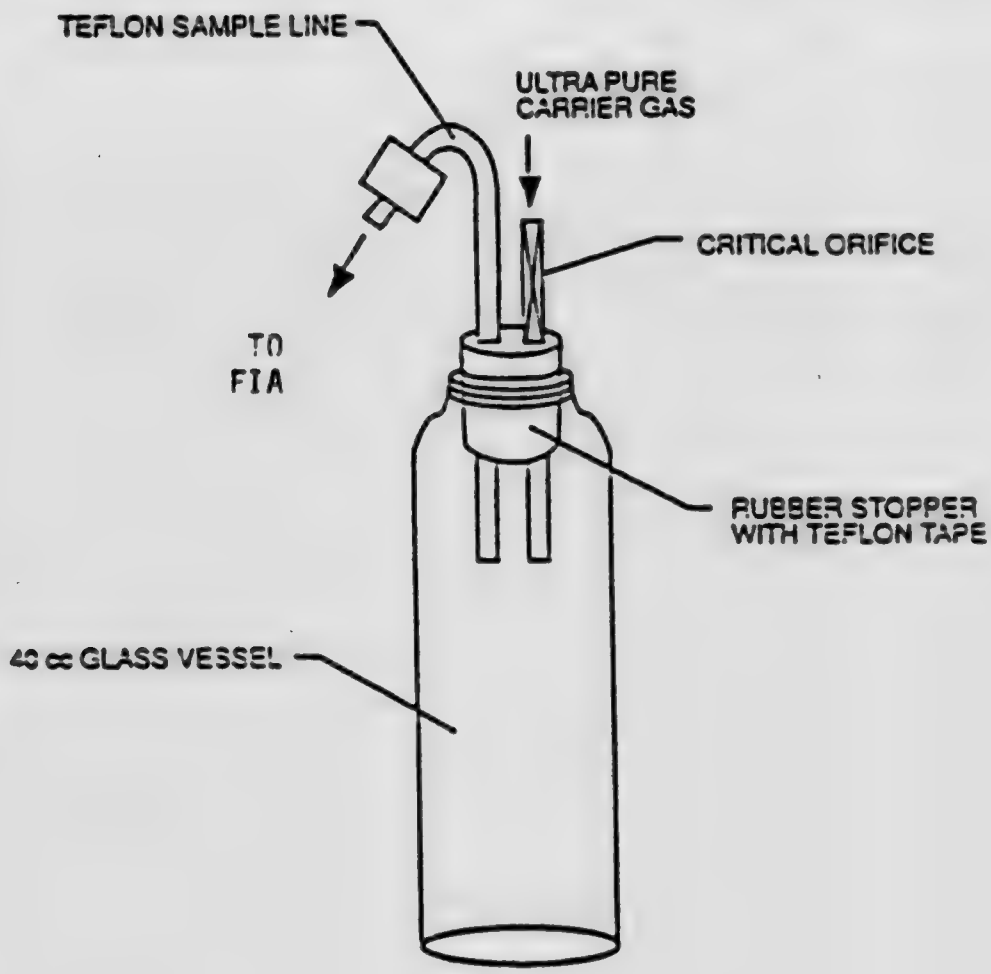


Figure 2. VOC sampling vessel.

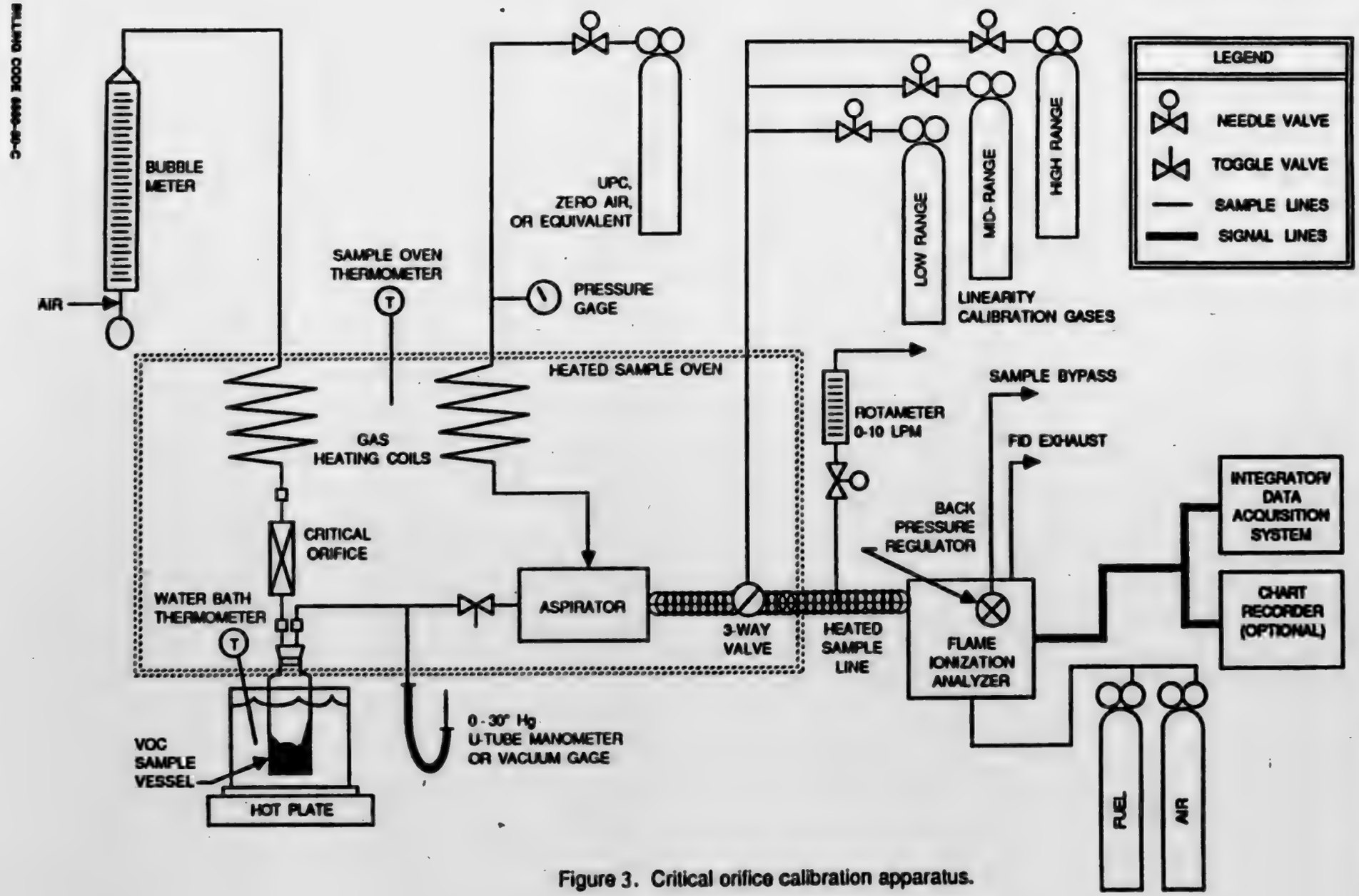


Figure 3. Critical orifice calibration apparatus.

Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure

1. Introduction

1.1 *Applicability.* This procedure is used to determine whether a permanent or temporary enclosure meets the criteria of a total enclosure.

1.2 *Principle.* An enclosure is evaluated against a set of criteria. If the criteria are met and if all the exhaust gases are ducted to a control device, then the volatile organic compounds (VOC) capture efficiency (CE) is assumed to be 100 percent and CE need not be measured. However, if part of the exhaust gas stream is not ducted to a control device, CE must be determined.

2. Definitions

2.1 *Natural Draft Opening (NDO)*—Any permanent opening in the enclosure that remains open during operation of the facility and is not connected to a duct in which a fan is installed.

2.2 *Permanent Total Enclosure (PTE)*—A permanently installed enclosure that completely surrounds a source of emissions such that all VOC emissions are captured and contained for discharge through a control device.

2.3 *Temporary Total Enclosure (TTE)*—A temporarily installed enclosure that completely surrounds a source of emissions such that all VOC emissions are captured and contained for discharge through ducts that allow for the accurate measurement of VOC rates.

3. Criteria of a Temporary Total Enclosure

3.1 Any NDO shall be at least 4 equivalent opening diameters from each VOC emitting point.

3.2 Any exhaust point from the enclosure shall be at least 4 equivalent duct or hood diameters from each NDO.

3.3 The total area of all NDO's shall not exceed 5 percent of the surface area of the enclosure's four walls, floor, and ceiling.

3.4 The average facial velocity (FV) of air through all NDO's shall be at least 3,600 m/hr (200 fpm). The direction of air through all NDO's shall be into the enclosure.

3.5 All access doors and windows whose areas are not included in section 3.3 and are not included in the calculation in section 3.4 shall be closed during routine operation of the process.

4. Criteria of a Permanent Total Enclosure

4.1 Same as sections 3.1 and 3.3–3.5.

4.2 All VOC emissions must be captured and contained for discharge through a control device.

5. Procedure

5.1 Determine the equivalent diameters of the NDO's and determine the distances from each VOC emitting point to all NDO's. Determine the equivalent diameter of each exhaust duct or hood and its distance to all NDO's. Calculate the distances in terms of equivalent diameters. The number of equivalent diameters shall be at least 4.

5.2 Measure the total area (A_t) of the enclosure and the total area (A_N) of all NDO's of the enclosure. Calculate the NDO to enclosure area ratio (NEAR) as follows:

$$NEAR = A_N/A_t$$

The NEAR must be ≤0.05.

5.3 Measure the volumetric flow rate, corrected to standard conditions, of each gas stream exiting the enclosure through an exhaust duct or hood using EPA Method 2. In some cases (*e.g.*, when the building is the enclosure), it may be necessary to measure the volumetric flow rate, corrected to standard conditions, of each gas stream entering the enclosure through a forced makeup air duct using Method 2. Calculate FV using the following equation:

$$FV = [Q_o - Q_i]/A_N$$

where:

Q_o = the sum of the volumetric flow from all gas streams exiting the enclosure through an exhaust duct or hood.

Q_i = the sum of the volumetric flow from all gas streams into the enclosure through a forced makeup air duct; zero, if there is no forced makeup air into the enclosure.

A_N = total area of all NDO's in enclosure.

The FV shall be at least 3,600 m/hr (200 fpm).

5.4 Verify that the direction of air flow through all NDO's is inward. Use streamers, smoke tubes, tracer gases, etc. Strips of plastic wrapping film have been found to be effective. Monitor the direction of air flow at intervals of at least 10 minutes for at least 1 hour.

6. Quality Assurance

6.1 The success of this protocol lies in designing the TTE to simulate the conditions that exist without the TTE, i.e., the effect of the TTE on the normal flow patterns around the affected facility or the amount of fugitive VOC emissions should be minimal. The TTE must enclose the application stations, coating reservoirs, and all areas from the application station to the oven. The oven does not have to be enclosed if it is under negative pressure. The NDO's of the temporary enclosure and a fugitive exhaust fan must be properly sized and placed.

6.2 Estimate the ventilation rate of the TTE that best simulates the conditions that exist without the TTE, i.e., the effect of the TTE on the normal flow patterns around the affected facility or the amount of fugitive VOC emissions should be minimal. Figure 1 may be used as an aid. Measure the concentration (C_o) and flow rate (Q_o) of the captured gas stream, specify a safe concentration (C_f) for the fugitive gas stream, estimate the CE, and then use the plot in Figure 1 to determine the volumetric flowrate of the fugitive gas stream (Q_f). A fugitive VOC emission exhaust fan that has a variable flow control is desirable.

6.2.1 Monitor the concentration of VOC into the capture device without the TTE. To minimize the effect of temporal variation on the captured emissions, the baseline measurement should be made over as long a time period as practical. However, the process conditions must be the same for the measurement in section 6.2.3 as they are for this baseline measurement. This may require short measuring times for this quality control check before and after the construction of the TTE.

6.2.2 After the TTE is constructed, monitor the VOC concentration inside the TTE. This concentration shall continue to increase and must not exceed the safe level according to OSHA requirements for permissible exposure limits. An increase in VOC concentration indicates poor TTE design or poor capture efficiency.

6.2.3 Monitor the concentration of VOC into the capture device with the TTE. To limit the effect of the TTE on the process, the VOC concentration with and without the TTE must be within ±10 percent. If the measurements do not agree, adjust the ventilation rate from the TTE until they agree within 10 percent.

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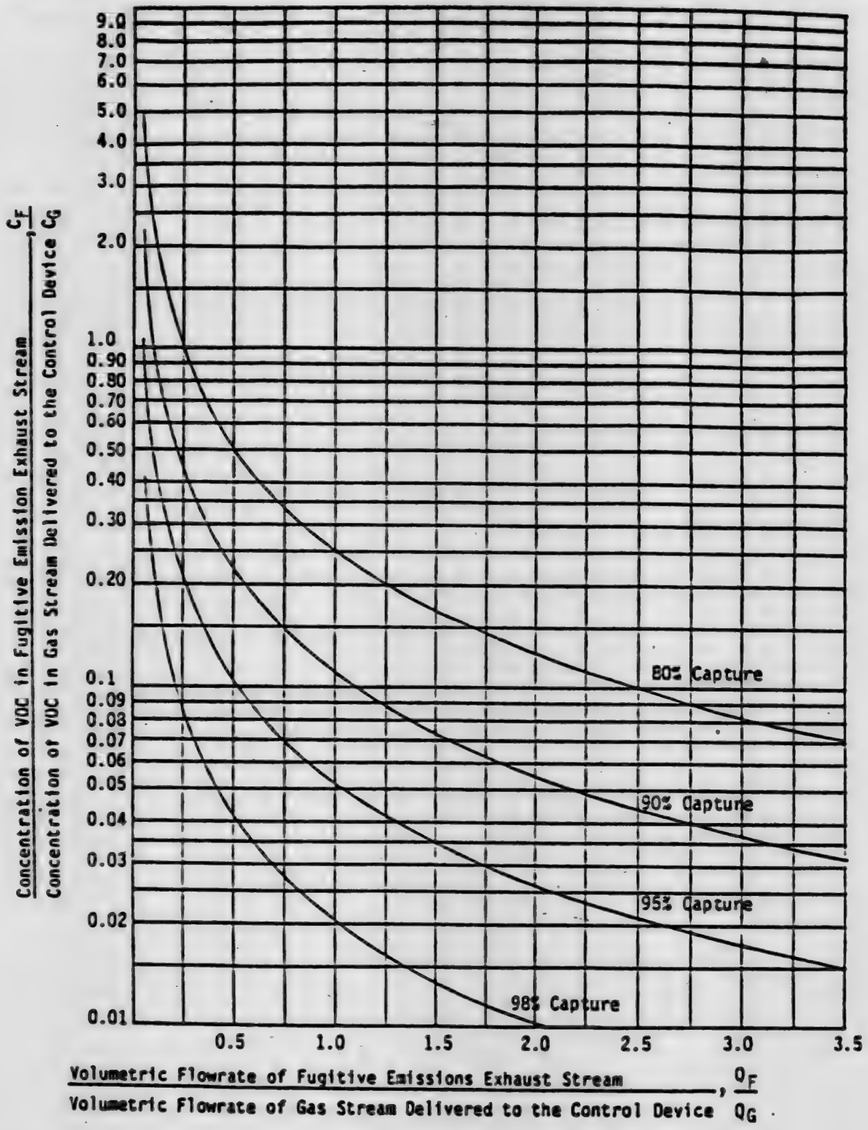


Figure 1. The Crumpler Chart

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3. 40 CFR part 52 is amended by adding a new § 52.742 to subpart O to read as follows:

§ 52.742 Incorporation by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. The incorporation by reference was approved by the Director of the Office of Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available from the sources listed below.

(a) The following material is available for purchase from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania, 19103.

(1) ASTM D1475–85, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products, for § 52.741(a)(4)(i)(B)(*3*)(*i*).

(2) ASTM D2369–87, Standard Test Method for Volatile Content of Coatings, for § 52.741(a)(4)(i)(B)(*3*)(*ii*).

(3) ASTM D3792–86, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, for § 52.741(a)(4)(i)(B)(*3*)(*iii*).

(4) ASTM D4017–81(Reapproved 1987), Standard Test Method for Water in Paints and Paint Materials by Karl Fischer Method, for § 52.741(a)(4)(i)(B)(*3*)(*iv*).

(5) ASTM D4457–85, Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, for § 52.741(a)(4)(i)(B)(*3*)(*v*).

(6) ASTM D2697–86, Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, for § 52.741(a)(4)(i)(B)(*3*)(*vi*).

(7) ASTM D3980–87, Standard Practice for Interlaboratory Testing of Paint and Related Materials, for § 52.741(a)(4)(i)(B)(*3*)(*vi*).

(8) ASTM E180–85, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, for § 52.741(a)(4)(i)(B)(*3*)(*viii*).

(9) ASTM D2372–85, Standard Method of Separation of Vehicle from Solvent-Reducible Paints, for § 52.741(a)(4)(i)(B)(*3*)(*ix*).

(10) ASTM D2879–86, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, for § 52.741(a)(3), (a)(8)(ii), (a)(9)(iii), and (a)(10)(iii).

(11) ASTM D323–82, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method), for § 52.741(a)(3).

(12) ASTM D86–82, Standard Method for Distillation of Petroleum Products, for § 52.741(a)(3).

(13) ASTM D3925–81(Reapproved 1985), Standard Practice for Sampling Liquid Paints and Related Pigment Coatings, for § 52.741(a)(4)(i)(A)(*1*).

(14) ASTM E300–86, Standard Practice for Sampling Industrial Chemicals, for § 52.741(a)(4)(i)(A)(*2*).

(b) The Evaporation Loss From External Floating-Roof Tanks, Publication 2517, second edition, February 1980, for § 52.741(a)(3) is available for purchase from the American Petroleum Institute, 2101 L Street, NW., Washington, DC, 20037.

(c) The Standard Industrial Classification Manual, 1987, for § 52.741(a)(3) is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402.

(d) 35 Illinois Administrative Code 215, June 1989, subparts (B), (E) (sections 215.182, 215.183, and 215.184), (K) (sections 215.301 and 215.302), (Q) (excluding sections 215.432 and 215.436), (R) (excluding sections 215.447, 215.450, and 215.452), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), and (Z) of 35 Ill. Adm. Code 215 for § 52.741 (d)(1)–(d)(3); (e)(3), (e)(4); (h)(2); (i)(1), (i)(2); (j)(1)–(j)(3); (q)(1); (s)(1); (u)(1), (3); (v)(1); (w)(1); and (x)(1), (x)(3) is available from the United States Environmental Protection Agency, Air and Radiation Division, Region V, 230 S. Dearborn, Chicago, IL, 60604.

4. Section 52.726 is further amended by adding paragraph (e) to read as follows:

§ 52.726 Control strategy—ozone

* * * * *

(e) Disapproval—The Administrator finds that the following State rules have not been demonstrated to be consistent with the reasonably available control technology requirements of section 172 of the Clean Air Act, as amended in 1977, and thus, are disapproved: subpart F, section 215.204(c); subpart F, section 215.206(b); subpart F, section 215.204(j)(4); subpart I; subpart AA; subpart PP; subpart QQ; subpart RR; subpart A, section 215.102; subpart T; subpart H, section 215.245; subpart F, section 215.207; and subpart A, section 215.107, all of title 35; Environmental Protection; subtitle B: Air Pollution; Chapter 1: Pollution Control Board of the Illinois Administrative Code (June 1989).

5. Section 52.720 is amended by adding paragraph (c)(78) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(78) On January 28, 1983, June 25, 1987, August 21, 1987, September 28, 1987, October 2, 1987, December 22, 1987, January 8, 1988, March 29, 1988, and May 2, 1988 the State submitted stationary source control measures for incorporation in the ozone plan.

(i) *Incorporation by reference.* (A) The following sections of title 35, Environmental Protection; subtitle B: Air Pollution; Chapter 1: Pollution Control Board of the Illinois Administrative Code, (June 1989): section 211.122 (definitions of bead-dipping; component; dry cleaning facility; external floating roof; gas service; green tire spraying; green tires; heavy liquid; liquid mounted seal; liquid service; pneumatic rubber tire manufacture; refinery unit, process unit, or unit; tread end cementing; undertread cementing; valves not externally regulated; vapor collection system; vapor mounted primary seal; volatile organic liquid; and volatile organic material) of subpart B (part 211); section 215.104 (definitions of continuous process; in vacuum service; material recovery section; open-ended valve; polystyrene plant; polystyrene resin; repaired; styrene devolatilizer unit; and styrene recovery unit) of subpart A (part 215); sections 215.124, 215.125, and 215.126 of subpart B (part 215); section 215.205 of subpart F (part 215); sections 215.240, 215.241, and 215.249 of subpart H (part 215); section 215.406 of subpart P (part 215); sections 215.420 through 215.431, 215.433, 215.434, 215.435, 215.437, and 215.438, all of subpart Q (part 215); section 215.453 of subpart R (part 215); sections 215.465 and 215.466 of subpart S (part 215); sections 215.520, 215.521, 215.525, 215.526, and 215.527 all of subpart V (part 215); sections 215.582, 215.583, and 215.584 of subpart Y (part 215); sections 215.607 through 215.613 of subpart Z (part 215); and sections 215.875, 215.877, 215.879, 215.881, 215.883, and 215.886 all of subpart BB (part 215) are approved.

(ii) *Additional material.*

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federal register

Friday
June 29, 1990

Part III

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources; Rules and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2960-5]

RIN 2060-AA30

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for air oxidation unit processes in the SOCMI were proposed in the Federal Register on October 21, 1983 (48 FR 48832). On May 16, 1985, the public comment period was reopened (50 FR 20446) for the purpose of allowing public comment on the results of a reanalysis of the costing procedures, the total resource effectiveness (TRE) equation and coefficients, and the designation of affected facility. This action promulgates standards of performance for SOCMI air oxidation unit processes. These standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that VOC emissions from air oxidation processes in the SOCMI cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed air oxidation facilities to achieve an emission reduction that reflects the capabilities of the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: June 29, 1990.

Under section 307(b)(1) of the CAA, judicial review of this new source performance standard (NSPS) is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

INCORPORATION BY REFERENCE: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of June 29, 1990.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards," EPA-450/3-82-001b. The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the regulation since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A-81-22, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), South Conference Center, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Debbie Stackhouse, telephone (919) 541-5568 and 5258, respectively, concerning regulatory decisions. Mr. Robert E. Rosensteel or Mr. Leslie B. Evans, telephone (919) 541-5608 and 5410, respectively, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under section 111 of the CAA reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, and reconstructed air oxidation facilities within the SOCMI. This includes any reactors that use air as an oxidizing agent to produce one or more of the chemicals listed in § 60.617 of the regulation. The affected facility is designated as a single air oxidation reactor with its own individual recovery system (if any) or the combination of two or more air oxidation reactors and the common recovery system they share. A recovery system consists of any device, or devices, capable of and used for the purpose of recovering chemicals for use, reuse, or sale and may include both primary and secondary recovery devices. Some examples of recovery devices are absorbers, adsorbers, and condensers as well as certain devices that recover non-VOC's, such as ammonia and hydrogen chloride recovery units. Construction, reconstruction, or modification of the facility must have begun after October 21, 1983, for the standard to be applicable. Existing facilities are not subject to the standard unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15

The standards include emission reduction requirements and/or emission limits which are based on the emission reduction capabilities of BDT. However, the standards do not require that a specific device or technology be used for those facilities that must comply with the emission reduction requirements, although the Agency expects that those facilities required to reduce their VOC emissions by 98 weight-percent or to 20 parts per million by volume (ppmv) will use combustion devices (e.g., incinerators, flares, etc.). Rather, any control technology other than recovery devices as defined in the standards can be used as long as it can be demonstrated that it is at least as effective as BDT at reducing VOC emissions.

Due to variations in factors such as flow rate, heat content, and concentration of organic compounds, the total cost of control per unit of total organic compound (TOC) emission reduction would vary considerably among the different types of air oxidation facilities. The Administrator has determined that for some air oxidation facilities, the cost of control per unit of VOC reduced is unreasonably high. Thus, the designation of BDT by the Administrator has two aspects. First, for facilities that can reduce VOC emissions at a reasonable cost, BDT is the reduction of VOC emissions by 98 weight-percent or to 20 ppmv through the use of thermal incineration. For facilities that cannot reduce VOC emissions at a reasonable cost, BDT is no additional control.

To identify those facilities for which implementation of the emission reduction requirements would be too costly, a means of measuring the total cost to control VOC emissions from air oxidation facilities was developed. This means of measuring the cost to control is called the TRE index. Using the TRE index approach, the standards would require each owner or operator of an affected facility with a TRE less than 1.0 to either reduce process vent stream VOC emissions by 98 weight-percent or to 20 ppmv, whichever is less stringent, or for facilities with a TRE index value greater than 1.0 to consistently maintain a value greater than 1.0.

An equation is included in the regulation for determining the TRE index value of each vent stream from an affected facility. The process vent stream flow rate, TOC emission rate, net heating value and corrosion properties (whether or not halogenated compounds are present) must be determined according to the specified Reference Methods in order to calculate the TRE index value. These vent stream characteristics would be measured following the last product recovery device (e.g., condensers, absorbers, carbon adsorbers).

The structure of the standards allows an affected facility with a TRE index value of less than 1.0 to add a recovery device; improve the existing recovery system efficiency; or alter the process operation so that the TRE value would increase above 1.0 and; therefore, VOC emissions would not have to be reduced by 98 weight-percent or to 20 ppmv. Increased recovery efficiency would have the advantage of achieving additional emission reduction, less energy usage, lower costs, and increased recovery of compounds or increased retention of products. The additional emission reduction could be as much as 30 percent more than current industry practice.

If a boiler or process heater were used to comply with the percent reduction or emission limit, the standards would also require that the air oxidation vent stream be introduced in the flame zone of the boiler or process heater. If a boiler or process heater were used to comply with the standards, the owner or operator would be required to monitor and record continuously the vent stream flow (using a flow indicator as described later) to the device and the firebox operating temperature. For boilers or process heaters of 44 MW (150 million/Btu) design heat input capacity or greater, no temperature monitoring is required but records (such as steam production records) would be required which would verify the periods of operation of the heat generating unit.

A steam-assisted flare, an air-assisted flare, and a flare with no assist are considered to be capable of achieving 98 weight-percent emission reduction and may be used to meet the standards, provided that the flares are operated in accordance with the requirements in 40 CFR 60.18. Each owner or operator complying with the standards by using a smokeless flare would be required to monitor continuously the presence of the pilot flame. Ultra-violet beam sensors or thermocouples are acceptable for this purpose. A flow indicator would also be required that provides a record of vent stream flow to the flare.

Each owner or operator complying with the standards by using an incinerator would be required to monitor continuously and record the firebox operating temperature or, if a catalytic oxidizer were used, the temperature before and after the catalyst bed. A vent stream flow indicator is also required for each affected facility and must be installed as close to the combustion device as possible but immediately before the vent stream is joined with any vent stream not part of the affected facility. Records of vent stream flow must be maintained. If the emission reduction requirements were achieved by other means, the owner or operator would be required to provide information describing the operation of the control device and the parameter(s) that indicate proper operation and maintenance of the device so that the enforcing agency could specify appropriate monitoring requirements.

Each owner or operator who complies with the standards by maintaining a vent stream TRE index value above 1.0 would be required to monitor and record specified operating parameters of the final recovery device, or, if there are no recovery devices, at the point where the vent stream is discharged from the reactor to ensure that the TRE is consistently maintained. Operating parameters are established during the initial (or most recent) performance test. Subsequent monitoring of these parameters is done to determine whether their values have deviated from the values measured during the performance test. Depending on what the final recovery device is, the specified operating parameters are condenser exit (product side) operating temperature; absorber liquid temperature; specific gravity (or an alternative measure of absorbing liquid saturation, if approved by the enforcing agency); carbon adsorption bed temperature [after regeneration and completion of any cooling cycles]; and the mass flow rate of carbon bed regeneration steam. The owner or operator would also be required to maintain records of any change in the design or operation of the facility which could affect the TRE index value. Such records would include changes in the production capacity, feedstock type, or catalyst type, as well as the replacement, removal, or addition of recovery equipment. When any such change takes place, the owner or operator of the facility is required to recalculate the TRE index value to document that the facility continues to have a TRE index value above 1.0. Such recalculation can be based on test data reflecting the changes in the system, or best engineering estimates of the effects of the changes. If the recalculated TRE index value for the facility is less than 1.0, the owner or operator shall demonstrate compliance with the 98 weight-percent reduction requirement or 20 ppmv emission limit within 180 days of the process change. Prior notice of any performance testing shall be given to EPA as required by the General Provisions of 40 CFR part 60. Performance testing may also be required on a case-by-case basis by the Administrator following any change to the recovery system in order to verify the TRE index value for the facility.

The standards require that records of the operating parameters discussed above be maintained to ensure the proper operation and maintenance of combustion control equipment and recovery equipment used to reduce VOC emissions. Furthermore, records of instances where these monitored values exceed allowable limitations established during the most recent performance test must be maintained. In addition to maintaining these records, an owner or operator must submit a semiannual report of the recorded exceedances. The requirement of semiannual reporting may be waived for affected facilities in States that have been delegated authority for enforcement provided EPA approves the reporting requirements or alternative means of compliance surveillance adopted by the State and the affected facilities comply with the requirements established by the State. For facilities with TRE index values greater than 4.0, there are no monitoring and reporting requirements unless there is a change to the process operation.

In addition to this promulgated standard, Reference Methods 1A, 2C, and 2D are being promulgated in today's Federal Register.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts associated with the standards were projected by using a statistical representation of the industry's vent stream characteristics at existing plants. These characteristics included vent stream flow rate, net heating value, TOC emission rate, and corrosion properties (presence or absence of halogenated compounds). It was assumed that the national distribution of these characteristics for new sources would be the same as the distribution for existing sources. In the determination of these impacts it was assumed that all new, modified, and reconstructed facilities with a TRE index value less than 1.0 would use thermal incineration to meet the 98 weight-percent emission reduction requirement or the 20 ppmv emission limit. Thermal oxidation is the only VOC control technique determined to be universally applicable to all SOCMI air oxidation processes.

The actual energy, environmental, and economic impacts associated with the air oxidation NSPS are expected to be less than the impacts estimated here. One reason why these impacts would be lessened is that some facilities would upgrade existing recovery equipment to achieve a TRE index value higher than the cutoff, and, in fact, the standards structured in such a way that encourages this. Such equipment generally has lower associated costs and energy use. Secondly, some facilities would use other combustion devices, such as boilers, or process heaters which may be less expensive to apply and have a lower net energy consumption than incineration. A third reason is that some facilities could use existing devices to control emissions and not have to build new devices. The impacts estimated here assumed that new control devices would be built as a result of the standards. Although these factors contribute to the overstatement of the energy and economic impacts associated with the standards, the degree of overstatement of the impacts cannot be quantified.

Under the standards, it is estimated that 19 percent of all new, modified, or reconstructed air oxidation facilities would have vent streams with TRE index values under the TRE cutoff of 1.0. If all of these facilities were controlled to 98 weight-percent, the projected national VOC emissions from all new, modified and reconstructed air oxidation processes would be reduced by an estimated 10,700 megagrams per year (Mg/yr). This national VOC reduction would be approximately 46 percent beyond the 23,500 Mg/yr level that would be expected under typical State implementation plans (SIP's).

It is projected that in the absence of the standards, uncontrolled VOC emissions would be reduced an average of 72 percent by State regulations. Seventy-two percent represents a weighted average of the regulations in States where new sources are projected to be built. The actual control required would vary considerably from State to State. Therefore, the impacts for individual plants would vary depending on the State where the affected facility is located.

Any increase in emissions of other air pollutants as a result of controlling VOC emissions would be negligible. There would be no direct solid waste impacts under the standards, and impacts on noise, space requirements, and availability of resources would be negligible.

No significant increase in total plant wastewater is projected under the standard. There is no organic wastewater effluent associated with combustion devices themselves. Some facilities which could have an associated water pollution impact are those which might choose to upgrade or add recovery devices to achieve a TRE index value above the 1.0 cutoff. Carbon adsorption is the only product recovery technique currently in use in the industry which has an associated organic wastewater effluent. Based on available data, only a small percentage of air oxidation chemical manufacturing processes are expected to employ carbon adsorption.

The fifth year energy requirements of the standards would be 0.69 billion megajoules per year (MJ/yr) (320 bbl fuel oil equivalent/day). The projected national energy impacts are considered reasonable.

The fifth year cost impacts of the standards are also considered reasonable. The fifth year national annualized cost for VOC control would be $8.9 million ($1978). The fifth year national capital cost for VOC control would be $14.4 million ($1978).

An economic analysis indicated that the costs associated with the standards could be passed on with little or no effect on the profitability of the industry. Projections made by employing process-specific assumptions indicate that the standards would not trigger product price increases in excess of 5 percent of the product price. Potential price increases for the 38 chemicals that are currently produced using the air oxidation process, assuming control costs would be passed through totally and using conservative control cost estimates (high cost projections), would range from 0 to a 3.1 percent increase. Finally, there would be no adverse effects on employment because the standards would not appreciably affect demand for the air oxidation chemicals.

The environmental, energy, and cost impacts are discussed in greater detail in the two BID's for the standards: "Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Proposed Standards" and "Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards" (EPA–450/3–82–001a and EPA–450/3–82–001b).

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (46 FR 42910) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the air oxidation VOC standard recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the Federal Register on October 21, 1983 (48 FR 48832). The preamble to the proposed standards discussed the availability of the BID "Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry" (EPA–450/3–82–001a) which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The proposal notice stated that a public hearing would be held, if requested, to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. The public hearing was held on December 1, 1983. One speaker appeared at the public hearing to comment on the proposed standards. The public comment period ended on December 31, 1983.

On May 10, 1985, the public comment period was reopened (50 FR 20446) for the purpose of allowing public comment on the results of a reanalysis of the costing procedures, the TRE equation and coefficients, and the designation of affected facility. The reanalysis resulted from the acquisition of new information received in public comments and collected since proposal.

Twelve comment letters were received concerning issues relative to the proposed standards of performance for air oxidation processes in the SOCMI. Eleven of these were in response to the proposed publication and one was in response to the reopening of the public comment period. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from nine chemical companies, one manufacturer of control equipment, and one environmental group. A detailed discussion of these comments and responses can be found in the BID for the promulgated standards which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions which have been made to the standards between proposal and promulgation.

The major comments and responses are summarized in this preamble. The comments have been divided into the following areas: Designation of Affected Facility; Applicability of the Standards; Selection of BDT; Selection of the TRE Cutoff; and Costing Revisions.

All comments discussed here have been entered into Docket Number A–81–22. Access to this docket is described in the ADDRESSES section of this preamble.

Designation of Affected Facility

One commenter objected to the designation of affected facility in the proposed standards. The standards designated the affected facility as the recovery system and all associated air oxidation reactors or each air oxidation reactor that vents directly to the atmosphere. The commenter stated that this designation does not conform to the requirements of the CAA as outlined in *ASARCO* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978). The commenter stated that this designation in effect legislates a mechanism that may enable certain facilities to avoid the reconstruction and modification provisions of the standards. As an example, the commenter indicated that if an existing facility consists of a single reactor, any changes in that reactor which would result in cumulative costs of over 50 percent of the capital cost of a new reactor would make it an affected facility. However, if two or more reactors are joined in an existing facility, similar changes in one reactor may not make that facility subject to the standards because the capital costs are not likely to exceed 50 percent of the capital cost of the entire facility (both reactors and the associated recovery system). Thus, the commenter concluded that under the Agency's proposed designation the changed reactor may go unaffected by the standards. The commenter recommended that the designation be changed to each individual reactor and its associated recovery system to ensure that the standards achieve the maximum possible VOC emission reductions.

The Agency has reviewed the commenter's recommended affected facility designation and has found it to be inappropriate for use in these standards. The choice of the affected facility for these standards is based on the Agency's interpretation of section 111 of the CAA and on the judicial construction of its meaning (*ASARCO* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978)). Under section 111, the standards of performance for new stationary sources must apply to "new sources." "Source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (section 111(a)(3)). Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants and that may be viewed as "sources." The Agency, therefore, uses the term "affected facility" to designate the equipment within a particular kind of plant that is chosen as the "source" covered by a given standard.

As the commenter notes, the Court in ASARCO discussed the scope of EPA's discretion in choosing the affected facility. The Court stated:

> The EPA's definition of a "facility", which this court accepts, is "any apparatus to which a standard of performance is specifically applicable." [Citation omitted.] This definition is clearly designed to designate as "facilities" those units of equipment—be they individual machines, combinations of machines, or even entire plants—that the Agency finds to be appropriate units for separate emission standards. A cursory review of EPA's regulations indicates that the units designated as "facilities" under this definition are usually larger than individual machines or single pieces of equipment, and are sometimes whole plants. [Citation omitted.] In designating what will constitute a facility in each particular industrial context, EPA is guided by a reasoned application of the terms of the statute it is charged to enforce, not by an abstract "dictionary" definition. This court would not remove this appropriate exercise of the Agency's discretion. [Citation omitted.] 578 F.2d at 324 n. 17.

Consistent with this statement, EPA has selected the affected facility in the air oxidation standards by looking at the terms and purposes of section 111, as well as the characteristics of air oxidation plants. As EPA stated at proposal, the main purpose of section 111 is to minimize emissions by requiring the application of BDT at all new, modified, and reconstructed sources (considering cost, nonair quality health and environmental effects, and energy impacts). The EPA believes that in most cases a narrow affected facility designation will best further this purpose, because in most cases a narrow designation ensures that all new emission units will be brought under the coverage of the standards. If, for example, an entire plant is designated as the affected facility, no part of the plant would be covered by the standard unless a replacement caused the plant as a whole to be "modified" or "reconstructed." If each piece of equipment is designated as a separate affected facility, then as each piece is replaced, the replacement piece would be a new source subject to the standards. For this reason, EPA generally presumes that the narrow designation is appropriate.

The EPA treats the narrow designation only as a presumption, however, because in some cases a broader affected facility designation may be more consistent with the purposes of section 111. For example, the Agency might choose a broader designation if it concludes that either: (a) It would result in greater emissions reduction than would a narrow designation; or (b) the other relevant statutory factors (technical feasibility, energy, cost, and nonair quality health and environmental impacts) point to a broader designation.

The EPA analyzed several alternative affected facility designations for the air oxidation standards, including: (1) Each individual reactor with its recovery system, (2) the group of reactors whose vent streams are ducted together through a single recovery system, and (3) the entire plant. Using the presumption mentioned above, EPA examined as a single affected facility each individual reactor whose vent stream is sent to its own recovery system. The EPA concluded, however, that when reactor vent streams are joined and sent through a single recovery system the group of reactors and their recovery system, rather than each reactor, should be a single affected facility.

The EPA estimates a greater reduction in national VOC emissions using the

broader designation of affected facility. Greater reduction in emissions will occur with the broader designation because for facilities where the TRE index is less than 1.0, emissions from existing air oxidation reactors will also be controlled when new reactors are combined with existing reactors sharing a common recovery system. Under a narrow designation, when a new reactor is combined with existing reactors, the new reactor is treated separately. Thus, only emissions from the new reactor could potentially be controlled.

The commenter did not comment on this reasoning. Instead, the commenter contended that when more than one reactor is vented to the same recovery device, EPA's designation will permit reactor replacements to avoid coverage under the standards and will therefore result in less emission reduction than would occur if the commenter's affected facility designation were used. The EPA disagrees with the commenter's analysis and conclusion. The replacement of air oxidation reactors or pieces of recovery equipment is rare within the industry. This is because reactors are expensive pieces of equipment which are designed to last a long time. Moreover, the Agency has concluded that those few replacements which do occur often result from process changes (e.g., from chlorination to hydrochlorination) or catastrophic events that would probably require replacement of most of the group of reactors joined to a single recovery system. These changes would likely amount to a "reconstruction" of the facility as it is defined in these standards. Thus, in the small percentage of cases where reactor replacements occur, the facility would most likely fall under the coverage of the standards.

Furthermore, as EPA stated at proposal, the other types of reactor changes that source owners would most likely consider are substantial changes in catalysts, reactor conditions, or product separation purification equipment. The cost of these changes is so great, however, that most owners would choose to build new groups of reactors rather than radically modify individual existing reactors. Thus, few air oxidation reactors would undergo process changes that would subject them to the standards under either the commenter's or EPA's designation. Moreover, under EPA's designation, in the event an owner added a reactor to an existing group of reactors ducted to the same recovery system, it is unlikely the facility could avoid being considered a modification by offsetting the new reactor emissions somewhere else within the reactor group. This is because it would likely be technologically infeasible to reduce emissions sufficiently or at all from the other reactors. Although some VOC reductions could occur through upgrading recovery equipment, it is unlikely that this reduction would result in a full offset of the new reactor emissions because the increased load on the recovery device (i.e., increased flow and VOC) would make the needed increase in VOC removal efficiency difficult to achieve. Thus, the likely result is that addition of a reactor to a group of joined reactors would bring the entire set under the coverage of the standards as a modified facility.

In short, the broad evasion of the modification and reconstruction provisions that might generally occur under broad affected facility designations would not occur under EPA's designation for the air oxidation standards. As discussed above, under EPA's designation, the inability of owners to offset emissions from new reactors added to a set of existing reactors would likely cause the entire set of new and existing reactors to come under the standards as a modified facility. This results in a greater emission reduction potential than would be the case for these reactors under a narrow designation. For these reasons, EPA disagrees with the commenter's premise that the affected facility designation in these standards would result in foregone emission reductions and would, therefore, be inconsistent with section 111. Rather, EPA's selection of the affected facility represents a reasoned application of section 111, consistent with ASARCO, because it couples consideration of both the need to secure the greatest emissions reductions from new and modified emission units with the technological realities of the air oxidation process.

An incidental effect of selecting the broader designation of affected facility is that implementation of the standards would be made significantly easier. When several reactors feed process vent streams into a common recovery system, the characteristics of the emissions vented into the atmosphere from the recovery system are determined by both the process vent streams from each of the reactors and the efficiency of the recovery system. Determining accurately the contribution of each individual reactor to these emissions (i.e., each reactor's TRE index value) can be complex and, therefore, costly. It requires a mass balance calculation using three sampling sites: two which are located upstream and downstream of the recovery system and one located just downstream of the reactor.

Under the broader designation EPA is promulgating, however, only one sampling site located after the last recovery device is needed to yield an accurate determination of the facility's TRE index value. No estimation of the recovery device efficiency on individual reactors is required, because the standards cover the entire vent stream. Therefore there is no need to determine which portion of the final vent stream from a group of reactors is attributable to new, modified, and reconstructed reactors and which portion is attributable to reactors that have not been changed or added. This results in a decrease in both the cost and complexity of performance testing because fewer sampling sites and a simpler analysis are needed.

Applicability of the Standards

Four commenters requested clarification on the applicability of the standards. These commenters indicated that the standards are not explicitly limited to air oxidation processes in the SOCMI. Further, the commenters stated that, consequently, the standards could be interpreted as applying to air oxidation reactors in other industries, such as asphalt roofing, kraft pulp mills, and fertilizer plants. The commenters recommended that the applicability provisions of the regulation be amended to specify that the standards are applicable only to air oxidation processes used in the manufacture of certain listed chemicals.

Upon considering this comment, the Agency decided to clarify the applicability of the standards by adding a list of affected SOCMI air oxidation chemicals to the regulation. Based on information available to the Agency, this list includes all SOCMI air oxidation chemicals produced and; thus, the list includes all chemicals and processes intended to be covered under these standards. The list is contained in § 60.617 and consists of the 36 chemicals identified in the BID as being entirely or partially produced by air oxidation processes. To accommodate this change § 60.610(a) of the regulation has been amended to limit the coverage of the standards to air oxidation processes that are used to produce one of the listed chemicals.

Selection of BDT

Several commenters objected to the Agency's selection of BDT. The objections raised by the commenters focused on two main areas. First, two commenters implied that the 98 percent emission reduction specified in the regulation should be lowered to allow for the use of catalytic oxidation. These commenters stated that catalytic oxidation could achieve VOC destruction efficiencies comparable to those achievable by thermal incineration. One commenter stated that it would be necessary to add a thermal incinerator after the catalytic oxidizer in order to comply with the standards. Another commenter mentioned that compared to catalytic oxidation, the slightly higher efficiency typical of thermal incineration would not result in a measurable improvement in the environment. The commenter added that the use of thermal incineration instead of catalytic oxidation could possibly entail detrimental effects such as increased NO_x emission, energy use, cost, and domestic chemical prices relative to foreign chemical prices. A second concern related to one commenter's perception that technologies which involve lower costs and energy requirements than thermal incineration be evaluated for application to facilities which have too high a cost per megagram of VOC destroyed (i.e., over $1,900/Mg). The commenter suggested that recovery devices and combustion devices such as catalytic oxidation be evaluated for such applications. It was pointed out that although the emission reduction capabilities of recovery devices are not as great as combustion, further emissions reductions could be achieved using these relatively low cost devices.

The Agency evaluated the commenters' concerns and has decided to make no changes in the emission reduction requirements of the standards. The standards do not prohibit the application of any devices, including catalytic oxidizers, which are used to comply with the emission reduction requirements and/or emission limits. The Agency believes, based on available data, the catalytic oxidizers are capable of achieving 98 weight-percent destruction efficiency in all cases where they are applicable. Since both thermal incinerators and catalytic oxidizers can meet the 98 weight-percent reduction or 20 ppmv limit, the owner or operator has the flexibility to choose the device which he believes is best for the facility in terms of cost or other technical considerations.

Catalytic oxidizers do not, however, necessarily have the advantages over thermal incinerators named by the commenters. Because of the potential for greater heat recovery associated with recuperative heat exchangers used in conjunction with thermal incinerators, thermal incinerators may in many cases be less expensive and use less energy than catalytic oxidation units. This has to be examined on a case-by-case basis by owners or operators with facilities which can use catalytic oxidation. For these reasons, catalytic oxidation does not necessarily have an advantage over thermal incineration in terms of price impacts or competitive position of domestic producers relative to foreign competition, as suggested by the commenters. The potential impacts of domestic price increases associated with thermal incineration were investigated and are not considered to be large enough to significantly affect the competitive position of domestic producers relative to foreign competition. Using conservative (high) control cost estimates, chemical price increases are estimated to range from 0 to about 3 percent. Further, the potential for increased NO_x emissions associated with thermal incineration was also examined, but the rate of NO_x formation is estimated to be low due the relatively low combustion temperatures and relatively short residence times.

With respect to the second major concern raised by one commenter, the Agency maintains that it is appropriate to not require additional control for facilities with control costs per unit of VOC removed greater than $1,900/Mg. It was determined to be infeasible to consider catalytic oxidizers and recovery devices (e.g., adsorbers, absorbers, and condensers) for application to individual facilities with cost-effectiveness values above the cutoff. These devices were not considered because the Agency was unable to identify subcategories for which a particular control device would apply in all cases. The applicability and effectiveness of these devices may be greatly affected by the vent stream flow rate, water content, temperature, VOC concentration, and VOC properties such as solubility, molecular weight, and liquid/vapor equilibrium. Since these characteristics vary widely within the air oxidation industry, it is not possible with available information and resources to identify categories or subcategories of air oxidation processes for which these devices would always apply and to specify control efficiencies under an industry-wide standards development approach. Therefore, application of these devices in analyzing regulatory options is not feasible. Even with greater resources, this analysis would be infeasible because it would require a stream-by-stream characterization, ultimately resulting in the need to create a separate standard for each process used to produce a listed chemical. The number of standards required to regulate the same number of sources would increase significantly. The Agency believes that such an approach to regulating the air oxidation industry would be administratively infeasible and, therefore, environmentally counterproductive. In any event, as the commenter recognizes, proceeding now with this generic regulation based on thermal incineration at least represents an important first step in regulating air oxidation emissions and does not preclude later regulation of subcategories of air oxidation facilities should that become feasible. The EPA believes it has the authority to take this step-by-step approach under section 111. *See, e.g., Group Against Smog and Pollution* v. *EPA*, 665 F.2d (D.C. Cir. 1981).

Selection of the TRE Cutoff

Three commenters indicated that the $1,900/Mg (1978$) cost-effectiveness cutoff is unreasonable. One commenter recommended that the cutoff be raised to a level higher than $1,900/Mg so that the standards cover a greater number of emission sources and, thus, a greater amount of emissions. This recommendation is based on the commenter's perception that the inclusion of a greater number of sources would reduce public exposure to pollutants emitted by air oxidation reactors, including potentially hazardous pollutants. This commenter also stated that cost effectiveness is inappropriate as the sole determinant for excluding certain air oxidation reactors from the application of the proposed standards. The commenter stated that cost effectiveness is an invalid basis for deciding not to set standards on processes for which no perceptible economic impacts have been shown. Two commenters stated that the cost-effectiveness cutoff should be reduced to a lower level which is more typical of VOC standards. Both commenters stated that the Agency has not presented adequate justification for concluding that a $1,900/Mg cost-effectiveness cutoff is a reasonable upper limit for application of the standards. Specifically, these commenters assert that this higher figure cannot be justified based on the presence of toxic constituents in the discharge streams from air oxidation reactors. They point out that the control of toxic pollutants is the objective of standards developed under section 112 of the CAA (national emission standards for hazardous air pollutants (NESHAP)) and not standards such as

these which are being proposed pursuant to section 111 of the Act (NSPS). The first commenter stated that the Agency: (1) Has not presented data which quantify the presence of toxic pollutants in the emissions from air oxidation processes, (2) has made no effort to correlate the costs of control with the degree to which toxic pollutants are eliminated, and (3) has not shown that toxic pollutants will be controlled to the same degree as other pollutants under the proposed standards. The second commenter contended that the preamble does not adequately demonstrate that the presence of toxic pollutants in the emissions from air oxidation reactors are sufficiently different from the emissions from other VOC sources to justify a special consideration of their hazards. Both commenters also state that although the cost of controlling VOC emissions is analyzed as a "worst-case" situation, there are facilities which will have to incur costs as high $1,900/Mg. They contend that the Agency has not justified costs this high as being either reasonable or appropriate for these facilities.

The EPA believes that its decision to consider cost effectiveness as one indication of cost when determining the cutoff for applying the standards reflects a reasonable interpretation of section 111 of the CAA. In analyzing the question whether the consideration of cost effectiveness is appropriate, EPA looked to see whether Congress had "directly spoken to the precise question." *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 2782 (1984). Section 111 requires EPA to promulgate NSPS limiting emissions to the level that reflects the best system of emission reduction "which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." Section 111(a)(1). Nothing in either section 111 or elsewhere in the Act defines "the cost of achieving such emission reduction." The plain meaning of the phrase, however, is quite broad. This indicates that Congress implicitly delegated to EPA the authority to interpret the phrase to encompass a range of impacts, including costs of control in relation to the emission reduction achieved. Further, Congress did not specify any particular manner in which EPA was to take these costs "into consideration." Thus, absent a clear Congressional direction to the contrary discernible from the Act's history, *Chevron*, 104 S.Ct. at 2783, section 111 gives EPA authority to reject NSPS control options on the ground that their costs are unreasonably high in light of the emission reductions they achieve.

The EPA has reviewed the legislative history of Section 111 and concluded that no contrary intent is discernible. Most important, the history contains no express repudiation of the use of cost effectiveness as one mechanism in considering cost when setting an NSPS.

For these reasons, EPA believes that Congress implicitly delegated the Agency the authority to decide how best to "take into consideration * * * cost" in setting NSPS and, if the Agency concluded it was appropriate, to consider cost effectiveness.

Further, in *Portland Cement Association* v. *Train*, 513 F.2d 506, 508 (D.C. Cir. 1975), *cert. denied*, 416 U.S. 1025 (1975) ("Portland II"), the Court stated that EPA may reject control options that result in a "gross disproportion between achievable reduction in emissions and cost of the control technique." Since the purpose of cost effectiveness analysis is to highlight such disproportion, this passage supports EPA's approach.

In selecting cutoffs related to applicability of NSPS, EPA looks at a variety of factors including: (1) The technical feasibility of additional control; (2) the economic feasibility associated with different control alternatives; (3) the magnitude of emission reductions associated with a control alternative (e.g., a slightly higher cutoff could be selected if it led to a substantial increase in the emission reduction achieved by the NSPS); (4) the cost effectiveness (C/E) of the control alternative in terms of annual cost per megagram ($/Mg) of emissions reduced; (5) the quality of the cost estimates (e.g., worst case versus realistic estimates); (6) potential reductions in other air pollutants not specifically regulated by the NSPS resulting from a control alternative; and (7) the location of the sources (e.g., urban versus rural). Because these factors vary from industry to industry and, in some cases, within the same industry, decisions on the appropriate level of control are made on a category by category basis.

In evaluating the above factors, EPA found that the following considerations were key to the selection of the appropriate cutoff for SOCMI air oxidation processes: (1) The cost effectiveness of NSPS for VOC emissions previously promulgated by EPA; (2) the fact that air oxidation vent streams contain compounds that are considered potentially toxic by EPA and that many of the facilities are located in urban areas; and (3) the likelihood that these maximum costs will not be incurred by industry.

A survey of the VOC standards for other source categories shows that the cost effectiveness of those control requirements has sometimes ranged as high as $2,000/Mg. (See Docket Item No. IV–B–14.) The Agency's experience in implementing these standards reveals that NSPS requiring this level of control have proved a useful tool in bringing about the installation of much emissions control technology, significant reductions in emissions, and corresponding improvements in air quality, yet have not imposed costs that appear "grossly disproportionate" to the emission reduction achieved. *Portland II*, 513 F.2d at 508. Such an approach simply makes this NSPS consistent (as to dollars spent per metric ton of VOC removed) with the existing body of NSPS regulations, all of which have either been promulgated without legal challenge or have been judicially upheld.

EPA also considered evidence that air oxidation streams include compounds that may be toxic.[1] Although that evidence has not yet resulted in a determination that those compounds should be listed as hazardous under section 112, EPA considered this potential toxicity along with other relevant factors when choosing the cutoff. As stated in EPA's Air Toxics Strategy published in July 1985, the Agency will consider the likely toxic pollutant control benefits in the course of carrying out its responsibilities under section 111. This strategy reduces emissions of potentially toxic compounds from new sources and from industries as their facilities are reconstructed or modified. This approach achieves significant reductions in these compounds of concern while the Agency evaluates them for regulation under section 112. The Agency disagrees with the argument that EPA has no authority to do this. The EPA is not attempting here to regulate streams based on a decision that they contain hazardous air pollutants within the meaning of section 112. Rather, the Agency is simply considering all available evidence within the framework of section 111. Section 111 does not attempt to restrict EPA's discretion to consider all relevant factors in making that decision, and certainly the potential toxicity of a stream is relevant to the control requirement selected. Many SOCMI facilities are located in urban areas and, as a result, many people will be exposed to any hazardous air pollutants emitted from these facilities.

A third consideration in setting the cutoff at $1,900/Mg is the likelihood that no facility will actually have to incur the costs implied by that cutoff. The reasons are: (a) Less expensive control systems may be used, thus reducing the costs and cost effectiveness incurred by individual facilities; (b) the cost estimates for thermal incinerators and natural gas prices are overstated; and (c) the inherent flexibility within the regulation encourages the use of product recovery modifications that will significantly reduce the cost incurred by individual facilities that may have otherwise had to add a combustion device. The regulatory analysis assumes that each air oxidation process vent would have its own combustion device and would need separate ducting and support structures. It is expected, however, that some air oxidation processes will share control systems with other process vents. The analysis also assumes that thermal incinerators or flares will be used to reduce VOC emissions by 98 weight-percent. Data on current capital costs of thermal incinerators indicate that units are now available at substantially reduced costs compared to the costs used in developing these standards. Lower capital costs would reduce the annualized costs estimates, also, but not as significantly. This is an important consideration in selecting the appropriate cost-effectiveness cutoff. Another consideration is the fact that natural gas prices used to calculate the cost effectiveness for each stream are overstated by about 40 percent, even though they were updated after proposal (see following section on "Costing Revisions"). These conservative assumptions have resulted in higher cost and cost-effectiveness estimates than will actually occur. Finally, the standard encourages pollution prevention by not requiring 98 weight-percent reduction if a TRE index greater than 1.0 is maintained. The EPA believes that many facilities having a TRE index just below the 1.0 cutoff (equivalent to $1,900/Mg) will upgrade product recovery to reduce VOC and raise their TRE index above 1.0. This will significantly reduce the cost of control incurred by the industry while reducing emissions and will also minimize the national energy impacts. A preliminary examination of the national statistical profile shows that because many facilities have the potential to reduce VOC emissions sufficiently to raise their TRE values above 1.0, the highest cost effectiveness that a facility will actually incur as a result of installing a combustion device is estimated to be approximately $1,400/Mg.

The EPA believes that this process reflects a reasoned interpretation of the phrase "taking into consideration the cost of achieving such emission reduction," especially given the lack of clear Congressional guidance. The commenters' arguments that EPA should have selected either a higher cutoff to provide for a greater degree of protection of the public health, or a lower cutoff because most VOC standards have lower costs in relation to the resulting emission reduction, fail to provide a more reasoned methodology for selecting the appropriate level. Instead, they merely reflected each of the competing goals reflected in section 111's history, as described above.

Consideration of all of the above factors confirmed EPA's belief that a TRE value of 1.0 (i.e., $1,900/Mg) represents an appropriate cutoff for determining which facilities must reduce VOC emissions by 98 weight-percent or to 20 ppmv. The cutoff is specific to the SOCMI air oxidation processes source category and would not necessarily be appropriate for other source categories; therefore, it should not be viewed as a benchmark for other standards.

Costing Revisions

Several commenters indicated that several oversights and flawed assumptions exist in the cost estimation procedure. The commenters mentioned that the following capital cost items were either ignored or treated inadequately in the costing procedures: Ductwork length between the emission source and the incinerator, siting, bringing utilities to the site, and piping and instrumentation connections. In addition, both commenters mentioned that the following operating costs were ignored: maintenance-related labor costs, operating supplies, and laboratory costs. The commenters requested that the cost estimation procedure contain factors to account for these capital and operating cost items.

In response to these statements claiming that the costing procedures contain flawed assumptions, the Agency reviewed the procedures in great detail. Revisions were made where determined to be appropriate for ensuring that the costing procedures result in representative costs. Throughout the development of the air oxidation NSPS, the Agency has made efforts to ensure that the costing procedures result in estimates that adequately represent control costs anticipated to be incurred by the majority of facilities in the industry. Prior to proposal, industry members were given the opportunity to provide substantial input into the development of the costing procedures. Preliminary costing assumptions were reviewed by industry and subsequently revised based upon industry input. After proposal, costing assumption revisions were prepared and presented in a supplemental Federal Register notice (50 FR 20446) on May 16, 1985. This notice solicited further comments on costing procedures. The bases for these revisions are documented in Docket Item No. IV–B–8. As a result of the initial industry involvement and the recent revisions based on industry public comments, the Agency feels confident that the costing procedures result in accurate estimates for typical air oxidation facilities. The specific assumptions that are key for ensuring representative cost estimates are discussed below.

Certain assumptions were included in the procedures to avoid underestimating costs incurred by facilities using combustion to control VOC. These assumptions were made to ensure that control equipment sizes and supplemental gas requirements were not underestimated. First, vent streams were assumed to contain no oxygen to maximize estimated combustion air requirements. Most streams, while not containing 21 percent oxygen, have some smaller percentage of oxygen present. The assumption of no oxygen ensures that no underestimate will occur for the equipment size, the combustion air flow rate, and the amount of supplemental natural gas needed. Second, actual offgas flow rate was increased by 5 percent in calculating costs, which inflated gas consumption and equipment size by 5 percent. Third, the temperatures and residence times assumed for cost estimation purposes (1,600 °F/.75 sec for non-halogenated streams, 2000 °F/1 sec for halogenated streams) are the highest temperature and residence time conditions generally necessary to achieve a 98 percent VOC destruction efficiency, as discussed in appendix A of the proposal BID. These higher temperatures and residence times would result in a larger equipment size and higher gas consumption than the majority of air oxidation facilities

[1] The Agency has adequately documented that this is the case. (See Wehrum, W. et al., "Air Toxics Emission Patterns and Trends," Docket Item No. IV–A–2, and Registry of Toxic Effects of Chemical Substances, Docket Item No. IV–J–2.) Moreover, it is apparent that combustion of these streams will reduce these compounds proportionately. (See, e.g., "Thermal Incinerator Performance for NSPS," Docket Item No. II–B–2.) The Agency received no comment questioning this documentation.

require. Fourth, the overall installation factors assumed for new sources were 4.0, 2.5, and 3.5 for the combustion chamber, heat exchanger, and waste heat boiler, respectively. These factors were all higher than the EPA GARD Manual recommended factor of 2.17 (EPA–450/3–80–002) because they incorporate contingencies recommended by industry representatives to account for equipment that was not originally specified in the costing procedures.

Revisions were made where appropriate in the capital cost and the annual operating cost assumptions used in the procedures. For example, in the capital cost component of the procedures, the ductwork length was changed from 150 feet to 300 feet. The ductwork length increase is based on specifications provided by the Industrial Risk Insurers (IRI) and the National Fire Protection Association (NFPA). These organizations present recommended distances for safely locating combustion sources from process units in chemical plants. The recommended distance for locating a closed combustion source such as an incinerator from a process unit is 200 feet. An additional 100 feet was added to the IRI and NFPA recommendation to account for routing the stream around process equipment before routing it away from the process unit. The 300-foot figure is believed to be more representative of industry conditions and is within the range recommended by the commenter.

In addition to the ductwork length change, the capital cost component of the procedures also was modified to include 250 feet of pipe rack. The Agency judged that since the standards will probably require the use of new rather than existing incinerators and since newly constructed incinerators would require about 300 feet of ductwork, it is reasonable to assume that existing structures may not be available to support the piping. However, the 250 feet of pipe rack assumes that 50 feet of the 300 feet of ductwork would be supported by existing structures.

Several revisions were also made in the annual operating cost component of the procedures. These were revisions in the labor rate, in the calculation of total labor cost, and in the gas and electricity prices used. All these annual operating cost revisions were discussed below and are explained in more detail in a memorandum to the SOCMI air oxidation NSPS files (Docket Item No. IV–B–8). The labor rate was changed to reflect more accurately the actual value for 1978. The original incinerator labor costing was based on a labor rate (including overhead) in 1979 dollars that was deescalated to 1978 dollars. The new labor rate is based on actual U.S. Bureau of Labor Statistics for 1978 and does not include overhead and fringe benefits.

The revisions in the calculation of total labor cost were made to calculate explicitly the cost attributable to overhead and fringe benefits. The overall changes in the total labor cost calculation included: (1) Calculation of the supervisory labor cost as 15 percent of the operating labor cost; (2) calculation of the overhead cost as 80 percent of the sum of operating, supervisory, and maintenance labor costs; and (3) calculation of total labor cost as the sum of operating, supervisory, maintenance, and overhead labor costs.

The natural gas price used in the costing procedures was revised to represent more accurately the projected effects of natural gas deregulation and account for regional variations in gas price. The previous estimate of natural gas was based on prices projected through the first 5 years of the regulation and then was deflated to 1978 dollars. This was done to reflect the fact that gas prices have been rising more rapidly than inflation. The previous estimate was made during a period of rapidly increasing energy prices. However, the actual rate of increase has slowed since that original estimate was made. Thus, to improve the accuracy and representativeness of the gas price, a new projection was made. The gas price was derived by projecting regional gas prices to 1990, taking a nationwide 1990 gas price that was weighted geographically, and then deflating to 1978 dollars. Since that projection was made, the rate of increase continued to slow. Therefore, the revised gas price is still overstated but is more realistic than the original estimate.

The price for electricity was modified to provide for a more accurate estimate of 1978 costs. Although the electricity was originally based on 1978 costs, further examination showed that a more representative price could be used.

Several of the commenters' suggestions were not incorporated in the procedures because they were not justified. The recommended capital cost items that were judged to be inappropriate included the costs for siting, bringing utilities to the site, and piping and instrumentation connections. The cost associated with bringing utilities to the site was not included because the control device will be located in the proximity of the process units where utilities are readily accessible. It was not necessary to include the cost for siting because this has already been included. An equipment cost installation factor of 1.35, which increased equipment purchase price by 35 percent, was used to account for site development, fees, and general contingencies. Neither was it necessary to include the cost associated with piping and instrumentation connections, because these were already incorporated. An equipment cost installation factor of 1.20 was used to increase the equipment purchase price by 20 percent to account for unspecified equipment. Also, an overall correction factor of 1.33 was used to increase equipment purchase price by 33 percent to account for any miscellaneous items associated with purchasing and installing control equipment that may have been overlooked.

Some annual operating cost items recommended by the commenters were also judged to be inappropriate. The items identified by the commenters included maintenance-related labor costs, operating supplies, and laboratory costs. It was not necessary to include maintenance-related labor costs because these are already incorporated in the maintenance labor factor, which is calculated as 3 percent of the total installed capital cost. Similarly, the cost associated with operating supplies was not a missing item but was already incorporated in the maintenance materials factor, which is calculated as 3 percent of the installed capital cost. Finally, it was determined that laboratory expenses, such as those involved with testing scrubbing wastewater effluent, are part of the normal operating and maintenance cost for an incinerator/scrubber system that would be used to control vent streams with halogenated compounds. Thus, factors for maintenance labor and maintenance materials associated with such a system would incorporate laboratory expenses.

In summary, the revised costing procedures do not result in annualized costs that are significantly different from the costs estimated using the procedures at proposal. An examination of the data showed that depending on the vent stream characteristics of a facility, the annualized cost increased for some facilities and decreased for others. For the most common type of air oxidation vent stream (Category B—nonhalogenated stream with net heating value below 0.48 MJ/m^3), the annualized cost increased by about 3 percent.

Paperwork Reduction Act

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and an accompanying supporting statement which are included in Docket Item No. IV–H–1 for public review. This documentation contains: (1) A description of the reporting and recordkeeping required by the regulation and the 40 CFR part 60 General Provisions, (2) the reasons for the requirements, (3) and evaluation of the major alternatives considered (including the use of existing sources of information), and (4) an estimate of the labor-hour burden of the requirements.

The General Provisions of 40 CFR part 60 and the standards would require three types of reports: (1) Notification requirements which enable the Agency to keep abreast of facilities subject to the standards, (2) reporting of initial performance test results and continuous monitoring system performance evaluations, and (3) semiannual reporting of exceedances or deviations from the monitored parameters from recovery of combustion control devices. Analysis of these reporting requirements (Docket Item No. IV–H–1) indicates that they are both necessary and reasonable considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to prepare the reports for the first 3 years average about 3.5 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 3 years would average about 0.2 person-years per year.

Information collection requirements associated with this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0053.

Public reporting burden for this collection of information is estimated to be 7,150 hours per year, with an average of 715 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

There are no reporting requirements by other governmental agencies for the information required by these standards which would result in overlapping requirements. In particular, there is no overlap with the reporting requirements of the Superfund program. The Superfund program was established in 1980 by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Pub. L. 96–510) and authorizes the Federal government to respond directly to releases (or threatened releases) of hazardous substances and pollutants or contaminants to any media that may endanger public health or welfare. Under the notification and liability provisions of section 103 (see 48 FR 23552, May 25, 1983), CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities immediately notify the National Response Center (NRC) of the release (800–424–8802; in Washington, DC, metropolitan area 202–426–2675). However, air releases which qualify as Federally permitted releases, such as VOC emissions that are regulated under section 111 of the CAA, are not subject to the notification or liability provisions of CERCLA unless the air releases are in excess of the allowable NSPS emissions by an amount equal to or greater than the reportable quantity; in this case, persons in charge must report the excess air release to the NRC. (Reporting under CERCLA does not excuse the persons in charge from any responsibility, including reporting, or liability under the NSPS program.)

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (except as noted in section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is June 29, 1990. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction, reconstruction, or modification of which commenced after October 21, 1983.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any NSPS under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards (EPA–450/3–82–001a).

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because: (1) The national annualized compliance costs, including capital charges resulting from the standards total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to OMB for review as required by Executive Order 12291. Any written communication between OMB and EPA

pertaining to the standards has been put in the docket (A–81–22).

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to current Small Business Administration guidelines, a small business in the air oxidation industry is one that has 1,000 employees or less. Currently only 4 percent of existing air oxidation companies (three companies) employ less than 1,000 people. No new, modified, or reconstructed small air oxidation facilities will be adversely affected by the standards. This conclusion is based on the fact that in doing the economic analysis for this standard, the price increase and profitability impacts have been estimated from the perspective of the smaller air oxidation facilities in operation. The findings of this analysis that producers of air oxidation chemicals, under a worst-case scenario, would be able to pass through NSPS compliance costs to their customers while keeping the price increase of their product under 5 percent accurately reflects the impacts for small air oxidation companies.

The economies of scale that exist in this industry hinder the entrance of small businesses. Furthermore, if a company has the capital available to enter the industry, the NSPS will require only a small percentage increase in the capital required for the project.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, SOCMI air oxidation processes.

Dated: June 1, 1990.

William K. Reilly,

Administrator.

PART 60—[AMENDED]

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act (CAA) as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.17 is amended by revising (a)(6) and (a)(36), removing (a)(46), and redesignating (a)(47) through (a)(55) as (a)(46) through (a)(54) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(6) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4).

* * * * *

(36) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for § 60.18(f), 60.485(g), 60.614(d)(4).

* * * * *

3. By adding subpart III to read as follows:

Subpart III—Standards of Performance for Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes

Sec.

60.610 Applicability and designation of affected facility.
60.611 Definitions.
60.612 Standards.
60.613 Monitoring of emissions and operations.
60.614 Test methods and procedures.
60.615 Reporting and recordkeeping requirements.
60.616 Reconstruction.
60.617 Chemicals affected by subpart III.
60.618 Delegation of Authority.

Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes

§ 60.610 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility designated in paragraph (b) of this section that produces any of the chemicals listed in § 60.617 as a product, co-product, by-product, or intermediate, except as provided in paragraph (c) of this section.

(b) The affected facility is any of the following for which construction, modification, or reconstruction commenced after October 21, 1983:

(1) Each air oxidation reactor not discharging its vent stream into a recovery system.

(2) Each combination of an air oxidation reactor and the recovery system into which its vent stream is discharged.

(3) Each combination of two or more air oxidation reactors and the common recovery system into which their vent streams are discharged.

(c) Each affected facility that has a total resource effectiveness (TRE) index value greater than 4.0 is exempt from all provisions of this subpart except for §§ 60.612, 60.614(f), 60.615(h), and 60.615(l).

[Note: The intent of these standards is to minimize the emissions of VOC through the application of BDT. The numerical emission limits in these standards are expressed in terms of total organic compounds (TOC), measured as TOC minus methane and ethane. This emission limit reflects the performance of BDT.]

§ 60.611 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of part 60, and the following terms shall have the specific meanings given them.

Air Oxidation Reactor means any device or process vessel in which one or more organic reactants are combine with air, or a combination of air and oxygen, to produce one or more organic compounds. Ammoxidation and oxychlorination reactions are included in this definition.

Air Oxidation Reactor Recovery Train means an individual recovery system receiving the vent stream from at least one air oxidation reactor, along with all air oxidation reactors feeding vent streams into this system.

Air Oxidation Unit Process means a unit process, including ammoxidation and oxychlorination unit process, that uses air, or a combination of air and oxygen, as an oxygen source in combination with one or more organic reactants to produce one or more organic compounds.

Boilers means any enclosed combustion device that extracts useful energy in the form of steam.

By Compound means by individual stream components, not carbon equivalents.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a vent stream.

Halogenated Vent Stream means any vent stream determined to have a total concentration (by volume) of compounds containing halogens of 20 ppmv (by compound) or greater.

Incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Process Heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that is heated to produce steam.

Process Unit means equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.617. A process unit can operate independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities.

Product means any compound or chemical listed in § 60.617 that is produced for sale as a final product as that chemical or is produced for use in a process that needs that chemical for the production of other chemicals in another facility. By-products, co-products, and intermediates are considered to be products.

Recovery Device means an individual unit of equipment, such as an absorber, condenser, and carbon adsorber, capable of and used to recover chemicals for use, reuse or sale.

Recovery System means an individual recovery device or series of such devices applied to the same process stream.

Total organic compounds (TOC) means those compounds measured according to the procedures in § 60.614(b)(4). For the purposes of measuring molar composition as required in § 60.614(d)(2)(i), hourly emissions rate as required in § 60.614(d)(5) and § 60.614(e) and TOC concentration as required in § 60.615(b)(4) and § 60.615(g)(4), those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone are to be excluded. The compounds to be excluded are identified in Environmental Protection Agency's statements on ozone abatement policy for SIP revisions (42 FR 35314; 44 FR 32042; 45 FR 32424; 45 FR 48942).

Total resource effectiveness (TRE) Index Value means a measure of the supplemental total resource requirement per unit reduction of TOC associated with an individual air oxidation vent stream, based on vent stream flow rate, emission rate of TOC, net heating value, and corrosion properties (whether or not the vent stream is halogenated), as quantified by the equation given under § 60.614(e).

Vent Stream means any gas stream, containing nitrogen which was introduced as air to the air oxidation reactor, released to the atmosphere directly from any air oxidation reactor recovery train or indirectly, after diversion through other process equipment. The vent stream excludes equipment leaks and relief valve discharges including, but not limited to, pumps, compressors, and valves.

§ 60.612 Standards.

Each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test required by § 60.8 and § 60.614 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either:

(a) Reduce emissions of TOC (minus methane and ethane) by 98 weight-percent, or to a TOC (minus methane and ethane) concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(b) Combust the emissions in a flare that meets the requirements of § 60.18; or

(c) Maintain a TRE index value greater than 1.0 without use of VOC emission control devices.

§ 60.613 Monitoring of emissions and operations.

(a) The owner or operator of an affected facility that uses an incinerator to seek to comply with the TOC emission limit specified under § 60.612(a) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow to the incinerator at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the inlet of each incinerator and before being joined with any other vent stream.

(b) The owner or operator of an affected facility that uses a flare to seek to comply with § 60.612(b) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultra-violet sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(2) A flow indicator that provides a record of vent stream flow to the flare at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the flare and before being joined with any other vent stream.

(c) The owner or operator of an affected facility that uses a boiler or process heater to seek to comply with § 60.612(a) shall install, calibrate, maintain and operate according to the manufacturer's specifications in the following equipment:

(1) A flow indicator that provides a record of vent stream flow to the boiler or process heater at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each air oxidation reactor within an affected facility at a point closest to the inlet of each boiler or process heater and before being joined with any other vent stream.

(2) A temperature monitoring device in the firebox equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater, for boilers or process heaters of less than 44 MW (150 million Btu/hr) heat input design capacity.

(3) Monitor and record the periods of operation of the boiler or process heater if the design input capacity of the boiler is 44 MW (150 million Btu/hr) or greater. The records must be readily available for inspection.

(d) The owner or operator of an affected facility that seeks to demonstrate compliance with the TRE index value limit specified under § 60.612(c) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator:

(1) Where an absorber is the final recovery device in a recovery system:

(i) A scrubbing liquid temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius

or 0.5 °C, whichever is greater, and a specific gravity monitoring device having an accuracy of 0.02 specific gravity units, each equipped with a continuous recorder;

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(2) Where a condenser is the final recovery device in a recovery system:

(i) A condenser exit (product side) temperature monitoring device equipped with a continuous recorder and having an acuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or 0.5 °C, whichever is greater;

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(3) Where a carbon adsorber is the final recovery device in a recovery system:

(i) An integrating steam flow monitoring device having an accuracy of 10 percent, and a carbon bed temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, both equipped with a continuous recorder;

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(e) An owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 60.612 with control devices other than an incinerator, boiler, process heater, or flare; or recovery devices other than an absorber, condenser, or carbon adsorber shall provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.614 Test methods and procedures.

(a) For the purpose of demonstrating compliance with § 60.612, all affected facilities shall be run at full operating conditions and flow rates during any performance test.

(b) The following methods in appendix A to this part, except as provided under § 60.8(b) shall be used as reference methods to determine compliance with the emission limit or percent reduction efficiency specified under § 60.612(a).

(1) Method 1 or 1A, as appropriate, for selection of the sampling sites. The control device inlet sampling site for determination of vent stream molar composition or TOC (less methane and ethane) reduction efficiency shall be prior to the inlet of the control device and after the recovery system.

(2) Method 2, 2A, 2C, or 2D, as appropriate, for determination of the volumetric flow rates.

(3) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration ($\%O_{2d}$) for the purposes of determining compliance with the 20 ppmv limit. The sampling site shall be the same as that of the TOC samples and the samples shall be taken during the same time that the TOC samples are taken.

The TOC concentration corrected to 3 percent O_3 (C_c) shall be computed using the following equation:

$$C_c = C_{TOC}\ \frac{17.9}{20.9 - \%O_{2d}}$$

where:

C_c = Concentration of TOC corrected to 3 percent O_3, dry basis, ppm by volume.

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.

$\%O_{2d}$ = Concentration of O_2, dry basis, percent by volume.

(4) Method 18 to determine concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined.

(i) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used then the samples shall be taken at 15-minute intervals.

(ii) The emission reduction (R) of TOC (minus methane and ethane) shall be determined using the following equation:

$$R = \frac{E_i - E_o}{E_i} \times 100$$

where:

R = Emission reduction, precent by weight.

E_i = Mass rate of TOC entering the control device, kg TOC/hr.

E_o = Mass rate of TOC discharged to the atmosphere, kg TOC/hr.

(iii) The mass rates of TOC (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

Where:

C_{ij}, C_{oj} = Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis ppm by volume.

M_{ij}, M_{oj} = Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, g/g-mole (lb/lb-mole).

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dscm/min (dscf/hr).

K_2 = Constant, 2.494×10^{-9} (1/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20°C.

(iv) The TOC concentration (C_{TOC}) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.

C_j = Concentration of sample components in the sample.

n = Number of components in the sample.

(5) When a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to seek to comply with § 60.612(a), the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in section 114 of the Act.

(c) When a flare is used to seek to comply with § 60.612(b), the flare shall comply with the requirements of § 60.18.

(d) The following test methods in appendix A to this part, except as provided under § 60.8(b), shall be used

for determining the net heating value of the gas combusted to determine compliance under § 60.612(b) and for determining the process vent stream TRE index value to determine compliance under § 60.612(c).

(1)(i) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for the vent stream flow rate and molar composition determination prescribed in § 60.614(d)(2) and (3) shall be, except for the situations outlined in paragraph (d)(1)(ii) of this section, prior to the inlet of any control device, prior to any post-reactor dilution of the stream with air, and prior to any post-reactor introduction of halogenated compounds into the vent stream. No transverse site selection method is needed for vents smaller than 4 inches in diameter.

(ii) If any gas stream other than the air oxidation vent stream from the affected facility is normally conducted through the final recovery device.

(A) The sampling site for vent stream flow rate and molar composition shall be prior to the final recovery device and prior to the point at which the nonair oxidation stream is introduced.

(B) The efficiency of the final recovery device is determined by measuring the TOC concentration using Method 18 at the inlet to the final recovery device after the introduction of any nonair oxidation vent stream and at the outlet of the final recovery device.

(C) This efficiency is applied to the TOC concentration measured prior to the final recovery device and prior to the introduction of the nonair oxidation stream to determine the concentration of TOC in the air oxidation stream from the final recovery device. This concentration of TOC is then used to perform the calculations outlined in § 60.614(d) (4) and (5).

(2) The molar composition of the process vent stream shall be determined as follows:

(i) Method 18 to measure the concentration of TOC including those containing halogens.

(ii) ASTM D1946-77 (incorporation by reference as specified in § 60.17 of this part) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 to measure the content of water vapor.

(3) The volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, as appropriate.

(4) The net heating value of the vent stream shall be calculated using the following equation:

$$H_T = K_1 \left(\sum_{j=1}^{n} C_j H_j \right)$$

where:

H_T = Net heating value of the sample, MJ/scm, where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, as in the definition of Q_s (offgas flow rate).

K_1 = Constant, 1.740×10^{-7}

$$\frac{(1)}{\text{ppm}}\ \frac{(\text{g mole})}{\text{scm}}\ \frac{(\text{MJ})}{\text{kcal}}$$

where standard temperature for

$$\frac{(\text{g-mole})}{\text{scm}}$$

is 20 °C.

C_j = Concentration of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-77 (incorporated by reference as specified in § 60.17 of this part) as indicated in § 60.614(d)(2).

H_j = Net heat of combustion j, kcal/g-mole, based on combustion at 25 °C and 760 mm Hg. The heats of combustion of vent stream components would be required to be determined using ASTM D2382-76 (incorporation by reference as specified in § 60.17 of this part) if published values are not available or cannot be calculated.

(5) The emission rate of TOC in the process vent stream shall be calculated using the following equation:

$$E_{TOC} = K_2 \left[\sum_{j=1}^{n} C_j M_j \right] Q_s$$

where:

E_{TOC} = Emission rate of TOC in the sample, kg/hr

K_2 = Constant, 2.494×10^{-9} (1/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C

C_j = Concentration on a basis of compound j in ppm as measured by Method 18 as indicated in § 60.614(d)(2)

M_j = Molecular weight of sample j, g/g-mole

Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C

(6) The total process vent stream concentration (by volume) of compounds containing halogens (ppmv, by compound) shall be summed from the individual concentrations of compounds containing halogens which were measured by Method 18.

(e) For purposes of complying with § 60.612(c), the owner or operator of a facility affected by this subpart shall calculate the TRE index value of the vent stream using the equation for incineration in paragraph (e)(1) of this section for halogenated vent streams. The owner or operator of an affected facility with a nonhalogenated vent stream shall determine the TRE index value by calculating values using both the incinerator equation in paragraph (e)(1) of this section and the flare equation in paragraph (e)(2) of this section and selecting the lower of the two values.

(1) The TRE index value of the vent stream controlled by an incinerator shall be calculated using the following equation:

$$TRE = \frac{1}{E_{TOC}} \left[a + b\left(Q_s\right)^{0.88} + c\left(Q_s\right) + d\left(Q_s\right)\left(H_T\right) + e\left(Q_s\right)^{0.88}\left(H_T\right)^{0.88} + f\left(Y_c\right)^{2.5} \right]$$

(i) where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is greater than or equal to 14.2 scm/min:

TRE = TRE index value.

Q_s = Vent stream flow rate (scm/min), at a standard temperature of 20 °C.

H_T = Vent stream net heating value (MJ/scm), where the net enthalpy of combustion per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, as in the definition of Q_s.

$Y_s = Q_s$ for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = (Q_s)(H_T)/3.6$.

E_{TOC} = Hourly emissions of TOC reported in kg/hr.

a, b, c, d, e, and f are coefficients.

The set of coefficients which apply to a vent stream shall be obtained from Table 1.

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TABLE 1. AIR OXIDATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR

DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	19.18370	0.27580	0.75752	-0.13064	0	0.01025
$18.8 < Q_s \leq 699$	20.00563	0.27580	0.30387	-0.13064	0	0.01025
$699 < Q_s \leq 1400$	39.87022	0.29973	0.30387	-0.13064	0	0.01449
$1400 < Q_s \leq 2100$	59.73481	0.31467	0.30387	-0.13064	0	0.01775
$2100 < Q_s \leq 2800$	79.59941	0.32572	0.30387	-0.13064	0	0.02049
$2800 < Q_s \leq 3500$	99.46400	0.33456	0.30387	-0.13064	0	0.02291

DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.5 MJ/scm:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	18.84466	0.26742	-0.20044	0	0	0.01025
$18.8 < Q_s \leq 699$	19.66658	0.26742	-0.25332	0	0	0.01025
$699 < Q_s \leq 1400$	39.19213	0.29062	-0.25332	0	0	0.01449
$1400 < Q_s \leq 2100$	58.71768	0.30511	-0.25332	0	0	0.01775
$2800 < Q_s \leq 3500$	78.24323	0.31582	-0.25332	0	0	0.02049
	97.76879	0.32439	-0.25332	0	0	0.02291

DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 0.48:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	8.54245	0.10555	0.09030	-0.17109	0	0.01025
$1340 < Q_s \leq 2690$	16.94386	0.11470	0.09030	-0.17109	0	0.01449
$2690 < Q_s \leq 4040$	25.34528	0.12042	0.09030	-0.17109	0	0.01775

DESIGN CATEGORY C. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) ≤ 1.9:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	9.25233	0.06105	0.31937	-0.16181	0	0.01025
$1340 < Q_s \leq 2690$	18.36363	0.06635	0.31937	-0.16181	0	0.01449
$2690 < Q_s \leq 4040$	27.47492	0.06965	0.31937	-0.16181	0	0.01775

DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) ≤ 3.6:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1180$	6.67868	0.06943	0.02582	0	0	0.01025
$1180 < Q_s \leq 2370$	13.21633	0.07546	0.02582	0	0	0.01449
$2370 < Q_s \leq 3550$	19.75398	0.07922	0.02582	0	0	0.01775

DESIGN CATEGORY E. FOR NONHALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.6 MJ/scm:

Y_s = Dilution Flow rate (scm/min) = $(Q_s)(H_T)/3.6$	a	b	c	d	e	f
$14.2 \leq Y_s \leq 1180$	6.67868	0	0	-0.00707	0.02220	0.01025
$1180 < Y_s \leq 2370$	13.21633	0	0	-0.00707	0.02412	0.01449
$2370 < Y_s \leq 3550$	19.75398	0	0	-0.00707	0.02533	0.01775

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(ii) Where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is less than 14.2 scm/min:

TRE = TRE index value.
Q_s = 14.2 scm/min.
H_T = (FLOW)(HVAL)/14.2.

Where the following inputs are used:

FLOW = Vent stream flow rate (scm/min), at a standard temperature of 20 °C.
HVAL = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of Q_s.
Y_s = 14.2 scm/min for all vent stream categories listed in Table 1 except for Category E vent streams, where $Y_s = (14.2)(H_T)/3.6$.
E_{TOC} = Hourly emissions of TOC reported in kg/hr.
a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) The equation for calculating the TRE index value of a vent stream controlled by a flare is as follows:

$$TRE = \frac{1}{E_{TOC}}\left[a\left(Q_s\right)+b\left(Q_s\right)^{e}+c\left(Q_s\right)\left(H_T\right)+d\left(E_{TOC}\right)+e\right]$$

where:

TRE = TRE index value.
E_{TOC} = Hourly emission rate of TOC reported in kg/hr.
Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C.
H_T = Vent stream net heating value (MJ/scm) where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of Q_s.
a, b, c, d, and e are coefficients.

The set of coefficients that apply to a vent stream shall be obtained from Table 2.

TABLE 2.—AIR OXIDATION PROCESSES NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE

	a	b	c	d	e
H_T < 11.2 MJ/scm	2.25	0.288	−0.193	−0.0051	2.08
H_T > 11.2 MJ/scm	0.309	0.619	−0.0043	−0.0034	2.08

(f) Each owner or operator of an affected facility seeking to comply with § 60.610(c) or § 60.612(c) shall recalculate the TRE index value for that affected facility whenever process changes are made. Some examples of process changes are changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. The TRE index value shall be recalculated based on test data, or on best engineering estimates of the effects of the change to the recovery system.

(1) Where the recalculated TRE index value is less than or equal to 1.0, the owner or operator shall notify the Administrator within 1 week of the recalculation and shall conduct a performance test according to the methods and procedures required by § 60.614 to determine compliance with § 60.612(a). Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(2) Where the initial TRE index value is greater than 4.0 and the recalculated TRE index value is less than or equal to 4.0, but greater than 1.0, the owner or operator shall conduct a performance test in accordance with § 60.8 and § 60.614 and shall comply with § 60.613, § 60.614, and § 60.615. Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

§ 60.615 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.612 shall notify the Administrator of the specific provisions of § 60.612 (§ 60.612 (a) (b), or (c)) with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.612 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.614 within 180 days.

(b) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 60.8. Where a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to comply with § 60.612(a), a report containing performance test data need not be submitted, but a report containing the information of § 60.615(b)(2)(i) is required. The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a control device, outlet concentration of TOC, or the TRE index value of a vent stream from a recovery system is determined.

(1) Where an owner or operator subject to this subpart seeks to demonstrate compliance with § 60.612(a) through use of either a thermal or catalytic incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured at least every 15 minutes and averaged over the same time period of the performance testing, and

(ii) The percent reduction of TOC determined as specified in § 60.614(b) achieved by the incinerator, or the concentration of TOC (ppmv, by compound) determined as specified in § 60.614(b) at the outlet of the control device on a dry basis corrected to 3 percent oxygen.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.612(a) through use of a boiler or process heater:

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(3) Where an owner or operator subject to the provisions of this subpart seeks to comply with § 60.612(b) through the use of a smokeless flare, flare design (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(4) Where an owner or operator seeks to demonstrate compliance with § 60.612(c):

(i) Where an absorber is the final recovery device in a recovery system, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average exit temperature of the absorbing liquid, measured at least every 15 minutes and averaged over the same time period of the performance testing (both measured while the vent stream is normally routed and constituted), or

(ii) Where a condenser is the final recovery device in a recovery system, the average exit (product side) temperature, measured at least every 15 minutes and average over the same time period of the performance testing while the vent stream is normally routed and constituted.

(iii) Where a carbon adsorber is the final recovery device in a recovery system, the total steam mass flow measured at least every 15 minutes and averaged over the same time period of the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s), and duration of the carbon bed steaming cycle (all measured while the vent stream is normally routed and constituted), or

(iv) As an alternative to § 60.615(b)(4)(i), (ii) or (iii), the concentration level or reading indicated by the organic monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream.

(c) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.613(a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where a combustion device is used by an owner or operator seeking to demonstrate compliance with § 60.612(a) or (c), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (50°F) below the average combustion temperature during the most recent performance test at which compliance with § 60.612(a) was determined.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance with § 60.612(a) was determined. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance with § 60.612(a) was determined.

(3) All 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.612(a) was determined for boilers or process heaters with a design heat input capacity of less than 44 MW (150 million Btu/hr).

(4) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.612(a).

(d) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flow indication specified under § 60.613(a)(2), § 60.613(b)(2), and § 60.613(c)(1), as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device or has no flow rate.

(e) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 MW or greater to comply with § 60.612(a) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements).

(f) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified in § 60.613(b), as well as up-to-date, readily accessible records of all periods of operations in which the pilot flame is absent.

(g) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.613(c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where the owner or operator seeks to demonstrate compliance with § 60.612(c), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final recovery device in a recovery system, and where an organic monitoring device is not used:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, or

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1

unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter, which is a measure of the degree of absorbing liquid saturation, is approved by the Administrator, in which case he or she will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) When a condenser is the final recovery device in a recovery system, and where an organic monitoring device is not used, all 3-hour periods of operation during which the average exit (product side) condenser operating temperature was more than 6 °C (11 °F) above the average exit (product side) operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final recovery device in a recovery system and where an organic monitoring device is not used:

(i) All carbon bed regeneration cycles during which the total mass steam flow was more than 10 percent below the total mass steam flow during the most recent performance test, or

(ii) All carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration (and after completion of any cooling cycle(s)) was more than 10 percent greater than the carbon bed temperature (in degrees Celsius) during the most recent performance test.

(4) Where an absorber, condenser, or carbon adsorber is the final recovery device in the recovery system and an organic monitoring device approved by the Administrator is used, all 3-hour periods of operation during which the average concentration level or reading of organic compounds in the exhaust gases is more than 20 percent greater than the exhaust gas organic compound concentration level or reading measured by the monitoring device during the most recent performance test.

(h) Each owner or operator subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.612(c) shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of recovery equipment or air oxidation reactors;

(2) Any recalculation of the TRE index value performed pursuant to § 60.614(f);

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.614(d).

(i) Each owner and operator subject to the provisions of this subpart is exempt from the quarterly reporting requirements contained in § 60.7(c) of the General Provisions.

(j) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the requirements of § 60.612 shall submit to the Administrator semiannual reports of the following information. The initial report shall be submitted within 6 months after the initial start-up-date.

(1) Exceedances of monitored parameters recorded under § 60.615(c) and (g).

(2) All periods recorded under § 60.615(d) when the vent stream is diverted from the control device or has no flow rate.

(3) All periods recorded under § 60.615(e) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.615(f) in which the pilot flame of the flare was absent.

(5) Any recalculation of the TRE index value, as recorded under § 60.615(h).

(k) The requirements of § 60.615(j) remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with § 60.615(j), provided that they comply with the requirements established by the State.

(l) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility seeks to demonstrate compliance with the standards specified under § 60.612 other than as provided under § 60.613 (a), (b), (c), and (d).

§ 60.616 Reconstruction.

For purposes of this subpart "fixed capital cost of the new components," as used in § 60.15, includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following October 21, 1983. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

(Approved by OMB under the control number 2060-0053)

§ 60.617 Chemicals affected by subpart III.

Chemical name	CAS No.*
Acetaldehyde	75-07-0
Acetic acid	64-19-7
Acetone	67-64-1
Acetonitrile	75-05-8
Acetophenone	98-86-2
Acrolein	107-02-8
Acrylic acid	79-10-7
Acrylonitrile	107-13-1
Anthraquinone	84-65-1
Benzaldehyde	100-52-7
Benzoic acid, tech	65-85-0
1,3-Butadiene	106-99-0
p-t-Butyl benzoic acid	98-73-7
N-Butyric acid	107-92-6
Crotonic acid	3724-65-0
Cumene hydroperoxide	80-15-9
Cyclohexanol	108-93-0
Cyclohexanone	108-94-1
Dimethyl terephthalate	120-61-6
Ethylene dichloride	107-06-2
Ethylene oxide	75-21-8
Formaldehyde	50-00-0
Formic acid	64-18-6
Glyoxal	107-22-2
Hydrogen cyanide	74-90-8
Isobutyric acid	79-31-2
Isophthalic acid	121-91-5
Maleic anhydride	108-31-6
Methyl ethyl ketone	78-93-3
a-Methyl styrene	98-83-9
Phenol	108-95-2
Phthalic anhydride	85-44-9
Propionic acid	79-09-4
Propylene oxide	75-56-9
Styrene	100-42-5
Terephthalic acid	100-21-0

*CAS numbers refer to the Chemical Abstracts Registry numbers assigned to specific chemicals, isomers, or mixtures of chemicals. Some isomers or mixtures that are covered by the standards do not have CAS numbers assigned to them. The standards apply to all of the chemicals listed, whether CAS numbers have been assigned or not.

§ 60.618 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 60.613(e).

[FR Doc. 90-14263 Filed 6-28-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3960-6]

RIN 2060-AA35

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for distillation unit operations in the SOCMI were proposed in the Federal Register on December 30, 1983 (48 FR 57538). On May 10, 1985, the public comment period was reopened (50 FR 20446) for the purpose of allowing public comment on revisions to the affected facility designation and the costing procedures. Today's action promulgates standards of performance for SOCMI distillation unit operations. These standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that VOC emissions from SOCMI cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed distillation facilities to achieve an emission reduction that reflects the capabilities of the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: June 29, 1990. Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of June 29, 1990.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Distillation Operations in Synthetic Organic Chemical Manufacturing Industry—Background Information for Promulgated Standards," EPA-450/3-83-005b. The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the regulation since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A-80-25, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), South Conference Center, room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Debbie Stackhouse, telephone (919) 541-5568 and 5258, respectively, concerning regulatory decisions. Mr. Robert E. Rosensteel or Mr. David A. Beck, telephone (919) 541-5606 and 5421, respectively, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under section 111 of the CAA reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, and reconstructed distillation facilities within the SOCMI. The standards apply to distillation facilities operating as part of a process unit which produces any of the chemicals listed in section 60.667 as a product. The definition of "process unit" and "product" is discussed below in the section entitled: *Significant Comments and Changes to the Proposed Standards.* The affected facility is designated as a single distillation column with its own individual recovery system (if any) or the combination of two or more distillation columns and the common recovery system they share. A recovery system consists of any device, or devices, capable of and used for the purpose of recovering chemicals for use, reuse, or sale and may include both primary and secondary recovery devices. Some examples of recovery devices are absorbers, adsorbers, and condensers as well as certain devices that recover non-VOC's, such as ammonia and hydrogen chloride recovery units. The designation of affected facility has been changed since the proposed regulation, where an affected facility was designated as a single distillation unit and associated recovery system. Reasons for the change are given in the section below entitled: *Significant Comments and Changes to the Proposed Standards.*

Construction, reconstruction or modification of the affected facility must have begun after December 30, 1983, for the standards to be applicable. Existing facilities are not subject to the standards unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15.

Distillation facilities operating as part of a process unit which produces coal tar or beverage alcohols, or which uses, contains, or produces no VOC are not affected facilities. Any distillation facility that is part of a process unit that has a total design production capacity less than one Gg/yr for the entire process unit has to meet the requirements in paragraphs (j), (l)(6), and (n) of § 60.665 only. Any distillation facility operated with a maximum vent stream flow rate less than 0.008 m^3/min has to meet the requirements in § 60.664(g) and paragraphs (i), (l)(5), and (o) of § 60.665 only. Any distillation facility operating as part of a polymer manufacturing process that is subject to the provisions of the polymer manufacturing new source performance standards (NSPS) (subpart DDD) is not subject to these standards. Any distillation facility that is designed and operated as a batch operation is exempt from the distillation operation NSPS.

The standards include emission reduction requirements and/or emission limits which are based on the emission reduction capabilities of the BDT. However, the standards do not require that a specific device or technology be used for those facilities that must comply with the emission reduction requirements. Rather, any control technology other than recovery devices as defined in the standards can be used as long as it can be demonstrated that it is at least as effective as BDT at reducing VOC emissions.

Due to variations in the vent stream characteristics of flow rate, heat content, and concentration of organic compounds, the total cost of control per unit of VOC removed would vary considerably among the different types of distillation facilities. The Administrator has determined that for some distillation facilities, the cost of control per unit of VOC reduced is unreasonably high. Thus, the designation of BDT by the Administrator has two aspects. First, for facilities that can reduce VOC emissions at a reasonable cost, BDT is the reduction of VOC emissions by 98 weight-percent or to 20 ppmv through the use of a thermal incinerator or a flare. For facilities that cannot reduce VOC emissions at a reasonable cost, BDT is no additional control.

To identify those facilities for which implementation of the emission reduction requirements would be unreasonably costly, a means of measuring the total cost to control VOC emissions from distillation facilities was developed. This means of measuring the cost to control is called the total resource effectiveness (TRE) index. Using the TRE approach, the standards would require each owner or operator of an affected facility with a TRE less than 1.0 to either reduce process vent stream VOC emissions by 98 weight-percent or to 20 ppmv by a method other than additional product recovery, whichever is less stringent, or for facilities with a TRE index greater than 1.0 to consistently maintain a value greater than 1.0.

Equations are included in the regulation for determining the TRE index of a vent stream from an affected facility. The process vent stream flow rate, total organic compound emission rate, net heating value, and corrosion properties (whether or not halogenated compounds are present) must be determined according to the specified Reference Methods in order to calculate the TRE index. These vent stream characteristics would be determined for the vent stream following the last recovery device (e.g., condenser, absorber, carbon adsorber).

The structure of the standards allows an affected facility with a TRE index value of less than 1.0 to add a recovery device or improve the existing recovery system efficiency so that the TRE value would increase above 1.0 and, therefore, emissions would not have to be reduced by 98 weight-percent or to 20 ppmv. Increased recovery efficiency for this purpose would have the advantages of achieving additional emission reductions, less energy usage, lower costs and increased recovery of compounds or increased retention of products. The additional emission reduction could be as much as 30 percent more than current industry practice.

If a boiler or process heater were used to comply with the percent reduction or emission limit, the standards also would require that the distillation vent stream be introduced in the flame zone of the boiler or process heater. If a boiler or process heater were used to comply with the standards, the owner or operator would be required to monitor and record continuously the vent stream flow (using a flow indicator as described later) to the device and the firebox operating temperature. For boilers or process heaters of 44 MW (150 million Btu/hr) design heat input capacity or greater, no temperature monitoring is required but records (such as steam production records) would be required which would verify the periods of operation of the heat generating unit.

A steam-assisted flare, an air-assisted flare, and a flare with no assist are considered to be capable of achieving 98 weight-percent emission reduction and may be used to meet the standards, provided that the flares are operated in accordance with the requirements in 40 CFR 60.18. Each owner or operator complying with the standards by using a smokeless flare would be required to monitor continuously the presence of the pilot flame. Ultra-violet beam sensors or thermocouples are acceptable for this purpose. A flow indicator would also be required that provides a record of vent stream flow to the flare.

Each owner or operator complying with the standards by using an incinerator would be required to monitor continuously and record the firebox operating temperature or, if a catalytic oxidizer were used, the temperature before and after the catalyst bed. A vent stream flow indicator is also required for each affected facility and must be installed as close to the combustion device as possible but immediately before that vent stream is joined with any vent stream not part of the affected facility. Records of vent stream flow must be maintained. If the emission reduction requirements were achieved by other means, the owner or operator would be required to provide information describing the operation of the control device and the parameter(s) that indicate proper operation and maintenance of the device so that the enforcing agency could specify appropriate monitoring requirements.

Each owner or operator who complies with the standards by maintaining a vent stream TRE index value above 1.0 would be required to monitor continuously and record specified operating parameters of the final piece of recovery equipment to ensure this TRE is consistently maintained. Operating parameters are established during the initial (or most recent) performance test when VOC concentration is measured. Subsequent monitoring of these parameters is done to determine if their values have deviated from the values measured during the performance test. Depending on what the final recovery device is, the specified operating parameters are condenser exit (product side) operating temperature; absorber liquid temperature; specific gravity (or an alternative measure of absorbing liquid saturation, if approved by the enforcing agency); carbon adsorption bed temperature (after regeneration and completion of any cooling cycle(s)); and the mass flow rate of carbon bed regeneration steam. The owner or operator would also be required to maintain records of changes in production capacity; feedstock identity, catalyst identity; or of replacement, removal, or addition of recovery equipment. When any such change takes place, the owner or operator of the facility is required to recalculate the TRE index value to document that the facility continues to have a TRE index value above 1.0. Such recalculation can be based on test data reflecting the changes in the system, or best engineering estimates of the effects of the changes. If the recalculated TRE index for the facility is less than 1.0, the owner or operator would have to demonstrate compliance with the 98 weight-percent reduction or 20 ppmv emission limit within 180 days from the time of process change. Prior notice of any performance testing shall be given to EPA as required by the General Provisions of 40 CFR part 60. Performance testing may also be required on a case-by-case basis by the Administrator following any change to the recovery system in order to verify the status of the TRE index value for the facility.

The standards require that records of the operating parameters discussed above be maintained to ensure the proper operation and maintenance of combustion control equipment and recovery equipment used to reduce VOC emissions. Furthermore, records of instances where these monitored values exceed allowable limitations established during the most recent performance test must be maintained. In addition to maintaining these records, an owner or operator must submit a semiannual report of the recorded exceedances. The requirement of semiannual reporting may be waived for affected facilities in States that have been delegated authority for enforcement provided EPA approves the reporting requirements or alternative means of compliance surveillance adopted by the State and the affected facilities comply with the requirements established by the State.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts associated with the standards were projected by using a statistical representation of the industry's vent stream characteristics at existing plants. These characteristics include process vent stream flow rate, net heating value, total organic compound emission rate, and corrosion properties (presence or absence of halogenated compounds). It was assumed that the national distribution of these characteristics for new sources would be the same as the distribution for existing sources. In analyzing regulatory alternatives it was assumed that for all new, modified, and reconstructed facilities with a TRE index less than 1.0 either a flare or an incinerator would be applied to all nonhalogenated vent streams to meet the 98 weight-percent emission reduction requirement or 20 ppmv emission limit. Flaring and incineration were determined to be effective control devices that are universally applicable to all SOCMI distillation vent streams that do not contain halogenated compounds. In estimating the impacts of each alternative for nonhalogenated streams it was assumed that the least expensive of these two devices would be applied to individual vent streams. For distillation vent streams containing halogenated compounds, incineration was determined to be most widely applicable due primarily to the corrosion related problems that may occur if flares were used.

The actual energy, environmental, and economic impacts associated with the distillation NSPS are expected to be less than the impacts estimated here. One reason why these impacts would be lessened is that some facilities would upgrade existing recovery equipment to achieve a TRE index value higher than the cutoff, and, in fact, the standards are structured in such a way that encourages this. Such equipment generally has lower associated costs and energy use. Secondly, some facilities would use other combustion devices, such as boilers, or process heaters which may be less expensive to apply and have a lower net energy consumption than flaring or incineration. A third reason is that some facilities could use existing devices to control emissions and not have to build new devices. The impacts estimated here assumed that new control devices would be built as a result of the standards. Although these factors contribute to the overstatement of the energy, and economic impacts associated with the standards, the degree of overstatement of the impacts cannot be quantified.

Under the standards, it is estimated that 32 percent of all new, modified, or reconstructed distillation facilities would have vent streams with TRE index values under the TRE cutoff of 1.0. If all of these facilities were controlled to 98 weight-percent, the projected national VOC emissions from all new, modified and reconstructed distillation operations would be reduced by an estimated 42,200 Mg/yr. This national VOC reduction would be approximately 82 percent beyond the emission level projected to occur under typical State Implementation Plans (SIP's).

It is projected that in the absence of the standards, uncontrolled VOC emissions would be reduced an average of 81 percent by State regulations. Eighty-one percent represents a weighted average of the regulations in States where new sources are projected to be built. The actual control required would vary considerably from State to State. Therefore, the impacts for individual plants would vary depending on the State where the affected facility is located.

Any increase in emissions of other air pollutants as a result of controlling VOC emissions would be negligible. There would be no direct solid waste impacts under the standards, and impacts on noise, space requirements, and availability of resources would be negligible.

No significant increase in total plant wastewater effluent is projected under the standard. There is no organic wastewater effluent associated with combustion devices themselves. Some facilities which may have a slight increase in wastewater are those which might choose to upgrade or add recovery devices to acheive a TRE above the 1.0 cutoff. Absorption and carbon adsorption are the only recovery techniques currently in use in the industry which have an associated organic wastewater effluent. Based on the available data, only a small percentage of distillation chemical manufacturing operations are expected to employ these recovery techniques.

The fifth year energy requirements of the standards would be 600 terajoules per year (T/yr), (286 bbl of fuel oil equivalent/day), which are considered reasonable. The fifth year cost impacts of the standards are also considered reasonable. The fifth year national annualized cost for VOC control would be $9.0 million (1978). The fifth year national capital cost for VOC control would be $15.5 million (1978). As mentioned above, these impacts may be overstated because less costly and less energy intensive VOC reduction methods are likely to be used.

An economic analysis indicated that the costs associated with the standards could be passed on with little or no effect on the profitability of the industry. Projections made by employing process-specific assumptions indicate that the standards would not trigger product price increases in excess of 5 percent of the product price. Most of the chemicals screened (87 percent) would have a maximum price increase of 2 percent or less and 95 percent would have a maximum price increase of 3 percent or less. Finally, there would be no adverse effects on employment because the standards would not appreciably affect the sale or use of chemicals covered by these standards.

The environmental, energy, and cost impacts are discussed in greater detail in the two background information documents for the standards: "Distillation Operations in Synthetic Organic Chemical Manufacturing—Background Information for Proposed Standards" and "Distillation Operations in Synthetic Organic Chemical Manufacturing—Background Information for Promulgated Standards." (EPA–450/3–83–005a and EPA–450/3–83–005b).

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register (47 FR 26453) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the distillation VOC standards recommended for proposal. This meeting was held on July 21–22, 1982. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the Federal Register on December 30, 1983 (48 FR 57538). The preamble to the proposed standards discussed the availability of the BID "Distillation

Operations in Synthetic Organic Chemical Manufacturing" (EPA–450/3–83–006a) which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The proposal notice stated that a public hearing would be held, if requested, to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards. No public hearing was requested. On May 16, 1985, the public comment period was reopened (50 FR 20446) for the purpose of allowing public comment on the results of a reanalysis of the costing procedures, the TRE equations and coefficients which are derived from these costing procedures, and the designation of affected facility. The reanalysis resulted from the acquisition of new information received in public comments and collected since proposal.

Thirty-five comment letters were received concerning issues relative to the proposed standards of performance for distillation operations in the SOCMI. Thirty-four of these were in response to the proposed standards and one was in response to the revisions being considered to the costing procedures, TRE equations, and designation of affected facility. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from 25 industry representatives, one manufacturer of control equipment, one environmental group, and two State and Federal agencies. A detailed discussion of these comments and responses can be found in the BID for the promulgated standards which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions which have been made to the standards between proposal and promulgation.

The major comments and responses are summarized in this preamble. The comments have been divided into the following areas: Designation of Affected Facility; Applicability of the Standards; Selection of Best Demonstrated Technology; Selection of the TRE Cutoff; Costing Revisions; Change in Flare Specifications; and Exemptions.

All comments discussed here have been entered into Docket Number A–80–25. Access to this docket is described in the ADDRESSES section of this preamble.

Designation of Affected Facility

At proposal, the affected facility was designated to be any single distillation unit with its associated recovery system that produces any of the chemicals listed in § 60.667. Other possible designations were identified at proposal and EPA specifically solicited comments concerning the proposed designation of affected facility. A number of commenters from the chemical industry disagreed with the proposed designation of affected facility. The commenters indicated that this designation is unrealistic and not representative of the way distillation units are operated within the industry. According to the commenters, distillation units are often physically linked together and to artificially separate them would be inappropriate. The commenters pointed out that some processes include a series of distillation units that can use a common recovery device. They concluded that in these cases, application of VOC reduction requirements and monitoring methods under the proposed designation of affected facility would be potentially confusing and costly.

The commenters prefer that an affected facility be designated as the recovery system with all associated distillation units. The commenters indicated that this designation would best reflect the way distillation units are used within the industry. Also, ambiguities in monitoring and testing requirements would be minimized when more than one distillation unit is tied to a common recovery system. The commenters stated that this designation would also allow a facility the flexibility to change operating conditions or equipment within a process unit in lieu of adding combustion devices. It was also stated that the flexibility associated with the recommended designation would not result in less environmental benefits compared to the proposed designation. Overall, the commenters felt that this designation would reduce monitoring, control, and hardward costs incurred by affected distillation facilities.

A comment from an environmental group indicated that the designation of affected facility contained in the proposed regulation conforms with the requirements of the CAA in so far as it does not allow two or more distillation units which are joined to a common recovery system to be interpreted as one facility. One commenter from industry is in favor of the designation of affected facility selected by EPA at proposal because the commenter believes the approach will allow for continuous improvement of the air quality.

Based on these comments, the Agency reevaluated the designation of affected facility and presented the results of this reevaluation in the Federal Register on May 16, 1985 (50 FR 20446). Based on those results and the lack of adverse comment on that reevaluation, the designation of affected facility used in the standards has been changed to a single distillation unit that does not vent to a recovery device, a combination of a single unit with its associated recovery system, or the combination of two or more distillation units and the common recovery system to which their vent streams are discharged. For the majority of the industry, this change will have no effect because approximately 80 to 90 percent of the industry's distillation units exist as individual units. However, the effect of the designation change will be seen for the remaining 10 to 20 percent of the distillation units that share recovery devices. This change was not made to provide industry with operating flexibility; rather the new designation is estimated to result in greater emissions reduction. Also, as discussed below, the new designation would facilitate the implementation of the standards because, in some cases, the cost and complexity associated with determining a TRE index value will decrease.

The EPA estimates a greater reduction in national VOC emissions because of the change in the designation of affected facility. Greater reduction in emissions will occur with the new designation because for facilities where the TRE is less then 1.0, emissions from existing distillation units will also be controlled when new units are combined with existing units sharing a common recovery system. The Agency believes that a widespread evasion of the modification provisions would not occur under this designation. For example, a change that would be considered a modification is made to one distillation unit within a group of existing units. In order to avoid a modification, the common recovery system is upgraded so that no emissions increase results. However, operational or physical changes that would be considered modifications are rarely made to individual existing distillation units sharing a recovery device. Instead, it is more likely that new distillation units would be added to an existing group of units resulting in increased emissions.

In the event an owner added a distillation unit to an existing group of units ducted to the same recovery system, it is unlikely the facility could avoid being considered a modification by offsetting the new distillation unit emissions somewhere else within the distillation group. This is because it would likely be technologically infeasible to reduce emissions sufficiently from other distillation units. Although some VOC reductions could occur through upgrading recovery equipment, it is unlikely that this reduction would result in a full offset of the new distillation unit emissions because the increased load on the recovery device (i.e., increase flow and VOC) would make the needed increase in VOC removal efficiency difficult to achieve. Thus, the likely result is that addition of a distillation unit to a group of joined units would bring the entire set under the coverage of the standards as a modified facility. Even though it is unlikely to occur, if the owners or operators of the facility could completely offset emissions from a new distillation unit by upgrading the recovery system, it would be the equivalent of 100 percent VOC control for that new distillation unit. This is 2 percent more than would be necessary if the individual units were designated as affected facilities and 98 weight-percent control were applied to the new unit.

The EPA believes the reconstruction provisions will not be avoided under the broad designation because major physical changes (i.e., reconstruction) to individual distillation units within a group of units rarely occurs within the industry. It is not likely that an owner or operator of an affected facility made up of a group of distillation units could replace one of the units and avoid being considered a reconstruction. Available data show this situation would not arise because the replacement of individual distillation units or pieces of recovery equipment is rare within the industry. This is because distillation units are expensive pieces of equipment which are designed to last a long time (Docket Item No. II–B–13). Moreover, the Agency has concluded that those few replacements which do occur often result from process changes or catastrophic events that would probably require replacement of most of the group of distillation units joined to a single recovery system. These changes would likely amount to a "reconstruction" of the facility as it is defined in these standards. Thus, in the small percentage of cases where distillation unit replacements occur, the facility would most likely fall under the coverage of the standards.

An incidental effect of this change in the affected facility designation is that implementation of the standards would be made significantly easier. When two or more distillation units are joined to a common recovery system, determining a TRE index value is less complex and less costly than under the designation at proposal because fewer test sites are required to measure the vent stream characteristics needed to calculate a TRE index value. Under the designation set forth at proposal of these standards, it was required only that the portion of the combined vent stream contributed by the new, modified, or reconstructed distillation unit comply with the standards when it shares a recovery system with existing units. Therefore, the TRE index value was determined for the portion of the stream contributed by that unit only. This determination was complex and costly and was based upon an apportioning method using sampling sites located just downstream of the new unit and sampling sites located upstream and downstream of the common recovery system. These sampling data were to have been used to determine the overall efficiency of the common recovery system. This efficiency was then to have been applied to the vent stream from the new unit to determine its contribution to the total emissions from the common recovery system.

Under the final designation, the standards require only one sampling site located after the last recovery device to determine a TRE index value. No determination of recovery efficiency is needed because the entire vent stream is covered. Therefore, there is no need to determine which portion of the final vent stream from a group of distillation units is attributable to new, modified, or reconstructed distillation units and which portion is attributable to distillation units that have not been changed or added. This results in a performance test requirement that is less costly and less complex because fewer sampling sites and subsequent analyses are needed.

Applicability of Standards

Several commenters stated that three fertilizer chemicals, urea, urea ammonium nitrate (UAN), and ammonium carbamate should not be covered by the standards. They stated that the production of two of these chemicals does not involve the use of a distillation operation, while urea production uses flash evaporation which may be considered a distillation operation. It was also stated that production of these three chemicals does not result in significant VOC emissions. It was pointed out because of insignificant VOC emissions all affected facilities that produce urea, UAN, or ammonium carbamate would probably comply with the standards by maintaining a TRE index value much greater than 1.0. The reasons given for the expected high TRE index value for all affected facilities producing these chemicals are the current and extensive use of very efficient recovery equipment and the large amounts of fuel enrichment needed for the low heating value vent streams. The commenters stated that compliance based on maintaining a TRE index value above the cutoff would still be costly because of the required monitoring, recordkeeping, reporting, and performance testing. The commenters felt it was unjustified that these compounds be on the SOCMI list only because they are organic chemicals produced in large volume.

Based upon available information, EPA has decided to remove three fertilizer chemicals from the list in § 60.667. Urea, ammonium carbamate, and UAN are no longer listed in the distillation regulation. The distillation NSPS is not applicable to the production of UAN and ammonium carbamate because according to the information available to the Agency, no distillation operations are used to produce these chemicals. Although distillation operations are involved in the production of urea, EPA has removed urea from the list because no VOC emissions are expected to occur during distillation operations involved with urea production. The vent streams from these distillation units consist almost entirely of inert gases (e.g., nitrogen), water, ammonia, and urea particulate. The potential for VOC emissions would exist when formaldehyde based additives (FBA) and/or methanol are added before or during the distillation operation. However, available information indicates that at the majority of urea production facilities, FBA is injected into the product stream after the distillation operation. Therefore, there is no potential for formaldehyde emissions from distillation units within this type of production process. For process units where FBA are injected prior to or during distillation, the only organic emissions expected from the distillation unit would be particulate urea. Any formaldehyde should be completely reacted with urea to form methylenediurea. (Docket Item No. IV–E–14).

No information was available that indicates methanol is added before or during distillation. For these reasons, the Agency has decided to remove urea

from the list of chemicals covered by the final standards.

Several organic chemical and petroleum producers believe the standards should not apply to distillation facilities that do not produce any of the chemicals listed in the regulation as the main product. They said that only listed chemicals produced as products should be covered, while contaminants, by-products, and intermediates should not be included. It was also suggested that the standards should not apply to the recovery of waste or feedstock components. There was a request that EPA clarify whether a facility would be an affected facility if its process stream contains listed chemicals that are either sold, disposed of, used in the production of other chemicals, or recycled. Furthermore, it was suggested that the standards specify a minimum level for quantities of listed chemicals in a process stream that would cause the proposed regulation not to be applicable to distillation facilities that contain listed chemicals only as impurities in a process stream.

The EPA considers it appropriate for the standards to apply to any distillation facility within a process unit producing any of the listed chemicals as a product, by-product, co-product, or intermediate. The standards were developed from data on distillation facilities within process units that produce the chemicals listed in § 60.667 in any of the forms listed above. The cost of controlling emissions from the production of a listed chemical as a by-product, co-product, or intermediate is similar to the cost of controlling emissions from the production of that chemical as a product. Furthermore, the application of the standards to facilities producing any of the listed chemicals was found to be reasonable. Therefore, EPA considers the word product to also represent by-products, co-products, and intermediates. The standards are also applicable to distillation facilities that are used to recover waste or feedstock components as long as the facility is within a process unit producing any of the listed chemicals as a product. The main factor in determining if a listed chemical is produced as a product is the use of the chemcial after the process unit. The EPA considers either of the following downstream uses as indicative of the production of a listed chemical as a product: (1) Produced for sale as that listed chemical, or (2) used in another process where that listed chemical is needed. However, if a listed chemical is only part of a mixed stream exiting a process unit and cannot be sold or used in another process as the listed chemical, then that chemical is not considered to be produced as a product.

The EPA has decided that for the purposes of these standards it is more appropriate to determine applicability according to whether a listed chemical is intended to be produced as a product instead of setting a minimum concentration level of a listed chemical as a means of defining what may constitute production as a "product". It is not feasible to set any one concentration limit for listed chemicals below which the chemical is always an impurity or waste. It is not feasible because the necessary concentration or purity for a listed chemical to be considered a product can vary from site to site. For example, a chemical that is produced as 90 percent pure from one process may only be 80 percent pure to be considered as a product for another process. Therefore, resource requirements for establishing different concentration limits for all of the processes covered by the standards would be prohibitive because of the diversity and complexity of the SOCMI.

Selection of BDT

One commenter stated that catalytic oxidation can be an attractive alternative to thermal incineration. He indicated that although catalytic oxidation can be designed for high VOC reduction efficiencies, economic factors dictate whether these levels are practical. The commenter added that the 98 percent reduction efficiencies associated with the proposed standards would possibly require the use of uneconomically large catalyst volumes in catalytic incinerators or require the use of thermal incinerators. The commenter pointed out that 98 percent reduction efficiency may not result in a measurable improvement in the environment over the case of catalytic oxidation at an efficiency slightly lower than 98 percent. Furthermore, the use of thermal incineration may potentially entail the following detrimental effects: (a) A higher energy usage by the affected facilities; (b) an increase in NO_x emissions from the affected facilities using thermal incineration; and (c) a decrease in the international competitive position of domestic chemical producers with respect to foreign competition.

Another commenter suggested that those distillation facilities with vent streams above the TRE cutoff be considered for the applicability of emission reduction techniques other than flaring or incineration. A suggestion was made that technologies such as catalytic oxidation and carbon adsorption which involve lower costs and energy requirements than flaring or incineration be evaluated for application to distillation facilities determined to have cost-effectiveness values above the cutoff. It was pointed out that although the emission reduction capabilities of catalytic oxidizers and recovery devices are not consistently as great as combustion, further emissions reductions could be achieved using these relatively low cost devices.

The EPA has determined that where catalytic oxidation units are applicable, they are capable of achieving 98 weight-percent reduction efficiency. However, catalytic oxidation for VOC emissions reduction has not been demonstrated to be universally applicable for all distillation process vent streams, and we cannot subcategorize facilities that can use catalytic oxidation on the basis of available information. Therefore, the costs of catalytic oxidation were not evaluated by the Agency. Catalytic oxidizers are limited by their inability to handle streams with high heating values because deactivation of the catalyst occurs at high temperatures. Catalysts can also be deactivated by compounds present in some waste streams, such as arsenic, sulfur, mercury, lead, zinc or tin.

The Agency did evaluate two control techniques universally applicable within the industry, thermal incineration and flaring. The Agency examined emissions data from incinerators already operating within the industry, as well as incinerator and flare tests conducted by the Agency and by chemical companies. All the new, well-operated incinerators and flares were found to achieve 98 percent reduction efficiency. From the available data the Agency determined many facilities could achieve 98 percent reduction efficiency at a reasonable cost using thermal incineration and flaring. The Agency has bounded the cost impacts associated with combustion devices by costing the most expensive devices: thermal incinerators and flares. Costs associated with these devices were found to be reasonable for facilities with TRE index values less than 1.0. Therefore, if a stream does exist whose constituents are such that a catalytic oxidizer is not applicable or not economical, a flare or thermal incinerator can be used.

The commenter is particularly concerned that EPA, by not allowing catalytic incinerators to substitute for thermal incinerators, will create a competitive disadvantage for U.S. plants vis-a-vis foreign competition. However, the Agency is not preventing the use of catalytic incinerators. They may be used if the emission reduction requirements are satisfied. Furthermore, if an owner or operator chooses to use a thermal incinerator, no economic disadvantage should be created vis-a-vis foreign competition. Using reasonable control estimates, chemical price increases are expected to range from about 0 to about 4 percent.

The energy and environmental effects mentioned were considered in selecting thermal incineration as one of the control techniques upon which the impacts of the standards are based. The energy consumption and cost associated with thermal incineration were considered and found to be reasonable because these can be offset by the use of recuperative heat exchangers. The potential for increased NO_x emissions was also examined, but the rate of NO_x formation is expected to be low due to relatively low combustion temperatures and relatively short residence times associated with thermal incineration.

With respect to the suggestion of evaluating other techniques for use on facilities above the TRE cutoff, EPA is unable with available information to identify subcategories of distillation operations for which other VOC control techniques, such as catalytic oxidation and carbon adsorption, have been demonstrated to always apply. The applicability and effectiveness of these devices may be affected greatly by the vent stream flow rate, water content, temperature, VOC concentration, and VOC properties such as solubility, molecular weight, and liquid/vapor equilibrium. These characteristics vary widely within the SOCMI. Therefore, consideration of these devices in developing regulatory options was not feasible. Even with greater resources, this analysis would be infeasible because it would require a stream-by-stream characterization, ultimately resulting in the need to create a separate standard for each distillation facility within a process unit used to produce a listed chemical. The number of standards required to regulate the same number of sources would increase significantly. The Agency believes that such an approach to regulating the SOCMI distillation industry would be administratively infeasible and therefore environmentally counterproductive. In any event, as the commenter recognizes, proceeding now with this generic regulation based on thermal incineration and flaring at least represents an important first step in regulating distillation emissions and does not preclude later regulation of subcategories of distillation facilities should that become feasible. The EPA believes it has the authority to take this step by step approach under section 111. *See, e.g., Group Against Smog and Pollution* v. *EPA*, 665 F.2d 1284. (D.C. Cir 1981).

Selection of the TRE Cutoff

Both an environmental group and industry commenters indicated that the $1,900/Mg (1978$) cutoff is unreasonable. The environmental group requested that the cutoff level be raised in order to cover a greater number of sources and a greater quantity of emissions. This recommendation is based on the commenter's perception that the inclusion of a greater number of sources would reduce public exposure to pollutants emitted by distillation facilities, including potentially hazardous pollutants. The environmental group requested that the cutoff be set at the point of diminishing returns, i.e., where cost effectiveness at individual facilities starts to sharply increase in relation to the amount of reduction in national emissions. The commenter stated that this rationale has not been applied for this NSPS in selecting the cutoff.

An industry representative considers the cutoff too high and stated that it is not adequately justified by the Agency. The commenter stated because EPA has greatly underestimated the total installed capital cost and the annual operating costs of control devices, the cutoff of $1,900/Mg for VOC abatement is understated. The commenter also contended that the cutoff exceeds the $1,000/Mg limit used in most other NSPS and suggested that a $500/Mg cutoff is more than adequate to secure all meaningful reductions. The commenter stated that a plot of the data from the proposed regulation shows a point of sharply diminished national VOC emission reduction in the $200 to $600/Mg range with essentially no additional reduction in emissions achieved at any cost above that range.

The same commenter asserted that the $1,900/Mg cutoff cannot be justified based on the presence of toxic constituents in the vent streams from distillation facilities. The commenter pointed out that control of toxic pollutants is the objective of standards developed under section 112 of the CAA (national emission standards for hazardous air pollutants (NESHAP)) and not standards such as these which are being proposed pursuant to section 111 of the Act (NSPS). The commenter also stated that the Agency has not adequately demonstrated that the presence of toxic pollutants in the emissions from distillation facilities are sufficiently different from the emissions from other VOC sources to justify a special consideration of their hazards.

Several commenters indicated that EPA had used the same $1,900/Mg cutoff in the recently proposed air oxidation NSPS. They suggested this figure results from an EPA policy decision, not from a specific evaluation of the costs and impacts associated with the distillation NSPS.

The EPA believes that its decision to consider cost effectiveness as one indication of cost when determining the cutoff for applying the percent reduction standards reflects a reasonable interpretation of section 111 of the CAA. In analyzing the question of whether the consideration of cost effectiveness is appropriate, EPA looked to see whether Congress had "directly spoken to the precise question." *Chevron, U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 104 S.Ct. 2778, 2782 (1984). Section 111 requires EPA to promulgate NSPS limiting emissions to the level that reflects the best system of emission reduction "which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." Section 111(a)(1). Nothing in either section 111 or elsewhere in the Act defines "the cost of achieving such emission reduction." The plain meaning of the phrase, however, is quite broad. This indicates that Congress implicitly delegated to EPA the authority to interpret the phrase to encompass a range of impacts, including costs of control in relation to the emission reductions achieved. Further, Congress did not specify any particular manner in which EPA was to take these costs "into consideration." Thus, absent a clear Congressional direction to the contrary discernible from the Act's history, *Chevron*, 104 S.Ct. at 2783, section 111 gives EPA authority to reject NSPS control options on the ground that their costs are unreasonably high in light of the emission reductions they achieve.

The EPA has reviewed the legislative history of section 111 and concluded that no contrary intent is discernible. Most important, the history contains no express repudiation of the use of cost effectiveness as one mechanism in considering costs when setting an NSPS.

For these reasons, EPA believes that Congress implicitly delegated the Agency the authority to decide how best to "take into consideration * * * cost" in setting NSPS and, if the Agency concluded it was appropriate, to consider cost effectiveness.

Further, in *Portland Cement Association* v. *Train*, 513 F.2d 506, 508 (D.C. Cir 1975), *cert. denied*, 416 U.S. 1025 (1975) ("Portland II"), the Court

stated that EPA may reject control options that result in a "gross disproportion between achievable reduction in emissions and cost of the control technique." Since the purpose of cost effectiveness analysis is to highlight such disproportion, this passage supports EPA's approach.

In selecting cutoffs related to applicability of NSPS, EPA looks at a variety of factors including: (1) The technical feasibility of additional control; (2) the economic feasibility associated with different control alternatives; (3) the magnitude of emission reductions associated with a control alternative (e.g., a slightly higher cutoff could be selected if it led to a substantial increase in the emission reduction achieved by the NSPS); (4) the cost effectiveness (C/E) of the control alternative in terms of annual cost per megagram ($/Mg) of emissions reduced; (5) the quality of the cost estimates (e.g., worst case versus realistic estimates); (6) potential reductions in other air pollutants not specifically regulated by the NSPS resulting from a control alternative; and (7) the location of the sources (e.g., urban versus rural). Because these factors vary from industry to industry and, in some cases, within the same industry, decisions on the appropriate level of control are made on a category by category basis.

In evaluating the above factors, EPA found that the following considerations were key to the selection of the appropriate cutoff for SOCMI distillation operations: (1) The cost effectiveness of NSPS for VOC emissions previously promulgated by EPA; (2) the fact that distillation vent streams contain compounds that are considered potentially toxic by EPA and that many of the facilities are located in urban areas; and (3) the likelihood that these maximum costs will not be incurred by industry.

A survey of the VOC standards for other source categories shows that the cost effectiveness of those control requirements has sometimes ranged as high as $2,000/Mg. (See Docket Item No. IV–B–17.) The Agency's experience in implementing these standards reveals that NSPS requiring this level of control have proved a useful tool in bringing about the installation of much emissions control technology, significant reductions in emissions, and corresponding improvements in air quality, yet have not imposed costs that appear "grossly disproportionate" to the emission reduction achieved. *Portland II*, 513 F.2d at 508. Such an approach simply makes this NSPS consistent (as to dollars spent per metric ton of VOC removed) with the existing body of NSPS regulations, all of which have either been promulgated without legal challenge or have been judicially upheld.

EPA also considered evidence that distillation streams include compounds that may be toxic.[1] Although that evidence has not yet resulted in a determination that those compounds should be listed as hazardous under Section 112, EPA considered this potential toxicity along with other relevant factors when choosing the cutoff. As stated in EPA's Air Toxics Strategy published in July 1985, the Agency will consider the likely toxic pollutant control benefits in the course of carrying out its responsibilities under Section 111. This strategy reduces emissions of potentially toxic compounds from new sources and from industries as their facilities are reconstructed or modified. This approach achieves significant reductions in these compounds of concern while the Agency evaluates them for regulation under section 112. The Agency disagrees with the argument that EPA has no authority to do this. The EPA is not attempting here to regulate streams based on a decision that they contain hazardous air pollutants within the meaning of section 112. Rather, the Agency is simply considering all available evidence within the framework of section 111. Section 111 does not attempt to restrict EPA's discretion to consider all relevant factors in making that decision, and certainly the potential toxicity of a stream is relevant to the control requirement selected. Many SOCMI facilities are located in urban areas and, as a result, many people will be exposed to any hazardous air pollutants emitted from these facilities.

A third consideration in setting the cutoff at $1,900/Mg is the likelihood that no facility will actually have to incur the costs implied by that cutoff. The reasons are: (a) Less expensive control systems may be used, thus reducing the costs and cost effectiveness incurred by individual facilities; (b) the cost estimates for thermal incinerators and natural gas prices are overstated; and (c) the inherent flexibility within the regulation encourages the use of product recovery modifications that will significantly reduce the cost incurred by individual facilities that may have otherwise had to add a combustion device. The regulatory analysis assumes that each distillation operation process vent would have its own combustion device and would need separate ducting and support structures. It is expected, however, that some operations will share control systems with other process vents. The analysis also assumes that incinerators or flares will be used to reduce VOC emissions by 98 weight-percent. However, many facilities will opt to use boilers, process heaters or catalytic oxidizers. When these devices are used, the cost of control will be significantly reduced over the cost of thermal incineration. Data on current capital costs of thermal incinerators indicate that units are now available at substantially reduced costs compared to the costs used in developing these standards. Lower capital costs would reduce the annualized costs estimates, also, but not as significantly. This is an important consideration in selecting the appropriate cost-effectiveness cutoff. Another consideration is the fact that natural gas prices used to calculate the cost effectiveness for each stream are overstated by about 40 percent, even though they were updated after proposal (see following section on "Costing Revisions"). These conservative assumptions have resulted in higher cost and cost-effectiveness estimates than will actually occur. Finally, the standard encourages pollution prevention by not requiring 98 weight-percent reduction if a TRE index greater than 1.0 is maintained. The EPA believes that many facilities having a TRE index just below the 1.0 cutoff (equivalent to $1,900/Mg) will upgrade product recovery to reduce VOC and raise their TRE index above 1.0. This will significantly reduce the cost of control incurred by the industry while reducing emissions and will also minimize the national energy impacts. A preliminary examination of the national statistical profile shows that because many facilities have the potential to reduce VOC emissions sufficiently to raise their TRE values above 1.0, the highest cost effectiveness that a facility will actually incur as a result of installing a combustion device is estimated to be approximately $1,400/Mg.

The EPA believes that this process reflects a reasoned interpretation of the phrase "taking into consideration the cost of achieving such emission reduction," especially given the lack of clear Congressional guidance. The commenters' arguments that EPA should have selected either a higher cutoff to provide for a greater degree of protection of the public health, or a lower cutoff because most VOC standards have lower costs in relation to the resulting emission reduction, fail to provide a more reasoned methodology for selecting the appropriate level. Instead, they merely reflect each of the competing goals reflected in Section 111's history, as described above.

Consideration of all of the above factors confirmed EPA's belief that a TRE value of 1.0 (i.e., $1,900/Mg) represents an appropriate cutoff for determining which facilities must reduce VOC emissions by 98 weight-percent or to 20 ppmv. The cutoff is specific to the SOCMI distillation operations source category and would not necessarily be appropriate for other source categories; therefore, it should not be viewed as a benchmark for other standards. It is not surprising, however, that the cost-effectiveness cutoff for distillation would be the same as for the air oxidation NSPS for a number of reasons. First, the same pollutant, (i.e., VOC) is being regulated. Second, the same general class of VOC emitters (i.e., SOCMI) and similar types of process equipment (e.g., recovery equipment) are affected. Third, the same types of control techniques are applicable.

Costing Revisions

Several commenters from industry objected to the costing assumptions used in development of the standards. They stated that both the total installed capital cost and annualized costs for combusting VOC were greatly underestimated thus causing the TRE cutoff to be understated. Most comments pertained to flares. The following are some of the major equipment cost items identified as being either overlooked or not adequately treated by EPA: (a) A new pipe support system (pipe rack); (b) provision of steam, natural gas, and electrical services to the flares; (c) a TV camera and monitor to observe flare operations for smoke; and (d) an inadequate design basis for the flare height (maximum ground level heat intensity). Some of the major operating and maintenance components that industry identified as being either overlooked or not adequately treated by EPA included the following: (a) General plant overhead; (b) engineering and environmental costs; and (c) labor, supervision, and maintenance related costs.

The EPA reevaluated all costing assumptions (see Docket Items IV–B–7 and IV–B–8) and revised them where it was justified. For example, the cost of a new pipe rack was added that is appropriate for use in routing flare services (e.g., electrical, gas and steam services) and the vent stream to the base of the control device. However, the pipe bridge cost recommended by industry was not used because it was found to be unrealistically high for servicing a single affected facility. The pipe bridge cost recommended by industry corresponded to a heavy-duty system capable of supporting many pipes from many process units and not just those pipes associated with the affected facility. In addition to the pipe rack, other costs such as those associated with bringing services such as gas and steam up to the flare were added. Based on recommendations from industry, the maximum ground level heat intensity for flares was adjusted from the original value used. This change had little effect on costs and resulted in increased flare heights in some cases; but in most cases, the flare height did not change from the height determined with the original heat intensity.

Some equipment additions recommended by industry were not included. For example, a TV camera and monitor were not included in the flare costing algorithms because they were judged to be unnecessary for ensuring the proper operation and maintenance of a flare. The EPA determined that the monitoring requirements in the regulation can be satisfied without the use of a TV camera and ancillary equipment. Constant temperature readings of a flare thermocouple are acceptable for monitoring the flare.

In reviewing costs, several equipment cost assumptions were changed that were not requested by industry. For example, changes were made in the length of duct needed to route a vent stream from the facility to a flare or incinerator. The original estimates of duct lengths were derived from information received from the chemical industry and were based on distances from existing distillation units to the nearest combustion devices. However, EPA determined that a new combustion device dedicated to a continuous flow vent stream at new plants would be necessary for some facilities covered by the standard. Since use of a new combustion device at a new plant should be the basis of costing, duct length criteria should be based on the most probable location of a new combustion device. This device is expected to be located as close to the process unit as possible but far enough away to provide safety. The length of ducting included in the revised design criteria (200 feet for an incinerator and 300 feet for a flare) is based on insurance underwriter recommendations for locating open and enclosed combustion sources at a safe distance from process equipment.

The Agency also reviewed, and where appropriate, revised the operating and maintenance costs for flaring and incineration. The cost for labor involved with operation and maintenance was adjusted along with the cost for supervisory labor. Changes were also made in the overhead costs and engineering costs. The net heating value of natural gas used as a supplemental fuel was also modified and the new flare specifications, as discussed below, were incorporated into the costing algorithms. The cost of natural gas was also revised to take into account: (1) Regional variations in gas price, and (2) the projected effects of natural gas deregulation. However, due to a slower than anticipated rate of price increase the revised cost of natural gas is overstated by about 40 percent.

Change in Flare Specifications

A number of commenters from industry consider the flare specifications at proposal to be too restrictive. Commenters indicated that the proposed flare specifications would have a severe economic impact on some existing facilities that would be covered by these standards. This is because these plants already use flares designed and operated at velocities considerably higher than 60 ft/sec maximum exit velocity specification. The commenters stated that the exit velocity limitation of 60 ft/sec when the gas stream heating value is less than 1,000 Btu/scf could necessitate the replacement of existing flares designed and operated with velocities greater thn 60 ft/sec. Commenters also mentioned that the construction of new flares to meet the velocity restrictions will be costly and in many cases completely infeasible. Furthermore, the commenters mentioned that not enough data were collected and not a broad enough range in test conditions was used by EPA in setting the specifications.

Because of the technical infeasibility of testing for the VOC reduction efficiency of flares, EPA determined it necessary to set operational specifications to ensure 98 weight-percent reduction efficiency. The original specifications were based upon the best data available at the time of proposal. Since proposal, operating specifications for flares used to comply with requirements in NSPS were added

[1] The agency has adequately documented that this is the case. (See Wehrum, W. et al., "Air Toxics Emission Patterns and Trends," Docket Item No. IV–A–3, and Registry of Toxic Effects of Chemical Substances, Docket Item No. IV–J–6.) Moreover, it is apparent that combustion of these streams will reduce those compounds porportionately. (See, e.g., "Thermal Incinerator Performance for NSPS," Docket Item No. II–B–3.) The Agency received no comment questioning this documentation.

to the General Provisions (51 FR 2701, January 21, 1986). The regulation has been revised to refer all owners or operators of affected facilities which use flares to comply with this NSPS to those requirements. These new specifications resolve the commenters' concerns about the specifications in the standards at proposal.

Other types of flares not demonstrated by EPA to have a 98 weight-percent reduction efficiency could be used in complying with the standards. As stated in the General Provisions, data can be submitted to the Agency to demonstrate 98 weight-percent reduction efficiency. If this were done, that flare could be allowed as a suitable control device.

The commenters were concerned that the exit velocity limitation of 60 ft/sec when the gas stream heating value is less than 1,000 Btu/scf could necessitate the replacement of existing flares designed and operated with velocities greater than 60 ft/sec. However, EPA's analysis shows the cost of constructing a complete new flare system to be reasonable. The EPA believes existing facilities coming under the standards would not have to completely replace these existing flares designed and operated with velocities greater than 60 ft/sec. Instead of building a new flare, only the existing flare tip and some auxiliary equipment would have to be changed to accommodate the 60 ft/sec limitation. Considering that many components of the existing flare could still be used, EPA has judged the cost of modifying and existing flare to be well below the cost estimated to construct an entirely new flare.

Exemptions

A suggestion was made to allow distillation facilities operated with a vent stream flow rate of less than 0.008 m^3/min (0.3 scfm) to be exempt from coverage by the standards. The proposed regulation contained an exemption for any distillation facility which is designed with a maximum vent stream flow rate of less than 0.008 m^3/min. The proposed provision constituted an exemption from meeting the specifications of the standards exept for recordkeeping and reporting requirements. The commenters indicated the designed vent stream flow rate is usually different from the operated flow rate. Since vents are typically designed to accommodate the highest flow rate that might be experienced under typical operating conditions, operating flow rates are usually lower than design flow rates. The commenter pointed out that the suggested change would also clarify any ambiguity over vents that were designed for 0.008 m^3/min but are operated at higher flow rates.

The Agency recognizes that some distillation facilities may operate with vent stream flow rates above or below their designed level. Therefore, EPA has decided to exempt from coverage by the standards, except for recordkeeping and reporting requirements, those distillation facilities that operate with a vent stream flow rate less than 0.008 m^3/min. The Agency will not exempt distillation facilities only because they were designed for a vent stream flow rate below 0.008 m^3/min. The owner or operator of an affected facility that operates with a vent stream flow rate below 0.008 m^3/min must notify EPA and demonstrate, with a performance tests, that the operating flow rate is less than 0.008 m^3/min. Furthermore, any operational changes in the facility that may cause the operating vent stream flow rate to no longer be below the exemption level must be recorded along with a new flow rate measurement after the change has been made. No reporting to EPA is required until the low flow level has been exceeded and the report must contain the new flow rate measurement. If the vent stream flow rate exceeds the exemption level, the owner or operator must comply with the provisions of Section 60.662.

Several commenters requested more consideration be given to the complex nature of batch operations. They suggested the standards be applied on a case-by-case basis for batch distillation systems because the vent streams from these operations often have variable characteristics. For example, batch vacuum distillation may have an initially high vent stream flow rate as noncondensibles are removed from the products being purified followed by very low emissions for the rest of the cycle. The commenter stated that application of a recovery system for compliance with a TRE greater than 1.0 is likely to represent greater difficulty and cost impact on batch distillation facilities than anticipated by the Agency.

The EPA has decided to exclude batch distillation operations from this NSPS because BDT was evaluated with respect to continuous operations which have relatively constant vent stream flow rates and compositions within a process unit. Batch distillation typically emits a vent stream of variable flow rate and composition during its operation. As a result, BDT may not be applicable to vent streams from batch processes. The Agency is currently investigating the need for a separate NSPS for batch processes within the SOCMI.

One commenter suggested that an exemption from monitoring or recordkeeping requirements should be allowed for facilities showing a TRE index greater than a specified value. The Agency has decided that facilities with TRE index values greater than 8.0 would not fall below the cutoff without a process change. Thus, the Agency believes that the monitoring and recordkeeping requirements should not be imposed on such facilities. However, a process change in that facility would warrant a recalculation of the TRE index value to determine whether the value is still greater than 8.0 and the facility still qualifies for the exemption.

Paperwork Reduction Act

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and an accompanying supporting statement which are included in the docket for public review. This documentation contains (1) A description of the reporting and recordkeeping required by the regulation and the 40 CFR Part 60 General Provisions, (2) the reasons for the requirements, (3) an evaluation of the major alternatives considered (including the use of existing sources of information), and (4) an estimate of the labor-hour burden of the requirements.

The General Provisions of 40 CFR part 60 and the standards would require three types of reports: (1) Notification requirements which enable the Agency to keep abreast of facilities subject to the standards, (2) reporting of initial performance test results and continuous monitoring system performance evaluations, and (3) semiannual reporting of exceedances or deviations from the monitored parameters from recovery equipment or combustion control devices. Analysis of these reporting requirements (II–F–2) indicates that they are both necessary and reasonable considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to prepare the reports for the first 3 years average about 82.7 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 3 years would average about 5.2 person-years per year.

Information collection requirements associated with this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060-0055.

Public reporting burden for this collection of information is estimated to be 168,668 hours per year, with an average of 715 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

There are no reporting requirements by other governmental agencies for the information required by these standards which would result in overlapping requirements. In particular, there is no overlap with the reporting requirements of the Superfund program. The Superfund program was established in 1980 by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Pub. L. 96-510) and authorizes the Federal government to respond directly to releases (or threatened releases) of hazardous substances and pollutants or contaminants to any media that may endanger public health or welfare. Under the notification and liability provisions of section 103 (see 48 FR 23552, May 25, 1983), CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities immediately notify the National Response Center of the release (800–424–8802; in Washington, DC, metropolitan area 202–426–2675). However, air releases which qualify as Federally-permitted releases such as VOC emissions that are regulated under section 111 of the CAA, are not subject to the notification or liability provisions of CERCLA unless the air releases are in excess of the allowable NSPS emissions by an amount equal to or greater than the reportable quantity; in this case, persons in charge must report the excess air releases to the National Response Center. (Reporting under CERCLA does not excuse the persons in charge from any responsibility, including reporting, or liability under the NSPS program).

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review except as noted in (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is June 29, 1990. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, where construction, reconstruction, or modification commenced after December 30, 1983.

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any new source standard of performance under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards (EPA–450/3–89–006a). As explained in the section entitled *Selection of the TRE Cutoff* in the preamble to the proposed standards (48 FR 57836), cost per megagram of emission reduction was an important factor considered in selecting the proposed standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because: (1) The national annualized compliance costs, including capital charges resulting from the standards total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written communication between OMB and EPA pertaining to the standards has been put in Docket A–80–25. This docket is available for public inspection at the EPA's Central Docket Section, which is listed under the "ADDRESSES" section of this notice.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that adverse effects of all Federal regulations upon small businesses be identified. According to the current guidelines of the Small Business Administration, a small business that uses distillation operations in the manufacture of synthetic organic chemicals is one that has 750 employees or less. Currently, about 24 percent of the existing producers of the 211 affected chemicals (41 of 169 producers) are estimated to be small by this definition. Since it is estimated that about 600 plants would be affected by the standards in the first 5 years, all 41 small producers could potentially be affected by the NSPS.

Based upon an economic screening of the 211 chemicals, the control costs associated with the standards would be small since no chemical that is covered by these standards would have a cost increase of 5 percent or greater of the projected chemical price in 1987. Even under the conservative costing assumptions used in the economic screening analysis, 95 percent of the chemicals screened would have price increases less than 3 percent. Therefore,

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no plants either large or small, would suffer significant economic impact under this NSPS.

It is difficult to estimate the specific effects of the NSPS on new businesses entering the industry. In general, however, if a company has the capital available to enter the industry, the NSPS will require only a small percentage increase in the capital needed for the project.

Pursuant to the provisions of 5 U.S.C.A. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, SOCMI distillation unit operations, Reporting and recordkeeping requirements, Intergovernmental relations.

Dated: June 13, 1990.

William K. Reilly,

Administrator.

PART 60—[AMENDED]

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act (CAA) as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

§ 60.17 [Amended]

2. Section 60.17 is amended in paragraph (a)(6) by removing the period at the end of the paragraph and adding the phrase "60.664(d)(2)(ii) and 60.664(d)(4)" and in paragraph (a)(38) by removing the period at the end of the paragraph and adding the phrase "and 60.664(d)(4)".

3. By adding subpart NNN as follows:

Subpart NNN—Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations

Sec.

60.660 Applicability and designation of affected facility.
60.661 Definitions.
60.662 Standards.
60.663 Monitoring of emissions and operations.
60.664 Test methods and procedures.
60.665 Reporting and recordkeeping requirements.
60.666 Reconstruction.
60.667 Chemicals affected by Subpart NNN.
60.668 Delegation of Authority.

Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

§ 60.660 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility designated in paragraph (b) of this section that is part of a process unit that produces any of the chemicals listed in § 60.667 as a product, co-product, by-product, or intermediate, except as provided in paragraph (c).

(b) The affected facility is any of the following for which construction, modification, or reconstruction commenced after December 30, 1983:

(1) Each distillation unit not discharging its vent stream into a recovery system.

(2) Each combination of a distillation unit and the recovery system into which its vent stream is discharged.

(3) Each combination of two or more distillation units and the common recovery system into which their vent streams are discharged.

(c) Exemptions from the provisions of paragraph (a) of this section are as follows:

(1) Any distillation unit operating as part of a process unit which produces coal tar or beverage alcohols, or which uses, contains, and produces no VOC is not an affected facility.

(2) Any distillation unit that is subject to the provisions of Subpart DDD is not an affected facility.

(3) Any distillation unit that is designed and operated as a batch operation is not an affected facility.

(4) Each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 is exempt from all provisions of this subpart except for §§ 60.662; 60.664 (d), (e), and (f); and 60.665 (h) and (l).

(5) Each affected facility in a process unit with a total design capacity for all chemicals produced within that unit of less than one gigagram per year is exempt from all provisions of this subpart except for the recordkeeping and reporting requirements in paragraphs (j), (l)(6), and (n) of § 60.665.

(6) Each affected facility operated with a vent stream flow rate less than 0.008 scm/min is exempt from all provisions of this subpart except for the test method and procedure and the recordkeeping and reporting requirements in § 60.664(g) and paragraphs (i), (l)(5), and (o) of § 60.665.

[Note: The intent of these standards is to minimize the emissions of VOC through the application of best demonstrated technology (BDT). The numerical emission limits in these standards are expressed in terms of total organic compounds (TOC), measured as TOC less methane and ethane. This emission limit reflects the performance of BDT.]

§ 60.661 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of part 60, and the following terms shall have the specific meanings given them.

Batch distillation operation means a noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam.

By compound means by individual stream components, not carbon equivalents.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Distillation operation means an operation separating one or more feed stream(s) into two or more exit stream(s), each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.

Distillation unit means a device or vessel in which distillation operations occur, including all associated internals (such as trays or packing) and accessories (such as reboiler, condenser, vacuum pump, steam jet, etc.), plus any associated recovery system.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a vent stream.

Halogenated vent stream means any vent stream determined to have a total concentration (by volume) of compounds containing halogens of 20 ppmv (by compound) or greater.

Incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that is heated to produce steam.

Process unit means equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.667. A process unit can operate independently if supplied with sufficient fuel or raw materials and sufficient product storage facilities.

Product means any compound or chemical listed in § 60.667 that is produced for sale as a final product as that chemical, or for use in the production of other chemicals or compounds. By-products, co-products, and intermediates are considered to be products.

Recovery device means an individual unit of equipment, such as an absorber, carbon adsorber, or condenser, capable of and used for the purpose of recovering chemicals for use, reuse, or sale.

Recovery system means an individual recovery device or series of such devices applied to the same vent stream.

Total organic compounds (TOC) means those compounds measured according to the procedures in § 60.664(b)(4). For the purposes of measuring molar composition as required in § 60.664(d)(2)(i); hourly emissions rate as required in § 60.664(d)(5) and § 60.664(e); and TOC concentration as required in § 60.665(b)(4) and § 60.665(g)(4), those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone are to be excluded. The compounds to be excluded are identified in Environmental Protection Agency's statements on ozone abatement policy for State Implementation Plans (SIP) revisions (42 FR 35314; 44 FR 32042; 45 FR 32424; 45 FR 48943).

TRE index value means a measure of the supplemental total resource requirement per unit reduction of TOC associated with an individual distillation vent stream, based on vent stream flow rate, emission rate of TOC net heating value, and corrosion properties (whether or not the vent stream is halogenated), as quantified by the equation given under § 60.664(e).

Vent stream means any gas stream discharged directly from a distillation facility to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. The vent stream excludes relief valve discharges and equipment leaks including, but not limited to, pumps, compressors, and valves.

§ 60.662 Standards.

Each owner or operator of any affected facility shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test required by § 60.8 and § 60.664 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall either:

(a) Reduce emissions of TOC (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(b) Combust the emissions in a flare that meets the requirements of § 60.18; or

(c) Maintain a TRE index value greater than 1.0 without use of VOC emission control devices.

§ 60.663 Monitoring of emissions and operations.

(a) The owner or operator of an affected facility that uses an incinerator to seek to comply with the TOC emission limit specified under § 60.662(a) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow to the incinerator at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the inlet of each incinerator and before being joined with any other vent stream.

(b) The owner or operator of an affected facility that uses a flare to seek to comply with § 60.662(b) shall install, calibrate, maintain and operate according to manufacturer's specifications the following equipment:

(1) A heat sensing device, such as a ultra-violet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(2) A flow indicator that provides a record of vent stream flow to the flare at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the flare and before being joined with any other vent stream.

(c) The owner or operator of an affected facility that uses a boiler or process heater to seek to comply with § 60.662(a) shall install, calibrate, maintain and operate according to the manufacturer's specifications in the following equipment:

(1) A flow indicator that provides a record of vent stream flow to the boiler or process heater at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each distillation unit within an affected facility at a point closest to the inlet of each boiler or process heater and before being joined with any other vent stream.

(2) A temperature monitoring device in the firebox equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 °C, whichever is greater, for boilers or process heaters of less than 44 MW (150 million Btu/hr) heat input design capacity.

(3) Monitor and record the periods of operation of the boiler or process heater if the design heat input capacity of the boiler or process heater is 44 MW (150 million Btu/hr) or greater. The records must be readily available for inspection.

(d) The owner or operator of an affected facility that seeks to comply with the TRE index value limit specified under § 60.662(c) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator:

(1) Where an absorber is the final recovery device in the recovery system:

(i) A scrubbing liquid temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, and a specific gravity monitoring device having an accuracy of ±0.02 specific

gravity units, each equipped with a continuous recorder, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infrared, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(2) Where a condenser is the final recovery device in the recovery system:

(i) A condenser exit (product side) temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, or

(ii) An organic monitoring device used to monitor organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(3) Where a carbon adsorber is the final recovery device unit in the recovery system:

(i) An integrating steam flow monitoring device having an accuracy of ±10 percent, and a carbon bed temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, both equipped with a continuous recorder, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(e) An owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 60.662 with control devices other than incinerator, boiler, process heater, or flare; or recovery device other than an absorber, condenser, or carbon absorber shall provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.664 Test methods and procedures.

(a) For the purpose of demonstrating compliance with § 60.662, all affected facilities shall be run at full operating conditions and flow rates during any performance test.

(b) The following methods in appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods to determine compliance with the emission limit or percent reduction efficiency specified under § 60.662(a).

(1) Method 1 or 1A, as appropriate, for selection of the sampling sites. The control device inlet sampling site for determination of vent stream molar composition or TOC (less methane and ethane) reduction efficiency shall be prior to the inlet of the control device and after the recovery system.

(2) Method 2, 2A, 2C, or 2D, as appropriate, for determination of the gas volumetric flow rates.

(3) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration ($\%O_{2d}$) for the purposes of determining compliance with the 20 ppmv limit. The sampling site shall be the same as that of the TOC samples, and the samples shall be taken during the same time that the TOC samples are taken.

The TOC concentration corrected to 3 percent O_2 (C_c) shall be computed using the following equation:

$$C_c = C_{TOC}\ \frac{17.9}{20.9 - \%O_{2d}}$$

where:

C_c = Concentration of TOC corrected to 3 percent O_2, dry basis, ppm by volume.
C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.
$\%O_{2d}$ = Concentration of O_2, dry basis, percent by volume.

(4) Method 18 to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined.

(i) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used then the samples shall be taken at 15-minute intervals.

(ii) The emission reduction (R) of TOC (minus methane and ethane) shall be determined using the following equation:

$$R = \frac{E_i - E_o}{E_i} \times 100$$

where:

R = Emission reduction, percent by weight.
E_i = Mass rate of TOC entering the control device, kg TOC/hr.
E_o = Mass rate of TOC discharged to the atmosphere, kg TOC/hr.

(iii) The mass rates of TOC (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

where:

C_{ij}, C_{oj} = Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppm by volume.
M_{ij}, M_{oj} = Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, g/g-mole (lb/lb-mole).
Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dscm/min (dscf/hr).
K_2 = Constant, 2.494×10^{-6} (1/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C.

(iv) The TOC concentration (C_{TOC}) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.
C_j = Concentration of sample components "j", dry basis, ppm by volume.
n = Number of components in the sample.

(5) When a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to seek to comply with § 60.662(a), the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in section 114 of the Act.

(c) When a flare is used to seek to comply with § 60.662(b), the flare shall comply with the requirements of § 60.18.

(d) The following test methods in appendix A to this part, except as provided under § 60.8(b), shall be used for determining the net heating value of the gas combusted to determine compliance under § 60.662(b) and for determining the process vent stream TRE index value to determine compliance under § 60.662(c).

(1)(i) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for the vent stream flow rate and molar composition determination prescribed in § 60.664(d)(2) and (3) shall be, except for the situations outlined in paragraph (d)(1)(ii) of this section, prior to the inlet of any control device, prior to any post-distillation dilution of the stream with air, and prior to any post-distillation introduction of halogenated compounds into the process vent stream. No transverse site selection method is needed for vents smaller than 4 inches in diameter.

(ii) If any gas stream other than the distillation vent stream from the affected facility is normally conducted through the final recovery device.

(A) The sampling site for vent stream flow rate and molar composition shall be prior to the final recovery device and prior to the point at which the nondistillation stream is introduced.

(B) The efficiency of the final recovery device is determined by measuring the TOC concentration using Method 18 at the inlet to the final recovery device after the introduction of any nondistillation vent stream and at the outlet of the final recovery device.

(C) This efficiency is applied to the TOC concentration measured prior to the final recovery device and prior to the introduction of the nondistillation stream to determine the concentration of TOC in the distillation vent stream from the final recovery device. This concentration of TOC is then used to perform the calculations outlined in § 60.664(d) (4) and (5).

(2) The molar composition of the process vent stream shall be determined as follows:

(i) Method 18 to measure the concentration of TOC including those containing halogens.

(ii) ASTM D1946-77 (incorporation by reference as specified in § 60.17 of this part) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 to measure the content of water vapor.

(3) The volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, as appropriate.

(4) The net heating value of the vent stream shall be calculated using the following equation:

$$H_T = K_1\left(\sum_{j=1}^{n} C_jH_j\right)$$

where:

H_T = Net heating value of the sample, MJ/scm, where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C, as in the definition of Q_s (vent stream flow rate).
K_1 = Constant, 1.740×10^{-7}

$$\frac{(1)}{\text{ppm}}\ \frac{(\text{g-mole})}{\text{scm}}\ \frac{(\text{MJ})}{\text{kcal}}$$

where standard temperature for

$$\frac{(\text{g-mole})}{\text{scm}}$$

is 20 °C.
C_j = Concentration on a wet basis of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946-77 (incorporation by reference as specified in § 60.17 of this part) as indicated in § 60.664(d)(2).
H_j = Net heat of combustion of compound j, kcal/g-mole, based on combustion at 25 °C and 760 mm Hg.

The heats of combustion of vent stream components would be required to be determined using ASTM D2382-76 (incorporation by reference as specified in § 60.17 of this part) if published values are not available or cannot be calculated.

(5) The emission rate of TOC in the vent stream shall be calculated using the following equation:

$$E_{TOC} = K_2\left[\sum_{j=1}^{n} C_jM_j\right]Q_s$$

where:

E_{TOC} = Emission rate of TOC in the sample, kg/hr.
K_2 = Constant, 2.494×10^{-6} (1/ppm) (g-mole/scm) (kg/g) (min/hr), where standard temperature for (g-mole/scm) is 20 °C.
C_j = Concentration on a basis of compound j in ppm as measured by Method 18 as indicated in § 60.664(d)(2).
M_j = Molecular weight of sample j, g/g-mole.
Q_s = Vent stream flow rate (scm/min) at a temperature of 20 °C.

(6) The total process vent stream concentration (by volume) of compounds containing halogens (ppmv, by compound) shall be summed from the individual concentrations of compounds containing halogens which were measured by Method 18.

(e) For purposes of complying with § 60.662(c) the owner or operator of a facility affected by this subpart shall calculate the TRE index value of the vent stream using the equation for incineration in paragraph (e)(1) of this section for halogenated vent streams. The owner or operator of an affected facility with a nonhalogenated vent stream shall determine the TRE index value by calculating values using both the incinerator equation in (e)(1) and the flare equation in (e)(2) of this section and selecting the lower of the two values.

(1) The equation for calculating the TRE index value of a vent stream controlled by an incinerator is as follows:

$$TRE = \frac{1}{E_{TOC}}\left[a + b(Q_s)^{0.88} + c\,(Q_s) + d(Q_s)(H_T) + e(Q_s)^{0.88}(H_T)^{0.88} + f\,(Y_s)^{0.5}\right]$$

(i) where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is greater than or equal to 14.2 scm/min:

TRE = TRE index value.
Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C.
H_T = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in the definition of Q_s.
Y_s = Q_s for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = (Q_s)\,(H_T)/3.6$.
E_{TOC} = Hourly emissions of TOC reported in kg/hr.
a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

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TABLE 1. DISTILLATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR

DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	19.18370	0.27580	0.75762	-0.13064	0	0.01025
$18.8 < Q_s \leq 699$	20.00563	0.27580	0.30387	-0.13064	0	0.01025
$699 < Q_s \leq 1400$	39.87022	0.29973	0.30387	-0.13064	0	0.01449
$1400 < Q_s \leq 2100$	59.73481	0.31467	0.30387	-0.13064	0	0.01775
$2100 < Q_s \leq 2800$	79.59941	0.32572	0.30387	-0.13064	0	0.02049
$2800 < Q_s \leq 3500$	99.46400	0.33456	0.30387	-0.13064	0	0.02291

DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.5 MJ/scm:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	18.84466	0.26742	-0.20044	0	0	0.01025
$18.8 < Q_s \leq 699$	19.66658	0.26742	-0.25332	0	0	0.01025
$699 < Q_s \leq 1400$	39.19213	0.29062	-0.25332	0	0	0.01449
$1400 < Q_s \leq 2100$	58.71768	0.30511	-0.25332	0	0	0.01775
$2800 < Q_s \leq 3500$	78.24323	0.31582	-0.25332	0	0	0.02049
	97.76879	0.32439	-0.25332	0	0	0.02291

DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 0.48:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	8.54245	0.10555	0.09030	-0.17109	0	0.01025
$1340 < Q_s \leq 2690$	16.94386	0.11470	0.09030	-0.17109	0	0.01449
$2690 < Q_s \leq 4040$	25.34528	0.12042	0.09030	-0.17109	0	0.01775

DESIGN CATEGORY C. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) ≤ 1.9:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	9.25233	0.06105	0.31937	-0.16181	0	0.01025
$1340 < Q_s \leq 2690$	18.36363	0.06635	0.31937	-0.16181	0	0.01449
$2690 < Q_s \leq 4040$	27.47492	0.06965	0.31937	-0.16181	0	0.01775

DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) ≤ 3.6:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1180$	6.67868	0.06943	0.02582	0	0	0.01025
$1180 < Q_s \leq 2370$	13.21633	0.07546	0.02582	0	0	0.01449
$2370 < Q_s \leq 3550$	19.75398	0.07922	0.02582	0	0	0.01775

DESIGN CATEGORY E. FOR NONHALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.6 MJ/scm:

Y_s = Dilution Flow rate (scm/min) = $(Q_s)(H_T)/3.6$	a	b	c	d	e	f
$14.2 \leq Y_s \leq 1180$	6.67868	0	0	-0.00707	0.02220	0.01025
$1180 < Y_s \leq 2370$	13.21633	0	0	-0.00707	0.02412	0.01449
$2370 < Y_s \leq 3550$	19.75398	0	0	-0.00707	0.02533	0.01775

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(ii) where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is less than 14.2 scm/min:

TRE = TRE index value.
Q_s = 14.2 scm/min.
H_T = (FLOW)(HVAL)/14.2.

where by the following inputs are used:

FLOW = Vent stream flow rate (scm/min), at a standard temperature of 20 °C.

HVAL = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in definition of Q_s.

Y_s = 14.2 scm/min for all vent stream categories listed in Table 1 except for Category E vent streams, where $Y_s = (14.2)(H_T)/3.6$.

E_{TOC} = Hourly emissions of TOC reported in kg/hr.

a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) The equation for calculating the TRE index value of a vent stream controlled by a flare is as follows:

$$TRE = \frac{1}{E_{TOC}}\left[a\left(Q_s\right) + b\left(Q_s\right)^{0.8} + c\left(Q_s\right)\left(H_T\right) + d\left(E_{TOC}\right) + e\right]$$

where:

TRE = TRE index value.
E_{TOC} = Hourly emission rate of TOC reported in kg/hr.
Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C.

H_T = Vent stream net heating value (MJ/scm) where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in the definition of Q_s.

a, b, c, d, and e are coefficients.

The set of coefficients that apply to a vent stream shall be obtained from Table 2.

TABLE 2.—DISTILLATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE

	a	b	c	d	e
H_T <11.2 MJ/scm	2.25	0.288	−0.193	−0.0051	2.08
H_T >11.2 MJ/scm	0.309	0.0619	−0.0043	−0.0034	2.08

(f) Each owner or operator of an affected facility seeking to comply with § 60.660(c)(4) or § 60.662(c) shall recalculate the TRE index value for that affected facility whenever process changes are made. Examples of process changes include changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. The TRE index value shall be recalculated based on test data, or on best engineering estimates of the effects of the change to the recovery system.

(1) Where the recalculated TRE index value is less than or equal to 1.0, the owner or operator shall notify the Administrator within 1 week of the recalculation and shall conduct a performance test according to the methods and procedures required by § 60.664 in order to determine compliance with § 60.662(a). Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(2) Where the initial TRE index value is greater than 8.0 and the recalculated TRE index value is less than or equal to 8.0 but greater than 1.0, the owner or operator shall conduct a performance test in accordance with § 60.8 and § 60.664 and shall comply with § 60.663, § 60.664 and § 60.665. Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(g) Any owner or operator subject to the provisions of this subpart seeking to demonstrate compliance with § 60.660(c)(6) shall use Method 2, 2A, 2C, or 2D as appropriate, for determination of volumetric flow rate.

§ 60.665 Reporting and Recordkeeping Requirements.

(a) Each owner or operator subject to § 60.662 shall notify the Administrator of the specific provisions of § 60.662 (§ 60.662 (a), (b), or (c)) with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.662 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.664 within 180 days.

(b) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 60.8. Where a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to comply with § 60.662(a), a report containing performance test data need not be submitted, but a report containing the information in § 60.665(b)(2)(i) is required. The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a control device, outlet concentration of TOC, or the TRE index value of a vent stream from a recovery system is determined.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.662(a) through use of either a thermal or catalytic incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured at least every 15 minutes and averaged over the same time period of the performance testing, and

(ii) The percent reduction of TOC determined as specified in § 60.664(b) achieved by the incinerator, or the concentration of TOC (ppmv, by compound) determined as specified in § 60.664(b) at the outlet of the control device on a dry basis corrected to 3 percent oxygen.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.662(a) through use of a boiler or process heater:

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.662(b) through use of a smokeless flare, flare design (i.e., steam-assisted, air-assisted or nonassisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.662(c):

(i) Where an absorber is the final recovery device in the recovery system, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average exit temperature, of the absorbing liquid measured at least every 15 minutes and averaged over the same time period of the performance testing (both measured while the vent stream is normally routed and constituted), or

(ii) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is routed and constituted normally, or

(iii) Where a carbon adsorber is the final recovery device in the recovery system, the total steam mass flow measured at least every 15 minutes and averaged over the same time period of the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s)), and duration of the carbon bed steaming cycle (all measured while the vent stream is routed and constituted normally), or

(iv) As an alternative to § 60.665(b)(4)((i), (ii) or (iii), the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber, measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream.

(c) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.663 (a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where a combustion device is used to comply with § 60.662(a), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.662(a) was determined.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance with § 60.662(a) was determined. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance with § 60.662(a) was determined.

(3) All 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.662(a) was determined for boilers or process heaters with a design heat input capacity of less than 44 MW (150 million Btu/hr).

(4) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.662(a).

(d) Each owner or operator subject to the provisions of this subpart shall keep up to date, readily accessible continuous records of the flow indication specified under § 60.663(a)(2), § 60.663(b)(2) and § 60.663(c)(1), as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device or has no flow rate.

(e) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 MW or greater to comply with § 60.662(a) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.)

(f) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.663(b), as well as up-to-date, readily accessible records of all periods of operations in which the pilot flame is absent.

(g) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.663(d), as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where an owner or operator seeks to comply with § 60.662(c), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final recovery device in a recovery system, and where an organic compound monitoring device is not used:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, or

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter, which is a measure of the degree of absorbing liquid saturation, is approved by the Administrator, in which case he will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final recovery device in a system, and where an organic compound monitoring device is not used, all 3-hour periods of operation during which the average exit (product side) condenser operating temperature was more than 6 °C (1 1°F) above the average exit (product side) operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final recovery device in a system, and where an organic compound monitoring device is not used:

(i) All carbon bed regeneration cycles during which the total mass steam flow was more than 10 percent below the total mass steam flow during the most recent performance test, or

(ii) All carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration (and after completion of any cooling cycle(s)) was more than 10 percent greater than the carbon bed temperature (in degrees Celsius) during the most recent performance test.

(4) Where an adsorber, condenser, or carbon absorber is the final recovery device in the recovery system and where an organic compound monitoring device is used, all 3-hour periods of operation during which the average organic compound concentration level or reading of organic compounds in the exhaust gases is more than 20 percent greater than the exhaust gas organic compound concentration level or reading measured by the monitoring device during the most recent performance test.

(h) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.662(c) shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of recovery equipment or a distillation unit;

(2) Any recalculation of the TRE index value performed pursuant to § 60.664(f); and

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.664(d).

(i) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the flow rate cutoff in § 60.660(c)(6) shall keep up-to-date, readily accessible records to indicate that the vent stream flow rate is less than 0.008 m^3/min and of any change in equipment or process operation that increases the operating vent stream flow rate, including a measurement of the new vent stream flow rate.

(j) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the design production capacity provision in § 60.660(c)(5) shall keep up-to-date, readily accessible records of any change in equipment or process operation that increases the design production capacity of the process unit in which the affected facility is located.

(k) Each owner and operator subject to the provisions of this subpart is exempt from the quarterly reporting requirements contained in § 60.7(c) of the General Provisions.

(l) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the requirements of § 60.660 (c)(4), (c)(5), or (c)(6) or § 60.662 shall submit to the Administrator semiannual reports of the following recorded information. The initial report shall be submitted within 6 months after the initial start-up date.

(1) Exceedances of monitored parameters recorded under § 60.665 (c) and (g).

(2) All periods recorded under § 60.665(d) when the vent stream is diverted from the control device or has no flow rate.

(3) All periods recorded under § 60.665(e) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.665(f) in which the pilot flame of the flare was absent.

(5) Any change in equipment or process operation that increases the operating vent stream flow rate above the low flow exemption level in § 60.660(c)(6), including a measurement of the new vent stream flow rate, as recorded under § 60.665(i). These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed with the same time period to verify the recalculated flow value and to obtain the vent stream characteristics of heating value and E_{roc}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under the low capacity exemption status in § 60.660(c)(5), the facility must begin compliance with the requirements set forth in § 60.662.

(6) Any change in equipment or process operation, as recorded under § 60.665(j), that increases the design production capacity above the low capacity exemption level in § 60.660(c)(5) and the new capacity resulting from the change for the distillation process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, E_{roc}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under the low flow exemption in § 60.660(c)(6), the facility must begin compliance with the requirements set forth in § 60.662.

(7) Any recalculation of the TRE index value, as recorded under § 60.665(h).

(m) The requirements of § 60.665(l) remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with § 60.665(l), provided that they comply with the requirements established by the State.

(n) Each owner or operator that seeks to demonstrate compliance with § 60.660(c)(5) must submit to the Administrator an initial report detailing the design production capcity of the process unit.

(o) Each owner or operator that seeks to demonstrate compliance with § 60.660(c)(6) must submit to the Administrator an initial report including a flow rate measurement using the test methods specified in § 60.664.

(p) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.662 other than as provided under § 60.663(a), (b), (c) and (d).

§ 60.666 Reconstruction.

For purposes of this subpart "fixed capital cost of the new components," as used in § 60.15, includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following December 30, 1983. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

(Approved by the Office of Management and Budget under the control number 2060-0055)

§ 60.667 Chemicals affected by Subpart NNN.

Chemical name	CAS No.*
Acetaldehyde	75-07-0
Acetaldol	107-89-1
Acetic acid	64-19-7
Acetic anhydride	108-24-7
Acetone	67-64-1
Acetone cyanohydrin	75-86-5
Acetylene	74-86-2
Acrylic acid	79-10-7
Acrylonitrile	107-13-1
Adipic acid	124-04-9
Adiponitrile	111-69-3
Alcohols, C-11 or lower, mixtures	
Alcohols, C-12 or higher, mixtures	
Allyl chloride	107-05-1
Amylene	513-35-9
Amylenes, mixed	
Aniline	62-53-3
Benzene	71-43-2
Benzenesulfonic acid	98-11-3
Benzenesulfonic acid C_{10}-$_{16}$-alkyl derivatives, sodium salts	68081-81-2
Benzoic acid, tech	65-85-0
Benzyl chloride	100-44-7
Biphenyl	92-52-4
Bisphenol A	80-05-7
Bromotone	76-08-4
1,3-Butadiene	106-99-0
Butadiene and butene fractions	
n-Butane	106-97-8
1,4-Butanediol	110-63-4
Butanes, mixed	
1-Butene	106-98-9
2-Butene	25167-67-3
Butenes, mixed	
n-Butyl acetate	123-86-4
Butyl acrylate	141-32-2
n-Butyl alcohol	71-36-3
sec-Butyl alcohol	78-92-2
tert-Butyl alcohol	75-65-0
Butylbenzyl phthalate	85-68-7
Butylene glycol	107-88-0
tert-Butyl hydroperoxide	75-91-2
2-Butyne-1,4-diol	110-65-6
Butyraldehyde	123-72-8
Butyric anhydride	106-31-0
Caprolactam	105-60-2
Carbon disulfide	75-15-0
Carbon tetrabromide	558-13-4
Carbon tetrachloride	56-23-5
Chlorobenzene	108-90-7
2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine	1912-24-9
Chloroform	67-66-3
p-Chloronitrobenzene	100-00-5
Chloroprene	126-99-8
Citric acid	77-92-9
Crotonaldehyde	4170-30-0
Crotonic acid	3724-65-0
Cumene	98-82-8
Cumene hydroperoxide	80-15-9
Cyanuric chloride	108-77-0
Cyclohexane	110-82-7
Cyclohexane, oxidized	68512-15-8
Cyclohexanol	108-93-0
Cyclohexanone	108-94-1
Cyclohexanone oxime	100-64-1
Cyclohexene	110-83-8
1,3-Cyclopentadiene	542-92-7
Cyclopropane	75-19-4
Diacetone alcohol	123-42-2
Dibutanized aromatic concentrate	
1,4-Dichlorobutene	110-57-6
3,4-Dichloro-1-butene	64037-54-3
Dichlorodifluoromethane	75-71-8
Dichlorodimethylsilane	75-78-5
Dichlorofluoromethane	75-43-4
-Dichlorohydrin	96-23-1
Diethanolamine	111-42-2
Diethylbenzene	25340-17-4
Diethylene glycol	111-46-6
Di-n-heptyl-n-nonyl undecyl phthalate	85-68-7
Di-isodecyl phthalate	26761-40-0
Diisononyl phthalate	28553-12-0
Dimethylamine	124-40-3
Dimethyl terephthalate	120-61-6
2,4-Dinitrotoluene	121-14-2
2,4-(and 2,6)-Dinitrotoluene	121-14-2
	606-20-2
Dioctyl phthalate	117-81-7
Dodecene	25378-22-7
Dodecylbenzene, non linear	
Dodecylbenzenesulfonic acid	27176-87-0
Dodecylbenzenesulfonic acid, sodium salt	25155-30-0
Epichlorohydrin	106-89-8
Ethanol	64-17-5
Ethanolamine	141-43-5
Ethyl acetate	141-78-6
Ethyl acrylate	140-88-5
Ethylbenzene	100-41-4
Ethyl chloride	75-00-3
Ethyl cyanide	107-12-0
Ethylene	74-85-1
Ethylene dibromide	106-93-4
Ethylene dichloride	107-06-2
Ethylene glycol	107-21-1
Ethylene glycol monobutyl	111-76-2
Ethylene glycol monoethyl ether	110-80-5
Ethylene glycol monoethyl ether acetate	111-15-9
Ethylene glycol monomethyl ether	109-86-4
Ethylene oxide	75-21-8
2-Ethylhexanal	26266-68-2
2-Ethylhexyl alcohol	104-76-7
(2-Ethylhexyl) amine	104-75-6
Ethylmethylbenzene	25550-14-5
6-Ethyl-1,2,3,4-tetrahydro 9,10-anthracenedione	15547-17-8
Formaldehyde	50-00-0
Glycerol	56-81-5
n-Heptane	142-82-5
Heptenes (mixed)	
Hexadecyl chloride	
Hexamethylene diamine	124-09-4
Hexamethylene diamine adipate	3323-53-3
Hexamethylenetetramine	100-97-0
Hexane	110-54-3
2-Hexenedinitrile	13042-02-9
3-Hexenedinitrile	1119-85-3
Hydrogen cyanide	74-90-8
Isobutane	75-28-5
Isobutanol	78-83-1
Isobutylene	115-11-7
Isobutyraldehyde	78-84-2
Isodecyl alcohol	25339-17-7
Isooctyl alcohol	26952-21-6
Isopentane	78-78-4
Isophthalic acid	121-91-5
Isoprene	78-79-5
Isopropenol	67-63-0
Kelene	463-51-4
Linear alcohols, ethoxylated, mixed	
Linear alcohols, ethoxylated, and sulfated, sodium salt, mixed	
Linear alcohols, sulfated, sodium salt, mixed	
Linear alkylbenzene	123-01-3
Magnesium acetate	142-72-3
Maleic anhydride	108-31-6
Melamine	108-78-1
Mesityl oxide	141-79-7
Methacrylonitrile	126-98-7
Methanol	67-56-1
Methylamine	74-89-5
α-Methylbenzenedamine	25376-45-8
Methyl chloride	74-87-3
Methylene chloride	75-09-2
Methyl ethyl ketone	78-93-3
Methyl iodide	74-88-4
Methyl isobutyl ketone	108-10-1
Methyl methacrylate	80-62-6
2-Methylpentane	107-83-5
1-Methyl-2-pyrrolidone	872-50-4
Methyl tert-butyl ether	
Naphthalene	91-20-3
Nitrobenzene	98-95-3
1-Nonene	27215-95-8
Nonyl alcohol	143-08-08
Nonylphenol	25154-52-3
Nonylphenol, ethoxylated	9016-45-9
Octene	25377-83-7
Oil-soluble petroleum sulfonate, calcium salt	
Oil-soluble petroleum sulfonate, sodium salt	
Pentaerythritol	115-77-5
n-Pentane	109-66-0
3-Pentenenitrile	4635-87-4
Pentenes, mixed	109-67-1
Perchloroethylene	127-18-4
Phenol	108-95-2
1-Phenylethyl hydroperoxide	3071-32-7
Phenylpropene	103-65-1
Phosgene	75-44-5
Phthalic anhydride	85-44-9
Propane	74-98-6
Propionaldehyde	123-38-6
Propionic acid	79-09-4
Propyl alcohol	71-23-8
Propylene	115-07-1
Propylene chlorohydrin	78-89-7
Propylene glycol	57-55-6
Propylene oxide	75-56-9
Sodium cyanide	143-33-9
Sorbitol	50-70-4
Styrene	100-42-5
Terephthalic acid	100-21-0
1,1,2,2-Tetrachloroethane	79-34-5
Tetraethyl lead	78-00-2
Tetrahydrofuran	109-99-9
Tetra (methyl-ethyl) lead	
Tetramethyl lead	75-74-1
Toluene	108-88-3
Toluene-2,4-diamine	95-80-7
Toluene-2,4-(and, 2,6)-diisocyanate (80/20 mixture)	26471-62-5
Tribromomethane	75-25-2
1,1,1-Trichloroethane	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Triethanolamine	102-71-6
Triethylene glycol	112-27-6
Vinyl acetate	108-05-4
Vinyl chloride	75-01-4
Vinylidene chloride	75-35-4
m-Xylene	108-38-3
o-Xylene	95-47-6
p-Xylene	106-42-3
Xylenes (mixed)	1330-20-7
m-Xylenol	576-26-1

* CAS numbers refer to the Chemical Abstracts Registry numbers assigned to specific chemicals, isomers, or mixtures of chemicals. Some isomers or mixtures that are covered by the standards do not have CAS numbers assigned to them. The standards apply to all of the chemicals listed, whether CAS numbers have been assigned or not.

§ 60.668 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under § 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 60.663(e).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3823-6]

RIN 2060-AB55

Standards of Performance for New Stationary Sources; Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit the emissions of VOC from new, modified, and reconstructed SOCMI reactor process facilities. The proposed standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that emissions from the SOCMI cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed SOCMI reactor process facilities to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before September 12, 1990.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 20, 1990, a public hearing will be held on August 7, 1990 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Public Hearing. Persons wishing to present oral testimony must contact EPA by July 20, 1990.

Incorporated by Reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the Federal Register as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-83-29, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Julia Stevens, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Reactor Processes in Synthetic Organic Chemical Manufacturing Industry—Background Information for Proposed Standards," EPA/450-3/85-006a.

Docket. Docket Number A-83-29, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell or Ms. Debbie Stackhouse, telephone (919) 541-5568 and 5258, respectively, concerning regulatory decisions. Mr. Robert E. Rosensteel or Mr. Leslie B. Evans, telephone (919) 541-5608 and 5410, respectively, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. New Source Performance Standards—General

New source performance standards (NSPS or "standards") implement section 111 of the CAA. The NSPS are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions, i.e., sources whose construction, reconstruction, or modification begins after a standard for them is proposed.

The NSPS require these sources to control emissions to the level achievable by "best demonstrated technology" or "BDT," which is defined in item B.6 below.

B. The NSPS Decision Scheme

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.

2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standard will control.

3. Regulatory approach—the general strategy for regulating sources.

4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

5. Emission points to be regulated—within the affected facility, the specific physical location emitting pollutants (e.g., vents, stacks, and equipment leaks).

6. Best demonstrated technology—the technology on which the Agency will base the standards, i.e.,

• • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1)].

7. Format for the standards—the form in which the standards are expressed, i.e., as a percent reduction in emissions, as pollutant concentrations or as equipment standards.

8. Actual standards—based on what BDT can achieve, the maximum permissible emissions.

Note: In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.)

9. Other considerations—in addition, this NSPS includes: modification/reconstruction considerations, performance test methods, monitoring requirements, and reporting and recordkeeping requirements.

C. Overview of This Preamble

This preamble will:

1. Summarize the important features of this NSPS by discussing the conclusions reached with respect to

each of the elements in the decision scheme.

2. Describe the estimated environmental, energy, and economic impacts of this NSPS.

3. Present a rationale for each of the decisions in the decision scheme.

4. Discuss administrative requirements relevant to this action.

II. Summary of the NSPS

A. Source Category to be Regulated

The source category to be regulated is the SOCMI. These standards affect the reactor process subcategory of the SOCMI. A reactor process is the means by which one or more synthetic organic chemicals are produced by the reaction of feedstocks or chemical intermediates other than air. (Processes using air are covered in a separate NSPS.)

B. Pollutant to be Regulated

The proposed standards would control emissions of VOC from reactor process vent streams.

C. Regulatory Approach

Rather than develop a separate standard for each chemical produced in reactor processes, this proposal is a single standard covering all reactor processes producing one or more designated high production volume chemicals. These 173 high production volume chemicals account for about 90 percent of total chemical production from the SOCMI and are estimated to account for the majority of the emissions from reactor processes as well. This same approach was used in the two previous process vent standards for the SOCMI (distillation, 48 FR 57536, and air oxidation, 48 FR 48032).

D. Affected Facility

The facility affected by the proposed standards is designated as a single reactor with its own recovery system (if any) or the combination of two or more reactors and the common recovery system they share.

E. Emission Points to be Regulated

The emission points to be regulated include VOC discharged from chemical reactors either directly from a reactor or indirectly after passing from one or more reactors through one or more product recovery devices.

F. Best Demonstrated Technology

A variety of control techniques are capable of reducing VOC from reactor process vent stream by 98 weight-percent or to 20 parts per million by volume (ppmv). However, certain combustion controls (thermal incinerators and flares) are the only devices that are applicable to all reactor process vent streams. The selection of the best device for an individual stream depends on the process vent stream characteristics and other site-specific considerations. Each of these two devices, however, is capable of achieving 98 weight-percent VOC destruction or 20 ppmv.

For facilities where the costs of combustion control by thermal incinerators or flares are reasonable, BDT is 98 weight-percent control or reduction to 20 ppmv, whichever is less stringent. For facilities where the costs to control VOC by combustion are not reasonable, BDT is no additional control. The standards do not require that a specific device or technology be used to comply with the emission reduction requirements. Rather, any control can be used as long as it can be demonstrated that it is at least as effective as BDT at reducing VOC emissions. The EPA is unable, with available information, to identify subcategories of reactor processes for which VOC control techniques other than incineration or flaring (e.g., catalytic oxidation and carbon adsorption) have been demonstrated to always apply. The applicability of these devices may be greatly affected by the vent stream flow rate, water content, temperature, VOC concentration and VOC properties such as solubility, molecular weight, and liquid/vapor equilibrium. These characteristics vary widely within the SOCMI. Therefore, consideration of these devices in developing regulatory options was not feasible. Even with greater resources, this analysis would be infeasible because it would require a stream-by-stream characterization, ultimately resulting in the need to create a separate standard for each reactor process facility. The number of standards required to regulate the same number of sources would increase significantly. The Agency believes that such an approach to regulating SOCMI reactor processes would be administratively infeasible and therefore environmentally counter-productive. This approach does not preclude later regulation of subcategories of reactor process facilities should that become feasible.

G. Format of the Standards

The format of the proposed standards would allow owners and operators of affected facilities to comply with the standards by controlling emissions or by maintaining or adding product recovery devices. Where the cost effectiveness of controls is reasonable, a percentage reduction or concentration limit, whichever is less stringent, would apply. Where the costs of control are unreasonably high, no additional emission reduction would be required. The cutoff is calculated by using a set of equations and coefficients in the regulation that produce a total resource effectiveness (TRE) index value. A TRE index value of 1.0 or less indicates the need to control. This format permits owners and operators of facilities near, but below, the 1.0 cutoff to change the process operation or equipment in order to reduce emissions and, thereby, raise the TRE index value to a point above the cutoff.

H. Actual Standards

Sources with TRE values of 1.0 or below would be subject to the following: (1) A 98 weight-percent reduction of the total organic compounds (minus methane and ethane) in the reactor vent stream, or a reduction to 20 ppmv, whichever is less stringent; (2) if a boiler or process heater is used to comply with the standards, the reactor vent stream must be introduced into the flame zone; (3) if a flare is used to comply with the standards, it must comply with the requirements set forth in 40 CFR 60.18.

For sources where the costs of combustion control result in a TRE index value greater than 1.0, no additional VOC control is required.

Facilities with low flow rates (less than or equal to 0.011 scm/min) and facilities which are in process units with low production capacities (less than or equal to 1 gigagram per year for all chemicals produced) would be exempt from the standards except for certain recordkeeping and reporting requirements. Batch processes would also be exempt from the standards.

I. Modification/Reconstruction Considerations

An existing facility would be required to meet these standards if it is modified or reconstructed as determined under the General Provisions of 40 CFR part 60. With some specific exceptions, an existing facility is considered to be modified if a physical or operational change results in an increase in VOC emissions. For example, if a reactor is added to a group of existing reactors and if an increase in VOC emissions results, all reactors—existing and new—would be subject to the standards because the facility had been modified. A reconstruction occurs when components of an existing facility are replaced to such an extent that the fixed capital costs of the new components exceed 50 percent of the fixed capital costs that would be required to construct an entirely new facility comparable to the existing facility. A facility will be considered to have been reconstructed only if it is technologically and economically feasible for the facility to meet the standards.

J. Compliance Testing

Initial performance testing is required to demonstrate that a facility complies with the TRE provisions of the standard or, for facilities complying with the emission reduction requirements, that control devices achieve 98 weight-percent control of VOC emissions or 20 ppmv. Facility owners or operators seeking to demonstrate compliance with the TRE index provisions must determine vent stream flow rate, heating value, VOC emissions, and the presence or absence of halogenated compounds. The vent stream heating value and flow rate are used to select the appropriate TRE index coefficients for calculating the TRE index value. For facilities that seek to comply with the 98 weight-percent reduction requirement, an initial performance test is required if an incinerator, a small boiler or small process heater (less than 150 million Btu/hr) is used. The initial performance test for a flare includes a measurement of exit velocity and stream heat content to verify that the operating specifications are met. The initial performance test has been waived for large boilers and large process heaters (greater than 150 million Btu/hr).

K. Monitoring Requirements

For facilities using any combustion device to comply with the emission reduction requirements, vent stream flow to the combustion device would be monitored by use of flow indicators. For facilities using thermal incinerators, small boilers or small process heaters, continuous measurements of firebox temperatures are also required. For facilities using large boilers or large process heaters, records indicating when the device is being operated are also required. For facilities using a flare, the regulation requires continuous monitoring of the presence of a flame. For facilities using catalytic incinerators, the regulation requires continuous monitoring of the gas stream temperature immediately before and after the catalyst bed.

For facilities using product recovery devices to maintain a TRE index value greater than 1.0, the following parameters are required to be continuously monitored: The temperature and specific gravity of the absorbing liquid where an absorber is the final product recovery device; the exit temperature of the vent stream where a condenser is the final product recovery device; and the carbon bed temperature and regeneration stream flow where a carbon adsorber is the final product recovery device.

L. Reporting and Recordkeeping Requirements

As required under the General Provisions of 40 CFR part 60, the recommended standards require three types of reports. First, there are notification requirements under the General Provisions, which would enable the Agency to keep abreast of facilities subject to the standards of performance. Second, there is the reporting of performance test results, which would show that a facility is meeting the standards initially. Third, there is the semiannual reporting of exceedances of certain monitored parameters and any change in equipment or process operation that could affect compliance with the TRE or emission reduction requirements or with the low flow and low capacity exemptions. The proposed standards would require records indicating proper operation and maintenance of the control device or product recovery equipment. First, specific operating parameters would be monitored and the results recorded. Second, records of periods when the measured values of these parameters significantly deviated from the values measured in the most recent performance test would be maintained. Third, there would be recordkeeping of major changes that could affect the TRE index value or the low flow and low capacity exemption status. Finally, records and reporting of periods when control device are not operating or when the vent stream is not routed to the control device would be required.

III. Impacts of the NSPS

A. Air

In the fifth year after this NSPS is proposed, it is estimated that nationwide emissions of VOC will be decreased by 2,100 megagrams per year compared with projected emissions calculated to occur in the absence of the standards (baseline). During the first 5 years of the standards' applicability, an estimated 56 facilities would be candidates for the control attributable solely to the requirements of this NSPS. It is estimated that 7 of the 56 facilities are anticipated to be required to meet the 98 weight-percent reduction requirements. However, the VOC emissions from the 7 facilities account for about 90 percent of the total from all 56 facilities. Any increase in emissions of other air pollutants as a result of controlling VOC emissions will be negligible.

B. Water

A Negligible increase in total plant wastewater is projected under this NSPS.

C. Solid Waste, Noise and Radiation

No solid waste, noise, or radiation impacts are expected under this NSPS.

D. Energy

In the fifth year after this NSPS would become applicable, energy consumption in the SOCMI nationwide would be increased by as much as the equivalent of about 141 barrels of crude oil per day if incinerators and flares are used to comply with the proposed standards when compared with the existing energy consumption associated with the baseline level.

E. Control Costs

During the fifth year of applicability of the proposed standards, the nationwide annualized costs of control at facilities covered by the standards would amount to $3.7 million (1982 dollars) per year. The nationwide cumulative 5-year capital costs for control under the proposed standards would be $5.9 million (1982 dollars). These costs are based on the assumption that flares or incinerators would be used to comply with the proposed standards. If less expensive control devices such as boilers and process heaters are used, the costs would be significantly lower.

F. Economic Effects

No chemical that is projected both to have new, modified, or reconstructed facilities built in the first 5 years of the standards and to be required to control emissions beyond current State requirements is projected to have a price increase greater than 5 percent. Furthermore, chemicals that are produced downstream of the listed chemicals will not have price increases over 5 percent. Most of the projected price increases for the listed chemicals and chemicals produced downstream are small: 81 percent are under 2 percent. Impacts on industry structure, industry growth, inflation, foreign trade, and capital formation are projected to be insignificant.

IV. Rationale for the Proposed Standards

A. Selection of Source Category

The EPA priority list, 40 CFR 60.16 (44 FR 49222, August 21, 1979), ranks major source categories for which NSPS are to be promulgated. This list implements

section 111(b) of the Clean Air Act and reflects the Administrator's determination that emissions from the listed source categories contribute significantly to air pollution that endangers health or welfare. The SOCMI was ranked highest priority for NSPS development on the final priority list of 59 major source categories. Organic chemical plants are a major source of VOC emissions that contribute to ozone formation.

The VOC's are emitted from four main subcategories of sources within the SOCMI: Losses from storage and handling of volatile organic liquids, fugitive leaks from valves and process equipment, evaporative losses from liquid and solid wastes (secondary sources), and emissions from process vents. A breakdown by source type indicates that over half of the VOC emitted from the SOCMI are from process vents.

Process vent emission sources are typically associated with product recovery systems in a SOCMI chemical manufacturing facility. Process vent emission sources consist primarily of the venting of VOC-containing inert gases and evacuation of equipment for vacuum processing. For purposes of developing an NSPS for the SOCMI, EPA has divided process vents into two categories: Continuous and batch processes. Batch process vents are currently being evaluated by the Agency. Continuous process vents include distillation unit operations, air oxidation processes, and reactor process. Standards for distillation unit operations were proposed on December 30, 1983 (48 FR 57536). Standards for air oxidation processes were proposed on October 21, 1983 (48 FR 48932). The standards being proposed today address the third type of process vents: Reactor processes. A reactor process is the means by which one or more substances or reactants, other than air, are chemically altered such that one or more new organic chemicals are formed. The VOC's are emitted from reactor process vents in one of two ways: (1) Indirectly from the reactor following product recovery (e.g., through condensation, absorption, or adsorption), or (2) directly from the reactor to the atmosphere. An estimated 6 percent of the total VOC emitted by the SOCMI source category are from reactor processes.

In developing standards, environmental, cost, economics, small business, and other impacts are examined. It would be very resource intensive and time consuming to analyze all of these impacts for each of the many chemicals produced. The result of following such an approach would be to delay developing standards significantly, resulting in turn in a significant loss in emission reduction. Therefore, EPA has decided to limit the scope of these standards initially to a relatively small number of high production chemicals. The Agency performed an analysis to determine the probable effects of such a limitation. Two alternatives were considered for limiting the scope to high production volume synthetic organic chemicals. The first involved limiting the scope of the standards to about 870 organic chemicals produced in quantities greater than 4,500 Mg/yr (10 million lb/yr). This would cover roughly 97 percent of organic chemical production but would result in an unworkable number of chemicals for the impact analyses. The second alternative would limit the scope of the standards to 173 organic chemicals generally produced in quantities greater than 45,000 Mg/yr (100 million lb/yr). The chemicals covered under this second alternative would account for about 90 percent of total U.S. production of organic chemicals. Therefore, the Administrator concluded that limiting the scope of the standards to the 173 chemicals generally produced in quantities greater than 45,000 Mg/yr would provide a workable scope while covering the great majority of organic chemical production. A list of the affected chemicals is included in the regulation.

B. Pollutant to be Regulated

In addition to VOC emissions, other pollutants are emitted from reactor process sources in much smaller quantities. These include carbon monoxide (CO), Nitrogen oxides (NO_x) sulfur oxides (SO_x) and hydrochloric acid (HCl). The VOC is by far the primary pollutant emitted from reactor processes. Due to the size and complexity of this source category, acquiring the information to determine the applicable technology for the other pollutants that have low emissions at the same time the Agency analyzes the pollutant covered by these standards would have been an unmanageable task. Therefore, the pollutant to be regulated by these standards is VOC.

C. Selection of Regulatory Approach

Two general regulatory approaches were considered for use in developing standards for reactor processes. The first approach would involve establishing standards for each of the 173 specific chemicals included under these proposed standards. It would be very difficult to develop standards using this approach due to the large number of chemical reactions and chemical products that are produced by reactor processes and the variable emission characteristics associated with each. There are about 35 separate types of chemical reactions used to produce the 173 chemicals that account for the great majority of the emissions from reactor processes.

The second approach involves the development of standards on the basis of similar types of emission sources and applicable emission control techniques. This approach would allow a timely and resource-efficient regulatory development because a large number of specific chemicals can be covered by only one regulation. Using this approach would mean that an NSPS for the SOCMI reactor processes could be developed in a relatively short period of time at much less public cost, compared to the chemical-by-chemical approach.

Despite the large number of reaction types and chemicals produced by reactor processes, VOC emissions from reactor process units can be controlled by commonly used combustion and noncombustion control techniques. Because regulating the entire group would be more resource-efficient and the chemical-by-chemical approach is for practical purposes infeasible and lacks any clear advantage, the Administrator has determined that a single regulation should be proposed for all reactor processes in the SOCMI. This approach is consistent with the approach taken for the SOCMI distillation and air oxidation standards.

D. Selection of Affected Facility

The choice of the affected facility for these standards is based on the Agency's interpretation of section 111 of the Clean Air Act and on the judicial construction of its meaning (*ASARCO, Inc.*, v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978)). Under Section 111, the standards of performance for new stationary sources must apply to "new sources." "Source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (section 111(a)(3)). Most industrial plants, however, consist, of numerous pieces or groups of equipment that emit air pollutants and that may be viewed as "sources." The EPA, therefore, uses the term "affected facility" to designate the equipment within a particular kind of plant that is chosen as the "source" covered by a given standard.

In designating the affected facility, EPA must decide which piece or group of equipment is the appropriate unit (the source) for emission standards in the particular industrial context. The Agency must do this by examining the situation in light of the terms and purpose of section 111 of the Clean Air Act. The main purpose of section 111 is to minimize emissions by requiring the application of BDT at all new, modified, and reconstructed sources (considering cost, nonair quality health and environmental effects, and energy impacts). The EPA believes that in most cases a narrow affected facility designation will best further this purpose, because in most cases a narrow designation ensures that new emission units will be brought under the coverage of the standards. If, for example, an entire plant is designated as the affected facility, no part of an existing plant would be covered by the standard unless the replacement caused the plant as a whole to be "modified" or "reconstructed." If each piece of equipment is designated as a separate affected facility, then as each piece is replaced, the replacement piece would be a new source subject to the standards. For this reason, EPA generally presumes that the narrow designation is appropriate.

The EPA treats the narrow designation only as a presumption, however, because in some cases a broader affected facility designation may be more consistent with the purpose of section 111. For example, the Agency might choose a broader designation if it concluded that either (a) it would result in greater emissions reduction than would a narrow designation; or (b) the other relevant statutory factors (technical feasibility, economic cost, energy, and nonair quality health and environmental impacts) point to a broader designation.

The EPA analyzed several alternative affected facility designations for the reactor process standards, including (1) each individual reactor with its recovery system; (2) the group of reactors whose vent streams flow together through a single recovery system; and (3) the entire plant. Using the presumption mentioned above, EPA examined as a single affected facility each individual reactor whose vent stream is sent to its own recovery system. The EPA concluded, however, that when reactor vent streams are joined and sent through a single recovery system, the group of reactors and their recovery system, rather than each reactor, should be a single affected facility.

The EPA estimates that a greater reduction in national VOC emissions would likely result under the broader designation of affected facility. This conclusion is based upon the behavior of the industry with regard to the expansion of reactor capacity and replacement, reconstruction or modification of existing reactors.

Capacity expansions will occur either as a result of new facilities being built or existing ones being expanded. When expanding production capacity at an existing reactor facility, it is common industry practice to add new reactors to existing sets of reactors and recovery systems. When this occurs, there are two possible outcomes under the broader affected facility designation—both of which will result in a greater emissions reduction than would occur under a more narrow designation of affected facility. One possibility is that the total emissions from the group of reactors will increase. In this case, it would bring all (new plus existing) reactors discharging into a common recovery system under the standard by virtue of the NSPS General Provisions regarding "modifications." The second possibility is that the owners or operators of the plant could completely offset the increased emissions from the new reactors by increasing recovery. Although this outcome is unlikely, the result is that a greater emissions reduction will occur under the broad rather than the narrow designation of affected facility. The reason is that by completely offsetting the increased emissions from the new reactors through additional recovery, the emissions from the new reactors have been controlled at 100 weight-percent effectiveness. This exceeds the control effectiveness (i.e., 98 weight-percent) required under this standard.

Replacement of existing reactors rarely occurs within the industry because reactors are expensive pieces of equipment designed and usually built to last the lifetime of the plant. Reactor replacements usually occur as a result of process changes (e.g., from chlorination to hydrochlorination) or as a result of fires or explosions. Whether in multireactor or single reactor facilities, the replacements of individual reactors (as opposed to replacement of entire facilities) are rare. When reactor replacements do occur, however, all reactors tend to be replaced, and, therefore, the reactor replacements would bring the entire facility under the standards under the broader affected facility designation.

Reactor changes that source owners could make that might be considered modifications are substantial changes in catalysts, reactor conditions, or product separation purification equipment. The cost of these changes is so great, however, that most owners would choose to build a new group of reactors rather than radically modify individual existing reactors. Therefore, few reactors would undergo process changes that might be considered a modification under any designation of affected facility.

Thus, greater emissions reductions are likely to occur under this broader designation. For that reason, the Administrator has determined that the appropriate affected facility designation is an individual reactor with its own individual recovery system (if any) or the combination of two or more reactors and the common recovery system they share.

When several reactors feed vent streams into a common recovery system, the characteristics of the emissions vented into the atmosphere from the recovery system are determined by both the vent streams from each of the reactors and the efficiency of the recovery system. Under the narrow designation, it would have been required that only that portion of the combined vent stream contributed by any new, modified or reconstructed reactor unit comply with the standards when the unit shares a recovery system with existing units. Therefore, the TRE index value would have been determined for the portion of the stream contributed by that unit only. At least three sampling locations would be used in this case. Two of the locations (i.e., before and after the common recovery system) would be used to determine the overall efficiency of the common recovery system. This efficiency would then be applied to the emissions measurement taken at the third sample location which is just prior to the new or changed unit being joined with any other vent stream. Thus, three sample locations would be needed to determine the contribution by the new or changed unit to the total emissions from the common recovery system.

However, under the broader affected facility option selected above, only one sampling site is necessary to determine the facility's TRE index value. No estimation of the recovery system's efficiency on individual reactors is required, because the standards cover the entire vent stream. Therefore, there is no need to determine which portion of the final vent stream from a group of reactors is attributable to new, modified, and reconstructed reactors and which portion is attributable to reactors that have not been changed or added. This results in performance testing that is simpler and cheaper because fewer sampling sites and simpler analyses are needed.

The Administrator has decided to exclude from these standards reactors that are operated in a batch mode rather than operated continuously. The data upon which the standards are based (including the cost and control device performance) assume a continuous or near continuous type of operation.

Also excluded from these standards are facilities in plants with very low capacities or with very low vent stream flows. Most research and development or laboratory scale facilities are not designed to produce more than one gigagram (Gg) per year. It is not the intent of the standards to cover such facilities because they are generally intermittent operations. Moreover, the control techniques that are applicable to industry-scale production facilities would not necessarily be appropriate for these operations. For these reasons, EPA has decided to exempt facilities which are part of process units with one Gg production capacity per year or less of all chemicals produced within the process unit. Similarly, facilities with vent stream flows below 0.011 standard cubic meters per minute (scm/min) are excluded from the standards. No facility with flows below this cutoff are anticipated to have TRE index value less than 1.0, and thus to include them under the standards would impose unnecessary reporting and recordkeeping requirements on these facilities. For the low flow facilities, only an initial measurement and report is required to verify entitlement to the exclusion. In addition, owners and operators of both low capacity and low flow facilities are required to notify EPA if a change occurs that would result in production capacities or flows above the respective cutoff levels.

E. Selection of Control Techniques

The Clean Air Act requires that standards of performance be based on the best system of continuous emission reduction, considering costs, energy usage and nonair health and environmental impacts ("best demonstrated technology" or BDT). As discussed in the BID, one or more combustion techniques (boiler, process heater, incinerator, or flares) are applicable to any reactor process vent stream and can achieve at least 98 weight-percent control or 20 ppmv in the outlet gas.

However, combustion control devices are the only types of control devices which are applicable to reactor processes. The EPA examined several VOC control technologies that achieve the same or less emission reduction, such as absorption, adsorption, condenser devices, and catalytic oxidation, but found that these control technologies are not applicable to all reactor process vent streams. Moreover, EPA is unable, with available information, to identify subcategories of reactor processes for which the above mentioned control technologies have been demonstrated to always apply. The applicability and effectiveness of these devices may be greatly affected by the vent stream flow rate, water content, temperature, VOC concentration, and VOC properties such as solubility, molecular weight, and liquid/vapor equilibrium. These characteristics vary widely within the SOCMI. Therefore, there is no way to evaluate technologies for application to reactor process units for which thermal incineration and flaring have been determined to be too costly. Even with greater resources, this approach would be infeasible because it would require a stream-by-stream characterization, ultimately resulting in the need for a separate standard for each vent stream from a process used to produce a reactor chemical.

Combustion devices were found to be applicable to any nonhalogenated vent stream. For incinerators, operating conditions can be identified that will ensure 98 weight-percent reduction or 20 ppmv total organics (minus methane and ethane) in the outlet gas, whichever is less stringent. Boilers and process heaters were found to be capable of achieving 98 weight-percent reduction if the organic-laden stream is used as a fuel and is put into the flame zone. In recent tests, smokeless steam-assisted, air-assisted and nonassisted flares were also found to be as efficient as these other combustion devices in achieving 98 weight-percent reduction of VOC if they were operated as specified in 40 CFR 60.18. In terms of cost, boilers and process heaters are generally the least expensive combustion devices, because these units are already in place in SOCMI plants and because of heat recovery from the VOC-containing vent streams. Flares can control most nonhalogenated VOC-containing streams for less cost than incinerators. Incinerators were found to be the only devices applicable to halogenated streams because incinerators can accept a wide variety of stream types and can be constructed to tolerate the corrosive effects of halogenated streams. Furthermore, an absorber can be used to remove halogens from the offgases exiting the incinerator.

In summary, 98 weight-percent control or reduction to 20 ppmv is achievable for all halogenated and nonhalogenated reactor process vent streams using one of the combustion devices discussed above. Thus, these four combustion devices are candidates for BDT for the emission source category of organic chemical reactor processes.

Since vent stream characteristics within this category vary widely, it is to be expected that the cost per unit of emission reduction among streams will also vary. The potential environmental impacts of using a combustion device to control VOC emissions vary from vent stream to vent stream. The Administrator, therefore, has analyzed the environmental, economic, and energy impacts and the cost per unit of emission reduction for reactor processes vent streams included in the scope of these standards to determine if, due to adverse impacts associated with the use of the most applicable combustion devices, BDT for certain classes, types, or sizes of reactor processes might be no additional control. The following sections discuss these additional impacts.

Consideration of Environmental Impacts

The potential adverse environmental impacts that could result from reactor process standards were assessed. The generation of NO_x by the combustion process was examined as a possible native impact on ambient air quality. The principal factors affecting the rate of NO_x formation during combustion are the amount of excess air available, the peak temperature, and the rate of cooling of the combustion products. Relatively low combustion temperatures of approximately 870 °C (1,600 °F) are associated with control of VOC using thermal incinerators, and residence times are generally too short to be conducive to NO_x formation. Therefore, the rate of NO_x formation is expected to be low if incinerators are used.

Introduction of a reactor process vent stream as a supplement to the fuel and combustion air normally introduced into a boiler or process heater could, in some cases, result in increases in NO_x emissions. The combustion temperatures in these devices are well in excess of 2,000 °F and are therefore conducive to NO_x formation, and some reactor process vents being controlled would contain nitrogenous organic compounds or nitrogen from air in the vent stream. However, reactor process vent streams would represent only a small part of the total input to the boiler or heater. Also, in many cases, introduction of the reactor process vent stream would result in lowered fuel requirements and could result in lower NO_x emissions if the nitrogen from nitrogenous organic compounds is less than the fuel-bound nitrogen of the fuel being replaced. In addition, measures to minimize NO_x formation could be implemented due to NO_x standards under development for industrial boilers. Any increase or decrease in NO_x emissions due to introduction of the reactor process stream would be slight.

Only limited data are available for NO_x emissions from flares. In a recent study of steam-assisted and air-assisted flares, the highest estimated NO_x emissions were well below the reported NO_x emissions tabulated for industrial boilers and process heaters firing gas or oil. Because NO_x emissions from flares are less than the NO_x emissions from boilers and process heaters (which are themselves slight), NO_x emissions from flares are considered to be insignificant. Therefore, any increase in NO_x emissions resulting from the combustion of a reactor process vent stream is expected to be relatively small.

In additions to generation of NO_x, the control of VOC emissions from halogenated vent streams by thermal incinerators may result in the release of halogenated combustion products to the environment. However, flue gas quenching and scrubbing could be used to remove these compounds from the incinerator outlet stream. State or local regulations may require use of these scrubbers if the halogenated combustion products are in high enough concentrations. Current industry practice among reactor process facilities with halogenated vent streams that employ combustion devices is to use flue gas scrubbing to reduce plant maintenance costs by preventing corrosion of equipment. The capital cost and operating costs associated with flue gas quenching and scrubbing were taken into account in projecting the cost impacts for the standards.

Control of VOC emissions using combustion devices would not result in any significant increase in wastewater discharge by reactor processes. No water effluents are generated by the combustion devices themselves.

Use of an incinerator/scrubber system for control of VOC emissions from halogenated streams would result in increased water consumption. The increase in total plant wastewater would be relatively small and would not affect plant waste treatment capacity or sewer capacity. However, if the scrubber effluent is not recovered, it may be necessary to adjust the pH of the scrubber effluent by treatment with caustic (NaOH) before it is released into the plant wastewater system. The salt (NaCl) formed by the caustic treatment must be purged from the system and properly disposed. Brine solutions are currently disposed of in a variety of ways depending on site-specific conditions. These include direct discharge to sewer systems and surface waters (fresh and salt water bodies or rivers), discharge to evaporative lagoons, and injection into a disposal well. Because it is not possible to determine which options will be selected by the individual facilities analyzed, it would be impractical to represent all of these types of brine disposal in the cost analysis. Therefore, the costs most likely to occur at affected facilities, handling halogenated compounds, where considered instead.

The Agency has investigated brine disposal costs and has found that the deep well injection cost represents the cost associated with the most expensive disposal option available. In addition, available data indicate that this cost is appropriate for disposal of hazardous wastes in deep wells, not nonhazardous brine solutions. Furthermore, the cost associated with this option is not applicable to the majority of facilities generating brine.

For the reactor processes NSPS, the cost for brine disposal was considered to be negligible and not included in the TRE equation because the disposal options most likely to be used by affected facilities are of a relatively low cost. These include ocean dumping; direct discharge to fresh water, brackish water, and sewer systems were permitted; and injection into existing oil or gas wells that are located on-site. The Agency sees no reason why any facility would have to choose the most expensive option of deep well injection; therefore, these costs were not included in the TRE equation.

For each of the 173 chemicals under consideration, the adverse environmental impacts of VOC control using combustion devices would not be significant. Therefore, these impacts do not provide a basis for exempting any of the chemicals from the proposed standards or affecting the selection of BDT.

Consideration of Economic Impacts

An economic analysis was performed to determine if the price of any of the 173 chemicals or chemicals produced from the listed chemicals would be adversely affected by control at the 98 weight-percent reduction level. Assumptions that tend to maximize projected price increases were used in the analysis.

Some of the 173 chemicals are basic chemicals produced directly from the petroleum, while others are intermediates or end-use chemicals produced from the basic chemicals. The price increase caused by the use of a combustion device for a particular chemical was assumed to be reflected also in the price of all chemicals produced from that chemical. The projected price increase was calculated assuming that all control costs would be reflected as price increases, and that none would be absorbed. The price increase was calculated by dividing the estimated annualized control costs by the annual production of a facility. The price increase was then rolled into the price of chemicals that are produced downstream of the listed chemicals.

No chemical that is projected both to have new, modified, or reconstructed facilities built in the first 5 years of the standards and to be required to control emissions beyond current State requirements is projected to have a price increase greater than 5 percent. Furthermore, chemicals that are produced downstream of the listed chemicals will not have price increases over 5 percent. Most of the projected price increases for listed and downstream chemicals are small: 61 percent are under 2 percent while 90 percent are under 3 percent; any actual price increases are expected to be less than these projections. Impacts on industry structure, industry growth, inflation, foreign trade, and capital formation are projected to be insignificant.

Consideration of Cost and Energy Impacts

After it had been determined that the 98 weight-percent VOC emission reduction could be achieved from a variety of combustion controls without significant adverse environmental or economic impacts, the Administrator next examined the cost, energy, and costs per unit of VOC reduced (i.e., cost effectiveness) of these controls on the projected new, modified, or reconstructed reactor process units. Based on EPA's previous experience in developing an NSPS for SOCMI process vents, the Agency anticipated that the cost of removing VOC from the vent streams of some of the process units would be unreasonably high and therefore, conducted additional analysis.

The analysis required to determine costs, energy requirements, and costs per unit of VOC reduced included the following steps. First, the total number of new, modified, and reconstructed process units with vent streams which would be affected by the standard during the first 5 years was estimated. These include all process units with vent streams projected to not use combustion in the absence of an NSPS.

The process units with these uncontrolled streams are assumed to be those that would incur the cost and energy impacts resulting from the control requirements of the standards. The costs of controlling the emissions from these process units were then developed for each. These process units were then ranked according to costs of control per Mg of VOC reduced. From this ranking, a set of regulatory alternatives consisting of increasingly large numbers of controlled process units was developed. The remainder of this section provides a discussion of the approach and results of this regulatory analysis.

In order to project the number of process units that would be affected by the standards during the first 5 years of its applicability, estimates of SOCMI growth and replacement capacity were determined for each of the 173 chemicals. This step identified all of the chemicals which may have new, modified or reconstructed process units built between 1985 and 1990. The next step was to identify which of these chemicals would likely have units built where combustion devices would be applied in the absence of an NSPS. A total of 22 chemicals were identified as where combustion would be applied as a result of existing regulations or industry practices. Any impacts associated with process units making these chemicals would not be attributed to the NSPS and, therefore, these chemicals were eliminated from the analysis of impacts. The next step was to estimate the number and size of new, modified, and reconstructed process units producing chemicals which would likely not use a combustion device in the absence of an NSPS. A total of 56 such units were projected to come on-line and these were the facilities included in the analysis of impacts.

To determine the emission characteristics of these 56 process units, an extensive data base on existing reactor processes was developed. This data base or Emissions Data Profile (EDP) covers 127 reactor process units and is discussed in detail in the BID. The emission characteristics contained in the EDP were used to represent the emission characteristics of the 56 process units. It was assumed the EDP was representative of units making all of the chemicals associated with the 56 units. The EDP is based upon reactor process units rather than affected facilities. A process unit is defined in the BID as one or more combinations of reactor(s) and recovery system(s) located at a common site and producing the same chemical. Therefore, it should be noted that this regulatory analysis is based upon an industry unit which, in some cases, may include more than one affected facility. The EPA does not believe that this difference will affect the validity of the conclusions of this regulatory analysis because where a process unit contains more than one affected facility it is likely that emissions from both facilities will be ducted to a common control device. This is the situation represented in the regulatory analysis.

As previously stated, the 56 process units projected to come on-line between 1985 and 1990 are estimated to have vent streams that would not be controlled in the absence of an NSPS. The VOC emissions from these 56 process units are estimated to be about 2,400 Mg/yr. Total emissions from the 77 process units making the 22 chemicals anticipated to use combustion in the absence of an NSPS are estimated to be 910 Mg/yr. Therefore, the baseline emissions for all new, modified, and reconstructed reactor process units projected to come on-line between 1985 and 1990 are estimated to be 3,310 Mg/yr (the sum of 2,400 and 910). Baseline represents conditions that would exist in the absence of a standard. The proposed standards would affect the 2,400 Mg/yr from the 56 process units with uncontrolled vent streams.

In order to rank the 56 process units and to conduct the regulatory analysis, the cost for controlling each of the process units was determined. Estimating the cost of controlling VOC emissions from reactor process units consists of first designing the control system and then costing the system. The general approach used consists of determining the design parameters for a control system applied to a particular reactor process that emits VOC. The system was costed based upon these design parameters and by using cost equations developed from data supplied by vendors and industry. It was not possible with available data to identify those reactor process vent streams for which the use of catalytic incinerators, process heaters, and boilers would be applicable. Therefore, only thermal incinerators and flares were used to develop these cost data. Flares or incinerators (whichever were determined to be less costly) were applied to nonhalogenated streams. Incinerators are applied to vent streams containing halogenated VOC because flare tip corrosion may prohibit use of flares and because halogenated streams may create secondary emissions that require flue gas scrubbing (which is not possible from flared emission). Because this regulatory analysis is based upon the assumption that facilities will use flares and incinerators, when in fact, the less expensive boilers and process heaters (because they are already in place and they accrue heat recovery credits) will be used in some plants, the cost impacts are overstated.

Once the cost and emissions reductions for each of the 56 process units were estimated, the cost per Mg of VOC reduction for each process unit was determined. Then, each of the 56 units was ranked by cost effectiveness (i.e., from the lowest to the highest cost per Mg of VOC). To illustrate how impacts change as a result of increasing the number of units controlled, nine regulatory alternatives were developed based on discrete cost-effectiveness cutoffs from a continuum of all possible cost-effectiveness values. These alternatives are presented in Table 1.

TABLE 1.—SUMMARY OF ENVIRONMENTAL, COST, AND ENERGY IMPACTS OF NINE REGULATORY ALTERNATIVES [a]

[All Costs are in Third Quarter 1982 Dollars]

Regulatory alternatives	Theoretical [b] worst case cost-effectiveness cutoff value ($/Mg)	Average cost per Mg of VOC removed ($/Mg)	Costs per Mg of VOC removed ($/Mg)	Number of units controlled	Emission reduction from baseline (Mg/yr)	Percent "controllable" emissions reduced [c]	National annualized costs (million $/yr)	National energy requirements (TJ/yr) [d]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
I [e]				0	0	0	0	0
II	1,200	500	250–780	4	300	13	0.15	3
III	2,500	1,700	2,000	7	2,100	90	3.7	320
IV	5,500	1,800	5,400	8	2,300	91	3.9	340
V	20,000	2,100	5,600–14,000	21	2,300	97	4.7	390
VI	50,000	2,900	21,000–43,000	33	2,300	100	6.7	430
VII	200,000	3,200	64,000–110,000	42	2,300	100	7.4	440
VIII	500,000	3,500	280,000–450,000	46	2,300	100	8.2	450
IX	>500,000	4,000	>4,000,000	56	2,300	100	9.3	520

[a] Calculated for the fifth year of the NSPS.
[b] This is a theoretical cost effectiveness. As explained elsewhere in this document, all the units with calculated costs per Mg which approach the indicated value are expected to make process adjustments and thus not experience control costs as high as indicated by this theoretical worst case.
[c] Controllable emissions are the 2,400 Mg/yr that would be controlled if all 56 units were controlled at 98-weight-percent VOC destruction efficiency (i.e., at the most stringent possible alternative, Alternative IX).
[d] Expressed in Terajoules per year.
[e] Baseline, or conditions that would exist in the absence of the standards.

Column 1 in Table 1 identifies each of the nine alternatives. Regulatory Alternative I represents baseline or the conditions which would exist in the absence of a standard. At the other extreme is Alternative IX, which would control all 56 units. The number of units controlled above baseline for each alternative is presented in Column 5. The ranges of costs per Mg of VOC removed within each alternative are presented in Column 4. These ranges represent the additional cost-effectiveness values achieved at successively higher alternatives. Column 3 presents the average costs per Mg of VOC removed for each alternative. Thus, for example, Regulatory Alternative III could theoretically control 7 of the 56 process units with an average cost of $1,700/Mg of VOC controlled (in 1982 dollars).

Column 6 in Table 1 presents an estimate of the VOC emissions reduction over baseline from the 56 units. At baseline 2,400 Mg/yr of VOC would be emitted by the 56 units. Under Alternative II, 4 units would be controlled resulting in a reduction of 300 Mg/yr. However, under Alternative III, a total of 7 units are theoretically controlled resulting in an emission reduction of 2,100 Mg/yr. If all 56 units were controlled at 98 weight-percent (Alternative IX), there would be a reduction of 2,300 Mg/yr of VOC being emitted from the 56 units. This alternative is the most stringent possible. These 2,300 Mg/yr of VOC emissions are the maximum available for control. Column 7 presents the percentage of the "controllable" emissions that each regulatory alternative would control "Controllable" emissions are 98 percent of total emissions from the 56 units (98 percent of 2,400 Mg/yr).

It is evident from Columns 6 and 7 that most of the emissions reduction occurs as a result of controlling only a small fraction of the 56 process units. For example, Alternative III would control only 7 of the 56 process units. For example, Alternative III would control only 7 of the 56 process units but would account for about 90 percent of the controllable emissions.

Column 8 presents the national annualized costs requirements for each alternative. These cost impacts range from $0.15 million (1982 dollars) for Alternative II to $9.3 million for Alternative IX. Capital costs accumulated over the 5-year period (not shown in the table) range from $270,000 for Alternative II to $17.3 million for Alternative IX. These cost and cost-effectiveness data reflect the costs of controlling these units at 98 weight-percent VOC reduction through the use of incinerators and flares. The actual costs and cost effectiveness should be considerably less than those indicated in Table 1 for two reasons. First, plant owners and operators may be able to use boilers, process heaters or catalytic oxidizers rather than the more expensive flares and incinerators to comply with the 98 weight-percent reduction requirement. Secondly, as will be discussed later in this preamble, plant owners and operators may be able to increase the efficiency of product recovery sufficiently to comply with this standard and thereby would not have to apply 98 weight-percent-efficient reduction controls. To the extent that this alternative means of compliance is used; costs as well as emission reduction will be lower than those indicated in Table 1.

Column 9 presents the energy impacts of the various alternatives. Electricity is frequently required to operate the pumps, fans, blowers and instrumentation that may be necessary to control VOC using an incinerator or flare. The amount of supplemental fuel needed to increase the heating value of vent streams depends on vent stream temperature, net heating value of vent streams depends on vent stream temperature, net heating value, flow rate, combustion temperature, and type of heat recovery used. Due to the use of heat recovery techniques, combustion of some reactor process vent streams would result in a net production of energy event though supplemental fuel would be necessary for flame stability. Total electricity needs are relatively small compared to energy requirements in the form of supplemental fuel for combustion. The fifth year national energy use would range from about 3 terajoules per year (TJ/yr) (453 barrels of oil/yr) for Alternative II to 517 TJ/yr (85,000 barrels of oil/yr) for Alternative IX. As with the cost data, these impacts may be overstated because some facility operators will choose to comply with the standards through the alternative devices and mechanisms previously discussed.

F. Selection of Best Demonstrated Technology

As explained previously, the control of reactor process units would not result in unreasonable nonair environmental impacts or cause any of the chemicals to experience a significant adverse economic impact. Therefore, the Administrator analyzed the cost per megaram of emission reduction and energy impacts before determining which regulatory alternative should be selected. This analysis assures that the cost of units being controlled is reasonable, not only in terms of economic impacts, but also in terms of the emission reductions that would result. In this analysis, the cost data in Table 1 were first considered. The energy impacts shown in Table 1 indicate that there would be no unreasonable adverse energy impacts.

even if all units were controlled by combustion devices.

In selecting cutoffs related to applicability of NSPS, EPA looks at a variety of factors including: (1) The technical feasibility of additional control; (2) the economic feasibility associated with different control alternatives; (3) the magnitude of emission reductions associated with a control alternative (e.g., a slightly higher cutoff could be selected if it led to a substantial increase in the emission reduction achieved by the NSPS); (4) the cost effectiveness (C/E) of the control alternative in terms of annual cost per megagram ($/Mg) of emissions reduced; (5) the quality of the cost estimates (e.g., worst case versus realistic estimates); (6) potential reductions in other air pollutants not specifically regulated by the NSPS resulting from a control alternative; and (7) the location of the sources (e.g., urban versus rural). Because these factors vary from industry to industry and, in some cases, within the same industry, decisions on the appropriate level of control are made on a category-by-category basis.

After evaluating the above factors, the Administrator concluded that the cost of requiring control of any reactor process unit below the $2,500/Mg cutoff (1982 dollars) is reasonable and found that the following considerations were key to selecting the cutoff: (1) The cost effectiveness of NSPS for VOC emissions previously promulgated by EPA; (2) the probability that these maximum costs will not actually be incurred by industry; and (3) the presence of potentially toxic compounds in SOCMI reactor process vent streams and the fact that many of the facilities are located in urban areas.

In the past, the estimated cost per megagram of VOC removed has sometimes ranged as high as $2,800/Mg (1982 dollars) for affected facilities covered by other NSPS. (See Docket Item No. II–B–64). The Agency's experience in implementing these standards reveals that NSPS requiring this level of control have proved a useful tool in bringing about the installation of much emissions control technology, significant reductions in emissions, and corresponding improvements in air quality, yet have not imposed costs that appear "grossly disproportionate" to the emission reduction achieved. *Portland II*, 513 F.2d at 506. Such an approach simply makes this NSPS consistent (as to dollars spent per metric ton of VOC removed) with the existing body of NSPS regulations, all of which have either been promulgated without legal challenge or have been judicially upheld. As indicated in column 2 of table 1, the cost-effectiveness cutoff of $2,500/Mg used in the standard corresponds to Regulatory Alternative III. This alternative is estimated to result in a national annualized cost of $3.7 million (1982 dollars) by controlling seven process units with a VOC emissions reduction of 2,100 Mg/yr. The range of cost effectiveness would vary from $250/Mg to $2,000/Mg with a $1,700 average cost per megagram of VOC reduced.

Because of the conservative assumptions used to develop the regulatory analysis and because of the flexibility inherent in the means by which industry can comply with the standards, it is very unlikely that any facility would actually have to incur a cost of $2,500/Mg (the cost-effectiveness cutoff). Data on current capital costs of thermal incinerators indicate that units are now available at substantially reduced costs compared to those used in developing these proposed standards. Lower capital costs would result in lower annualized costs than previous estimates, though the change in annualized costs will not be as significant as the change in capital costs. This is an important factor to consider in selecting the appropriate regulatory alternative. Another consideration is the fact that natural gas prices used to calculate the cost effectiveness for each stream are overstated by about 40 percent. These conservative assumptions have resulted in higher cost and cost-effectiveness estimates than would actually occur. In addition, as discussed earlier, the regulatory analysis assumes (for costing purposes) that flares and incinerators would be used to comply with the standards. In fact, it may be feasible for these facilities to use boilers or process heaters. If they are able to use these devices, the costs of compliance would be significantly reduced. Costs would also be reduced for reactors that share control systems with other process vents. Finally, the proposed standard would encourage pollution prevention by not requiring 98 weight-percent reduction if a TRE index greater than 1.0 is maintained. As detailed in the section entitled "TRE Index," the costs shown in table 1 do not take into account the ability of facilities to comply with the standards through changes in the equipment or operation of the process facility, in certain cases, thereby avoiding additional control device costs. Available data indicate that reactor process facilities with a TRE index just below the 1.0 cutoff (equivalent to $2,500/Mg) would probably opt to comply with the standards by making a process change such as adding recovery equipment to reduce VOC emissions and raise their TRE index above 1.0 rather than by combusting the vent stream. The objective of making a process change is to reduce VOC emissions without disposing of the VOC to the point at which the cost effectiveness associated with combustion is over the cutoff. For example, reactor process facilties with TRE values as low as 30 percent below the cutoff could potentially apply product recovery devices to comply with the standards. Due to this ability, no reactor process facility is likely to incur the maximum cost-effectiveness value of $2,500/Mg. The highest value that a facility would actually incur by using a combustion device is estimated to be approximately $1,700/Mg.

A third consideration in the selection of this regulatory alternative is that SOCMI reactor process vent streams contain a wide variety of suspected or confirmed toxic compounds (e.g., benzene, acrylonitrile, butadiene, ethylene dichloride, ethylene oxide, carbon tetrachloride, and chloroform). A document listing the known toxic effects for the chemicals covered by this standard has been placed in Docket A–83–29 (Item II–I–166). Data on the emissions sources of more than 80 potentially toxic air pollutants indicate that the SOCMI emissions account for a disproportionate share of potentially toxic constitutents compared to other VOC sources (see Docket Entry II–A–39). In addition, as stated in the EPA's Air Toxics Strategy published in July 1985, the Agency will consider the likely toxic pollutant control benefits in the course of carrying out its responsibilities under section 111. This strategy reduces emissions of potentially toxic compounds from new sources and from industries as their facilities are reconstructed and modified. This approach is to work in tandem with EPA's efforts to control existing and new sources of specific toxic compounds under section 112 of the CAA. In setting an NSPS under section 111 of the CAA, the Agency evaluates all relevant factors (including costs, control technologies, environmental and energy impacts, and secondary impacts or benefits). Control of potentially toxic compounds by this NSPS is a secondary benefit that was considered by the Administrator in determining the reasonableness of the cost of different regulatory alternatives. Therefore, although EPA has not yet decided whether to list many of these compounds under section 112 of the

CAA, the Agency believes that it may properly consider their potential toxicity along with other relevant factors when choosing the cutoff. Many SOCMI facilities are located in urban areas and, as a result, many people will be exposed to any hazardous air pollutants emitted from these facilities.

Consideration of all of the above factors confirmed EPA's belief that a TRE value of 1.0 (i.e., $2,500/Mg) represents an appropriate cutoff for determining which facilities must reduce VOC emissions by 98 weight-percent or to 20 ppmv. The cutoff is specific to the SOCMI reactor processes source category and would not necessarily be appropriate for other source categories; therefore, it should not be viewed as a benchmark for other standards. It is not surprising, however, that the cost-effectiveness cutoff for reactors of $2,500/Mg (1982 dollars) is equivalent to the $1,900/Mg (1978 dollars) cutoff for the SOCMI air oxidation processes and distillation operations standards considering that the industry, the pollutants emitted, and the emission controls are the same. The only differences among the sources are the processes that are the sources of VOC emissions.

G. Selection of Format for the Standards

Several formats could be used to implement the proposed standards. Section 111 of the Clean Air Act requires that numerical standards of performance be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such standards. In this case, section 111(h) allows the Administrator to prescribe design, equipment, work practice or operational standards, or combinations thereof. Under that Section the term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technological or economic limitations. Because emissions from reactor vents and emissions from incinerators, process heaters, and boilers can be measured, an emission limitation (performance) standard for these combustion devices would generally be appropriate.

Because of the variety in process vent flow rates and VOC contents for many chemical reaction processes and facilities in the reactor source category, mass emission rates from sources using 98 weight-percent efficient control devices would vary considerably. Consequently, a mass emission limit based on an average source would require that more than 98 weight-percent control be selected as BDT at some facilities and less at others. Therefore, a mass emission standard was considered inappropriate, because it would not require the BDT at each source. Reactor process vent streams have as much variation in volume percent organics concentration as in mass emission rates. Any standards based solely on a concentration limit would also require more than BDT at some facilities and less than BDT at others. Therefore, standards based solely upon concentration were considered inappropriate. However, as discussed below, a concentrations limit might be used in combination with another type of emission limit if the applicability of the concentration limit were restricted to facilities within a limited range of process vent gas VOC content.

A weight-percent reduction standard would be feasible for incinerators, boilers, and process heaters because the control device inlet and outlet emission rates can be measured. A weight-percent reduction standard would result in the application of BDT at all sources. Furthermore, a given set of incinerator, boiler, or process heater operating conditions tends to result in a given weight-percent reduction, rather than in an absolute outlet organics concentration or emission rate. As discussed above in the section entitled *Selection of Best Demonstrated Technology*, all new incinerators can achieve at least a 98 weight-percent reduction in total organics (minus methane and ethane), provided that the total organic (minus methane and ethane) concentraton of the process vent stream is greater than approximately 2,000 ppmv (corresponding to 1,000 ppmv VOC in the incinerator inlet stream because air dilution is typically 1:1). Therefore, a weight-percent reduction standard, based on the mass rate of organics exiting the control device versus the mass rate of organics entering the device, would be approxriate for vent streams with total organics (minus methane and ethane) concentrations above approcimately 2,000 ppmv. For vent streams with organics concentrations below approximately 2,000 ppmv, it has been determined that an incinerator outlet concentration of 20 ppmv is achievable by all new incinerators. Therefore, EPA concluded that the format of the proposed standards for reactor process vents using an incinerator, boiler, or process heater should include a combination of a weight-percent reduction standard and a volume concentration standard. The proposed emission limits would be a 98 weight-percent reduction in total organic compounds (minus methane and ethane) or reduction to 20 ppmv total organic compounds (minus methane and ethane), whichever would be less stringent. The concentration limit of 20 ppmv would be based on a 3 percent vent stream oxygen concentration in the outlet stream.

Boilers and process heaters can achieve a 98 weight-percent reduction, provided that the waste stream is introduced into the flame zone where temperatures are highest. Unlike incinerators, in which furnace temperatures are fairly constant, furnace temperatures in heat-generating units are highest. Ulike incinerators, in which furnace temperatures are fairly constant, furnace temperatures in heat-generating units are hightest in the flame zone, and a temperature gradient is experienced between the flame zone and the walls. The combustion kinetics are much more rapid in the flame zone, due to the higher temperatures (2,800°F to 3,000°F). This results in very small residence time requirements (much less than furance residence times) to achieve 98 weight-percent reduction or greater than is required in an incinerator. When burned as a fuel in the flame zone, the organic compounds to be destroyed are exposed to these higher temperatures. As a result of the more rapid combustion kinetics at these temperatures, high destruction efficiencies comparable to those achieved by incinerators are attainable. In tests of the combustion of organic compounds burned as fuels in boilers and process heaters, greater than 98 weight-percent destruction efficiencies were demonstrated. Therefore, a reactor process vent stream, when combusted in a boiler or heater, must be introduced into the flame zone to ensure that it reaches sufficient combustion temperatures for destruction of the VOC. If the waste stream is not introduced into the flame zone, measuring 98 weight-percent efficiency across the control device has no value (i.e., does not assure the stream is being reduced by 98 weight-percent) since reactor process vent streams comprise generally a small portion of the total combustible stream to the heat generating unit. It is infeasible to "measure" whether the waste stream is introduced into the flame zone. Therefore, where a boiler or process heater is used as the control device, it is appropriate under section 111(h) of the CAA to have a combination format of performance standard and operational requirement. The proposed emission limit therefore would require any owner or operator using a boiler or process

heater to introduce the reactor process vent stream into the flame zone of the combustion device.

Unlike boilers, heaters and incinerators in which combustion takes place in an enclosed chamber, flaring is an open combustion process. It is very difficult, therefore, to measure the emissions from a flare to determine its efficiency. It may be technologically possible to measure these emissions, but the costs involved due to the necessity of hooding the flare and other equipment needs would be economically impracticable. The Administrator, therefore, has determined that it is not feasible to measure the emissions from a flare. Consequently, an equipment standard with stated specifications is being proposed as the format for the use of flares.

As described in the BID, test data show that flares meeting certain conditions achieve a 98 weight-percent emission reduction. The proposed standards require the use of a flare that meets the requirements of 40 CFR 60.18 to comply with the standards. This means that only flares that are steam assisted, air assisted, or nonassisted may be used. Furthermore, the net heating value of the flared gas must not be less than 11.2MJ/scm (300 Btu/scf) for steam-assisted and air-assisted flares or less than 7.45 MJ/scm (200 Btu/scf) for a nonassisted flare. In addition, the exit velocity of the flare gas at the flare tip must not exceed 18.3 m/sec (60 ft/sec) for steam-assisted and nonassisted flares, except for the following conditions. If the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf), the exist velocity of the flare gas at the flare tip must not exceed 122 m/sec (400 ft/sec) for steam-assisted and nonassisted flares. When the net heating value is less than 37.3 MJ/scm but greater than 11.2 MJ/scm. the maximum exit velocity for nonassisted and steam-assisted flares is a function of the heating value. Air-assisted flares must also operate below a maximum exit velocity, which is dependent upon the net heating value of the flared stream. There are the only conditions for which EPA has data supporting the finding that flares achieve 98 weight-percent emission reduction.

Another consideration in developing the equipment standard for streams using flares is the potential for process variations such as flow surges that can cause a flare to smoke for short periods of time until the flare can be adjusted. Five minutes is a reasonable period of time for alleviating the smoking conditions by making the needed adjustment to the steam or air to the flare. The provisions in 40 CFR 60.18 limit visible emissions to no more than 5 minutes within any 2-hour period.

Some reactors process facilities recycle all vapors to the manufacturing process and, therefore, do not emit VOC. For others, the product recovery devices remove virtually all of the vent stream. Analysis by EPA indicates that, even with large vent stream VOC emission rates and heat contents, no vent stream with flow rate below 0.011 scm/min (0.30 scfm) would be required to implement combustion controls. These facilities would have an unreasonably high control cost per megagram of VOC destroyed (greater than $2,500/Mg). For this reason, the proposed standards exclude facilities with flow rates less than 0.011 scm/min from the provisions of the standards except for an initial measurement and reporting requirement.

H. TRE Index

After selecting the cost-effectiveness cutoff above which additional control of VOC is not required, it was necessary to develop a method for use in the regulation that would distinguish those reactor process units below the cutoff (which would be required to meet the 98 weight-percent reduction requirements) from those process units for which no additional VOC reduction would be required. The EPA, therefore, has included equations in the regulation to calculate an index to determine whether further control is required. This index is termed TRE. An important feature of this index is that it is independent of cost changes over time so that it is not necessary to periodically revise the calculation to reflect current year dollars. The equations include the parameters used in calculating costs considered in selecting the cutoff. These parameters are the vent stream characteristics of flow rate, net heating value, mass flow of total organic compounds, and corrosion properties (presence of halogenated compounds). There parameters can be measured easily and objectively. The TRE value calculation allows the owner or operator of an affected facility to determine if that facility would be required to reduce VOC emissions by 98 weight-percent or to 20 ppmv. The standardized calculation allows objective enforcement since all TRE values would be calculated based on the same parameters and calculated by the same method.

The TRE index of a process vent stream is calculated according to one or both equations given in § 60.704(e)(7). The TRE index cutoff as calculated by the equation is 1.0. Affected reactor process facilities with a TRE index of less than or equal to 1.0 would be required to reduce VOC emissions by 98 weight-percent or to 20 ppmv, whichever is less, while affected facilities with a TRE index above 1.0 would not be required to comply with emission reduction requirements. The set of coefficients used in the equations that apply to a process vent stream can be obtained from Tables 1 and 2 of the regulation. These coefficients were derived directly from the cost and emission reduction equations associated with control of VOC emissions from reactor process facilities by flares and incinerators.

The standards require that a plant owner or operator calculate the TRE of the process vent stream based on the specific characteristics of the vent stream. If the vent stream contains halogenated VOC, the equation for determining the TRE value for incineration must be used, along with the appropriate coefficients (in Table 1) based upon vent stream heat content and flow rate. For vent streams containing nonhalogenated VOC, the plant owner or operator must calculate TRE values, using both the incineration equation and the equation for flares (selecting the appropriate set of coefficients in Table 1 or 2 based upon heat content and flow rate). After calculating both the incineration and flaring TRE values, the plant owner or operator must select the lowest TRE value for purposes of determining compliance with the standards. In most instances incinerators are more expensive than flares for controlling nonhalogenated vent streams; but in some instances the reverse is true. For this reason the regulation requires that the least expensive technique be used for TRE index calculation purposes. If this requirement did not exist, it is possible that a plant owner or operator could avoid the emission reduction requirements by not selecting the least costly control device in determining TRE.

The vent stream of an affected facility is considered "halogenated" under the proposed standards if it is determined to contain a concentration of halogenated compounds of 20 ppmv (by compound) or greater. This low 20 ppmv halogenation cutoff was chosen for the analysis to avoid control cost and TRE underestimates. Even small amounts of halogenated compounds may be corrosive and can necessitate incinerator temperatures greater than 870 °C to achieve a 98 weight-percent control. Therefore, it was judged essential to set a low cutoff, so that the control cost and TRE would not be underestimated for any facility. This does not imply that flares, boilers, and process heaters are prohibited from use on streams containing more than 20 ppmv halogenated compounds.

The BDT selected allows flexibility in implementing the standards. For sources below the TRE index cutoff where the cost of combustion control is considered reasonable, BDT is the use of a control device capable of achieving a reduction of 98 weight-percent, or to 20 ppmv total organics (minus methane and ethane) whichever is less stringent. Control is achievable through the use of combustion devices such as incinerators, boilers, process heaters, and flares. Incinerators may be the only applicable combustion device for use on streams containing halogenated VOC. Above the TRE index cutoff, BDT is no additional control.

The use of a TRE index cutoff will also permit the use of recovery techniques or process modification in an effort to raise the TRE index to a point above the 1.0 cutoff. The parameters used to calculate the TRE index are measured at the outlet of the recovery system. Additional recovery can be used to change the values of the parameters (e.g., decrease the emission rate) and subsequently increase the TRE index value. The total cost to a facility for improved recovery to exceed the TRE cutoff may, in some cases, be much lower than the total cost of a flare, boiler, or incinerator. It may, therefore, be economically advantageous for such a facility to choose to improve its recovery system or make some other change within the process. The decision by the owner of a facility concerning the design and resulting VOC removal efficiency of a change within the process is primarily made prior to the construction, modification, or reconstruction of that facility. As a practical matter, EPA has no ability to assess the extent to which VOC removal efficiency is influenced by economic versus regulatory considerations. As such, the source's motivation for establishing a particular process design is not considered when the TRE index value is measured. Consider an example where the owner or operator of a facility chooses to improve the facility's recovery system. For this type of process change, EPA presumes that the recovery systems are integral to the process and that, therefore, BDT is best determined according to the characteristics of the stream existing the last recovery device.

I. Selection of Actual Standards

In summary, under the proposed standards, sources for which the costs of combustion control are reasonable would be subject to the following requirements: (1) A 98 weight-percent reduction of the total organic compounds (minus methane and ethane) in the reactor vent stream or a reduction to 20 ppmv total organic compound (minus methane and ethane), whichever is less stringent; and if a boiler or process heater is used to comply with the standards, the reactor vent stream must be introduced into the flame zone of the boiler or process heater, or (2) when a flare is used to comply with the standards, a smokeless flare is required and must be operated in accordance with the requirements in 40 CFR 60.18. As previously discussed, facilities with low flow rate (less than or equal to 0.011 scm/min) and facilities with low capacities (less than or equal to one Cg/year) would be exempt from these standards except for certain recordkeeping and reporting requirements.

For sources where the costs of control are not reasonable, the proposed standards would require that the TRE index be maintained at a value of 1.0 or above. This TRE concept is explained in Section H.

J. Compounds Used in Determining Compliance

The proposed standards are intended to reduce emissions of VOC through the application of BDT (considering costs and other impacts); and the emission limits in the standards are designed to reflect the performance of BDT. Where a control device for a reactor process is BDT, that control device (i.e., combustion) does not selectively control VOC (that is, the proportion of the organics that is regarded as photochemically reactive), but rather these technologies control all organic compounds. Moreover, the numerical values of the emission limits (98 weight-percent reduction and 20 ppmv) in the case of reactor processes, were based on total organic compounds data that excluded methane and ethane.

To reflect accurately the performance of these control devices and to make the emission limits consistent with the data and test methods from which the limits were derived, EPA has expressed the standards in terms of organic compounds, minus methane and ethane. For the same reason, the test procedure in the proposed standards prescribes measurement of total organic compounds, excluding methane and ethane. In short, EPA is relying on control of total organic compounds, minus methane and ethane, as the best surrogate for controlling VOC, which react to form ozone in the atmosphere.

K. Modification/Reconstruction Considerations

The proposed standards would apply to all affected facilities which commenced construction, reconstruction, or modification after the date of proposal of the NSPS. Modification is defined in 40 CFR 60.14 as any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any air pollutant to which a standard applies. (Section 60.14(e) lists the six exemptions which would not be considered modifications even if emissions increased.) Reconstruction, as defined in 40 CFR 60.15, occurs when components of an existing facility are replaced to such an extent that: (1) The fixed capital cost of the new components exceed 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and (2) it is technologically and economically feasible to meet the applicable standards.

Potential modifications involving SOCMI reactor processes include process equipment changes, changes in operating parameters, or both. Two types of process changes that may result in modification are: (1) Feedstock (i.e., basic chemical) or reactant substitution in reactors which were not designed to accommodate the new feedstock or reactant, and (2) process equipment changes.

Many of the chemicals produced in reactors can be manufactured from two or more feedstocks. For example, cyclohexanone can be produced using either phenol (a reactor process reactant) or cyclohexanol (an air oxidation reactant). If a feedstock change were made and if: (1) Emissions increased, and (2) as required under § 60.14(e) the reactor was not designed to accommodate the feedstock change, the feedstock change would result in a modification. In the example cited above, all the reactors could have to be rebuilt, possibly requiring a capital expenditure in excess of 50 percent of the capital cost of the affected facility. In this case, a reconstruction could result, regardless of the emissions.

The second type of process change is a process equipment change. As discussed earlier, this type of change rarely occurs within the industry. Examples include the replacement of a fixed-bed reactor with a fluidized-bed reactor, the expansion in the size of a

reactor, or the replacement of an absorber or substitution of a condenser for an absorber in the gas treatment system. If any of these process equipment changes result in an increase in emissions, a modification could result; if any of the changes requires the expenditures of more than half of the replacement cost of the affected facility, then a reconstruction could occur.

L. Selection of Monitoring Requirements and Test Methods

Following is a discussion of the monitoring requirements and test methods selected for demonstrating compliance with both the emission reduction and the TRE provisions of the proposed standards.

Percent Reduction/Concentration Limit

The combined gas chromatograph/flame ionization detection method (GC/FID) (Reference Method 18) is the best available procedure for determining emissions from reactor process facilities. It has the advantage of being able to measure individual organic compounds. Details concerning the use of this methodology, including sampling, analysis, preparation of standards, calibration procedures, and reporting of results are discussed in Reference Method 18, "Measurement of Gaseous Organic Compound Emissions by Gas Chromatography," which was promulgated with the NSPS for SOCMI equipment leaks (48 FR 48328).

The owner or operator of a facility using an incinerator to comply with the proposed 98 weight-percent/20 ppmv emission limit would be required to determine compliance according to Reference Method 18 during any performance test. Reference Method 1 or 1A would be required, as appropriate, to be used for selection of the sampling site. The control device inlet sampling site for determination of reduction efficiency would be required to be prior to the inlet of any control device and after all product recovery devices. Reference Methods 2, 2A, 2C, or 2D would be required, as appropriate, to be used for determination of the volumetric flow rate. Reference Method 3 would be required to be used for an air dilution correction, based on 3 percent oxygen in the emission sample.

If any process vent stream(s) from outside the affected facility were normally routed through the product recovery system or directly to the control device of the affected facility, the proposed standards would permit such a stream to be routed normally during any performance test to determine compliance with the proposed reduction requirement. The Agency considered requiring such streams to be rerouted or turned off, in order to assure that 98 weight-percent reduction or reduction to 20 ppmv would be achieved for control of the reactor process stream itself. However, the Agency determined that if a performance test conducted on such a facility while routing its vent streams from a nonaffected facility showed compliance with the proposed emission limit, that limit would also be achieved by the combustion device when only the reactor process vent stream is routed through it, provided that the combustion device operating parameters, such as temperature and residence time, remained unchanged. Therefore, the Agency concluded that requiring the nonaffected facility process stream to be rerouted or turned off during a performance test would be unnecessary.

The Agency believes that boilers and process heaters with a design heat input capacity of 44 MW (150 million Btu/hr) or greater would achieve a reduction efficiency of 98 weight-percent or reduction to 20 ppmv, so long as the reactor process stream is introduced into the flame zone. Therefore, the Agency believes that an initial measurement of control efficiency would not be necessary for boilers of this size. As explained in the discussion of combustion kinetics given in the BID, a firebox temperature of 1,100 °C and 1 second residence time represent the conditions that might, in the worst case, be necessary to achieve 98 weight-percent reduction, even if the organics were halogenated. Boilers (and process heaters) with a design heat input capacity of 44 MW or greater are operated at temperatures and residence times greater than 1,100 °C and 1 second, respectively. In some cases, the residence time is less than 1 second. However, in these cases, the firebox temperature is much greater than 1,100 °C, and 98 weight-percent reduction would still be achieved.) Other than an adequately high temperature and residence time, the two primary conditions necessary for high combustion device control efficiency are stable flow rate and adequate mixing of gases. It is the economic advantage of the owners of facilities using boilers or process heaters to design and operate them with stable flow rates to avoid upsets. For the same reason, such devices would be designed and operated with adequate mixing of gases to maximize the extent of the combustion efficiency, thereby maximizing the steam or heat generation rate.

For these reasons, the Administrator has decided that using a boiler or heater with a design heat input capacity of 44 MW or greater to control VOC emissions from reactor process operations is an acceptable means of demonstrating compliance with the proposed standards if the vent stream is introduced into the flame zone. Therefore, in accordance with § 60.8(b), the Administrator has waived the requirement for a performance test on such devices. An initial report is required within 180 days of start-up, describing the location at which the vent stream is introduced into the boiler or process heater. The reference methods applicable to incinerators described below apply to the smaller (i.e., less than 44 MW) boiler and process heaters.

As explained under *Selection of Format for the Standards*, an operational standard was selected for cases where a flare is used to meet the standards. Therefore, a performance test measuring percent reduction is not required for streams equipped with flares. However, the standard requires that the flare operate in accordance with the requirements in 40 CFR 60.18. Flow rate and heat content of the flared stream are to be determined in accordance with the procedures prescribed in § 60.703.

Incinerators used to comply with the proposed emission limit need to be maintained and operated properly if either a 98 weight-percent reduction or reduction to 20 ppmv is to be achieved on a continuing basis. Monitoring can generally be used to ensure such proper operation and maintenance are occurring. Two methods of monitoring to ensure the proper operation and maintenance of the control equipment used to comply with the proposed emission limit were considered. These methods were continuous emission monitoring and continuous combustion control device parameter measurement. Examples of such parameters are combustion temperature and vent stream flow.

Continuous combustion control device inlet and outlet emission monitoring would be the preferred method of monitoring, because it would provide a continuous, direct measurement of actual emissions. However, no continuous monitor measuring total organics (minus methane and ethane) has been demonstrated for incinerators because each of the many different compounds in reactor process vent streams would have to be identified separately and the concentrations of each determined. Therefore, the Administrator has determined that continuous monitoring of compliance with the proposed standards is not feasible.

Provided that combustion parameters that accurately reflect the level of combustion device efficiency can be identified and monitored continuously, monitoring of such parameters alone would have several advantages, such as low cost and high reliability. However, a disadvantage of combustion parameters monitoring alone is that the correlation of the parameters with the numerical emission limit is not exact. However, exact correlation is not necessary if the parameter monitored would demonstrate proper operation and maintenance of the control device.

The combustion device operating parameters that affect incinerator performance were analyzed. These variables are temperature, mixing, type of compound, residence time, inlet concentration, and flow regime. Of these variables, the inlet concentration was judged to have only a small impact on incinerator performance (provided reactor vent concentrations are at least 2,000 ppmv). Residence time is essentially set after incinerator construction unless the vent stream flow rate is changed. At temperatures above 760 °C, the compound type has little effect on combustion efficiency. Temperature and flow rate were then analyzed in more detail to define their impact on performance and the ability to monitor them.

Temperature was analyzed first. Test results and theoretical calculations show that lower temperature can cause significant decreases in control device efficiency. Test results also indicate that temperature increases can also adversely affect control device efficiency, apparently by decreasing the thoroughness of mixing of process vent gases, burner gases, and combustion air. In terms of cost, temperature monitors are relatively inexpensive, costing less than $5,000 installed with strip charts, and are easily and cheaply operated. Given the large effect of temperature on efficiency and the low cost of temperature monitors, this variable is clearly an effective parameters to monitor. The proposed standards would, therefore, require the owner or operator of an affected facility using a thermal incinerator to comply with the proposed 98 weight-percent/20 ppmv emission limit to install, calibrate, maintain, and operate according to manufacturer's specifications a temperature measurement device. This device would be required to be equipped with a continuous recorder and have an accuracy of 1 percent of the temperature being measured, expressed in degrees Celsius, or ±0.5 °C, whichever is greater. The device would be required to be installed in the firebox. If a catalytic incinerator were used, the temperature measuring device would be required to be installed in the gas stream immediately before and after the catalyst bed.

Flow rate of the reactor process vent stream to the combustion device was the next parameters to be analyzed as a potential monitoring parameter. Where a combustion device is used to incinerate VOC streams alone, total flow rate into the unit can provide useful information regarding destruction efficiency since it relates to residence time in the combustion device. Reactor process vent stream flow rates can be small in comparison to other streams that may also be ducted to the same combustion device. Since total flow rate must be monitored in order to provide reliable information, and reactor vents may be combined with other nonreactor vents, then the monitoring requirements would be applied to vents that were not intended to be covered by the standards. Flow indicators, as opposed to flow rate monitors, are relatively inexpensive and easy to operate. Therefore, because it gives an indication that the organic-laden stream is being routed for destruction and it is monitored inexpensively, indication of flow is also an effective parameter to monitor for combustion devices.

The proposed standards would, therefore, require the operator of an affected facility using an incinerator to comply with the proposed emission limit to install, calibrate, maintain, and operate a flow indicator, according to the manufacturer's specifications. The flow indicator would be required to be installed at the combustion device inlet.

These two combustion parameters (temperature and flow) would be required to be monitored during the original (or most recent) performance test. Temperature would then be monitored to determine if it deviated from the values measured during the performance test. Flow indicators would be required to determine whether the vent stream was being continuously routed for destruction.

If a reactor process vent stream is introduced into the flame zone of a boiler (or process heater) of any size, it is necessary, for the purpose of ensuring proper operation and maintenance, to know that the boiler (or process heater) is operating and to know that the vent stream is being introduced into the boiler (or process heater). The maintenance of records (such as steam production records) would be required that would indicate the periods of operation of the boiler (or process heater). The Administrator must be notified if the location at which the vent stream is introduced into a boiler or process heater is changed after the initial performance test. The nature of the records to be kept to comply with this requirement are left to the discretion of the owner or operator of the facility, but they must be readily available for inspection. To ensure that the vent stream is being introduced into the boiler (or process heater), the proposed standards require owners or operators to install and operate a flow indicator that provides a record of vent stream flow to the boiler (or process heater).

For heat generating units (boilers and process heaters) of less than 44 MW (150 million Btu/hr) heat input design, performance testing is required to ensure efficient VOC destruction. For these units, just as for incinerators, temperature would be required to be measured during the original (or most recent) performance test and to be monitored to determine if it deviated from the values measured during the performance test. Monitoring of temperature would not be required for heat generating units with a design heat capacity of 44 MW or greater.

A flare will be in compliance with the proposed standards provided it is operating in accordance with 40 CFR 60.18 (i.e., it is operating smokelessly (no more than 5 minutes of visible emissions from any 2-hour period), a flame is present, the minimum heat content requirements for the flared gas are met, and a maximum exit gas velocity is not exceeded). Because flares are not enclosed combustion devices, it is not feasible to measure combustion parameters. Moreover, temperatures and residence times are more variable throughout the combustion zone for flares than for enclosed devices and, therefore, such measurements would not necessarily provide a good indicator of flare performance even if measurable. The typical method of monitoring continuous operation of a flare is visual inspection. However, if a flare is operating smokelessly, it can be difficult to visually determine if a flame is present. The presence of a flame can also be determined through the use of a heat sensing device on a flare's pilot flame, such as a thermocouple or ultra-violet (U-V) beam sensor. If a flame is absent, the temperature probe can be used to alert the plant operator. The cost of available thermocouple sensors ranges from $800 to $3,000 per pilot. (The more expensive sensors in this price range have elaborate automatic relight and alarm systems.) The cost of a U-V

sensor is approximately $2,000. While U-V sensors are designed primarily to monitor flames within enclosed combustion devices, they can be applied to open flames so long as any outside interferences are corrected for. The use of either thermocouples or U-V sensors is suitable for indication of the presence of a flame. The proposed standards would require continuous monitoring to indicate the presence of a flame to ensure proper operation and maintenance of a flare, but the standards do not specify a particular monitoring technique.

Among the criteria governing the use of flares under the proposed standards is maximum exit gas velocity requirement. Compliance with this requirement is determined by performance testing. Methods 2, 2A, 2C, or 2D (see § 60.704) are used in performance tests to determine the actual exit velocity of flares. These tests must be performed under representative flare operating conditions. Exceedances of velocity limitations during periods in which one or more processes (that vent to the flare) start-up, shutdown, and malfunction are not considered a violation (see § 60.8(c)). These tests are used to ensure that the flare is designed to be and is capable of being operated within the velocity limitation during representative process conditions. During nonperformance test periods, operators must maintain and operate flares used to comply with Subpart RRR in a manner consistent with good air pollution control practices for minimizing emissions, even during periods of start-up, shutdown and malfunction (see § 60.11(d)).

The formula specified at § 60.704 requires that Method 2, 2A, 2C, or 2D be used as the test method to determine the volumetric flow rate. This flow rate should be determined in the flare header or headers that feed the flare because the volumetric flow rate determined in these headers reflects the flow rate in the flare. After this flow rate is determined, an operator would use design and engineering principles to determine the unobstructed cross-sectional area of the flare tip. With these two factors, the actual exit velocity is determined.

The TRE Index Cutoff

Calculation of the TRE index value for an affected facility is dependent upon measurement of the process vent gas volumetric flow rate, net heating value, total organic compound emission rate, and corrosion properties (presence or absence of halogenated compounds into the stream, and also prior to the inlet of any combustion device). Subject to the requirements just mentioned, the sampling site would also be required to be downstream of all product recovery equipment except as discussed in the remainder of this section. In the situation where vent streams from new and existing reactors are ducted to a common product recovery system, a single TRE measurement is required downstream of the common product recovery system for the control of the combined new and existing reactor vent streams.

The final piece of recovery equipment will not always be associated with only the affected facility; it can sometimes include nonreactor process facilities. These are configurations that could influence the location and number of sampling sites required. One possible exception to the previous discussion involves a vent stream from an affected facility that is normally routed through a final recovery system that is shared with a nonreactor process gas stream. The Agency considered whether or not to require in the proposed standards that such nonreactor process streams be bypassed during any test to determine the TRE index. The efficiency of the recovery system including both the reactor and the nonreactor process vent stream would often be different from the efficiency of similar devices designed to handle each vent stream separately. Furthermore, it is reasonable to conclude that, especially for recovery devices, their design would be different for reactor and nonreactor vent streams constituents. Therefore, for purposes of determining compliance with the TRE index cutoff of such cases, the Agency requires that the TRE index be determined based upon the portion of the recovery outlet stream contributed by the reactor process facility alone. Thus, it is necessary to locate sampling sites directly upstream and downstream of the recovery system (to determine that overall control efficiency for the device or devices) and also directly downstream of the reactor process facility. In all cases, compliance with the TRE index cutoff would be determined for the total portion of the vent stream contributed by a reactor facility by determining the effects of the overall efficiency of the device upon the characteristics of the vent stream determined from the upstream sampling site (or sites) and by measuring flow rate and molar composition at a point just downstream of each affected facility (i.e., downstream of the final recovery device).

For any sampling site, the volumetric flow rate would be required to be determined according to Reference Methods 2, 2A, 2C, or 2D, as appropriate. The molar composition of the offgas stream, including the total molar concentration of halogenated compounds, would be required to be calculated according to the proposed Reference Method 18, Measurement of Gaseous Organic Compound Emission by Gas Chromatography. The water vapor concentration of the vent stream would be required to be calculated according to Reference Method 4.

The net heating value of the process vent stream (25 °C, 760 mm Hg) would be required to be calculated according to an equation specified in the regulation. This equation would make use of the molar composition of the process vent stream, as measured by Reference Methods 4 and 18. The net heat of combustion of each vent stream component would be required to be determined using ASTM D2382–76 if published values are not available or cannot be calculated. This method of determining net heating value was chosen because it would not require a separate test procedure from that required for determination of reduction efficiency and offgas halogenation. Moreover, the Agency believes that the proposed method for determining net heating value would be more accurate than any available direct experimental measure, such as bomb calorimetry.

The total organic mass emission rate of the process vent stream would also be required to be calculated according to an equation specified in the regulation. This equation would make use of the molar composition of the offgas stream, as measured by Reference Method 18, and of the volumetric flow rate, as measured by Reference Method 2.

After an initial performance test to determine compliance with the proposed TRE index cutoff value, variations in process parameters, process modifications or improper operation or maintenance of recovery equipment could lead to higher emissions and a true TRE index below the cutoff. Some method is necessary to determine if the TRE index measured during the initial performance test has changed. Methods considered were continuous monitoring of selected operating parameters of the final piece of product recovery equipment in the affected facility and periodic performance testing of the TRE index of the facility. As explained previously, continuous vent stream molar composition and flow rate monitoring are not feasible. The first method investigated for determining if the initial TRE index had changed, involved the monitoring of product recovery device parameters. The operating parameters of the three types of product recovery equipment commonly used in reactor processes were analyzed for correlation with product recovery device operation and maintenance, which in turn would give an indication of changes in TRE index. The three types of product recovery equipment are absorbers, condensers, and carbon adsorbers.

For an absorber, two operating parameters were identified as the primary determinants of product recovery device operations: absorbing liquid temperature and specific gravity (or some other parameter used by a facility to measure absorbing liquid saturation). In the absence of the proposed standard, facilities employing an absorber for product recovery would, in general, monitor continuously some parameter related to the degree of saturation of absorbing liquid with recovered material. Specific gravity is one such parameter that is frequently monitored. Absorbing liquid temperature monitors and specific gravity measurement devices are available at a reasonable cost. The estimated one-time combined capital investment for such equipment is $8,000. These absorption parameters would be required to be measured during each performance test. (If approved by the enforcing Agency, an alternate parameter that would indicate the degree of absorbing liquid saturation could be measured during each performance test.) These absorption parameters would then be monitored to determine if any value had changed since the performance test. This monitoring would indicate whether the absorber was being operated and maintained properly. Therefore, an operator of an affected facility for which an absorber was the final device in the product recovery system would be required to install, calibrate, maintain, and operate according to a manufacturer's specifications an absorbing liquid temperature monitor and specific gravity measurement device (or an alternate device that would measure the degree of absorbing liquid saturation, if approved by the enforcing agency), each recorded continuously.

For a condenser, the exit (product side) temperature of the offgas was identified as the primary determinant of product recovery device operation. Condenser temperature monitors are available at a reasonable cost. The estimated one-time capital investment for such equipment is $3,000. The condenser exit (product side) temperature would be required to be measured during each performance test. The temperature would then be monitored to determine if the value had changed since the most recent performance test. This monitoring would indicate whether the condenser was being operated and maintained properly. Therefore, an operator of an affected facility for which a condenser was the final device in the product recovery system would be rquired to install, calibrate, maintain, and operate according to manufacturer's specifications a condenser temperature monitor equipped with a continuous recorder.

For a carbon absorber, the carbon bed temperature (after regeneration and completion of any cooling cycle), as well as the amount of steam used to regenerate the adsorption bed, were identified as the primary determinants of product recovery device operation. Steam flow meters that indicate the quantity of steam used over a period of time and bed temperature monitors are available at a reasonable cost. The estimated one-time capital investment for such equipment is $10,000. These adsorption parameters would be required to be measured during each performance test. These adsorption parameters would then be monitored to determine if any value had changed since the most recent performance test. This monitoring would indicate whether the carbon adsorption unit was being operated and maintained properly. Therefore, an operator of an affected facility for which a carbon adsorber is the final unit of the product recovery system would be required to install, calibrate, maintain, and operate according to manufacturer's specifications an integrating steam flow meter and a carbon bed temperature measurement device, each equipped to be recorded continuously.

Some carbon absorbers, adsorbers, and condensers may include vent stream organic concentration monitors to aid operators maximizing the recovery of raw materials or products. Such devices equipped with a continuous recorder may be used as an alternative to monitoring the other operating parameters for absorbers, adsorbers, and condensers specified in the regulation.

The enforcement agency would specify, on a case-by-case basis, appropriate monitoring procedures or requirements where the owner or operator of an affected facility uses emission control or product recovery techniques other than those specified to comply with the proposed standards.

The Agency has determined that an affected facility with a TRE index value greater than 8.0 could not lower its TRE index value below 1 without a process change. Therefore, facilities with TRE index values greater than 8.0 are exempt from the monitoring, recordkeeping and reporting requirements other than the initial performance test requirements unless a process change is made to the facility. If a process change occurs, the TRE index value would have to be recalculated. If the recalculated TRE index value is below or equal to 8.0 and greater than 1.0, the facility would have to comply with the monitoring, recordkeeping, and reporting requirements of the standards.

M. Reporting and Recordkeeping Requirements

The General Provisions for the NSPS regulations (40 CFR part 60, subpart A) require submittal of several one-time notifications for occurrences such as construction, modification, reconstruction, scheduled dates for performance tests, and performance test results. Owners and operators of boilers and process heaters with design heat input capacities of 44 MW (150 million Btu/hr) or greater would not report performance test results, since the proposed standards would waive the requirement of such a test. Instead, operators would be required to file an initial report describing the location at which the reactor vent stream is introduced into the boiler (or process heater) to be used. Owners and operators of flares used to comply with the proposed standards would be required to file an initial report on the results of performance testing to determine compliance with the visible emission requirements and the heat content and maximum exit gas velocity criteria for flares.

The proposed standards exempt reactor process facilities from the quarterly report required by the General Provisions. However, records of start-up, shutdown, and malfunction would still be required. Also, records indicating whether control equipment is being operated and maintained properly would be required. The proposed standards would require owners or operators of those facilities, exempted because their operational flow rate was less than 0.011 scm/min, to send an initial report to the Administrator containing a measurement of the operating flow rate, maintain records of and report semiannually if any changes in equipment process operation occur that would increase their flow rate above 0.011 scm/min. Similarly, owners

or operators of those facilities that would be excluded from control requirements because the process unit in which they are located has a design capacity below 1 Gg/yr, would be required to send an initial report to the Administrator of the design production capacity. They would also be required to record and report changes that increase their process unit capacities above the one Gg/yr cutoff.

Records indicating proper operation and maintenance would be based on the monitoring of control device or recovery device parameters discussed in the previous section. Two types of records would be required. The first would be the monitoring results themselves. This information can be automatically recorded, and therefore, essentially the only labor necessary for keeping these records would consist of filing automatically recorded parameters. The second type of record would be a tabulation of periods when the measurements of these automatically recorded parameters significantly deviated from measurements of the same parameters during the most recent performance test. Although this requires more effort, it is a necessary step for both the owner or operator and enforcement agency to ensure that the control equipment is being operated and maintained properly. This information would be necessary for the owner or operator to know when to make necessary corrections to the control equipment. For this second type of record it would be necessary for the owner or operator to record control device or product recovery equipment operating parameters, as appropriate, during all performance tests and keep these records for purposes of comparison. The owner or operator would not be required to record all deviations from these measurements, but only certain deviations as listed in the proposed regulation. All records would be required to be kept up to date and in readily accessible files for 2 years. The parameter boundaries included in the proposed regulation would allow for normal fluctuations in operation of the equipment monitored. The VOC reduction efficiency of the control device would not be affected by such normal fluctuations.

Where a recovery system is used to comply with the proposed TRE index value, the proposed standards would also require recording of any change in production capacity; feedstock; type of catalyst; or of the replacement, removal, or additional of product recovery equipment. When any such change occurs, the TRE index value would have to be recalculated to document that the facility continues to have a TRE index value above 1.0. Such recalculation can be based on the best engineering estimates of the effects of the change or on emission test data. A record would be maintained of the recalculated TRE value. If the recalculated TRE index value for the facility is below 1.0, the owner, or operator of the facility would have to demonstrate compliance with the 98 weight-percent reduction or 20 ppmv emission limits. Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

If the initial TRE index value for a facility were above 8.0 and the recalculated value were below or equal to 8.0 but greater than 1.0, the facility must report the recalculated TRE index value to the Administrator as soon as possible after the change and no later than 180 days after the change. In addition, a performance test must be completed within the same time period to verify the recalculated value and to obtain the initial operating parameters. The performance test is subject to the requirements of § 60.8 of the General Provisions. The facility must begin complying with the monitoring, recordkeeping, and reporting requirements immediately after the performance test.

In addition to the one-time notifications and performance test reports discussed above, semiannual reporting of recorded data would be required for instances where monitored parameters exceed the allowable limitations set forth in the standards. These data include the operating parameters cited above for combustion and other control devices. Other instances that would be reported semiannually ar periods of no flow to control devices used for compliance with the standards and periods where there is no flame present for flares used for compliance with the standards. The requirement for semiannual reporting, however, is waived for affected facilities in States where the program has been delegated, if EPA, in the course of delegation, approves reporting requirements or an alternative means of source surveillance adopted by the State. Such affected facilities would be required to comply with the requirements adopted by the State.

During the first 3 years of this regulation, the average annual burden of the reporting and recordkeeping requirements would be 7.9 person-years, based on an average of 27 respondents per year.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of the preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of the preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Central Docket Section in Washington, DC (see the **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to, or otherwise considered in, the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials as noted in Section 307(d)(7)(A)).

C. Clean Air Act Procedural Requirments

Administrator Listing—Section 111. As prescribed by section 111 of the CAA, as amended, establishment of standards of performance for SOCMI reactor process units was preceded by the Administrator's determination (49 CFR 60.16, 44 FR 49222, dated August 21, 1979) that SOCMI contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

Periodic Review—Section 111. This regulation will be reviewed within 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

External Participation—Section 117. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with

appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during development of the proposed standards. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technolgical issues.

Economic Impact Assessment—Section 317. Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the BID.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

There are no reporting requirments by other governmental agencies for the information required by these standards which would result in overlapping requirements. In particular, there is no overlap with the reporting requirements of the Superfund program. The Superfund program was established in 1980 by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Pub. L. 96–510) and authorizes the Federal government to respond directly to releases (or threatened releases) of hazardous substances and pollutants or contaminants to any media that may endanger public health or welfare. Under the notification and liability provisions of section 103 (see 48 FR 23552, May 25, 1983), CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to, or greater than, the reportable quantities immediately notify the National Response Center of the release (800–424–8802; in Washington, DC, metropolitan area 202–426–2675). However, air releases which qualify as Federally permitted releases, such as VOC emissions that are regulated under section 111 of the Clean Air Act, are not subject to the notification or liability provisions of CERCLA unless the air releases are in excess of the allowable NSPS emissions by an amount equal to or greater than the reporting quantity; in this case, persons in charge must report the excess air releases to the National Response Center. (Reporting under CERCLA does not excuse the persons in charge from any responsibility, including reporting, or liability under the NSPS program.)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq* and has been assigned an OMB control number. Comments on these requirements should be submitted for approval to the Office of Information and Regulatory Affairs of OMB; 728 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

Public reporting burden for this collection of information is estimated to be 15,771 hours per year, with an average of 584 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Mangement and Budget, Washington, DC 20503.

2. Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because: (1) The national annualized control costs, including capital charges resulting for the standards total less than $100 million; (2) the standards do not cause a major increase in prices or production costs for most of the chemicals considered; and (3) given the low levels of investment required and the small price increases estimated for chemicals with low TRE values, the effects of the regulation on domestic competition, employment, investment, productivity, innovation, and competition in foreign markets will be negligible.

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments for OMB and any written responses by EPA will be included in Docket A–83–29. This docket is available for public inspection at EPA's Central Docket Section , which is listed under the **ADDRESSES** section of this notice.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980) requires that special consideration be given to the impacts of all Federal regulations on small businesses, small governments, and small organizations. These standards will have no known effects on small governments and small organizations. Some small businesses may be affected. However, the economic analysis described above indicates that these standards will have no significant, adverse economic impact on firms producing affected chemicals, regardless of firm size. Furthermore, no burden will be placed upon small businesses disproportionate to their potential contribution to VOC emissions.

The price increase screening analysis uses many conservative control cost assumptions and demonstrates that not even small plants should incur control costs in excess of 5 percent of production costs. There should be no capital availability or industrial growth problems associated with these standards. Thus, no significant, adverse economic impacts on small businesses are anticipated.

No burden will be placed on any firm disproportionate to the VOC that it would emit in the absence of these standards. This is ensured by application of the TRE index, which identifies facilities that would emit a substantial amount of reasonably controllable VOC in the absence of these standards.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, Intergovernmental relations, SOCMI.

Dated: June 13, 1990.

William K. Reilly,

Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR part 6 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act (CAA) as amended (42 U.S.C. 7401, 7411, 7414, 7601).

2. By adding a new subpart RRR to read as follows:

Subpart RRR—Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

Sec.
60.700 Applicability and designation of affected facility.
60.701 Definitions.
60.702 Standards.
60.703 Monitoring of emissions and operations.
60.704 Test methods and procedures.
60.705 Reporting and recordkeeping requirements.
60.706 Reconstruction.
60.707 Chemicals affected by subpart RRR.
60.708 Delegation of authority.

Subpart RRR—Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

§ 60.700 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility designated in paragraph (b) of this section that produces any of the chemicals listed in § 60.707 as a product, co-product, by-product, or intermediate, except as provided in paragraph (c) of this section.

(b) The affected facility is any of the following for which construction, modification, or reconstruction commenced after June 29, 1990.

(1) Each reactor process not discharging its vent stream into a recovery system.

(2) Each combination of a reactor process and the recovery system into which its vent stream is discharged.

(3) Each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged.

(c) Exemptions from the provisions of paragraph (a) of this section are as follows:

(1) Any reactor process that is designed and operated as a batch operation is not an affected facility.

(2) Each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 is exempt from all provisions of this subpart except for §§ 60.702; 60.704(d), (e), and (f); and 60.705 (h) and (l).

(3) Each affected facility in a process unit with a total design capacity for all chemicals produced within that unit of less than 1 gigagram per year is exempt from all provisions of this subpart except for the recordkeeping and reporting requirements in paragraphs (j), (l)(6), and (n) of § 60.705.

(4) Each affected facility operated with a vent stream flow rate less than 0.011 scm/min is exempt from all provisions of this subpart except for the test method and procedure and the recordkeeping and reporting requirements in § 60.704(g) and paragraphs (i), (l)(5), and (o) of § 60.705.

(Note: The intent of these standards is to minimize the emissions of VOC through the application of best demonstrated technology (BDT). The numerical emission limits in these standards are expressed in terms of total organic compounds (TOC) measured as TOC less methane and ethane. These emission limits reflect the performance of BDT.)

§ 60.701 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of part 60, and the following terms shall have the specific meaning given them.

Batch process means any noncontinuous reactor process which is not characterized by steady-state conditions and in which reactants are not added and products are not removed simultaneously.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam.

By compound means by individual stream components, not carbon equivalents.

Continuous recorder means a data recording device recording an instantaneous data value at least once every 15 minutes.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a vent stream.

Halogenated vent stream means any vent stream determined to have a total concentration (by volume) of compounds containing halogens of 20 ppmv (by compound) or greater.

Incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that is heated to produce steam.

Process unit means equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more of the chemicals in § 60.707. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient product storage facilities.

Product means any compound or chemical listed in § 60.707 which is produced for sale as a final product as that chemical, or is used for the production of other chemicals or compounds. By-products, co-products, and intermediates are considered to be products.

Reactor processes are unit operations in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way that their molecular structures are altered and one or more new organic compounds are formed.

Recovery device means an individual unit of equipment, such as an absorber, carbon adsorber, or condenser, capable of and used for the purpose of recovering chemicals for use, reuse, or sale.

Recovery system means an individual recovery device or series of such devices applied to the same vent stream.

Total organic compounds (TOC) means those compounds measured according to the procedures in § 60.704(b)(4). For the purpose of measuring molar composition as required in § 60.704(d)(2)(i); and hourly emissions rate as required in § 60.704(d)(5), and § 60.704(d)(6); and TOC concentration as required in § 60.705(b)(4) and § 60.705(g)(4), those compounds which the Administrator has determined do not contribute appreciably to the formation of ozone are to be excluded.

TRE index value means a measure of the supplemental total resource requirement per unit reduction of TOC associated with an individual vent stream from an affected reactor process facility based on vent stream flow rate, emission rate of TOC, net heating value, and corrosive properties (whether or not the stream contains halogenated compounds), as quantified by the equation given under § 60.704(e).

Vent stream means any gas stream discharged directly from a reactor to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. The vent stream excludes relief valve discharges and equipment leaks including, but not limited to, pumps, compressors, and valves.

§ 60.702 Standards.

Each owner or operator of any affected facility which is subject to the requirements of this subpart shall comply with paragraph (a), (b), or (c) of this section for each vent stream on and after the date on which the initial performance test, required by § 60.8 and § 60.704, is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial start-up, whichever date comes first. Each owner or operator shall:

(a) Reduce emissions of TOC (less methane and ethane) by 98 weight-percent, or to a TOC (less methane and ethane) concentration of 20 ppmv, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(b) Combust the emissions in a flare. Flares used to comply with this subpart shall comply with the requirements of § 60.18.

(c) Maintain a TRE index value greater than 1.0 without use of a VOC emission control device.

§ 60.703 Monitoring of emissions and operations.

(a) The owner or operator of an affected facility that uses an incinerator to seek to comply with the TOC emission limit specified under § 60.702(a) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5°C, whichever is greater.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow to the incinerator at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the inlet of each incinerator and before being joined with any other vent stream.

(b) The owner or operator of an affected facility that uses a flare to seek to comply with § 60.702(b) shall install, calibrate, maintain and operate according to manufacturer's specifications the following equipment:

(1) A heat sensing device, such as a ultra-violet beam sensor or thermocouple, at the pilot light to indicate continuous presence of a flame.

(2) A flow indicator that provides a record of vent stream flow to the flare at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the flare and before being joined with any other vent stream.

(c) The owner or operator of an affected facility that uses a boiler or process heater to seek to comply with § 60.702(a) shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A flow indicator that provides a record of vent stream flow to the boiler or process heater at least once every hour for each affected facility. The flow indicator shall be installed in the vent stream from each affected facility at a point closest to the inlet of each boiler or process heater and before being joined with any other vent stream.

(2) A temperature monitoring device in the firebox equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5°C, whichever is greater, for boilers or process heaters of less than 44 MW (150 million Btu/hr) design heat input capacity.

(3) Monitor and record the periods of operation of the boiler or process heater if the design heat input capacity of the boiler or process heater is 44 MW (150 million Btu/hr) or greater. The records must be readily available for inspection.

(d) The owner or operator of an affected facility that seeks to demonstrate compliance with the TRE index value limit specified under § 60.702(c) shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Administrator.

(1) Where an absorber is the final recovery device in the recovery system:

(i) A scrubbing liquid temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, and a specific gravity monitoring device having an accuracy of ±0.02 specific gravity unit, each equipped with a continuous recorder, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(2) Where a condenser is the final recovery device in the recovery system:

(i) A condenser exit (product side) temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(3) Where a carbon adsorber is the final recovery device unit in the recovery system:

(i) An integrating steam flow monitoring device having an accuracy of ±10 percent, and a carbon bed temperature monitoring device having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater, both equipped with a continuous recorder, or

(ii) An organic monitoring device used to indicate the concentration level of organic compounds exiting the recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity, each equipped with a continuous recorder.

(e) An owner or operator of an affected facility seeking to demonstrate compliance with the standards specified under § 60.702 with control devices other than incinerator, boiler, process heater, or flare; or recovery devices other than an absorber, condenser, or carbon adsorber shall provide to the Administrator information describing the operation of the control device or recovery device and the process parameter(s) that would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

§ 60.704 Test methods and procedures.

(a) For the purpose of demonstrating compliance with § 60.702, all affected facilities shall be run at full operating conditions and flow rates during any performance test.

(b) The following methods in appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods to determine compliance with the emission limit or

percent reduction efficiency specified under § 60.702(a).

(1) Method 1 or 1A, as appropriate, for selection of the sampling sites. The control device inlet sampling site for determination of vent stream molar composition or TOC (less methane and ethane) reduction efficiency shall be prior to the inlet of the control device and after the recovery system.

(2) Method 2, 2A, 2C, or 2D, as appropriate, for determination of the gas volumetric flow rates.

(3) The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration ($\%O_{w,s}$) for the purposes of determining compliance with the 20 ppmv limit. The sampling site shall be the same as that of the TOC samples and the samples shall be taken during the same time that the TOC samples are taken. The TOC concentration corrected to 3 percent O_2 (C_c) shall be computed using the following equation:

$$C_c = C_{TOC} = \frac{17.9}{20.9 - \%O_{w,s}}$$

Where:

C_c = Concentration of TOC corrected to 3 percent O_2, dry basis, ppm by volume.

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.

$\%O_{w,s}$ = Concentration of O_2, dry basis, percent by volume.

(4) Method 18 to determine the concentration of TOC in the control device outlet and the concentration of TOC in the inlet when the reduction efficiency of the control device is to be determined.

(i) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used then the samples shall be taken at 15-minute intervals.

(ii) The emission reduction (R) of TOC (minus methane and ethane) shall be determined using the following equation:

$$R = \frac{E_i - E_o}{E_i} \times 100$$

where:

R = Emission reduction, percent by weight.

E_i = Mass rate of TOC entering the control device, kg TOC/hr.

E_o = Mass rate of TOC discharged to the atmosphere, kg TOC/hr.

(iii) The mass rates of TOC (E_i, E_o) shall be computed using the following equations:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

where:

C_{TOC} = Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppm by volume.

M_{ij}, M_{oj} = Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, g/g-mole (lb/lb-mole).

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dscm/min (dscf/min).

$K_2 = 2.494 \times 10^{-6}$ (1/ppm)(g-mole/scm)(kg/g)(min/hr), where standard temperature for (g-mole/scm) is 20°C.

(iv) The TOC concentration (C_{TOC}) is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume.

C_j = Concentration of sample component "j", dry basis, ppm by volume.

n = Number of components in the sample.

(5) When a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to seek to comply with § 60.702(a), the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in section 114 of the Act.

(c) When a flare is used to seek to comply with § 60.702(b), the flare shall comply with the requirements of § 60.18.

(d) The following test methods in appendix A to this part, except as provided under § 60.8(b), shall be used as reference methods for determining the net heating value of the gas combusted to determine compliance under § 60.702(b) and for determining the process vent stream TRE index value to determine compliance under § 60.702(c).

(1)(i) Method 1 or 1A, as appropriate, for selection of the sampling site. The sampling site for the vent stream molar composition determination and flow rate prescribed in § 60.704(d)(2) and (d)(3) shall be, except for the situations outlined in paragraph (d)(1)(ii) of this section, prior to the inlet of any control device, prior to any post-reactor dilution of the stream with air, and prior to any post-reactor introduction of halogenated compounds into the process vent stream. No traverse site selection method is needed for vents smaller than 4 inches in diameter.

(ii) If any gas stream other than the reactor vent stream is normally conducted through the final recovery device:

(A) The sampling site for vent stream flow rate and molar composition shall be prior to the final recovery device and prior to the point at which any nonreactor stream or stream from a nonaffected reactor is introduced.

(B) The efficiency of the final recovery device is determined by measuring the TOC concentration using Method 18 at the inlet to the final recovery device after the introduction of all vent streams and at the outlet of the final recovery device.

(C) The efficiency of the final recovery device shall be applied to the TOC concentration measured prior to the final recovery device and prior to the introduction of any nonreactor stream or stream from a nonaffected reactor to determine the concentration of TOC in the reactor vent stream from the final recovery device. This concentration of TOC is then used to perform the calculations outlined in § 60.704(d) (4) and (5).

(2) The molar composition of the vent stream shall be determined as follows:

(i) Method 18 to measure the concentration of TOC including those containing halogens.

(ii) ASTM D1946–77 to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 to measure the content of water vapor.

(3) The volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, as appropriate.

(4) The net heating value of the vent stream shall be calculated using the following equation:

$$H_T = K_1 \left(\sum_{j=1}^{n} C_j H_j \right)$$

where:

H_T = Net heating value of the sample, MJ/scm, where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, as in the definition of Q_s (vent stream flow rate).

K_1 = Constant, $1.740 \times 10^{-7} \left(\frac{1}{ppm}\right)\left(\frac{g\text{-}mole}{scm}\right)\left(\frac{MJ}{kcal}\right)$ where standard temperature for $\left(\frac{g\text{-}mole}{scm}\right)$ is 20 °C.

C_j = Concentration on a wet basis of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–77 as indicated in § 60.704(d)(2).

H_j = Net heat of combustion of compound j, kcal/g-mole, based on combustion at 25 °C and 760 mm Hg. The heats of combustion of vent stream components would be required to be determined using ASTM D2382–76 if published values are not available or cannot be calculated.

(5) The emission rate of TOC in the vent stream shall be calculated using the following equation:

$$E_{TOC} = K_2 \left[\sum_{j=1}^{n} C_j M_j \right] Q_s$$

where:

E_{TOC} = Emission rate of TOC in the sample, kg/hr

K_2 = Constant, 2.494×10^{-6} (1/ppm)(g-mole/scm)(kg/g)(min/hr), where standard temperature for (g-mole/scm) is 20 °C

C_j = Concentration on a dry basis of compound j in ppm as measured by Method 18 as indicated in § 60.704(d)(2)

M_j = Molecular weight of sample j, g/g-mole

Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C

(6) The total vent stream concentration (by volume) of compounds containing halogens (ppmv, by compound) shall be summed from the individual concentrations of compounds containing halogens which were measured by Method 18.

(e) For purposes of complying with § 60.702(c), the owner or operator of a facility affected by this subpart shall calculate the TRE index value of the vent stream using the equation for incineration in paragraph (e)(1) of this section for halogenated vent streams. The owner or operator of an affected facility with a nonhalogenated vent stream shall determine the TRE index value by calculating values using both the incinerator equation in paragraph (e)(1) of this section and the flare equation in paragraph (e)(2) of this section and selecting the lower of the two values.

(1) The equation for calculating the TRE index value of a vent stream controlled by an incinerator is as follows:

$$TRE = \frac{1}{E_{TOC}} \left[a + b\,(Q_s)^{0.88} + c\,(Q_s) + d\,(Q_s)\,(H_T) + e\,(Q_s)^{0.88}\,(H_T)^{0.88} + f\,(Y_s)^{2.5} \right]$$

(i) where for a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is greater than or equal to 14.2 scm/min:

TRE = TRE index value.

Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C.

H_T = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in the definition of Q_s.

Y_s = Q_s for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = (Q_s)\,(H_T)/3.6$.

E_{TOC} = Hourly emissions of TOC reported in kg/hr. a, b, c, d, e, and f are coefficients. The set of coefficients that apply to a vent stream can be obtained from Table 1.

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TABLE 1. REACTOR PROCESSES NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR

DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	19.65559	0.27948	0.76683	-0.13173	0	0.01044
$18.8 < Q_s \leq 699$	20.48848	0.27948	0.30929	-0.13173	0	0.01044
$699 < Q_s \leq 1400$	40.83338	0.30372	0.30929	-0.13173	0	0.01477
$1400 < Q_s \leq 2100$	61.17828	0.31887	0.30929	-0.13173	0	0.01809
$2100 < Q_s \leq 2800$	81.52318	0.33007	0.30929	-0.13173	0	0.02088
$2800 < Q_s \leq 3500$	101.86808	0.33902	0.30929	-0.13173	0	0.02335

DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.5 MJ/scm:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 18.8$	19.31203	0.27099	-0.20500	0	0	0.01044
$18.8 < Q_s \leq 699$	20.14491	0.27099	-0.25255	0	0	0.01044
$699 < Q_s \leq 1400$	40.14625	0.29449	-0.25255	0	0	0.01477
$1400 < Q_s \leq 2100$	60.14759	0.30917	-0.25255	0	0	0.01809
$2800 < Q_s \leq 3500$	80.14892	0.32003	-0.25255	0	0	0.02068
	100.15026	0.32872	-0.25255	0	0	0.02335

DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 0.48:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	8.84812	0.10696	0.09188	-0.17252	0	0.01044
$1340 < Q_s \leq 2690$	17.55267	0.11623	0.09188	-0.17252	0	0.01477
$2690 < Q_s \leq 4040$	26.25721	0.12203	0.09188	-0.17252	0	0.01809

DESIGN CATEGORY C. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) ≤ 1.9:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1340$	9.56783	0.06187	0.32303	-0.16316	0	0.01044
$1340 < Q_s \leq 2690$	18.99209	0.06723	0.32303	-0.16316	0	0.01477
$2690 < Q_s \leq 4040$	28.41635	0.07058	0.32303	-0.16316	0	0.01809

DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) ≤ 3.6:

Q_s = Vent Stream Flow rate (scm/min)	a	b	c	d	e	f
$14.2 \leq Q_s \leq 1180$	6.87612	0.07036	0.02669	0	0	0.01044
$1180 < Q_s \leq 2370$	13.60866	0.07646	0.02669	0	0	0.01477
$2370 < Q_s \leq 3550$	20.34120	0.08028	0.02669	0	0	0.01809

DESIGN CATEGORY E. FOR NONHALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.6 MJ/scm:

V_s = Dilution Flow rate (scm/min) = $(Q_s)(H_T)/3.6$	a	b	c	d	e	f
$14.2 \leq V_s \leq 1180$	6.87612	0	0	-0.00730	0.02249	0.01044
$1180 < V_s \leq 2370$	13.60866	0	0	-0.00730	0.02445	0.01477
$2370 < V_s \leq 3550$	20.34120	0	0	-0.00730	0.02566	0.01809

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(ii) For a vent stream flow rate (scm/min) at a standard temperature of 20 °C that is less than 14.2 scm/min:

TRE = TRE index value.
Q_s = 14.2 scm/min.
H_T = (FLOW) (HVAL)/14.2
where the following inputs are used:
FLOW = Vent steam flow rate (scm/min), at a standard temperature of 20 °C.
HVAL = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in definition of Q_s.
Y_s = 14.2 scm/min for all vent streams except for Category E vent streams, where $Y_s = (14.2)(H_T)/3.6$.
E_{TOC} = Hourly emissions of TOC reported in kg/hr.
a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) The equation for calculating the TRE index value of a vent stream controlled by a flare is as follows:

$$TRE = \frac{1}{E_{TOC}} [a (Q_s) + b (Q_s^{0.8}) + c (Q_s)(H_T) + d (E_{TOC}) + e]$$

where:
TRE = TRE index value.
E_{TOC} = Hourly emission rate of TOC reported in kg/hr.
Q_s = Vent stream flow rate (scm/min) at a standard temperature of 20 °C.
H_T = Vent stream net heating value (MJ/scm), where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C as in definition of Q_s.
a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 2.

TABLE 2.—REACTOR PROCESSES NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE

	a	b	c	d	e
$H_T < 11.2$ MJ/scm	2.25	0.288	−0.193	−0.0051	2.08
$H_T > 11.2$ MJ/scm	0.309	0.0619	−0.0043	−0.0034	2.08

(f) Each owner or operator of an affected facility seeking to comply with § 60.700(c)(2) or § 60.702(c) shall recalculate the TRE index value for the affected facility whenever process changes are made. Examples of process changes include changes in production capacity, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. The TRE index value shall be recalculated based on test data, or on best engineering estimates of the effects of the change on the recovery system.

(1) Where the recalculated TRE index value is less than or equal to 1.0, the owner or operator shall notify the Administrator within 1 week of the recalculation and shall conduct a performance test according to the methods and procedures required by § 60.704 in order to determine compliance with § 60.702(a). Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(2) Where the initial TRE index value is greater than 8.0 and the recalculated TRE index value is less than or equal to 8.0 but greater than 1.0, the owner or operator shall conduct a performance test in accordance with § 60.8 and § 60.704 and shall comply with § 60.703, § 60.704, and § 60.705. Performance tests must be conducted as soon as possible after the process change but no later than 180 days from the time of the process change.

(g) Any owner or operator subject to the provisions of this subpart seeking to demonstrate compliance with § 60.700(c)(4) shall use Method 2, 2A, 2C, or 2D of appendix A to part 60, as appropriate, for determination of volumetric flow rate.

§ 60.705 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to § 60.702 shall notify the Administrator of the specific provisions of § 60.702 (§ 60.702 (a), (b), or (c)) with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial start-up required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.702 with which he or she will comply, then the Administrator shall be notified by the owner or operator 90 days before implementing a change and, upon implementing the change, a performance test shall be performed as specified by § 60.704 within 180 days.

(b) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily accessible record of the following data measured during each performance test, and also include the following data in the report of the initial performance test required under § 60.8. Where a boiler or process heater with a design heat input capacity of 44 MW (150 million Btu/hour) or greater is used to comply with § 60.702(a), a report containing performance test data need not be submitted, but a report containing the information in § 60.705(b)(2)(i) is required. The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a control device, outlet concentration of TOC, or the TRE index value of a vent stream from a recovery system is determined.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(a) through use of either a thermal or catalytic incinerator:

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured at least every 15 minutes and averaged over the same time period of the performance testing, and

(ii) The percent reduction of TOC determined as specified in § 60.704(b) achieved by the incinerator, or the

concentration of TOC (ppmv, by compound) determined as specified in § 60.704(b) at the outlet of the control device on a dry basis corrected to 3 percent oxygen.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(a) through use of a boiler or process heater:

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(b) through use of a smokeless flare, flare design (i.e., steam-assisted, air-assisted or non-assisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.702(c):

(i) Where an absorber is the final recovery device in the recovery system, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average exit temperature of the absorbing liquid, measured at least every 15 minutes and averaged over the same time period of the performance testing (both measured while the vent stream is normally routed and constituted), or

(ii) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is routed and constituted normally, or

(iii) Where a carbon adsorber is the final recovery device in the recovery system, the total steam mass flow measured at least every 15 minutes and averaged over the same time period of the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s)), and duration of the carbon bed steaming cycle (all measured while the vent stream is routed and constituted normally), or

(iv) As an alternative to § 60.705 (b)(4)(i), (b)(4)(ii) or (b)(4)(iii), the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber, measured at least every 15 minutes and averaged over the same time period of the performance testing while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream.

(c) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.703 (a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where a combustion device is used to comply with § 60.702(a), periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) For thermal incinerators, all 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.702(a) was determined.

(2) For catalytic incinerators, all 3-hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance with § 60.702(a) was determined. The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance with § 60.702(a) was determined.

(3) All 3-hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance with § 60.702(a) was determined for boilers or process heaters with a design heat input capacity of less than 44 MW (150 million Btu/hr).

(4) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.702(a).

(d) Each owner or operator subject to the provisions of this subpart shall keep up to date, readily accessible continuous records of the indication of flow specified under § 60.703(a)(2), § 60.703(b)(2) and § 60.703(c)(1), as well as up-to-date, readily accessible records of all periods when the vent stream is diverted from the control device or has no flow rate.

(e) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 MW or greater to comply with § 60.702(a) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.)

(f) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.703(b), as well as up-to-date, readily accessible records of all periods of operations in which the pilot flame is absent.

(g) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.703(d), as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. The Administrator may at any time require a report of these data. Where an owner or operator seeks to comply with § 60.702(c), periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as follows:

(1) Where an absorber is the final recovery device in a recovery system, and where an organic compound monitoring device is not used:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, or

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter, which is a measure of the degree of absorbing liquid saturation, is approved by the Administrator, in which case he will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final recovery device in a system, and where an organic compound monitoring device is not used, all 3-hour periods of operation during which the average exit (product side) condenser operating temperature was more than 6 °C (11 °F) above the average exit (product side) operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final recovery device in a system, and where an organic compound monitoring device is not used:

(i) All carbon bed regeneration cycles during which the total mass steam flow was more than 10 percent below the total mass steam flow during the most recent performance test, or

(ii) All carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration [and after completion of any cooling cycle(s)] was more than 10 percent greater than the carbon bed temperature (in degrees Celsius) during the most recent performance test.

(4) Where an absorber, condenser, or carbon adsorber is the final recovery device in the recovery system and where an organic monitoring device is used, all 3-hour periods of operation during which the average organic compound concentration level or reading of organic compounds in the exhaust gases is more than 20 percent greater than the exhaust gas organic compound concentration level or reading measured by the monitoring device during the most recent performance test.

(h) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.702(c) shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of recovery equipment or reactors;

(2) Any recalculation of the TRE index value performed pursuant to § 60.704(f); and

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.704(d).

(i) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the flow rate cutoff in § 60.700(c)(4) shall keep up-to-date, readily accessible records to indicate that the stream flow rate is less than 0.011 scm/min and of any change in equipment or process operation that increases the operating vent stream flow rate, including a measurement of the new vent stream flow rate.

(j) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the design production capacity provision in § 60.700(c)(3) shall keep up-to-date, readily accessible records of any change in equipment or process operation that increases the design production capacity of the process unit in which the affected facility is located.

(k) Each owner and operator subject to the provisions of this subpart is exempt from the quarterly reporting requirements contained in § 60.7(c) of the General Provisions.

(l) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the requirements of § 60.700 (c)(2), (c)(3), or (c)(4) or § 60.702 shall submit to the Administrator semiannual reports of the following recorded information. The initial report shall be submitted within 6 months after the initial start-up date.

(1) Exceedances of monitored parameters recorded under § 60.705 (c) and (g).

(2) All periods recorded under § 60.705(d) when the vent stream is diverted from the control device or has no flow rate.

(3) All periods recorded under § 60.705(e) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.705(f) in which the pilot flame of the flare was absent.

(5) Any change in equipment or process operation that increases the operating vent stream flow rate above the low flow exemption level in § 60.700(c)(4), including a measurement of the new vent stream flow rate, as recorded under § 60.705(i). These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed within the same time period to verify the recalculated flow value and to obtain the vent stream characteristics of heating value and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under the low capacity exemption status in § 60.700(c)(3), the facility must begin compliance with the requirements set forth in § 60.702.

(6) Any change in equipment or process operation, as recorded under § 60.705(j), that increases the design production capacity above the low capacity exemption level in § 60.700(c)(3) and the new capacity resulting from the change for the reactor process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and E_{TOC}. The performance test is subject to the requirements of § 60.8 of the General Provisions. Unless the facility qualifies for an exemption under the flow exemption in § 60.700(c)(4), the facility must begin compliance with the requirements set forth in § 60.702.

(7) Any recalculation of the TRE index value, as recorded under § 60.702(h).

(m) The requirements of § 60.705(l) remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with § 60.705(l), provided that they comply with the requirements established by the State.

(n) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(3) must submit to the Administrator an initial report detailing the design production capacity of the process unit.

(o) Each owner or operator that seeks to demonstrate compliance with § 60.700(c)(4) must submit to the Administrator an initial report including a flow rate measurement using the test methods specified in § 60.704.

(p) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.702 other than as provided under § 60.703 (a), (b), (c), and (d).

§ 60.706 Reconstruction.

(a) For purposes of this subpart "fixed capital cost of the new components," as used in § 60.15, includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous programs of component replacement

which are commenced within any 2-year period following June 29, 1990. For purposes of this paragraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

§ 60.707 Chemicals affected by subpart RRR.

Chemical name	CAS No.[1]
Acetaldehyde	75-07-0
Acetic acid	64-19-7
Acetic anhydride	108-24-7
Acetone	67-64-1
Acetone cyanohydrin	75-86-5
Acetylene	74-86-2
Acrylic acid	79-10-7
Acrylonitrile	107-13-1
Adipic acid	124-04-9
Adiponitrile	111-69-3
Alcohols, C-11 or lower, mixtures	
Alcohols, C-12 or higher, mixtures	
Alcohols, C-12 or higher, unmixed	
Allyl chloride	107-05-1
Amylene	513-35-9
Amylenes, mixed	
Aniline	62-53-3
Benzene	71-43-2
Benzenesulfonic acid	98-11-3
Benzenesulfonic acid C_{10-16}-alkyl derivatives, sodium salts.	68081-81-2
Benzyl chloride	100-44-7
Bisphenol A	80-05-7
Bromotene	75-06-4
1,3-Butadiene	106-99-0
Butadiene and butene fractions	
n-Butene	106-97-8
1,4-Butanediol	110-63-4
Butenes, mixed	
1-Butene	106-98-9
2-Butene	25167-67-3
Butenes, mixed	
n-Butyl acetate	123-86-4
Butyl acrylate	141-32-2
n-Butyl alcohol	71-36-3
sec-Butyl alcohol	78-92-2
tert-Butyl alcohol	75-65-0
Butylbenzyl phthalate	85-68-7
tert-Butyl hydroperoxide	75-91-2
2-Butyne-1,4-diol	110-65-6
Butyraldehyde	123-72-8
Butyric anhydride	106-31-0
Caprolactam	105-60-2
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chloroacetic acid	79-11-8
Chlorobenzene	108-90-7
Chlorodifluoromethane	75-45-6
Chloroform	67-66-3
p-Chloronitrobenzene	100-00-5
Citric acid	77-92-9
Cumene	98-82-8
Cumene hydroperoxide	80-15-9
Cyanuric chloride	108-77-0
Cyclohexane	110-82-0
Cyclohexane, oxidized	68512-15-2
Cyclohexanol	108-93-0
Cyclohexanone	108-94-1
Cyclohexanone oxime	100-64-1
Cyclohexene	110-83-8
Cyclopropane	75-19-4
Diacetone alcohol	123-42-2
1,4-Dichlorobutene	110-57-6
3,4-Dichloro-1-butene	64037-54-3
Dichlorodifluoromethane	75-71-8
Dichlorodimethylsilane	75-78-5
Dichlorofluoromethane	75-43-4
Diethanolamine	111-42-2
Diethylbenzene	25340-17-4
Diethylene glycol	111-46-6
Di-isodecyl phthalate	26761-40-0
Dimethyl terephthalate	120-61-6
2,4-(and 2,6)-Dinitrotoluene	121-14-2
	606-20-2
Dioctyl phthalate	117-81-7
Dodecene	25378-22-7
Dodecylbenzene, non-linear	
Dodecylbenzenesulfonic acid	27176-87-0
Dodecylbenzenesulfonic acid, sodium salt.	25155-30-0
Epichlorohydrin	106-89-8
Ethanol	64-17-5
Ethanolamine	141-43-5
Ethyl acetate	141-78-6
Ethyl acrylate	140-88-5
Ethylbenzene	100-41-4
Ethyl chloride	75-00-3
Ethylene	74-85-1
Ethylene dibromide	106-93-4
Ethylene dichloride	107-06-2
Ethylene glycol	107-21-1
Ethylene glycol monobutyl ether	111-76-2
Ethylene glycol monoethyl ether acetate.	111-15-9
Ethylene glycol monomethyl ether	109-86-4
Ethylene oxide	75-21-8
2-Ethylhexyl alcohol	104-76-7
(2-Ethylhexyl) amine	104-75-6
6-Ethyl-1,2,3,4-tetrahydro 9,10-anthracenedione.	15547-17-8
Formaldehyde	50-00-0
Glycerol	56-81-5
n-Heptane	142-82-5
Heptenes (mixed)	
Hexamethylene diamine	124-09-4
Hexamethylene diamine adipate	3323-53-3
Hexamethylenetetramine	100-97-0
Hexane	110-54-3
Isobutane	75-28-5
Isobutanol	78-83-1
Isobutylene	115-11-7
Isobutyraldehyde	78-84-2
Isopentane	78-78-4
Isoprene	78-79-5
Isopropanol	67-63-0
Ketene	463-51-4
Linear alcohols, ethoxylated, mixed	
Linear alcohols, ethoxylated, and sulfated, sodium salt, mixed.	
Linear alkylbenzene	123-01-3
Maleic anhydride	108-31-6
Mesityl oxide	141-79-7
Methanol	67-56-1
Methylamine	74-89-5
4,4-Methylenedianiline	25376-45-8
Methyl chloride	74-87-3
Methylene chloride	75-09-2
Methyl ethyl ketone	78-93-3
Methyl isobutyl ketone	108-10-1
Methyl methacrylate	80-62-6
1-Methyl-2-pyrrolidone	872-50-4
Methyl tert-butyl ether	
Naphthalene	91-20-3
Nitrobenzene	98-95-3
1-Nonene	27215-95-8
Nonyl alcohol	143-08-08
Nonylphenol	25154-52-3
Nonylphenol, ethoxylated	9016-45-9
Octene	25377-83-7
Oil-soluable petroleum sulfonate, calcium salt.	
Pentaerythritol	115-77-5
3-Pentenenitrile	4635-87-4
Pentenes, mixed	109-67-1
Perchloroethylene	127-18-4
Phenol	108-95-2
1-Phenylethyl hydroperoxide	3071-32-7
Phenylpropene	103-65-1
Phosgene	75-44-5
Phthalic anhydride	85-44-9
Propane	74-98-6
Propionaldehyde	123-38-6
Propyl alcohol	71-23-8
Propylene	115-07-1
Propylene glycol	57-55-6
Propylene oxide	75-56-9
Sorbitol	50-70-4
Styrene	100-42-5
Terephthalic acid	100-21-0
Tetraethyl lead	78-00-2
Tetrahydrofuran	109-99-9
Tetra (methyl-ethyl) lead	
Tetramethyl lead	75-74-1
Toluene	108-88-3
Toluene-2,4-diamine	95-80-7
Toluene-2,4-(and, 2,6)-diisocyanate (80/20 mixture).	26471-62-5
1,1,1-Trichloroethane	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Triethanolamine	102-71-6
Triethylene glycol	112-27-6
Vinyl acetate	108-05-4
Vinyl chloride	75-01-4
Vinylidene chloride	75-35-4
m-Xylene	108-38-3
o-Xylene	95-47-9
p-Xylene	106-42-3
Xylenes (mixed)	1330-20-7

[1] CAS numbers refer to the Chemical Abstracts Registry numbers assigned to specific chemicals, isomers, or mixtures of chemicals. Some isomers or mixtures that are covered by the standards do not have CAS numbers assigned to them. The standards apply to all of the chemicals listed, whether CAS numbers have been assigned or not.

§ 60.706 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 60.703(e).

[FR Doc. 90-14206 Filed 6-28-90; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
June 29, 1990

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Section 8 Loan Management Set-Aside Assistance; Notice

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-90-3096; FR-2796-N-01]

Section 8 Loan Management Set-Aside Assistance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice announces the availability of approximately $114 million in fiscal year 1990 section 8 funds for Loan Management Set-Aside (LMSA) assistance. The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA insured or Secretary-held projects with immediate or potentially serious financial difficulties.

APPLICATION DUE DATE: July 30, 1990.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Hans, Acting Director, Operations Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6164, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-0216. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Loan Management Set-Aside (LMSA) program provides special allocations of Housing Assistance Payments under section 8 of the United States Housing Act of 1937. The primary purpose of the program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with immediately or potentially serious financial difficulties. First priority is given to projects with serious current financial problems, which are likely to result in a claim on the insurance fund in the near future.

Projects eligible for LMSA assistance include (1) existing subsidized or unsubsidized multifamily residential projects subject to a mortgage insured under any section of the National Housing Act; (2) any such project subject to a mortgage that has been assigned to the Secretary; (3) any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; (4) a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885).

Available Funds

This Notice of Funding Availability (NOFA) makes available approximately $114 million of the funds available for Fiscal Year 1990 for additional assistance under the Section 8 Loan Management Set-Aside (LMSA) program for purposes of avoiding claims on the Department's insurance fund. It announces that HUD is currently accepting applications for additional assistance under the LMSA program from owners of FHA-insured or Secretary-held multifamily projects with immediately or potentially serious financial difficulties.

Application Procedures

LMSA program requirements are found under 24 CFR part 886; application requirements for eligible projects are set forth in § 886.105 of that part.

Applications pursuant to this NOFA must be submitted to the respective HUD office having jurisdiction over the project for which assistance is requested. Applicants must respond within 30 days from the date of publication of this Notice with a request for section 8 assistance under the LMSA program which includes all of the items listed under § 886.105, in the order listed. A separate submission must be made for each project.

In addition to materials submitted as part of the LMSA application, HUD will use the Form HUD-92547A, Budget Worksheet-Income and Expense Projections, as submitted by the project owner in support of the most recent rent increase request in its review of the application for additional LMSA subsidy. There is no requirement for applicants to submit Form HUD-92547A with the LMSA application package. However, applicants may, at their option, update and provide a completed Form HUD-92547A with the LMSA application.

Applications received later than 30 days after the publication of this Notice will be considered for additional assistance in Fiscal Year 1990 only if the Secretary determines that additional assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient budget authority remains to satisfy the additional LMSA subsidy requirement.

The owner of any project eligible for the LMSA program may apply for assistance. However, because HUD must give first priority to projects for which a claim on the insurance fund is likely to occur in the near future, applicants should be aware that priority in the allocation of available funds will be given to projects with HUD mortgage insurance.

An owners who applied for LMSA assistance in a prior year and did not receive the desired number of units may update the contents and resubmit the application should he/she want the project reconsidered in Fiscal Year 1990.

Selection Criteria

Each application for assistance under the LMSA program will be reviewed by the HUD office having jurisdiction over the project in question. The HUD office must notify the relevant unit of general local government and approve the application pursuant to § 886.107 of the LMSA regulations, certifying that each application has been approved under outstanding LMSA program requirements.

General LMSA Funding

Fiscal Year 1990 general funding awards will be selected from projects identified by HUD Area and Regional Offices as projects which are both eligible for and in need of additional section 8 LMSA assistance and which adhere to the following guidelines.

HUD projects with serious current financial problems which are likely to result in a mortgage insurance claim in the near future may be recommended for additional LMSA units provided that financial and market analyses indicate that the project can be restored to financially sound operations with the additional LMSA assistance.

Both projects with and projects without mortgage subsidy are eligible for new units under general LMSA funding. A property is considered as having mortgage subsidy if it is the recipient of assistance under either section 221(d)(3) BMIR or 236 of the National Housing Act. Properties with unsubsidized HUD mortgages will be treated as unsubsidized, whether or not more than 50 percent of total units already have tenant-based subsidy. The following are limits on the number of additional units which may be requested for unsubsidized projects:

1. For unsubsidized projects with less than 20 percent project-based section 8 assistance currently, HUD Offices may request additional LMSA units up to the minimum number of units needed to cure the project's vacancy and cash flow problems *OR* the number by which 20 percent of total units exceeds the current number of project-based Section 8 units, whichever is less.

2. For unsubsidized projects with 20 percent or more project-based section 8 currently, there should generally be no additional units requested. However, when thorough review of project operations indicates that a small increment in the subsidy level will maintain project viability for the foreseeable future, LMSA new units may be requested up to the minimum number of units needed to cure the project's vacancy and cash flow problems *OR* the number by which 40 percent of total units exceeds the current number of project-based section 8 units, whichever is less. In each case where LMSA units above the 20 percent level are recommended, the Field Office's written justification must document assurance that project management has an aggressive and workable plan in place for leasing the market rate units in the project.

HUD Regional and Area Offices will report to HUD Headquarters, via their fiscal 1990 annual needs survey the projects which, on the basis of the HUD field office review, have acceptable LMSA applications and which need additional LMSA subsidy to meet the project's HUD-92547A expense projections. HUD field staff also will report project data required for determining the items listed below which are to be used by Headquarters in establishing a funding score for each project. This funding score will be used to determine general funding awards. A maximum funding score of 100 points per project (80 points for HUD-held and section 202 projects) may be accumulated on the basis of the following project characteristics and maximum point potentials:

(a) Vacancy Rate—20 points;

(b) Mortgage balance per dollar of additional subsidy—20 points for HUD-insured projects only;

(c) Owner advances or contributions since October 1, 1987—25 points;

(d) Percent of tenants paying in excess of 40 percent of their income for rent—5 points;

(e) Income/expense ratio—15 points; and

(f) Mortgage payment coverage ratio (current assets less current liabilities divided by total monthly mortgage payment)—15 points.

HUD-insured project selections will be made separately from HUD-held and section 202 funding selections, if any. Projects will be scored, ranked, and selected, to the extent funds are available, in descending order of funding score—all HUD-insured projects first, and then HUD-held or section 202 projects. Assuming that processing checklists are submitted in good order by HUD Field Offices and proposed new units are within general funding limits, LMSA unit allocations will be the number of units requested by the Field Office.

If a field office submits a non-emergency recommendation that an unsubsidized project receive an amount of additional LMSA units exceeding the limits set forth above, the Headquarters Office, in calculating the number of points awarded for item (b) above—"Mortgage balance per dollar of additional subsidy," will base its scoring on the maximum allowable number of units. Funding for the reduced number of units will not be assigned, however, until a revised HUD field offices Checklist certification is received in Headquarters reflecting the reduction in new units.

If approved, notification of a general funding award will be made through the HUD regional and area offices. Disapproved applicants will also be notified with a statement of the grounds for disapproval.

Emergency LMSA Funding

Up to 5 percent of available funds may be made available for funding projects recommended by HUD offices for emergency LMSA assistance. An "emergency" request must have concurrence from the Director of Housing in the appropriate Regional Office and must be characterized by one of the following:

(1) The project meets criteria for general funding, but was submitted by the HUD Field Office to HUD Headquarters after the FY 1990 annual needs survey deadline (the date HUD area or Regional Offices are required to report to Headquarters LMSA general funding applications and survey data on needs).

(2) The project was recommended on the general funding needs survey, but was not selected because of an insufficient score; or

(3) The project is encumbered by an unsubsidized HUD mortgage and requires more additional units than permitted under general guidelines to alleviate emergency conditions which will likely result in a mortgage assignment in the near future or which involve matters affecting the health and safety of tenants.

Emergency Approval Requirements

All application and review procedures pertaining to general LMSA requests must also be carried out for emergency LMSA recommendations. In addition, HUD Regional or Area Offices must demonstrate that placement of the additional LMSA units will likely head-off a mortgage default or assignment in the near future.

The Regional Office must concur in writing with the Field Office's recommendation and the request to Headquarters must briefly explain why funds are needed on an emergency basis. Headquarters will not consider any emergency funding request which does not have written Regional Office concurrence.

HUD Regional Offices may submit emergency funding requests to Headquarters at any time, including on the survey report, as long as the emergency requests are clearly designated as such and emergency submission requirements are met for the applicable projects. After the needs survey deadline for general LMSA recommendations, only emergency requests will be accepted in HUD Headquarters for processing in Fiscal Year 1990.

If approved, notification of an emergency funding award will be made through the HUD Regional and Area Offices.

Other Matters

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The LMSA program is designed to maintain the viability of existing HUD insured or assisted projects. It in no way changes existing relationships between HUD, State or local governments or the private sector.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The function of this Notice is limited to inviting applications for HUD assistance to help maintain the viability of existing HUD-related projects. The impact of any assistance granted on families will be positive. It will increase both housing affordability and housing opportunities for affected families.

Environment. The subject matter of this Notice is categorically excluded from otherwise applicable National Environmental Policy Act Requirements under 24 CFR 50.20(c).

Certification Regarding Lobbying. On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative

agreements, and loans of a new prohibition regarding the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must file with the application a certification and a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

Dated: June 21, 1990.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-15153 Filed 6-28-90; 8:45 am]

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federal register

Friday
June 29, 1990

Part V

Environmental Protection Agency

40 CFR Parts 261, 264, 265, 268, 271 and 302

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 268, 271 and 302

[SWH-FRL-3792-2; EPA/OSW-FR-90-014]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule; corrections.

SUMMARY: On March 29, 1990 (55 FR 11798), the Environmentl Protection Agency (EPA) promulgated a rule to revise the existing toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. Since promulgation, the Agency has found the need to make corrections to the rule in order to ensure consistency of the toxicity characteristic leaching procedure (TCLP), Method 1311, with other methods contained in Test Methods for Evaluating Solid Waste (Physical/Chemical Methods), SW-846 and to clarify the section on quality assurance. This notice also corrects several errors in the March 29, 1990 notice.

DATES: Effective date: September 25, 1990. The effective date and compliance dates are not changed by this document.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 475-8551.

I. SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of RCRA. The rule broadened and refined the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984.

Today's notice makes corrections to appendix II of the regulatory language of the March 29, 1990 final rule, Method 1311, the TCLP. The method has been reorganized to correspond to the current version of Test Methods for Evaluating Solid Waste (Chemical/Physical Methods), SW-846. In addition, the quality assurance section has been renumbered and has been clarified to eliminate confusion. Today's notice also corrects several typographical errors and other omissions that appeared in the final rule revising the toxicity characteristics.

The preamble to the March 29, 1990 final rule stated that any person that would like to use the TCLP before the effective date of the rule (September 25, 1990) may do so in order to determine whether the eight heavy metals and six pesticides that are currently regulated under the Extraction Procedure (EP) Toxicity Characteristic leach at levels of regulatory concern. This language was included because the TCLP is required for both waste determination (on September 25, 1990, the TC effective date) and the land disposal restrictions program. The Agency today is clarifying that, while it is appropriate to use just one leach test to fulfill both requirements, persons that would like to continue using the EP leach test until the effective date of the TC rule may do so. It should be noted, however, that the EP test may still be required as a matter of state law, and this regulation does not affect such state law requirements.

B. Method 1311 and Quality Assurance

Today's notice makes technical corrections to mistakes made in Method 1311, and to errors made during typesetting, and provides clarifications to specific procedures of the method. The method also is being reorganized by placing the leaching procedure in one section and the quality assurance in a separate section to conform with the format used in SW-846.

A correction is being made in the calculation for the weight of waste to charge the Zero-Headspace Extractor (ZHE). In the final rule published March 29, 1990, the method incorrectly stated that the optimum sample size to charge into the ZHE should be determined for wastes containing >0.5% solids. This calculation results in a charge sample greater than the capacity of the ZHE. The Agency today is correcting the procedure to require a determination on wastes containing >5% solids. The sample holding times and errors made during typesetting are also being corrected by today's notice.

The Agency received inquiries indicating that confusion exists concerning correction factors and how they should be applied. Therefore, the Agency is making a technical correction in § 8.2.5 of Method 1311, published in today's notice, by adding a formula for correcting measured values for analytical bias. Also, inquiries indicate that EPA's discussion of the appropriate GC and GC/MS methods to be used was improper. The preamble language is corrected by today's notice to indicate the appropriate GC and GC/MS methods to be used.

Method 1311 is also being reorganized by today's notice by placing the leaching procedure itself in one section, 7.0. (The steps of the leaching procedure were previously presented in sections 7, 8, and 9 in the March 29, 1990 final rule.) In addition, this notice makes minor corrections to the quality assurance section and it is renumbered 8.0. This reorganization provides consistency with SW-846.

Appendix II, Method 1311 of the March 29, 1990 final rule is replaced in its entirety by Method 1311 of this notice in order to incorporate the corrections, reorganizations, and clarifications which are being made by today's notice.

The March 29, 1990 final rule provided an exclusion under 40 CFR 261.4 for petroleum-contaminated media and debris that fail the Toxicity Characteristic. This exclusion applies only to petroleum-contaminated media and debris which exhibit the TC for any one or more of the newly identified organic constituents, and which are subject to corrective action under part 280. The regulatory language of this exclusion in the final rule is revised by today's notice to correctly reflect this application.

C. Corrections

1. On page 11798, column one, under "**DATES.**" in the second line of the compliance dates paragraph, change "generators: September 25, 1990. Small" to "generators and treatment, storage, and disposal facilities (TSDFs): September 25, 1990. Small".

2. On page 11804, Table II.2—Toxicity Characteristics Constitutents and Regulatory Levels, change the column heading "Constituent (mg/L)" to "Constituent".

3. On page 11804, Table II.2—Toxicity Characteristic Constituents and Regulatory Levels, line twenty, change "Heptachlor (and its hydroxide)" to "Heptachlor (and its epoxide)".

4. On page 11815, column three, Table C-1—Chronic Toxicity Reference Levels, lines nineteen and twenty, change "Heptachlor (and its hydroxide)" to "Heptachlor (and its epoxide)".

5. On page 11825, column one, fourth bullet, first line, change "The data extracted from RFSs" to "The data extracted from RFAs".

6. On page 11829, columnn one, the first full paragraph (lines twenty-four) through thirty-six) is replaced by the following: "The Agency agrees that the GC method (Method 8040) or the GC/MS method (Method 8270) for phenols and the GC/Electron Capture Detection (GC/ECD) for phenoxyacid herbicides (Method 8150) are more advantageous for the analysis of these analytes because the equipment is more readily available than the HPLC, despite the associated difficulties. HPLC methods for phenols and phenoxyacid herbicides are not included in the third edition of SW-846 because of a lack of validation data. The Agency will allow only the use of the previously mentioned GC and GC/MS methods (Methods 8040 or 8270) or their equivalents for phenols and Method 8150 for phenoxyacid herbicides until such time that the Agency proposes an HPLC method."

7. On page 11831, column two, paragraph b, seventh line, change "rule of 40 CFR 262.3(a)(2)(iv) or the" to "rule of 40 CFR 261.3(a)(2)(iv) or the".

8. On page 11835, column one, first and second line, change "July 25, 1985" to "July 15, 1985".

9. On page 11837, column one, third complete paragraph, thirteenth line, change "for TSDFs on February 5, 1987 (53 FR" to "for TSDFs on February 5, 1987 (52 FR".

10. On page 11840, column three, first bullet of second complete paragraph, first line, change "Solid waste that is a hazardous waste" to "Used oil that is a hazardous waste".

11. On page 11844, Table IV-1.—TC Constituent and Regulatory Levels Proposed June 13, 1986—Continued, fourth line, change the CASNO for D034 from "78-44-2" to "76-44-8".

12. On page 11844, Table IV-1.—TC Constituent and Regulatory Levels Proposed June 13, 1986—Continued, line twenty-one, change to read as follows: D045 . . . . 1,1,1,2-Tetrachloroethane . . . . 630-20-6. . . .10.0.

13. On page 11844, column two, Table IV-2.—Organic Constituents, fourth line, change the CASNO for D021 from "106-90-7" to "108-90-7".

14. On page 11844, column three, Table IV-2.—Organic Constituents-Continued, first line, change "D031 . . . . Heptachlor (and its hydroxide) . . . . 76-44-2" to "D031 . . . . Heptachlor (and its epoxide) . . . .76-44-8".

15. On page 11848, Table IV-3—Toxicity Characteristic Constituents and Regulatory Levels—Continued, tenth line, change "Heptachlor (and its hydroxide)" to "Heptachlor (and its epoxide)".

16. Also on page 11846, column two, third line, change "270 of chapter 40." to "270 of title 40.".

PART 261—[AMENDED]

§ 261.4 [Corrected]

17. On page 11862, column two, in § 261.4 paragraph (b)(10), is corrected to read as follows:

10. Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of § 261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under part 280 of this chapter.

§ 261.24 [Corrected]

18. Also on page 11862, column three, in § 261.24 Table 1.—Maximum Concentration of Contaminants for the Toxicity Characteristic, lines twenty-eight and twenty-nine, change "Heptachlor (and its hydroxide)" to "Heptachlor (and its epoxide)".

PART 271—[AMENDED]

§ 271.1 [Corrected]

19. On page 11876, in § 271.1(j) Table 1—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984, the Federal Register reference should be "55 FR 11798-11877".

PART 302—[AMENDED]

§ 302.4 [Corrected]

20. On page 11877, in § 302.4, Table 302.4, List of Hazardous Substances and Reportable Quantities, in the first column, make the following corrections:

A. In the ninth line, change "Heptachlor (and hydroxide) (D031)" to "Heptachlor (and epoxide) (D031)."

B. In line twenty-five, change "Thrichloroethylene (D040)" to "Trichloroethylene (D040)".

C. In line twenty-six, change "2,4,5-Trichlorethylene (D041)" to "2,4,5-Trichlorophenol (D041)".

Dated: June 22, 1990.

Mary A. Gade,

Acting Assistant Administrator.

In addition to the corrections made above, part 261 is amended by revising appendix II to read as follows:

Appendix II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)

1.0 Scope and Application

1.1 The TCLP is designed to determine the mobility of both organic and inorganic analytes present in liquid, solid, and multiphasic wastes.

1.2 If a total analysis of the waste demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate regulatory levels could not possibly be exceeded, the TCLP need not be run.

1.3 If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated compound is present at such high concentrations that, even after accounting for dilution from the other fractions of the extract, the concentration would be equal to or above the regulatory level for that compound, then the waste is hazardous and it is not necessary to analyze the remaining fractions of the extract.

1.4 If an analysis of extract obtained using a bottle extractor shows that the concentration of any regulated volatile analyte equals or exceeds the regulatory level for that compound, then the waste is hazardous and extraction using the ZHE is not necessary. However, extract from a bottle extractor cannot be used to demonstrate that the concentration of volatile compounds is below the regulatory level.

2.0 Summary of Method

2.1 For liquid wastes (i.e., those containing less than 0.5% dry solid material), the waste, after filtration through a 0.6 to 0.8 μm glass fiber filter, is defined as the TCLP extract.

2.2 For wastes containing greater than or equal to 0.5% solids, the liquid, if any, is separated from the solid phase and stored for later analysis; the particle size of the solid phase is reduced, if necessary. The solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The extraction fluid employed is a function of the alkalinity of the solid phase of the waste. A special extractor vessel is used when testing for volatile analytes (see Table 1 for a list of volatile compounds). Following extraction, the liquid extract is separated from the solid phase by filtration through a 0.6 to 0.8 μm glass fiber filter.

2.3 If compatible (i.e., multiple phases will not form on combination), the initial liquid phase of the waste is added to the liquid extract, and these are analyzed together. If incompatible, the liquids are analyzed separately and the results are mathematically combined to yield a volume-weighted average concentration.

3.0 Interferences

3.1 Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 Apparatus and Materials

4.1 Agitation apparatus: The agitation apparatus must be capable of rotating the extraction vessel in an end-over-end fashion (see Figure 1) at 30 ±2 rpm. Suitable devices known to EPA are identified in Table 2.

4.2 Extraction Vessels.

4.2.1 Zero-Headspace Extraction Vessel (ZHE). This device is for use only when the waste is being tested for the mobility of

volatile analytes (i.e., those listed in Table 1). The ZHE (depicted in Figure 2) allows for liquid/solid separation within the device, and effectively precludes headspace. This type of vessel allows for initial liquid/solid separation, extraction, and final extract filtration without opening the vessel (see section 4.3.3.1). The vessels shall have an internal volume of 500–600 mL, and be equipped to accommodate a 90–110 mm filter. The devices contain VITON®[1] O-rings which should be replaced frequently. Suitable ZHE devices known to EPA are identified in Table 3.

For the ZHE to be acceptable for use, the piston within the ZHE should be able to be moved with approximately 15 pounds per square inch (psi) or less. If it takes more pressure to move the piston, the O-rings in the device should be replaced. If this does not solve the problem, the ZHE is unacceptable for TCLP analyses and the manufacturer should be contacted.

The ZHE should be checked for leaks after every extraction. If the device contains a built-in pressure gauge, pressurize the device to 50 psi, allow it to stand unattended for 1 hour, and recheck the pressure. If the device does not have a built-in pressure gauge, pressurize the device to 50 psi, submerge it in water, and check for the presence of air bubbles escaping from any of the fittings. If pressure is lost, check all fittings and inspect and replace O-rings, if necessary. Retest the device. If leakage problems cannot be solved, the manufacturer should be contacted.

Some ZHEs use gas pressure to actuate the ZHE piston, while others use mechanical pressure (see Table 3). Whereas the volatiles procedures (see section 7.3) refers to pounds per square inch (psi), for the mechanically actuated piston, the pressure applied is measured in torque-inch-pounds. Refer to the manufacturer's instructions as to the proper conversion.

4.2.2 Bottle Extraction Vessel. When the waste is being evaluated using the nonvolatile extraction, a jar with sufficient capacity to hold the sample and the extraction fluid is needed. Headspace is allowed in this vessel.

The extraction bottles may be constructed from various materials, depending on the analytes to be analyzed and the nature of the waste (see section 4.3.3). It is recommended that borosilicate glass bottles be used instead of other types of glass, especially when inorganics are of concern. Plastic bottles, other than polytetrafluorothylene, shall not be used if organics are to be investigated. Bottles are available from a number of laboratory suppliers. When this type of extraction vessel is used, the filtration device discussed in section 4.3.2 is used for initial liquid/solid separation and final extract filtration.

4.3 Filtration Devices: It is recommended that all filtrations be performed in a hood.

4.3.1 Zero-Headspace Extractor Vessel (ZHE): When the waste is evaluated for volatiles, the zero-headspace extraction vessel described in section 4.2.1 is used for filtration. The device shall be capable of supporting and keeping in place the glass fiber filter and be able to withstand the pressure needed to accomplish separation (50 psi).

Note: When it is suspected that the glass fiber filter has been ruptured, an in-line glass fiber filter may be used to filter the material within the ZHE.

4.3.2 Filter Holder: When the waste is evaluated for other than volatile analytes, any filter holder capable of supporting a glass fiber filter and able to withstand the pressure needed to accomplish separation may be used. Suitable filter holders range from simple vacuum units to relatively complex systems capable of exerting pressures of up to 50 psi or more. The type of filter holder used depends on the properties of the material to be filtered (see section 4.3.3). These devices shall have a minimum internal volume of 300 mL and be equipped to accommodate a minimum filter size of 47 mm (filter holders having an internal capacity of 1.5 L or greater, and equipped to accommodate a 142 mm diameter filter, are recommended). Vacuum filtration can only be used for wastes with low solids content (<10%) and for highly granular, liquid-containing wastes. All other types of wastes should be filtered using positive pressure filtration. Suitable filter holders known to EPA are shown in Table 4.

4.3.3 Materials of Construction: Extraction vessels and filtration devices shall be made of inert materials which will not leach or absorb waste components. Glass, polytetrafluoroethylene (PTFE), or type 316 stainless steel equipment may be used when evaluating the mobility of both organic and inorganic components. Devices made of high density polyethylene (HDPE), polypropylene (PP), or polyvinyl chloride (PVC) may be used only when evaluating the mobility of metals. Borosilicate glass bottles are recommended for use over other types of glass bottles, especially when inorganics are analytes of concern.

4.4 Filters: Filters shall be made of borosilicate glass fiber, shall contain no binder materials, and shall have an effective pore size of 0.6 to 0.8 μm, or equivalent. Filters known to EPA which meet these specifications are identified in Table 5. Prefilters must not be used. When evaluating the mobility of metals, filters shall be acid-washed prior to use by rinsing with 1N nitric acid followed by three consecutive rinses with deionized distilled water (a minimum of 1 L per rinse is recommended). Glass fiber filter are fragile and should be handled with care.

4.5 pH Meters: The meter should be accurate to ± 0.05 units at 25°C.

4.6 ZHE Extract Collection Devices: TEDLAR® [2] bags or glass, stainless steel or PTFE gas-tight syringes are used to collect the initial liquid phase and the final extract of the waste when using the ZHE device. The devices listed are recommended for use under the following conditions:

4.6.1 If a waste contains an aqueous liquid phase or if a waste does not contain a significant amount of nonaqueous liquid (i.e., <1% of total waste), the TEDLAR® bag or a 600 mL syringe should be used to collect and combine the initial liquid and solid extract.

4.6.2 If a waste contains a significant amount of nonaqueous liquid in the initial liquid phase (i.e., >1% of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

4.6.3 If the waste contains no initial liquid phase (is 100% solid) or has no significant solid phase (is 100% liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL of liquid expressed from the device. The remaining aliquots are used for analysis.

4.7 ZHE Extraction Fluid Transfer Devices: Any device capable of transferring the extraction fluid into the ZHE without changing the nature of the extraction fluid is acceptable (e.g. a positive displacement or peristaltic pump, a gas tight syringe, pressure filtration unit (see section 4.3.2), or other ZHE device).

4.8 Laboratory Balance: Any laboratory balance accurate to within ± 0.01 grams may be used (all weight measurements are to be within ± 0.1 grams).

4.9 Beaker or Erlenmeyer flask, glass, 500 mL.

4.10 Watchglass, appropriate diameter to cover beaker or erlenmeyer flask.

4.11 Magnetic stirrer.

5.0 Reagents

5.1 Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Other grades may be used, provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination.

5.2 Reagent water. Reagent water is defined as water in which an interferent is not observed at or above the methods detection limit of the analyte(s) of interest. For nonvolatile extractions, ASTM Type II water or equivalent meets the definition of reagent water. For volatile extractions, it is recommended that reagent water be generated by any of the following methods. Reagent water should be monitored periodically for impurities.

5.2.1 Reagent water for volatile extractions may be generated by passing tap water through a carbon filter bed containing about 500 grams of activated carbon (Calgon Corp., Filtrasorb-300 or equivalent).

5.2.2 A water purification system (Millipore Super-Q or equivalent) may also be used to generate reagent water for volatile extractions.

5.2.3 Reagent water for volatile extractions may also be prepared by boiling water for 15 minutes. Subsequently, while maintaining the water temperature at 90 + 5 degrees C, bubble a contaminant-free inert gas (e.g., nitrogen) through the water for 1 hour. While still hot, transfer the water to a narrow mouth screw-cap bottle under zero-headspace and seal with a Teflon-lined septum and cap.

5.3 Hydrochloric acid (1N), HCl, made from ACS reagent grade.

5.4 Nitric acid (1N), HNO_3, made from ACS reagent grade.

5.5 Sodium hydroxide (1N), NaOH, made from ACS reagent grade.

5.6 Glacial acetic acid, CH_3CH_2OOH, ACS reagent grade.

5.7 Extraction fluid.

5.7.1 Extraction fluid #1: Add 5.7 mL glacial CH_3CH_2OOH to 500 mL of reagent water (See section 5.2), add 64.3 mL of 1N NaOH, and dilute to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 4.93 ± 0.05.

5.7.2 Extraction fluid #2: Dilute 5.7 mL glacial CH_3CH_2OOH with reagent water (See section 5.2) to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 2.88 ± 0.05.

Note: These extraction fluids should be monitored frequently for impurities. The pH should be checked prior to use to ensure that these fluids are made up accurately. If impurities are found or the pH is not within the above specifications, the fluid shall be discarded and fresh extraction fluid prepared.

5.8 Analytical standards shall be prepared according to the appropriate analytical method.

6.0 Sample Collection, Preservation, and Handling

6.1 All samples shall be collected using an appropriate sampling plan.

6.2 The TCLP may place requirements on the minimal size of the field sample, depending upon the physical state or states of the waste and the analytes of concern. An aliquot is needed for preliminary evaluation of which extraction fluid is to be used for the nonvolatile analyte extraction procedure. Another aliquot may be needed to actually conduct the nonvolatile extraction (see section 1.4 concerning the use of this extract for volatile organics). If volatile organics are of concern, another aliquot may be needed. Quality control measures may require additional aliquots. Further, it is always wise to collect more samples just in case something goes wrong with the initial attempt to conduct the test.

6.3 Preservatives shall not be added to samples before extraction.

6.4 Samples may be refrigerated unless refrigeration results in irreversible physical change to the waste. If precipitation occurs, the entire sample (including precipitate) should be extracted.

6.5 When the waste is to be evaluated for volatile analytes, care shall be taken to minimize the loss of volatiles. Samples shall be collected and stored in a manner intended to prevent the loss of volatile analytes (e.g., samples should be collected in Teflon-lined septum capped vials and stored at 4 °C. Samples should be opened only immediately prior to extraction).

6.6 TCLP extracts should be prepared for analysis and analyzed as soon as possible following extraction. Extracts or portions of extracts for metallic analyte determinations must be acidified with nitric acid to a pH <2, unless precipitation occurs (see section 7.2.14 if precipitation occurs). Extracts should be preserved for other analytes according to the guidance given in the individual analysis methods. Extracts or portions of extracts for organic analyte determinations shall not be allowed to come into contact with the atmosphere (i.e., no headspace) to prevent losses. See section 8.0 (QA requirements) for acceptable sample and extract holding times.

7.0 Procedure

7.1 Preliminary Evaluations. Perform preliminary TCLP evaluations on a minimum 100 gram aliquot of waste. This aliquot may not actually undergo TCLP extraction. These preliminary evaluations include: (1) Determination of the percent solids (section 7.1.1); (2) determination of whether the waste contains insignificant solids and is, therefore, its own extract after filtration (section 7.1.2); (3) determination of whether the solid portion of the waste requires particle size reduction (section 7.1.3); and (4) determination of which of the two extraction fluids are to be used for the nonvolatile TCLP extraction of the waste (section 7.1.4.).

7.1.1 Preliminary determination of percent solids: Percent solids is defined as that fraction of a waste sample (as a percentage of the total sample) from which no liquid may be forced out by an applied pressure, as described below.

7.1.1.1 If the waste will obviously yield no liquid when subjected to pressure filtration (i.e., is 100% solids) proceed to section 7.1.3.

7.1.1.2 If the sample is liquid or multiphasic, liquid/solid separation to make a preliminary determination of percent solids is required. This involves the filtration device described in section 4.3.2 and is outlined in sections 7.1.1.3 through 7.1.1.9.

7.1.1.3 Pre-weigh the filter and the container that will receive the filtrate.

7.1.1.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure.

7.1.1.5 Weigh out a subsample of the waste (100 gram minimum) and record the weight.

7.1.1.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

7.1.1.7 Quantitatively transfer the waste sample to the filter holder (liquid and solid phases). Spread the waste sample evenly over the surface of the filter. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature then allow the sample to warm up to room temperature in the device before filtering.

Note: If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in section 7.1.1.5 to determine he weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2 minute interval, slowly increase the pressure in 10 psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2 minute interval, proceed to the next 10 psi increment. When the pressurizing gas begins to move through the filter, or when liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within any 2 minute period), stop the filtration.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.1.1.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying vacuum or pressure filtration, as outlined in section 7.1.1.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid. Do not replace the original filter with a fresh filter under any circumstances. Use only one filter.

7.1.1.9 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (see section 7.1.1.3) from the total weight of the filtrate-filled container. Determine the weight of the solid phase of the waste sample by subtracting the weight of the liquid phase from the weight of the total waste sample, as determined in section 7.1.1.5 or 7.1.1.7.

Record the weight of the liquid and solid phases. Calculate the percent solids as follows:

$$\text{Percent solids} = \frac{\text{Weight of solid (section 7.1.1.9)}}{\text{Total weight of waste (section 7.1.1.5 or 7.1.1.7)}} \times 100$$

[1] VITON® is a registered trademark of DuPont.

[2] TEDLAR® is a registered trademark of Dupont.

7.1.2 If the percent solids determined in section 7.1.1.9 is equal to or greater than 0.5%, then proceed either to section 7.1.3 to determine whether the solid material requires particle size reduction or to section 7.1.2.1 if it is noticed that a small amount of the filtrate is entrained in wetting of the filter. If the percent solids determined in section 7.1.1.9 is less than 0.5%, then proceed to section 7.2.9 if the nonvolatile TCLP is to be performed and to section 7.3 with a fresh portion of the waste if the volatile TCLP is to be performed.

7.1.2.1 Remove the solid phase and filter from the filtration apparatus.

7.1.2.2 Dry the filter and solid phase at 100± 20°C until two successive weighings yield the same value within ± 1%. Record the final weight.

Note: Caution should be taken to ensure that the subject solid will not flash upon heating. It is recommended that the drying oven be vented to a hood or other appropriate device.

7.1.2.3 Calculate the percent dry solids as follows:

$$\% \text{ dry solids} = \frac{(\text{Weight of dry waste+filter})-\text{tared weight of filter}}{\text{Initial weight of waste (section 7.1.1.5 or 7.1.1.7)}} \times 100$$

7.1.2.4 If the percent dry solids is less than 0.5%, then proceed to section 7.2.9 if the nonvolatile TCLP is to be performed, and to section 7.3 if the volatile TCLP is to be performed. If the percent dry solids is greater than or equal to 0.5%, and if the nonvolatile TCLP is to be performed, return to the beginning of this section (7.1) and, with a fresh portion of waste, determine whether particle size reduction is necessary (section 7.1.3) and determine the appropriate extraction fluid (section 7.1.4). If only the volatile TCLP is to be performed, see the note in section 7.1.4.

7.1.3 Determination of whether the waste requires particle size reduction (particle size is reduced during this step): Using the solid portion of the waste, evaluate the solid for particle size. Particle size reduction is required, unless the solid has a surface area per gram of material equal to or greater than 3.1 cm^2, or is smaller than 1 cm in its narrowest dimension (i.e., is capable of passing through a 9.5 mm (0.375 inch) standard sieve). If the surface area is smaller or the particle size larger than described above, prepare the solid portion of the waste for extraction by crushing, cutting, or grinding the waste to a surface area or particle size as described above. If the solids are prepared for organic volatiles extraction, special precautions must be taken (see section 7.3.6).

Note: Surface area criteria are meant for filamentous (e.g., paper, cloth, and similar) waste materials. Actual measurement of surface area is not required, nor is it recommended. For materials that do not obviously meet the criteria, sample-specific methods would need to be developed and employed to measure the surface area. Such methodology is currently not available.

7.1.4 Determination of appropriate extraction fluid: If the solid content of the waste is greater than or equal to 0.5% and if the sample will be extracted for nonvolatile constituents (section 7.2), determine the appropriate fluid (section 5.7) for the nonvolatiles extraction as follows:

Note: TCLP extraction for volatile constituents uses only extraction fluid #1 (section 5.7.1). Therefore, if TCLP extraction for nonvolatiles is not required, proceed to section 7.3.

7.1.4.1 Weigh out a small subsample of the solid phase of the waste, reduce the solid (if necessary) to a particle size of approximately 1 mm in diameter or less, and transfer 5.0 grams of the solid phase of the waste to a 500 mL beaker or Erlenmeyer flask.

7.1.4.2 Add 96.5 mL of reagent water to the beaker, cover with a watchglass, and stir vigorously for 5 minutes using a magnetic stirrer. Measure and record the pH. If the pH is <5.0, use extraction fluid #1. Proceed to section 7.2.

7.1.4.3 If the pH from section 7.1.4.2 is >5.0, add 3.5 mL 1N NCl, slurry briefly, cover with a watchglass, heat to 50°C, and hold at 50°C for 10 minutes.

7.1.4.4 Let the solution cool to room temperature and record the pH. If the pH is <5.0, use extraction fluid #1. If the pH is >5.0, use extraction fluid #2. Proceed to section 7.2.

7.1.5 If the aliquot of the waste used for the preliminary evaluation (sections 7.1.1–7.1.4) was determined to be 100% solid at section 7.1.1.1, then it can be used for the section 7.2 extraction (assuming at least 100 grams remain), and the section 7.3 extraction (assuming at least 25 grams remain). If the aliquot was subjected to the procedure in section 7.1.1.7, then another aliquot shall be used for the volatile extraction procedure in section 7.3. The aliquot of the waste subjected to the procedure in section 7.1.1.7 might be appropriate for use for the section 7.2 extraction if an adequate amount of solid (as determined by section 7.1.1.9) was obtained. The amount of solid necessary is dependent upon whether a sufficient amount of extract will be produced to support the analyses. If an adequate amount of solid remains, proceed to section 7.2.10 of the nonvolatile TCLP extraction.

7.2 Procedure When Volatiles are not Involved. A minimum sample size of 100 grams (solid and liquid phases) is recommended. In some cases, a larger sample size may be appropriate, depending on the solids content of the waste sample (percent solids, See section 7.1.1), whether the initial liquid phase of the waste will be miscible with the aqueous extract of the solid, and whether inorganics, semivolatile organics, pesticides, and herbicides are all analytes of concern. Enough solids should be generated for extraction such that the volume of TCLP extract will be sufficient to support all of the analyses required. If the amount of extract generated by a single TCLP extraction will not be sufficient to perform all of the analyses, more than one extraction may be performed and the extracts from each combined and aliquoted for analysis.

7.2.1 If the waste will obviously yield no liquid when subjected to pressure filtration (i.e., is 100% solid, see section 7.1.1), weigh out a subsample of the waste (100 gram minimum) and proceed to section 7.2.9.

7.2.2 If the sample is liquid or multiphasic, liquid/solid separation is required. This involves the filtration device described in section 4.3.2 and is outlined in sections 7.2.3 to 7.2.8.

7.2.3 Pre-weigh the container that will receive the filtrate.

7.2.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure. Acid-wash the filter if evaluating the mobility of metals (see section 4.4).

Note: Acid-washed filters may be used for all nonvolatile extractions even when metals are not of concern.

7.2.5 Weigh out a subsample of the waste (100 gram minimum) and record the weight. If the waste contains <0.5% dry solids (section 7.1.2), the liquid portion of the waste, after filtration, is defined as the TCLP extract. Therefore, enough of the sample should be filtered so that the amount of filtered liquid will support all of the analyses required of the TCLP extract. For wastes containing >0.5% dry solids (sections 7.1.1 or 7.1.2), use the percent solids information obtained in section 7.1.1 to determine the optimum sample size (100 gram minimum) for filtration. Enough solids should be generated by filtration to support the analyses to be performed on the TCLP extract.

7.2.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Use centrifugation only as an aid to filtration. If the waste is centrifuged, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

7.2.7 Quantitatively transfer the waste sample (liquid and solid phases) to the filter holder (see section 4.3.2). Spread the waste sample evenly over the surface of the filter. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering.

Note: If waste material (>1% of the original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in section 7.2.5, to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is reached under 10 psi, and if no additional liquid has passed through the filter in any 2 minute interval, slowly increase the pressure in 10 psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2 minute interval, proceed to the next 10 psi increment. When the pressurizing gas begins to move through the filter, or when the liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within a 2 minute period), stop the filtration.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.2.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase. Weigh the filtrate. The liquid phase may now be either analyzed (See section 7.2.12) or stored at 4°C until time of analysis.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying vacuum or pressure filtration, as outlined in section 7.2.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the extraction as a solid. Do not replace the original filter with a fresh filter under any circumstances. Use only one filter.

7.2.9 If the waste contains <0.5% dry solids (see section 7.1.2), proceed to section 7.2.13. If the waste contains >0.5% dry solids (see section 7.1.1 or 7.1.2), and if particle size reduction of the solid was needed in section 7.1.3, proceed to section 7.2.10. If the waste as received passes a 9.5 mm sieve, quantitatively transfer the solid material into the extractor bottle along with the filter used to separate the initial liquid from the solid phase, and proceed to section 7.2.11.

7.2.10 Prepare the solid portion of the waste for extraction by crushing, cutting, or grinding the waste to a surface area or particle size as described in section 7.1.3. When the surface area or particle size has been appropriately altered, quantitatively transfer the solid material into an extractor bottle. Include the filter used to separate the initial liquid from the solid phase.

Note: Sieving of the waste is not normally required. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended. If sieving is necessary, a Teflon-coated sieve should be used to avoid contamination of the sample.

7.2.11 Determine the amount of extraction fluid to add to the extractor vessel as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \text{percent solids (section 7.1.1)} \times \text{weight of waste filtered (section 7.2.5 or 7.2.7)}}{100}$$

Slowly add this amount of appropriate extraction fluid (see section 7.1.4) to the extractor vessel. Close the extractor bottle tightly (it is recommended that Teflon tape be used to ensure a tight seal), secure in rotary agitation device, and rotate at 30 ± 2 rpm for 18 ± 2 hours. Ambient temperature (i.e., temperature of room in which extraction takes place) shall be maintained at 23 ± 2°C during the extraction period.

Note: As agitation continues, pressure may build within the extractor bottle for some types of wastes (e.g., limed or calcium carbonate containing waste may evolve gases such as carbon dioxide). To relieve excess pressure, the extractor bottle may be periodically opened (e.g., after 15 minutes, 30 minutes, and 1 hour) and vented into a hood.

7.2.12 Following the 18 ± 2 hour extraction, separate the material in the extractor vessel into its component liquid and solid phases by filtering through a new glass fiber filter, as outlined in section 7.2.7. For final filtration of the TCLP extract, the glass fiber filter may be changed, if necessary, to facilitate filtration. Filter(s) shall be acid-washed (see section 4.4) if evaluating the mobility of metals.

7.2.13 Prepare the TCLP extract as follows:

7.2.13.1 If the waste contained no initial liquid phase, the filtered liquid material obtained from section 7.2.12 is defined as the TCLP extract. Proceed to section 7.2.14.

7.2.13.2 If compatible (e.g., multiple phases will not result on combination), combine the filtered liquid resulting from section 7.2.12 with the initial liquid phase of the waste obtained in section 7.2.7. This combined liquid is defined as the TCLP extract. Proceed to section 7.2.14.

7.2.13.3 If the initial liquid phase of the waste, as obtained from section 7.2.7, is not or may not be compatible with the filtered liquid resulting from section 7.2.12, do not combine these liquids. Analyze these liquids, collectively defined as the TCLP extract, and combine the results mathematically, as described in section 7.2.14.

7.2.14 Following collection of the TCLP extract, the pH of the extract should be recorded. Immediately aliquot and preserve the extract for analysis. Metals aliquots must be acidified with nitric acid to pH <2. If precipitation is observed upon addition of nitric acid to a small aliquot of the extract, then the remaining portion of the extract for metals analyses shall not be acidified and the extract shall be analyzed as soon as possible. All other aliquots must be stored under refrigeration (4 °C) until analyzed. The TCLP extract shall be prepared and analyzed according to appropriate analytical methods. TCLP extracts to be analyzed for metals shall be acid digested except in those instances where digestion causes loss of metallic analytes. If an analysis of the undigested extract shows that the concentration of any regulated metallic analyte exceeds the regulatory level, then the waste is hazardous and digestion of the extract is not necessary. However, data on undigested extracts alone cannot be used to demonstrate that the waste is not hazardous. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to ± 0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analyte Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phase (L).
C_1 = The concentration of the analyte of concern in the first phase (mg/L).
V_2 = The volume of the second phase (L).
C_2 = The concentration of the analyte of concern in the second phase (mg/L).

7.2.15 Compare the analyte concentrations in the TCLP extract with the levels identified in the appropriate regulations. Refer to section 8.0 for quality assurance requirements.

7.3 Procedure When Volatiles are Involved. Use the ZHE device to obtain TCLP extract for analysis of volatile compounds only. Extract resulting from the use of the ZHE shall not be used to evaluate the mobility of nonvolatile analytes (e.g., metals, pesticides, etc.).

The ZHE device has approximately a 500 mL internal capacity. The ZHE can thus accommodate a maximum of 25 grams of solid (defined as that fraction of a sample from which no additional liquid may be forced out by an applied pressure of 50 psi), due to the need to add an amount of extraction fluid equal to 20 times the weight of the solid phase.

Charge the ZHE with sample only once and do not open the device until the final extract (of the solid) has been collected. Repeated filling of the ZHE to obtain 25 grams of solid is not permitted.

Do not allow the waste, the initial liquid phase, or the extract to be exposed to the atmosphere for any more time than is absolutely necessary. Any manipulation of these materials should be done when cold (4°C) to minimize loss of volatiles.

7.3.1 Pre-weigh the (evacuated) filtrate collection container (See section 4.6) and set aside. If using a TEDLAR® bag, express all liquid from the ZHE device into the bag.

whether for the initial or final liquid/solid separation, and take an aliquot from the liquid in the bag for analysis. The containers listed in section 4.0 are recommended for use under the conditions stated in sections 4.0.1–4.0.3.

7.3.2 Place the ZHE piston within the body of the ZHE (it may be helpful first to moisten the piston O-rings slightly with extraction fluid). Adjust the piston within the ZHE body to a height that will minimize the distance the piston will have to move once the ZHE is charged with sample (based upon sample size requirements determined from section 7.3, section 7.1.1 and/or 7.1.2). Secure the gas inlet/outlet flange (bottom flange) onto the ZHE body in accordance with the manufacturer's instructions. Secure the glass fiber filter between the support screens and set aside. Set liquid inlet/outlet flange (top flange) aside.

7.3.3 If the waste is 100% solid (see section 7.1.1), weigh out a subsample (25 gram maximum) of the waste, record weight, and proceed to section 7.3.5.

7.3.4 If the waste contains <5% dry solids (section 7.1.2), the liquid portion of waste, after filtration, is defined as the TCLP extract. Filter enough of the sample so that the amount of filtered liquid will support all of the volatile analyses required. For wastes containing >5% dry solids (sections 7.1.1 and/or 7.1.2), use the percent solids information obtained in section 7.1.1 to determine the optimum sample size to charge into the ZHE. The recommended sample size is as follows:

7.3.4.1 For wastes containing <5% solids (see Section 7.1.1), weigh out a 500 gram subsample of waste and record the weight.

7.3.4.2 For wastes containing >5% solids (see Section 7.1.1), determine the amount of waste to charge into the ZHE as follows:

$$\text{Weight of waste to charge ZHE} = \frac{25}{\text{percent solids (section 7.1.1)}} \times 100$$

Weigh out a subsample of the waste of the appropriate size and record the weight.

7.3.5 If particle size reduction of the solid portion of the waste was required in section 7.1.3, proceed to section 7.3.6. If particle size reduction was not required in section 7.1.3, proceed to section 7.3.7.

7.3.6 Prepare the waste for extraction by crushing, cutting, or grinding the solid portion of the waste to a surface area or particle size as described in section 7.1.3.1. Wastes and appropriate reduction equipment should be refrigerated, if possible, to 4°C prior to particle size reduction. The means used to effect particle size reduction must not generate heat in and of itself. If reduction of the solid phase of the waste is necessary, exposure of the waste to the atmosphere should be avoided to the extent possible.

Note: Sieving of the waste is not recommended due to the possibility that volatiles may be lost. The use of an appropriately graduated ruler is recommended as an acceptable alternative. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

When the surface area or particle size has been appropriately altered, proceed to section 7.3.7.

7.3.7 Waste slurries need not be allowed to stand to permit the solid phase to settle. Do not centrifuge wastes prior to filtration.

7.3.8 Quantitatively transfer the entire sample (liquid and solid phases) quickly to the ZHE. Secure the filter and support screens onto the top flange of the device and secure the top flange to the ZHE body in accordance with the manufacturer's instructions. Tighten all ZHE fittings and place the device in the vertical position (gas inlet/outlet flange on the bottom). Do not attach the extract collection device to the top plate.

Note: If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the ZHE, determine the weight of this residue and subtract it from the sample weight determined in section 7.3.4 to determine the weight of the waste sample that will be filtered.

Attach a gas line to the gas inlet/outlet valve (bottom flange) and, with the liquid inlet/outlet valve (top flange) open, begin applying gentle pressure of 1–10 psi (or more if necessary) to force all headspace slowly out of the ZHE device into a hood. At the first appearance of liquid from the liquid inlet/outlet valve, quickly close the valve and discontinue pressure. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering. If the waste is 100% solid (see section 7.1.1), slowly increase the pressure to a maximum of 50 psi to force most of the headspace out of the device and proceed to section 7.3.12.

7.3.9 Attach the evacuated pre-weighed filtrate collection container to the liquid inlet/outlet valve and open the valve. Begin applying gentle pressure of 1–10 psi to force the liquid phase of the sample into the filtrate collection container. If no additional liquid has passed through the filter in any 2 minute interval, slowly increase the pressure in 10 psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if no additional liquid has passed through the filter in any 2 minute interval, proceed to the next 10 psi increment. When liquid flow has ceased such that continued pressure filtration at 50 psi does not result in any additional filtrate within a 2 minute period, stop the filtration. Close the liquid inlet/outlet valve, discontinue pressure to the piston, and disconnect and weigh the filtrate collection container.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.3.10 The material in the ZHE is defined as the solid phase of the waste and the filtrate is defined as the liquid phase.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying pressure filtration, this material will not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the TCLP extraction as a solid.

If the original waste contained <0.5% dry solids (see section 7.1.2), this filtrate is defined as the TCLP extract and is analyzed directly. Proceed to section 7.3.15.

7.3.11 The liquid phase may now be either analyzed immediately (See sections 7.3.13 through 7.3.15) or stored at 4°C under minimal headspace conditions until time of analysis.

Determine the weight of extraction fluid #1 to add to the ZHE as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \text{percent solids (section 7.1.1)} \times \text{weight of waste filtered (section 7.3.4 or 7.3.8)}}{100}$$

7.3.12 The following sections detail how to add the appropriate amount of extraction fluid to the solid material within the ZHE and agitation of the ZHE vessel. Extraction fluid #1 is used in all cases (See section 5.7).

7.3.12.1 With the ZHE in the vertical position, attach a line from the extraction fluid reservoir to the liquid inlet/outlet valve. The line used shall contain fresh extraction fluid and should be preflushed with fluid to eliminate any air pockets in the line. Release gas pressure on the ZHE piston (from the gas inlet/outlet valve), open the liquid inlet/outlet valve, and begin transferring extraction fluid (by pumping or similar means) into the ZHE. Continue pumping extraction fluid into the ZHE until the appropriate amount of fluid has been introduced into the device.

7.3.12.2 After the extraction fluid has been added, immediately close the liquid inlet/outlet valve and disconnect the extraction fluid line. Check the ZHE to ensure that all valves are in their closed positions. Manually rotate the device in an end-over-end fashion 2 or 3 times. Reposition the ZHE in the vertical position with the liquid inlet/outlet valve on top. Pressurize the ZHE to 5–10 psi (if necessary) and slowly open the liquid inlet/outlet valve to bleed out any headspace (into a hood) that may have been introduced due to the addition of extraction fluid. This bleeding shall be done quickly and shall be stopped at the first appearance of liquid from the valve. Re-pressurize the ZHE with 5–10 psi and check all ZHE fittings to ensure that they are closed.

7.3.12.3 Place the ZHE in the rotary agitation apparatus (if it is not already there) and rotate at 30 ± 2 rpm for 18 ± 2 hours. Ambient temperature (i.e., temperature of room in which extraction occurs) shall be maintained at 22 ± 3°C during agitation.

7.3.13 Following the 18 ± 2 hour agitation period, check the pressure behind the ZHE piston by quickly opening and closing the gas inlet/outlet valve and noting the escape of gas. If the pressure has not been maintained (i.e., no gas release observed), the device is leaking. Check the ZHE for leaking as specified in section 4.2.1, and perform the extraction again with a new sample of waste. If the pressure within the device has been maintained, the material in the extractor vessel is once again separated into its component liquid and solid phases. If the waste contained an initial liquid phase, the liquid may be filtered directly into the same filtrate collection container (i.e., TEDLAR® bag) holding the initial liquid phase of the waste. A separate filtrate collection container must be used if combining would create multiple phases, or there is not enough volume left within the filtrate collection container. Filter through the glass fiber filter, using the ZHE device as discussed in section 7.3.9. All extract shall be filtered and collected if the TEDLAR® bag is used, if the extract is multiphasic, or if the waste contained an initial liquid phase (see sections 4.0 and 7.3.1).

Note: An in-line glass fiber filter may be used to filter the material within the ZHE if it is suspected that the glass fiber filter has been ruptured.

7.3.14 If the original waste contained no initial liquid phase, the filtered liquid material obtained from section 7.3.13 is defined as the TCLP extract. If the waste contained an initial liquid phase, the filtered liquid material obtained from section 7.3.13 and the initial liquid phase (section 7.3.9) are collectively defined as the TCLP extract.

7.3.15 Following collection of the TCLP extract, immediately prepare the extract for analysis and store with minimal headspace at 4°C until analyzed. Analyze the TCLP extract according to the appropriate analytical methods. If the individual phases are to be analyzed separately (i.e., are not miscible), determine the volume of the individual phases (to 0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final Analtye Concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phases (L).
C_1 = The concentration of the analyte of concern in the first phase (mg/L).
V_2 = The volume of the second phase (L).
C_2 = The concentration of the analyte of concern in the second phase (mg/L).

7.3.16 Compare the analyte concentrations in the TCLP extract with the levels identified in the appropriate regulations. Refer to section 8.0 for quality assurance requirements.

8.0 Quality Assurance

8.1 A minimum of one blank (using the same extraction fluid as used for the samples) must be analyzed for every 20 extractions that have been conducted in an extraction vessel.

8.2 A matrix spike shall be performed for each waste type (e.g., wastewater treatment sludge, contaminated soil, etc.) unless the result exceeds the regulatory level and the data is being used solely to demonstrate that the waste property exceeds the regulatory level. A minimum of one matrix spike must be analyzed for each analytical batch. The bias determined from the matrix spike determination shall be used to correct the measured values. (See sections 8.2.4 and 8.2.5.) As a minimum, follow the matrix spike addition guidance provided in each analytical method.

8.2.1 Matrix spikes are to be added after filtration of the TCLP extract and before preservation. Matrix spikes should not be added prior to TCLP extraction of the sample.

8.2.2 In most cases, matrix spikes should be added at a concentration equivalent to the corresponding regulatory level. If the analyte concentration is less than one half the regulatory level, the spike concentration may be as low as one half of the analyte concentration, but may not be not less than five times the method detection limit. In order to avoid differences in matrix effects, the matrix spikes must be added to the same nominal volume of TCLP extract as that which was analyzed for the unspiked sample.

8.2.3 The purpose of the matrix spike is to monitor the performance of the analytical methods used, and to determine whether matrix interferences exist. Use of other internal calibration methods, modification of the analytical methods, or use of alternate analytical methods may be needed to accurately measure the analyte concentration of the TCLP extract when the recovery of the matrix spike is below the expected analytical method performance.

8.2.4 Matrix spike recoveries are calculated by the following formula:

%R (% Recovery) = 100 ($X_s - X_u$)/K

where:

X_s = measured value for the spiked sample.
X_u = measured value for the unspiked sample, and
K = known value of the spike in the sample.

8.2.5 Measured values are corrected for analytical bias using the following formula:

$X_c = 100\ (X_s/\%R)$

where:

X_c = corrected value, and
X_s = measured value of the unspiked sample.

8.3 All quality control measures described in the appropriate analytical methods shall be followed.

8.4 Samples must undergo TCLP extraction within the following time periods:

SAMPLE MAXIMUM HOLDING TIMES (DAYS)

	From: Field collection to: TCLP extraction	From: TCLP extraction to: Preparative extraction	From: preparative extraction to: determinative analysis	Total elapsed time
Volatiles	14	NA	14	28
Semivolatiles	14	7	40	61
Mercury	28	NA	28	56
Metals, except mercury	180	NA	180	360

NA—Not applicable.

If sample holding times are exceeded, the values obtained will be considered minimal concentrations. Exceeding the holding time is not acceptable in establishing that a waste does not exceed the regulatory level. Exceeding the holding time will not invalidate characterization if the waste exceeds the regulatory level.

TABLE 1.—VOLATILE ANALYTES [1,2]

Compound	CAS No.
Acetone	67-64-1
Benzene	71-43-2
n-Butyl alcohol	71-36-3
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlorobenzene	108-90-7
Chloroform	67-66-3
1,2-Dichloroethane	107-06-2
1,1-Dichloroethylene	75-35-4
Ethyl acetate	141-78-6
Ethyl benzene	100-41-4
Ethyl ether	60-29-7
Isobutanol	78-83-1
Methanol	67-56-1
Methylene chloride	75-09-2
Methyl ethyl ketone	78-93-3
Methyl isobutyl ketone	108-10-1
Tetrachloroethylene	127-18-4
Toluene	108-88-3
1,1,1,-Trichloroethane	71-55-6
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Vinyl chloride	75-01-4
Xylene	1330-20-7

[1] When testing for any or all of these analytes, the zero-headspace extractor vessel shall be used instead of the bottle extractor.

[2] Benzene, carbon tetrachloride, chlorobenzene, chloroform, 1,2-dichloroethane, 1,1-dichloroethylene, methyl ethyl ketone, tetrachloroethylene, trichloroethylene, and vinyl chloride are toxicity characteristic constituents.

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [3]

Company	Location	Model No.
Analytical Testing and Consulting Services, Inc.	Warrington, PA, (215) 343-4490.	4-vessel (DC3S), 8-vessel (DC20), 12-vessel (DC20S).
Associated Design and Manufacturing Company.	Alexandria VA, (703) 549-5999.	2-vessel (3740-2), 4-vessel (3740-4), 6-vessel (3740-6), 8-vessel (3740-8), 12-vessel (3740-12), 24-vessel (3740-24).
Environmental Machine and Design, Inc.	Lynchburg, VA, (804) 845-8424.	8-vessel (08-00-00) 4-vessel (04-00-00).
IRA Machine Shop and Laboratory.	Santurce, PR, (809) 752-4004.	8-vessel (011001).
Lars Landa Manufacturing.	Whitmore Lake, MI, (313) 449-4116.	10-vessel (01VRE), 5-vessel (5VRE).
Millipore Corp.	Bedford, MA, (800) 225-3384.	4-ZHE or 4 1-liter, bottle extractor, (YT300RAHW).

[3] Any device that rotates the extraction vessel in an end-over-end fashion at 30 ± 2 rpm is acceptable.

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS [3]

Company	Location	Model No.
Analytical Testing & Consulting Services, Inc.	Warrington, PA, (215) 343-4490.	C102, Mechanical Pressure Device.
Associated Design and Manufacturing Company.	Alexandria VA, (703) 549-5999.	3745-ZHE, Gas Pressure Device.
Lars Landa Manufacturing [4].	Whitmore Lake, MI, (313) 449-4116.	ZHE-11, Gas Pressure Device.
Millipore Corporation.	Bedford, MA, (800) 225-3384.	VT30090HW, Gas Pressure Device.
Environmental Machine and Design, Inc.	Lynchburg, VA, (804) 845-8424.	VOLA-TOX1, Gas Pressure Device.

[3] Any device that meets the specifications listed in section 4.2.1. of the method is acceptable.

[4] This device uses a 110 mm filter.

TABLE 4.—SUITABLE FILTER HOLDERS [1]

Company	Location	Model/catalogue No.	Size
Nuclepore Corporation.	Pleasanton, CA, (800) 882-7711.	425910 410400	142mm, 47 mm.
Micro Filtration Systems.	Dublin, CA, (800) 334-7132, (415) 828-8010.	302400 311400	142 mm, 47 mm.
Millipore Corporation.	Bedford, MA, (800) 225-3384.	YT30142HW XX1804709	142 mm, 47 mm.

[1] Any device capable of separating the liquid from the solid phase of the waste is suitable, providing that it is chemically compatible with the waste and the constituents to be analyzed. Plastic devices (not listed above) may be used when only inorganic analytes are of concern. The 142 mm size filter holder is recommended.

TABLE 5.—SUITABLE FILTER MEDIA [1]

Company	Location	Model	Pore Size (μm)
Millipore Corporation.	Bedford, MA, (800) 225-3384.	AP40	0.7
Nuclepore Corporation.	Pleasanton, CA, (415) 463-2530.	211625	0.7
Whatman Laboratory Products, Inc.	Clifton, NJ, (201) 773-5800.	GFF	0.7
Micro Filtration Systems.	Dublin, CA, (800) 334-7132, (415) 828-8010.	GF75	0.7

[1] Any filter that meets the specifications in section 4.4 of the Method is suitable.

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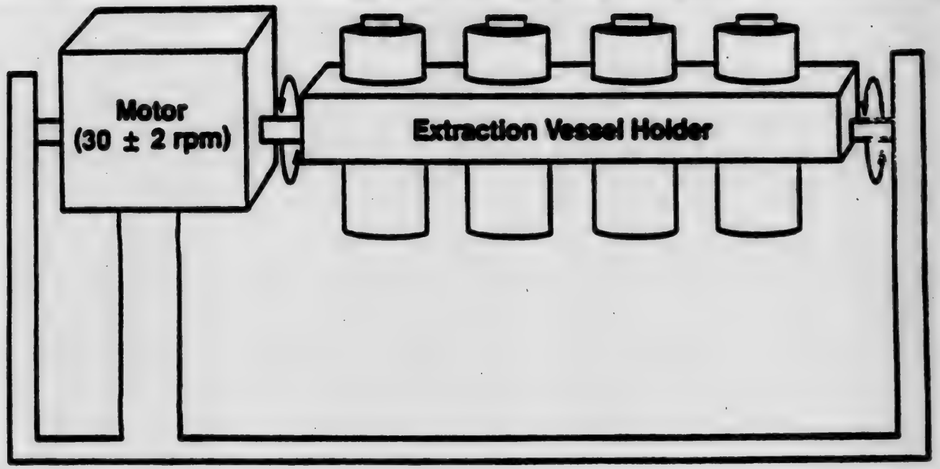


Figure 1. Rotary Agitation Apparatus

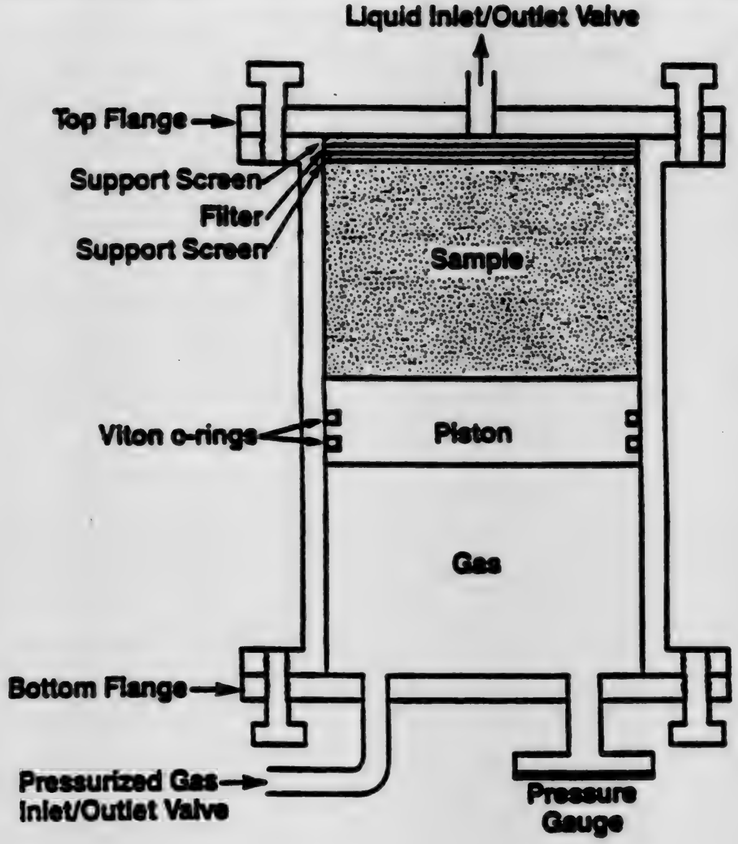
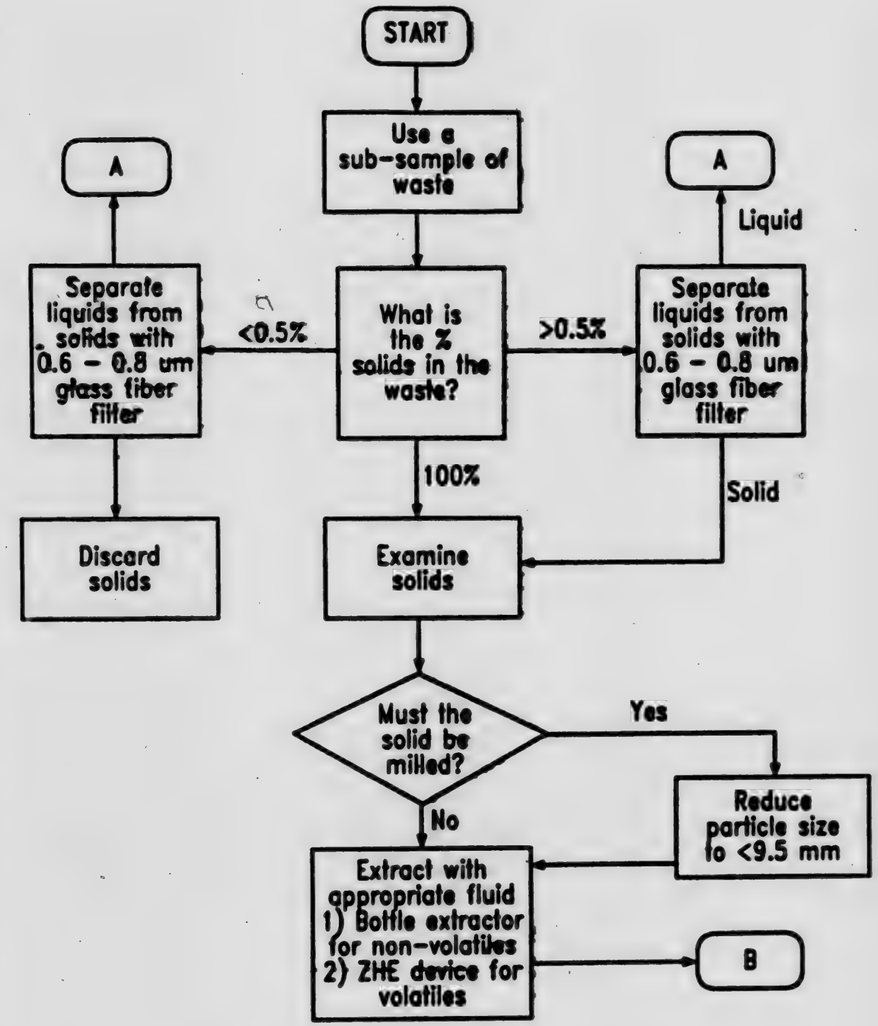


Figure 2. Zero-Headspace Extractor (ZHE)

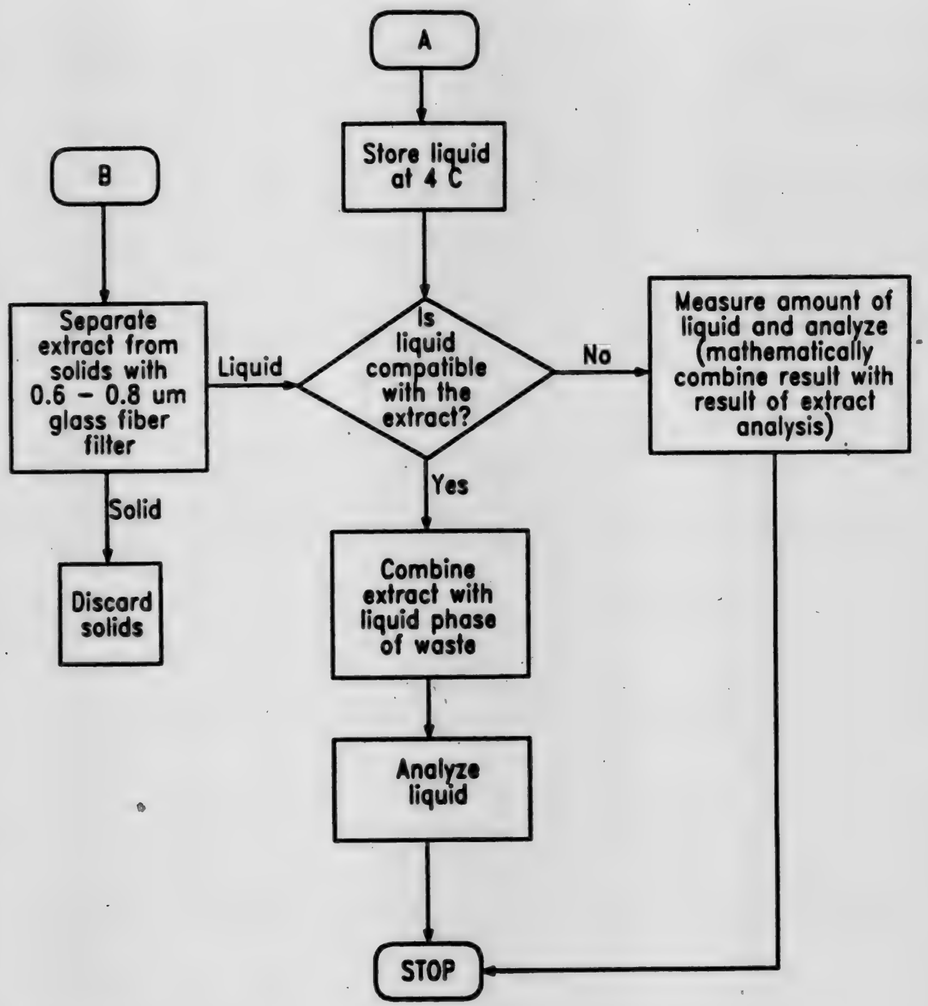
METHOD 1311

TOXICITY CHARACTERISTIC LEACHATE PROCEDURE



METHOD 1311 (CONTINUED)

TOXICITY CHARACTERISTIC LEACHATE PROCEDURE



[FR Doc. 90-15048 Filed 6-28-90; 8:45 am]
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federal register

Friday
June 29, 1990

Part VI

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 325

Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 325

Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This regulation (appendix C to 33 CFR Part 325) establishes the procedures to be followed by the U.S. Army Corps of Engineers (Corps) in its regulatory program in order to comply with the National Historic Preservation Act (NHPA), as amended, and other laws dealing with historic properties. This regulation provides for full consideration of impacts on historic properties.

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, (202) 272-1782.

SUPPLEMENTARY INFORMATION:

Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Appropriate environmental documentation is prepared for all permit decisions on a case-by-case basis.

Background

On April 3, 1980, we published a proposed appendix C, which was approved by the Advisory Council on Historic Preservation for use on an interim basis. We have been operating under that appendix since that time. On May 4, 1984, we published a new proposed appendix C. In response to public comment we have made a number of changes to that proposed appendix C as discussed below.

Public Comments

We received 51 comments on the May 4, 1984, proposed regulation (49 FR 19036), which covered a full range of views. All the comments were synthesized into major issues and are discussed below. In addition, on September 2, 1986, the Advisory Council on Historic Preservation (ACHP) revised its regulation on Protection of Historic Properties at 36 CFR part 800 (51 FR 31115). We made further changes to reflect changes in that regulation. This appendix is consistent with the requirement and the flexibility contained in the ACHP regulation. We have discussed all significant changes to the proposed rule. This regulation only addresses the procedures to be followed by the Corps in implementing its regulatory program.

General Comments

Several commenters indicated that the proposed regulation did not comply with the National Historic Preservation Act (NHPA) and/or the 1979 regulation developed by the ACHP at 36 CFR part 800. These commenters indicated that sections 106 and 110(f) of the NHPA require identification of previously unrecorded properties and a regulatory/advisory role for the SHPO. The ACHP revised its regulations on September 2, 1986. This appendix has been modified in light of the revised ACHP regulations and fully implements those regulations and complies with the NHPA. Implementation of the Corps Regulatory Program, in general and particularly in regard to historic preservation, is a complex process which requires coordination and consultation with other Federal and state agencies. These agencies function in an advisory or commenting role, as specified by law. This appendix C sets forth the Corps regulatory responsibilities under the authority of various national historic preservation statutes. Further, this appendix, as revised, provides a significant role for the SHPO. We believe the SHPO to be one of the foremost authorities for identifying historic properties as well as for assessing effects of proposed activities on historic properties. Accordingly, we will seek and carefully consider the SHPOs comments through public notices, coordination, and consultation throughout the permit process.

A few commenters indicated they felt it was necessary to do a survey to determine if a previously unrecorded historic property may be present. We agree and have revised this appendix to require the district engineer to survey for the presence of historic properties in the permit area, when appropriate.

Several commenters indicated that this regulation would shift the role of the SHPO to the ACHP. They believe that under existing manpower and budget limits the ACHP would not be able to respond adequately and thus that historic resources would suffer. We have clarified throughout this appendix that the SHPO has an important role in the Corps regulatory process. It has been our experience that most of our coordination occurs with the SHPO, while the ACHP becomes involved in only a relatively few cases. We firmly intend that this should continue and that there should be no cause under this regulation for the ACHP to have to participate more actively in our permit process than it has in the past. However, the ACHP may participate as it deems appropriate.

Several commenters addressed the effect of this regulation on the reduction of excessive delays. Some commenters supported the proposal because they felt that the regulation would reduce delays, while others thought that it would create excessive delays. Most commenters supported the goal to reduce unnecessary delays. We believe this appendix will streamline the regulatory process, when appropriate, while maintaining the ACHP's statutory/advisory role in historic preservation, the goals of the NHPA, and the SHPO's important participation in the permit process.

A few commenters indicated that we should address section 110(g) of the NHPA, which provides that reasonable costs may be charged to a Federal licensee or permittee. It is our policy that applicants be responsible to perform any required mitigation as a condition to the Corps permit. When mitigation of historic properties, including preservation, is required, the permittee is required to perform (or contract for) and pay for all reasonable costs. Our policy for conditioning permits is contained at 33 CFR 325.4.

Paragraph 1. (Proposed 2) Definitions

Paragraphs 1.a. & 1.b. One commenter expressed concern about the omission of a detailed definition of "historic properties" and whether a means is necessary to correct the apparent impression that the Corps considers designated historic properties more important than undesignated historic properties. For clarification we added a definition of "historic property" which includes both designated and undesignated historic properties. It should be noted in this regard that the term "historic property" as used in this appendix is broader than that term as used in the NHPA. This is because our public interest decision requires us to consider impacts on *all* properties with historical importance regardless of the degree of their historical importance and whether or not they may be eligible for inclusion on the National Register.

Paragraph 1.c. One commenter requested that the definition of a certified local government contain a reference to 36 CFR part 61. For clarity we have included that reference.

Paragraph 1.d. (proposed paragraph 1.e.) There were no comments on this definition and it is being adopted as proposed.

Paragraph 1.e. (proposed Paragraph 1.f.) One commenter expressed confusion regarding the use of the term "effect" and "affect" as used throughout the text. We have reviewed these two terms as used and believe they are used correctly. We added a sentence to clarify that we also consider indirect effects of the undertaking on historic properties. We also indicated that the criteria for effect and adverse effect is found in paragraph 15. of appendix C.

Paragraph 1.f. (proposed Paragraph 1.b.) There were no comments on this definition and it is being adopted essentially as proposed.

Paragraph 1.g. (proposed Paragraph 1.d.) One commenter stated that the definition of the term "permit area" does not give adequate consideration to indirect effects. The term "permit area" does not limit the consideration of indirect effects on historic properties. The Corps will consider both direct and indirect effects on historic properties. To further clarify the permit area we have added several examples that were included in the April 3, 1980, proposed regulation. We have also added an example to clarify the permit area for linear projects.

Paragraph 2. (Proposed 1. General) General Policy

Some commenters questioned the wording "directly affected" in paragraph 2.b. as it relates to NEPA. They indicated that NEPA considerations include secondary impacts. One commenter thought this paragraph would limit consideration to only "direct impacts" of a proposed activity under the NHPA. It was not the purpose of this paragraph to define the Corps responsibilities under NEPA which are included at 33 CFR part 325, appendix B, for the Corps regulatory program, nor was it to define the Corps' responsibilities under the NHPA. Rather, the purpose was to reference other Corps regulations which include additional responsibilities to consider impacts on historic properties. This paragraph was revised to clarify its intent.

We added two new paragraphs (2.e. and 2.f.) to clarify that the Corps will provide for maximum consideration of historic properties and maximum coordination within required time constraints. These paragraphs also provide that the Corps will strive to avoid or minimize effects on historic properties and adhere to the goals of the NHPA and other applicable laws dealing with historic properties.

Paragraph 3. Initial Review

Several commenters objected to the first sentence of this paragraph, pointing out that the latest published list of the National Register is never current and that there is not currently a consolidated list. They recommend that other sources, such as the SHPO, be consulted for knowledge of designated properties. We concur with these comments and have so revised this paragraph. One commenter suggested that the other appropriate sources of information be named. While we agree with the commenter that the SHPO, State Archeologist, local archeological and historical societies, universities, Indian tribes, and other organizations and individuals with historic expertise may be appropriate sources for information on historic properties, we do not believe it is necessary to list them. The appropriate sources may vary from case to case depending on the type of activity or location. Nevertheless, we recognize that our ability to communicate with these sources can be a problem. Therefore, we have added a sentence requiring district engineers to establish procedures for consulting these sources when appropriate. Because of the important role of the SHPO in the historic preservation process, the SHPO is especially identified in the added sentence.

One commenter indicated if an area has been disturbed to the point that archeological properties are not likely to exist or yield important information, it may be inappropriate to conduct any additional archeological or historic studies. This principle was included in the April 3, 1980, proposed regulations (45 FR 22113, paragraph 4.b.) and we have been operating under that provision since that time. This principle has been added to this appendix at paragraph 3.b.

One commenter stated that "early pre-application coordination and the preparation of adequate studies and project documentation" can expedite permit processing. This commenter recommended we provide a copy of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) to permit applicants. We agree that pre-application coordination and preparation of early studies can be very useful on some applications and have already provided for this 33 CFR 325.1(b). We have added a new paragraph 3.c. to provide that during preapplication consultation the district engineer will, in appropriate cases, inform the prospective applicant of the Department of the Interior's (DOI) Standards and Guidelines and the need to consider effects on historic properties in accordance with this Appendix.

We have also added a new paragraph 3.d. that requires district engineers to discuss with applicants, at the earliest practical time, measures or alternatives to avoid or minimize effects on historic properties.

Paragraph 4. Public Notice

There were no comments on this paragraph. It is being adopted essentially, as proposed. However, we have added a new paragraph 4.c. which provides for district engineers to withhold information from the public notice relating to the location or character of sensitive historic resources when disclosure of such information may create a substantial risk of harm, theft or destruction to such resources or to the area or place where such resources are located. This provision is to comply with section 304 of the NHPA.

Paragraph 4.b.

Commenters on proposed paragraph 8 "Designation or Discovery of a Property During Permit Processing" discussed pre-application coordination and identification, surveys, and the issue of who should bear the costs associated with historic preservation. These comments have been addressed elsewhere. We determined that this paragraph was duplicative with other provisions of appendix C and the requirements of this paragraph could be adopted and clarified by revising paragraph 4.b. and eliminating this paragraph.

Paragraph 5. Investigations

Paragraph 6. Eligibility Determinations

Paragraph 7. Assessing Effects

These paragraphs, were not included in the May 4, 1984, proposed regulation. However, they were included in the April 3, 1980, proposed regulation. The process is basically the same as that proposed in 1980 and used by the Corps since then with a few exceptions. These exceptions deal with the Corps responsibility to seek eligibility determinations. The eligibility determination process and the assessment of effects is essentially the same as that contained in the ACHP regulations. Paragraph 6.c. also contains a requirement to wait a reasonable period of time when the SHPO is nominating an historic property to the National Register.

Paragraph 8. (Proposed 6): Consultation

A few commenters questioned the adequacy of the consultation provision.

Consultation can be very beneficial in resolving issues and considering alternatives to avoid or minimize adverse effects. Therefore, we fully intend to use consultation in the permit process when appropriate. We believe we have provided for adequate time to consult on the issues in most cases. However, the time may be longer depending on the complexity of the specific project. We moved this paragraph to be before the ACHP Review and Comment paragraph to clarify that consultation occurs before the formal ACHP comment process.

Paragraph 8. (Proposed 5) ACHP Review and Comment

Several commenters on the paragraph supported the proposed time periods as adequate and appropriate. The ACHP objected to the timeframes, indicating that the Corps could not define what is a "reasonable opportunity to comment" as provided in section 106 of the NHPA. Several commenters supported the time periods as adequate and appropriate. We revised this paragraph to be consistent with the September 2, 1986, ACHP regulations.

Some commenters felt that this paragraph would reduce the role of the applicant and the SHPO in the Corps decisionmaking process. This paragraph does not limit these important roles. The applicant's role in the permit process is defined in 33 CFR part 325. If the district engineer believes that mitigation or modification of the proposal may be necessary to protect historic properties, he will coordinate, as appropriate, with the applicant and the SHPO. We concur with those commenters who felt that the SHPO is the best qualified to provide information and comments on the existence of historic properties and any potential effects, and have included that principle throughout this appendix.

Paragraph 10. (Proposed 7) District Engineer Decision

One commenter supported the requirement that the district engineer would add permit conditions to reduce effects on historic properties, but suggested we reference the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716). We agree that the Secretary's standards should be considered and have so revised this paragraph. We have also clarified that the district engineer will add conditions to avoid effects on historic properties.

One commenter thought this paragraph would limit the district engineer's decision making authority and his discretion to resolve the problem. There is no intent to do this. This paragraph is consistent with the district engineer's existing decision making authority and ability to resolve problems.

Paragraph 10.b. (Proposed 8) Recovery of Historic Properties

One commenter indicated this paragraph authorizes the district engineer to require mitigation. Another commenter questioned whose responsibility it is to implement and pay for data recovery, and questioned if the National Park Service is expected to implement the Corps mitigation plan. The Corps regulation for conditioning of permits and requiring mitigation is contained at 33 CFR 325.4.

Generally, the Corps will condition permits to avoid or mitigate by appropriate measures, including data recovery impacts on historic properties. However, in some cases it may be necessary to issue a permit although some resources may be lost. In such cases, this paragraph addresses the Secretary of the Interior's authority to provide for the protection of historic resources which may be lost if a permit is issued as provided in the Archeological and Historic Preservation Act (Pub. L. 86–291). This paragraph has been generally adopted as proposed. We added a requirement that the district engineer include permit conditions addressing historic properties in the notice to DOI. For clarity the proposed paragraph was moved to paragraph 10.b.

Paragraph 11 (Proposed 10) Historic Properties Discovered During Construction

One commenter questioned how the district engineer would determine whether or not a previously unrecorded historic property discovered during construction meets the National Register criteria. The district engineer will not determine if a previously unrecorded historic property meets the National Register criteria but only if it appears to meet the criteria. This will ensure that all those historic properties that would likely meet the criteria are considered.

Another commenter expressed concern about inequities and costs borne by the applicant should modification or revocation be sought by the district engineer and asked whether these extraordinary costs should not be paid by the public or the economic hardship minimized. The modification, suspension, and revocation procedures of 33 CFR 325.7 do take into account the equities of all parties as well as considerations of the public interest, which includes effects on historic properties.

The Department of the Interior (DOI) indicated that it has certain authorities and responsibilities concerning discovery of historic properties. DOI commented that this paragraph is not consistent with its policies and procedures and recommended that it be revised in consultation with its Departmental Consulting Archeologist. We have clarified this paragraph in accordance with the DOI comments. In addition we added a requirement for the district engineer to seek voluntary avoidance of construction activities that could affect the historic property pending a DOI recommendation.

Paragraph 12. (Proposed 11 General Permits) Regional General Permits

There were no comments on this paragraph. It is being adopted as proposed with minor clarifications.

Paragraph 13. Nationwide Permits

We have added a new paragraph to address how the district engineer handles compliance with the nationwide permit condition on historic properties and requirements of 33 CFR part 330. Basically, the district engineer will use the criteria of effect and adverse effect and the notification, investigation, and eligibility determination procedures of this appendix to determine compliance with the nationwide permit condition. In appropriate cases, the district engineer will coordinate with the ACHP and the SHPO to determine compliance with the nationwide permit condition.

Paragraph 14. (Proposed 12) Emergency Procedures

The Department of the Interior indicated it has published proposed regulations (36 CFR part 78) on waiving Federal agency responsibilities under the NHPA and that the Corps consult with DOI. Under emergency procedures at 33 CFR 325.2(e)(4) we make every effort to consult with DOI on a case-by-case basis when considering emergency procedures to authorize a proposed project. Furthermore, we have added a requirement that the district engineer will comply with the provisions of appendix C to the extent time and the emergency situation allows.

Paragraph 15. (Proposed 13 - Consideration for Evaluating Effect) Criteria of Effect and Adverse Effect

One commenter thought that paragraph (a)(1) did not include indirect effects. This paragraph, as now written, does include indirect effects on historic properties.

One commenter pointed out that the definition of "effect" does not agree with that in 36 CFR 800.3 (Now 36 CFR 800.9). Another commenter questioned the Corps' authority to require a permittee to take affirmative action to maintain or improve an historic site located on private property. Another commenter expressed concern that the proposed rule appeared too broad in the use of the word "property" and should be restricted to the historic property itself. We believe these comments were based on a misunderstanding of the purpose of this paragraph. The purpose of this paragraph is to aid district engineers in evaluating if an undertaking is reasonably expected to have an effect on a historic property, not to establish criteria which must be required to restrict, maintain, or improve historic properties. Decisions on conditioning of permits are made in accordance with paragraph 7. On September 2, 1986, the ACHP adopted the criteria of effect and adverse effect at 35 CFR 800.9., which was similar but not the same as that which we had proposed. Therefore, we are revising the proposed paragraph by adopting the language from 36 CFR 800.9.

Note 1. The Department of the Army has determined that the proposed regulation is not a major rule requiring the preparation of a regulatory impact analysis under E.O. 12291. I certify pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that this regulation will not have significant economic impact on a significant number of entities.

Note 2. The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects in 33 CFR Part 325

Administrative practice and procedure, Dams, Environmental protection, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

Dated: June 25, 1990.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

Accordingly, the Department of the Army is amending 33 CFR part 325 as follows:

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

1. The authority citation for part 325 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*, 33 U.S.C. 1344, 33 U.S.C. 1413.

2. Appendix C to part 325 is added to read as follows:

Appendix C—Procedures for the Protection of Historic Properties

1. Definitions
2. General Policy
3. Initial Review
4. Public Notice
5. Investigations
6. Eligibility Determinations
7. Assessing Effects
8. Consultation
9. ACHP Review and Comment
10. District Engineer Decision
11. Historic Properties Discovered During Construction
12. Regional General Permits
13. Nationwide General Permits
14. Emergency Procedures
15. Criteria of Effect and Adverse Effect

1. Definitions

a. *Designated historic property* is a historic property listed in the National Register of Historic Places (National Register) or which has been determined eligible for listing in the National Register pursuant to 36 CFR part 63. A historic property that, in both the opinion of the SHPO and the district engineer, appears to meet the criteria for inclusion in the National Register will be treated as a "designated historic property."

b. *Historic property* is a property which has historical importance to any person or group. This term includes the types of districts, sites, buildings, structures or objects eligible for inclusion, but not necessarily listed, on the National Register.

c. *Certified local government* is a local government certified in accordance with section 101(c)(1) of the NHPA (See 36 CFR part 61).

d. The term "criteria for inclusion in the National Register" refers to the criteria published by the Department of Interior at 36 CFR 60.4.

e. An "effect" on a "designated historic property" occurs when the undertaking may alter the characteristics of the property that qualified the property for inclusion in the National Register. Consideration of effects on "designated historic properties" includes indirect effects of the undertaking. The criteria for effect and adverse effect are described in Paragraph 15 of this appendix.

f. The term "undertaking" as used in this appendix means the work, structure or discharge that requires a Department of the Army permit pursuant to the Corps regulations at 33 CFR 320–334.

g. Permit area.

(1) The term "permit area" as used in this appendix means those areas comprising the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three tests must all be satisfied for an activity undertaken outside the waters of the United States to be included within the "permit area":

(i) Such activity would not occur but for the authorization of the work or structures within the waters of the United States;

(ii) Such activity must be integrally related to the work or structures to be authorized within waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and

(iii) Such activity must be directly associated (first order impact) with the work or structures to be authorized.

(2) For example, consider an application for a permit to construct a pier and dredge an access channel so that an industry may be established and operated on an upland area.

(i) Assume that the industry requires the access channel and the pier and that without such channel and pier the project would not be feasible. Clearly then, the industrial site, even though upland, would be within the "permit area." It would not be established "but for" the access channel and pier; it also is integrally related to the work and structure to be authorized; and finally it is directly associated with the work and structure to be authorized. Similarly, all three tests are satisfied for the dredged material disposal site and it too is in the "permit area" even if located on uplands.

(ii) Consider further that the industry, if established, would cause local agencies to extend water and sewer lines to service the area of the industrial site. Assume that the extension would not itself involve the waters of the United States and is not solely the result of the industrial facility. The extensions would not be within the "permit area" because they would not be directly associated with the work or structure to be authorized.

(iii) Now consider that the industry, if established, would require increased housing for its employees, but that a private developer would develop the housing. Again, even if the housing would not be developed but for the authorized work and structure, the housing would not be within the permit area because it would not be directly associated with or integrally related to the work or structure to be authorized.

(3) Consider a different example. This time an industry will be established that requires no access to the navigable waters for its operation. The plans for the facility, however, call for a recreational pier with an access channel. The pier and channel will be used for the company-owned yacht and employee recreation. In the example, the industrial site is not included within the permit area. Only areas of dredging, dredged material disposal, and pier construction would be within the permit area.

(4) Lastly, consider a linear crossing of the waters of the United States; for example, by a transmission line, pipeline, or highway.

(i) Such projects almost always *can* be undertaken without Corps authorization, if they are designed to avoid affecting the waters of the United States. Corps authorization is sought because it is less expensive or more convenient for the applicant to do so than to avoid affecting the waters of the United States. Thus the "but for" test is not met by the entire project right-of-way. The "same undertaking" and "integral relationship" tests are met, but this is not sufficient to make the whole right-of-way part of the permit area. Typically, however, some portion of the right-of-way, approaching the crossing, would not occur in

its given configuration "but for" the authorized activity. This portion of the right-of-way, whose location is determined by the location of the crossing, meets all three tests and hence is part of the permit area.

(ii) Accordingly, in the case of the linear crossing, the permit area shall extend in either direction from the crossing to that point at which alternative alignments leading to reasonable alternative locations for the crossing can be considered and evaluated. Such a point may often coincide with the physical feature of the waterbody to be crossed, for example, a bluff, the limit of the flood plain, a vegetational change, etc., or with a jurisdictional feature associated with the waterbody, for example, a zoning change, easement limit, etc., although such features should not be controlling in selecting the limits of the permit area.

2. General Policy

This appendix establishes the procedures to be followed by the U.S. Army Corps of Engineers (Corps) to fulfill the requirements set forth in the National Historic Preservation Act (NHPA), other applicable historic preservation laws, and Presidential directives as they relate to the regulatory program of the Corps of Engineers (33 CFR parts 320-330).

a. The district engineer will take into account the effects, if any, of proposed undertakings on historic properties both within and beyond the waters of the U.S. Pursuant to section 110(f) of the NHPA, the district engineer, where the undertaking that is the subject of a permit action may directly and adversely affect any National Historic Landmark, shall, to the maximum extent possible, condition any issued permit as may be necessary to minimize harm to such landmark.

b. In addition to the requirements of the NHPA, all historic properties are subject to consideration under the National Environmental Policy Act, (33 CFR part 325, appendix B), and the Corps' public interest review requirements contained in 33 CFR 320.4. Therefore, historic properties will be included as a factor in the district engineer's decision on a permit application.

c. In processing a permit application, the district engineer will generally accept for Federal or Federally assisted projects the Federal agency's or Federal lead agency's compliance with the requirements of the NHPA.

d. If a permit application requires the preparation of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act, the draft EIS will contain the information required by paragraph 8.a. below. Furthermore, the SHPO and the ACHP will be given the opportunity to participate in the scoping process and to comment on the Draft and Final EIS.

e. During pre-application consultations with a prospective applicant the district engineer will encourage the consideration of historic properties at the earliest practical time in the planning process.

f. This appendix is organized to follow the Corps standard permit process and to indicate how historic property considerations are to be addressed during the processing and evaluating of permit applications. The procedures of this Appendix are not intended to diminish the full consideration of historic properties in the Corps regulatory program. Rather, this appendix is intended to provide for the maximum consideration of historic properties within the time and jurisdictional constraints of the Corps regulatory program. The Corps will make every effort to provide information on historic properties and the effects of proposed undertakings on them to the public by the public notice within the time constraints required by the Clean Water Act. Within the time constraints of applicable laws, executive orders, and regulations, the Corps will provide the maximum coordination and comment opportunities to interested parties especially the SHPO and ACHP. The Corps will discuss with and encourage the applicant to avoid or minimize effects on historic properties. In reaching its decisions on permits, the Corps will adhere to the goals of the NHPA and other applicable laws dealing with historic properties.

3. Initial Review

a. Upon receipt of a completed permit application, the district engineer will consult district files and records, the latest published version(s) of the National Register, lists of properties determined eligible, and other appropriate sources of information to determine if there are any designated historic properties which may be affected by the proposed undertaking. The district engineer will also consult with other appropriate sources of information for knowledge of undesignated historic properties which may be affected by the proposed undertaking. The district engineer will establish procedures (e.g., telephone calls) to obtain supplemental information from the SHPO and other appropriate sources. Such procedures shall be accomplished within the time limits specified in this appendix and 33 CFR part 325.

b. In certain instances, the nature, scope, and magnitude of the work, and/or structures to be permitted may be such that there is little likelihood that a historic property exists or may be affected. Where the district engineer determines that such a situation exists, he will include a statement to this effect in the public notice. Three such situations are:

(1) Areas that have been extensively modified by previous work. In such areas, historic properties that may have at one time existed within the permit area may be presumed to have been lost unless specific information indicates the presence of such a property (e.g., a shipwreck).

(2) Areas which have been created in modern times. Some recently created areas, such as dredged material disposal islands, have had no human habitation. In such cases, it may be presumed that there is no potential for the existence of historic properties unless specific information indicates the presence of such a property.

(3) Certain types of work or structures that are of such limited nature and scope that there is little likelihood of impinging upon a historic property even if such properties were to be present within the affected area.

c. If, when using the pre-application procedures of 33 CFR 325.1(b), the district engineer believes that a designated historic property may be affected, he will inform the prospective applicant for consideration during project planning of the potential applicability of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716). The district engineer will also inform the prospective applicant that the Corps will consider any effects on historic properties in accordance with this appendix.

d. At the earliest practical time the district engineer will discuss with the applicant measures or alternatives to avoid or minimize effects on historic properties.

4. Public Notice.

a. Except as specified in subparagraph b.c., the district engineer's current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties will be included in the public notice. The public notice will be sent to the SHPO, the regional office of the National Park Service (NPS), certified local governments (see paragraph (1.c.) and Indian tribes, and interested citizens. If there are designated historic properties which reasonably may be affected by the undertaking or if there are undesignated historic properties within the affected area which the district engineer reasonably expects to be affected by the undertaking and which he believes meet the criteria for inclusion in the National Register, the public notice will also be sent to the ACHP.

b. During permit evaluation for newly designated historic properties or undesignated historic properties which reasonably may be affected by the undertaking and which have been newly identified through the public interest review process, the district engineer will immediately inform the applicant, the SHPO, the appropriate certified local government and the ACHP of the district engineer's current knowledge of the effects of the undertaking upon these properties. Commencing from the date of the district engineer's letter, these entities will be given 30 days to submit their comments.

c. Locational and sensitive information related to archeological sites is excluded from the Freedom of Information Act (Section 304 of the NHPA and Section 9 of ARPA). If the district engineer or the Secretary of the Interior determine that the disclosure of information to the public relating to the location or character of sensitive historic resources may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located, then the district engineer will not include such information in the public notice nor otherwise make it available to the public. Therefore, the district engineer will furnish such information to the ACHP and the SHPO by separate notice.

5. Investigations

a. When initial review, additional submissions by the applicant, or response to the public notice indicates the existence of a potentially eligible property, the district engineer shall examine the pertinent evidence to determine the need for further investigation. The evidence must set forth specific reasons for the need to further investigate within the permit area and may consist of:

(1) Specific information concerning properties which may be eligible for inclusion in the National Register and which are known to exist in the vicinity of the project; and

(2) Specific information concerning known sensitive areas which are likely to yield resources eligible for inclusion in the National Register, particularly where such sensitive area determinations are based upon data collected from other, similar areas within the general vicinity.

b. Where the scope and type of work proposed by the applicant or the evidence presented leads the district engineer to conclude that the chance of disturbance by the undertaking to any potentially eligible historic property is too remote to justify further investigation, he shall so advise the reporting party and the SHPO.

c. If the district engineer's review indicates that an investigation for the presence of potentially eligible historic properties on the upland locations of the permit area (see paragraph 1.g.) is justified, the district engineer will conduct or cause to be conducted such an investigation. Additionally, if the notification indicates that a potentially eligible historic property may exist within waters of the U.S., the district engineer will conduct or cause to be conducted an investigation to determine whether this property may be eligible for inclusion in the National Register. Comments or information of a general nature will not be considered as sufficient evidence to warrant an investigation.

d. In addition to any investigations conducted in accordance with paragraph 6.a. above, the district engineer may conduct or cause to be conducted additional investigations which the district engineer determines are essential to reach the public interest decision . As part of any site visit, Corps personnel will examine the permit area for the presence of potentially eligible historic properties. The Corps will notify the SHPO, if any evidence is found which indicates the presence of potentially eligible historic properties.

e. As determined by the district engineer, investigations may consist of any of the following: further consultations with the SHPO, the State Archeologist, local governments, Indian tribes, local historical and archeological societies, university archeologists, and others with knowledge and expertise in the identification of historical, archeological, cultural and scientific resources; field examinations; and archeological testing. In most cases, the district engineer will require, in accordance with 33 CFR 325.1(e), that the applicant conduct the investigation at his expense and usually by third party contract.

f. The Corps of Engineers' responsibilities to seek eligibility determinations for potentially eligible historic properties is limited to resources located within waters of the U.S. that are directly affected by the undertaking. The Corps responsibilities to identify potentially eligible historic properties is limited to resources located within the permit area that are directly affected by related upland activities. The Corps is not responsible for identifying or assessing potentially eligible historic properties outside the permit area, but will consider the effects of undertakings on any known historic properties that may occur outside the permit area.

6. Eligibility determinations

a. For a historic property within waters of the U.S. that will be directly affected by the undertaking the district engineer will, for the purposes of this Appendix and compliance with the NHPA:

(1) Treat the historic property as a "designated historic property," if both the SHPO and the district engineer agree that it is eligible for inclusion in the National Register; or

(2) Treat the historic property as not eligible, if both the SHPO and the district engineer agree that it is not eligible for inclusion in the National Register; or

(3) Request a determination of eligibility from the Keeper of the National Register in accordance with applicable National Park Service regulations and notify the applicant, if the SHPO and the district engineer disagree or the ACHP or the Secretary of the Interior so request. If the Keeper of the National Register determines that the resources are not eligible for listing in the National Register or fails to respond within 45 days of receipt of the request, the district engineer may proceed to conclude his action on the permit application.

b. For a historic property outside of waters of the U.S. that will be directly affected by the undertaking the district engineer will, for the purposes of this appendix and compliance with the NHPA:

(1) Treat the historic property as a "designated historic property," if both the SHPO and the district engineer agree that it is eligible for inclusion in the National Register; or

(2) Treat the historic property as not eligible, if both the SHPO and the district engineer agree that it is not eligible for inclusion in the National Register; or

(3) Treat the historic property as not eligible unless the Keeper of the National Register determines it is eligible for or lists it on the National Register. (See paragraph 6.c. below.)

c. If the district engineer and the SHPO do not agree pursuant to paragraph 6.b.(1) and the SHPO notifies the district engineer that it is nominating a potentially eligible historic property for the National Register that may be affected by the undertaking, the district engineer will wait a reasonable period of time for that determination to be made before concluding his action on the permit. Such a reasonable period of time would normally be 30 days for the SHPO to nominate the historic property plus 45 days for the Keeper of the National Register to make such determination. The district engineer will encourage the applicant to cooperate with the SHPO in obtaining the information necessary to nominate the historic property.

7. Assessing Effects

a. *Applying the Criteria of Effect and Adverse Effect.* During the public notice comment period or within 30 days after the determination or discovery of a designated history property the district engineer will coordinate with the SHPO and determine if there is an effect and if so, assess the effect. (See Paragraph 15.)

b. *No Effect.* If the SHPO concurs with the district engineer's determination of no effect or fails to respond within 15 days of the district engineer's notice to the SHPO of a no effect determination, then the district engineer may proceed with the final decision.

c. *No Adverse Effect.* If the district engineer, based on his coordination with the SHPO (see paragraph 7.a.), determines that an effect is not adverse, the district engineer will notify the ACHP and request the comments of the ACHP. The district engineer's notice will include a description of both the project and the designated historic property; both the district engineer's and the SHPO's views, as well as any views of affected local governments, Indian tribes, Federal agencies, and the public, on the no adverse effect determination; and a description of the efforts to identify historic properties and solicit the views of those above. The district engineer may conclude the permit decision if the ACHP does not object to the district engineer's determination or if the district engineer accepts any conditions requested by the ACHP for a no adverse effect determination, or the ACHP fails to respond within 30 days of the district engineer's notice to the ACHP. If the ACHP objects or the district engineer does not accept the conditions proposed by the ACHP, then the effect shall be considered as adverse.

d. *Adverse Effect.* If an adverse effect on designated historic properties is found, the district engineer will notify the ACHP and coordinate with the SHPO to seek ways to avoid or reduce effects on designated historic properties. Either the district engineer or the SHPO may request the ACHP to participate. At its discretion, the ACHP may participate without such a request. The district engineer, the SHPO or the ACHP may state that further coordination will not be productive. The district engineer shall then request the ACHP's comments in accordance with paragraph 9.

8. Consultation

At any time during permit processing, the district engineer may consult with the involved parties to discuss and consider possible alternatives or measures to avoid or minimize the adverse effects of a proposed activity. The district engineer will terminate any consultation immediately upon determining that further consultation is not productive and will immediately notify the consulting parties. If the consultation results in a mutual agreement among the SHPO, ACHP, applicant and the district engineer regarding the treatment of designated historic properties, then the district engineer may formalize that agreement either through permit conditioning or by signing a Memorandum of Agreement (MOA) with

these parties. Such MOA will constitute the comments of the ACHP and the SHPO, and the district engineer may proceed with the permit decision. Consultation shall not continue beyond the comment period provided in paragraph 9.b.

9. ACHP Review and Comment

a. If: (i) The district engineer determines that coordination with the SHPO is unproductive; or (ii) the ACHP, within the appropriate comment period, requests additional information in order to provide its comments; or (iii) the ACHP objects to any agreed resolution of impacts on designated historic properties; the district engineer, normally within 30 days, shall provide the ACHP with:

(1) A project description, including, as appropriate, photographs, maps, drawings, and specifications (such as, dimensions of structures, fills, or excavations; types of materials and quantity of material);

(2) A listing and description of the designated historic properties that will be affected, including the reports from any surveys or investigations;

(3) A description of the anticipated adverse effects of the undertaking on the designated historic properties and of the proposed mitigation measures and alternatives considered, if any; and

(4) The views of any commenting parties regarding designated historic properties.

In developing this information, the district engineer may coordinate with the applicant, the SHPO, and any appropriate Indian tribe or certified local government.

Copies of the above information also should be forwarded to the applicant, the SHPO, and any appropriate Indian tribe or certified local government. The district engineer will not delay his decision but will consider any comments these parties may wish to provide.

b. The district engineer will provide the ACHP 60 days from the date of the district engineer's letter forwarding the information in paragraph 9.a., to provide its comments. If the ACHP does not comment by the end of this comment period, the district engineer will complete processing of the permit application. When the permit decision is otherwise delayed as provided in 33 CFR 325.2(d) (3) & (4), the district engineer will provide additional time for the ACHP to comment consistent with, but not extending beyond that delay.

10. District Engineer Decision

a. In making the public interest decision on a permit application, in accordance with 33 CFR 320.4, the district engineer shall weigh all factors, including the effects of the undertaking on historic properties and any comments of the ACHP and the SHPO, and any views of other interested parties. The district engineer will add permit conditions to avoid or reduce effects on historic properties which he determines are necessary in accordance with 33 CFR 325.4. In reaching his determination, the district engineer will consider the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716).

b. If the district engineer concludes that permitting the activity would result in the irrevocable loss of important scientific, prehistoric, historical, or archeological data, the district engineer, in accordance with the Archeological and Historic Preservation Act of 1974, will advise the Secretary of the Interior (by notifying the National Park Service (NPS)) of the extent to which the data may be lost if the undertaking is permitted, any plans to mitigate such loss that will be implemented, and the permit conditions that will be included to ensure that any required mitigation occurs.

11. Historic Properties Discovered During Construction

After the permit has been issued, if the district engineer finds or is notified that the permit area contains a previously unknown potentially eligible historic property which he reasonably expects will be affected by the undertaking, he shall immediately inform the Department of the Interior Departmental Consulting Archeologist and the regional office of the NPS of the current knowledge of the potentially eligible historic property and the expected effects, if any, of the undertaking on that property. The district engineer will seek voluntary avoidance of construction activities that could affect the historic property pending a recommendation from the National Park Service pursuant to the Archeological and Historic Preservation Act of 1974. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the district engineer may modify, suspend or revoke a permit in accordance with 33 CFR 325.7.

12. Regional General Permits

Potential impacts on historic properties will be considered in development and evaluation of general permits. However, many of the specific procedures contained in this appendix are not normally applicable to general permits. In developing general permits, the district engineer will seek the views of the SHPO and, the ACHP and other organizations and/or individuals with expertise or interest in historic properties. Where designated historic properties are reasonably likely to be affected, general permits shall be conditioned to protect such properties or to limit the applicability of the permit coverage.

13. Nationwide General Permit

a. The criteria at paragraph 15 of this Appendix will be used for determining compliance with the nationwide permit condition at 33 CFR 330.5(b)(9) regarding the effect on designated historic properties. When making this determination the district engineer may consult with the SHPO, the ACHP or other interested parties.

b. If the district engineer is notified of a potentially eligible historic property in accordance with nationwide permit regulations and conditions, he will immediately notify the SHPO. If the district engineer believes that the potentially eligible historic property meets the criteria for inclusion in the National Register and that it may be affected by the proposed undertaking then he may suspend authorization of the nationwide permit until he provides the ACHP and the SHPO the opportunity to comment in accordance with the provisions of this Appendix. Once these provisions have been satisfied, the district engineer may notify the general permittee that the activity is authorized including any special activity specific conditions identified or that an individual permit is required.

14. Emergency Procedures

The procedures for processing permits in emergency situations are described at 33 CFR 325.2(e)(4). In an emergency situation the district engineer will make every reasonable effort to receive comments from the SHPO and the ACHP, when the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property and will comply with the provisions of this Appendix to the extent time and the emergency situation allows.

15. Criteria of Effect and Adverse Effect

(a) An undertaking has an effect on a designated historic property when the undertaking may alter characteristics of the property that qualified the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant, and depending on a property's important characteristics, should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a designated historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on designated historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of this appendix:

(1) When the designated historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected designated historic properties through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a designated historic property, and adequate restrictions or conditions are included to ensure preservation of the property's important historic features.

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federal register

Friday
June 29, 1990

Part VII

Department of Health and Human Services

Health Resources and Services Administration

Primary Medical Care Health Manpower Shortage Areas (HMSAs); List of Designations and Withdrawals; Notice

Department of Health and Human Services

Public Health Services

List of Designated Primary Medical Care Health Manpower Shortage Areas (HMSAs); List of Withdrawals From Primary Medical Care HMSA Designation

AGENCY: Health Resources and Services Administration, HHS

ACTION: Notice

SUMMARY: This notice provides two lists. The first is a list of all areas, population groups, or facilities designated as primary medical care health manpower shortage areas (HMSAs) as of December 31, 1989. Second is a list of previously-designated primary medical care HMSAs that have been found to no longer meet the HMSA criteria and are therefore being withdrawn from the HMSA list. HMSAs are designated or withdrawn by the Secretary of Health and Human Services (HHS) under the authority of section 332 of the Public Health Service Act.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Director, Office of Shortage Designation, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Parklawn Building, Room 4-101, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-0932).

SUPPLEMENTARY INFORMATION:

1. Background

Section 332 of the Public Health Service Act provides that the Secretary of Health and Human Services shall designate health manpower shortage areas based on criteria established by regulation. Health manpower shortage areas (HMSAs) are defined in section 332 to include (1) urban and rural geographic areas, (2) population groups, and (3) facilities with shortages of health manpower. Section 332 further requires that the Secretary publish a list of the designated geographic areas, population groups, and facilities. The list of areas is to be reviewed at least annually and revised as necessary. The Health Resources and Services Administration's Bureau of Health Care Delivery and Assistance has the responsibility for designating and updating these HMSAs.

Public or nonprofit entities in (or with a demonstrated interest in) these HMSAs are eligible to apply for assignment of National Health Service Corps (NHSC) personnel to provide health services in, or to, the areas or populations involved. These HMSAs are also eligible obligated-service areas for certain Public Health Service scholarship, loan repayment, and traineeship programs; entities located therein are eligible to apply for (or receive preference for) certain Public Health Service grant programs; physicians delivering services in non-metropolitan HMSAs may be eligible for increased Medicare reimbursement; and nurse practitioners and physician's assistants serving Rural Health Clinics in HMSAs are eligible for Medicaid or Medicare reimbursement.

2. Development of the Designation and Withdrawal Lists

Criteria for designating HMSAs were published by the Department of Health and Human Services as Final regulations (42 CFR Part 5) in the Federal Register on November 17, 1980. Criteria are defined for each of seven health manpower types (primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary manpower). However, most currently-funded Public Health Service programs involve primary medical care, dental, or psychiatric HMSAs.

The first lists of HMSAs (developed under Interim-Final criteria) were published in 1978. A different list was included for each of the seven manpower types mentioned above. Since then, updated lists have been published approximately annually to reflect those changes which occur as a result of the shortage area designation process. Individual requests for designation or withdrawal of particular areas, population groups, or facilities as HMSAs are continuously received and reviewed. The review process includes routine submission of such requests to the appropriate State Health Planning and Development Agency (SHPDA) and Health System Agency (HSA), if any, or to a unit of the State Health Department where no SHPDA or HSA is active, and to the Governor and other interested organizations or individuals for their comments and recommendations. Requests regarding primary medical care or psychiatric manpower are also provided to the appropriate State medical society for comment, while requests regarding dental manpower are provided to the appropriate State dental society for comment.

Annually, data listings are provided to all SHPDAs, HSAs, State medical societies and others showing the latest available data contained in the HMSA data base for each county and designated HMSA within their State, together with a request for their review and update of this data, and their recommendations regarding possible additions to, continuations or revisions of, and/or withdrawals from the HMSA list.

The Office of Shortage Designation within the Bureau of Health Care Delivery and Assistance reviews each HMSA designation or withdrawal request, together with any recommendations received on individual requests or on the annual review data listings. The results of these reviews are provided by letter to the agency or individual requesting action or providing data with copies to other interested organizations and individuals. These letters constitute the official notice of designation as a HMSA, rejection of recommendations for such a designation, or revision of a designation, and/or constitute advance notice of pending withdrawals from the list. Designations (or revisions of designations) are effective as of the date of the letter making (or revising) the designation; proposed withdrawals become effective when published in the Federal Register.

This notice contains two lists relevant to primary medical care HMSA designation. The first list below ("List of Designated Primary Medical Care HMSAs") includes all those areas, population groups, and facilities which were designated as primary medical care HMSAs as of December 31, 1989. This list incorporates the most recent annual review of designated HMSAs and supersedes the Primary Medical Care HMSA list which appeared in the Federal Register on November 17, 1987. The list of designated HMSAs below includes the current definitions for each designated service area, excluding any portions withdrawn since the last such listing was published.

The second list below ("List of Withdrawals from Primary Medical Care HMSA Designation") includes those areas, population groups, and facilities which had previously been designated as primary medical care HMSAs but were found, between September 1, 1987, and December 31, 1989, to no longer meet the HMSA criteria and therefore were indicated by letter as proposed for withdrawal from the HMSA list. (This withdrawal list does not include any former HMSAs already listed in previous Federal Register lists of withdrawals.)

Some service area definitions may have been modified in such a way that portions of some areas have effectively been withdrawn. The list of withdrawals below does not include such technical withdrawals, but rather consists of those whole counties, service areas, population groups, and facilities that have been completely withdrawn.

3. Format of Lists

a. List of Designated Primary Medical Care HMSAs

The list of primary medical care HMSAs is arranged by State. Within each State, the list is first presented by county. If only a portion (or portions) of a county has been designated, or if the county is part of a larger designated service area, or if a population group residing in the county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name.

Following the county listing, a list of any designated service areas is presented identifying their component parts in terms of counties, towns, townships, census tracts (CTs), minor civil divisions (MCDs), census county divisions (CCDs), enumeration districts (EDs), magisterial districts, or other definable geographic divisions recognized by the Bureau of the Census. Those counties (or parts of counties included in service areas) which are classified as non-metropolitan are indicated by an asterisk (*).

Following the service area listing, a list of any designated population groups is presented which identifies each such group and the geographic area wherein it resides. Following the population group listing, a list by name and location of any separately-designated facilities (including prisons, correctional institutions, health centers, or hospitals) is presented.

In addition to the specific listings included in this notice, all Indian tribes which meet the definition of such tribes referenced in Section 4(d) of Public Law 94-437, the Indian Health Care Improvement Act of 1976, are automatically designated as population groups with primary medical care and dental manpower shortages. Such Indian tribes are automatically considered assigned to degree-of-shortage group 4 (unless otherwise indicated in this listing based on specific data provided for this purpose).

In the listings below, beside the name of each designated area, population group, or facility, its calculated "degree-of-shortage" group is indicated, corresponding to the criteria for these groupings contained in the regulations. (Group 1 represents areas with the highest calculated degree of shortage, Group 2 with next highest degree of shortage, etc.) These groups are defined in terms of population-to-practitioner ratios and the presence or absence of other indicators of high need, for use in determining relative priorities for placement of NHSC personnel. However, the NHSC placement process also includes other factors and considerations relating to need, demand, and relative attractiveness of the various designated HMSAs.

At the time of this publication, physicians delivering Medicare-reimbursable services in designated geographic HMSAs which are listed in degree-of-shortage groups 1 or 2 and are in non-metropolitan areas (i.e., those areas identified with an asterisk) are eligible for higher Medicare reimbursement levels.

b. List of Withdrawals from Primary Medical Care HMSA Designation

The list of withdrawals from primary medical care HMSA designation is also arranged by State. Within each State, whole counties being withdrawn are presented first. Following the county listing, a list of those service areas, population groups, and facilities being withdrawn is presented, identifying their component parts in terms of counties and subparts of counties.

4. Future Updates of List of Designated HMSAs

The list of primary medical care HMSAs below consists of all those which were designated as of December 31, 1989. It should be noted that additional HMSAs have been designated by letter since December 31, 1989, and the appropriate agencies and individuals notified of these actions by letter.

Any designated HMSA listed below is subject to withdrawal from designation if new information received and confirmed by the Office of Shortage Designation indicates that the situation in the area involved has changed since its designation or that erroneous or incomplete data were used in making the original designation. Interested parties will be notified by mail of any proposed withdrawal, which will become effective only after interested parties in the area affected have been afforded the opportunity to submit additional information in support of its continued or revised designation.

For further information on the HMSA designations and withdrawals listed below, or to request additional designations or withdrawals or reinstatement of a withdrawn HMSA, please contact Richard C. Lee, Director, Office of Shortage Designation, Bureau of Health Care Delivery and Assistance, at the address listed above. All requests for designations or withdrawals should be based on the criteria in the regulations as published on November 17, 1980, plus amendments made for correctional facilities on March 2, 1989, and any future amendments made after the date of this notice.

Dated: UNKNOWN, 1990.

Robert G. Harmon,

Administrator.

LIST OF DESIGNATED PRIMARY MEDICAL CARE HEALTH MANPOWER SHORTAGE AREAS

PRIMARY CARE: Alabama

County Listing

County Name	Degree of shortage group
Autauga	3
*Barbour	
Service Area: Clayton	1
*Bibb	2
Blount	2
*Butler	3
*Chambers	
Service Area: La Fayette	1
*Cherokee	3
*Chilton	3
*Clarke	
Service Area: Coffeeville	1
Service Area: Grove Hill/Fulton	2
*Cleburne	2
Colbert	
Service Area: Cherokee	3
*Conecuh	1
*Coosa	1
*Covington	
Service Area: Florala	2
*Crenshaw	1
*Escambia	
Service Area: Flomaton	3
Etowah	
Population Group: Pov. Pop.—Gadsden	1
*Geneva	2
*Hale	4
*Henry	4
Houston	
Service Area: Gordon	1
*Jackson	
Population Group: Med. Ind. Pop.—Jackson Co.	4
Jefferson	
Population Group: Pov. Pop.—Central Birmingham	1
*Lamar	3
Lauderdale	
Service Area: Waterloo	3
Service Area: West Limestone	2
*Lawrence	3
*Limestone	
Service Area: West Limestone	2
*Lowndes	1
*Macon	3
Madison	
Population Group: Pov Pop.—Madison Co.	4
Mobile	
Service Area: Bayou La Batre	2
Population Group: Pov. Pop.—E. Mobile	1
Facility: Univ S. Al. Childns Md. Ctr.	1
Montgomery	
Population Group: Pov Pop.—Montgomery Co.	3
*Morgan	
Population Group: Pov Pop.—Morgan Co.	3
*Perry	1
*Randolph	4

PRIMARY CARE: Alabama—Continued

County Listing

County Name	Degree of shortage group
Russell	
Service Area: Cottonton/Hurtsboro	1
Shelby	2
St Clair	2
*Tallapoosa	
Service Area: Camp Hill	2
Tuscaloosa	
Service Area: West Tuscaloosa	1
*Washington	1
*Wilcox	1
*Winston	3

PRIMARY CARE: Alabama

Service Area Listing

Service Area Name	Degree of shortage group
Bayou La Batre	2
County—Mobile	
Parts:	
C.T. 66–67	
C.T. 72.02	
C.T. 73	
Camp Hill	2
County—Tallapoosa	
Parts:	
*Camp Hill CCD	
*Dadeville CCD	
*Tallassee CCD	
Cherokee	3
County—Colbert	
Parts:	
Cherokee CCD (C.T. 210)	
Clayton	1
County—Barbour	
Parts:	
*Clayton CCD	
*Clio CCD	
*Louisville CCD	
Collinsville	1
County—Clarke	
Parts:	
*Collinsville CCD	
Cottonton/Hurtsboro	1
County—Russell	
Parts:	
Cottonton-Sasie CCD	
Hurtsboro CCD	
Flomaton	3
County—Escambia	
Parts:	
Flomaton CCD	
Florala	2
County—Covington	
Parts:	
Florala CCD	
Gordon	1
County—Houston	
Parts:	
Gordon CCD	
Grove Hill/Fulton	2
County—Clarke	
Parts:	
Fulton CCD	
Grove Hill CCD	
La Fayette	1
County—Chambers	
Parts:	
*Five Points CCD	
*Lafayette CCD	

PRIMARY CARE: Alabama—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Millown CCD	
Waterloo	3
County—Lauderdale	
Parts:	
Waterloo CCD	
West Limestone	2
County—Lauderdale	
Parts:	
C.T. 117–118	
County—Limestone	
Parts:	
*C.T. 202–203	
West Tuscaloosa	1
County—Tuscaloosa	
Parts:	
C.T. 116–119	

PRIMARY CARE: Alabama

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Jackson Co.	4
County—Jackson	
Parts:	
Med. Ind. Pop.	
Pov Pop.—Madison Co.	4
County—Madison	
Parts:	
Pov. Pop.	
Pov Pop.—Montgomery Co.	3
County—Montgomery	
Parts:	
Pov. Pop.	
Pov Pop.—Morgan Co.	3
County—Morgan	
Parts:	
Pov. Pop.	
Pov. Pop.—Central Birmingham	3
County—Jefferson	
Parts:	
C.T. 5–9	
C.T. 15–17	
C.T. 24–25	
C.T. 26.01–26.02	
C.T. 27	
C.T. 28.01–28.02	
C.T. 29	
C.T. 30.02	
C.T. 41–42	
C.T. 44–46	
C.T. 51.01	
C.T. 55	
Pov. Pop.—E. Mobile	1
County—Mobile	
Parts:	
C.T. 1–3	
C.T. 4.01–4.02	
C.T. 5–6	
C.T. 7.01–7.02	
C.T. 8	
C.T. 10.01–10.02	
C.T. 11	
C.T. 12.01	
C.T. 13.01–13.02	
C.T. 14	
C.T. 15.01–15.02	
C.T. 23.01–23.02	
C.T. 26	
C.T. 38.01	

PRIMARY CARE: Alabama—Continued

Population Group Listing

Population Group	Degree of shortage group
C.T. 39.01–39.02	
C.T. 40–50	
Pov. Pop.—Gadsden	1
County—Etowah	
Parts:	
C.T. 1–17	

PRIMARY CARE: Alabama

Facility Listing

Facility Name	Degree of shortage group
Univ S. Al. Childrns Md. Ctr.	1
County—Mobile	
Univ. S. Ala. Childrns. Med. Ctr.	

PRIMARY CARE: Alaska

Census Area Listing

Census Area Name	Degree of shortage group
*Aleutian Island Area	2
Anchorage Borough	
Population Group: Med. Ind.—Anchorage Boro	3
Facility: Hiland Mtn/Meadow Crk Corr Ctr	2
Facility: 3rd Ave/6th Ave Annex/Ridgeview	2
*Bethel Area	1
Bristol Bay Borough	
Service Area: Bristol Bay/Kokhanok	1
*Dillingham Area	
Service Area: Bristol Bay/Kokhanok	1
Service Area: Chignik/Perryville	1
Service Area: Togiak/Twin Hills	1
*Kenai Peninsula Borough	
Facility: Cook Inlet Pre-Trial Facil	2
*Kobuk Area	1
*Matanuska-Susitna Borough	
Facility: Palmer Correctional Ctr	2
*North Slope Borough	1
*Prince Of Wales-Outer Ket	3
*Skagway-Yakutat-Angoon	1
*Southeast Fairbanks	2
*Valdez-Cordova Area	
Service Area: Whittier	1
*Wade Hampton Area	1
*Wrangell-Petersburg Area	
Service Area: Kake	1
*Yukon-Koyukuk	1

PRIMARY CARE: Alaska

Service Area Listing

Service Area Name	Degree of shortage group
Bristol Bay/Kokhanok	1
Census Area—Bristol Bay Borough	
Census Area—Dillingham Area	
Parts:	
Iguigig	
Kokhanok	
Pedro Bay	
Chignik/Perryville	1
Census Area—Dillingham Area	
Parts:	
Chignik	
Chignik Lake	
Chignik Lagoon	
Ivanhof Bay	
Perryville	
Kake	1
Census Area—Wrangell-Petersburg Area	
Parts:	
*Kupreanof Is. (N.W. Pt.)	
Togiak/Twin Hills	1
Census Area—Dillingham Area	
Parts:	
Togiak City	
Twin Hills	
Whittier	1
Census Area—Valdez-Cordova Area	
Parts:	
Whittier City	

PRIMARY CARE: Alaska

Population Group Listing

Population Group	Degree of shortage group
Med. Ind.—Anchorage Boro.	3
Census Area—Anchorage Borough	
Parts:	
Mun. Of Anchorage	

PRIMARY CARE: Alaska

Facility Listing

Facility Name	Degree of shortage group
Cook Inlet Pre-Trial Facil	2
Census Area—Kenai Peninsula Borough	
Hiland Mtn/Meadow Crk Corr Ctr	2
Census Area—Anchorage Borough	
Palmer Correctional Ctr	2
Census Area—Matanuska-Susitna Borough	
3rd Ave/6th Ave Annex/Ridgeview	2
Census Area—Anchorage Borough	

PRIMARY CARE: Arizona

County Listing

County Name	Degree of shortage group
*Apache	
Service Area: Ganado/Rough Rock	1
Service Area: Kayenta	1
Service Area: Puerco Valley	1
Service Area: Tsaile	1
Population Group: White Mountain Apache Indian Tribe	1
*Cochise	
Service Area: Bisbee	4
Service Area: Bowie	1
Service Area: Douglas	3
Service Area: Elfrelds	1
Service Area: Tombstone	1
*Coconino	
Service Area: Page/Tuba City	2
Population Group: Hopi Indian Tribe	1
*La Paz	2
Maricopa	
Population Group: Gila River Indian Community	1
Population Group: Med. Ind. Pop.—Guadalupe	1
Population Group: Med. Ind.—Central/South Phoenix	1
Population Group: Med. Ind./Mig.Fretr.—El Mirage	1
Facility: Maricopa Co. Jails	2
*Mohave	
Service Area: Dolan Springs	1
*Navajo	
Service Area: Ganado/Rough Rock	1
Service Area: Heber/Overgaard	1
Service Area: Kayenta	1
Population Group: Hopi Indian Tribe	1
Population Group: White Mountain Apache Indian Tribe	1
Pima	
Service Area: Arivaca	1
Service Area: Catalina-Oracle Junction	2
Service Area: Marana	2
Service Area: Sahaurita-Continental	1
Population Group: Med. Ind. Pop.—South Tucson	2
*Pinal	
Service Area: Catalina-Oracle Junction	2
Service Area: San Pedro Valley	2
Service Area: Superior	1
Population Group: Gila River Indian Community	1
Population Group: Med. Ind. Pop—Cant/W Pinal	2
*Santa Cruz	1
*Yavapai	
Service Area: Seligman	1
*Yuma	
Service Area: Wellton	2
Population Group: Pov./Mig. Pop.—Somerton	1

PRIMARY CARE: Arizona

Service Area Listing

Service Area Name	Degree of shortage group
Arivaca	1
County—Pima	
Parts:	
E.D. 257–262 (C.T. 43.05)	
Bisbee	4
County—Cochise	
Parts:	
Bisbee CCD	
Bowie	1
County—Cochise	
Parts:	
*Bowie CCD	
Catalina-Oracle Junction	2
County—Pima	
Parts:	
Catalina CDP	
County—Pinal	
Parts:	
*Oracle Junction	
Dolan Springs	1
County—Mohave	
Parts:	
*E.D. 23–25 (Kingman N. CCD)	
*E.D. 33–35 (Kingman N. CCD)	
*E.D. 37 (Kingman N. CCD)	
Douglas	3
County—Cochise	
Parts:	
*E.D. 86 (Elfrelds CCD)	
*E.D. 90–93 (Douglas CCD)	
Elfrelds	1
County—Cochise	
Parts:	
*E.D. 87–89 (Elfrelds CCD)	
Ganado/Rough Rock	1
County—Apache	
Parts:	
*Chinle CCD (W. Pt.)	
*Ft. Defiance CCD (W. Pt.)	
County—Navajo	
Parts:	
*Indian Wells CCD (E. Pt.)	
*Pinon CCD (S.E. Pt.)	
Heber/Overgaard	1
County—Navajo	
Parts:	
*E.D. 418–423 (Snowflake CCD)	
Kanab/Fredonia (Ut/Az)	0
Parts:	
E.D. 11 (Kaibab CCD)	
E.D. 11 (Kaibab CCD)	
E.D. 11 (Kaibab CCD)	
E.D. 111 (Kaibab CCD)	
E.D. 115–116 (Kaibab CCD)	
Kayenta	1
County—Apache	
Parts:	
Dennehotso CCD	
County—Navajo	
Parts:	
Western CCD	
Marana	2
County—Pima	
Parts:	
C.T. 44.05 (N. Pt.)	
Page/Tuba City	2
County—Coconino	
Parts:	
Kaibab CCD (E. Pt)	
Tuba City CCD (N. Pt.)	
Puerco Valley	1
County—Apache	
Parts:	
*Ft. Defiance CCD (S. Pt.)	
*Puerco CCD (E.D. 552, 553, 557)	
Sahaurita-Continental	

PRIMARY CARE: Arizona—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Pima	
Parts:	
E.D. 236–243	2
San Pedro Valley	
County—Pinal	
Parts:	
*E.D. 78–82 (San Manuel CCD)	
*E.D. 86–88 (San Manuel CCD)	
*E.D. 90 (San Manuel CCD)	1
Seligman	
County—Yavapai	
Parts:	
Ashfork CCD	1
Superior	
County—Pinal	
Parts:	
*E.D. 1–8 (n. Pinal CCD)	1
Tombstone	
County—Cochise	
Parts:	
Tombstone City	
E.D. 72–73 (Tombstone CCD)	
E.D. 76 (Tombstone CCD)	1
Teec Nos Pos	
County—Apache	
Parts:	
*Chinle CCD (N.E. Pt.)	
*Sweetwater CCD (S.W. Pt.)	2
Wellton	
County—Yuma	
Parts:	
*E.D. 228–229 (Wellton CCD)	
*E.D. 236–248 (Wellton CCD)	2

PRIMARY CARE: Arizona

Population Group Listing

Population Group	Degree of shortage group
Gila River Indian Community	1
County—Maricopa	
Parts:	
Gila River Res.	
County—Pinal	
Parts:	
Gila River Res.	
Hopi Indian Tribe	1
County—Coconino	
Parts:	
Hopi CCD	
County—Navajo	
Parts:	
Hopi CCD.	
Med. Ind.—Central/South Phoenix	1
County—Maricopa	
Parts:	
C.T. 1129–1133	
C.T. 1138–1161	
C.T. 1162–1165	
C.T. 1165.02	
Med. Ind. Pop.—Cent/W Pinal	2
County—Pinal	
Parts:	
Casa Grande CCD	
Coolidge CCD	
Eloy CCD	
Maricopa-Stanfield CCD	
Sacaton CCD	
Med. Ind. Pop.—Guadalupe	1

PRIMARY CARE: Arizona—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Maricopa	
Parts:	
C.T. 3200.02	
Med. Ind. Pop.—South Tucson	2
County—Pima	
Parts:	
C.T. 1–12	
C.T. 13.01–13.02	
C.T. 14	
C.T. 20–24	
C.T. 25.01–25.02	
C.T. 37.01–37.03	
C.T. 38–39	
C.T. 41.03–41.04	
C.T. 43.01	
Med. Ind./Mig.Fmslr.—El Mirage	1
County—Maricopa	
Parts:	
C.T. 405.01	
C.T. 608–609	
C.T. 610.01	
Pov./Mig. Pop.—Somerton	1
County—Yuma	
Parts:	
C.T. 114–116	
White Mountain Apache Indian Tribe	1
County—Apache	
Parts:	
Ft. Apache In. Res.	
County—Navajo	
Parts:	
White Mt. In. Res.	

PRIMARY CARE: Arizona

Facility Listing

Facility Name	Degree of shortage group
Maricopa Co. Jails	2
County—Maricopa	

PRIMARY CARE: Arkansas

County Listing

County Name	Degree of shortage group
*Arkansas	
Service Area: Dewitt	4
*Ashley	
Service Area: Portland/Wilmot	2
*Boone	
Service Area: Lead Hill	1
*Bradley	
Service Area: Hermitage	1
*Calhoun	3
*Clay	3
*Cleburne	3
*Cleveland	4
Crawford	
Service Area: Mountainburg/Chester	1
Crittendon	
Service Area: Parkin/Earle	1
*Cross	
Service Area: Parkin/Earle	1

PRIMARY CARE: Arkansas—Continued

County Listing

County Name	Degree of shortage group
*Dallas	
Service Area: Carthage	1
Service Area: Spartacus	1
*Desha	
Service Area: Snow Lake	1
Faulkner	
Service Area: Vilonia	1
*Franklin	
Service Area: Cass	1
*Fulton	
Service Area: Mammoth Springs	2
*Grant	3
*Howard	
Service Area: Umpire	1
*Izard	
Service Area: Horseshoe Bend	4
Jefferson	
Service Area: Altheimer	1
Service Area: North Pine Bluff	1
Service Area: Redfield	1
Service Area: Richland	1
Facility: Tucker/Tucker Maximum Pris.	2
*Johnson	
Service Area: Clark	1
*Lafayette	2
*Lawrence	4
*Lee	4
*Lincoln	1
Facility: Cummins Prison	2
*Logan	4
*Madison	2
*Marion	
Service Area: Lead Hill	1
*Mississippi	
Population Group: Med. Ind. Pop.—Mississippi Co.	2
*Monroe	
Service Area: Clarendon	2
*Montgomery	2
*Nevada	4
*Newton	1
*Ouachita	
Service Area: Reader	1
Service Area: Stephens	1
*Perry	4
*Phillips	
Service Area: Elaine	2
*Poinsett	4
*Polk	
Service Area: Grannis/Wickes	1
*Pope	
Service Area: Hector	1
*Prairie	4
Pulaski	
Service Area: College Station	1
Facility: Wrightsville Prison	2
*Scott	4
*Searcy	4
Sebastian	
Service Area: Diamond	3
*Sharp	3
*Union	
Service Area: Strong	1
*Van Buren	4
Washington	
Service Area: West Washington	2
*Woodruff	
Population Group: Pov. Pop.—Cotton Plant	4
*Yell	
Service Area: Havana	1

PRIMARY CARE: Arkansas

Service Area Listing

Service Area Name	Degree of shortage group
Altheimer	1
County—Jefferson	
Parts:	
C.T. 1	
C.T. 7	
Carthage	1
County—Dallas	
Parts:	
*Chester Twp.	
*Smith Twp.	
*Willow Twp.	
Cass	1
County—Franklin	
Parts:	
Boston Twp.	
Cobb Twp.	
Limestone Twp.	
McIlroy Twp.	
Morgan Twp.	
Shores Twp.	
Clarendon	2
County—Monroe	
Parts:	
*Cache Twp.	
*Cypress Ridge Twp.	
*Hindman Twp.	
*Keevil Twp.	
*Pine Ridge Twp.	
*Roc Roe Twp.	
College Station	1
County—Pulaski	
Parts:	
C.T. 2	
C.T. 4–5	
C.T. 40.01	
C.T. 40.08	
C.T. 40.05	
Dewitt	4
County—Arkansas	
Parts:	
Arkansas Twp.	
Bayou Meto Twp.	
Brewer Twp.	
Chester Twp.	
Crockett Twp.	
Garland Twp.	
La Grue Twp.	
Point De Luce Twp.	
Prairie Twp.	
Stanley Twp.	
Diamond	3
County—Sebastian	
Parts:	
Diamond Twp.	
Hartford Twp.	
Jim Fork Twp.	
Mississippi Twp.	
Sugarloaf Twp.	
Elaine	2
County—Phillips	
Parts:	
*Mooney Twp.	
*Tappen Twp.	
Grannis/Wickes	1
County—Polk	
Parts:	
*Ozark Twp.	
*White Twp.	
Havana	1
County—Yell	
Parts:	
*Bluffton Twp.	
*Briggsville Twp.	
*Crawford Twp.	
*Dutch Creek Twp.	
*Gravely Hill Twp.	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Herring Twp.	
*Ions Creek Twp.	
*Richland Twp.	
*Riley Twp.	
*Waveland Twp.	
Hector	1
County—Pope	
Parts:	
*Center Twp.	
*Freeman Twp.	
*Griffin Twp.	
*Jackson Twp.	
*Liberty Twp.	
*Martin Twp.	
*Phoenix Twp.	
*Smyrna Twp.	
Hermitage	1
County—Bradley	
Parts:	
*Eagle Twp.	
*Marion Twp.	
*Ouchita Twp.	
*Palestine Twp.	
*River Twp.	
*Sumpter Twp.	
*Washington Twp.	
Horseshoe Bend	4
County—Izard	
Parts:	
Baker Twp.	
Franklin Twp.	
Jefferson Twp.	
New Hope Twp.	
Violet Hill Twp.	
Lead Hill	1
County—Boone	
Parts:	
*Sugarloaf Twp.	
County—Marion	
Parts:	
*Crockett Twp.	
*Franklin Twp.	
*Kessee Twp.	
*Sugarloaf Twp.	
Mammoth Springs	2
County—Fulton	
Parts:	
*Afton Twp.	
*Mammoth Springs Twp.	
*Wilson Twp. (Eastern 1/2)	
*Wyatt Twp.	
Mountainburg/Chester	1
County—Crawford	
Parts:	
Chester Twp.	
Mountain Twp.	
Porter Twp.	
Sand Point Twp.	
Shepherd Twp.	
Upper Twp.	
Whitley Twp.	
Wintrey Twp.	
North Pine Bluff	1
County—Jefferson	
Parts:	
C.T. 5.01–5.02	
C.T. 6	
C.T. 8.99	
C.T. 10–13	
C.T. 14.02	
C.T. 21.01	
Ozark	1
County—Johnson	
Parts:	
Batson Twp.	
Dickerson Twp.	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Hill Twp.	
Low Gap Twp.	
Mulberry Twp.	
Parkin/Earle	1
County—Crittenden	
Parts:	
Tyronza Twp.	
County—Cross	
Parts:	
*Tyronza Twp.	
Portland/Wilmot	2
County—Ashley	
Parts:	
Banner Twp.	
Bayou Twp.	
Beachcreek Twp.	
Bearhouse Twp.	
De Bastrop Twp.	
Montrose Twp.	
Portland Twp.	
Prairie Twp.	
Union Twp.	
Wilmot Twp.	
Reader	1
County—Ouachita	
Parts:	
Behoeton Twp.	
Red Hill Twp.	
Redfield	1
County—Jefferson	
Parts:	
C.T. 2	
Richland	1
County—Jefferson	
Parts:	
C.T. 8	
Snow Lake	1
County—Desha	
Parts:	
Mississippi Twp.	
Sparkman	1
County—Dallas	
Parts:	
*Manchester Twp.	
*Nix Twp.	
*Owen Twp.	
Stephens	1
County—Ouachita	
Parts:	
*Jefferson Twp.	
*Liberty Twp.	
*Smackover Twp.	
Strong	1
County—Union	
Parts:	
*Harrison Twp.	
*Lapile Twp.	
Umpire	1
County—Howard	
Parts:	
Burg Twp.	
Clay Twp.	
Duckett Twp.	
Mountain Twp.	
Umpire Twp.	
Vilonia	1
County—Faulkner	
Parts:	
Benton Twp.	
Bristol Twp.	
California Twp.	
Cypress Twp.	
Eagle Twp.	
Enola Twp.	
Hardin Twp.	
Harve Twp.	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Matthews Twp.	
Mountain Twp.	
Mt. Vernon Twp.	
Newton Twp.	
Palarm Twp.	
Union Twp.	
Walker Twp.	
Wilson Twp.	
West Washington	2
County—Washington	
Parts:	
Boston Twp.	
Cane Hill Twp.	
Cove Creek Twp.	
Dutch Mills Twp.	
Illinois Twp.	
Morrow Twp.	
Price Twp.	
Rhea's Hill Twp.	
Starr Hill Twp.	
Vineyard Twp.	
Weddington Twp.	

PRIMARY CARE: Arkansas

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Mississippi Co.	2
County—Mississippi	
Parts:	
Med. Ind. Pop.	
Pov. Pop.—Cotton Plant	4
County—Woodruff	
Parts:	
Cache Twp.	
Caney Twp.	
Cotton Plant Twp.	
Franks Twp.	
Freeman Twp.	
Garden Twp.	
Point Twp.	

PRIMARY CARE: Arkansas

Facility Listing

Facility Name	Degree of shortage group
Cummins Prison	2
County—Lincoln 1	
Cummins Prs.	
Tucker/Tucker Maximum Prs.	2
County—Jefferson	
Tucker/Tucker Max Prs.	
Wrightsville Prison	2
County—Pulaski	
Wrightsville Prs.	

PRIMARY CARE: California

County Listing

County Name	Degree of shortage group
Alameda	
Service Area: Central Oakland	3
Service Area: East Oakland	1
Service Area: West Berkeley	1
*Alpine	
Service Area: Markleeville	1
Butte	
Service Area: Feather Falls	1
*Calaveras	
Service Area: West Point/Wilseyville	1
Contra Costa	
Service Area: East Contra Costa	2
*Del Norte	
Population Group: Indian Pop. (Trinidad)	1
El Dorado	
Service Area: Georgetown Divide	1
Fresno	
Service Area: Edison/Easton	2
Service Area: Firebaugh/Mendota	2
Service Area: Huron	1
Service Area: Riverdale/Caruthers	2
Service Area: San Joaquin	1
Service Area: Sierra	3
*Glenn	3
*Humboldt	
Service Area: Willow Creek	2
Population Group: Indian Pop. (Trinidad)	1
Population Group: Medi-Cal—Arcata/Eureka/Redway	4
*Imperial	
Service Area: Imperial Valley	4
*Inyo	
Service Area: Southern Inyo	2
Kern	
Service Area: Arvin/Lamont	2
Service Area: Frazier Park	2
Service Area: Lake Isabella	2
Service Area: Southeast Kern	2
Population Group: Pov./Mig.—Sutter-willow/Wasco/Shafter	1
*Kings	
Service Area: Avenal	2
Service Area: Corcoran	2
*Lassen	
Service Area: Honey Lake	1
Service Area: North Lassen	1
Los Angeles	
Service Area: Avalon/Goodyear/Main	1
Service Area: East Compton	3
Service Area: East L.A./City Terrace/Commerce	1
Service Area: El Monte	3
Service Area: Florence/Huntington Park	1
Service Area: Highland Pk/Linc Hts/Mt. Wash	2
Service Area: Maywood Bell	1
Service Area: Santa Catalina Island	3
Service Area: Venice	1
Service Area: Watts/Figueroa/Firestone	1
Service Area: West Compton	1
Population Group: Mono. Hispanic—Pacoima/San Fernando	2
Facility: Martin Luther King Jr. General Hospital	2
Marin	
Service Area: Bolinas/Stinson Beach	2
*Mendocino	
Service Area: Covelo	4
Service Area: Northwest Mendocino	2
Service Area: Potter Valley	2
Merced	
Service Area: Gustine/Newman	3

PRIMARY CARE: California—Continued

County Listing

County Name	Degree of shortage group
Population Group: Indochinese Pop.-Atwater/Merced	2
Population Group: Mig./Monolingual Span.-Planada-La Grande	1
Population Group: Mig./Span. Sp.-Los Banos/Dos Palos	3
Population Group: Span. Sp. Pop—N.W. Merced	1
*Modoc	
Service Area: Adin-Lookout	1
Service Area: Surprise Valley	4
Service Area: Tule Lake—Butte Valley	3
*Mono	
Service Area: North Mono	1
Monterey	
Service Area: Soledad	2
Population Group: MSFW—Pajaro Valley	3
Orange	
Facility: Juvenile Detention Facilities	2
*Plumas	
Service Area: Greenville	4
Population Group: Medi-Cal Eligible Pop.—Loyalton	1
Riverside	
Population Group: Morongo Indian Pop.	1
Population Group: MSFW—Lower Coachella Valley	1
Population Group: Sobobs Indian Pop.	1
*San Benito	
Service Area: Hollister	3
Service Area: San Benito-Bitterwater	1
San Bernardino	
Service Area: Arrowhead	4
Service Area: 29 Palms/Morongo Valley	2
Population Group: Morongo Indian Pop.	1
Population Group: San Manuel Indian Pop.	1
San Diego	
Service Area: Anza	2
Service Area: Barrio Logan	1
Service Area: Mountain Empire	2
Service Area: Palomar/Laguna	2
Service Area: Ramona	3
Service Area: San Ysidro	1
Service Area: Valley Center/Pauma Valley	1
Population Group: Indochinese/Pov. Pop.—Linda Vista	2
Population Group: Medicaid Eligible—Oceanside	1
Population Group: Span. Spk. Pop.—San Marcos	4
San Francisco	
Service Area: Tenderloin	3
San Mateo	
Service Area: East Palo Alto	2
Santa Barbara	
Service Area: Cuyama Valley	1
Santa Cruz	
Population Group: MSFW—Pajaro Valley	3
Shasta	
Service Area: Burney Basin	2
Service Area: Shingletown	1
*Sierra	
Service Area: Downieville	1
Population Group: Medi-Cal Eligible Pop.—Loyalton	1
*Siskiyou	
Service Area: Etna/Ft. Jones	3
Service Area: Happy Camp	2
Service Area: Tule Lake—Butte Valley	3

PRIMARY CARE: California—Continued

County Listing

County Name	Degree of shortage group
Solano	
Population Group: Medicaid Pop.—Vacaville	4
Sonoma	
Population Group: Pov./Homeless/Aida Pop.—Guerneville	1
Stanislaus	
Service Area: Gustine/Newman	3
*Tehama	
Population Group: Medi-Cal Eligible Pop.—Tehama Co.	4
*Trinity	
Service Area: Hayfork/Mad River	3
Service Area: Willow Creek	2
Tulare	
Service Area: Springville	1
Service Area: Tipton	1
Service Area: Woodlake	4
Population Group: Span. Sp. Pop.—Porterville	3
*Tuolumne	
Service Area: Groveland	1
Service Area: Stanislaus/Yosemite	1
Ventura	
Population Group: Mig./Mono. Span. Sp. Pop.—Can. Ventura	1

PRIMARY CARE: California

Service Area Listing

Service Area Name	Degree of shortage group
Adin-Lookout	1
County—Modoc	
Parts:	
*Adin-Lookout CCD	
Anza	2
County—San Diego	
Parts:	
C.T. 210	
Arrowhead	4
County—San Bernardino	
Parts:	
C.T. 101	
Arvin/Lamont	2
County—Kern	
Parts:	
C.T. 62-64	
Avalon/Goodyear/Main	1
County—Los Angeles	
Parts:	
C.T. 2291-2298	
C.T. 2291-2294	
C.T. 2311	
C.T. 2316-2319	
C.T. 2326	
C.T. 2391-2398	
Avenal	2
County—Kings	
Parts:	
Avenal CCD	
Stratford CCD(Ed45-Kettleman City)	
Stratford CCD.(Ed47b-Avenal Town)	
Barrio Logan	1
County—San Diego	
Parts:	
C.T. 36-41	
C.T. 45-54	

PRIMARY CARE: California—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Bolinas/Stinson Beach	2
County—Marin	
Parts:	
C.T. 1321	
Burney Basin	2
County—Shasta	
Parts:	
E.D. 326-327 (East Shasta CCD)	
E.D. 329 (East Shasta CCD)	
E.D. 332-333 (Central Shasta CCD)	
E.D. 335-337 (Central Shasta CCD)	
E.D. 340-341 (Central Shasta CCD)	
Central Oakland	3
County—Alameda	
Parts:	
C.T. 4053-4060	
C.T. 4066	
C.T. 4070-4072	
Corcoran	2
County—Kings	
Parts:	
Corcoran CCD	
Stratford CCD (E.D.44)	
Stratford CCD (E.D.47a)	
Stratford CCD (E.D.48)	
Covelo	4
County—Mendocino	
Parts:	
*Covelo CCD	
Cuyama Valley	1
County—Santa Barbara	
Parts:	
Cuyama CCD	
Downieville	1
County—Sierra	
Parts:	
West Sierra CCD	
East Compton	3
County—Los Angeles	
Parts:	
C.T. 5416.01-5416.02	
C.T. 5420	
C.T. 5421.01-5421.02	
C.T. 5422	
C.T. 5424.01-5424.02	
East Contra Costa	2
County—Contra Costa	
Parts:	
East Contra Costa CCD	
East L.A./City Terrace/Commerce	1
County—Los Angeles	
Parts:	
C.T. 5303-5306	
C.T. 5308-5315	
C.T. 5316.01-5316.02	
C.T. 5317.01-5317.02	
C.T. 5318-5319	
C.T. 5323.01-5323.02	
East Oakland	1
County—Alameda	
Parts:	
C.T. 4073-4075	
C.T. 4084-4097	
C.T. 4102-4104	
East Palo Alto	2
County—San Mateo	
Parts:	
C.T. 6117-6121	
Edison/Easton	2
County—Fresno	
Parts:	
C.T. 2-3	
C.T. 7-11	

PRIMARY CARE: California—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 19	
El Monte	3
County—Los Angeles	
Parts:	
C.T. 4324	
C.T. 4327-4329	
C.T. 4331-4336	
C.T. 4337-4340	
Etna/Ft. Jones	3
County—Siskiyou	
Parts:	
*Etna CCD	
*Ft. Jones CCD	
Feather Falls	1
County—Butte	
Parts:	
Feather Falls CCD	
Firebaugh/Mendota	2
County—Fresno	
Parts:	
Firebaugh CCD (C.T.93)	
Mendota CCD (C.T. 84.01 & 84.02)	
Florence/Huntington Park	1
County—Los Angeles	
Parts:	
C.T. 5325-5332	
C.T. 5335	
C.T. 5345	
C.T. 5347-5348	
Frazier Park	2
County—Kern	
Parts:	
C.T. 33.02	
Georgetown Divide	1
County—El Dorado	
Parts:	
C.T. 306	
Greenville	4
County—Plumas	
Parts:	
Greenville CCD	
Groveland	1
County—Tuolumne	
Parts:	
*Groveland CCD	
Gustine/Newman	3
County—Merced	
Parts:	
Gustine CCD	
County—Stanislaus	
Parts:	
Newman CCD	
Happy Camp	2
County—Siskiyou	
Parts:	
Happy Camp CCD	
Hayfork/Mad River	3
County—Trinity	
Parts:	
*Hayfork CCD	
*Mad River CCD	
Highland Pk/Linc Hts/Mt Wash	2
County—Los Angeles	
Parts:	
C.T. 1831.01-1831.02	
C.T. 1832-1833	
C.T. 1835-1838	
C.T. 1851	
C.T. 1852.01-1852.02	
C.T. 1853	
C.T. 1991-1999	
C.T. 2011-2013	
C.T. 2014.01-2014.02	
C.T. 2015.01-2015.02	
C.T. 2016-2017	

PRIMARY CARE: California—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 5307	
Hollister	3
County—San Benito	
Parts:	
*Hollister CCD	
*San Juan Bautista CCD	
Honey Lake	1
County—Lassen	
Parts:	
*Honey Lake CCD	
Huron	1
County—Fresno	
Parts:	
Huron CCD	
Imperial Valley	4
County—Imperial	
Parts:	
Brawley CCD	
Calexico CCD	
Calipatria-Westmorland CCD	
El Centro CCD	
Holtville CCD	
Imperial CCD	
Lake Isabella	2
County—Kern	
Parts:	
C.T. 51.01	
C.T. 52	
Markleeville	1
County—Alpine	
Parts:	
*Markleeville CCD	
Maywood Bell	1
County—Los Angeles	
Parts:	
C.T. 5333–5337	
C.T. 5338.01–5338.02	
C.T. 5339–5343	
*E.D. 5344.01–5344.02 (portola CCD)	
*E.D. 6 (portola CCD	
Mountain Empire	2
County—San Diego	
Parts:	
Mountain Empire CCD	
North Lassen	1
County—Lassen	
Parts:	
*Big Valley CCD	
*Madeline Plains CCD	
North Mono	1
County—Mono	
Parts:	
*Mono North CCD	
*E.D. 21 (Mono South	
Northwest Mendocino	2
County—Mendocino	
Parts:	
Laytonville-Leggett CCD	
Palomar/Laguna	2
County—San Diego	
Parts:	
C. T. 209.01	
Mtw	
C.T. 209.02 (portola CCD)	
Potter Valley	2
County—Mendocino	
Parts:	
*E.D. 200–202 (Redwood-Potter CCD)	
Ramona	3
County—San Diego	
Parts:	
Ramona CCD	
Riverdale/Caruthers	2

PRIMARY CARE: California—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Fresno	
Parts:	
C.T. 75–77	
San Benito-Bitterwater	1
County—San Benito	
Parts:	
*San Benito-Bitterwater CCD	
San Joaquin	1
County—Fresno	
Parts:	
San Joaquin-Tranquility CCD	
San Ysidro	1
County—San Diego	
Parts:	
C.T. 100.01–100.07	
C.T. 101.03–101.07	
C.T. 102–105	
Santa Catalina Island	3
County—Los Angeles	
Parts:	
C.T. 5890	
Shingletown	1
County—Shasta	
Parts:	
E.D. 343–347 (Central Shasta CCD)	
Sierra	3
County—Fresno	
Parts:	
Sierra CCD	
Soledad	2
County—Monterey	
Parts:	
C.T. 111 (Pt. Of Soledad CCD)	
Southeast Kern	2
County—Kern	
Parts:	
C.T. 55.02	
C.T. 56–59	
Southern Inyo	2
County—Inyo	
Parts:	
Death Valley CCD	
Independence CCD (51/2)	
Lone Pine CCD	
Springville	1
County—Tulare	
Parts:	
C.T. 27	
Stanislaus/Yosemite	1
County—Tuolumne	
Parts:	
*Stanislaus/Yosemite CCD	
Surprise Valley	4
County—Modoc	
Parts:	
*Surprise Valley CCD	
Tenderloin	3
County—San Francisco	
Parts:	
C.T. 122–125	
Tipton	1
County—Tulare	
Parts:	
C.T. 32	
C.T. 42–44	
Tule Lake—Butte Valley	3
County—Modoc	
Parts:	
*Tule Lake CCD	
County—Siskiyou	
Parts:	
*Butte Valley CCD	
*Tule Lake CCD	
Valley Center/Pauma Valley	1

PRIMARY CARE: California—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—San Diego	
Parts:	
C.T. 191.01–191.02	
Venice	1
County—Los Angeles	
Parts:	
C.T. 2731–2739	
Watts/Figueroa/Firestone	1
County—Los Angeles	
Parts:	
C.T. 2397–2399	
C.T. 2401–2409	
C.T. 2411–2416	
C.T. 2421–2429	
C.T. 2431	
C.T. 5349–5350	
C.T. 5351.01–5351.02	
C.T. 5352–5364	
C.T. 5404	
West Berkeley	1
County—Alameda	
Parts:	
C.T. 4220–4223	
C.T. 4230–4234	
C.T. 4240	
West Compton	1
County—Los Angeles	
Parts:	
C.T. 5411–5415	
C.T. 5425–5432	
West Point/Wilseyville	1
County—Calaveras	
Parts:	
E.D. 50 (W. Pt. Wilseyl CCD)	
E.D. 55–59 (W. Pt. Wilseyl CCD)	
Willow Creek	2
County—Humboldt	
Parts:	
*Trinity-Klamath CCD	
County—Trinity	
Parts:	
*Lower Trinity CCD	
Woodlake	4
County—Tulare	
Parts:	
Woodlake—Three Rivers CCD	
29 Palms/Morongo Valley	2
County—San Bernardino	
Parts:	
C.T. 104.01	
C.T. 104.03–104.04	

PRIMARY CARE: California

Population Group Listing

Population Group	Degree of shortage group
Indian Pop. (Trinidad)	1
County—Del Norte	
Parts:	
Indian Pop.	
County—Humboldt	
Parts:	
Indian Pop.	
Indochinese Pop.-Atwater/Merced	2
County—Merced	
Parts:	
Atwater CCD	
Merced CCD	
Indochinese/Pov. Pop.—Linda Vista	2

PRIMARY CARE: California—Continued

Population Group Listing

Population Group	Degree of shortage group
County—San Diego	
Parts:	
C.T. 86	
C.T. 87.01	
C.T. 88	
C.T. 89.01	
C.T. 90	
C.T. 91.05	
Medi-Cal—Arcata/Eureka/Redway	4
County—Humboldt	
Parts:	
Arcata CCD	
Eureka CCD	
Ferndale CCD	
Fortuna CCD	
Garberville CCD	
North Coastal CCD	
Medi-Cal Eligible Pop.—Loyalton	1
County—Plumas	
E.D. 6 (portola CCD)	
County—Sierra	
Parts:	
East Sierra CCD	
Medi-Cal Eligible Pop.—Tehama Co.	4
County—Tehama	
Parts:	
Medi-Cal Eligible Pop.	
Medicaid Eligible—Oceanside	1
County—San Diego	
Parts:	
C.T. 181–184	
C.T. 185.01–185.02	
C.T. 185.04–185.06	
C.T. 189.01	
C.T. 189.03–189.05	
C.T. 193	
Medicaid Pop.—Vacaville	4
County—Solano	
Parts:	
Medicaid Pop.	
Mig./Mono. Span. Sp. Pop.—Con. Ventura	1
County—Ventura	
Parts:	
Fillmore-Piru CCD	
Moorpark CCD	
Oxnard CCD	
Santa Paula CCD	
Saticoy CCD	
Mig./Monolingual Span.-Planada-Le Grande	1
County—Merced	
Parts:	
Planada-Le Grand CCD	
Mig./Span. Sp.-Los Banos/Dos Palos	3
County—Merced	
Parts:	
Migrants (C.T. 21–24)	
Mono. Span. (C.T. 21–24)	
Mono. Hispanic—Pacoima/San Fernando	2
County—Los Angeles	
Parts:	
C.T. 1041.01–1041.02	
C.T. 1042.01–1042.02	
C.T. 1045–1046	
C.T. 1091	
C.T. 1094–1095	
C.T. 1181–1182	
C.T. 1184–1185	
C.T. 1198	
C.T. 3201–3203	
Morongo Indian Pop.	1
County—Riverside	
Parts:	
Indian Pop.	

PRIMARY CARE: California—Continued

Population Group Listing

Population Group	Degree of shortage group
County—San Bernardino	
Parts:	
Indian Pop.(Banning Area)	
MSFW—Lower Coachella Valley	1
County—Riverside	
Parts:	
C.T. 456.01–456.02	
C.T. 457.01–457.02	
MSFW—Pajaro Valley	3
County—Monterey	
Parts:	
Pajaro CCD	
County—Santa Cruz	
Parts:	
Watsonville CCD	
Pov./Homeless/Aide Pop.—Guerneville	1
County—Sonoma	
Parts:	
Homeless	
Persons With Aide	
C.T. 1537.01–1537.02 (S.1/2)	
C.T. 1543 (S.1/2	
Pov./Mig.—Buttonwillow/Wasco/Shafter	1
County—Kern	
Parts:	
C.T. 33.01 (S.1/2)	
C.T. 37 (S.1/2	
C.T. 39–45	
San Manual Indian Pop.	1
County—San Bernardino	
Parts:	
San Manuel Res.	
Sobobe Indian Pop.	1
County—Riverside	
Parts:	
Indian Pop.	
Span. Sp. Pop—N.W. Merced	1
County—Merced	
Parts:	
Hilmar-Irwin CCD	
Livingston-Delhi CCD	
Span. Sp. Pop.—Portersville	3
County—Tulare	
Parts:	
C.T. 33–41	
C.T. 46	
Span. Spk. Pop.—San Marcos	4
County—San Diego	
Parts:	
San Marcos City	

PRIMARY CARE: California

Facility Listing

Facility Name	Degree of shortage group
Juvenile Detention Facilities	2
County—Orange	
Martin Luther King Jr. General Hospital	2
County—Los Angeles	

PRIMARY CARE: Colorado

County Listing

County Name	Degree of shortage group
Adams	
Service Area: Bennett/Strasburg	2
Service Area: Commerce City	4
Population Group: MSFW—Weld Co.	1
Arapahoe	
Service Area: Bennett/Strasburg	2
*Baca	1
*Bent	
Population Group: Med. Ind.—Bent/Crowley/Otero	1
Boulder	
Population Group: MSFW—Weld Co.	1
Population Group: Pov. Pop.—Lafayette/Louisville	1
*Cheyenne	1
*Conejos	
Population Group: Med. Ind. Pop.—Conejos Co.	1
*Costilla	1
*Crowley	
Population Group: Med. Ind.—Bent/Crowley/Otero	1
*Custer	1
*Dolores	1
El Paso	
Service Area: Calhan-Yoder	2
Population Group: Med. Ind. Pop.—Colorado Springs	1
*Elbert	
Service Area: Kiowa/Elizabeth	1
Service Area: Limon	2
*Gilpin	1
*Hinsdale	1
*Huerfano	
Service Area: Gardner	4
*Las Animas	4
*Lincoln	
Service Area: Limon	2
*Moffat	
Service Area: Rangely	1
*Montrose	
Service Area: Nucla/Norwood	2
*Otero	
Population Group: Med. Ind.—Bent/Crowley/Otero	1
*Park	
Service Area: Fairplay	1
Service Area: Lake George	1
*Prowers	2
Pueblo	
Service Area: Avondale/Boone	1
Population Group: Med. Ind. Pop.—Pueblo City	1
*Rio Blanco	
Service Area: Rangely	1
*Routt	
Service Area: Oak Creek/Yampa	4
*Saguache	1
*San Miguel	
Service Area: Nucla/Norwood	2
Weld	
Population Group: MSFW—Weld Co.	1

PRIMARY CARE: Colorado

Service Area Listing

Service Area Name	Degree of shortage group
Avondale/Boone	1
County—Pueblo	
Parts:	
C.T. 32-34 (Avondale)	
Bennett/Strasburg	2
County—Adams	
Parts:	
East Adams Div.	
County—Arapahoe	
Parts:	
East Arapahoe Div.	
Calhan-Yoder	2
County—El Paso	
Parts:	
C.T. 39.01	
C.T. 46	
Commerce City	4
County—Adams	
Parts:	
C.T. 87.03 (Commerce City)	
C.T. 87.05-87.06 (Irondale City)	
C.T. 88.01-88.02 (Commerce City)	
C.T. 88.01 (Commerce City)	
C.T. 89.52 (Commerce City)	
Fairplay	1
County—Park	
Parts:	
Fairplay Div.	
Gardner	4
County—Huerfano	
Parts:	
Gardner Div.	
Kiowa/Elizabeth	1
County—Elbert	
Parts:	
*Kiowa Div.	
Lake George	1
County—Park	
Parts:	
Lake George Div.	
Limon	2
County—Elbert	
Parts:	
*Agate Div.	
*Simla Div.	
County—Lincoln	
Nucla/Norwood	2
County—Montrose	
Parts:	
Nucla Div.	
County—San Miguel	
Parts:	
Norwood Div.	
Oak Creek/Yampa	4
County—Routt	
Parts:	
*Oak Creek Div.	
*Yampa Div.	
Rangely	1
County—Moffat	
Parts:	
*Artesia Div.	
County—Rio Blanco	
Parts:	
*Rangely Div.	

PRIMARY CARE: Colorado

Population Group Listing

Population Group	Degree of shortage group
Med. Ind.—Bent/Crowley/Otero	1
County—Bent	
Parts:	
Med. Ind.-Bent/Crowley/Otero	
County—Crowley	
Parts:	
Med. Ind.	
County—Otero	
Parts:	
Med. Ind.	
Med. Ind. Pop.—Colorado Springs	1
County—El Paso	
Parts:	
C.T. 13.01 (Med. Ind.))	
C.T. 14-17 (Med. Ind.)	
C.T. 21.01 (Med. Ind.)	
C.T. 22-23 (Med. Ind.)	
C.T. 26-29 (Med. Ind.)	
Med. Ind. Pop.—Conejos Co.	1
County—Conejos	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Pueblo City	1
County—Pueblo	
Parts:	
C.T. 1-2 (Med. Ind.)	
C.T. 4-8 (Med. Ind.)	
C.T. 9.02 (Med. Ind.)	
C.T. 10-27 (Med. Ind.)	
C.T. 28.01-28.02 (Med. Ind.)	
C.T. 29.01 (Med. Ind.)	
MSFW—Weld Co.	1
County—Adams	
Parts:	
C.T. 85.13-85.14 (MSFW)	
C.T. 86.01-86.02 (MSFW)	
County—Boulder	
Parts:	
C.T. 126 (MSFW)	
C.T. 132.01 (MSFW)	
C.T. 132.04 (MSFW)	
C.T. 133.02-133.04 (MSFW)	
C.T. 134 (MSFW	
C.T. 135.01-135.02 (MSFW)	
County—Weld	
Parts:	
MSFW	
Pov. Pop.—Lafayette/Louisville	1
County—Boulder	
Parts:	
C.T. 129.01-129.02	
C.T. 130	
C.T. 131.02-131.05	

PRIMARY CARE: Connecticut

County Listing

County Name	Degree of shortage group
Fairfield	
Service Area: Southwest Bridgeport	3
Population Group: Poverty Pop.—Central/East Bridgeport	4
Hartford	
Service Area: Charter Oak/Rice Hts	1
Service Area: North-Central Hartford	1
New Haven	
Service Area: Fair Haven	1

PRIMARY CARE: Connecticut—Continued

County Listing

County Name	Degree of shortage group
New London	
Population Group: Pov. Pop.—New London	3

PRIMARY CARE: Connecticut

Service Area Listing

Service Area Name	Degree of shortage group
Charter Oak/Rice Hts	1
County—Hartford	
Parts:	
C.T. 5048	
C.T. 5049	
Fair Haven	1
County—New Haven	
Parts:	
C.T. 1421-1426	
North-Central Hartford	1
County—Hartford	
Parts:	
C.T. 5008-5015	
C.T. 5017-5018	
C.T. 5035	
C.T. 5037	
Southwest Bridgeport	3
County—Fairfield	
Parts:	
C.T. 702-711	

PRIMARY CARE: Connecticut

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—New London	3
County—New London	
Parts:	
C.T. 6901	
C.T. 6903-6907	
Poverty Pop.—Central/East Bridgeport	4
County—Fairfield	
Parts:	
C.T. 713-717	
C.T. 735-744	

PRIMARY CARE: DELAWARE

County Listing

County Name	Degree of shortage group
New Castle	
Service Area: Middletown-Odessa	3
Service Area: Wilmington—Southbridge	2

PRIMARY CARE: DELAWARE—Continued

County Listing

County Name	Degree of shortage group
*Sussex:	
Service Area: Mid-Sussex (Indian River)	4

PRIMARY CARE: DELAWARE

Service Area Listing

Service Area Name	Degree of shortage group
Mid-Sussex (Indian River)	4
County—Sussex	
Parts:	
*Georgetown CCD (C.T. 505)	
*Millsboro CCD (C.T. 506-507)	
*Selbyville-Frankford CCD (C.T. 512-516)	
Middletown-Odessa	3
County—New Castle	
Parts:	
Middletown-Odessa CCD	
Wilmington—Southbridge	2
County—New Castle	
Parts:	
C.T. 1	
C.T. 6.01-6.02	
C.T. 7-9	
C.T. 15-17	
C.T. 19-23	
C.T. 154-155	

PRIMARY CARE: District Of Columbia

County Listing

County Name	Degree of shortage group
Dist Of Columbia	
Service Area: Anacostia	1
Population Group: Spsn. Sp. Pop.—Adams-Morgan	1
Facility: D.C. Detention Facility	2

PRIMARY CARE: District Of Columbia

Service Area Listing

Service Area Name	Degree of shortage group
Anacostia	1
County—Dist Of Columbia	
Parts:	
C.T. 77.03	
C.T. 77.07-77.08	
C.T. 78.03-78.05	
C.T. 78.07-78.08	
C.T. 98.01-98.04	
C.T. 98.01-99.07	

PRIMARY CARE: District Of Columbia

Population Group Listing

Population Group	Degree of shortage group
Spsn. Sp. Pop.—Adams-Morgan	1
County—Dist Of Columbia	
Parts:	
C.T. 37.20	
C.T. 39	
C.T. 37-40	
C.T. 42.10	
C.T. 43	

PRIMARY CARE: District Of Columbia

Facility Listing

Facility Name	Degree of shortage group
D.C. Detention Facility	2
County—Dist Of Columbia	

PRIMARY CARE: Florida

County Listing

County Name	Degree of shortage group
*Baker	1
Bay	
Population Group: Medicaid Pop.—Bay Co.	4
Bradford	2
Brevard	
Population Group: Medicaid/Mlg. Pop.—Brevard Co.	1
Broward	
Population Group: Pov./Mlg. Pop.—Pompano	2
*Calhoun	4
*Charlotte	
Population Group: Medicaid/Mlg. Pop.—Charlotte Co.	1
*Citrus	
Population Group: Medicaid Pop.—Citrus Co.	1
Collier	
Service Area: Everglades	1
Service Area: Immokalee	1
*Columbia	
Population Group: Medicaid Pop.—Columbia Co.	1
Dade	
Service Area: Model Cities	1
Service Area: Southern Dade (Homestead)	2
Service Area: Wynwood	1
Population Group: Pov. Pop. Of S. Miami Beach	4
Facility: Doris Ison S. Dade Comm Hlth Ctr	1
Facility: Jackson Memorial Hosp.	1
*De Soto	
Population Group: Pov./Mlg. Pop.—Desoto Co.	1
*Dixie	2
Duval	
Population Group: Low Income Pop.—Duval	2
Escambia	
Service Area: Northwestern Escambia	1

PRIMARY CARE: Florida—Continued

County Listing

County Name	Degree of shortage group
*Franklin	2
Gadsden	2
*Gilchrist	2
*Glades	
Service Area: Glades/Hendry	2
*Hamilton	
Population Group: Medicaid Pop.—Hamilton Co.	4
*Hardee	
Population Group: Medicaid/Mlg. Pop.—Hardee Co.	1
*Hendry	
Service Area: Glades/Hendry	2
Hernando	3
*Highlands	
Population Group: Medicaid/MSFW Pop.—Highlands Co.	1
Hillsborough	
Service Area: East Tampa/Ybor City	1
Population Group: Pov./Mlg. Pop.—E. Hillsborough	1
*Holmes	2
*Indian River	
Population Group: Medicaid/Mlg. Pop.—Indian River Co.	1
*Jackson	3
*Jefferson	2
*Lafayette	2
*Lake	
Population Group: Medicaid/Mlg. Pop.—Lake Co.	1
Lee	
Population Group: Medicaid Mlg. Pop.—Lee Co.	1
*Levy	4
*Liberty	2
*Madison	3
Manatee	
Population Group: Medicaid/Mlg. Pop.—Manatee Co.	1
Marion	
Population Group: Medicaid/Mlg. Pop.—Marion Co.	1
Martin	
Service Area: Indiantown	2
Nassau	
Service Area: Callahan/Hilliard	2
*Okeechobee	
Population Group: Medicaid/Mlg. Pop.—Okeechobee Co.	2
Orange	
Population Group: Medicaid/Mlg. Pop.—Orange Co.	2
Osceola	4
Palm Beach	
Service Area: Belle Glade/Pahokee	1
Service Area: West Palm Beach	1
Pasco	
Population Group: Medicaid/Mlg. Pop.—Pasco Co.	4
Pinellas	
Population Group: Pov. Pop.—Inner St. Petersburg	2
Polk	
Service Area: Medicaid Pop.—Polk Co.	1
*Putnam	
Population Group: Medicaid Pop.—Putnam Co.	2
Santa Rosa	
Service Area: Northern Santa Rosa	3
Seminole	
Population Group: Medicaid/Mlg. Pop.—Seminole Co.	1
St Johns	
Population Group: Medicaid/Mlg. Pop.—St. Johns Co.	1

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PRIMARY CARE: Florida—Continued

County Listing

County Name	Degree of shortage group
St Lucie	
Population Group: Pov./Mig. Pop.—St. Lucie Co.	1
*Sumter	1
*Suwannee	2
*Taylor	
Population Group: Medicaid Pop.—Taylor Co.	1
*Union	2
Facility: R.M.C. Corr. Inst.	2
Volusia	
Population Group: Medicaid/Mig. Pop.—Volusia Co.	1
*Wakulla	3
*Walton	1
*Washington	
Population Group: Medicaid Pop.—Washington Co.	1

PRIMARY CARE: Florida

Service Area Listing

Service Area Name	Degree of shortage group
Belle Glade/Pahokee	1
County—Palm Beach	
Parts:	
C.T. 80-83	
Callahan/Hilliard	2
County—Nassau	
Parts:	
C.T. 504-505	
East Tampa/Ybor City	1
County—Hillsborough	
Parts:	
C.T. 10	
C.T. 18-19	
C.T. 30-44	
C.T. 49-51	
Everglades	1
County—Collier	
Parts:	
C.T. 111	
Glades/Hendry	2
County—Glades	
County—Hendry	
Immokalee	1
County—Collier	
Parts:	
Mig. Pops.	
C.T. 112-114	
Indiantown	2
County—Martin	
Parts:	
Indiantown CCD	
Medicaid Pop.—Polk Co.	1
County—Polk	
Parts:	
Medicaid Pop.	
Model Cities	1
County—Dade	
Parts:	
C.T. 9.05	
C.T. 10.01-10.04	
C.T. 14	
C.T. 15.01-15.02	
C.T. 17.01-17.02	
C.T. 18.01-18.03	
C.T. 19.01-19.02	
C.T. 20.01-20.02	
C.T. 22.01-22.02	
C.T. 23	
Northern Santa Rosa	3
County—Santa Rosa	
Parts:	
Jay (C.T. 102)	
Munson-Mcmillan (C.T. 101)	
Northwestern Escambia	1
County—Escambia	
Parts:	
Century	
Northwestern Escambia	
Southern Dade (Homestead)	2
County—Dade	
Parts:	
C.T. 103-105	
C.T. 106.02	
C.T. 107.01	
C.T. 108-114	
West Palm Beach	1
County—Palm Beach	
Parts:	
C.T. 21-26	
Wynwood	1
County—Dade	
Parts:	
C.T. 26	
C.T. 27.01-27.02	
C.T. 28	
C.T. 31	

PRIMARY CARE: Florida

Population Group Listing

Population Group	Degree of shortage group
Low Income Pop.—Duval	2
County—Duval	
Parts:	
C.T. 1-5	
C.T. 9-19	
C.T. 25-29	
C.T. 107-109	
C.T. 112-116	
C.T. 118	
C.T. 121	
Medicaid Mig. Pop.—Lee Co.	1
County—Lee	
Parts:	
Medicaid/Mig. Pop.	
Medicaid Pop.—Bay Co.	4
County—Bay	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Citrus Co.	1
County—Citrus	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Columbia Co.	1
County—Columbia	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Hamilton Co.	4
County—Hamilton	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Putnam Co.	2
County—Putnam	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Taylor Co.	1
County—Taylor	
Parts:	
Medicaid Pop.	
Medicaid Pop.—Washington Co.	1
County—Washington	
Parts:	
Medicaid Pop.	
Medicaid/Mig. Pop.—Brevard Co.	1
County—Brevard	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Charlotte Co.	1
County—Charlotte	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Hardee Co.	1
County—Hardee	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Indian River Co.	1
County—Indian River	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Lake Co.	1
County—Lake	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Manatee Co.	1
County—Manatee	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Marion Co.	1
County—Marion	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Okeechobee Co.	2
County—Okeechobee	
Parts:	
Medicaid	
Migrants	
Medicaid/Mig. Pop.—Orange Co.	2
County—Orange	
Parts:	
Medicaid Pop.	
Mig. Pop.	
Medicaid/Mig. Pop.—Pasco Co.	4
County—Pasco	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—St. Johns Co.	1
County—St Johns	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Seminole Co.	1
County—Seminole	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/Mig. Pop.—Volusia Co.	1
County—Volusia	
Parts:	
Medicaid/Mig. Pop.	
Medicaid/MSFW Pop.—Highlands Co.	1
County—Highlands	
Parts:	
Medicaid Pop.	
MSFW	
Pov. Pop.—Inner St. Petersburg	2
County—Pinellas	
Parts:	
C.T. 201.01	
C.T. 203.01	
C.T. 204-206	
C.T. 209.95	
C.T. 210.95	
C.T. 213-215	

PRIMARY CARE: Florida—Continued

Population Group Listing

Population Group	Degree of shortage group
C.T. 216.95	
C.T. 218.95	
C.T. 219.95	
C.T. 220	
C.T. 234-235	
Pov. Pop. Of S. Miami Beach	4
County—Dade	
Parts:	
C.T. 42-45	
Pov./Mig. Pop.—Desoto Co.	1
County—De Soto	
Parts:	
Pov./Mig. Pop.	
Pov./Mig. Pop.—E. Hillsborough	1
County—Hillsborough	
Parts:	
Mig.	
Mig.	
C.T. 121.01-121.02	
C.T. 122.01-122.02	
C.T. 123.01-123.02	
C.T. 124-132	
C.T. 133.01-133.03	
C.T. 134	
C.T. 135.01-135.02	
C.T. 136-138	
C.T. 139.01-139.03	
C.T. 140	
C.T. 141.01-141.02	
Pov./Mig. Pop.—Pompano	2
County—Broward	
Parts:	
C.T. 103.01-103.02	
C.T. 107	
C.T. 303-306	
C.T. 308.01	
Pov./Mig. Pop.—St. Lucie Co.	1
County—St Lucie	
Parts:	
Pov./Mig. Pop.	

PRIMARY CARE: Florida

Facility Listing

Facility Name	Degree of shortage group
Doris Ison S. Dade Comm Hlth Ctr	1
County—Dade	
Doris Ison Comm Hlth Ctr	
Jackson Memorial Hosp	1
County—Dade	
R.M.C. Corr. Inst.	2
County—Union 2	
Rmc Corr. Inst.	

PRIMARY CARE: Georgia

County Listing

County Name	Degree of shortage group
*Atkinson	4
*Baker	1
*Banks	2
*Bartow	4
*Berrien	
Population Group: Mig. Pop.—Berrien/Cook	1
*Brantley	2
*Brooks	4
*Bryan	
Service Area: Pembroke	1
*Burke	4
*Charlton	1
Chatham	
Population Group: Pov. Pop.—N.W. Savannah	2
*Chattooga	2
Cherokee	3
Clarke	
Population Group: Pov. Pop. Of The Athens NHC	1
*Colquitt	4
*Cook	
Population Group: Mig. Pop.—Berrien/Cook	1
*Crawford	2
Dade	2
De Kalb	
Service Area: South Decatur/Candler/Mcafee	1
*Dodge	4
*Dooly	3
Dougherty	
Service Area: East Albany	1
Service Area: South Albany	1
Effingham	3
*Elbert	3
*Emanuel	3
Fannin	
Service Area: Fannin/Suches	4
Fulton	
Service Area: Atlanta/Southside	1
Service Area: West Atlanta	1
Population Group: Pov. Pop.—Palmetto	1
*Gilmer	2
*Glascock	1
*Greene	2
*Hall	
Population Group: Med. Ind. Pop.—Hall Co.	1
*Hancock	2
Henry	3
*Irwin	2
Jackson	3
*Jasper	2
*Jeff Davis	
Population Group: Med. Ind. Pop.—Jeff Davis Co.	1
*Johnson	1
*Lamar	4
Lee	1
*Liberty	2
*Lincoln	3
*Long	1
*Lumpkin	4
*Macon	3
Madison	2
McDuffie	4
*Meriwether	2
*Mitchell	3
Montgomery	
Service Area: Montgomery/Wheeler	2
*Morgan	2
*Murray	4
*Oglethorpe	1
Paulding	4
*Pierce	4
*Pike	1
*Polk	2
*Putnam	1
*Schley	1
*Stewart	
Service Area: Stewart/Webster	1
*Sumter	
Population Group: Pov. Pop.—Sumter Co.	1
*Talbot	1
*Taliaferro	1
*Tattnall	2
*Taylor	4
*Telfair	4
*Terrell	3
*Tift	
Population Group: Mig. Pop.—Tift/Turner	1
*Towns	
Population Group: Pov. Pop.—Towns Co.	2
*Turner	
Population Group: Mig. Pop.—Tift/Turner	1
*Twiggs	1
*Union	
Service Area: Fannin/Suches	4
Walker	
Service Area: Lafayette	3
Walton	2
*Warren	2
*Webster	
Service Area: Stewart/Webster	1
Wheeler	
Service Area: Montgomery/Wheeler	2
*Whitfield	
Population Group: Pov. Pop.—Whitfield Co.	3
*Wilcox	1
*Wilkinson	2
*Worth	4

PRIMARY CARE: Georgia

Service Area Listing

Service Area Name	Degree of shortage group
Atlanta/Southside	1
County—Fulton	
Parts:	
C.T. 44	
C.T. 46.95	
C.T. 48	
C.T. 49.95	
C.T. 50	
C.T. 52-53	
C.T. 55.01-55.02	
C.T. 56-58	
C.T. 63-64	
C.T. 67	
C.T. 68.01-68.02	
C.T. 69-73	
East Albany	1
County—Dougherty	
Parts:	
C.T. 1-2	
C.T. 101-102	
C.T. 103.01-103.02	
C.T. 107-110	
Fannin/Suches	4

PRIMARY CARE: Georgia—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Fannin	
County—Union	
Parts:	
Suches CCD	
Lafayette	3
County—Walker	
Parts:	
Kensington CCD	
Lafayette CCD	
Rock Springs CCD	
Villanow CCD	
Montgomery/Wheeler	2
County—Montgomery	
County—Wheeler	
Pembroke	1
County—Bryan	
Parts:	
C.T. 201 (Pembroke CCD)	
South Albany	1
County—Dougherty	
Parts:	
C.T. 12 (Pembroke CCD)	
C.T. 14.01–14.02	
C.T. 18	
C.T. 106.01–106.02	
South Decatur/Candler/Mcafee	1
County—De Kalb	
Parts:	
C.T. 205–209	
C.T. 227	
C.T. 231.01	
C.T. 235.01–235.02	
C.T. 235–237	
Stewart/Webster	1
County—Stewart	
County—Webster	
West Atlanta	1
County—Fulton	
Parts:	
C.T. 8	
C.T. 22–28	
C.T. 36–41	
C.T. 42.95	
C.T. 45	
C.T. 60–62	
C.T. 66.20	
C.T. 78.04	
C.T. 80	
C.T. 81.01–81.02	
C.T. 82.01–82.02	
C.T. 83.01–83.02	
C.T. 84–85	
C.T. 86.01–86.02	
C.T. 87.01–87.02	

PRIMARY CARE: Georgia

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Hall Co.	1
County—Hall	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Jeff Davis Co.	1
County—Jeff Davis	
Mig. Pop.—Berrien/Cook	1
County—Berrien	
Parts:	
Mig. Pop.	

PRIMARY CARE: Georgia—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Cook	
Parts:	
Mig. Pop.	
Mig. Pop.—Tift/Turner	1
County—Tift	
Parts:	
Mig. Pop.	
County—Turner	
Parts:	
Mig. Pop.	
Pov. Pop.—N.W. Savannah	2
County—Chatham	
Parts:	
C.T. 1	
C.T. 3	
C.T. 6.01–6.02	
C.T. 8–13	
C.T. 15	
C.T. 17–26	
C.T. 32	
C.T. 33.01–33.02	
C.T. 36.01	
C.T. 37	
C.T. 45	
C.T. 105.04	
Pov. Pop.—Palmetto	1
County—Fulton	
Parts:	
C.T. 104	
C.T. 105.04–105.06	
Pov. Pop.—Sumter Co.	1
County—Sumter	
Parts:	
Pov. Pop.	
Pov. Pop.—Towns Co.	2
County—Towns	
Parts:	
Pov. Pop.	
Pov. Pop.—Whitfield Co.	3
County—Whitfield	
Parts:	
Pov. Pop.	
Pov. Pop. Of The Athens NHC	1
County—Clarke	
Parts:	
C.T. 1–7	
C.T. 9–10	

PRIMARY CARE: Hawaii

County Listing

County Name	Degree of shortage group
Honolulu	
Service Area: Kalihi Valley	1
Facility: Oahu Comm. Corr. Ctr.	2

PRIMARY CARE: Hawaii

Service Area Listing

Service Area Name	Degree of shortage group
Kalihi Valley	1
County—Honolulu	
Parts:	
C.T. 63–66	

PRIMARY CARE: Hawaii

Facility Listing

Facility Name	Degree of shortage group
Oahu Comm. Corr. Ctr.	2
County—Honolulu	

PRIMARY CARE: Idaho

County Listing

County Name	Degree of shortage group
Ada	
Facility: Idaho State Pen.	1
*Bannock	
Service Area: Lava Hot Springs	1
Service Area: Maled City/Downey	2
*Benewah	
Service Area: St. Maries	4
*Bingham	
Service Area: American Falls	1
Population Group: MSFW—E. Snake River Valley	1
*Boise	1
*Bonner	
Service Area: Priest River	4
*Butte	
Service Area: Arco/Mackay	2
*Camas	1
*Canyon	
Service Area: Nyese	1
Population Group: MSFW—S. Treasure Valley	1
*Caribou	2
*Cassia	
Service Area: Albion/Malta	1
Service Area: Oakley	1
Population Group: MSFW—E. Magic Valley	1
*Clark	1
*Custer	
Service Area: Arco/Mackay	2
Service Area: Challis	1
Service Area: Stanley	1
*Elmore	
Service Area: Glenns Ferry	1
*Franklin	3
*Fremont	3
*Gem	4
Population Group: MSFW—N. Treasure Valley (Id/Ut)	1
*Gooding	2
Population Group: MSFW—W. Magic Valley	1
*Jefferson	
Service Area: Mud Lake	1
Population Group: MSFW—E. Snake River Valley	1
*Jerome	
Population Group: MSFW—W. Magic Valley	1

PRIMARY CARE: Idaho—Continued

County Listing

County Name	Degree of shortage group
*Kootenai	
Service Area: Spirit Lake/Athol	2
Service Area: St. Maries	4
*Lewis	4
*Lincoln	1
*Minidoka	
Population Group: MSFW—E. Magic Valley	1
Oneida	
Service Area: Maled City/Downey	2
*Owyhee	
Service Area: Grand View/Bruneau	1
Service Area: N.W. Owyhee	1
Population Group: MSFW—S. Treasure Valley	1
*Payette	
Service Area: New Plymouth	1
Population Group: MSFW—N. Treasure Valley (Id/Ut)	1
*Power	
Service Area: American Falls	1
Population Group: MSFW—E. Magic Valley	1
*Teton	1
*Twin Falls	
Service Area: Buhl	2
Population Group: MSFW—W. Magic Valley	1
*Washington	4
Population Group: MSFW—N. Treasure Valley (Id/Ut)	1

PRIMARY CARE: Idaho

Service Area Listing

Service Area Name	Degree of shortage group
Albion/Malta	1
County—Cassia	
Parts:	
*Albion Div.	
American Falls	1
County—Bingham	
Parts:	
*Aberdeen Div.	
County—Power	
Parts:	
*American Falls Div.	
*Rockland Div.	
Arco/Mackay	2
County—Butte	
County—Custer	
Parts:	
*Mackay Div.	
Buhl	2
County—Twin Falls	
Parts:	
*Buhl Div.	
*W. Salmon Falls Div.	
Challis	1
County—Custer	
Parts:	
*Challis Div.	
Glenns Ferry	1
County—Elmore	
Parts:	
*Glenns Ferry Div.	
Grand View/Bruneau	1

PRIMARY CARE: Idaho—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Owyhee	
Parts:	
*Bruneau CCD	
*Grand View CCD	
Lava Hot Springs	1
County—Bannock	
Parts:	
E.D. 1137–1142 (S.Bannock CCD)	
E.D. 1144–1149 (S.Bannock CCD)	
E.D. 1152–1159 (S.Bannock CCD)	
Maled City/Downey	2
County—Bannock	
Parts:	
E.D. 1143 (S.Bannock CCD)	
E.D. 1150–1151 (S.Bannock CCD)	
E.D. 1157 (S.Bannock CCD)	
County—Oneida	
Mud Lake	1
County—Jefferson	
Parts:	
*Hamer Div.	
N.W. Owyhee	1
County—Owyhee	
Parts:	
*Homedale Div.	
*Marsing Div.	
*Murphy Div.	
New Plymouth	1
County—Payette	
Parts:	
*New Plymouth Div.	
Nyese	1
County—Canyon	
Parts:	
*Parma Div.	
*Wilder Div.	
Oakley	1
County—Cassia	
Parts:	
*Oakley Div.	
Priest River	4
County—Bonner	
Parts:	
Priest River Div.	
E.D. 555.03	
Spirit Lake/Athol	2
County—Kootenai	
Parts:	
Spirit Lake-Athol CCD	
St. Maries	4
County—Benewah	
County—Kootenai	
Parts:	
*Harrison Div. (S. 1/2)	
*Worley Div.	
Stanley	1
County—Custer	
Parts:	
*Stanley Div.	

PRIMARY CARE: Idaho

Population Group Listing

Population Group	Degree of shortage group
MSFW—E. Magic Valley	1
County—Cassia	
Parts:	
MSFW Pop.	
County—Minidoka	
Parts:	
MSFW Pop.	
County—Power	
Parts:	
MSFW Pop.	
MSFW—E. Snake River Valley	1
County—Bingham	
Parts:	
MSFW Pop.	
County—Jefferson	
Parts:	
MSFW Pop.	
MSFW—N. Treasure Valley (Id/Ut)	1
County—Gem 4	
Parts:	
MSFW	
County—Payette	
Parts:	
MSFW	
County—Washington 4	
Parts:	
MSFW	
MSFW—S. Treasure Valley	1
County—Canyon	
Parts:	
MSFW Pop.	
County—Owyhee	
Parts:	
MSFW Pop.	
MSFW—W. Magic Valley	1
County—Gooding 2	
Parts:	
MSFW Pop.	
County—Jerome	
Parts:	
MSFW Pop.	
County—Twin Falls	
Parts:	
MSFW Pop.	

PRIMARY CARE: Idaho

Facility Listing

Facility Name	Degree of shortage group
Idaho State Pen.	1
County—Ada	

PRIMARY CARE: Illinois

County Listing

County Name	Degree of shortage group
Alexander	
Service Area: Cairo	1
*Brown	2
*Carroll	4
*Cass	2

PRIMARY CARE: Illinois—Continued

County Listing

County Name	Degree of shortage group
Champaign	
Service Area: Northend Champaign-Urbana	1
*Clay	3
Cook	
Service Area: Austin/Garfield	1
Service Area: Cabrini Green/Near North Side	2
Service Area: Chatham (Near Southeast)	1
Service Area: Douglas/Armour Square/Near South Side	1
Service Area: Humboldt Park/West Town	2
Service Area: New City/W. Englewood/Englewood	1
Service Area: Riverdale	1
Service Area: Roseland	1
Service Area: S. Lawndale/Lower W. Side	2
Service Area: South Chicago	3
Service Area: South Deering	1
Service Area: South Shore	1
Service Area: Southeast Chicago	1
Service Area: Uptown	4
Facility: Cook Co. Dept. Of Corr. Comp.	2
Facility: Fantus Clinic-Cook Co Hosp	1
*Cumberland	3
*Edwards	4
*Fayette	2
*Franklin	4
*Gallatin	4
*Hamilton	3
*Henderson	2
*Jackson	
Population Group: Med. Ind. Pop.—Jackson Co.	1
*Jasper	3
*Jo Daviess	
Service Area: Galena/Hanover	3
Service Area: Stockton/Warren	2
*Johnson	3
Kankakee	
Service Area: Pembroke	1
Macon	
Service Area: Decatur Inner City	2
*Mason	4
*Massac	4
*Mercer	3
*Pope	1
Pulaski	
Service Area: Cairo	1
*Scott	2
St Clair	
Service Area: East St. Louis	1
*Union	2
*Wayne	2
Will	
Service Area: Eastside Joliet	1
Facility: Joliet Corr. I.	3
Winnebago	
Service Area: Rockford Inner City	1

PRIMARY CARE: Illinois

Service Area Listing

Service Area Name	Degree of shortage group
Austin/Garfield	1
County—Cook	
Parts:	
C.T. 2508-2510	
C.T. 2514-2523	
C.T. 2601-2610	
C.T. 2701-2719	
C.T. 2901-2928	
C.T. 2636-2643	
C.T. 2943	
C.T. 2901-2927	
Cabrini Green/Near North Side	2
County—Cook	
Parts:	
C.T. 803-810	
C.T. 817-819	
Cairo	1
County—Alexander	
County—Pulaski	
Chatham (Near Southeast)	1
County—Cook	
Parts:	
C.T. 4401-4409	
C.T. 4501-4503	
C.T. 4701	
C.T. 6001-6015	
C.T. 7101-7115	
Decatur Inner City	2
County—Macon	
Parts:	
C.T. 1	
C.T. 6-9	
Douglas/Armour Square/Near South Side	1
County—Cook	
Parts:	
C.T. 3301-3305	
C.T. 3401-3409	
C.T. 3501-3515	
East St. Louis	1
County—St Clair	
Parts:	
C.T. 4007	
C.T. 5004-5006	
C.T. 5008-5014	
C.T. 5021-5022	
C.T. 5024.01	
C.T. 5024.03-5024.04	
C.T. 5025	
C.T. 5027-5030	
C.T. 5041	
C.T. 5042.01-5042.02	
Eastside Joliet	1
County—Will	
Parts:	
C.T. 8612-8613	
C.T. 8620-8621	
C.T. 8624-8625	
Galena/Hanover	3
County—Jo Daviess	
Parts:	
*Council Hill Twp.	
*East Galena Twp.	
*Elizabeth Twp.	
*Guilford Twp.	
*Hanover Twp.	
*Rawlins Twp.	
*Rice Twp.	
*Scales Mound Twp.	
*Vinegar Hill Twp.	
*West Galena Twp.	
Humboldt Park/West Town	2
County—Cook	
Parts:	
C.T. 2201-2316	
C.T. 2316-2317 (West Town)	

PRIMARY CARE: Illinois—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 2401 (West Town)	
C.T. 2401-2436	
New City/W. Englewood/Englewood	1
County—Cook	
Parts:	
C.T. 6101-6122	
C.T. 6701-6720	
C.T. 6801-6814	
Northend Champaign-Urbana	1
County—Champaign	
Parts:	
C.T. 2	
C.T. 7	
C.T. 53	
Pembroke	1
County—Kankakee	
Parts:	
Pembroke Twp.	
St. Anne Twp. (E 1/3)	
Riverdale	1
County—Cook	
Parts:	
C.T. 5401	
Rockford Inner City	1
County—Winnebago	
Parts:	
C.T. 10	
C.T. 21	
C.T. 24-29	
Roseland	1
County—Cook	
Parts:	
C.T. 4901-4914	
S. Lawndale/Lower W. Side	2
County—Cook	
Parts:	
C.T. 3001-3020	
C.T. 3101-3115	
South Chicago	3
County—Cook	
Parts:	
C.T. 4601-4610	
South Deering	1
County—Cook	
Parts:	
C.T. 5101-5104	
C.T. 5104.99-5105.00	
South Shore	1
County—Cook	
Parts:	
C.T. 4301-4314	
Southeast Chicago	1
County—Cook	
Parts:	
C.T. 3601-3605	
C.T. 3701-3704	
C.T. 3801-3820	
C.T. 3901-3903	
C.T. 4001-4008	
Stockton/Warren	2
County—Jo Daviess	
Parts:	
*Apple River Twp.	
*Berreman Twp.	
*Derinda Twp.	
*Nora Twp.	
*Pleasant Valley Twp.	
*Rush Twp.	
*Stockton Twp.	
*Thompson Twp.	
*Warda Grove Twp.	
*Warren Twp.	
*Woodbine Twp.	
Uptown	4

PRIMARY CARE: Illinois—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Cook	
Parts:	
C.T. 310-313	
C.T. 315-321	

PRIMARY CARE: Illinois

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Jackson Co.	1
County—Jackson	
Parts:	
Med. Ind. Pop.	
Medicaid—Quad-Cities (Ia/Il)	0
Parts:	
Medicaid-Eligible	

PRIMARY CARE: Illinois

Facility Listing

Facility Name	Degree of shortage group
Cook Co. Dept. Of Corr. Comp.	2
County—Cook	
Dept. Of Corr. Cmp.	
Fantus Clinic-Cook Co Hosp	1
County—Cook	
Joliet Corr. I.	3
County—Will	

PRIMARY CARE: Indiana

County Listing

County Name	Degree of shortage group
*Adams	4
*Brown	3
*Crawford	
Service Area: English	4
Service Area: Fredricksburg	3
*Franklin	2
*Fulton	4
Harrison	
Service Area: Elizabeth	1
Service Area: Fredricksburg	3
Hendricks	
Facility: Indiana Youth/Diagnostic Center	1
Howard	
Population Group: Med. Ind. Pop.—Kokomo	1
*Jennings	3
*Knox	
Service Area: Bicknell	2
*La Porte	
Facility: Westville Corr. C.	2
Lake	
Service Area: Gary	3

PRIMARY CARE: Indiana—Continued

County Listing

County Name	Degree of shortage group
Marion	
Service Area: Highland-Brookside (Indianapolis)	1
Service Area: Near North Side (Indianapolis)	1
Service Area: South Central Indianapolis	1
*Ohio	2
*Owen	2
*Perry	4
Facility: Branchville Training C.	2
*Pike	2
*Putnam	
Facility: Indiana State Farm	3
*Ripley	
Service Area: Osgood/Versailles	2
*Scott	3
*Spencer	2
St Joseph	
Service Area: Southwest South Bend	1
*Starke	4
*Vermillion	
Service Area: Northern Vermillion	1
*Warren	3
*Washington	
Service Area: Fredricksburg	3
Service Area: Salem	3

PRIMARY CARE: Indiana

Service Area Listing

Service Area Name	Degree of shortage group
Bicknell	2
County—Knox	
Parts:	
Vigo Twp.	
Washington Twp. (E. 1/2)	
Widner Twp.	
Elizabeth	1
County—Harrison	
Parts:	
Boone Twp.	
Posey Twp.	
Taylor Twp.	
English	4
County—Crawford	
Parts:	
*Boone Twp.	
*Jennings Twp.	
*Johnson Twp.	
*Ohio Twp.	
*Paloka Twp.	
*Sterling Twp.	
*Union Twp	
Fredricksburg	3
County—Crawford	
Parts:	
*Liberty Twp.	
*Whiskey Run Twp.	
County—Harrison	
Parts:	
Blue River Twp.	
Morgan Twp.	
County—Washington	
Parts:	
*Posey Twp.	
Gary	3

PRIMARY CARE: Indiana—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Lake	
Parts:	
C.T. 103-120	
C.T. 123-129	
C.T. 411-412	
Highland-Brookside (Indianapolis)	1
County—Marion	
Parts:	
C.T. 3529-3537	
C.T. 3544-3545	
C.T. 3547-3561	
Near North Side (Indianapolis)	1
County—Marion	
Parts:	
C.T. 3517	
C.T. 3519	
C.T. 3521	
C.T. 3529	
C.T. 3531-3532	
Northern Vermillion	1
County—Vermillion	
Parts:	
Eugene Twp.	
Highland Twp.	
Vermillion Twp.	
Osgood/Versailles	2
County—Ripley	
Parts:	
Brown Twp.	
Center Twp.	
Johnson Twp.	
Otter Creek Twp.	
Shelby Twp.	
Washington Twp.	
Salem	3
County—Washington	
Parts:	
*Brown Twp.	
*Franklin Twp.	
*Gibson Twp.	
*Howard Twp.	
*Jackson Twp.	
*Jefferson Twp.	
*Madison Twp.	
*Monroe Twp.	
*Pierce Twp.	
*Polk Twp.	
*Vernon Twp.	
*Washington Twp.	
South Central Indianapolis	1
County—Marion	
Parts:	
C.T. 3556-3557	
C.T. 3558	
C.T. 3562	
C.T. 3569-3572	
C.T. 3578-3580	
Southwest South Bend	1
County—St Joseph	
Parts:	
C.T. 6	
C.T. 17-24	
C.T. 27	
C.T. 29-30	

PRIMARY CARE: Indiana

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Kokomo County—Howard	1

PRIMARY CARE: Indiana

Facility Listing

Facility Name	Degree of shortage group
Branchville Training C. County—Perry 4	2
Indiana State Farm County—Putnam	3
Indiana Youth/Diagnostic Center County—Hendricks	1
Westville Corr. C. County—La Porte	2

PRIMARY CARE: Iowa

County Listing

County Name	Degree of shortage group
*Adair Service Area: Redfield	2
*Allamakee Service Area: Caledonia/Spring Grove (Iowa/Minn)	3
*Benton Service Area: North Benton	3
Black Hawk Population Group: Medicaid Pop.—Blackhawk Co.	4
*Boone Service Area: Dayton/Gowrie	2
Bremer Service Area: Sumner/Tripoli	2
*Buchanan	4
*Butler	2
*Calhoun Service Area: Dayton/Gowrie	2
*Cedar Service Area: Lowden/Lost Nation	2
*Cherokee Service Area: Kingsley/Anthon/Mapleton	4
*Clinton Service Area: Lowden/Lost Nation	2
Dallas Service Area: Redfield	2
*Davis	2
*Delaware Service Area: Central City	2
*Fayette Service Area: South Fayette	4
*Greene Service Area: Dayton/Gowrie	2
*Grundy Service Area: Grundy	3
*Guthrie Service Area: Redfield	2
*Hamilton Service Area: Dayton/Gowrie Service Area: Hubbard/Eldora	2 3
*Hardin Service Area: Hubbard/Eldora	3

PRIMARY CARE: Iowa—Continued

County Listing

County Name	Degree of shortage group
*Harrison Service Area: Onawa (Iowa/Neb)	2
*Jackson Service Area: Lowden/Lost Nation	2
*Jasper Service Area: Monroe	1
*Jones Service Area: Lowden/Lost Nation	2
*Kossuth Service Area: North Kossuth	2
Linn Service Area: Central City	2
*Louisa Service Area: Columbus/Wapello	4
*Lucas	4
*Lyon Service Area: Rock Rapids	2
*Madison Service Area: Redfield	2
*Marion Service Area: Monroe	1
*Mills	2
*Monona Service Area: Kingsley/Anthon/Mapleton Service Area: Onawa (Iowa/Neb)	4 2
*Muscatine Service Area: Columbus/Wapello	4
*Plymouth Service Area: Kingsley/Anthon/Mapleton Service Area: Le Mars/Akron	4 3
Pottawattamie Service Area: Oakland	2
Scott Service Area: Lowden/Lost Nation Population Group: Medicaid—Quad-Cities (Ia/Il)	2 4
*Story Service Area: Hubbard/Eldora	3
*Tama	3
*Taylor	2
*Webster Service Area: Dayton/Gowrie	2
*Winneshiek Service Area: Caledonia/Spring Grove (Iowa/Minn)	3
Woodbury Service Area: Kingsley/Anthon/Mapleton Service Area: Onawa (Iowa/Neb)	4 2

PRIMARY CARE: Iowa

Service Area Listing

Service Area Name	Degree of shortage group
Caledonia/Spring Grove (Iowa/Minn) County—Allamakee Parts: *Waterloo Twp. County—Winneshiek Parts: *Highland Twp.	3
Central City County—Delaware Parts: Adams Twp. Hazel Green Twp.	2

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Linn Parts: Boulder Twp. Buffalo Twp. Jackson Twp. Maine Twp. Spring Grove Twp.	
Columbus/Wapello	4
County—Louisa Parts: Columbus City Twp. Concord Twp. Elm Grove Twp. Grandview Twp. Jefferson Twp. Marshall Twp. Oakland Twp. Port Louisa Twp. Union Twp. Wapello Twp.	
County—Muscatine Parts: Cedar Twp. Orono Twp.	
Dayton/Gowrie	2
County—Boone Parts: Dodge Twp. Grant Twp. Pilot Mound Twp.	
County—Calhoun Parts: Reading Twp.	
County—Greene Parts: Dawson Twp. Paton Twp.	
County—Hamilton Parts: Marion Twp. Webster Twp.	
County—Webster Parts: Burnside Twp Clay Twp. Dayton Twp. Gowrie Twp. Hardin Twp. Lost Grove Twp. Roland Twp. Sumner Twp. Webster Twp. Yell Twp.	
Grundy	3
County—Grundy Parts: Beaver Twp. Blackhawk Twp. Coffax Twp. Grant Twp. Lincoln Twp. Melrose Twp. Palmero Twp. Pleasant Valley Twp. Shiloh Twp. Washington Twp.	
Hubbard/Eldora	3
County—Hamilton Parts: Ellsworth Twp. Lincoln Twp. Lyon Twp. Scott Twp.	
County—Hardin Parts: Concord Twp.	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Eldora Twp. Eldora City Grant Twp. Pleasant Twp Providence Twp. Sherman Twp. Tipton Twp. Union Twp. (W. 1/2)	
County—Story Parts: Lincoln Twp. Warren Twp. (E. 1/2)	
Kingsley/Anthon/Mapleton	4
County—Cherokee Parts: Grand Meadow Twp.	
County—Monona Parts: Cooper Twp Grant Twp. Maple Twp.	
County—Plymouth Parts: Elkhorn Twp. Garfield Twp.	
County—Woodbury Parts: Arlington Twp. Banner Twp. Floyd Twp. Grange Twp. Grant Twp. Kedron Twp. Liston Twp. Little Sioux Twp. Miller Twp. Morgan Twp. Moville Twp. Oto Twp. Reck Twp. Rutland Twp. Union Twp. West Fork Twp. Willow Twp. (N 1/2) Wolf Creek Twp.	
Le Mars/Akron	3
County—Plymouth Parts: Aurelia Twp. Elgin Twp. Fredonia Twp. Grant Twp. Henry Twp. Johnson Twp. Liberty Twp. Marion Twp. Meadow Twp. Plymouth Twp. Portland Twp. Preston Twp. Remsen Twp. Sioux Twp. Stanton Twp. Union Twp. Washington Twp. Westfield Twp.	
Lowden/Lost Nation	2
County—Cedar Parts: Inland Twp. Massillon Twp. Springfield Twp.	
County—Clinton Parts: Liberty Twp. Sharon Twp.	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Spring Rock Twp.	
County—Jackson Parts: Monmouth Twp.	
County—Jones Parts: Oxford Twp. Wyoming Twp.	
County—Scott Parts: Liberty Twp.	
Monroe	1
County—Jasper Parts: Fairview Twp. Palo Alto Twp.	
County—Marion Parts: Red Rock Twp. Summit Twp.	
North Benton	3
County—Benton Parts: Benton Twp. Big Grove Twp. Bruce Twp. Canton Twp. Cedar Twp. Eden Twp. Harrison Twp. Homer Twp. Jackson Twp. Monroe Twp. Polk Twp. Shellsburg Twp. Taylor Twp. Vinton Twp.	
North Kossuth	2
County—Kossuth Parts: Buffalo Twp. Burt Twp. Eagle Twp. Fenton Twp. German Twp. Grant Twp. Greenwood Twp. Harrison Twp. Hebron Twp. Ledyard Twp. Lincoln Twp. Portland Twp. Ramsey Twp. Seneca Twp. Springfield Twp. Swea Twp.	
Oakland	2
County—Pottawattamie Parts: Belknap Twp. Carson Twp. Center Twp. Grove Twp. James Twp. Knox Twp. Layton Twp. Lincoln Twp. Macedonia Twp. Pleasant Twp. Silver Creek Twp. Valley Twp. Washington Twp. Waveland Twp. Wright Twp.	
Onawa (Iowa/Neb)	2

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Harrison Parts: Jackson Twp. Little Sioux Twp.	
County—Monona Parts: Ashton Twp. Belvidere Twp. Center Twp. Fairview Twp. Franklin Twp. Jordan Twp. Kennebec Twp. Lake Twp. Lincoln Twp. Onawa City Sherman Twp. Sioux Twp. Soldier Twp. Spring Valley Twp. St. Clair Twp. West Fork Twp. Willow Twp.	
County—Woodbury Parts: Lakeport Twp. Sloan Twp. Willow Twp.	
Redfield	2
County—Adair Parts: Lincoln Twp.	
County—Dallas Parts: Linn Twp. Union Twp.	
County—Guthrie Parts: Penn Twp. Stuart Twp.	
County—Madison Parts: Madison Twp. Penn Twp.	
Rock Rapids	2
County—Lyon Parts: Allison Twp. Cleveland Twp. Dale Twp. Dixon Twp. Elgin Twp. Garfield Twp. Grant Twp. Larchwood Twp. Liberal Twp. Midland Twp. Riverside Twp. Rock Twp. Sioux Twp. Wheeler Twp.	
South Fayette	4
County—Fayette Parts: Fairfield Twp. Fremont Twp. Harlan Twp. Jefferson Twp. Otter Twp. Putnam Twp. Scott Twp. Smithfield Twp.	
Sumner/Tripoli	2
County—Bremer Parts: Dayton Twp.	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Frederika Twp.	
Fremont Twp.	
Le Roy Twp.	
Sumner City	
Sumner-2 Twp.	

PRIMARY CARE: Iowa

Population Group Listing

Population Group	Degree of shortage group
Medicaid—Quad-Cities (Ia/Il)	4
County—Scott	
Parts:	
Medicaid-Eligible	
Medicaid Pop.—Blackhawk Co.	4
County—Black Hawk	
Parts:	
Medicaid Eligible	

PRIMARY CARE: Kansas

County Listing

County Name	Degree of shortage group
*Coffey	2
*Dickinson	
Service Area: Herington	2
*Ellsworth	4
*Geary	4
*Gove	
Service Area: Oakley	3
*Jackson	3
*Kearny	2
Leavenworth	
Population Group: Med. Ind. Pop.—Lansing	3
*Lincoln	3
*Linn	3
*Logan	
Service Area: Oakley	3
*Marion	
Service Area: Herington	2
*Marshall	
Service Area: Centralia	2
*Morris	
Service Area: Herington	2
*Nemaha	
Service Area: Centralia	2
*Osage	3
*Rawlins	3
Sedgwick	
Population Group: Medicaid—N.E. Wichita	4
*Sheridan	
Service Area: Oakley	3
*Thomas	
Service Area: Oakley	3
*Wabaunsee	3
*Washington	4
*Woodson	2

PRIMARY CARE: Kansas

Service Area Listing

Service Area Name	Degree of shortage group
Centralia	2
County—Marshall	
Parts:	
*Cleveland Twp.	
*Lincoln Twp.	
*Noble Twp.	
County—Nemaha	
Parts:	
*Center Twp.	
*Harrison Twp.	
*Home Twp.	
*Illinois Twp.	
*Nauchatel Twp.	
*Red Vermillion Twp.	
*Reilly Twp.	
*Wetmore Twp.	
Herington	2
County—Dickinson	
Parts:	
*Herington City	
*Hope Twp.	
*Liberty Twp.	
*Lyon Twp.	
*Ridge Twp.	
*Union Twp.	
County—Marion	
Parts:	
*Blaine	
*Clear Creek	
*Colfax	
*Lost Spring	
County—Morris	
Parts:	
*Highland Twp.	
*Overland Twp.	
*Township 4 (parkerville)	
*Township 5 (white City)	
*Township 6 (latimer)	
*Township 7	
*Township 8	
*Township 9 (wilsey)	
Oakley	3
County—Gove	
Parts:	
Gaeland Twp.	
Grinnell Twp.	
County—Logan	
Parts:	
Elkader Twp.	
Logansport Twp.	
McAllaster Twp.	
Monument Twp.	
Oakley Twp.	
Russell Springs Twp.	
Western Twp.	
Winona Twp.	
County—Sheridan	
Parts:	
Solomon Twp.	
County—Thomas	
Parts:	
South Randall Twp.	
Summers Twp.	

PRIMARY CARE: Kansas

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Lansing	3
County—Leavenworth	
Parts:	
Lansing City	
Leavenworth City	
Medicaid—N.E. Wichita	4
County—Sedgwick	
Parts:	
C.T. 6–9	
C.T. 18	
C.T. 25–26	
C.T. 41–42	
C.T. 76	

PRIMARY CARE: Kentucky

County Listing

County Name	Degree of shortage group
*Adair	4
*Bell	
Service Area: Southeast Whitley	1
Service Area: Western Harlan	1
*Breathitt	4
*Butler	3
Campbell	
Service Area: Pov. Pop.—Inner City Newport	1
*Carroll	4
Carter	1
*Casey	4
*Clay	
Service Area: Manchester	1
*Clinton	2
*Elliott	4
*Estill	4
Fayette	
Population Group: Pov. Pop.—N. Central Lexington	4
*Floyd	
Service Area: Mud Creek	1
*Gallatin	2
*Hancock	2
*Harlan	
Service Area: Cumberland	4
Service Area: Western Harlan	1
*Henry	2
*Jackson	2
Jefferson	
Service Area: West End (Louisville)	1
*Knott	2
*Knox	4
*Laurel	4
*Letcher	
Service Area: Western Letcher	1
*Lewis	
Service Area: Vanceburg	3
*Lincoln	
Service Area: Crab Orchard	1
*Magoffin	1
*McLean	4
*Meade	2
*Menifee	2
Oldham	
Facility: Ky. State Ref.	3
*Owen	4
*Owsley	1
*Perry	
Service Area: Buckhorn	1
Service Area: Western Letcher	1

PRIMARY CARE: Kentucky—Continued

County Listing

County Name	Degree of shortage group
*Pike	
Service Area: Mud Creek	1
Service Area: Phelps	1
*Powell	2
*Robertson	1
*Russell	3
*Spencer	1
*Whitley	
Service Area: Southeast Whitley	1
*Wolfe	4

PRIMARY CARE: Kentucky

Service Area Listing

Service Area Name	Degree of shortage group
Buckhorn	3
County—Perry	
Parts:	
*Buckhorn CCD	
*Krypton CCD (E.D. 302)	
Crab Orchard	3
County—Lincoln	
Parts:	
*Crab Orchard CCD	4
Cumberland	
County—Harlan	
Parts:	
Cumberland CCD	1
Manchester	
County—Clay	
Parts:	
*Big Creek CCD	
*Borning Springs CCD	
*Manchester CCD	
*Oneida CCD	
*Sibert-Hima CCD	
Mud Creek	1
County—Floyd	
Parts:	
*McDowell CCD	
*Mud Creek CCD	
*Wheelwright-Weeksbury-CCD	
County—Pike	
Parts:	
*Long Fork CCD	
Phelps	1
County—Pike	
Parts:	
*Feds Creek CCD	
*Phelps CCD	
Pov. Pop.—Inner City Newport	1
County—Campbell	
Parts:	
C.T. 501–506	
Southeast Whitley	1
County—Bell	
Parts:	
*Pruden-Fonde CCD	
County—Whitley	
Parts:	
*Pearl CCD	
*Saxton CCD	
*Siller CCD	
Vanceburg	3
County—Lewis	
Parts:	
*Garrison CCD	
*Laurel/Peterville CCD	
*Vanceburg CCD	

PRIMARY CARE: Kentucky—Continued

Service Area Listing

Service Area Name	Degree of shortage group
West End (Louisville)	1
County—Jefferson	
Parts:	
C.T. 1–30	
C.T. 32–35	
Western Harlan	1
County—Bell	
Parts:	
*Tejay CCD	
County—Harlan	
Parts:	
*Alva CCD	
Western Letcher	1
County—Letcher	
Parts:	
*Blackey CCD	
County—Perry	
Parts:	
*Daisy CCD	

PRIMARY CARE: Kentucky

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—N. Central Lexington	4
County—Fayette	
Parts:	
C.T. 1–5	
C.T. 8–14	
C.T. 18–19	
C.T. 36.01	

PRIMARY CARE: Kentucky

Facility Listing

Facility Name	Degree of shortage group
Ky. State Ref.	3
County—Oldham	

PRIMARY CARE: Louisiana

Parish Listing

Parish Name	Degree of shortage group
*Allen	4
Ascension	4
*Assumption	2
*Avoyelles	3
*Beauregard	
Service Area: Dequincy	2
*Bienville	4
Caddo	
Population Group: Pov. Pop.—Central Shreveport	1
Facility: Louisiana State Univ Med Ctr	1
Calcasieu	
Service Area: Dequincy	2
Service Area: North Lake Charles	1
*Caldwell	3
*Cameron	2
*Catahoula	2
*Claiborne	3
*De Soto	1
*East Carroll	3
*East Feliciana	2
*Franklin	2
*Grant	1
*Iberia	
Population Group: Med. Ind. Pop.—Iberia Par.	1
*Jackson	3
Jefferson	
Service Area: LaFitte	2
Service Area: S.E. Lafourche	3
Lafourche	
Service Area: S.E. Lafourche	3
*Lasalle	4
*Lincoln	3
Livingston	2
*Madison	3
*Morehouse	4
*Natchitoches	4
Orleans	
Service Area: Desire/Florida	1
Service Area: Lower 9Th Ward	1
Service Area: St. Bernard	3
Population Group: Pov. Pop.—Irish Channel	1
Facility: New Orleans Charity Hosp.	1
Ouachita	
Population Group: Pov. Pop.—Ouachita Par.	4
Facility: E.A. Conway Mem Hosp.	4
*Plaquemines	4
*Pointe Coupee	4
Rapides	
Population Group: Med. Ind. Pop.—Rapides Par.	2
*Sabine	2
*St Helena	1
*St James	
Service Area: Vacherie	3
St John The Baptist	
Service Area: Vacherie	1
*St Landry	
Service Area: Palmetto	1
St Martin	1
*St Mary	
Service Area: Teche	3
*Tangipahoa	
Population Group: Med. Ind. Pop.—Tangipahoa Par.	1
*Tensas	1
Terrebonne	
Service Area: Dulac	1
*Union	3
*Vernon	1
*Washington	4
*Webster	2
*West Carroll	1
*Winn	1

PRIMARY CARE: Louisiana

Service Area Listing

Service Area Name	Degree of shortage group
Dequincy	2
Parish—Beauregard	
Parts:	
*Ward 1	
*Ward 5-6	
Parish—Calcasieu	
Parts:	
Ward 5-6	
Desire/Florida	1
Parish—Orleans	
Parts:	
C.T. 11 (N. Of Derbigny St.)	
C.T. 14.01-14.02 (N. Of Derbigny St.)	
C.T. 15-16	
C.T. 17.03	
C.T. 17.14	
Dulac	1
Parish—Terrebonne	
Parts:	
Ward 4 (excluding Houma)	
Ward 6-7 (excluding Houma)	
Lafitte	2
Parish—Jefferson	
Parts:	
Ward 6	
Ward 11	
Lower 9Th Ward	1
Parish—Orleans	
Parts:	
C.T. 7.01-7.02	
C.T. 8	
C.T. 9.01-9.04	
North Lake Charles	1
Parish—Calcasieu	
Parts:	
C.T. 2-4	
C.T. 14-15	
Palmetto	1
Parish—St Landry	
Parts:	
*Ward 4	
S.E. Labourche	3
Parish—Jefferson	
Parts:	
Ward 11	
Parish—Labourche	
Parts:	
S.E. Ward 10	
St. Bernard	1
Parish—Orleans	
Parts:	
C.T. 33.05-33.06	
Teche	3
Parish—St Mary	
Parts:	
Ward 1-4	
Ward 7	
Ward 10	
Vacherie	1
Parish—St James	
Parts:	
Ward 5-7	
Parish—St John The Baptist	
Parts:	
Ward 1-3	

PRIMARY CARE: Louisiana

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Iberia Par.	1
Parish—Iberia	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Rapides Par.	2
Parish—Rapidas	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Tangipahoa Par.	4
Parish—Tangipahoa	
Parts:	
Med. Ind. Pop.	
Pov. Pop.—Central Shreveport	1
Parish—Caddo	
Parts:	
C.T. 201-204	
C.T. 206-213	
C.T. 218-220	
Pov. Pop.—Irish Channel	1
Parish—Orleans	
Parts:	
C.T. 77-78	
C.T. 81.01-81.02	
C.T. 83	
C.T. 87-88	
Pov. Pop.—Ouachita Par.	4
Parish—Ouachita	
Parts:	
Pov. Pop.	

PRIMARY CARE: Louisiana

Facility Listing

Facility Name	Degree of shortage group
E.A. Conway Mem Hosp.	4
Parish—Ouachita	
Louisiana State Univ Med Ctr	1
Parish—Caddo	
New Orleans Charity Hosp.	1
Parish—Orleans	

PRIMARY CARE: Maine

County Listing

County Name	Degree of shortage group
Androscoggin	
Service Area: Jay/Livermore Falls	2
*Aroostock	
Service Area: Ashland	1
Service Area: Danforth	2
Service Area: Eagle Lake	1
Service Area: Island Falls	4
Service Area: St. Francis	1
Service Area: Van Buren	3
Cumberland	
Service Area: Casco Bay Islands	1
*Franklin	
Service Area: Jay/Livermore Falls	2
*Hancock	
Service Area: Bucksport	4
*Kennebec	
Service Area: Jay/Livermore Falls	2
Service Area: Richmond	1

PRIMARY CARE: Maine—Continued

County Listing

County Name	Degree of shortage group
*Lincoln	
Service Area: Richmond	1
*Oxford	
Service Area: Bethel	1
Service Area: Jay/Livermore Falls	2
Penobscot	
Service Area: Corinth	1
Service Area: Danforth	2
Service Area: Dexter	2
Service Area: Howland	3
Service Area: Island Falls	4
*Piscataquis	
Service Area: Bingham	1
Service Area: Milo	2
*Sagadahoc	
Service Area: Richmond	1
*Somerset	
Service Area: Bingham	1
Service Area: Dexter	2
Service Area: Jackman	1
Waldo	
Service Area: Bucksport	4
*Washington	
Service Area: Danforth	2
Service Area: Eastport	1
Service Area: Jonesport	1
Service Area: Millbridge	3
Service Area: Vanceboro	1

PRIMARY CARE: Maine

Service Area Listing

Service Area Name	Degree of shortage group
Ashland	1
County—Aroostook	
Parts:	
*Ashland Twn.	
*Garfield Plt.	
*Masardis Twn.	
*Nashville Plt.	
*Oxbow Plt.	
*Portage Lake Twn.	
Bethel	1
County—Oxford	
Parts:	
*Bethel Twn.	
*Gilead Twn.	
*Greenwood Twn.	
*N. Oxford (Unorg.)	
*Newry Twn.	
*Upton Twn.	
*Woodstock Twn.	
Bingham	1
County—Piscataquis	
Parts:	
*Kingsbury Plt.	
County—Somerset	
Parts:	
*Bingham Twn.	
*Brighton Plt.	
*Carratunk Plt.	
*Moscow Twn.	
*N.E. Somerset Unorg. (S. 1/2)	
*Pleasant Ridge Twn.	
*Solon Twn.	
*The Forks Plt.	
*West Forks Plt.	
Bucksport	4

PRIMARY CARE: Maine—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Hancock	
Parts:	
*Bucksport Twn.	
*Orland Twn.	
*Verona Twn.	
County—Waldo	
Parts:	
Frankfort Twn.	
Prospect Twn.	
Casco Bay Islands	1
County—Cumberland	
Parts:	
Cliff Island	
Cushing Island	
Great Chebeague Island	
Great Diamond Island	
Little Chebeague Island	
Little Diamond Island	
Long Island	
Peak'S Island	
Corinth	1
County—Penobscot	
Parts:	
Bradford Twn.	
Charleston Twn.	
Corinth Twn.	
Exeter Twn.	
Hudson Twn.	
Danforth	2
County—Aroostook	
Parts:	
*Bancroft	
*Orient	
*Weston	
County—Penobscot	
Parts:	
Drew	
Kingman Unorg.	
Prentiss	
Whitney (Unorg.)	
County—Washington	
Parts:	
*Danforth	
Dexter	2
County—Penobscot	
Parts:	
Corinna Twn.	
Dexter Twn.	
Garland Twn.	
County—Somerset	
Parts:	
*Cambridge Twn.	
Eagle Lake	1
County—Aroostook	
Parts:	
*Eagle Lake Twn.	
*Wallagrass Plt.	
*Winterville Plt.	
Eastport	1
County—Washington	
Parts:	
*Eastport City	
*Pembroke Twn.	
*Perry Twn.	
*Pleasant Point	
Howland	3
County—Penobscot	
Parts:	
Burlington Twn.	
Edinburg Twn.	
Enfield Twn.	
Grand Falls Plt.	
Howland Twn.	
Lagrange Twn.	
Lowell Twn.	
Medfield Twn.	

PRIMARY CARE: Maine—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Passadumkeag Twn.	
Sebosis Plt.	
Island Falls	4
County—Aroostock	
Parts:	
*Benedicta Twn.	
*Crystal Twn.	
*Dyer Brook Twn	
*Hersey Twn.	
*Island Falls Twn.	
*Moro Plt.	
*S. Aroostock (Unorg.)	
*Sherman Twn.	
County—Penobscot	
Parts:	
Mt. Chase Twn.	
N. Penobscot Unorg.	
Patten Twn.	
Stacyville Twn.	
Jackman	1
County—Somerset	
Parts:	
*Dennistown Plt.	
*Jackman Twn.	
*Moose River Twn.	
Jay/Livermore Falls	2
County—Androscoggin	
Parts:	
Livermore Falls Twn.	
Livermore Twn.	
County—Franklin	
Parts:	
*Jay Twn.	
County—Kennebec	
Parts:	
*Fayette Twn.	
County—Oxford	
Parts:	
*Canton Twn.	
*Hartford Twn.	
*Sumner Twn.	
Jonesport	1
County—Washington	
Parts:	
*Addison Twn.	
*Beals Twn.	
*Centerville Twn.	
*Columbia Falls Twn.	
*Jonesboro Twn.	
*Jonesport Twn.	
Millbridge	3
County—Washington	
Parts:	
*Beddington Twn.	
*Cherryfield Twn.	
*Columbia Twn.	
*Deblois Twn.	
*Harrington Twn.	
*Millbridge Twn.	
*Steuben Twn.	
Milo	2
County—Piscataquis	
Parts:	
*Atkinson Twn.	
*Barnard Plt.	
*Brownville Twn.	
*Lakeview Plt.	
*Medford Twn.	
*Milo Twn.	
*S.E. Piscataquis (Unorg.)	
*Sebec Twn.	
Richmond	1
County—Kennebec	
Parts:	
*Litchfield Twp.	

PRIMARY CARE: Maine—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Lincoln	
Parts:	
*Dresden Twp.	
County—Sagadahoc	
Parts:	
*Bowdoinham Twp.	
*Richmond Twp.	
St. Francis	1
County—Aroostock	
Parts:	
*Allagash Twn.	
*St. Francis Plt.	
*St. John Plt.	
Van Buren	3
County—Aroostock	
Parts:	
Grand Isle Twn.	
Hamlin Twn.	
Van Buren Twn.	
Vanceboro	1
County—Washington	
Parts:	
*Codyville Plt.	
*Grand Lake Stream Plt.	
*Indian Twn.	
*N. Washington Unorg.	
*Talmadge Twn.	
*Topsfield Twn.	
*Vanceboro Twn.	
*Wells Twn.	

PRIMARY CARE: Maryland

County Listing

County Name	Degree of shortage group
Allegany	
Service Area: Hancock (Md/Pa/Wv)	2
Anne Arundel	
Service Area: Owensville	2
Baltimore City	
Service Area: North Central Baltimore	1
Service Area: O'Donnell Heights	1
Service Area: Orleans Square	2
Service Area: West Baltimore	1
Facility: Mercy Hosp.	1
*Caroline	2
Cecil	
Service Area: Cecil/Kent	2
Charles	3
*Dorchester	
Service Area: Northeast Dorchester (Hurlock)	2
*Kent	
Service Area: Cecil/Kent	2
*Somerset	4
Washington	
Service Area: Hancock (Md/Pa/Wv)	2
*Worcester	
Service Area: Snow Hill/Pokomoke	4

PRIMARY CARE: Maryland

Service Area Listing

Service Area Name	Degree of shortage group
Cecil/Kent	2
County—Cecil	
Parts:	
Dist. 1 (cecilton)	
County—Kent	
Parts:	
*Dist. 1 (massey)	
Hancock (Md/Pa/WV)	2
County—Allegany	
Parts:	
Dist. 1 (orleans)	
County—Washington	
Parts:	
Dist. 4-5 (Indian Spring)	
Dist. 15 (Indian Spring)	
North Central Baltimore	1
County—Baltimore City	
Parts:	
C.T. 805 (Indian Spring)	
C.T. 901–909	
C.T. 1204	
Northeast Dorchester (Hurlock)	2
County—Dorchester	
Parts:	
*Dist. 1-3 (Williamsburg)	
*Dist. 12 (Williamsburg)	
*Dist. 15 (Hurlock)	
O'Donnell Heights	1
County—Baltimore City	
Parts:	
C.T. 2606.01–2606.02	
Orleans Square	2
County—Baltimore City	
Parts:	
C.T. 103	
C.T. 105	
C.T. 201–202	
C.T. 602–606	
C.T. 702–704	
C.T. 902	
C.T. 903.01	
C.T. 904	
C.T. 906–908	
Owensville	2
County—Anne Arundel	
Parts:	
C.T. 7012–7014	
C.T. 7070	
C.T. 7080	
Snow Hill/Pokomoke	4
County—Worcester	
Parts:	
*Dist. 1-2 (atkinsons)	
*Dist. 7-8 (stockton)	
West Baltimore	1
County—Baltimore City	
Parts:	
C.T. 1601–1603	
C.T. 1901–1903	
C.T. 2601–2605	

PRIMARY CARE: Maryland

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—Northwest Baltimore	4
Parts:	
C.T. 1513–1513	
C.T. 2716–2717	

PRIMARY CARE: Maryland—Continued

Population Group Listing

Population Group	Degree of shortage group
C.T. 2718.01–2718.02	

PRIMARY CARE: Maryland

Facility Listing

Facility Name	Degree of shortage group
Mercy Hosp.	1
County—Baltimore City	
Mercy Hospital	

PRIMARY CARE: Massachusetts

County Listing

County Name	Degree of shortage group
*Barnstable	
Service Area: Provincetown	2
Bristol	
Service Area: S.E. New Bedford	1
Essex	
Service Area: North Lawrence	2
Service Area: South Lynn	2
Population Group: Non-Eng. Sp. Pop.—Peabody/Salem	1
Middlesex	
Population Group: Port./Hisp. Pop.—E. Cambridge	1
Population Group: Portuguese Pop.—Somerville	4
Norfolk	
Facility: Norfolk-Walpole Corr. I.	3
Plymouth	
Population Group: Medicaid Pop.—Hull	1
Suffolk	
Service Area: N. Dorchester	2
Service Area: Roxbury	1
Service Area: S. Dorchester	3
Service Area: South Boston	4
Population Group: Chinese Pop.—Brighton/Allston	1
Population Group: Chinese Pop.—South End Boston	2
Population Group: Pov. Pop.—Brighton/Allston	1
Worcester	
Service Area: Great Brook Valley	3
Service Area: So. Blackstone Valley	3

PRIMARY CARE: Massachusetts

Service Area Listing

Service Area Name	Degree of shortage group
Great Brook Valley	3
County—Worcester	
Parts:	
C.T. 7330.01	
N. Dorchester	2

PRIMARY CARE: Massachusetts—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Suffolk	
Parts:	
C.T. 901–924	
North Lawrence	2
County—Essex	
Parts:	
C.T. 2501–2516	
C.T. 2524	
Provincetown	2
County—Barnstable	
Parts:	
Provincetown	
Roxbury	1
County—Suffolk	
Parts:	
C.T. 801–821	
S. Dorchester	3
County—Suffolk	
Parts:	
C.T. 1001–1005	
C.T. 1008.01–1008.02	
C.T. 1007–1009	
C.T. 1010.01–1010.02	
C.T. 1011.01–1011.02	
S.E. New Bedford	1
County—Bristol	
Parts:	
C.T. 6507–6509	
C.T. 6511–6514	
C.T. 6517–6519	
C.T. 6526–6527	
So. Blackstone Valley	3
County—Worcester	
Parts:	
Blackstone Twn.	
Douglas Twn.	
Mendon Twn.	
Millville Twn.	
Northbridge Twn.	
Sutton Twn.	
Uxbridge Twn.	
South Boston	4
County—Suffolk	
Parts:	
C.T. 605–613	
South Lynn	2
County—Essex	
Parts:	
C.T. 2058	
C.T. 2060–2063	
C.T. 2065	
C.T. 2067–2072	

PRIMARY CARE: Massachusetts

Population Group Listing

Population Group	Degree of shortage group
Chinese Pop.—Brighton/Allston	1
County—Suffolk	
Parts:	
C.T. 1–8	
Chinese Pop.—South End Boston	2
County—Suffolk	
Parts:	
C.T. 701–712	
Medicaid Pop.—Hull	1

PRIMARY CARE: Massachusetts—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Plymouth	
Parts:	
C.T. 5001.01–5001.02	
Non-Eng. Sp. Pop.—Peabody/Salem	1
County—Essex	
Parts:	
C.T. 2043	
C.T. 2045–2047	
C.T. 2104	
C.T. 2107–2109	
Port./Hisp. Pop.—E. Cambridge	1
County—Middlesex	
Parts:	
C.T. 3521–3528	
C.T. 3531	
Portuguese Pop.—Somerville	4
County—Middlesex	
Parts:	
Somerville	
Pov. Pop.—Brighton/Allston	1
County—Suffolk	
Parts:	
C.T. 1	
C.T. 2.01–2.02	
C.T. 3–5	
C.T. 6.01–6.02	
C.T. 7.01–7.02	
C.T. 8	

PRIMARY CARE: Massachusetts

Facility Listing

Facility Name	Degree of shortage group
Norfolk-Walpole Corr. I.	3
County—Norfolk	
Norfolk Twn.—Norfolk Corr. I.	
Walpole Twn.—Walpole Corr. I.	

PRIMARY CARE: Michigan

County Listing

County Name	Degree of shortage group
*Alcona	2
*Alger	2
*Allegan	
Service Area: Allegan	2
Service Area: South Haven/Bangor	4
*Alpena	4
*Antrim	
Service Area: East Jordan	4
Service Area: Mancelona	2
*Arenac	
Service Area: Sterling/Standish	3
Bay	
Service Area: Sterling/Standish	3
*Cass	
Service Area: Dowagiac	3
Service Area: Three Rivers	4
*Charlevoix	
Service Area: East Jordan	4
*Clare	
Service Area: Harrison	3

PRIMARY CARE: Michigan—Continued

County Listing

County Name	Degree of shortage group
Service Area: Marion	1
Genesee	
Service Area: North Flint/Beecher	1
Service Area: Otter Lake	3
*Gladwin	
Service Area: Ironwood/Hurley (MI/WI)	2
Service Area: Sterling/Standish	3
*Gogebic	
Service Area: Ewen	2
Service Area: Ironwood/Hurley (MI/WI)	2
Jackson	
Facility: State Prs.—South Michigan	2
*Kalkaska	
Service Area: Mancelona	2
Kent	
Service Area: Northern Kent	2
Population Group: Med. Ind.—Grand Rapids	1
*Keweenaw	1
*Lake	
Service Area: Lake/Newaygo	1
Lapeer	
Service Area: Marlette/Kingston	2
Service Area: Otter Lake	3
*Mackinac	2
*Marquette	
Facility: Marquette Branch Prs.	2
*Menominee	
Service Area: Northern Menominee	2
*Missaukee	
Service Area: Houghton Lake	3
Service Area: Marion	1
Monroe	
Service Area: Carlton	2
Population Group: Medicaid—South Monroe	2
*Montmorency	4
Muskegon	
Service Area: Northern Kent	2
*Newaygo	
Service Area: Lake/Newaygo	1
Service Area: White Cloud	4
*Oceana	
Service Area: Rose City/Lupton	1
*Otsego	
Service Area: Ewen	2
*Osceola	
Service Area: Marion	1
Ottawa	
Service Area: Northern Kent	2
*Roscommon	
Service Area: Houghton Lake	3
Saginaw	
Service Area: East Side Saginaw	1
*Sanilac	
Service Area: Marlette/Kingston	2
*Shiawassee	
Service Area: Perry/Morrice	3
*St Joseph	
Service Area: Three Rivers	4
*Tuscola	
Service Area: Marlette/Kingston	2
Service Area: Otter Lake	3
*Van Buren	
Service Area: Dowagiac	3
Service Area: South Haven/Bangor	4
Wayne	
Service Area: Airport/Conner (N.E. Detroit)	1
Service Area: Chene (S. Central Detroit)	1
Service Area: Eastside Detroit	2
Service Area: Mackenzie/Brooks	1
Service Area: Nolan/Stella Fair/Davison/Pershing	3

PRIMARY CARE: Michigan—Continued

County Listing

County Name	Degree of shortage group
Service Area: Tireman/Chadsey	1

PRIMARY CARE: Michigan

Service Area Listing

Service Area Name	Degree of shortage group
Airport/Conner (N.E. Detroit)	1
County—Wayne	
Parts:	
C.T. 5097–5098	
C.T. 5101	
C.T. 5107–5109	
Allegan	2
County—Allegan	
Parts:	
*Allegan Twp.	
*Allegan City	
*Cheshire Twp.	
*Clyde Twp.	
*Hopkins Twp.	
*Lee Twp.	
*Martin Twp.	
*Monterey Twp.	
*Trowbridge Twp.	
*Valley Twp.	
*Watson Twp.	
*Wayland Twp.	
*Wayland City	
Carlton	2
County—Monroe	
Parts:	
C.T. 303–306 (London Twp.)	
Chene (S. Central Detroit)	1
County—Wayne	
Parts:	
C.T. 5110–5111	
C.T. 5161	
C.T. 5177–5178	
C.T. 5182–5186	
Dowagiac	3
County—Cass	
Parts:	
*Dowagiac City	
*Lagrange Twp.	
*Marcellus Twp.	
*Newberg Twp.	
*Penn Twp.	
*Pokagon Twp.	
*Silver Creek Twp.	
*Vollmis Twp.	
*Wayne Twp.	
County—Van Buren	
Parts:	
*Decatur Twp.	
*Hamilton Twp.	
*Keeler Twp.	
*Porter Twp.	
East Jordan	4
County—Antrim	
Parts:	
*Banks Twp.	
*Echo Twp.	
*Jordan Twp. (N 1/2)	
County—Charlevoix	
Parts:	
*East Jordan City	
*South Arm Twp.	
*Wilson Twp. (S 1/2)	
East Side Saginaw	1

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Saginaw	
Parts:	
C.T. 1–11	
C.T. 119	
Eastside Detroit	2
County—Wayne	
Parts:	
C.T. 5121–5156	
Ewen	2
County—Gogebic	
Parts:	
Marenisco Twp.	
Watersmeet Twp.	
County—Ontonagon	
Parts:	
Bergland Twp.	
Haight Twp.	
Interior Twp.	
Matchwood Twp.	
McMillan Twp.	
Rockland Twp.	
Stannard Twp.	
Harrison	3
County—Clare	
Parts:	
*Arthur Twp.	
*City Of Harrison	
*Franklin Twp.	
*Freeman Twp.	
*Frost Twp.	
*Greenwood Twp.	
*Hamilton Twp.	
*Hatton Twp.	
*Hayes Twp.	
*Lincoln Twp.	
*Sumnerfield Twp.	
Houghton Lake	3
County—Missaukee	
Parts:	
Butterfield Twp.	
Enterprise Twp.	
Holland Twp.	
County—Roscommon	
Parts:	
Deaton Twp.	
Lake Twp.	
Markey Twp.	
Roscommon Twp.	
Ironwood/Hurley (MI/WI)	2
County—Gladwin	
Parts:	
Anderson Twn.	
Carey Twn.	
Gurney Twn.	
Hurley City	
Kimball Twn.	
Knight Twn.	
Mercer Twn.	
Montreal City	
Oma Twn.	
Pence Twn.	
Sexon Twn.	
County—Gogebic	
Parts:	
Bessemer City	
Bessemer Twp.	
Ervin Twp.	
Ironwood City	
Ironwood Twp.	
Wakefield City	
Wakefield Twp.	
Lake/Newaygo	1
County—Lake	
Parts:	
*Chase Twp.	
*Cherry Valley Twp.	

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Dover Twp.	
*Eden Twp.	
*Elk Twp.	
*Ellsworth Twp.	
*Lake Twp.	
*Newkirk Twp.	
*Peaseak Twp.	
*Pinora Twp.	
*Pleasant Plains Twp.	
*Sattre Twp.	
*Sweetwater Twp.	
*Webber Twp.	
*Yates Twp.	
County—Newaygo	
Parts:	
*Beaver Twp.	
*Home Twp.	
*Lilly Twp.	
*Merrill Twp.	
*Monroe Twp.	
*Troy Twp.	
Mackenzie/Brooks	1
County—Wayne	
Parts:	
C.T. 5341–5344	
C.T. 5347–5356	
C.T. 5364–5367	
C.T. 5370–5374	
C.T. 5451–5454	
Manistique	2
County—Antrim	
Parts:	
*Chestonia Twp.	
*Custer Twp.	
*Helena Twp.	
*Jordan Twp. (S 1/2)	
*Kearney Twp.	
*Mancelona Twp.	
*Star Twp.	
County—Kalkaska	
Parts:	
*Blue Lake Twp.	
*Cold Springs Twp.	
*Rapid River Twp.	
Marion	1
County—Clare	
Parts:	
*Redding Twp.	
*Winterfield Twp.	
County—Missaukee	
Parts:	
*Clam Union Twp.	
*Riverside Twp.	
County—Osceola	
Parts:	
*Hartwick Twp.	
*Highland Twp.	
*Marion Twp.	
*Middle Branch Twp.	
Marlette/Kingston	2
County—Lapeer	
Parts:	
Burlington Twp. (N. 1/2)	
County—Sanilac	
Parts:	
*La Motte Twp.	
*Marlette Twp.	
County—Tuscola	
Parts:	
*Dayton Twp.	
*Fremont Twp. (E 1/2)	
*Kingston Twp.	
*Koylton Twp.	
Nolan/State Fair/Davison/Pershing	3

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Wayne	
Parts:	
C.T. 5064–5080	
C.T. 5102–5106	
North Flint/Beecher	1
County—Genesee	
Parts:	
C.T. 1–7	
C.T. 19–26	
C.T. 103.02	
C.T. 103.04	
C.T. 122.02	
Northern Kent	2
County—Kent	
Parts:	
Algoma Twp. (N 1/2)	
Cedar Springs City	
Nelson Twp.	
Solon Twp.	
Sparta Twp.	
Tyrone Twp.	
County—Muskegon	
Parts:	
Casnovia Twp.	
County—Ottawa	
Parts:	
Chester Twp.	
Northern Menominee	2
County—Menominee	
Parts:	
Cedarville Twp.	
Daggett Twp.	
Fairborn Twp.	
Gourley Twp.	
Harris Twp.	
Holmes Twp.	
Lake Twp.	
Mayer Twp.	
Nadeau Twp.	
Spalding Twp.	
Stephenson Twp.	
Stephenson City	
Otter Lake	3
County—Genesee	
Parts:	
Forest Twp.	
County—Lapeer	
Parts:	
Deerfield Twp.	
Marathon Twp.	
Rich Twp.	
County—Tuscola	
Parts:	
Arbela Twp.	
Watertown Twp.	
Willington Twp.	
Perry/Montcalm	3
County—Shiawassee	
Parts:	
Antrim Twp.	
Burns Twp.	
Perry Twp.	
Perry City	
Rose City/Lupton	1
County—Ogemaw	
Parts:	
*Cumming Twp.	
*Goodar Twp.	
*Hill Twp.	
*Rose City	
*Rose Twp.	
South Haven/Bangor	4
County—Allegan	
Parts:	
*Casco Twp.	
*Geneva Twp.	

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Van Buren	
Parts:	
*Arlington Twp.	
*Bangor City	
*Bangor Twp.	
*Columbia Twp.	
*Covert Twp.	
*Geneva Twp.	
*Lawrence Twp.	
*South Haven City	
*South Haven Twp.	
Sterling/Standish	3
County—Bay	
Parts:	
Gibson Twp.	
County—Arenac	
County—Gladwin	
Parts:	
*Bentley Twp.	
*Bourre Twp.	
*Grim Twp.	
Three Rivers	4
County—Cass	
Parts:	
*Porter Twp.	
County—St Joseph	
Parts:	
*Constance Twp.	
*Fabius Twp.	
*Florence Twp.	
*Flowerfield Twp.	
*Leonidas Twp.	
*Lockport Twp.	
*Mendon Twp.	
*Nottawa Twp.	
*Park Twp.	
*Three Rivers City	
Tireman/Chadsey	1
County—Wayne	
Parts:	
C.T. 5221–5222	
C.T. 5251–5266	
C.T. 5335–5337	
C.T. 5345–5348	
White Cloud	4
County—Newaygo	
Parts:	
Big Prairie Twp	
Croton Twp	
Everett Twp	
Goodwell Twp	
Lincoln Twp	
White Cloud City	
Wilcox Twp	

PRIMARY CARE: Michigan

Population Group Listing

Population Group	Degree of shortage group
Med. Ind.—Grand Rapids	1
County—Kent	
Parts:	
Med. Ind.—Grand Rapids City	
Medicaid—South Monroe	2
County—Monroe	
Parts:	
Medicaid—Erie	
Medicaid—Summerfield	
Medicaid—Ida	

PRIMARY CARE: Michigan—Continued

Population Group Listing

Population Group	Degree of shortage group
Medicaid—La Salle	
Medicaid—Whiteford	
Medicaid—Bedford	

PRIMARY CARE: Michigan

Facility Listing

Facility Name	Degree of shortage group
Marquette Branch Prs.	2
County—Marquette	
State Prs.—South Michigan	2
County—Jackson	
State Prs.—S. Michigan	

PRIMARY CARE: Minnesota

County Listing

County Name	Degree of shortage group
*Aitkin	
Service Area: Floodwood	1
Service Area: Mille Lacs	2
Service Area: Sandstone/Hinckley	2
*Big Stone	
Service Area: Ortonville (Mn/Sd)	4
*Cass	4
Clay	
Service Area: Barnesville	2
*Cook	4
*Cottonwood	
Service Area: Windom/Mountain Lake	3
*Crow Wing	
Service Area: Mille Lacs	2
*Grant	4
Hennepin	
Service Area: Near North—(minneapolis)	4
Population Group: Am. Ind. in Minneapolis	4
*Houston	
Service Area: Caledonia/Spring Grove (Iowa/Minn)	3
*Jackson	
Service Area: Windom/Mountain Lake	3
*Kanabec	
Service Area: Mille Lacs	2
Service Area: Sandstone/Hinckley	2
*Kandiyohi	
Service Area: Paynesville	4
*Koochiching	
Service Area: Littlefork/Big Falls	4
*Lac Qui Parle	
Service Area: Canby (Mn/Sd)	4
Service Area: Ortonville (Mn/Sd)	4
*Lake	
Service Area: Ely/Babbitt	4
Service Area: Silver Bay	2
*Lake Of The Woods	
Service Area: Warroad	3
*Lincoln	
Service Area: Canby (Mn/Sd)	4
*Mahnomen	1
*Marshall	
Service Area: Warren	4

PRIMARY CARE: Minnesota—Continued

County Listing

County Name	Degree of shortage group
*Meeker	
Service Area: Paynesville	4
*Mille Lacs	
Service Area: Mille Lacs	2
*Morrison	
Service Area: Mille Lacs	2
*Murray	4
*Pine	
Service Area: Sandstone/Hinckley	2
*Polk	
Service Area: Fosston	4
Service Area: Warren	4
Ramsey	
Service Area: Summit-Dale	1
*Red Lake	3
*Roseau	
Service Area: Roseau	4
Service Area: Warroad	3
St Louis	
Service Area: Cook/Orr	4
Service Area: Ely/Babbitt	4
Service Area: Floodwood	1
Stearns	
Service Area: Paynesville	4
Service Area: Sauk Centre/Melrose	4
*Todd	
Service Area: Sauk Centre/Melrose	4
*Wabasha	
Service Area: Plainview	1
*Wilkin	
Service Area: Barnesville	2
*Winona	
Service Area: Plainview	1
*Yellow Medicine	
Service Area: Canby (Mn/Sd)	4

PRIMARY CARE: Minnesota

Service Area Listing

Service Area Name	Degree of shortage group
Barnesville	2
County—Clay	
Parts:	
Alliance Twp.	
Barnesville City	
Barnesville Twp.	
Comstock City	
Elkton Twp.	
Holy Cross Twp.	
Humboldt Twp.	
Perley Twp.	
Sabin Twp.	
Taraxen Twp.	
County—Wilkin	
Parts:	
Atherton Twp.	
Deerhorn Twp.	
Marston Twp.	
Mitchell Twp.	
Prairie View Twp.	
Rothsay City	
Tarberg Twp.	
Wolverton Twp.	
Caledonia/Spring Grove (Iowa/Minn)	3
County—Houston	
Parts:	
*Black Hammer Twp.	
*Caledonia Twp.	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Caledonia City	
*Crooked Creek Twp.	
*Elrzen City	
*Jefferson Twp.	
*Mayville Twp.	
*Spring Grove Twp.	
*Spring Grove City	
*Wilmington Twp.	
*Winnebago Twp.	
Canby (Mn/Sd)	4
County—Lac Qui Parle	
Parts:	
*Freeland Twp.	
*Manfred Twp.	
County—Lincoln	
Parts:	
*Alta Vista Twp.	
*Hendricks Twp.	
*Marble Twp.	
County—Yellow Medicine	
Parts:	
*Burton Twp.	
*Canby City	
*Florida Twp.	
*Porter Twp.	
*Hammer Twp.	
*Norman Twp.	
*Omro Twp.	
*Oshkosh Twp.	
*Porter City	
*St. Leo City	
*Wergeland Twp.	
Cook/Orr	4
County—St Louis	
Parts:	
Alango Twp.	
Angora Twp.	
Beatty Twp.	
Cook City	
Field Twp.	
Gheen—Unorg.	
Lake Vermillion—Unorg.	
Leiding Twp.	
Linden Grove Twp.	
Morcom Twp.	
N.E. St. Louis—Unorg. (	
N.W. St. Louis—Unorg.	
Nett Lake—Unorg.	
Orr City	
Owens Twp.	
Portage Twp.	
Sturgeon Twp.	
Willow Valley Twp.	
Ely/Babbitt	4
County—Lake	
Parts:	
*Fall Lake Twp.	
*Unorg.—W. Lake	
County—St Louis	
Parts:	
Babbitt City	
Bassett Twp.	
Breitung Twp.	
Ely City	
Embarrass Twp.	
Kugler Twp.	
Morse Twp.	
Pike Twp.	
Sandy Twp.	
Tower City	
Unorg.—Birch Lake	
Unorg.—N.E. St. Louis	
Vermilion Lake Twp.	
Wasaa Twp.	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Winton Vil.	
Floodwood	1
County—Aitkin	
Parts:	
Ball Bluff Twp.	
Balsam Twp.	
Cornish Twp.	
Turner Twp.	
Unorg.—N E Aitkin	
County—St Louis	
Parts:	
Arrowhead Twp.	
Cedar Valley Twp.	
Cotton Twp.	
Fine Lakes Twp.	
Floodwood City	
Floodwood Twp.	
Halden Twp.	
Kelsey Twp.	
Meadowlands City	
Meadowlands Twp.	
Ness Twp.	
Northland Twp.	
Payne Twp.	
Prairie Lake Twp.	
Tiowata Twp.	
Unorg.—(pot Shot Lake)	
Van Buren Twp.	
Fosston	4
County—Polk	
Parts:	
Badger Twp.	
Brandsvold Twp.	
Chester Twp.	
Columbia Twp.	
Eden Twp.	
Erskine City	
Fosston City	
Garden Twp.	
Gully City	
Gully Twp.	
Hill River Twp.	
Johnson Twp.	
King Twp.	
Knute Twp.	
Langby City	
Lessor Twp.	
McIntosh City	
Queen Twp.	
Rosebud Twp.	
Sletten Typ.	
Trail City	
Winger City	
Winger Twp.	
Woodside Twp.	
Littlefork/Big Falls	4
County—Koochiching	
Parts:	
*Big Falls City	
*Littlefork City	
*Unorg.—Nett Lake	
*Unorg.—S. Koochiching	
Mille Lacs	2
County—Aitkin	
Parts:	
Hazelton Twp.	
Idun Twp.	
Jewett Twp.	
Lakeside Twp.	
Malmo Twp.	
McGrath City	
Seavy Twp.	
Wealthwood Twp.	
Williams Twp.	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Crow Wing	
Parts:	
Garrison City	
Garrison Twp.	
Roosevelt Twp.	
County—Kanabec	
Parts:	
Ford Twp.	
Hay Brook Twp.	
Hillman Twp.	
County—Mille Lacs	
Parts:	
Bradbury Twp.	
Daily Twp.	
East Side Twp.	
Isle City	
Isle Harbor Twp.	
Kathio Twp.	
Lewis Twp.	
Mudgett Twp.	
Onamia City	
Onamia Twp.	
South Harbor Twp.	
Wahkon City	
County—Morrison	
Parts:	
Hillman City	
Leigh Twp.	
Mount Morris Twp.	
Richardson Twp.	
Near North—(minneapolis)	4
County—Hennepin	
Parts:	
C.T. 16	
C.T. 20–23	
C.T. 27–29	
C.T. 32–35	
C.T. 41–42	
Ortonville (Mn/Sd)	4
County—Big Stone	
Parts:	
*Akron Twp.	
*Big Stone Twp.	
*Correll City	
*Odessa City	
*Odessa Twp.	
*Ortonville City	
*Ortonville Twp.	
*Otrey Twp.	
*Prior Twp. (S 1/2)	
County—Lac Qui Parle	
Parts:	
*Agassiz Twp.	
*Yellow Bank Twp.	
Paynesville	4
County—Kandiyohi	
Parts:	
Irving Twp	
Regal City	
Roseville Twp.	
County—Meeker	
Parts:	
Eden Valley City	
Forest Prairie Twp.	
Manannah Twp.	
Union Grove Twp.	
Watkins City	
County—Stearns	
Parts:	
Eden Lake Twp.	
Farming Twp.	
Lake Henry City	
Lake Henry Twp.	
Luxemburg Twp.	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Munson Twp.	
Paynesville City	
Paynesville Twp.	
Richmond City	
Roscoe City	
St Martin City	
St Martin Twp.	
Zion Twp.	
Plainview	1
County—Wabasha	
Parts:	
Elgin City	
Elgin Twp.	
Highland Twp.	
Millville Twp.	
Oakwood Twp.	
Plainview City	
Plainview Twp.	
Watopa Twp.	
County—Winona	
Parts:	
Whitewater Twp.	
Roseau	4
County—Roseau	
Parts:	
*Dalbo Twp.	
*Grimstad Twp.	
*Jadis Twp.	
*Malung Twp.	
*Mickinock Twp.	
*Moose Twp.	
*N. Roseau—Unorg.	
*N.W. Roseau—Unorg.	
*Nereson Twp.	
*Pohlitz Twp.	
*Roseau City	
*Ross Twp.	
*S.E. Roseau—Unorg.	
*Soler Twp.	
*Spruce Twp.	
*Skiilford Twp.	
*Stokes Twp.	
Sandstone/Hinckley	2
County—Aitkin	
Parts:	
*Wagner Twp.	
County—Kanabec	
Parts:	
*Kroschel Twp.	
*Ponroy Twp.	
County—Pine	
Parts:	
*Arlone Twp.	
*Arne Twp.	
*Askov City	
*Barry Twp.	
*Bremen Twp.	
*Bruno Twp.	
*Clover Twp.	
*Danforth Twp.	
*Dell Grove Twp.	
*Finlayson Twp.	
*Finlayson City	
*Fleming Twp.	
*Hinckley Twp.	
*Hinckley City	
*Kettle River Twp.	
*New Dosey Twp.	
*Norman Twp.	
*Ogema Twp.	
*Park Twp.	
*Partridge Twp.	
*Pine Lake Twp.	
*Sandstone City	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Sanstone Twp.	
*Wilma City	
Sauk Centre/Melrose	4
County—Stearns	
Parts:	
Ashley Twp.	
Elrose City	
Freeport City	
Getty Twp.	
Grunewald City	
Grove Twp.	
Lake George Twp.	
Melrose Grove City	
Melrose Twp.	
Melrose City	
Millwood Twp	
New Munich City	
Oak Twp.	
Raymond Twp.	
Sauk Centre City	
Sauk Centre Twp	
Spring Hill City	
Spring Hill Twp.	
St. Rose City	
County—Todd	
Parts:	
Birchdale Twp.	
Gordon Twp.	
Grey Eagle City	
Grey Eagle Twp.	
Kandiota Twp	
Little Sauk Twp.	
West Union City	
West Union Twp.	
Silver Bay	2
County—Lake	
Parts:	
Beaver Bay City	
Beaver Bay Twp. (PL)	
Crystal Bay Twp.	
East Lake Unorg. Terr.	
Silver Bay City	
Summit-Dale	1
County—Ramsey	
Parts:	
C.T. 326–327	
C.T. 335–340	
C.T. 354–355	
Warren	4
County—Marshall	
Parts:	
*Alma Twp.	
*Alvarado City	
*Argyle City	
*Big Woods Twp.	
*Bloomer Twp.	
*Boesville Twp.	
*Comstock Twp.	
*Foldahl Twp.	
*McCrea Twp.	
*Middle River Twp.	
*Oak Park Twp.	
*Oslo City	
*Parker Twp.	
*Sinnott Twp.	
*Stephen Twp.	
*Tamarac Twp.	
*Vega Twp.	
*Wanger Twp.	
*Warren City	
*Warrenton Twp.	
County—Polk	
Parts:	
*Angus Twp.	

PRIMARY CARE: Minnesota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Brandt Twp.	
*Farley Twp.	
Warroad	3
County—Lake Of The Woods	
Parts:	
*Beltrami Forest—Unorg. W. 1/3	
*N.W. Angle—Unorg.	
*Rainy River—Unorg. W. 1/4	
County—Roseau	
Parts:	
*Beaver Twp.	
*Cedarbend Twp.	
*Enstrom Twp.	
*Falun Twp.	
*Lake Twp.	
*Lavens Twp.	
*Moranville Twp.	
*Reine Twp.	
*Roosevelt City	
*Southeast Roseau—Unorg.	
*Warroad City	
Windom/Mountain Lake	3
County—Cottonwood	
Parts:	
Amboy Twp.	
Ann Twp.	
Bingham Lake City	
Carson Twp.	
Dale Twp.	
Delton Twp.	
Great Bend Twp.	
Jeffers City	
Lakeside Twp.	
Midway Twp.	
Mountain Lake City	
Mountain Lake Twp.	
Selma Twp.	
Springfield Twp.	
Windom City	
County—Jackson	
Parts:	
Christiana Twp.	
Delafield Twp.	
Kimball Twp.	
Wilder City	

PRIMARY CARE: Minnesota

Population Group Listing

Population Group	Degree of shortage group
Am. Ind. In Minneapolis	4
County—Hennepin	
Parts:	
Am. Ind. Pop.—Minn	

PRIMARY CARE: Mississippi

County Listing

County Name	Degree of shortage group
*Alcorn	
Population Group: Prv. Pop.—Alcorn Co.	2

PRIMARY CARE: Mississippi—Continued

County Listing

County Name	Degree of shortage group
*Amite	
Service Area: Centreville	2
*Attala	4
*Benton	1
*Bolivar	
Service Area: Rosedale	1
Population Group: Med. Ind. Pop.—Bolivar/Sunflower	2
*Calhoun	4
*Carroll	1
*Chocktaw	2
*Claiborne	1
*Clarke	2
*Coahoma	
Population Group: Med. Ind. Pop.—Coahoma Co.	4
*Copiah	3
*Covington	4
*Franklin	4
*George	3
*Greene	3
Hancock	2
Harrison	
Population Group: Med. Ind. Pop.—Harrison Co.	1
Hinds	
Service Area: Jackson Inner-City	1
Service Area: South West Rural Hinds	1
*Holmes	3
*Humphreys	1
*Issaquena	
Service Area: Issaquena/Sharkey	4
*Itawamba	3
Jackson	
Service Area: Wade-Hurley	2
*Jasper	2
*Jefferson	4
*Jefferson Davis	2
*Jones	
Population Group: Pov Pop.—Jones Co.	2
*Kemper	1
*Lafayette	4
*Lamar	3
*Lauderdale	
Population Group: Pov Pop.—Lauderdale Co.	4
*Lawrence	3
*Leake	3
*Lefflore	4
Madison	4
*Marion	
Population Group: Pov. Pop.—Marion Co.	1
*Marshall	1
*Neshoba	2
*Noxubee	4
*Panola	
Population Group: Med. Ind.—Panola Co.	1
*Perry	4
*Pontotoc	3
*Quitman	3
Rankin	
Service Area: Pelahatchie-Puckett	2
*Scott	3
*Sharkey	
Service Area: Issaquena/Sharkey	4
*Smith	2
*Stone	3
*Sunflower	4
Population Group: Med. Ind. Pop.—Bolivar/Sunflower	2
Facility: Mississippi State Pen.	2

PRIMARY CARE: Mississippi—Continued

County Listing

County Name	Degree of shortage group
*Tallahatchie	1
*Tippah	4
*Tunica	2
*Warren	
Population Group: Pov. Pop.—Warren Co.	3
*Washington	
Service Area: Hollandale	1
*Webster	4
*Wilkinson	
Service Area: Centreville	2
*Yalobusha	2
*Yazoo	3

PRIMARY CARE: Mississippi

Service Area Listing

Service Area Name	Degree of shortage group
Centreville	2
County—Amite	
Parts:	
Amite	
County—Wilkinson	
Parts:	
Wilkinson	
Hollandale	1
County—Washington	
Parts:	
C.T. 19–20	
C.T. 22	
Issaquena/Sharkey	4
County—Issaquena	
County—Sharkey	
Jackson Inner-City	1
County—Hinds	
Parts:	
C.T. 5–12	
C.T. 17–21	
C.T. 24–32	
C.T. 102.01	
C.T. 102.03	
C.T. 103.01	
C.T. 106.01	
C.T. 109.02	
Pelahatchie-Puckett	2
County—Rankin	
Parts:	
C.T. 201	
C.T. 209	
Rosedale	1
County—Bolivar	
Parts:	
*Rosedale Town	
South West Rural Hinds	1
County—Hinds	
Parts:	
C.T. 105–107	
C.T. 112–113	
Wade-Hurley	2
County—Jackson	
Parts:	
C.T. 401–402	

PRIMARY CARE: Mississippi

Population Group Listing

Population Group	Degree of shortage group
Med. Ind.—Panola Co.	1
County—Panola	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Bolivar/Sunflower	2
County—Bolivar	
Parts:	
Med. Ind. Pop.	
County—Sunflower 4	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Coahoma Co.	4
County—Coahoma	
Parts:	
Med. Ind. Pop.	
Med. Ind. Pop.—Harrison Co.	1
County—Harrison	
Parts:	
Med. Ind. Pop.	
Pov Pop.—Jones Co.	2
County—Jones	
Parts:	
Pov Pop.	
Pov Pop.—Lauderdale Co.	4
County—Lauderdale	
Parts:	
Pov. Pop.	
Pov. Pop.—Alcorn Co.	2
County—Alcorn	
Parts:	
Pov. Pop.	
Pov. Pop.—Marion Co.	1
County—Marion	
Parts:	
Pov. Pop.	
Pov. Pop.—Warren Co.	3
County—Warren	
Parts:	
Pov. Pop.	

PRIMARY CARE: Mississippi

Facility Listing

Facility Name	Degree of shortage group
Mississippi State Pen.	2
County—Sunflower 4	

PRIMARY CARE: Missouri

County Listing

County Name	Degree of shortage group
*Andrew	
Service Area: Savannah	2
*Bollinger	1
*Caldwell	2
*Callaway	
Service Area: Fulton	4
Facility: Renz Corr. C.	2
*Carter	1
*Clark	3
*Cole	
Facility: Algoa Corr. C.	2
Facility: Central Missouri Corr. C.	2

PRIMARY CARE: Missouri—Continued

County Listing

County Name	Degree of shortage group
Facility: Missouri State Pen.	2
*Cooper	
Service Area: Bunceton	2
*Crawford	3
*Dade	4
*Dallas	3
*Daviess	3
*De Kalb	2
*Dent	4
*Douglas	2
Franklin	
Facility: Missouri Eastern Corr. C.	2
*Hickory	1
*Holt	2
*Howard	3
Jackson	
Service Area: Richard Cabot	2
Population Group: Pov. Pop.—Central K.C.	2
Jefferson	
Service Area: Hillsboro	2
*Johnson	3
*Knox	4
*Laclede	2
*Lewis	2
*Maries	1
*McDonald	2
*Mercer	1
*Miller	3
*Mississippi	
Service Area: East Prairie	3
*Montgomery	3
*New Madrid	
Service Area: New Madrid	2
*Nodaway	4
*Oregon	1
*Osage	2
*Ozark	1
*Pemiscot	4
*Pulaski	2
*Randolph	
Facility: Missouri Training C./Men	2
*Reynolds	1
*Ripley	2
*Shannon	1
St Louis	
Population Group: Pov. Pop.—West St. Louis	1
Population Group: Pov. Pop.—Kinlock/Berkeley	1
St Louis City	
Population Group: Pov. Pop.—Yeatman/Union-Sarah	2
Population Group: Pov. Pop.—West St. Louis	1
Population Group: Pov. Pop.—Grace Hill/Cochran	1
Population Group: Pov. Pop.—N. St. Louis	2
Population Group: Pov. Pop.—Southeast St. Louis	1
*Stone	2
*Texas	4
*Washington	1
*Wayne	3
*Webster	4
*Worth	1
*Wright	4

PRIMARY CARE: Missouri

Service Area Listing

Service Area Name	Degree of shortage group
Bunceton	2
County—Cooper	
Parts:	
*Clark Fork Twp.	
*Clear Creek Twp.	
*Kelley Twp.	
*Lebanon Twp.	
*N. Moniteau Twp.	
*Otterville Twp.	
*Palestine Twp.	
*Pilot Grove Twp.	
*Prairie Home Twp.	
*South Moniteau Twp.	
East Prairie	3
County—Mississippi	
Parts:	
*James Bayou Twp.	
*Mississippi Twp.	
*St. James Twp.—E. Prairie	
*Wolf Island Twp.	
Fulton	4
County—Callaway	
Parts:	
*Auxuasse Twp.	
*Bourbon Twp.	
*Caldwell Twp.	
*Calwood Twp.	
*Cedar Twp.	
*Cleveland Twp.	
*Cote Sans Dessein Twp.	
*E. Fulton Twp.	
*Guthrie Twp.	
*Jackson Twp.	
*Liberty Twp.	
*Mc Credie Twp.	
*Nine Mile Prairie Twp.	
*Round Prairie Twp.	
*Shamrock Twp.	
*St. Aubert Twp.	
*W. Fulton Twp.	
Hillsboro	2
County—Jefferson	
Parts:	
Big River Twp.	
Central Twp.	
Plattin Twp.	
Valle Twp.	
New Madrid	2
County—New Madrid	
Parts:	
Anderson Twp.	
Como Twp.	
Hough Twp.	
La Font Twp.	
La Saur Twp.	
Lewis Twp.	
New Madrid Twp.	
Portage Twp.	
St. John Twp.	
Richard Cabot	2
County—Jackson	
Parts:	
C.T. 1–4	
C.T. 6–20	
C.T. 22–27	
C.T. 28.01–28.02	
C.T. 29–34	
C.T. 35.01–35.02	
C.T. 36.01–36.02	
C.T. 37–45	
C.T. 59.01	
Savannah	2
County—Andrew	
Parts:	
*Benton Twp.	
*Clay Twp.	

PRIMARY CARE: Missouri—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Empire Twp.	
*Jackson Twp.	
*Monroe Twp.	
*Nodaway Twp. (Savannah)	
*Platte Twp.	
*Rochester Twp.	

PRIMARY CARE: Missouri

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—Central K.C.	2
County—Jackson	
Parts:	
C.T. 48–55	
C.T. 56.01–56.02	
C.T. 57	
C.T. 58.01–58.02	
C.T. 60–67	
C.T. 75–77	
C.T. 78.01–78.02	
C.T. 79–80	
C.T. 87–88	
C.T. 96	
Pov. Pop.—Grace Hill/Cochran	1
County—St Louis City	
Parts:	
C.T. 1085	
C.T. 1086–1087	
C.T. 1202–1203	
C.T. 1213–1214	
C.T. 1222	
C.T. 1255–1257	
C.T. 1265–1267	
Pov. Pop.—Kinlock/Berkeley	1
County—St Louis	
Parts:	
C.T. 2127–2129	
Pov. Pop.—N. St. Louis	2
County—St Louis City	
Parts:	
C.T. 1061–1067	
C.T. 1071–1075	
C.T. 2130–2140	
Pov. Pop.—Southeast St. Louis	1
County—St Louis City	
Parts:	
C.T. 1018	
C.T. 1156–1157	
C.T. 1164–1165	
C.T. 1172–1174	
C.T. 1181	
C.T. 1185	
C.T. 1221	
C.T. 1224	
C.T. 1231–1234	
C.T. 1241–1243	
C.T. 1246	
Pov. Pop.—West St. Louis	1
County—St Louis	
Parts:	
C.T. 2156–2164	
County—St Louis City	
Parts:	
C.T. 1051–1055	
C.T. 1121	
Pov. Pop.—Yeatman/Union-Sarah	2

PRIMARY CARE: Missouri—Continued

Population Group Listing

Population Group	Degree of shortage group
County—St Louis City	
Parts:	
C.T. 1101–1105	
C.T. 1111–1115	
C.T. 1122–1124	
C.T. 1184	
C.T. 1186	
C.T. 1191–1193	
C.T. 1201	
C.T. 1211–1212	

PRIMARY CARE: Missouri

Facility Listing

Facility Name	Degree of shortage group
Algoa Corr. C.	2
County—Cole	
Central Missouri Corr. C.	2
County—Cole	
Missouri Eastern Corr. C.	2
County—Franklin	
Missouri State Pen.	2
County—Cole	
Missouri Training C./Men.	2
County—Randolph	
Renz Corr. C.	2
County—Callaway	

PRIMARY CARE: Montana

County Listing

County Name	Degree of shortage group
*Big Horn	4
*Blaine	1
*Carter	1
*Chouteau	2
*Custer	
Service Area: Baker (Mt/Nd)	4
*Daniels	3
*Deer Lodge	
Facility: Montana State Prs.	3
*Fallon	
Service Area: Baker (Mt/Nd)	4
*Gallatin	
Service Area: Ennis/W. Yellowstone	2
Service Area: Three Forks/Manhattan	4
*Garfield	1
*Glacier	1
*Hill	
Service Area: Chester	1
*Jefferson	
Service Area: Boulder	1
*Judith Basin	1
*Lewis And Clark	
Service Area: Choteau	3
Service Area: Lincoln	2
*Liberty	
Service Area: Chester	1
*Madison	
Service Area: Ennis/W. Yellowstone	2
Service Area: Sheridan/Twin Bridges	2
*Meagher	1
*Musselshell	3

PRIMARY CARE: Montana—Continued

County Listing

County Name	Degree of shortage group
*Park	
Service Area: Gardiner/Mammoth Hot Springs	1
*Petroleum	1
*Phillips	1
*Powder River	2
*Powell	
Service Area: Deer Lodge	2
Service Area: Lincoln	2
*Roosevelt	
Service Area: Poplar/Wolf Point	1
*Rosebud	
Service Area: Forsyth/Colstrip	4
*Sweet Grass	1
*Teton	
Service Area: Choteau	3
*Toole	
Service Area: Chester	1
Service Area: Shelby	2
*Treasure	
Service Area: Forsyth/Colstrip	4
*Valley	4
*Wibaux	
Service Area: Baker (Mt/Nd)	4
Service Area: Wibaux	1

PRIMARY CARE: Montana

Service Area Listing

Service Area Name	Degree of shortage group
Baker (Mt/Nd)	4
County—Custer	
Parts:	
*Shirley-Ismay Div.	
County—Fallon	
County—Wibaux	
Parts:	
*Pine Hills-St. Phil. Div.	
Boulder	1
County—Jefferson	
Parts:	
*Boulder Div.	
Chester	1
County—Hill	
Parts:	
*Gildford Div. (W 1/2)	
*Rudyard Div.	
County—Liberty	
County—Toole	
Parts:	
*S. Toole Div. (E 1/3)	
Choteau	3
County—Lewis And Clark	
Parts:	
*Augusta Div.	
County—Teton	
Parts:	
*Choteau Div.	
*Fairfield Div.	
Deer Lodge	2
County—Powell	
Parts:	
*Avon Elliston Div.	
*Deer Lodge Div.	
Ennis/W. Yellowstone	2
County—Gallatin	
Parts:	
*West Yellowstone Div.	

PRIMARY CARE: Montana—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Madison	
Parts:	
*Harrison Div.	
*Madison Valley Div.	
*Virginia City Div.	
Forsyth/Colstrip	4
County—Rosebud	
County—Treasure	
Gardiner/Mammoth Hot Springs	1
County—Park	
Parts:	
*Gardiner-Cooke Div.	
Lincoln	2
County—Lewis And Clark	
Parts:	
*Lincoln Div.	
County—Powell	
Parts:	
*Helmville Div.	
Poplar/Wolf Point	1
County—Roosevelt	
Parts:	
*Ft. Peck Res. Div.	
Shelby	2
County—Toole	
Parts:	
*S. Toole Div. (W 2/3)	
*Shelby City	
*Sunburst Div.	
Sheridan/Twin Bridges	2
County—Madison	
Parts:	
*Sheridan Div.	
*Twin Bridges Div.	
Three Forks/Manhattan	4
County—Gallatin	
Parts:	
Manhattan Div. (N.1/3)	
Three Forks Div.	
Wibaux	1
County—Wibaux	
Parts:	
*Wibaux Div.	

PRIMARY CARE: Montana

Facility Listing

Facility Name	Degree of shortage group
Montana State Prs.	3
County—Deer Lodge	
Montana State Prs.	

PRIMARY CARE: Nebraska

County Listing

County Name	Degree of shortage group
*Boone	
Service Area: Albion	3
*Brown	
Service Area: North Central	3
*Cass	4
*Cedar	
Service Area: Cedar/Dixon	3

PRIMARY CARE: Nebraska—Continued

County Listing

County Name	Degree of shortage group
*Chase	3
*Cherry	
Service Area: Mullen	1
Service Area: Valentine	2
*Cuming	
Service Area: West Point	2
*Dawes	
Service Area: Crawford	4
*Dixon	
Service Area: Cedar/Dixon	3
Douglas	
Population Group: Medicaid—N.E./S.E. Omaha	4
*Franklin	
Service Area: Franklin	4
*Frontier	2
*Grant	
Service Area: Mullen	1
*Gresley	
Service Area: Albion	3
Service Area: Howard/St. Paul	3
*Hayes	
Service Area: Hayes/Hitchcock	1
*Hitchcock	
Service Area: Hayes/Hitchcock	1
*Hooker	
Service Area: Mullen	1
*Howard	
Service Area: Howard/St. Paul	3
*Johnson	2
*Keya Paha	
Service Area: North Central	3
*Kimball	2
Lancaster	
Facility: Lancaster Dept. Of Corr.	3
*Madison	
Service Area: Albion	3
*Platte	
Service Area: Albion	3
*Polk	2
*Rock	
Service Area: North Central	3
*Saunders	
Service Area: Wahoo	2
*Sherman	2
*Sioux	
Service Area: Crawford	4
*Stanton	2
*Thayer	4
*Thomas	
Service Area: Mullen	1
*Thurston	
Population Group: Winnebago Indian Pop.	1
*Webster	4

PRIMARY CARE: Nebraska

Service Area Listing

Service Area Name	Degree of shortage group
Albion	3
County—Greeley	
Parts:	
*Spalding Pre. 1	
*Spalding Pre. 2	
County—Madison	
Parts:	
*Newman Grove City	
*Shell Creek Prec.	

PRIMARY CARE: Nebraska—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Boone	
County—Platte	
Parts:	
*St. Bernard Twp.	
*Walker Twp.	
Cedar/Dixon	3
County—Cedar	
County—Dixon	
Parts:	
*Clark Twp.	
*Concord Twp.	
*Daily Twp.	
*Galena Twp.	
*Hooker Twp.	
*Newcastle Twp.	
*Otter Creek Twp.	
*Ponca Twp.	
*Ponca City	
*Silver Creek Twp.	
*Spring Bank Twp.	
Crawford	4
County—Dawes	
Parts:	
*Leonard Pre.	
*North Crawford Pre.	
*South Crawford Pre.	
*Whitney Pre.	
County—Sioux	
Parts:	
*Bowen Pre.	
*Hat Creek Pre.	
*Warbonnet Pre.	
*Whistle Creek Pre.	
Franklin	4
County—Franklin	
Parts:	
*Antelope Twp.	
*Bloomington Twp.	
*Franklin City	
*Grant Twp.	
*Macon Twp.	
*Marion Twp.	
*N. Franklin Twp.	
*Salem Twp.	
*Washington Twp.	
Hayes/Hitchcock	1
County—Dundy	
County—Hayes	
County—Hitchcock	
Howard/St. Paul	3
County—Gresley	
Parts:	
*Gresley Pre.	
*Scotia 1 Pre.	
*Wolbach Pre.	
County—Howard	
Mullen	1
County—Cherry	
Parts:	
*Calf Creek Pre.	
*Goose Creek Pre.	
*King Pre.	
*Lackey Pre.	
*Loup Pre.	
*Mother Lake Pre.	
*Wells Pre.	
County—Grant	
County—Hooker	
County—Thomas	
North Central	3
County—Brown	
County—Keya Paha	
County—Rock	
Omaha (Iowa/Neb)	0
Parts:	
Decatur Twp.	
Quinnebaugh Twp.	
Riverside Twp.	
Silver Creek Twp.	
Valentine	2
County—Cherry	
Parts:	
*Barley Pre.	
*Cleveland Pre.	
*Cody Pre.	
*Crookston Pre.	
*Gillespie Pre.	
*Kennedy Pre.	
*Kilgore Pre.	
*Merriman Pre.	
*Nenzel Pre.	
*Russell Pre.	
*Valentine City	
*Valentine Pre.	
*Wood Lake Pre.	
Wahoo	2
County—Saunders	
Parts:	
*Ashland Twp.	
*Center Twp.	
*Chapman Twp.	
*Chester	
*Clear Creek Twp.	
*Douglas Twp.	
*Elk Twp.	
*Green Twp.	
*Marble Twp.	
*Marietta Twp.	
*Mariposa Twp.	
*Newman Twp.	
*Oak Creek Twp.	
*Richland Twp.	
*Rock Creek Twp.	
*South Cedar Twp.	
*Stocking Twp.	
*Union Twp.	
*Wahoo City	
*Wahoo Twp.	
West Point	2
County—Cuming	
Parts:	
Beemer Twp.	
Bismark Twp.	
Blaine Twp.	
Cuming Twp.	
Elkhorn Twp.	
Garfield Twp.	
Grant Twp.	
Lincoln Twp.	
Logan Twp.	
Monterey Twp.	
Neligh Twp.	
Sherman Twp.	
St Charles Twp.	
West Point City	
Wisner City	
Wisner Twp.	

PRIMARY CARE: Nebraska

Population Group Listing

Population Group	Degree of shortage group
Medicaid—N.E./S.E. Omaha	4
County—Douglas	
Parts:	
C.T. 3	
C.T. 6–12	
C.T. 13.01–13.02	
C.T. 14–19	
C.T. 39–41	
C.T. 51–54	
C.T. 59.01–59.02	
C.T. 60	
C.T. 61.01–61.02	
Winnebago Indian Pop.	1
County—Thurston	

PRIMARY CARE: Nebraska

Facility Listing

Facility Name	Degree of shortage group
Lancaster Dept. Of Corr.	3
County—Lancaster	
Diagnostic & Evaluation C.	
Lincoln Corr. C.	
Nebraska State Pen.	

PRIMARY CARE: Nevada

County Listing

County Name	Degree of shortage group
Carson City (Indep)	
Facility: Nev. St. Corr. Fac. (North)	1
Clark	
Service Area: Blue Diamond	1
Service Area: Cant./N. Cant. Las Vegas	1
Service Area: Indian Springs	1
Service Area: Jean-Goodspring	1
Service Area: Moapa Valley	1
Service Area: Searchlight/Davis Dam	1
Service Area: Virgin Valley	1
Population Group: Washoe Indian Tribe	1
Facility: Nev. St. Corr. Fac. (South)	2
*Douglas	
Population Group: Washoe Indian Tribe	1
*Elko	
Service Area: Wendover (Ut/Nv)	1
Esmeralda	
Service Area: Tonopah/Esmeralda	2
*Eureka	1
*Lander	1
*Lincoln	1
*Mineral	2
*Nye	
Service Area: Beatty	1
Service Area: Pahrump	1
Service Area: Tonopah/Esmeralda	2
*Storey	1
Washoe	
Service Area: Gerlach	1
Service Area: Wadsworth	1
*White Pine	
Service Area: Wendover (Ut/Nv)	1

PRIMARY CARE: Nevada

Service Area Listing

Service Area Name	Degree of shortage group
Beatty	1
County—Nye	
Parts:	
Beatty Twp.	
Blue Diamond	1
County—Clark	
Parts:	
C.T. 58 (Central)	
Cant./N. Cant. Las Vegas	1
County—Clark	
Parts:	
C.T. 3.01–3.02	
C.T. 7	
C.T. 9	
C.T. 11	
C.T. 35–36	
C.T. 46	
Gerlach	1
County—Washoe	
Parts:	
Gerlach Twp.	
Indian Springs	1
County—Clark	
Parts:	
C.T. 58–59 (Southwest)	
Jean-Goodspring	1
County—Clark	
Parts:	
Goodsprings Twp.	
Moapa Valley	1
County—Clark	
Parts:	
Moapa Twp. (N.E. Part)	
Pahrump	1
County—Nye	
Parts:	
Pahrump Twp.	
Searchlight/Davis Dam	1
County—Clark	
Parts:	
Searchlight Twp.	
Tonopah/Esmeralda	2
County—Esmeralda	
County—Nye	
Parts:	
Tonopah Twp.	
Virgin Valley	1
County—Clark	
Parts:	
Bunkerville Twp.	
Mesquite Twp.	
Wadsworth	1
County—Washoe	
Parts:	
C.T. 31	
Wendover (Ut/Nv)	1
County—Elko	
Parts:	
*East Line Twp.	
*Tecoma Twp.	
County—White Pine	
Parts:	
*Ely Twp. (E. Pt.)	

PRIMARY CARE: Nevada

Population Group Listing

Population Group	Degree of shortage group
Washoe Indian Tribe	1
County—Clark	
Parts:	
Dresslerville Ranch	
County—Douglas	
Parts:	
Washoe Ranch	
Carson Colony	

PRIMARY CARE: Nevada

Facility Listing

Facility Name	Degree of shortage group
Nev. St. Corr. Fac. (South)	2
County—Clark	
S. Desert Corr. C.	
S. Nev. Corr. C.	
Nev. St. Corr. Fac. (North)	1
County—Carson City (Indep)	
N. Nev. Med. Security Prs.	
Nev. Max. Security Prs.	
Nev. Womens Corr. C.	

PRIMARY CARE: New Hampshire

County Listing

County Name	Degree of shortage group
*Grafton	
Service Area: Baker River Valley	1
Hillsboro	
Service Area: Hillsborough	2
Merrimack	
Service Area: Hillsborough	2
Rockingham	
Service Area: North West Rockingham County	2
*Sullivan	
Service Area: Hillsborough	2

PRIMARY CARE: New Hampshire

Service Area Listing

Service Area Name	Degree of shortage group
Baker River Valley	1
County—Grafton	
Parts:	
*Rumney Twn.	
*Warren Twn.	
*Wentworth Twn.	
Hillsborough	2
County—Hillsboro	
Parts:	
Deering Twn.	
Hillsborough Twn.	
Weare Twn.—Western Pt.	
Windsor Twn.	

PRIMARY CARE: New Hampshire—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Merrimack	
Parts:	
Henniker Twn.	
County—Sullivan	
Parts:	
*Washington Twn.	
North West Rockingham County	2
County—Rockingham	
Parts:	
Deerfield Twn.	
Epping Twn.	
Fremont Twn.	
Nottingham Twn.	
Raymond Twn.	

PRIMARY CARE: New Jersey

County Listing

County Name	Degree of shortage group
Atlantic	
Service Area: Sa-Lantic	4
Population Group: Pov. Pop.-Atlantic	1
Camden	
Service Area: Camden City	4
Cumberland	
Service Area: Bridgeton	4
Facility: Leesburg State Prs.	2
Essex	
Service Area: Central Newark	4
Service Area: North Newark	4
Service Area: South Newark	4
Hudson	
Population Group: Medicaid—Jersey City	1
Mercer	
Population Group: Medicaid—Trenton	1
Passaic	
Service Area: Northside Paterson	3
Salem	
Service Area: Bridgeton	4
Sussex	
Service Area: South Sussex	4

PRIMARY CARE: New Jersey

Service Area Listing

Service Area Name	Degree of shortage group
Bridgeton	4
County—Cumberland	
County—Salem	
Parts:	
Pittsgrove Twp.	
Camden City	4
County—Camden	
Parts:	
C.T. 6001–6020	
Central Newark	4
County—Essex	
Parts:	
C.T. 13–14	
C.T. 18	
C.T. 28–32	

PRIMARY CARE: New Jersey—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 34–35	
C.T. 37–40	
C.T. 55–60	
C.T. 62–66	
C.T. 80–83	
North Newark	4
County—Essex	
Parts:	
C.T. 1–11	
C.T. 15–17	
C.T. 84–97	
Northside Paterson	3
County—Passaic	
Parts:	
C.T. 1503–1607	
Sa-Lantic	4
County—Atlantic	
Parts:	
Buena Boro.	
Buena Vista Twp.	
Egg Harbor City	
Folsom Boro.	
Hamilton Twp.	
Hammonton Twp.	
Mullica Twp.	
Weymouth Twp.	
South Newark	4
County—Essex	
Parts:	
C.T. 41–47	
C.T. 48.01–48.02	
C.T. 48–54	
South Sussex	4
County—Sussex	
Parts:	
Andover Twp.	
Branchville Boro.	
Byram Twp.	
Frankford Twp	
Franklin Boro.	
Fredon Twp.	
Green Twp.	
Hamburg Boro.	
Hampton Twp.	
Hardyston Twp.	
Hopatcong Boro.	
Lafayette Twp.	
Newton Twp.	
Ogdensburg Boro.	
Sparta Twp.	
Stanhope Boro	
Stillwater Twp.	
Sussex Boro.	
Vernon Twp.	
Wantage Twp.	

PRIMARY CARE: New Jersey

Population Group Listing

Population Group	Degree of shortage group
Medicaid—Jersey City	1
County—Hudson	
Parts:	
Jersey City—Medicaid	
Medicaid—Trenton	1
County—Mercer	
Parts:	
Trenton—Medicaid	

PRIMARY CARE: New Jersey—Continued

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.-Atlantic	1
County—Atlantic	
Parts:	
Atlantic City—Pov.	

PRIMARY CARE: New Jersey

Facility Listing

Facility Name	Degree of shortage group
Leesburg State Prs.	2
County—Cumberland	

PRIMARY CARE: New Mexico

County Listing

County Name	Degree of shortage group
Bernalillo	
Service Area: Southwest Valley	1
*Catron	1
*Chaves	
Service Area: Cloudcroft	3
Service Area: Dexter—Hagerman	1
*Cibola	2
Facility: Western N.M. Corr. Fac.	3
Dona Ana	
Service Area: Hatch	1
Service Area: Southern Dona Ana	1
Facility: Southern N.M. Corr. Fac.	3
*Eddy	
Population Group: Med. Ind. Pop.—Eddy Co.	2
*Grant	
Service Area: Cliff-Gila	1
*Guadalupe	
Service Area: Pecos	1
*Harding	
Service Area: North Harding/Wagon Mound	1
Service Area: Quay/S. Harding/Conchas Dam	2
*Hidalgo	2
*Lincoln	
Service Area: Torrance/Claunch/Corona	1
*Luna	2
*McKinley	2
*Mora	
Service Area: Mora	4
Service Area: North Harding/Wagon Mound	1
*Otero	
Service Area: Cloudcroft	3
Quay	
Service Area: Quay/S. Harding/Conchas Dam	2
*Rio Arriba	
Service Area: South Rio Arriba/Taos	1
Service Area: Tierra Amarilla	1
*Roosevelt	4
*San Juan	
Population Group: Am. In. Pop.—San Juan	1

PRIMARY CARE: New Mexico—Continued

County Listing

County Name	Degree of shortage group
*San Miguel	
Service Area: Pecos	1
Service Area: Quay/S. Harding/Conchas Dam	2
*Sandoval	
Service Area: Cuba	2
Service Area: Southern Sandoval	1
Santa Fe	
Service Area: Santa Fe/La Familia	4
Facility: N.M. State Pen.—Carlos	3
*Sierra	
Service Area: Hatch	1
*Socorro	
Service Area: Magdalena	1
Service Area: Torrance/Claunch/Corona	1
*Taos	
Service Area: Questo/Arroyo Hondo	2
Service Area: South Rio Arriba/Taos	1
Torrance	
Service Area: Torrance/Claunch/Corona	1
*Union	4
*Valencia	
Service Area: Los Lunas	2
Facility: Central N.M. Corr. Fac.	3

PRIMARY CARE: New Mexico

Service Area Listing

Service Area Name	Degree of shortage group
Cliff-Gila	1
County—Grant	
Parts:	
*E.D. 801 (Pinos Altos)	
*E.D. 803 (Pinos Altos)	
*E.D. 805–806 (Tyrone)	
Cloudcroft	3
County—Chaves	
Parts:	
B.W. Chaves CCD (W. 1/2)	
County—Otero	
Parts:	
E.D. 715 (S.E. Otero CCD)	
E.D. 717–720 (S.E. Otero CCD)	
E.D. 722–723 (S.E. Otero CCD)	
Cuba	2
County—Sandoval	
Parts:	
*Cuba CCD	
*Jemez CCD	
Dexter—Hagerman	1
County—Chaves	
Parts:	
Dexter CCD	
Hagerman CCD	
Hatch	1
County—Dona Ana	
Parts:	
N. Dona-Ana Hill CCD (N1/2)	
N. Dona-Ana Hill CCD (N1/2)	
County—Sierra	
Parts:	
E.D. 632 (Tr. Or Consq. E. CCD)	
Los Lunas	2
County—Valencia	
Parts:	
Los Lunas CCD	

PRIMARY CARE: New Mexico—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Magdalena	1
County—Socorro	
Parts:	
*Magdalena CCD	
Mora	4
County—Mora	
Parts:	
*Mora CCD	
North Harding/Wagon Mound	1
County—Harding	
Parts:	
North Harding CCD	
County—Mora	
Parts:	
Wagon Mound CCD	
Pecos	1
County—Guadalupe	
Parts:	
*Dilia CCD	
County—San Miguel	
Parts:	
*Pecos CCD	
*Villanueva CCD	
Quay/S. Harding/Conchas Dam	2
County—Harding	
Parts:	
South Harding CCD	
County—Quay	
County—San Miguel	
Parts:	
Conchas Dam CCD	
Questo/Arroyo Hondo	2
County—Taos	
Parts:	
Arroyo Hondo CCD	
Questo CCD	
Santa Fe/La Familia	4
County—Santa Fe	
Parts:	
C.T. 3 (Tr. Or Consq. E. CCD)	
C.T. 7–9	
C.T. 10.02	
C.T. 12	
South Rio Arriba/Taos	1
County—Rio Arriba	
Parts:	
*Chimayo CCD	
*Dixon CCD	
*South Rio Arriba CCD	
County—Taos	
Parts:	
*Penasco CCD	
*Picuris CCD	
Southern Dona Ana	1
County—Dona Ana	
Parts:	
Anthony CCD	
Southern Dona Ana CCD	
Southern Sandoval	1
County—Sandoval	
Parts:	
*Bernalillo CCD (N. 1/2)	
*Jemez CCD	
*Santo Domingo CCD	
Southwest Valley	1
County—Bernalillo	
Parts:	
C.T. 23	
C.T. 24.01–24.02	
C.T. 40	
C.T. 43	
C.T. 44.01–44.02	
C.T. 45.01–45.02	
C.T. 46.01–46.02	

PRIMARY CARE: New Mexico—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Tierra Amarilla	1
County—Rio Arriba	
Parts:	
*Coyote CCD	
*Jicarilla CCD	
*Rio Chama CCD	
*Tierra Amarilla CCD	
*Vallecitos CCD	
*Western Rio Arriba CCD	
Torrance/Claunch/Corona	1
County—Lincoln	
Parts:	
Corona CCD	
County—Socorro	
Parts:	
Claunch CCD	
County—Torrance	

PRIMARY CARE: New Mexico

Population Group Listing

Population Group	Degree of shortage group
Am. In. Pop.—San Juan	1
County—San Juan	
Parts:	
Am. In. Pop.	
Med. Ind. Pop.—Eddy Co.	2
County—Eddy	
Parts:	
Med. Ind. Pop.	

PRIMARY CARE: New Mexico

Facility Listing

Facility Name	Degree of shortage group
Central N.M. Corr. Fac.	3
County—Valencia	
N.M. State Pen.—Carlos	3
County—Santa Fe	
Southern N.M. Corr. Fac.	3
County—Dona Ana	
Western N.M. Corr. Fac.	3
County—Cibola 2	

PRIMARY CARE: New York

County Listing

County Name	Degree of shortage group
Albany	
Service Area: Northeast Albany	1
Service Area: Southeast Albany City	3
*Allegany	
Service Area: Arcadia	2
Service Area: Letchworth	4

PRIMARY CARE: New York—Continued

County Listing

County Name	Degree of shortage group
Bronx	
Service Area: Morris Heights	1
Service Area: Soundview	2
Facility: Nyc Cen. Fac./Riker'S Island	3
Broome	
Service Area: Deposit	2
*Cattaraugus	
Service Area: Arcade	2
Service Area: Randolph/Ellicottville	3
*Cayuga	
Service Area: Cato	1
Service Area: Groton/Moravia	3
*Chautauqua	
Service Area: Westfield	4
*Chenango	
Service Area: Greene	2
Service Area: Marathon	2
*Clinton	
Service Area: Dannemora	2
*Columbia	
Service Area: Southeast Columbia	2
*Cortland	
Service Area: Marathon	2
*Delaware	
Service Area: Deposit	2
Service Area: Hancock/Colchester	2
Erie	
Service Area: Black Rock/Riverside (Buffalo)	2
Service Area: Elliott Neighborhood—(buffalo)	2
Population Group: Pov. Pop. (P.S. 84 Area)	1
Population Group: Pov. Pop.—Lower West Side	1
*Essex	
Service Area: Central Adirondack	2
Service Area: E. Cent. Essex	4
Service Area: Warrensburg	3
*Franklin	
Service Area: Tupper Lake	1
Greene	
Service Area: Cairo	3
Service Area: Western Greene	3
*Hamilton	
Service Area: Central Adirondack	2
Service Area: South Hamilton	2
Service Area: Webb	2
Herkimer	
Service Area: Webb	2
*Jefferson	
Service Area: Alexandria Bay	3
Service Area: Gouverneur	2
Kings	
Service Area: Brownsville	4
Population Group: Pov. Pop.—Sedford/Bushwick	1
*Lewis	
Service Area: Boonville	3
Service Area: Camden	2
Livingston	
Service Area: Letchworth	4
Service Area: N. Livingston	2
Madison	
Service Area: Marathon	2
Monroe	
Service Area: Jordan (Rochester)	4
Service Area: Westside (Rochester)	1
Montgomery	
Service Area: Western Montgomery	2
New York	
Service Area: East Harlem	3
Service Area: Upper West Side	4
Service Area: West Central Harlem	4
Population Group: Chinese Pop / Lower East Side	4

PRIMARY CARE: New York—Continued

County Listing

County Name	Degree of shortage group
Population Group: Homeless & Pov. Pop.—Chelsea	1
Facility: Bellevue Hosp. Center	3
Oneida	
Service Area: Boonville	3
Service Area: Camden	2
Population Group: Pov. Pop.—City Of Utica	3
Onondaga	
Service Area: Southern Onondaga	2
Population Group: Pov Pop/Syracuse	4
Orange	
Population Group: Med. Ind. / Mig.—N.E. Orange	4
Population Group: Mig. / Med. Ind.—S.W. Orange	2
Orleans	
Service Area: Oak Orchard	3
Oswego	
Service Area: Pulaski	4
*Otsego	
Service Area: Cherry Valley	1
Service Area: Southeast Otsego	1
Service Area: Southwest Otsego	2
Service Area: Western Otsego	1
Queens	
Service Area: Central South Jamaica	1
Population Group: Medicaid—Rockaway	4
Saratoga	
Service Area: Corinth/Luzerne	3
Schenectady	
Population Group: Pov. Pop.—Hamilton Hill/Mt. Pleasant	1
*Schoharie	
Service Area: Cherry Valley	1
Service Area: Southern Schoharie	2
*Schuyler	4
*Seneca	
Service Area: South Seneca	3
*St Lawrence	
Service Area: Alexandria Bay	3
Service Area: Gouverneur	2
Service Area: Massena	4
Service Area: Starlake	4
Service Area: Tupper Lake	1
*Steuben	
Service Area: Elkland (Ny/Pa)	2
*Sullivan	
Service Area: Cochecton	4
*Tompkins	
Service Area: Groton/Moravia	3
Warren	
Service Area: Corinth/Luzerne	3
Service Area: Warrensburg	3
Wayne	
Service Area: Sodus	3
Westchester	
Service Area: Peekskill	3
Service Area: Southwest Yonkers	1
Population Group: Pov. Pop./S. Mt. Vernon	4
*Wyoming	
Service Area: Arcade	2
Service Area: Letchworth	4
Facility: Attica Corr. Fac.	2
*Yates	4

PRIMARY CARE: New York

Service Area Listing

Service Area Name	Degree of shortage group
Alexandria Bay	3
County—Jefferson	
Parts:	
*Alexandria Twn.	
*Cape Vincent Twn.	
*Clayton Twn.	
*Lyme Twn.	
*Orleans Twn.	
*Philadelphia Twn.	
*Teresa Twn.	
County—St Lawrence	
Parts:	
*Hammond Twn.	
Arcade	2
County—Allegany	
Parts:	
*Centerville Twn.	
*Rushford Twn.	
County—Cattaraugus	
Parts:	
*Farmersville Twn.	
*Franklinville Twn.	
*Freedom Twn.	
*Machias Twn.	
*Yorkshire Twn.	
County—Wyoming	
Parts:	
*Arcade Twn.	
*Eagle Twn.	
*Java Twn.	
*Orangeville Twn.	
*Sheldon Twn.	
*Wethersfield Twn.	
Black Rock/Riverside (Buffalo)	2
County—Erie	
Parts:	
C.T. 55–59	
Boonville	3
County—Lewis	
Parts:	
Lewis	
Leyden	
Lyonsdale	
West Turin	
County—Oneida	
Parts:	
Boonville Twn.	
Boonville	
Forestport	
Brownsville	4
County—Kings	
Parts:	
C.T. 347	
C.T. 349	
C.T. 357	
C.T. 359	
C.T. 361	
C.T. 363	
C.T. 882	
C.T. 884	
C.T. 886	
C.T. 888	
C.T. 890	
C.T. 892	
C.T. 894	
C.T. 896	
C.T. 898	
C.T. 900	
C.T. 902	
C.T. 904	
C.T. 906	
C.T. 908	
C.T. 910	
C.T. 912	
C.T. 914	
C.T. 916	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 818	
C.T. 820	
C.T. 1134	
C.T. 1136	
C.T. 1138	
Cairo	3
County—Greene	
Parts:	
Cairo Twn.	
Durham Twn.	
Greenville Twn.	
Camden	2
County—Lewis	
Parts:	
*Osceola Twn.	
County—Oneida	
Parts:	
Annsville Twn.	
Camden Twn.	
Florence Twn.	
Vienna Twn.	
Cato	1
County—Cayuga	
Parts:	
*Cato Twn.	
*Conquest Twn.	
*Ira Twn.	
*Victory Twn.	
Central Adirondack	2
County—Essex	
Parts:	
*Newcomb Twn.	
County—Hamilton	
Parts:	
*Indian Lake Twn.	
*Long Lake Twn.	
Central South Jamaica	1
County—Queens	
Parts:	
C.T. 152	
C.T. 154	
C.T. 190	
C.T. 196	
C.T. 198	
C.T. 202	
C.T. 204	
C.T. 206	
C.T. 208	
C.T. 212	
C.T. 236	
C.T. 238	
C.T. 240	
C.T. 244	
C.T. 246	
C.T. 248	
C.T. 250	
C.T. 252	
C.T. 258	
C.T. 260	
C.T. 262	
C.T. 266	
C.T. 270	
C.T. 272	
C.T. 274	
C.T. 276	
C.T. 278	
C.T. 280	
C.T. 284	
C.T. 288	
C.T. 410	
C.T. 414	
C.T. 440	
C.T. 446.01–446.02	
C.T. 460	
Cherry Valley	1

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Otsego	
Parts:	
*Cherry Valley Twn.	
*Roseboom Twn.	
*Springfield Twn.	
County—Schoharie	
Parts:	
*Sharon Twn.	
Cochecton	4
County—Sullivan	
Parts:	
*Cochecton Twn.	
*Delaware Twn.	
*Fremont Twn.	
*Highland Twn.	
*Tusten Twn.	
Corinth/Luzerne	3
County—Saratoga	
Parts:	
Corinth Twn.	
Day Twn.	
Edinburg Twn.	
Hadley Twn.	
County—Warren	
Parts:	
Lake Luzerne Twn.	
Stony Creek Twn.	
Dannemora	2
County—Clinton	
Parts:	
*Dannemora Twn.	
*Saranac Twn.	
Deposit	2
County—Broome	
Parts:	
Colesville Twn.	
Sanford Twn.	
Windsor Twn.	
County—Delaware	
Parts:	
*Deposit Twn.	
*Tompkins Twn.	
E. Cent. Essex	4
County—Essex	
Parts:	
*Elizabeth Twn.	
*Essex Twn.	
*Keene Twn.	
*Lewis Twn.	
*Moriah Twn.	
*North Hudson Twn.	
*Westport Twn.	
*Willsboro Twn.	
East Harlem	3
County—New York	
Parts:	
C.T. 156.02	
C.T. 158.02	
C.T. 160.20	
C.T. 162	
C.T. 164	
C.T. 166	
C.T. 168	
C.T. 170	
C.T. 172.01–172.02	
C.T. 174.01–174.02	
C.T. 176	
C.T. 180	
C.T. 182	
C.T. 184	
C.T. 188	
C.T. 192	
C.T. 194	
C.T. 196	
C.T. 198	
C.T. 202	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 204	
C.T. 206	
C.T. 210	
Elkland (Ny/Pa)	2
County—Steuben	
Parts:	
*Tuscarora Twn.	
*Woodhill Twn.	
Ellicot Neighborhood—(buffalo)	2
County—Erie	
Parts:	
C.T. 12	
C.T. 13.01–13.02	
C.T. 14.01–14.02	
C.T. 15–18	
C.T. 25.01–25.02	
C.T. 26	
C.T. 27.01	
C.T. 31	
Gouverneur	2
County—Jefferson	
Parts:	
*Antwerp Twn.	
County—St Lawrence	
Parts:	
*Dekalb Twn.	
*Depeyster Twn. (S. 1/2)	
*Edwards Twn.	
*Fowler Twn.	
*Gouverneur Twn.	
*Hermon Twn.	
*Macomb Twn. (S. 1/2)	
*Rossie Twn.	
Greene	2
County—Chenango	
Parts:	
*German Twn.	
*Greene Twn.	
*McDonough Twn.	
*Smithville Twn.	
Groton/Moravia	3
County—Cayuga	
Parts:	
*Locke Twn.	
*Moravia Twn.	
*Sempronius Twn.	
*Summerhill Twn.	
County—Tompkins	
Parts:	
*Groton Twn.	
Hancock/Colchester	2
County—Delaware	
Parts:	
Colchester Twn.	
Hancock Twn.	
Jordan (Rochester)	4
County—Monroe	
Parts:	
C.T. 7	
C.T. 13–15	
C.T. 39	
C.T. 43	
C.T. 48–53	
C.T. 55–56	
C.T. 80	
C.T. 81–82	
C.T. 83.01	
Letchworth	4
County—Allegany	
Parts:	
*Allen Twn.	
*Caneadea Twn.	
*Granger Twn.	
*Hume Twn.	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Livingston	
Parts:	
Portage Twn.	
County—Wyoming	
Parts:	
*Castile Twn.	
*Gainesville Twn.	
*Genesee Falls Twn.	
*Pike Twn.	
Marathon	2
County—Chenango	
Parts:	
*Lincklaen Twn.	
*Pitcher Twn.	
County—Cortland	
Parts:	
*Cincinnatus Twn.	
*Cuyler Twn.	
*Freetown Twn.	
*Hurford Twn.	
*Lapeer Twn.	
*Marathon Twn.	
*Taylor Twn.	
*Willet Twn.	
County—Madison	
Parts:	
De Ruyter Twn.	
Massena	4
County—St Lawrence	
Parts:	
*Brasher Twn.	
*Lawrence Twn.	
*Louisville Twn.	
*Madrid Twn. (E. 1/2)	
*Massena Twn.	
*Norfolk Twn.	
*Stockholm Twn. (N. 1/2)	
*Waddington Twn. (E. 1/2)	
Morris Heights	1
County—Bronx	
Parts:	
C.T. 205	
C.T. 213.01–213.02	
C.T. 215.01–215.02	
C.T. 217.01	
C.T. 239	
C.T. 243	
C.T. 245	
C.T. 247	
C.T. 251	
C.T. 253	
C.T. 255	
C.T. 257	
N. Livingston	2
County—Livingston	
Parts:	
Avon Twn.	
Caledonia Twn.	
Geneseo Twn.	
Groveland Twn.	
Leicester Twn.	
Lima Twn.	
Livonia Twn.	
York Twn.	
Northeast Albany	1
County—Albany	
Parts:	
C.T. 1–2	
C.T. 7–8	
C.T. 11	
Oak Orchard	3
County—Orleans	
Parts:	
Albion Twn.	
Barre Twn.	
Carlton Twn.	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Clarendon Twn.	
Gaines Twn.	
Kendall Twn.	
Murray Twn.	
Peekskill	3
County—Westchester	
Parts:	
Peekskill City	
Pulaski	4
County—Oswego	
Parts:	
Albion Twn.	
Boylston Twn.	
Mexico Twn.	
Orwell Twn.	
Redfield Twn.	
Richland Twn.	
Sandy Creek Twn.	
Williamstown Twn.	
Randolph/Ellicottville	3
County—Cattaraugus	
Parts:	
*Cold Spring Twn.	
*Conewango Twn.	
*Ellicottville Twn.	
*Little Valley Twn.	
*Mansfield Twn.	
*Napoli Twn.	
*New Albion Twn.	
*Randolph Twn.	
*South Valley Twn.	
Sodus	3
County—Wayne	
Parts:	
C.T. 201 (Ontario)	
C.T. 204–205 (Sodus)	
C.T. 208–209 (Huron-Wolcott)	
C.T. 215–216 (Rose-Butler)	
Soundview	2
County—Bronx	
Parts:	
C.T. 2	
C.T. 4	
C.T. 16	
C.T. 20	
C.T. 24	
C.T. 28	
C.T. 36	
C.T. 38	
C.T. 40.02	
C.T. 46	
C.T. 74	
C.T. 84	
C.T. 86	
C.T. 88	
C.T. 96	
C.T. 102	
South Hamilton	2
County—Hamilton	
Parts:	
*Arietta Twn.	
*Benson Twn.	
*Hope Twn.	
*Lake Pleasant Twn.	
*Morehouse Twn.	
*Wells Twn.	
South Seneca	3
County—Seneca	
Parts:	
*Covert Twn.	
*Lodi Twn.	
*Ovid Twn.	
Southeast Albany City	3
County—Albany	
Parts:	
C.T. 23–26	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Southeast Columbia	2
County—Columbia	
Parts:	
*Ancram Twn.	
*Copake Twn.	
*Gallatin Twn.	
*Hillsdale Twn.	
*Taghkanic Twn.	
Southeast Otsego	1
County—Otsego	
Parts:	
*Decatur Twn.	
*Maryland Twn.	
*Westford Twn.	
*Worcester Twn.	
Southern Onondaga	2
County—Onondaga	
Parts:	
Fabius Twn.	
Lafayette Twn.	
Onondaga Twn. (S. 1/2)	
Onondaga Indian Res.	
Otisco Twn.	
Pompey Twn.	
Tully Twn.	
Southern Schoharie	2
County—Schoharie	
Parts:	
*Blenheim Twn.	
*Broome Twn.	
*Conesville Twn.	
*Fulton Twn.	
*Gilboa Twn.	
*Middleburgh Twn.	
Southwest Otsego	2
County—Otsego	
Parts:	
*Butternuts Twp.	
*Morris Twp.	
Southwest Yonkers	1
County—Westchester	
Parts:	
C.T. 1.01–1.02	
C.T. 2.01–2.03	
C.T. 3	
C.T. 4.01–4.02	
C.T. 5–6	
C.T. 10	
C.T. 11.01–11.02	
C.T. 12	
C.T. 13.01–13.03	
C.T. 16	
Starlake	4
County—St Lawrence	
Parts:	
*Clare Twn.	
*Clifton Twn.	
*Colton Twn. (S. 1/2)	
*Fine Twn.	
*Pitcairn Twn.	
*Russell Twn.	
Tupper Lake	1
County—Franklin	
Parts:	
*Altamont Twn.	
County—St Lawrence	
Parts:	
*Piercefield Twn.	
Upper West Side	4
County—New York	
Parts:	
C.T. 177	
C.T. 179	
C.T. 181	
C.T. 183	
C.T. 185	

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 187	
C.T. 189	
C.T. 191	
C.T. 193	
C.T. 195	
C.T. 197.01	
C.T. 199	
C.T. 201.01	
C.T. 203	
C.T. 205	
C.T. 207.01	
Warrensburg	3
County—Essex	
Parts:	
*Minerva Twn.	
County—Warren	
Parts:	
Chester Twn.	
Horicon Twn.	
Johnsburg Twn.	
Thurman Twn.	
Warrensburg Twn.	
Webb	2
County—Hamilton	
Parts:	
*Inlet Twn.	
County—Herkimer	
Parts:	
Webb Twn.	
West Central Harlem	4
County—New York	
Parts:	
C.T. 188	
C.T. 190	
C.T. 197.02	
C.T. 209	
C.T. 391.02	
C.T. 207.02	
C.T. 208	
C.T. 209.01–209.02	
C.T. 211–212	
C.T. 213.01–213.02	
C.T. 214	
C.T. 216	
C.T. 217.01–217.02	
C.T. 218–229	
C.T. 231.01–231.02	
C.T. 233–235	
C.T. 237.01–237.02	
C.T. 239–250	
C.T. 251.01–251.02	
C.T. 252–254	
C.T. 255.01–255.02	
C.T. 256–257	
C.T. 259	
C.T. 241	
C.T. 243.02	
Western Greene	3
County—Greene	
Parts:	
Ashland Twn.	
Hunter Twn.	
Jewett Twn.	
Lexington Twn.	
Prattsville Twn.	
Windham Twn.	
Western Montgomery	2
County—Montgomery	
Parts:	
Canajoharie Twn.	
Minden Twn.	
Palatine Twn.	
Root Twn.	
St. Johnsville Twn.	
Western Otsego	1

PRIMARY CARE: New York—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Otsego	
Parts:	
*Burlington Twn.	
*Edmeston Twn.	
*New Lisbon Twn.	
*Pittsfield Twn.	
*Plainfield Twn.	
Westfield	4
County—Chautauqua	
Parts:	
*Chautauqua Twn.	
*Ripley Twn.	
*Sherman Twn.	
*Westfield Twn.	
Westside (Rochester)	1
County—Monroe	
Parts:	
C.T. 2	
C.T. 16–17	
C.T. 25	
C.T. 27	
C.T. 32	
C.T. 41	
C.T. 64–66	
C.T. 68	
C.T. 94.03	
C.T. 95	
C.T. 96.01–96.04	

PRIMARY CARE: New York

Population Group Listing

Population Group	Degree of shortage group
Chinese Pop / Lower East Side	4
County—New York	
Parts:	
C.T. 2.01–2.02	
C.T. 6	
C.T. 8	
C.T. 10.01–10.02	
C.T. 12	
C.T. 14.01–14.02	
C.T. 15.01	
C.T. 16	
C.T. 18	
C.T. 20	
C.T. 22.01–22.02	
C.T. 24–25	
C.T. 26.01–26.02	
C.T. 27–29	
C.T. 30.01–30.02	
C.T. 31–32	
C.T. 34	
C.T. 35.01–35.02	
C.T. 38	
C.T. 40–41	
C.T. 43	
C.T. 45	
Homeless & Pov. Pop.—Chelsea	1
County—New York	
Parts:	
Mun. Shelter For The Homeless Srvs & Drop In Centers	
C.T. 99	
C.T. 101	
C.T. 103	
Med. Ind. / Mig.—N.E. Orange	4

PRIMARY CARE: New York—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Orange	
Parts:	
Blooming Grove Twn.	
Cornwall Twn.	
Crawford Twn.	
Hamptonburgh Twn.	
Highlands Twn.	
Montgomery Twn.	
New Windsor Twn.	
Newburgh Twn.	
Newburgh City	
Woodbury Twn.	
Medicaid—Rockaway	4
County—Queens	
Parts:	
C.T. 916.01–916.02	
C.T. 916.99	
C.T. 918	
C.T. 922	
C.T. 928	
C.T. 934	
C.T. 936	
C.T. 942.01–942.03	
C.T. 952	
C.T. 962	
C.T. 964	
C.T. 972	
C.T. 992	
C.T. 996	
C.T. 1006	
C.T. 1010	
C.T. 1032	
Mig. / Med. Ind.—S.W. Orange	2
County—Orange	
Parts:	
Chester Twn.	
Goshen Twn.	
Monroe Twn.	
Warwick Twn.	
Pov Pop/Syracuse	4
County—Onondaga	
Parts:	
Pov Pop/City Of Syracuse	
Pov. Pop. (P.S. 84 Area)	1
County—Erie	
Parts:	
C.T. 27.02	
C.T. 29	
C.T. 32.01–32.02	
C.T. 33.01–33.02	
C.T. 34–36	
C.T. 39.01–39.02	
C.T. 40.01–40.02	
C.T. 41	
C.T. 44.02	
Pov. Pop.—Bedford/Bushwick	1
County—Kings	
Parts:	
C.T. 253	
C.T. 255	
C.T. 257	
C.T. 259.01–259.02	
C.T. 261	
C.T. 275	
C.T. 277	
C.T. 279	
C.T. 281	
C.T. 283	
C.T. 285.01–285.02	
C.T. 287	
C.T. 289	
C.T. 291	
C.T. 293	
C.T. 375	
C.T. 389	
C.T. 391	

PRIMARY CARE: New York—Continued

Population Group Listing

Population Group	Degree of shortage group
C.T. 393	
C.T. 395	
C.T. 397	
C.T. 399	
C.T. 415	
C.T. 417	
C.T. 419	
C.T. 421	
C.T. 423	
C.T. 425	
C.T. 465	
C.T. 477	
C.T. 481	
C.T. 483	
C.T. 487	
C.T. 489	
C.T. 491	
C.T. 493	
C.T. 495	
C.T. 497	
C.T. 499	
C.T. 501	
C.T. 503	
C.T. 505	
C.T. 507	
C.T. 509	
C.T. 511	
C.T. 513	
C.T. 515	
C.T. 517	
C.T. 519	
C.T. 523	
C.T. 525	
C.T. 527	
C.T. 529	
C.T. 531	
C.T. 533	
C.T. 535	
C.T. 537	
C.T. 539	
C.T. 545	
C.T. 547	
C.T. 549	
C.T. 551	
C.T. 553	
C.T. 555	
C.T. 557	
Pov. Pop.—City Of Utica	3
County—Oneida	
Pov. Pop.—Hamilton Hill/Mt. Pleasant	1
County—Schenectady	
Parts:	
C.T. 207–209	
C.T. 210.01–210.02	
C.T. 211.09	
C.T. 214–217	
Pov. Pop.—Lower West Side	1
County—Erie	
Parts:	
C.T. 68	
C.T. 71.01–71.02	
C.T. 72.01	
Pov. Pop./S. Mt. Vernon	4
County—Westchester	
Parts:	
C.T. 25–36	
C.T. 40–41	

PRIMARY CARE: New York

Facility Listing

Facility Name	Degree of shortage group
Attica Corr. Fac.	2
County—Wyoming	
Bellevue Hosp. Center	5
County—New York	
Nyc Corr. Fac./Riker'S Island	5
County—Bronx	
Corr. Fac./Rikers Island	

PRIMARY CARE: North Carolina

County Listing

County Name	Degree of shortage group
*Anson	2
*Beaufort	
Service Area: Belhaven	1
Service Area: Richland	2
*Bertie	2
*Bladen	2
*Caldwell	
Service Area: Western Caldwell	1
*Carteret	
Service Area: Eastern Carteret	4
*Caswell	1
*Chatham	4
*Clay	3
*Cleveland	
Population Group: Med. Ind. Pop.—Cleveland Co.	1
Cumberland	
Service Area: S. E. Cumberland	2
*Currituck	2
*Duplin	2
*Edgecombe	1
Franklin	2
*Gates	3
*Greene	1
*Halifax	
Service Area: Littleton	1
*Harnett	
Service Area: Western Harnett	2
*Henderson	
Population Group: Mig. Pop.—Henderson/Polk	1
*Hoke	1
*Hyde	1
*Johnston	
Service Area: Benson	1
Population Group: Mig. Pop.—Johnston/Sampson	1
*Jones	1
*Martin	3
Mecklenburg	
Service Area: Central Charlotte	1
*Montgomery	2
*Nash	
Population Group: Mig. Pop.—Nash/Wilson	1
*Northampton	2
Onslow	3
*Pender	1
*Person	3
*Polk	
Population Group: Mig. Pop.—Henderson/Polk	1
Randolph	4
*Robeson	2
*Sampson	
Population Group: Mig. Pop.—Johnston/Sampson	1

PRIMARY CARE: North Carolina—Continued

County Listing

County Name	Degree of shortage group
*Swain	2
*Tyrrell	1
*Warren	
Service Area: Littleton	1
Service Area: Warrenton	1
*Washington	4
*Wilson	
Population Group: Mig. Pop.—Nash/Wilson	1
Yadkin	4

PRIMARY CARE: North Carolina

Service Area Listing

Service Area Name	Degree of shortage group
Belhaven	1
County—Beaufort	
Parts:	
Bath Twp.	
Pantego Twp.	
Benson	1
County—Johnston	
Parts:	
*Banner Twp.	
*Elevation Twp.	
*Meadow Twp.	
*Pleasant Grove Twp.	
Central Charlotte	1
County—Mecklenburg	
Parts:	
C.T. 1	
C.T. 4–6	
C.T. 36–37	
C.T. 38.02	
C.T. 39–42	
C.T. 43.01–43.02	
C.T. 44–46	
C.T. 46–47	
C.T. 47–51	
C.T. 51–52	
Eastern Carteret	4
County—Carteret	
Parts:	
*Atlantic Twp.	
*Cedar Island Twp.	
*Davis Twp.	
*Harkers Islands Twp.	
*Marshallberg Twp.	
*Merrimon Twp.	
*Portsmouth Twp.	
*Sea Level Twp.	
*Smyrna Twp.	
*Stacy Twp.	
*Straights Twp.	
Littleton	1
County—Halifax	
Parts:	
*Brinkleyville Twp.	
*Butterworth Twp.	
*Littleton Twp.	
County—Warren	
Parts:	
*Fishing Creek Twp.	
*Judkins Twp.	
Richland	2
County—Beaufort	
Parts:	
*Richland Twp.	

PRIMARY CARE: North Carolina—Continued

Service Area Listing

Service Area Name	Degree of shortage group
S. E. Cumberland	2
County—Cumberland	
Parts:	
Cedar Creek Twp.	
Eastover Twp.	
Grays Creek Twp.	
Warrenton	1
County—Warren	
Parts:	
*Fork Twp.	
*Hawtree Twp.	
*Nutbush Twp.	
*Rifle Twp.	
*Roanoke Twp.	
*Sandy Creek Twp.	
*Shocco Twp.	
*Skipcund Twp.	
*Smith Creek Twp.	
*Warrenton Twp.	
Western Caldwell	1
County—Caldwell	
Parts:	
*Globe Twp.	
*Johns River Twp.	
*Mulberry Twp.	
*Patterson Twp.	
*Wilson Creek Twp.	
Western Harnett	2
County—Harnett	
Parts:	
*Anderson Creek Twp.	
*Barbecue Twp.	
*Johnsonville Twp.	
*Lillington Twp.	
*Stewarts Creek Twp.	
*Upper Little River Twp.	

PRIMARY CARE: North Carolina

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Cleveland Co.	1
County—Cleveland	
Parts:	
Med. Ind. Pop.	
Mig. Pop.—Henderson/Polk	1
County—Henderson	
Parts:	
Mig. Pop.	
County—Polk	
Parts:	
Mig. Pop.	
Mig. Pop.—Johnston/Sampson	1
County—Johnston	
Parts:	
Mig. Pop.	
County—Sampson	
Parts:	
Mig. Pop.	
Mig. Pop.—Nash/Wilson	1
County—Nash	
Parts:	
Mig. Pop.	
County—Wilson	
Parts:	
Mig. Pop.	

PRIMARY CARE: North Dakota

County Listing

County Name	Degree of shortage group
*Benson	1
*Billings	
Service Area: Belfield/Medora	1
*Bowman	
Service Area: Baker (Mt/Nd)	4
*Burke	1
*Cavalier	3
*Dickey	
Service Area: Ellendale/Edgely (Nd/Sd)	2
*Divide	1
*Dunn	1
*Eddy	4
*Emmons	1
*Foster	
Service Area: Carrington	4
*Golden Valley	2
Grand Forks	
Service Area: Northwood	2
*Grant	2
*Griggs	4
*Hettinger	1
*Kidder	
Service Area: Carrington	4
Service Area: Harvey	3
Service Area: Medina	1
*La Moure	
Service Area: Ellendale/Edgely (Nd/Sd)	2
Service Area: La Moure	1
*Logan	1
*McIntosh	3
*McKenzie	3
*McLean	2
*Mercer	
Service Area: Mercer/Oliver	2
Morton	
Service Area: West Morton	2
*Mountrail	1
*Nelson	
Service Area: Northwood	2
*Oliver	
Service Area: Mercer/Oliver	2
*Pierce	
Service Area: Harvey	3
*Renville	2
*Rolette	2
*Sargent	1
*Sheridan	1
*Sioux	1
*Slope	
Service Area: Amidon	1
Service Area: Baker (Mt/Nd)	4
*Stark	
Service Area: Belfield/Medora	1
*Steele	
Service Area: Northwood	2
*Stutsman	
Service Area: Carrington	4
Service Area: Medina	1
*Walsh	4
*Wells	
Service Area: Carrington	4
Service Area: Harvey	3

PRIMARY CARE: North Dakota

Service Area Listing

Service Area Name	Degree of shortage group
Amidon	1
County—Slope	
Parts:	
*Amidon City	
*Carroll Twp.	
*Cash Twp.	
*Cedar Creek Twp.	
*Chalky Butte—Unorg.	
*Conner Twp.	
*Crewford Twp.	
*Deep Creek—Unorg.	
*Dovre Twp.	
*E-Six—Unorg.	
*Harper Twp.	
*Hume Twp.	
*Mineral Springs Twn.	
*Moord Twp.	
*Mound Twp.	
*Peaceful Valley Twn.	
*Rainy Butte Twp.	
*Richland Center Twn.	
*Sheets Twp.	
*Slope Center Twp.	
*Sund Creek Twp.	
*Sunshine Twp.	
*White Lake Twp.	
*Woodberry Twp.	
Baker (Mt/Nd)	4
County—Bowman	
Parts:	
*Sunny Slope Twp.	
*W. Bowman—Unorg.	
County—Slope	
Parts:	
*Bucklin Twp.	
*Hughes Twp.	
*Marmarth City	
*N. W. Slope—Unorg.	
*W. Slope—Unorg.	
Belfield/Medora	1
County—Billings	
County—Stark	
Parts:	
*Belfield City	
*E.D. 98 (W. 1/4)	
Carrington	4
County—Kidder	
Parts:	
*Frettim Twp.	
*Lake Williams Twp.	
*Petersville Twp.	
*Pettibone Twp.	
*Pettibone City	
*Resine Twp.	
*Wallace Twp.	
County—Stutsman	
Parts:	
*Conklin Twp.	
*Corinne Twp.	
*Edmunds Twp.	
*Gerber Twp.	
*Glacier Twp.	
*Kensal City	
*Kensal Twp.	
*Lowery Twp.	
*Marston Moor Twp.	
*Nogosek Twp.	
*Pingree City	
*Pingree Twp.	
*Pipestream Valley Twp.	
*Strong Twp.	
*Wadsworth Twp.	
*Walters Twp.	
*Woodworth City	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Foster	
County—Wells	
Parts:	
*Berlin Twp.	
*Bibdeau Twp	
*Cathay Twp.	
*Cathay City	
*Haaland Twp.	
*Hawkeanest Twp.	
*Johnsea Twp.	
*Pregrass Twp.	
*South Cottonwood Twp.	
*Spaedwell Twp.	
*Sykeston Twp.	
*Sykeston City	
*West Ontario Twp.	
*Woodward Twp.	
Ellendale/Edgely (Nd/Sd)	2
County—Dickey	
Parts:	
*Ada Twp.	
*Albertha Twp.	
*Albion Twp.	
*Elden Twp.	
*Ellendale City	
*Ellendale Twp.	
*Elm Twp.	
*Forbes City	
*Fullerton City	
*Garmen Twp.	
*Grand Valley Twp.	
*Hamberg Twp.	
*Kent Twp.	
*Kentner Twp.	
*Keystone Twp.	
*Lorraine Twp.	
*Maple Twp.	
*Merricourt City	
*Monango City	
*Northwest Twp.	
*Porter Twp.	
*Potsdam Twp.	
*Spring Valley Twp.	
*Valley Twp.	
*Van Meter Twp.	
*Whitestone Twp.	
*Wright Twp.	
*Yorktown Twp.	
*Young Twp.	
County—La Moure	
Parts:	
*Edgely City	
*Golden Glen Twp.	
*Nora Twp.	
*Pomona View Twp.	
*Ray Twp.	
*Wano Twp.	
*Willowbank Twp.	
Harvey	3
County—Kidder	
Parts:	
*Alwood Twp.	
*Clear Lake Twp.	
*Kiolspoo Twp.	
*Merkel Twp.	
*Northwest Twp.	
*Robinson City	
*Robinson Twp.	
*Stewart Twp.	
*Tuttle City	
*Tuttle Twp.	
County—Pierce	
Parts:	
*Alexander Twp.	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Antelope Lake Twp.	
*Elling Twp.	
*Hegel Twp.	
*S. Pierce—Unorg.	
*Truman Twp.	
*White Twp.	
County—Wells	
Parts:	
*Bremen Twp.	
*Bull Moose Twp.	
*Chaseley Twp.	
*Crystal Lake Twp.	
*Delgar Twp.	
*Fairville Twp.	
*Fessenden City	
*Forward Twp.	
*Friesz Twp.	
*Germantown Twp.	
*Hamberg City	
*Hamberg Twp.	
*Harvey City	
*Helmdal Twp.	
*Hillsdale Twp.	
*Lyan Twp.	
*Manfred Twp.	
*Norway Lake Twp.	
*Oshkosh Twp.	
*Pony Gulch Twp.	
*Rustand Twp.	
*Silver Lake Twp.	
*St. Anns Twp.	
*Valhalla Twp.	
*Wells Twp.	
*West Norway Twp.	
*Western Twp.	
La Moure	1
County—La Moure	
Parts:	
Adrian Twp.	
Berlin City	
Black Loam Twp.	
Blue Bird Twp.	
Budger Twp.	
Dean Twp.	
Dickey City	
Gladstone Twp.	
Glen Twp.	
Glenmore Twp.	
Grand Rapids Twp.	
Grandview Twp.	
Greenville Twp.	
Hasselata Twp.	
Jud City	
Kennison Twp.	
La Moure City	
Litchville Twp.	
Maston City	
Mikkelson Twp.	
Ovid Twp.	
Pearl Lake Twp.	
Prairie Twp.	
Raney Twp.	
Roscoe Twp.	
Russell Twp.	
Ryan Twp.	
Saratoga Twp.	
Sheridan Twp.	
Verona Twp.	
Lemmon (Sd/Nd)	0
Parts:	
E. Adams (Unorg.) S. 1/2	
Gilstrap Twp.	
North Lemmon Twp.	
Orange Twp.	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
South Fork Twp.	
Medina	1
County—Kidder	
Parts:	
Allen Twp.	
Buckeye Twp.	
Bunker Twp.	
Crystal Spring Twp.	
Dawson City	
Graf Twp.	
Haynes Twp.	
Manning Twp.	
Peace Twp.	
Quinby Twp.	
Sibley Twp.	
South Kidder—Unorg.	
Steele City	
Tanner Twp.	
Tappen City	
Tappen Twp.	
Valley Twp.	
Vernon Twp.	
Weiser Twp.	
Westford Twp.	
Williams Twp.	
Woodlawn Twp.	
County—Stutsman	
Parts:	
Bloomfield Twp.	
Chase Lake—Unorg.	
Chicago Twp.	
Cleveland City	
Flint Twp.	
Gemania Twp.	
Griffin Twp.	
Iosco Twp.	
Medina City	
Newbury Twp.	
Peterson Twp.	
Sinclair Twp.	
St. Paul Twp.	
Sirten Twp.	
Streeter City	
Streeter Twp.	
Valley Spring Twp.	
Weld Twp.	
Mercer/Oliver	2
County—Mercer	
County—Oliver	
Northwood	2
County—Grand Forks	
Parts:	
Arvilla Twp.	
Avon Twp.	
Elm Grove Twp.	
Grace Twp.	
Larimore Twp.	
Larimore City	
Lind Twp.	
Logan Center Twp.	
Loretta Twp.	
Moraine Twp.	
Niagara Twp.	
Niagara City	
Northwood Twp.	
Northwood City	
Pleasant View Twp.	
Washington Twp.	
County—Nelson	
Parts:	
*Anets City	
*Ora Twp.	
*Rugh Twp.	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Steele	
Parts:	
*Beaver Creek Twp.	
*Newburgh Twp.	
*Sharon Twp.	
*Sharon City	
*Westfield Twp.	
West Morton	2
County—Morton	
Parts:	
Almont City	
Curlew Twp	
Engelter Twp	
Glen Ullin City	
Hebron City	
New Salem City	
West Morton—Unorg.	

PRIMARY CARE: Ohio

County Listing

County Name	Degree of shortage group
*Adams	3
Allen	
Service Area: South Side Lima	1
*Ashtabula	
Service Area: Orwell	2
*Brown	3
Butler	
Service Area: Eastern Hamilton	1
Population Group: Pov. Pop.—W. Middletown	1
Carroll	4
Clark	
Population Group: Pov. Pop.—Springfield	2
Clermont	
Service Area: Blanchester	2
Service Area: Southern Clermont	2
*Clinton	
Service Area: Blanchester	2
*Columbiana	
Service Area: East Liverpool (Oh/Pa/Wv)	3
Cuyahoga	
Service Area: Glenville	1
Service Area: Hough/Norwood	2
Service Area: Mt. Pleas./Union-Miles/Corlett	1
Service Area: Near West/West Side	1
Population Group: Medicaid—Clark-Fulton/Denison/Tremont	1
Population Group: Medicaid—Central/Fairfax/Kinsman	1
Population Group: Pov. Pop.—W. Collinwood	1
Facility: Rainbow Babies/Children Hosp	1
*Darke	3
Franklin	
Service Area: Lower Linden (N.E. Columbus)	4
*Guernsey	
Service Area: Freeport	1
Hamilton	
Service Area: East End (Cincinnati)	2
Service Area: East&Lower Price Hill/S. Fairmont	3

PRIMARY CARE: Ohio—Continued

County Listing

County Name	Degree of shortage group
Service Area: Lincoln Heights (Cincinnati)	1
Service Area: Millvale	1
Service Area: Winton Hills (Cincinnati)	4
*Hardin	4
*Harrison	
Service Area: Freeport	1
*Henry	4
*Highland	
Population Group: Med. Ind.—Highland Co.	3
*Hocking	2
*Holmes	3
*Jackson	
Population Group: Medicaid—Jackson Co.	2
Jefferson	
Service Area: Bergholz/Amsterdam	2
Service Area: East Liverpool (Oh/Pa/Wv)	3
Lawrence	
Population Group: Pov. Pop.—Lawrence Co.	1
Lorain	
Population Group: Medicaid Pop.—Lorain	4
Lucas	
Service Area: Center City/Dorr (Toledo)	3
Service Area: Near South Side (Toledo)	1
Mahoning	
Service Area: Eastside Youngstown	2
*Meigs	2
*Monroe	
Service Area: New Matamoras	1
Service Area: Woodsfield	2
Montgomery	
Service Area: West Dayton	2
*Morgan	3
*Morrow	2
*Perry	3
*Pike	3
*Preble	4
*Ross	
Population Group: Medicaid—Ross	3
*Sandusky	
Population Group: Medicaid/MSFW—Sandusky Co.	3
Trumbull	
Service Area: Orwell	2
Service Area: The Flats (Warren)	1
*Tuscarawas	
Service Area: Freeport	1
*Vinton	1
Warren	
Service Area: Blanchester	2
Washington	
Service Area: New Matamoras	1

PRIMARY CARE: Ohio

Service Area Listing

Service Area Name	Degree of shortage group
Bergholz/Amsterdam	2
County—Jefferson	
Parts:	
Rose Twp.	
Springfield	

PRIMARY CARE: Ohio—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Blanchester	2
County—Clermont	
Parts:	
Wayne Twp.	
County—Clinton	
Parts:	
*Marion Twp.	
County—Warren	
Parts:	
Harland Twp.	
Center City/Dorr (Toledo)	3
County—Lucas	
Parts:	
C.T. 27–28	
C.T. 31–37	
C.T. 39	
East End (Cincinnati)	2
County—Hamilton	
Parts:	
C.T. 43–44	
C.T. 47.02	
East Liverpool (Oh/Pa/Wv)	3
County—Columbiana	
Parts:	
*Center Twp.	
*East Liverpool City	
*Elk Run Twp.	
*Franklin Twp.	
*Hanover Twp. (S. 1/2)	
*Liverpool Twp.	
*Madison Twp.	
*Middleton Twp.	
*St. Clair Twp.	
*Washington Twp.	
*Wayne Twp.	
*Wellsville City	
*Yellow Creek Twp.	
County—Jefferson	
Parts:	
Brush Creek Twp.	
Saline Twp.	
East&Lower Price Hill/S. Fairmont	3
County—Hamilton	
Parts:	
C.T. 87 (Fairmont—Sout	
C.T. 88 (Fairmont—Sout	
C.T. 91–95 (Riverside—Sel	
C.T. 103 (Riverside—Sel	
Eastern Hamilton	1
County—Butler	
Parts:	
C.T. 3–4	
C.T. 6	
C.T. 7.01–7.02	
Eastside Youngstown	2
County—Mahoning	
Parts:	
C.T. 6001–6008	
Freeport	1
County—Guernsey	
Parts:	
Londonderry Twp	
Madison Twp	
Washington Twp	
County—Harrison	
Parts:	
Freeport Twp	
Moorefield Twp	
Nottingham Twp	
Washington Twp	
County—Tuscarawas	
Parts:	
Perry Twp	
Glenville	1

PRIMARY CARE: Ohio—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Cuyahoga	
Parts:	
C.T. 1114	
C.T. 1161–1166	
C.T. 1181–1185	
Hough/Norwood	2
County—Cuyahoga	
Parts:	
C.T. 1113–1113	
C.T. 1115–1119	
C.T. 1121–1135	
C.T. 1186	
C.T. 1189	
Lincoln Heights (Cincinnati)	1
County—Hamilton	
Parts:	
C.T. 227 (Lincoln Heights)	
Lower Linden (N.E. Columbus)	4
County—Franklin	
Parts:	
C.T. 7.10	
C.T. 7.20	
C.T. 7.30	
C.T. 9.10	
C.T. 9.20	
C.T. 14–15	
C.T. 75.11	
C.T. 75.20	
Millvale	1
County—Hamilton	
Parts:	
C.T. 28	
C.T. 77	
C.T. 85.02	
C.T. 86.01	
Mt. Pleas./Union-Miles/Corlett	1
County—Cuyahoga	
Parts:	
C.T. 1155–1156	
C.T. 1198–1199	
C.T. 1204–1209	
C.T. 1213	
Near South Side (Toledo)	1
County—Lucas	
Parts:	
C.T. 26	
C.T. 40–42	
C.T. 54	
Near West/West Side	1
County—Cuyahoga	
Parts:	
C.T. 1012	
C.T. 1014–1019	
C.T. 1021–1026	
C.T. 1031–1039	
New Matamoras	1
County—Monroe	
Parts:	
Benton Twp.	
Jackson Twp.	
County—Washington	
Parts:	
Grandview Twp.	
Independence Twp.	
Liberty Twp.	
Ludlow Twp.	
Orwell	2
County—Ashtabula	
Parts:	
*Colebrook Twp.	
*Hartsgrove Twp.	
*New Lyme Twp.	
*Orwell Twp.	
*Roaming Shores Vil.	
*Rome Twp.	
*Windsor Twp.	

PRIMARY CARE: Ohio—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Trumbull	
Parts:	
Bloomfield Twp.	
Greene Twp.	
Gustavus Twp.	
South Side Lima	1
County—Allen	
Parts:	
C.T. 117	
C.T. 135–136	
Southern Clermont	2
County—Clermont	
Parts:	
Franklin Twp. (Pt. Of C.T. 420)	
Monroe Twp. (C.T. 417)	
Ohio Twp. (C.T. 416)	
Tate Twp. (C.T.'S 418 & 419)	
Washington Twp. (Pt. Of C.T. 420)	
The Flats (Warren)	1
County—Trumbull	
Parts:	
C.T. 9205–9206	
West Dayton	2
County—Montgomery	
Parts:	
C.T. 4–6	
C.T. 13	
C.T. 14.02	
C.T. 15–17	
C.T. 19–23	
C.T. 25–26	
C.T. 28–33	
C.T. 702.01–702.02	
C.T. 703	
Winton Hills (Cincinnati)	4
County—Hamilton	
Parts:	
C.T. 80 (Winton Hills)	
Woodsfield	2
County—Monroe	
Parts:	
*Adams Twp.	
*Bethel Twp.	
*Center Twp.	
*Franklin Twp.	
*Green Twp.	
*Lee Twp.	
*Malaga Twp.	
*Ohio Twp.	
*Perry Twp.	
*Salem Twp.	
*Seneca Twp.	
*Summit Twp.	
*Sunsburg Twp.	
*Switzerland Twp.	
*Washington Twp.	
*Wayne Twp.	

PRIMARY CARE: Ohio

Population Group Listing

Population Group	Degree of shortage group
Med. Ind.—Highland Co.	3
County—Highland	
Parts:	
Med. Ind. Pop.	
Medicaid—Central/Fairfax/Kinsman	1

PRIMARY CARE: Ohio—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Cuyahoga	
Parts:	
C.T. 1079 (Winton Hills)	
C.T. 1087–1089	
C.T. 1091–1093	
C.T. 1095–1099	
C.T. 1101–1109	
C.T. 1129	
C.T. 1131–1139	
C.T. 1141–1145	
C.T. 1147–1149	
Medicaid—Clark-Fulton/Denison/Tremont	1
County—Cuyahoga	
Parts:	
C.T. 1027–1029	
C.T. 1041–1042	
C.T. 1044–1049	
C.T. 1051–1059	
Medicaid—Jackson Co.	2
County—Jackson	
Parts:	
Medicaid Pop.	
Medicaid—Rose	3
County—Rose	
Parts:	
Medicaid	
Medicaid Pop.—Lorain	4
County—Lorain	
Parts:	
Lorain City	
Medicaid/MSFW—Sandusky Co.	3
County—Sandusky	
Parts:	
Sandusky	
Pov. Pop.—Lawrence Co.	1
County—Lawrence	
Parts:	
Pov. Pop.	
Pov. Pop.—Springfield	2
County—Clark	
Parts:	
C.T. 1–8	
C.T. 8	
C.T. 8.01–8.02	
C.T. 10	
C.T. 11.01–11.02	
C.T. 12	
Pov. Pop.—W. Collinwood	1
County—Cuyahoga	
Parts:	
C.T. 1169 (Pov. Pop.)	
C.T. 1171–1175 (Pov. Pop.)	
C.T. 1178 (Pov. Pop.)	
C.T. 1261 (Pov. Pop.)	
Pov. Pop.—W. Middletown	1
County—Butler	
Parts:	
C.T. 14 (Part)	
C.T. 128–132	

PRIMARY CARE: Ohio

Facility Listing

Facility Name	Degree of shortage group
Rainbow Babies/Children Hosp.	1
County—Cuyahoga	

PRIMARY CARE: Oklahoma

County Listing

County Name	Degree of shortage group
*Alfalfa	3
Facility: Stringtown Corr. C.	3
*Beaver	4
Cleveland	
Facility: Joseph Harp Corr. C.	1
Facility: Lexington Corr. C.	2
*Coal	3
*Greer	
Facility: Ok. State Pen.—Granite	2
*Haskell	3
*Latimer	4
*Le Flore	
Service Area: South Le Flore	1
Logan	3
*Mayes	
Service Area: Chelsea/New Alluwe	1
McClain	4
*Nowata	
Service Area: Chelsea/New Alluwe	1
Service Area: Nowata	3
Oklahoma	
Service Area: S.E. Oklahoma City	1
Facility: Mabel Bassett Corr. C.	3
Osage	
Facility: Conners Corr. C.	2
Pottawatomie	
Service Area: Konawa	2
*Pushmataha	
Service Area: Clayton	1
*Roger Mills	2
Rogers	
Service Area: Chelsea/New Alluwe	1
*Seminole	
Service Area: Konawa	2
*Texas	
Service Area: Texhoma	1
*Tillman	3
Tulsa	
Service Area: North Tulsa	1
Population Group: Am. In. Pop.—Tulsa	1
*Washita	
Service Area: Southwest Washita	1

PRIMARY CARE: Oklahoma

Service Area Listing

Service Area Name	Degree of shortage group
Chelsea/New Alluwe	1
County—Mayes	
Parts:	
*Adair E.D. 12	
County—Nowata	
Parts:	
*New Alluwe E.D. 14	
County—Rogers	
Parts:	
E.D. 1-4	
Clayton	1

PRIMARY CARE: Oklahoma—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Pushmataha	
Parts:	
*N. Pushmataha CCD	
Konawa	2
County—Pottawatomie	
Parts:	
Maud (C.T. 9012)	
Wanette-Asher (C.T. 9013)	
County—Seminole	
Parts:	
Konawa CCD	
Seminole South CCD	
North Tulsa	1
County—Tulsa	
Parts:	
C.T. 2-10	
C.T. 12-14	
C.T. 57	
C.T. 62	
C.T. 79	
C.T. 80.01-80.02	
C.T. 91.01	
Nowata	3
County—Nowata	
Parts:	
*Lenapah-Delaware CCD	
*Nowata CCD	
*South Coffeyville-Wann CCD	
S.E. Oklahoma City	1
County—Oklahoma	
Parts:	
C.T. 1039	
C.T. 1048	
C.T. 1053-1054	
C.T. 1073.04	
South Le Flore	1
County—Le Flore	
Parts:	
*South Le Flore CCD	
*Talihina CCD	
Southwest Washita	1
County—Washita	
Parts:	
*Southwest Washita CCD	
Texhoma	1
County—Texas	
Parts:	
*West Texas CCD	

PRIMARY CARE: Oklahoma

Population Group Listing

Population Group	Degree of shortage group
Am. In. Pop.—Tulsa	1
County—Tulsa	
Parts:	
Am. In. Pop	

PRIMARY CARE: Oklahoma

Facility Listing

Facility Name	Degree of shortage group
Conners Corr. C.	2
County—Osage	
Joseph Harp Corr. C.	1
County—Cleveland	
Joseph Harp. Corr. C.	
Lexington Corr. C.	2
County—Cleveland	
Lexington Assessment/Recep. C.	
Mabel Bassett Corr. C.	3
County—Oklahoma	
Ok. State Pen.—Granite	2
County—Greer	
Oklahoma State Pen.—Granite	
Stringtown Corr. C.	3
County—Atoka 3	

PRIMARY CARE: Oregon

County Listing

County Name	Degree of shortage group
*Baker	
Service Area: Halfway	1
*Benton	
Service Area: Alsea	1
Service Area: Junction City/Harrisburg/Monroe	3
Clackamas	
Service Area: Estacada	3
Service Area: Mt. Hood	2
Population Group: MSFW—Clackamas	1
*Columbia	
Service Area: Vernonia	1
*Coos	
Service Area: Powers	1
*Douglas	
Population Group: Cow Creek Band Umpqua Indians	1
*Gilliam	
Service Area: Arlington	1
Service Area: Condon	1
*Grant	
Service Area: Long Creek	1
*Harney	
Service Area: Burns	2
Service Area: South Harney	1
Population Group: Burns Paiute Res.	1
*Hood River	
Population Group: MSFW-Hood River (Or/Wa)	1
Jackson	
Service Area: Applegate-Williams	1
Service Area: MSFW—Jackson Co.	1
Service Area: Shady Cove	2
*Jefferson	
Population Group: Am Indian Pop-Warm Springs Res.	1
*Josephine	
Service Area: Applegate-Williams	1
Service Area: Cave Junction	3
*Klamath	
Service Area: Bly	1
Service Area: Chiloquin	1
*Lake	
Service Area: Silver Lake	1
Lane	
Service Area: Junction City/Harrisburg/Monroe	3
Service Area: Lowell	1
Service Area: McKenzie	1

PRIMARY CARE: Oregon—Continued

County Listing

County Name	Degree of shortage group
Service Area: Oakridge	3
Service Area: Triangle Lake/Swisshome	3
Service Area: Veneta	4
*Lincoln	
Population Group: Confed. Tribes / Siletz Res.	1
*Linn	
Service Area: Junction City/Harrisburg/Monroe	3
Service Area: Mill City/Gates	1
*Malheur	
Service Area: Jordan Valley	1
Service Area: Nyssa	1
Service Area: Vale	2
Marion	
Service Area: Detroit	1
Service Area: Mill City/Gates	1
Population Group: MSFW—Polk	1
Facility: St. Pen./Womens Corr. I.	2
Facility: State Corr. I.	2
*Morrow	
Service Area: Boardman	1
Multnomah	
Service Area: Burnside—Portland	5
Polk	
Service Area: Willamina	1
Population Group: Confed. Tribes Of Grande Ronde Res.	1
Population Group: MSFW—Polk	1
*Sherman	
Service Area: Moro/Grass Valley	1
*Tillamook	
Service Area: Pacific City/Cloverdale	3
*Umatilla	
Population Group: Am Indian Pop—Umatilla	1
Population Group: MSFW—Umatilla	2
*Union	
Service Area: Cove/Union	1
*Wasco	
Service Area: Maupin	2
Population Group: Am Indian Pop-Warm Springs Res.	1
Population Group: MSFW-Hood River (Or/Wa)	1
Washington	
Service Area: Vernonia	1
Population Group: MSFW—Washington	1
*Wheeler	
Service Area: Fossil	1
Service Area: Mitchell	1
Yamhill	
Service Area: Willamina	1
Population Group: Confed. Tribes Of Grande Ronde Res.	1
Population Group: MSFW—Yamhill	1

PRIMARY CARE: Oregon

Service Area Listing

Service Area Name	Degree of shortage group
Alsea	1
County—Benton	
Parts:	
*S.W. Benton Div. (W 1/3)	
Applegate-Williams	1

PRIMARY CARE: Oregon—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Jackson	
Parts:	
Southwest Jackson Div. (S.W. Pt.)	
County—Josephine	
Parts:	
*Williams Div.	
Arlington	1
County—Gilliam	
Parts:	
*Arlington Div.	
Bly	1
County—Klamath	
Parts:	
*Langell CCD	
Boardman	1
County—Morrow	
Parts:	
*Boardman Div.	
Burns	2
County—Harney	
Parts:	
Burns Div.	
Drewsey Div.	
Burnside—Portland	5
County—Multnomah	
Parts:	
C.T. 21	
C.T. 61	
Cave Junction	3
County—Josephine	
Parts:	
*Cave Junction Div.	
*E.D. 21 (Wilderville Div.)	
Chiloquin	1
County—Klamath	
Parts:	
*Chiloquin Div.	
*Crescent Lake Div. (S. Pt.)	
*Keno Div. (N. Pt.)	
Condon	1
County—Gilliam	
Parts:	
*Condon Div.	
Cove/Union	1
County—Union	
Parts:	
*Cove Div.	
*Union Div.	
Detroit	1
County—Marion	
Parts:	
Mill City Div. (E 1/2)	
Estacada	3
County—Clackamas	
Parts:	
Estacada Div.	
Fossil	1
County—Wheeler	
Parts:	
*Fossil Div.	
Halfway	1
County—Baker	
Parts:	
*Eagle Valley CCD	
*Halfway CCD	
Jordan Valley	1
County—Malheur	
Parts:	
*Jordan CCD	
Junction City/Harrisburg/Monroe	3
County—Benton	
Parts:	
*So Benton Div. (S 1/2)	

PRIMARY CARE: Oregon—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Lane	
Parts:	
Junction City Div.	
Mid. Suislaw/Trl. Lake (Ed 004)	
County—Linn	
Parts:	
*Harrisburg Div. (S. 1/2)	
Long Creek	1
County—Grant	
Parts:	
*Long Creek Div.	
Lowell	1
County—Lane	
Parts:	
Lowell Div.	
Maupin	2
County—Wasco	
Parts:	
*Dufur Div. (S. 1/2)	
McKenzie	1
County—Lane	
Parts:	
C.T. 1 (mckenzie)	
Mill City/Gates	1
County—Linn	
Parts:	
*Mill City Div. (W. Cont. Pt.)	
County—Marion	
Parts:	
Mill City Div. (W. Cont. Pt.)	
Mitchell	1
County—Wheeler	
Parts:	
*Mitchell Div.	
Moro/Grass Valley	1
County—Sherman	
Parts:	
*Moro Div.	
Mt. Hood	2
County—Clackamas	
Parts:	
Mt. Hood Div.	
MSFW—Jackson Co.	1
County—Jackson	
Parts:	
MSFW	
Nyssa	1
County—Malheur	
Parts:	
*Adrian Div.	
*Nyssa Div.	
*Owyhee Div.	
Oakridge	3
County—Lane	
Parts:	
Oakridge Div.	
Pacific City/Cloverdale	3
County—Tillamook	
Parts:	
*Beaver Div. (S 1/2)	
*Nestucca Div.	
Powers	1
County—Coos	
Parts:	
*Powers Div.	
Shady Cove	2
County—Jackson	
Parts:	
Butte Falls-Prospect Div. (N 1/2)	
Shady Cove Div.	
Silver Lake	1
County—Lake	
Parts:	
*Silver Lake-Ft Rock CCD	
South Harney	1

PRIMARY CARE: Oregon—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Harney	
Parts:	
*Diamond Div.	
Triangle Lake/Siuslaw	3
County—Lane	
Parts:	
Mid. Siuslaw/Mid Lake Div.	
Vale	2
County—Malheur	
Parts:	
*Brogan Div.	
*Juniper Div.	
*Vale Div.	
*West Vale Div.	
Veneta	4
County—Lane	
Parts:	
Veneta City	
C.T. 8 (ex. 1/2)	
C.T. 9.02 (ex. 1/2)	
Vernonia	1
County—Columbia	
Parts:	
*Vernonia Div.	
*E.D. 16 (Cable)	
County—Washington	
Parts:	
E.D. 855 (Coast)	
Willamina	1
County—Polk	
Parts:	
Willamina Div.	
County—Yamhill	
Parts:	
Sheridan Div. (W 2/3)	

PRIMARY CARE: Oregon

Population Group Listing

Population Group	Degree of shortage group
Am Indian Pop—Umatilla	1
County—Umatilla	
Parts:	
Reservation Div.	
Am Indian Pop-Warm Springs Res	1
County—Jefferson	
Parts:	
Warm Spring Div.	
County—Wasco	
Parts:	
Warm Springs Div.	
Burns Paiute Res	1
County—Harney	
Parts:	
Burns-Paiute Indian Colony	
Confed. Tribes / Siletz Res	1
County—Lincoln	
Parts:	
Confed. Tribes/Siletz Res.	
Confed. Tribes Of Grande Ronde Res	1
County—Polk	
Parts:	
Confed. Tribes/Grande Ronde Res	
County—Yamhill	
Parts:	
Grande Ronde Res.	
Cow Creek Band-Umpqua Indians	1

PRIMARY CARE: Oregon—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Douglas	
Parts:	
Cow Creek-Umpqua Indians	
MSFW—Clackamas	1
County—Clackamas	
Parts:	
MSFW	
MSFW—N. Treasure Valley (Id/Ut)	0
MSFW—Polk	1
County—Marion	
Parts:	
MSFW	
County—Polk	
Parts:	
MSFW	
MSFW—Umatilla	2
County—Umatilla	
Parts:	
MSFW	
MSFW—Washington	1
County—Washington	
Parts:	
MSFW	
MSFW—Yamhill	1
County—Yamhill	
Parts:	
MSFW	
MSFW-Hood River (Or/Wa)	1
County—Hood River	
Parts:	
MSFW	
County—Wasco	
Parts:	
Dalles Div. (MSFW)	
Dalur Div. (MSFW)	

PRIMARY CARE: Oregon

Facility Listing

Facility Name	Degree of shortage group
St. Pen./Womens Corr. I.	2
County—Marion	
St. Pen./Womens Corr. C.	
State Corr. I.	2
County—Marion	

PRIMARY CARE: Pennsylvania

County Listing

County Name	Degree of shortage group
Adams	
Service Area: North Adams	3
Allegheny	
Service Area: Arlington Heights/St. Clair	1
Service Area: Homewood-Brushton	2
Service Area: McKees Rocks-Stowe	3
Population Group: Medicaid—E. Liberty	1
*Armstrong	
Service Area: Dayton Rural Valley	4
Service Area: Kiski Valley	2

PRIMARY CARE: Pennsylvania—Continued

County Listing

County Name	Degree of shortage group
Service Area: Northeast Butler	3
Service Area: Punxsutawney	3
Beaver	
Service Area: East Liverpool (Oh/Pa/WV)	3
*Bedford	
Service Area: Bread Top (Area 22)	3
Service Area: Hyndman	1
*Butler	
Service Area: Northeast Butler	3
Cambria	
Service Area: Ebensburg	3
*Cameron	
Service Area: Austin-Emporium	2
Centre	
Service Area: Snow Shoe	1
*Clearfield	
Service Area: Mahaffey	1
Service Area: S. Central Clearfield	3
Service Area: Snow Shoe	1
*Clinton	
Service Area: Austin-Emporium	2
Columbia	
Service Area: Shamokin	3
*Crawford	
Service Area: Conneautville	2
Dauphin	
Service Area: Millersburg	2
Delaware	
Service Area: City Of Chester	2
Erie	
Service Area: Southern Erie	4
Population Group: Medicaid—Erie City	3
Fayette	
Service Area: Connellsville	4
Service Area: Greensboro	2
Service Area: Mercersburg	2
*Franklin	
Service Area: Valleys Community	4
*Fulton	
Service Area: Hancock (Md/Pa/WV)	2
*Greene	
Service Area: Clay/Battelle	2
Service Area: Greensboro	2
*Huntingdon	
Service Area: Big Valley	4
Service Area: Bread Top (Area 22)	3
Service Area: Cromwell (Pinng Area 25)	1
*Indiana	
Service Area: Mahaffey	1
Service Area: Punxsutawney	3
*Jefferson	
Service Area: Punxsutawney	3
*Juniata	
Service Area: Mt. Pleasant Mills-Middleburg	2
Lancaster	
Population Group: Pox. Pop.—Welsh Mtn.	2
Population Group: Span. Sp.-S.E. Lancaster	1
Luzerne	
Service Area: Exeter	3
Service Area: Monroe/Nesen	3
*McKean	
Service Area: Central Mckean	4
Service Area: Shinglehouse	2
Mercer	
Population Group: Medicaid—Sharon/Farrell	4
*Mifflin	
Service Area: Big Valley	4

PRIMARY CARE: Pennsylvania—Continued

County Listing

County Name	Degree of shortage group
*Northumberland	
Service Area: Herndon	2
Service Area: Millersburg	2
Service Area: Shamokin	3
Philadelphia	
Service Area: Lower N. Philadelphia	3
Service Area: South Philadelphia	4
Service Area: Upper N. Philadelphia	4
Service Area: West Philadelphia	4
*Potter	
Service Area: Austin-Emporium	2
Service Area: Shinglehouse	2
Service Area: Westfield	1
*Schuylkill	
Service Area: Herndon	2
*Snyder	
Service Area: Mt. Pleasant Mills-Middleburg	2
Somerset	
Service Area: Confluence (Area 7)	2
Service Area: Hyndman	1
*Sullivan	
Service Area: La Porte	4
*Tioga	
Service Area: Blossburg	2
Service Area: Elkland (Ny/Pa)	2
Service Area: Mansfield	2
Service Area: Westfield	1
*Wayne	
Service Area: Northern Wayne	2
Westmoreland	
Service Area: Connellsville	4
Service Area: Kiski Valley	2
Wyoming	
Service Area: Exeter	3
Service Area: Monroe/Nesen	3
York	
Service Area: York	3

PRIMARY CARE: Pennsylvania

Service Area Listing

Service Area Name	Degree of shortage group
Arlington Heights/St. Clair	1
County—Allegheny	
Parts:	
C.T. 1803–1804	
C.T. 1806	
Austin-Emporium	2
County—Clinton	
Parts:	
*West Keating Twp.	
County—Cameron	
County—Potter	
Parts:	
*Austin Twp.	
*Keating Twp.	
*Portage Twp.	
*Sylvania Twp.	
*Wharton Twp.	
Big Valley	4
County—Huntingdon	
Parts:	
*Barree Twp.	
*Brady Twp. (N. 1/4)	
*Jackson Twp.	
*Miller Twp.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Mifflin	
Parts:	
*Armagh Twp.	
*Brown Twp.	
*Menno Twp.	
*Union Twp.	
Blossburg	2
County—Tioga	
Parts:	
*Bloss Twp.	
*Blossburg Boro.	
*Covington Twp.	
*Hamilton Twp.	
*Liberty Twp. (E. 1/2)	
*Liberty Boro.	
*Putnam Twp.	
*Union Twp.	
*Ward Twp.	
Broad Top (Area 22)	3
County—Bedford	
Parts:	
*Broad Top Twp.	
*Coaldale Boro.	
*Hopewell Boro.	
*Liberty Twp.	
*Saxton Boro.	
County—Huntingdon	
Parts:	
*Broad Top City Boro.	
*Carbon Twp.	
*Cass Twp.	
*Caseville Boro.	
*Coalmont Boro.	
*Dudley Boro.	
*Hopewell Twp.	
*Todd Twp.	
*Wood Twp.	
Central Mckean	4
County—McKean	
Parts:	
*Annin Twp.	
*Eldred Twp.	
*Eldred Boro.	
*Hamlin Twp. (E. 1/2)	
*Keating Twp.	
*Liberty Twp.	
*Mt. Jewett Twp. (E. 1/2)	
*Norwich Twp.	
*Otto Twp.	
*Port Allegany Boro.	
*Sergeant Twp.	
*Smethport Boro.	
City Of Chester	2
County—Delaware	
Parts:	
C.T. 4048	
C.T. 4048.01–4048.02	
C.T. 4050–4057	
C.T. 4058.01–4058.02	
C.T. 4059–4060	
Clay/Battelle	2
County—Greene	
Parts:	
*Aleppo Twp.	
*Freeport Twp.	
*Gilmore Twp.	
*Jackson Twp.	
*Springhill Twp.	
Confluence (Area 7)	2
County—Somerset	
Parts:	
Addison Twp.	
Addison Boro.	
Casselman Boro.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Confluence Boro.	
Lower Turkeyfoot Twp.	
Upper Turkeyfoot Twp.	
Conneautville	2
County—Crawford	
Parts:	
*Beaver Twp.	
*Conneautville Boro.	
*Conneaut Twp.	
*Cussewago Twp. (W. 1/2)	
*Hayfield Twp. (W. 1/2)	
*Linesville Boro.	
*Pine Twp.	
*Springboro Boro.	
*Spring Twp.	
*Summerhill Twp.	
Connellsville	4
County—Fayette	
Parts:	
Bullskin Twp.	
Connellsville City	
Connellsville Twp.	
Dawson Boro.	
Dunbar Twp.	
Dunbar Boro.	
Everson Boro.	
Lower Tyrone Twp.	
S. Connellsville Boro.	
Saltlick Twp.	
Springfield Twp.	
Upper Tyrone Twp.	
Vanderbuilt Boro.	
County—Westmoreland	
Parts:	
E. Huntingdon Twp.	
Mt. Pleasant Twp.	
Mt. Pleasant Boro.	
S. Huntingdon Twp.	
Scottsdale Boro.	
Smithton Boro.	
Cromwell (Pinng Area 25)	1
County—Huntingdon	
Parts:	
*Clay Twp.	
*Cromwell Twp.	
*Dublin Twp.	
*Orbisonia Boro.	
*Rockhill Boro.	
*Saltillo Boro.	
*Shade Gap Boro.	
*Springfield Twp.	
*Tell Twp.	
*Three Springs Boro.	
Dayton Rural Valley	4
County—Armstrong	
Parts:	
*Atwood Boro.	
*Cowanshannock Twp.	
*Dayton Boro.	
*Redbank Twp. (W. 2/3)	
*Rural Valley Boro.	
*Wayne Twp.	
East Liverpool (Oh/Pa/WV)	3
County—Beaver	
Parts:	
Georgetown Boro.	
Glasgow Boro.	
Greene Twp. (W. 1/3)	
Hookstown Boro.	
Ohioville Boro. (W. 1/3)	
Ebensburg	3
County—Cambria	
Parts:	
Blacklick Twp.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Cambria Twp.	
Ebensburg Boro.	
Jackson Twp. (Mixed)	
Nanty-Glo Boro.	
Vintondale Boro.	
Elkland (Ny/Pa)	2
County—Tioga	
Parts:	
*Deerfield Twp.	
*Elkland Twp.	
*Elkland Boro.	
*Farmington Twp.	
*Knoxville Boro.	
*Nelson Twp.	
*Osceola Twp.	
Exeter	3
County—Luzerne	
Parts:	
Exeter Boro.	
Exeter Twp.	
Franklin Twp.	
West Wyoming Boro.	
County—Wyoming	
Parts:	
Exeter Twp.	
Falls Twp.	
Greensboro	2
County—Fayette	
Parts:	
German Twp.	
Masontown Boro.	
Nicholson Twp.	
Point Marion Boro.	
Springhill Twp.	
County—Greene	
Parts:	
*Dunkard Twp.	
*Greene Twp.	
*Greensboro Boro.	
*Monongahela Twp.	
Hancock (Md/Pa/Wv)	2
County—Fulton	
Parts:	
*Bethel Twp.	
*Thompson Twp.	
*Union Twp.	
Herndon	2
County—Northumberland	
Parts:	
*Herndon Boro.	
*Jackson Twp.	
*Jordan Twp.	
*Little Mahanoy Twp.	
*Lower Mahanoy Twp. (Pt. 1/2)	
*Upper Mahanoy Twp.	
*W. Cameron Twp.	
*Washington Twp.	
County—Schuylkill	
Parts:	
*Eldred Twp.	
*Upper Mahantango Twp.	
Homewood-Brushton	2
County—Allegheny	
Parts:	
C.T. 1207	
C.T. 1301–1306	
Hyndman	1
County—Bedford	
Parts:	
*Harrison Twp.	
*Hyndman Boro.	
*Juniata Twp.	
*Londonderry Twp.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Somerset	
Parts:	
Allegheny Twp.	
Fairhope Twp.	
New Baltimore Boro.	
Kiski Valley	2
County—Armstrong	
Parts:	
*Apollo Boro.	
*Bethel Twp.	
*Burrel Twp.	
*Gilpen Twp.	
*Kiskiminetas Twp.	
*Leechburg Boro.	
*N. Apollo Boro.	
*Parks Twp.	
*South Bend Twp.	
County—Westmoreland	
Parts:	
Allegheny Twp.	
Avonmore Boro.	
Bell Twp.	
E. Vandergrift Boro.	
Hyde Park Boro.	
Oklahoma Boro.	
Vandergrift Boro.	
W. Leechburg Boro.	
Washington Twp.	
La Porte	4
County—Sullivan	
Parts:	
Cherry Twp.	
Colley Twp.	
Davidson Twp.	
Dushore Boro.	
Eagles Mere Boro.	
Elkland Twp.	
Forks Twp.	
Forksville Boro.	
Hillsgrove Twp.	
La Porte Boro.	
La Porte Twp.	
Shrewsbury Twp.	
Lower N. Philadelphia	3
County—Philadelphia	
Parts:	
C.T. 125–142	
C.T. 144–157	
C.T. 162–169	
Mahaffey	1
County—Clearfield	
Parts:	
*Bell Twp.	
*Burnside Boro.	
*Burnside Twp.	
*Ferguson Twp. (W. 3/4)	
*Greenwood Twp.	
*Mahaffey Boro.	
*N. Washington Boro.	
*Newburg Boro.	
County—Indiana	
Parts:	
*Banks Twp. (E. 1/4)	
*Glen Campbell Boro.	
Mansfield	2
County—Tioga	
Parts:	
*Jackson Twp.	
*Lawrenceville Boro.	
*Lawrence Twp.	
*Mansfield Boro.	
*Richmond Twp.	
*Roseville Boro.	
*Rutland Twp.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Sullivan Twp.	
*Tioga Twp.	
*Tioga Boro.	
Markleysburg	2
County—Fayette	
Parts:	
Henry Clay Twp.	
Markleysburg Boro.	
Ohiopyle Boro.	
Stewart Twp.	
Wharton Twp.	
McKees Rocks-Stowe	3
County—Allegheny	
Parts:	
C.T. 4621 (Stowe Twp.)	
C.T. 4626 (Stowe Twp.)	
C.T. 4637–4639 (Mckees Rocks Boro)	
Millersburg	2
County—Dauphin	
Parts:	
Berrysburg Boro.	
Elizabethville Boro.	
Gratz Boro.	
Halifax Boro.	
Halifax Twp.	
Jackson Twp. (W. 3/4)	
Jefferson Twp. (W. 1/2)	
Lykens Twp.	
Millin Twp.	
Millersburg Boro.	
Reed Twp.	
Upper Paxton Boro.	
Washington Twp.	
Wayne Twp.	
County—Northumberland	
Parts:	
*Lower Mahanoy Twp. (S. 1/2)	
Monroe/Nowen	3
County—Luzerne	
Parts:	
Harvey'S Lake Boro.	
County—Wyoming	
Parts:	
Forkston Twp. (S. 3/4)	
Monroe Twp.	
Northmoreland Twp.	
Noxen Twp.	
Mt. Pleasant Mills-Middleburg	2
County—Juniata	
Parts:	
*Monroe Twp.	
*Susquehanna Twp.	
County—Snyder	
Parts:	
*Beavertown Boro.	
*Beaver Twp.	
*Centre Twp.	
*Chapman Twp.	
*Franklin Twp.	
*Freeburg Boro.	
*Middleburg Boro.	
*Perry Twp.	
*Union Twp.	
*Washington Twp.	
*West Perry Twp.	
North Adams	3
County—Adams	
Parts:	
Arendtsville Boro.	
Bendersville Boro.	
Biglerville Boro.	
Butler Twp.	
Huntington Twp.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Menallen Twp.	
Tyrone Twp.	
York Springs Boro.	
Northeast Butler	3
County—Armstrong	
Parts:	
*Hovey Twp.	
*Parker City	
County—Butler	
Parts:	
*Allegheny Twp.	
*Bruin Boro.	
*Cherry Valley Boro.	
*Chicora Boro.	
*Concord Twp.	
*Donegal Twp.	
*Eau Claire Boro.	
*Fairview Twp.	
*Fairview Boro.	
*Karns City Boro.	
*Parker Twp.	
*Petrolia Boro.	
*Venango Twp.	
*Washington Twp.	
Northern Wayne	2
County—Wayne	
Parts:	
*Buckingham Twp.	
*Damascus Twp.	
*Lebanon Twp.	
*Manchester Twp.	
*Mt. Pleasant Twp.	
*Preston Twp.	
*Scott Twp.	
*Starrucca Boro.	
Punxsutawney	3
County—Armstrong	
Parts:	
*Redbank Twp. (Eastern 1/3)	
County—Indiana	
Parts:	
*Banks Twp. (Western 3/4)	
*Canoe Twp.	
*Northern Mahoning (N.1/2)	
*Smicksburg Boro.	
*W. Mahoning (E. 1/4)	
County—Jefferson	
Parts:	
*Beaver Twp. (Southern 1/2)	
*Bell Twp.	
*Big Run Boro.	
*Gaskill Twp.	
*Henderson Twp.	
*McCalmont Twp.	
*Oliver Twp.	
*Perry Twp.	
*Porter Twp.	
*Punxsutawney Boro.	
*Ringgold Twp.	
*Timblin Boro.	
*Worthville Boro.	
*Young Twp.	
S. Central Clearfield	3
County—Clearfield	
Parts:	
*Beccaria Twp.	
*Bigler Twp.	
*Chest Twp.	
*Coalport Boro.	
*Glen Hope Boro.	
*Gulich Twp.	
*Irvona Boro.	
*Jordan Twp.	
*Ramey Boro.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Westover Boro.	
Shamokin	3
County—Columbia	
Parts:	
Cleveland Twp. (S. 1/4)	
County—Northumberland	
Parts:	
*Coal Twp.	
*Kulpmont Boro.	
*Marion Heights Boro.	
*Mt. Carmel Twp.	
*Ralpho Twp.	
*Shamokin City	
*Zerbe Twp.	
Shinglehouse	2
County—McKean	
Parts:	
*Ceres Twp.	
County—Potter	
Parts:	
*Clara Twp.	
*Genesee Twp.	
*Oswayo Twp.	
*Oswayo Boro.	
*Pleasant Valley Twp.	
*Sharon Twp.	
*Shinglehouse Boro.	
Snow Shoe	1
County—Centre	
Parts:	
Boggs Twp. (S. 1/2)	
Burnside Twp.	
Curtin Twp. (E. 1/2)	
Snow Shoe Twp.	
Snow Shoe Boro.	
Union Twp. (S. 1/2)	
Unionville Boro.	
County—Clearfield	
Parts:	
*Cooper Twp. (N. 2/3)	
*Covington Twp.	
*Karthaus Twp.	
South Philadelphia	4
County—Philadelphia	
Parts:	
C.T. 13–14	
C.T. 19–22	
C.T. 33	
Southern Erie	4
County—Erie	
Parts:	
Albion Boro.	
Conneaut Twp.	
Cranesville Boro.	
Elk Creek Twp.	
Franklin Twp.	
Platea Boro.	
Springfield Twp.	
Upper N. Philadelphia	4
County—Philadelphia	
Parts:	
C.T. 170–178	
C.T. 195–205	
Valleys Community	4
County—Franklin	
Parts:	
*Fannet Twp.	
*Metal Twp.	
West Philadelphia	4
County—Philadelphia	
Parts:	
C.T. 83–85	
C.T. 92–96	
C.T. 101–105	

Service Area Name	Degree of shortage group
C.T. 111–113	
Westfield	1
County—Potter	
Parts:	
Harrison Twp. (1/2)	
Hector Twp. (1/2)	
County—Tioga	
Parts:	
Brookfield Twp.	
Chatham Twp. (1/2)	
Clymer Twp. (1/2)	
Westfield Twp.	
Westfield Boro.	
York	3
County—York	
Parts:	
C.T. 1–3	
C.T. 6	
C.T. 7	
C.T. 10	
C.T. 15–16	

PRIMARY CARE: Pennsylvania

Population Groups Listing

Population Group	Degree of shortage group
Medicaid—E. Liberty	1
County—Allegheny	
Parts:	
C.T. 806	
C.T. 1006–1007	
C.T. 1104	
C.T. 1108–1110	
C.T. 1201–1204	
C.T. 1208	
Medicaid—Erie City	3
County—Erie	
Parts:	
Erie City—Medicaid	
Medicaid—Sharon/Farrell	4
County—Mercer	
Parts:	
Farrell City	
Sharon City	
Pov. Pop.—Welsh Mtn.	2
County—Lancaster	
Parts:	
Caernarvon Twp.	
East Earl Twp.	
Salisbury Twp.	
Terre Hill Boro.	
Spec. Sp.-S.E. Lancaster	1
County—Lancaster	
Parts:	
C.T. 8–9	
C.T. 14–16	

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PRIMARY CARE: Rhode Island

County Listing

County Name	Degree of shortage group
Bristol	
Population Group: Pov. Pop.—Bristol/E. Providence	3
Kent	
Population Group: Pov. Pop./Kent Co.	3
Providence	
Service Area: Central Falls/Central Pawtucket	2
Service Area: Northwest Providence	2
Service Area: Northwest Woonsocket	2
Population Group: Pov. Pop.—Bristol/E. Providence	3
Population Group: Pov. Pop./City Of Providence	3
Washington	
Service Area: West Washington	2
Population Group: Pov. Pop./East Washington 14	4

PRIMARY CARE: Rhode Island

Service Area Listing

Service Area Name	Degree of shortage group
Central Falls/Central Pawtucket	2
County—Providence	
Parts:	
C.T. 108–111	
C.T. 148	
C.T. 151–154	
C.T. 161	
C.T. 164	
Northwest Providence	2
County—Providence	
Parts:	
Burrillville Twn.	
Foster Twn.	
Glocester Twn.	
Northwest Woonsocket	2
County—Providence	
Parts:	
C.T. 172	
C.T. 174	
C.T. 176	
C.T. 178–183	
West Washington	2
County—Washington	
Parts:	
Charlestown Twn.	
Exeter Twn.	
Hopkinton Twn.	
Richmond Twn.	

PRIMARY CARE: Rhode Island

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—Bristol/E. Providence	3
County—Bristol	
Parts:	
Pov. Pop. (Bristol)	
County—Providence	
Parts:	
C.T 101.01–101.02 (Pov. Pop.)	
C.T. 102–104 (Pov. Pop.)	
C.T. 106.01–106.02 (Pov. Pop.)	
C.T. 106 (Pov. Pop.	
C.T. 107.01–107.02 (Pov. Pop.)	
Pov. Pop./City Of Providence	3
County—Providence	
Parts:	
C.T. 1–37	
Pov. Pop./East Washington 14	4
County—Washington	
Parts:	
Narragansett Twn.	
North Kingstown Twn.	
South Kingstown Twn.	
Pov. Pop./Kent Co.	3
County—Kent	
Parts:	
Pov. Pop.	

PRIMARY CARE: Rhode Island—Continued

Population Group Listing

PRIMARY CARE: South Carolina

County Listing

County Name	Degree of shortage group
*Abbeville	
Service Area: Calhoun Falls	2
Service Area: Ware Shoals/Princeton	3
*Allendale	2
Anderson	
Facility: Perry Corr. I.	3
*Bamberg	
Service Area: Bamberg	4
Service Area: Ehrhart/Lodge	1
*Barnwell	3
*Beaufort	
Service Area: Sheldon	1
Service Area: St. Helena	1
Berkeley	1
*Calhoun	2
Charleston	
Service Area: McClellanville/Sampit/Santee	1
Service Area: Sea Island	2
Population Group: Pov. Pop.-Peninsula Charleston	2
*Chester	
Service Area: Richburg	4
*Chesterfield	
Service Area: Sandhills	2
Service Area: Society Hill	1
*Clarendon	2
*Colleton	
Service Area: Ehrhart/Lodge	1
*Darlington	
Service Area: Society Hill	1
*Dillon	4
Dorchester	
Service Area: St. George	1
*Edgefield	
Service Area: Johnston/Trenton	3
*Fairfield	3
Florence	
Service Area: Olanta	1
*Georgetown	
Service Area: McClellanville/Sampit/Santee	1
*Greenwood	
Service Area: Ware Shoals/Princeton	3
*Hampton	4
*Horry	
Service Area: Little River	1
Service Area: Loris	3
*Jasper	4
*Kershaw	
Service Area: Bethune-Mt. Pisgah	1
*Lancaster	
Service Area: Heath Springs	4
*Laurens	
Service Area: Ware Shoals/Princeton	3
*Lee	3
Lexington	
Service Area: Batesburg/Leesville	3
Service Area: Pelion-Swansea	3
*Marion	
Service Area: Britions Neck	1
*Marlboro	4
*McCormick	3
*Orangeburg	
Service Area: Eastern Orangeburg	4
Richland	
Service Area: Eastover	1
Facility: Central Corr. I.	3
Facility: Kirkland Corr. I.	3
Facility: Manning Corr. I.	3
Facility: Women'S Corr. I.	3
*Saluda	1
*Sumter	
Service Area: Olanta	1
*Union	2
*Williamsburg	2

PRIMARY CARE: South Carolina

Service Area Listing

Service Area Name	Degree of shortage group
Bamberg	4
County—Bamberg	
Parts:	
*Bamberg CCD	
*Denmark CCD	
*Olar CCD	
Batesburg/Leesville	3
County—Lexington	
Parts:	
Batesburg/Leesville CCD	
Gilbert CCD	
Bethune-Mt. Pisgah	1
County—Kershaw	
Parts:	
*Bethune CCD	
*Mt. Pisgah CCD	
Britions Neck	1
County—Marion	
Parts:	
*Britions Neck CCD	
*Centenary CCD	
Calhoun Falls	2
County—Abbeville	
Parts:	
*Antreville/Lowndesville CCD	
*Calhoun Falls CCD	
Eastern Orangeburg	4
County—Orangeburg	
Parts:	
*Bowman CCD	
*Elloree CCD	
*Eutawville CCD	

PRIMARY CARE: South Carolina—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Holly CCD	
*Vance CCD	
Eastover	1
County—Richland	
Parts:	
Eastover CCD	
Hopkins CCD	
Ehrhart/Lodge	1
County—Bamberg	
Parts:	
*Ehrhart CCD	
County—Colleton	
Parts:	
*Lodge CCD	
*Smoaks CCD	
Heath Springs	4
County—Lancaster	
Parts:	
*Heath Springs CCD	
*Kershaw CCD	
Johnston/Trenton	3
County—Edgefield	
Parts:	
Johnston CCD	
Trenton CCD	
Little River	1
County—Horry	
Parts:	
*E.D. 660–664 (Longs CCD)	
*E.D. 669 (Longs CCD)	
*E.D. 663 (Longs CCD)	
*E.D. 775 (Longs CCD)	
Loris	3
County—Horry	
Parts:	
*Floyds CCD	
*Loris CCD	
*E.D. 660–662 (Longs Div.)	
*E.D. 694–695 (Aynor Div.)	
*E.D. 726–727 (Aynor Div.)	
*E.D. 730–731 (Aynor Div.)	
McClellanville/Sampit/Santee	1
County—Charleston	
Parts:	
C.T. 50	
County—Georgetown	
Parts:	
*E.D. 324–327	
Olanta	1
County—Florence	
Parts:	
Olanta CCD	
Sardis CCD	
County—Sumter	
Parts:	
*Shiloh CCD	
Pelion-Swansea	3
County—Lexington	
Parts:	
Pelion Twn.	
Swansea Twn.	
E.D. 72 (Swansea CCD)	
E.D. 726–728 (Swansea CCD)	
E.D. 730–731 (Pelion CCD)	
E.D. 736–739 (Pelion CCD)	
Richburg	4
County—Chester	
Parts:	
*Great Falls CCD	
*Landsford CCD	
*Richburg CCD	
*E.D. 397–398 (Chester CCD)	
*E.D. 402 (Chester CCD)	
*E.D. 406 (Chester CCD)	

PRIMARY CARE: South Carolina—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Sandhills	2
County—Chesterfield	
Parts:	
*Jefferson CCD	
*McBee CCD	
*Pageland CCD	
Sea Island	2
County—Charleston	
Parts:	
Edisto Is.	
James Is.	
Johns Is.	
Wadmalaw Is.	
Sheldon	1
County—Beaufort	
Parts:	
*Sheldon CCD	
Society Hill	1
County—Chesterfield	
Parts:	
*E.D. 481 (Cheraw CCD)	
*E.D. 483 (Cheraw CCD)	
County—Darlington	
Parts:	
*E.D. 550–554 (Society Hill CCD)	
St. George	1
County—Dorchester	
Parts:	
Harleyville CCD	
Reevesville CCD	
Ridgeville CCD	
St. George CCD	
St. Helena	1
County—Beaufort	
Parts:	
*St. Helena CCD	
Ware Shoals/Princeton	3
County—Abbeville	
Parts:	
*Donalds CCD	
County—Greenwood	
Parts:	
*Ware Shoals/Hodges CCD	
County—Laurens	
Parts:	
*Princeton CCD	

PRIMARY CARE: South Carolina

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.-Peninsula Charleston	2
County—Charleston	
Parts:	
C.T. 1–18	
C.T. 33–37	
C.T. 41–45	

PRIMARY CARE: South Carolina

Facility Listing

Facility Name	Degree of shortage group
Central Corr. I.	3
County—Richland	
Kirkland Corr. I.	3
County—Richland	
Manning Corr. I.	3
County—Richland	
Perry Corr. I.	3
County—Anderson	
Women'S Corr. I.	3
County—Richland	

PRIMARY CARE: South Dakota

County Listing

County Name	Degree of shortage group
*Aurora	
Service Area: Corsica/Armour	4
Service Area: Wessington Springs	2
*Bennett	4
*Bon Homme	4
*Brown	
Service Area: Britton	1
Service Area: Ellendale/Edgely (Nd/Sd)	2
*Buffalo	
Service Area: Wessington Springs	2
*Butte	
Service Area: Newell	1
Campbell	
Service Area: Eureka/Herreid	2
*Charles Mix	
Service Area: Wagner	1
*Clark	1
*Clay	
Service Area: Beresford/Alcester	2
*Corson	
Service Area: Isabel	1
Service Area: Lemmon (Sd/Nd)	1
Service Area: McLaughlin	1
*Custer	
Service Area: Hot Springs	4
*Deuel	
Service Area: Canby (Mn/Sd)	4
Service Area: Clearlake	1
*Dewey	
Service Area: Eagle Butte	1
Service Area: Isabel	1
*Douglas	
Service Area: Corsica/Armour	4
*Edmunds	
Service Area: Bowdle	3
Service Area: Hoven	1
Service Area: Ipswich/Leola	2
Fall River	
Service Area: Hot Springs	4
*Faulk	4
*Grant	
Service Area: Milbank	2
Service Area: Ortonville (Mn/Sd)	4
*Gregory	
Service Area: Wagner	1
Haakon	
Service Area: Philip	2
*Hamlin	1
*Hanson	
Service Area: Salem	1
*Harding	1
*Hyde	
Service Area: Gettysburg	2

PRIMARY CARE: South Dakota—Continued

County Listing

County Name	Degree of shortage group
Service Area: Highmore	1
*Jackson	
Service Area: Kadoka	4
Service Area: Philip	2
Jerauld	
Service Area: Wessington Springs	2
*Jones	2
*Lincoln	
Service Area: Beresford/Alcester	2
*Lyman	3
Marshall	
Service Area: Britton	1
McCook	
Service Area: Salem	1
*McPherson	
Service Area: Eureka/Herreid	2
Service Area: Ipswich/Leola	2
*Meade	
Service Area: Faith	2
*Miner	1
*Moody	3
Pennington	
Service Area: Philip	2
*Perkins	
Service Area: Faith	2
Service Area: Lemmon (Sd/Nd)	1
*Potter	
Service Area: Gettysburg	2
Service Area: Hoven	1
*Roberts	
Service Area: Milbank	2
Service Area: Ortonville (Mn/Sd)	4
*Sanborn	
Service Area: Wessington Springs	2
*Shannon	1
*Spink	3
*Sully	
Service Area: Gettysburg	2
*Todd	1
*Union	
Service Area: Beresford/Alcester	2
Service Area: Elk Point	2
*Walworth	
Service Area: Bowdle	3
Service Area: Hoven	1
*Ziebach	
Service Area: Eagle Butte	1
Service Area: Faith	2
Service Area: Isabel	1

PRIMARY CARE: South Dakota

Service Area Listing

Service Area Name	Degree of shortage group
Beresford/Alcester	2
County—Clay	
Parts:	
Glenwood Twp.	
County—Lincoln	
Parts:	
Beresford City	
Brooklyn Twp.	
Pleasant Twp.	
County—Union	
Parts:	
Alcester Twp.	
Alcester City	
Beresford City	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Big Springs Twp.	
Emmet Twp.	
Prairie Twp.	
Virginia Twp.	
Bowdle	3
County—Edmunds	
Parts:	
*Bowdle City	
*Bowdle Twp.	
*Cloyd Valley Twp.	
*Cottonwood Lake Twp.	
*Glen Twp.	
*Glover Twp.	
*Hoosier Twp.	
*Hosmer City	
*Modena Twp.	
*Odessa Twp.	
*Roscoe City	
*Sangamon Twp.	
County—Walworth	
Parts:	
*E. Walworth Unorg. (N.3/4)	
*Java City	
*Selby City	
Britton	1
County—Brown	
Parts:	
Hecla City	
Hecla Twp.	
Lansing Twp.	
N. Detroit Twp.	
Portage Twp.	
S. Detroit Twp.	
County—Marshall	
Canby (Mn/Sd)	4
County—Deuel	
Parts:	
*Gary City	
*Herrick Twp.	
Clearlake	1
County—Deuel	
Parts:	
*Altamont City	
*Altamont Twp.	
*Antelope Valley Twp.	
*Astoria City	
*Blom Twp.	
*Brandt City	
*Brandt Twp.	
*Clear Lake City	
*Clearlake Twp.	
*Glenwood Twp.	
*Goodwin City	
*Goodwin Twp.	
*Grange Twp.	
*Havana Twp.	
*Hidewood Twp.	
*Lowe Twp.	
*Norden Twp	
*Portland Twp.	
*Rome Twp.	
*Scandinavia Twp.	
*Toronto Twp.	
Corsica/Armour	4
County—Aurora	
Parts:	
*Aurora Twp.	
*Center Twp.	
*Trura Twp.	
*Washington Twp.	
County—Douglas	
Eagle Butte	1

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Dewey	
Parts:	
*Eagle Butte Twn.	
*N. Dewey (Unorg.) S. 1/6	
*North Eagle Butte	
*S. Dewey (Unorg.) S. 1/2	
County—Ziebach	
Parts:	
*S. Ziebach (Unorg.) E. 1/2	
Elk Point	2
County—Union	
Parts:	
Brule Twp.	
Civil Bend Twp. (N. 1/2)	
Elk Point Twp.	
Elk Point City	
Jefferson City	
Jefferson Twp. (N. 1/2)	
Richland (Unorg.)	
Ellendale/Edgely (Nd/Sd)	2
County—Brown	
Parts:	
*Allison Twp.	
*Frederick Twp.	
*Frederick Twn.	
*Greenfield Twp.	
*Liberty Twp.	
*Osceola Twp.	
*Palmyra Twp.	
*Richland Twp.	
*Savo Twp.	
Eureka/Herreid	2
County—Campbell	
County—McPherson	
Parts:	
Eureka City	
Hillview Twn.	
W. Mcpherson (Unorg.)	
Faith	2
County—Meade	
Parts:	
*Eagle Twp.	
*Faith City	
*Howard Twp.	
*North Meade (Unorg.)	
*Union Twp.	
*Upper Red Owl Twp.	
County—Perkins	
Parts:	
*Ada Twp.	
*Antelope Twp.	
*Back Twp.	
*Brushy Twp.	
*Chance Twp.	
*Chaudoin Twp.	
*Duell Twp.	
*Englewood Twp.	
*Foster Twp.	
*Hall Twp.	
*Highland Twp.	
*Lane Tree Twp.	
*Maltby Twp.	
*Martin Twp.	
*Moreau Twp.	
*S.W. Perkins (Unorg.)	
*South Perkins (Unorg.)	
*Vickers Twp.	
*Vrooman Twp.	
*Wells Twp.	
*West Central Perkins (Unorg.)	
*West Perkins (Unorg.)	
*Wynadotte Twp.	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Ziebach	
Parts:	
*Dupree City	
*Dupree (Unorg.)	
*N. Ziebach (Unorg.) W. 1/2	
*S. Ziebach (Unorg.) W. 1/2	
Gettysburg	2
County—Hyde	
Parts:	
North Hyde (Unorg.)	
County—Potter	
Parts:	
C. Potter (Unorg.) S. 1/2	
E. Potter (Unorg.) S. 1/2	
Gettysburg City	
Lebanon Twn.	
County—Sully	
Parts:	
Agar Twn.	
E. Sully (Unorg.) N. 1/2	
Onida City	
W. Sully (Unorg.) N. 1/2	
Highmore	1
County—Hyde	
Parts:	
Central Hyde (Unorg.)	
Crow Creek (Unorg.)	
Dewey Twp.	
Highmore City	
Valley Twp.	
Washington Twp.	
William Hamilton Twp.	
Hot Springs	4
County—Custer	
Parts:	
Buffalo Gap City	
E. Custer (Unorg.) S.1/4	
W. Custer (Unorg.) S.1/4	
County—Fall River	
Hoven	1
County—Edmunds	
Parts:	
*Hillside Twp.	
*Hudson Twp.	
*Madison Twp.	
County—Potter	
Parts:	
*C. Potter (Unorg. N. 1/2)	
*E. Potter (Unorg. N. 1/2)	
*Hoven Twn.	
*Tolstoy Twn.	
County—Walworth	
Parts:	
*Akaska Twn.	
*E. Walworth Unorg. (S. 1/4)	
*Lowry City	
*W. Walworth Unorg. (S. 1/4)	
Ipswich/Leola	2
County—Edmunds	
Parts:	
Adrian Twp.	
Bella Twp.	
Bryant Twp.	
Cleveland Twp.	
Fountain Twp.	
Harmony (Unorg.)	
Huntley Twp.	
Ipswich City	
Ipswich Twp.	
Kent Twp.	
Liberty Twp.	
Loyalton City	
Montpelier Twp.	
North Bryant Twp.	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Powell Twp.	
Rosette Twp.	
Union Twp.	
Vermont Twp.	
County—McPherson	
Parts:	
C. Mcpherson (Unorg.)	
Carl Twp.	
Hoffman Twp	
Leola City	
Long Lake Twn.	
Wachter Twn.	
Wacker Twn.	
Weber Twp.	
Wetonka Twn.	
Isabel	1
County—Corson	
Parts:	
*Fairview Twp.	
*Pleasant Ridge Twp.	
County—Dewey	
Parts:	
*Isabel City	
*N. Dewey (Unorg.) N. 5/6	
*S. Dewey (Unorg.) N. 1/2	
*Timber Lake City	
County—Ziebach	
Parts:	
*N. Ziebach (Unorg.) E. 1/2	
Kadoka	4
County—Jackson	
Parts:	
E. Jackson (Unorg.) S.2/3	
E. Jackson (Unorg.) S.2/3	
E. Washabaugh (Unorg.)	
Kadoka Twn.	
W. Washabaugh (Unorg.)	
Wall Twp.	
Lemmon (Sd/Nd)	1
County—Corson	
Parts:	
Custer Twp.	
Delaney Twp.	
Grand Valley Twp.	
Lake Twp.	
McIntosh City	
Morristown Twn.	
Pioneer Twp.	
Prairie View Twp.	
Riverside Twp.	
Rolling Green Twp.	
Sherman Twp.	
Thunder Hawk Twp.	
Twin Butte Twp.	
Westaga Twp.	
West Corson (Unorg.)	
County—Perkins	
Parts:	
Anderson Twp.	
Barrett Twp.	
Bison Twn.	
Bison Twp.	
Burdick Twp.	
Cash Twp.	
Castle Butte Twp.	
Clark Twp.	
De Witt Twp.	
Duck Creek (Unorg.)	
East Perkins (Unorg.)	
Flat Creek Twp.	
Fredlund Twp.	
Glendo Twp.	
Grand River Twp.	
Horse Creek Twp.	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Hudgins (Unorg.)	
Independence Twp.	
Lemmon City	
Liberty Twp.	
Lincoln Twp.	
Lodgepole Twp.	
Marshfield Twp.	
Meadow Twp.	
Plateau Twp.	
Pleasant Valley Twp.	
Rainbow Twp.	
Rockford Twp.	
Scotch Cap Twp.	
Selm Twp.	
Sidney Twp.	
Strool Twp.	
Trail Twp.	
Vail Twp.	
Viking Twp.	
White Butte Twp.	
White Hill Twp.	
Whitney Twp.	
Wilson Twp.	
McLaughlin	1
County—Corson	
Parts:	
*Cadillac Twp.	
*Central Corson (Unorg.)	
*Lincoln Twp.	
*Mahto Twp.	
*McLaughlin Twp.	
*McLaughlin City	
*N.E. Corson (Unorg.)	
*Walker Twp.	
Milbank	2
County—Grant	
Parts:	
Adams Twp.	
Albion Twp.	
Albee Twn.	
Blooming Valley Twp.	
Farmington Twp.	
Georgia Twp.	
Grant Center Twp.	
Kilborn Twp.	
La Bolt Twn.	
Lura Twp.	
Madison Twp.	
Marvin Twn.	
Massopa Twp.	
Matlock Twp.	
Milbank City	
Osceola Twp.	
Revilo Twn.	
Stockholm Twp.	
Stockholm Twn.	
Strandburg Twn.	
Troy Twp.	
Twin Brooks Twp.	
Twin Brooks Twn.	
Vernon Twp.	
County—Roberts	
Parts:	
Garfield Twp.	
Gonvaso Twp.	
Newell	1
County—Butte	
Parts:	
Cottonwood Twp.	
East Butte (Unorg.)	
Newell Twn.	
Union Twp.	
Vale Twp.	
Ortonville (Mn/Sd)	4

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Grant	
Parts:	
*Big Stone Twp.	
*Big Stone City	
County—Roberts	
Parts:	
*Lockwood Twp.	
Philip	2
County—Jackson	
Parts:	
Cottonwood Twn.	
E. Jackson (Unorg.) N.1/3	
Grandview Twp.	
Interior Twn.	
Interior Twp.	
Jewett Twp.	
Little Buffalo Twp.	
N.W. Jackson (Unorg.)	
Wells Twp.	
County—Haakon	
County—Pennington	
Parts:	
Ash Twp.	
Badlands (Unorg.)	
Castle Butte Twp.	
Cedar Butte Twp.	
Cheyenne Twp.	
Conata Twp.	
Crooked Creek Twp.	
Dalzell Canyon (Unorg.)	
Fairview Twp.	
Flat Butte Twp.	
Huron Twp.	
Imlay Twp.	
Lake Creek (Unorg.)	
Lake Flat Twp.	
Lake Hill Twp.	
N.E. Pennington (Unorg.)	
Owanka Twp.	
Pano Twp.	
Quinn Twn.	
Quinn Twp.	
Rainey Creek Twp.	
Scenic Twp.	
Shyne Twp.	
Sunnyside Twp.	
Wall Twn.	
Wasta Twp.	
Wasta Twn.	
Salem	1
County—Hanson	
Parts:	
Edgerton Twp.	
Emery Twp.	
Farmer Twn.	
Spring Lake Twp.	
Taylor Twp.	
County—McCook	
Wagner	1
County—Charles Mix	
Parts:	
Bryan Twp.	
Choteau Creek Twp.	
Dante Twn.	
Goose Lake Twp.	
Highland Twp.	
Howard Twp.	
Kennedy Twp.	
Lake Andes City	
Lawrence Twp.	
Lone Tree Twp.	
Plain Center Twp.	
Ravinia Twn.	
Ree Twp.	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Rouse Twp.	
Wagner City	
Wahefie Twp.	
White Swan Twp.	
County—Gregory	
Parts:	
S.E. Gregory (Unorg.)	
Star Valley Twp.	
Wessington Springs	2
County—Aurora	
Parts:	
Bedford Twp.	
Bristol Twp.	
Cooper Twp.	
Crystal Lake Twp.	
Eureka Twp.	
Firesteel Twp.	
Galse Twp.	
Hopper Twp.	
Lake Twp.	
Palestine Twp.	
Patten Twp.	
Plankinton City	
Plankinton Twp.	
Pleasant Lake Twp.	
Pleasant Valley Twp.	
White Lake City	
White Lake Twp.	
County—Buffalo	
Parts:	
Elvira Twp.	
S.E. Buffalo (Unorg.)	
County—Jerauld	
County—Sanborn	
Parts:	
Floyd Twp.	
Jackson Twp.	
Logan Twp.	
Oneida Twp.	
Silver Creek Twp.	
Twin Lake Twp.	
Union Twp.	
Warren Twp.	
Woonsocket Twp.	
Woonsocket City	

PRIMARY CARE: Tennessee

County Listing

County Name	Degree of shortage group
Anderson	
Service Area: Briceville	1
*Benton	
Service Area: Holladay	1
*Bledsoe	3
Blount	
Service Area: Tallassee	1
*Campbell	4
Carter	
Service Area: Roan Mountain	1
*Chester	2
*Clay	3
*Cocke	4
*Crockett	3
Davidson	
Population Group: Pov. & Homeless Pop.—Nashville	1
*Decatur	2

PRIMARY CARE: Tennessee—Continued

County Listing

County Name	Degree of shortage group
Dickson	
Service Area: Vanleer/Slaydon	1
*Fayette	2
*Fentress	4
Grainger	1
*Greene	
Service Area: Baileyton	1
*Grundy	3
Hamilton	
Population Group: Pov. Pop.—Chattanooga	3
*Hancock	4
*Hardeman	4
*Hardin	
Service Area: Saltillo	1
Hawkins	1
*Haywood	4
*Henderson	3
*Hickman	3
*Houston	4
*Jackson	4
*Lake	1
*Lauderdale	2
*Lewis	4
*Lincoln	
Service Area: Cash Point	1
*Macon	1
Marion	
Service Area: Whitwell	4
*Meigs	1
*Monroe	4
Montgomery	
Service Area: Vanleer/Slaydon	1
*Morgan	1
*Obion	
Service Area: Hornbeak-Samburg	1
*Overton	4
*Pickett	2
*Polk	3
*Rhea	3
*Roane	
Service Area: Barnard	1
Rutherford	
Service Area: Eagleville	1
*Scott	1
Sevier	4
Shelby	
Population Group: Pov. Pop./S.W. Memphis	1
Population Group: Pov. Pop./N.W. Memphis	1
*Stewart	2
Tipton	4
Unicoi	4
Union	1
*Van Buren	3
*Wayne	3
*Weakley	
Service Area: Dukedom/Palmersville	1

PRIMARY CARE: Tennessee

Service Area Listing

Service Area Name	Degree of shortage group
Baileyton	1
County—Greene	
Parts:	
*Baileyton CCD.	

PRIMARY CARE: Tennessee—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Barnard	1
County—Roane	
Parts:	
*Barnard CCD	
Briceville	1
County—Anderson	
Parts:	
Lake City West CCD	
New River CCD	
Cash Point	1
County—Lincoln	
Parts:	
*Cash Point/Blanche CCD	
Dukedom/Palmersville	1
County—Weakley	
Parts:	
*Chestnut Glade-Dukedom CCD	
*Palmersville CCD	
Eagleville	1
County—Rutherford	
Parts:	
Eagleville CCD	
Holladay	1
County—Benton	
Parts:	
*Holladay CCD	
Hornbeak-Samburg	1
County—Obion	
Parts:	
*Hornbeak/Samburg CCD	
Roan Mountain	1
County—Carter	
Parts:	
Laurel Fork CCD	
Roan Mountain CCD	
Tiger Valley CCD	
Saltillo	1
County—Hardin	
Parts:	
*Saltillo CCD	
Tallassee	1
County—Blount	
Parts:	
Lanier CCD	
Vanleer/Slaydon	1
County—Dickson	
Parts:	
Vanleer CCD	
County—Montgomery	
Parts:	
Palmyra/Shiloh CCD	
Whitwell	4
County—Marion	
Parts:	
Whitwell CCD	

PRIMARY CARE: Tennessee

Population Group Listing

Population Group	Degree of shortage group
Pov. & Homeless Pop.—Nashville	1
County—Davidson	
Parts:	
Homeless Pop.	
C.T. 112–126	
C.T. 128–130	
C.T. 132–152	
C.T. 156–181	

PRIMARY CARE: Tennessee—Continued

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—Chattanooga	3
County—Hamilton	
Parts:	
C.T. 1–16	
C.T. 18–27	
C.T. 31	
C.T. 115	
Pov. Pop./N.W. Memphis	1
County—Shelby	
Parts:	
C.T. 1–10	
C.T. 18–24	
C.T. 90	
Pov. Pop./S.W. Memphis	1
County—Shelby	
Parts:	
C.T. 40–89	
C.T. 75	
C.T. 78.10	
C.T. 78.20	

PRIMARY CARE: Texas

County Listing

County Name	Degree of shortage group
*Anderson	
Facility: Beto II Prs.	3
Facility: Beto Prs.	2
Facility: Coffield Prs.	3
*Archer	3
*Armstrong	2
*Atascosa	3
*Bailey	4
*Bandera	2
*Bee	4
Bexar	
Service Area: San Antonio (West Side)	3
Service Area: San Antonio (South Side)	2
Service Area: San Antonio (Southern Rural)	1
Service Area: San Antonio (Eastside)	1
*Borden	1
Brazoria	
Facility: Clemons Prs.	1
Facility: Darrington Prs.	2
Facility: Ramsey I Prs.	3
Facility: Ramsey II Prs.	1
Facility: Ramsey III Prs.	1
Facility: Retrieve Prs.	1
*Briscoe	1
Cameron	
Population Group: Pov./Mig. Pop.—Cameron Co.	4
*Carson	1
*Castro	4
*Chambers	3
*Coke	1
*Coleman	3
*Collingsworth	1
Coryell	4
Facility: Hilltop Prs.	1
*Crockett	2
*Crosby	2
*Culberson	3
*Dallam	1
Dallas	
Service Area: Lisbon	1

PRIMARY CARE: Texas—Continued

County Listing

County Name	Degree of shortage group
Service Area: Simpson Stuart	2
Service Area: South Dallas	4
Service Area: Trinity	1
Service Area: West Dallas	1
Population Group: Am. In. Below Pov./ Dallas-Ft. Worth	1
Facility: Parkland Hospital P.C. Outpt. Clinics	1
*Deaf Smith	4
*Delta	4
*Dickens	
Service Area: Dickens-King	1
Dimmit	
Service Area: Dimmit-Zavala	3
*Donley	2
*Duval	4
El Paso	
Service Area: South El Paso	2
Service Area: Southeast El Paso	1
*Falls	2
Fort Bend	
Facility: Central Prs.	1
Facility: Jester II Prs.	2
Facility: Jester III Prs.	1
*Frio	2
*Gaines	4
Galveston	
Service Area: Bolivar Penninsula	1
*Glasscock	1
*Goliad	3
*Gonzales	4
*Grimes	3
Facility: Pack I Prs.	1
Facility: Pack II Prs.	1
*Hale	
Population Group: Mig.Pop.—Hale Co.	4
Hardin	4
*Hartley	1
Hidalgo	
Population Group: Pov./Mig. Pop.—Hidalgo Co.	3
*Hockley	4
*Houston	
Facility: Eastham Prs.	2
*Hudspeth	1
*Hunt	
Population Group: Pov Pop.—Hunt Co.	3
*Irion	1
*Jackson	2
*Jeff Davis	
Service Area: Fort Davis/Marfa	2
Jefferson	
Service Area: Beaumont Inner City	1
Service Area: Port Arthur Inner City	1
*Karnes	4
*Kenedy	1
*Kent	1
*Kimble	1
*King	
Service Area: Dickens-King	1
*Knox	4
*La Salle	1
*Lampasas	2
Leon	
*Leon	
Service Area: Leon/Madison	2
Service Area: Leon/Madison	2
*Lipscomb	2
*Live Oak	4
*Loving	1
Lubbock	
Service Area: East Lubbock	1
*Lynn	1
Madison	
*Madison	
Service Area: Leon/Madison	2

PRIMARY CARE: Texas—Continued

County Listing

County Name	Degree of shortage group
Service Area: Leon/Madison	2
Facility: Ferguson Prs.	2
Facility: Ferguson Prs.	2
*Marion	1
*Mason	3
*Maverick	2
*McMullen	1
*Medina	4
*Mills	3
*Mitchell	4
*Motley	1
*Nacogdoches	
Population Group: Pov. Pop.—Nacogdoches Co.	3
*Newton	1
*Oldham	1
*Panola	4
*Parmer	1
*Pecos	4
*Polk	4
*Presidio	
Service Area: Fort Davis/Marfa	2
Service Area: Presidio	2
*Raine	2
*Real	1
*Red River	3
*Refugio	2
*Sabine	1
*San Augustine	4
*San Jacinto	1
*San Saba	1
*Sherman	
Service Area: Texhoma	1
*Starr	1
*Sutton	1
Tarrant	
Service Area: Poly/Stop Six	1
Population Group: Am. In. Below Pov./Dallas-Ft. Worth	1
*Terrell	1
*Terry	2
*Throckmorton	1
*Trinity	1
*Uvalde	
Population Group: Pov. Pop.—Uvalde Co.	4
*Val Verde	2
*Van Zandt	4
*Walker	
Facility: Diagnostic Prs.	3
Facility: Ellis Prs.	2
Facility: Goree Prs.	1
Facility: Huntsville Prs.	1
Facility: Wynne Prs.	2
*Ward	4
Webb	4
*Willacy	4
*Wilson	2
*Yoakum	1
*Zapata	3
Zavala	
Service Area: Dimmit-Zavala	3

PRIMARY CARE: Texas

Service Area Listing

Service Area Name	Degree of shortage group
Beaumont Inner City	1
County—Jefferson	
Parts:	
C.T. 1.03	
C.T. 6–10	
C.T. 15–19	
Bolivar Penninsula	1
County—Galveston	
Parts:	
C.T. 1254	
Dickens-King	1
County—Dickens	
County—King	
Dimmit-Zavala	3
County—Dimmit	
County—Zavala	
East Lubbock	1
County—Lubbock	
Parts:	
C.T. 2.01–2.02	
C.T. 3	
C.T. 8–11	
C.T. 12.01–12.02	
C.T. 25	
Fort Davis/Marfa	2
County—Jeff Davis	
County—Presidio	
Parts:	
*Marfa CCD	
Leon/Madison	2
County—Leon	
County—Madison	
County—Madison	
Lisbon	1
County—Dallas	
Parts:	
C.T. 56–57	
C.T. 59.01–59.02	
C.T. 97.01	
C.T. 97.03–97.05	
C.T. 98.01–98.02	
Poly/Stop Six	1
County—Tarrant	
Parts:	
C.T. 1035	
C.T. 1036.01	
C.T. 1037.01–1037.02	
C.T. 1046.01	
C.T. 1046.04	
C.T. 1062.01–1062.02	
C.T. 1063	
Port Arthur Inner City	1
County—Jefferson	
Parts:	
C.T. 51–54	
C.T. 57–62	
Presidio	2
County—Presidio	
Parts:	
*Presidio CCD	
San Antonio (Eastside)	1
County—Bexar	
Parts:	
C.T. 1102–1103	
C.T. 1110	
C.T. 1301–1312	
C.T. 1401	
San Antonio (South Side)	2
County—Bexar	
Parts:	
C.T. 1501	
C.T. 1503–1507	
C.T. 1510	
C.T. 1601–1605	
San Antonio (Southern Rural)	1

PRIMARY CARE: Texas—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Bexar	
Parts:	
C.T. 1416–1418	
C.T. 1519–1522	
C.T. 1610–1612	
C.T. 1619–1620	
San Antonio (West Side)	3
County—Bexar	
Parts:	
C.T. 1606–1607	
C.T. 1701	
C.T. 1703–1704	
C.T. 1707–1712	
C.T. 1715–1716	
Simpson Stuart	2
County—Dallas	
Parts:	
C.T. 112–113	
C.T. 114.01–114.02	
C.T. 167.01	
C.T. 169.01	
South Dallas	4
County—Dallas	
Parts:	
C.T. 29–30	
C.T. 32.02	
C.T. 33–36	
C.T. 39.01–39.02	
C.T. 40	
C.T. 115	
South El Paso	2
County—El Paso	
Parts:	
C.T. 17–21	
C.T. 26–29	
Southeast El Paso	1
County—El Paso	
Parts:	
C.T. 39–40	
C.T. 104–105	
Texhoma	1
County—Sherman	
Parts:	
*Stratford East CCD	
Trinity	1
County—Dallas	
Parts:	
C.T. 41	
C.T. 49	
C.T. 54–55	
C.T. 86.01–86.02	
C.T. 89	
West Dallas	1
County—Dallas	
Parts:	
C.T. 43	
C.T. 101–106	

PRIMARY CARE: Texas

Population Group Listing

Population Group	Degree of shortage group
Am. In. Below Pov./Dallas-Ft. Worth	1
County—Dallas	
Parts:	
Am. In. Below Pov.	
County—Tarrant	
Parts:	
Am. In. Below Pov.	

PRIMARY CARE: Texas—Continued

Population Group Listing

Population Group	Degree of shortage group
Mig.Pop.—Hale Co.	4
County—Hale	
Parts:	
Mig. Pop.	
Pov Pop.—Hunt Co.	3
County—Hunt	
Parts:	
Pov. Pop.	
Pov. Pop.—Nacogdoches Co.	3
County—Nacogdoches	
Pov. Pop.—Uvalde Co.	4
County—Uvalde	
Parts:	
Pov. Pop.	
Pov./Mig. Pop.—Cameron Co.	4
County—Cameron	
Parts:	
Mig. Pop.	
Pov. Pop.	
Pov./Mig. Pop.—Hidalgo Co.	3
County—Hidalgo	
Parts:	
Mig. Pop.	
Pov. Pop.	

PRIMARY CARE: Texas

Facility Listing

Facility Name	Degree of shortage group
Beto II Prs.	3
County—Anderson	
Beto Prs.	2
County—Anderson	
Central Prs.	1
County—Fort Bend	
Clemons Prs.	1
County—Brazoria	
Coffield Prs.	3
County—Anderson	
Darrington Prs.	2
County—Brazoria	
Diagnostic Prs.	3
County—Walker	
Eastham Prs.	2
County—Houston	
Ellis Prs.	2
County—Walker	
Ferguson Prs.	2
County—Madison	
County—Madison	
Goree Prs.	1
County—Walker	
Hilltop Prs.	1
County—Coryell 4	
Huntsville Prs.	1
County—Walker	
Jester II Prs.	2
County—Fort Bend	
Jester III Prs.	1
County—Fort Bend	
Pack I Prs.	1
County—Grimes 3	
Pack II Prs.	1
County—Grimes 3	
Parkland Hospital P.C. Outpt. Clinics	1
County—Dallas	
Parkland Memorial Hosp.	
Ramsey I Prs.	3

PRIMARY CARE: Texas—Continued

Facility Listing

Facility Name	Degree of shortage group
County—Brazoria	
Ramsey II Prs.	1
County—Brazoria	
Ramsey III Prs.	1
County—Brazoria	
Retreve Prs.	1
County—Brazoria	
Wynne Prs.	2
County—Walker	

PRIMARY CARE: Utah

County Listing

County Name	Degree of shortage group
*Daggett	1
*Duchesne	
Service Area: Roosevelt	4
*Emery	
Service Area: Castle Dale	1
Service Area: Green River	1
*Garfield	
Service Area: Panguitch	2
*Grand	
Service Area: Green River	1
*Iron	
Service Area: Enterprise	1
*Juab	
Service Area: Wendover (UI/NV)	1
Kane	
*Kane	
Service Area: Kanab/Fredonia (UI/Az)	2
Service Area: Kanab/Fredonia (UI/Az)	2
*Millard	
Service Area: Delta	1
*Piute	
Service Area: Richfield	4
*Rich	1
Salt Lake	
Population Group: Pov Pop—N.W. Salt Lake	4
*San Juan	
Service Area: Blanding/Monticello	1
Service Area: Montezuma Creek	1
Sevier	
Service Area: Richfield	4
*Tooele	
Service Area: Tooele	2
Service Area: Wendover (UI/NV)	1
*Uintah	
Service Area: Roosevelt	4
Service Area: Vernal	4
*Washington	
Service Area: Enterprise	1
Service Area: Hurricane	1
*Wayne	1
Weber	
Service Area: Central And West Ogden	1

PRIMARY CARE: Utah

Service Area Listing

Service Area Name	Degree of shortage group
Blanding/Monticello	1
County—San Juan	
Parts:	
*Blanding Div.	
*Monticello Div.	
Castle Dale	1
County—Emery	
Parts:	
*Castle Dale-Huntington Div.	
*Emery-Ferron Div.	
Central And West Ogden	1
County—Weber	
Parts:	
C.T. 2003–2004	
C.T. 2010–2012	
C.T. 2018–2019	
Delta	1
County—Millard	
Parts:	
Delta Div.	
Oak City—Scipio Div.	
Enterprise	1
County—Iron	
Parts:	
*Beryl-Newcastle Div.	
County—Washington	
Parts:	
*Enterprise Div.	
Green River	1
County—Emery	
Parts:	
*Green River Div.	
County—Grand	
Parts:	
*Thompson Div. (N.W. Pt)	
Hurricane	1
County—Washington	
Parts:	
*Hurricane Div.	
Kanab/Fredonia (UI/Az)	2
County—Kane	
County—Kane	
Montezuma Creek	1
County—San Juan	
Parts:	
*Ojato Div.	
*Red Mesa Div.	
Panguitch	2
County—Garfield	
Parts:	
Escalante Div.	
Panguitch Div.	
Tropic Div.	
Richfield	4
County—Piute	
Parts:	
Marysvale Div.	
County—Sevier	
Roosevelt	4
County—Duchesne	
County—Uintah	
Parts:	
*Uintah And Ouray Div.	
Tooele	2
County—Tooele	
Parts:	
Onaqui Div.	
Tooele-Grantsville Div.	
Vernal	4
County—Uintah	
Parts:	
*Vernal Div.	
Wendover (UI/NV)	1
County—Juab	
Parts:	
*West Juab Div. (W. Pt)	

PRIMARY CARE: Utah—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Tooele	
Parts:	
*Dugway-Wendover Div. (W. Pt)	

PRIMARY CARE: Utah

Population Group Listing

Population Group	Degree of shortage group
Pov Pop—N.W. Salt Lake	4
County—Salt Lake	
Parts:	
C.T. 1001 (Pov. Pop.)	
C.T. 1003.03–1003.04 (Pov. Pop.)	
C.T. 1004–1008 (Pov. Pop.)	

PRIMARY CARE: Vermont

County Listing

County Name	Degree of shortage group
*Addison	
Service Area: Otter Creek Valley	4
Service Area: Route 100	4
*Caledonia	
Service Area: Hardwick	1
*Essex	
Service Area: Island Pond	1
Franklin	
Service Area: Richford-Enosburg	3
Grand Isle	2
*Lamoille	
Service Area: Hardwick	1
*Orleans	
Service Area: Hardwick	1
*Rutland	
Service Area: Black River Valley	2
Service Area: Otter Creek Valley	4
Service Area: Route 100	4
*Washington	
Service Area: Hardwick	1
*Windsor	
Service Area: Black River Valley	2
Service Area: Route 100	4

PRIMARY CARE: Vermont

Service Area Listing

Service Area Name	Degree of shortage group
Black River Valley	2
County—Rutland	
Parts:	
*Mt Holly Twn.	
County—Windsor	
Parts:	
*Cavendish Twn.	
*Ludlow Twn.	
*Reading Twn.	
*Weathersfield Twn.	

PRIMARY CARE: Vermont—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Hardwick	1
County—Caledonia	
Parts:	
*Hardwick Twn.	
*Walden Twn.	
County—Lamoille	
Parts:	
*Wolcott Twn.	
County—Orleans	
Parts:	
*Craftsbury Twn.	
*Greensboro Twn.	
County—Washington	
Parts:	
*Woodbury Twn.	
Island Pond	1
County—Essex	
Parts:	
*Averys Grore	
*Brighton Twn.	
*Ferdinand Twn.	
*Lewis Twp.	
*Norton Twn.	
*Warners Grant	
*Warrens Gore	
Otter Creek Valley	4
County—Addison	
Parts:	
*Goshen Twn.	
*Leicester Twn.	
*Orwell Twn.	
*Shoreham Twn.	
*Whiting Twn.	
County—Rutland	
Parts:	
*Brandon Twn.	
*Hubbardton Twn.	
*Pittsford Twn.	
*Sudbury Twn.	
Richford-Enosburg	3
County—Franklin	
Parts:	
Bakersfield Twn.	
Berkshire Twn.	
Enosburg Twn.	
Fairfield Twn.	
Franklin Twn.	
Montgomery Twn.	
Richford Twn.	
Sheldon Twn.	
Route 100	4
County—Addison	
Parts:	
*Granville Twn.	
*Hancock Twn.	
County—Rutland	
Parts:	
*Pittsfield Twn.	
County—Windsor	
Parts:	
*Rochester Twn.	
*Stockbridge Twn.	

PRIMARY CARE: Virginia

County Listing

County Name	Degree of shortage group
*Accomack	2
Albemarle/Charlottes.	
Service Area: Southern Albemarle	1
*Amelia	2
*Augusta/Staunton-Waynesb.	
Service Area: Craigsville	2
Service Area: South River	2
*Bland	1
Brunswick	
Service Area: South Hill	4
Buckingham	
Service Area: Tri-County(Buck/Fluv/Cumb)	1
Campbell/Lynchburg	
Population Group: Low Income Pop. (Lynchburg)	3
*Caroline	1
Charles City	2
*Charlotte	3
Chesapeake	
Service Area: Southeast Chesapeake	1
*Craig	1
Cumberland	
Service Area: Tri-County(Buck/Fluv/Cumb)	1
Dinwiddie/Petersburg	
Service Area: McKenney	1
*Floyd	2
Fluvanna	
Service Area: Tri-County(Buck/Fluv/Cumb)	1
*Franklin	4
*King And Queen	
Service Area: Northern King William	3
*King George	2
*King William	
Service Area: Northern King William	3
*Louisa	3
*Lunenburg	2
Mecklenburg	
Service Area: South Hill	4
*Nelson	3
Newport News	
Service Area: East End	4
Norfolk/Portsmouth	
Service Area: Norfolk Area 3	1
Service Area: Norfolk Area 2	1
Service Area: Norfolk Area 1	4
*Page	4
*Patrick	4
Pittsylvania/Danville	
Service Area: Pittsylvania	1
*Richmond	4
*Rockbridge/Buena Vista	
Service Area: Craigsville	2
Service Area: South River	2
*Russell	4
Scott	
Service Area: Dungannon	1
*Smyth	
Service Area: Saltville	1
*Southampton/Franklin	
Service Area: Berlin-Ivor	1
*Surry	4
*Sussex	3
Washington/Bristol	
Service Area: Saltville	1
*Westmoreland	3

PRIMARY CARE: Virginia

Service Area Listing

Service Area Name	Degree of shortage group
Berlin-Ivor	1
County—Southampton/Franklin	
Parts:	
*Berlin-Ivor	
Craigsville	2
County—Augusta/Staunton-Waynesb.	
Parts:	
*Craigsville Twn.	
*Pastures Dist.	
*Riverhead Dist. (W. 1/2)	
County—Rockbridge/Buena Vista	
Parts:	
*Goshen Twn	
*Walkers Creek Dist. (W. 1/2 Portion)	
Dungannon	1
County—Scott	
Parts:	
Dekalb Dist.	
Floyd Dist.	
Johnson Dist.	
East End	4
County—Newport News	
Parts:	
C.T. 302-309	
C.T. 313	
McKenney	1
County—Dinwiddie/Petersburg	
Parts:	
Sapony Dist.	
Norfolk Area 1	4
County—Norfolk/Portsmouth	
Parts:	
C.T. 32-33	
C.T. 60-61	
Norfolk Area 2	1
County—Norfolk/Portsmouth	
Parts:	
C.T. 34	
C.T. 35.01-35.02	
Norfolk Area 3	1
County—Norfolk/Portsmouth	
Parts:	
C.T. 50	
C.T. 52-53	
Northern King William	3
County—King And Queen	
Parts:	
*Newtown Dist.	
*Stevensville Dist.	
County—King William	
Parts:	
*Aequinton Dist.	
*Mangohick Dist.	
Pittsylvania	1
County—Pittsylvania/Danville	
Parts:	
Callands Greins Dist.	
Chatham Dist.	
Staunton River Dist.	
Saltville	1
County—Smyth	
Parts:	
North Fork Dist.	
Saltville Dist.	
County—Washington/Bristol	
Parts:	
Jefferson Dist.	
South Hill	4
County—Brunswick	
County—Mecklenburg	
South River	2
County—Augusta/Staunton-Waynesb.	
Parts:	
*Riverhead Dist. (E. 1/2)	

PRIMARY CARE: Virginia—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Rockbridge/Buena Vista	
Parts:	
*South River Dist.	
*Walkers Creekdist. (E 1/2)	
Southeast Chesapeake	1
County—Chesapeake	
Parts:	
C.T. 211.02	
C.T. 212	
Southern Albemarle	1
County—Albemarle/Charlottes.	
Parts:	
Scottsville Dist.	
Tri-County(Buck/Fluv/Cumb)	1
County—Buckingham	
County—Cumberland	
County—Fluvanna	

PRIMARY CARE: Virginia

Population Group Listing

Population Group	Degree of shortage group
Low Income Pop. (Lynchburg)	3
County—Campbell/Lynchburg	
Parts:	
Lynchburg (Low Inc.Pop)	

PRIMARY CARE: Washington

County Listing

County Name	Degree of shortage group
*Adams	
Service Area: Ritzville	2
*Chelan	
Population Group: MSFW—Chelan/Douglas	1
*Clallam	
Service Area: Forks	3
Clark	
Service Area: Yacolt	1
*Columbia	
Population Group: MSFW—Walla Walla/Columbia	1
*Cowlitz	
Service Area: Toledo/Vader	2
*Douglas	
Service Area: Grand Coulee	2
Population Group: MSFW—Chelan/Douglas	1
*Ferry	
Service Area: Republic	2
Population Group: Am. In.—Colville Res.	1
Franklin	
Population Group: MSFW—Benton/Franklin	1
*Grant	
Service Area: Grand Coulee	2
Population Group: MSFW—Grant	1
*Grays Harbor	
Service Area: Copalis Beach	4
Service Area: Neilton	1
Service Area: Westport	2

PRIMARY CARE: Washington—Continued

County Listing

County Name	Degree of shortage group
*Jefferson	
Service Area: Forks	3
*Klickitat	
Population Group: MSFW-Hood River (Or/Wa)	1
*Lewis	
Service Area: Pe Ell	1
Service Area: Toledo/Vader	2
*Lincoln	
Service Area: Grand Coulee	2
Service Area: Odessa	1
Service Area: Ritzville	2
*Okanogan	
Service Area: Grand Coulee	2
Population Group: Am. In.—Colville Res.	1
Population Group: MSFW—Okanogan Co.	1
*Pacific	
Service Area: Naselle/Grays River	1
Service Area: Westport	2
*Pend Oreille	
Service Area: Ione/Metaline Falls	1
Service Area: Newport/Cusick	2
Pierce	
Service Area: Longbranch	2
Population Group: Med. Ind. Pop. (Pierce)	4
Facility: McNeil Island Corr. C.	1
*Skagit	
Population Group: MSFW—Skagit	1
Snohomish	
Service Area: Darrington	1
Population Group: Stillaguamish Ind. Tribe	1
Spokane	
Service Area: Deer Park	3
Population Group: Am. In. (Spokane)	1
*Stevens	
Service Area: Chewelah	1
Service Area: Deer Park	3
*Wahkiakum	
Service Area: Naselle/Grays River	1
*Walla Walla	
Population Group: MSFW—Walla Walla/Columbia	1
Whatcom	
Population Group: MSFW—Whatcom	1
*Whitman	
Service Area: Northeast Whitman	4
Service Area: Rock Lake/La Crosse	1
Yakima	
Population Group: MSFW-Toppenish/Grandview	1

PRIMARY CARE: Washington

Service Area Listing

Service Area Name	Degree of shortage group
Chewelah	1
County—Stevens	
Parts:	
*Chewelah CCD	
*Columbia CCD	
*Springdale CCD	
Copalis Beach	4

PRIMARY CARE: Washington—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Grays Harbor	
Parts:	
*North Beach Div.	
Darrington	1
County—Snohomish	
Parts:	
Cascade Div.	
Deer Park	3
County—Spokane	
Parts:	
Deer Park Div. (C.T. 103.01)	
Deer Park Div. (C.T. 103.02)	
Deer Park Div. (C.T. 102 N. 1/2)	
County—Stevens	
Parts:	
*Loon Lake Div. (E.D. 203)	
*Loon Lake Div. (E.D. 204)	
Forks	3
County—Clallam	
Parts:	
*Callam Bay-Neah Bay Div.	
*Forks Div.	
County—Jefferson	
Parts:	
*West End Div.	
Grand Coulee	2
County—Douglas	
Parts:	
*Coulee Dam Twn.	
*Mansfield Twn.	
*E.D. 256–257 (Waterville Div.)	
*E.D. 265 (Waterville Div.)	
County—Grant	
Parts:	
*Coulee City Div. (N. 2/3)	
*Grand Coulee Div.	
County—Lincoln	
Parts:	
*Wilbur Div. (W 2/3)	
County—Okanogan	
Parts:	
*Coulee Dam Twn.	
*Elmer City Twn.	
*Nespelem Twn.	
*E.D. 751 (Colville Res. Div.)	
*E.D. 760–761 (Colville Res. Div.)	
Ione/Metaline Falls	1
County—Pend Oreille	
Parts:	
*Ione/Metaline Falls Div.	
Longbranch	2
County—Pierce	
Parts:	
Lower Peninsula Div. (C.T. 726)	
Nasalle/Grays River	1
County—Pacific	
Parts:	
*Nasalle Div.	
County—Wahkiakum	
Parts:	
*Grays River	
Nelton	1
County—Grays Harbor	
Parts:	
*Humptulips Div. (N 1/3)	
*Lake Quinalt Div.	
Newport/Cusick	2
County—Pend Oreille	
Parts:	
*Newport Div.	
Northeast Whitman	4
County—Whitman	
Parts:	
*Rosalia Div.	
*Steptoe Div.	
*Tekoa Div.	
Odessa	1
County—Lincoln	
Parts:	
*Odessa Census Div. (Pt)	
Pe Ell	1
County—Lewis	
Parts:	
E.D. 71 (Bunker CCD)	
E.D. 76 (Bunker CCD)	
Republic	2
County—Ferry	
Parts:	
Curlew CCD	
Orient Sherman CCD	
Republic CCD	
Ritzville	2
County—Adams	
Parts:	
*Lind-Washtucna Div.	
*Ritzville Div.	
County—Lincoln	
Parts:	
*E.D. 551 (Bunker CCD)	
Rock Lake/La Crosse	1
County—Whitmen	
Parts:	
*La Crosse CCD	
*Rock Lake CCD	
Toledo/Vader	2
County—Cowlitz	
Parts:	
E.D. 757 (Castlerock CCD)	
County—Lewis	
Parts:	
Olequa CCD	
Winlock City	
E.D. 75 (Boistfort S.1/2)	
E.D. 82 (Boistfort S.1/2)	
E.D. 85 (Boistfort S.1/2)	
Westport	2
County—Grays Harbor	
Parts:	
South Shore Div.	
County—Pacific	
Parts:	
Raymond Div. Ed 578 & 579	
Yacolt	1
County—Clark	
Parts:	
Yacolt Div. (C.T. 401)	

PRIMARY CARE: Washington

Population Group Listing

Population Group	Degree of shortage group
Am. In. (Spokane)	1
County—Spokane	
Parts:	
Am. In.	
Am. In.—Colville Res.	1
County—Ferry	
Parts:	
Colville Res Div.	
County—Okanogan	
Parts:	
Colville Res Div.	

PRIMARY CARE: Washington—Continued

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop. (Pierce)	4
County—Pierce	
Parts:	
Med. Ind. Pop.—Pierce	
MSFW—Benton/Franklin	1
Parts:	
MSFW	
County—Franklin	
Parts:	
MSFW	
MSFW—Chelan/Douglas	1
County—Chelan	
Parts:	
MSFW	
County—Douglas	
Parts:	
MSFW	
MSFW—Grant	1
County—Grant	
Parts:	
MSFW	
MSFW—Okanogan Co.	1
County—Okanogan	
Parts:	
MSFW	
MSFW—Skagit	1
County—Skagit	
Parts:	
MSFW	
MSFW—Walla Walla/Columbia	1
County—Columbia	
Parts:	
MSFW	
County—Walla Walla	
Parts:	
MSFW	
MSFW—Whatcom	1
County—Whatcom	
Parts:	
MSFW	
MSFW-Hood River (Or/Wa)	1
County—Klickitat	
Parts:	
White Salmon Div. (MSFW)	
MSFW-Toppenish/Grandview	1
Parts:	
N.W. Benton Div.	
County—Yakima	
Parts:	
Mabton Div.	
S. Yakima Div.	
Sunnyside Div.	
Toppenish-Wapato Div.	
Sillaguamish Ind. Tribe	1
County—Snohomish	
Parts:	
C.T. 531–532	
C.T. 534	

PRIMARY CARE: Washington

Facility Listing

Facility Name	Degree of shortage group
McNeil Island Corr. C.	1
County—Pierce	

PRIMARY CARE: West Virginia

County Listing

County Name	Degree of shortage group
*Barbour	4
*Berkeley	
Population Group: Pov.Pop./MSFW—Shenandoah	2
*Braxton	2
Cabell	
Service Area: Guyandotte	1
*Calhoun	2
*Clay	1
*Doddridge	
Service Area: Doddridge/Salem	1
*Fayette	
Service Area: New Haven	1
Service Area: Oak Hill	3
*Gilmer	2
*Grant	
Service Area: Moorefield	3
Service Area: Mt Storm	2
*Greenbrier	
Service Area: Greenbriar/Pocahontas	4
*Hampshire	
Service Area: Capon Bridge	1
Hancock	
Service Area: East Liverpool (Oh/Pa/Wv)	3
*Hardy	
Service Area: Baker	3
Service Area: Moorefield	3
*Harrison	
Service Area: Doddridge/Salem	1
Service Area: Shinnston/Fairmont	4
*Jefferson	
Population Group: Pov.Pop./MSFW—Shenandoah	2
Kanawha	
Service Area: Cabin Creek	1
Service Area: Cedar Grove	2
Service Area: Clendanin	2
Service Area: Pocatalico	2
*Lewis	4
*Lincoln	1
*Marion	
Service Area: Shinnston/Fairmont	4
Marshall	
Service Area: Cameron	1
*Mason	
Service Area: Graham/Waggener	1
*McDowell	3
Mineral	
Service Area: Cabin Run	2
*Mingo	
Service Area: Gilbert	3
Service Area: Matewan	1
*Monongalia	
Service Area: Clay/Battelle	2
*Monroe	4
*Morgan	
Service Area: Hancock (Md/Pa/Wv)	2
*Nicholas	
Service Area: Summerville	4
*Pendleton	4
*Pocahontas	
Service Area: Greenbrier/Pocahontas	4

PRIMARY CARE: West Virginia—Continued

County Listing

County Name	Degree of shortage group
*Preston	
Service Area: Rowlesburg/Eglon	1
*Raleigh	
Service Area: Northwest Raleigh	1
Service Area: Shady Spring/Jumping Branch	1
*Randolph	
Facility: Huttonsville Corr. C.	3
*Ritchie	
Service Area: Harrisville	2
*Roane	3
*Summers	
Service Area: Shady Spring/Jumping Branch	1
*Taylor	1
*Upshur	
Service Area: Rock Cave	1
Wayne	2
*Webster	3
*Wetzel	
Service Area: Clay/Battelle	2
*Wirt	2

PRIMARY CARE: West Virginia

Service Area Listing

Service Area Name	Degree of shortage group
Baker	3
County—Hardy	
Parts:	
*Capon Dist.	
*Lost River Dist.	
Cabin Creek	1
County—Kanawha	
Parts:	
C.T. 121–123	
Cabin Run	2
County—Mineral	
Parts:	
Cabin Run Dist.	
Frankfort Dist.	
Cameron	1
County—Marshall	
Parts:	
Cameron	
Capon Bridge	1
County—Hampshire	
Parts:	
*Bloomary Dist.	
*Capon Dist.	
Cedar Grove	2
County—Kanawha	
Parts:	
C.T. 118–120	
Clay/Battelle	2
County—Monongalia	
Parts:	
*C.T. 114	
County—Wetzel	
Parts:	
*Center Dist.	
*Church Dist.	
*Clay Dist.	
Clendanin	2
County—Kanawha	
Parts:	
C.T. 112	
Doddridge/Salem	1
County—Doddridge	
County—Harrison	
Parts:	
*Salem City	
East Liverpool (Oh/Pa/Wv)	3
County—Hancock	
Parts:	
Grant Dist.	
Gilbert	3
County—Mingo	
Parts:	
*Stafford Dist.	
Graham/Waggener	1
County—Mason	
Parts:	
*Graham Dist.	
*Waggener Dist.	
Greenbriar/Pocahontas	4
County—Greenbrier	
Parts:	
Anthony Creek Dist.	
Falling Spring Dist.	
Frankford Dist.	
Williamsburg Dist.	
County—Pocahontas	
Parts:	
Little Levels Dist.	
Guyandotte	1
County—Cabell	
Parts:	
C.T. 2	
Hancock (Md/Pa/Wv)	2
County—Morgan	
Parts:	
*Allen Dist.	
*Bath Dist.	
*Rock Gap Dist.	
*Sleepy Creek Dist.	
Harrisville	2
County—Ritchie	
Parts:	
*Grant Dist.	
*Murphy Dist.	
*Union Dist.	
Matewan	1
County—Mingo	
Parts:	
*Magnolia Dist.	
Moorefield	3
County—Grant	
Parts:	
*Grant Dist.	
*Milroy Dist.	
*Petersburg City	
County—Hardy	
Parts:	
*Moorefield Twn.	
*Moorefield	
*South Fork Dist.	
Mt Storm	2
County—Grant	
Parts:	
*Union Dist.	
New Haven	1
County—Fayette	
Parts:	
*C.T. 210–211	
Northwest Raleigh	1
County—Raleigh	
Parts:	
*C.T. 112	
Oak Hill	3

PRIMARY CARE: West Virginia—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Fayette	
Parts:	
*C.T. 201–206	
Pocatalico	2
County—Kanawha	
Parts:	
C.T. 108	
Rock Cave	1
County—Upshur	
Parts:	
*Banks Dist.	
*Meade Dist.	
*Washington Dist. (S 1/2)	
Rowlesburg/Eglon	1
County—Preston	
Parts:	
Reno Dist.	
Union Dist.	
Shady Spring/Jumping Branch	1
County—Raleigh	
Parts:	
*C.T. 108 (Se 1/2)	
County—Summers	
Parts:	
*Bluestone River Dist. (Nw 1/2)	
Shinnston/Fairmont	4
County—Harrison	
Parts:	
*Northern Dist.	
County—Marion	
Summerville	4
County—Nicholas	
Parts:	
*Grant Dist.	
*Hamilton Dist.	
*Jefferson Dist.	
*Kentucky (W 1/2)	
*Summerville Dist.	
*Wilderness Dist.	

PRIMARY CARE: West Virginia

Population Group Listing

Population Group	Degree of shortage group
Pov.Pop./MSFW—Shenandoah	2
County—Berkeley	
Parts:	
MSFW	
Pov. Pop.	
County—Jefferson	
Parts:	
Pov. Pop.	

PRIMARY CARE: West Virginia

Facility Listing

Facility Name	Degree of shortage group
Huttonsville Corr. C.	3
County—Randolph	

PRIMARY CARE: Wisconsin

County Listing

County Name	Degree of shortage group
*Adams	2
*Ashland	
Service Area: Park Falls/Phillips	2
*Bayfield	
Service Area: Hayward/Radisson	2
Brown	
Service Area: Pulaski	2
Facility: Wisconsin State Ref.	3
*Buffalo	
Service Area: Arcadia	4
Service Area: Mondovi	2
*Burnett	2
Calumet	3
*Clark	3
*Dodge	
Facility: Dodge Corr. I.	2
Facility: Wisconsin Corr. I.	1
*Door	
Service Area: Sister Bay/Washington Island	2
Douglas	
Service Area: Minong/Solon Springs	4
Eau Claire	
Service Area: Osseo	3
*Forest	
Service Area: Laona	2
*Grant	
Service Area: Platteville/Cuba City	2
*Green Lake	
Service Area: Markesan/Kingston	2
*Iowa	
Service Area: Platteville/Cuba City	2
*Iron	
Service Area: Ironwood/Hurley (MI/WI)	2
Service Area: Park Falls/Phillips	2
*Jackson	
Service Area: Osseo	3
*Juneau	
Service Area: Hillsboro	2
Service Area: Mauston/New Lisbon	4
*Kewaunee	
Service Area: Kewaunee City	4
La Crosse	
Service Area: Coon Valley/Chaseburg	1
*Lafayette	
Service Area: Platteville/Cuba City	2
*Langlade	
Service Area: Elcho	2
Service Area: Mountain/White Lake	1
*Lincoln	
Service Area: Tomahawk	4
Marathon	
Service Area: Athens/Edgar	2
Service Area: Tigerton/Birnamwood	3
*Marinette	
Service Area: W. Marinette	2
*Marquette	
Service Area: Montello	4
*Menominee	1
Milwaukee	
Service Area: Capitol Drive (Milwaukee)	1
Service Area: Inner City South	3

PRIMARY CARE: Wisconsin—Continued

County Listing

County Name	Degree of shortage group
Service Area: Inner City North (Milwaukee)	2
Service Area: Juneautown	1
Population Group: Med. Ind. Pop.—Inner City West	1
*Monroe	
Service Area: Hillsboro	2
Service Area: Sparta	4
*Oconto	
Service Area: Mountain/White Lake	1
Service Area: Oconto Falls	4
Service Area: Pulaski	2
*Oneida	
Service Area: Elcho	2
Service Area: Tomahawk	4
*Pepin	
Service Area: Mondovi	2
*Polk	
Service Area: Frederic/Luck	4
*Price	
Service Area: Park Falls/Phillips	2
Service Area: Tomahawk	4
*Richland	
Service Area: Hillsboro	2
*Sauk	
Service Area: Hillsboro	2
*Sawyer	
Service Area: Hayward/Radisson	2
Service Area: Park Falls/Phillips	2
*Shawano	
Service Area: Oconto Falls	4
Service Area: Pulaski	2
Service Area: Tigerton/Birnamwood	3
*Trempealeau	
Service Area: Arcadia	4
Service Area: Galesville/Trempealeau	2
Service Area: Osseo	3
*Vernon	
Service Area: Coon Valley/Chaseburg	1
Service Area: Genoa	1
Service Area: Hillsboro	2
*Vilas	
Service Area: Land O'lakes/Presque Isle	2
*Washburn	
Service Area: Hayward/Radisson	2
Service Area: Minong/Solon Springs	4
Waukesha	
Facility: Ethan Allen School	3
*Waupaca	
Service Area: Tigerton/Birnamwood	3

PRIMARY CARE: Wisconsin

Service Area Listing

Service Area Name	Degree of shortage group
Arcadia	4
County—Buffalo	
Parts:	
Buffalo Twn.	
Cross Twn.	
Fountain City	
Glencoe Twn.	
Milton Twn.	
Montana Twn.	
Waumandee Twn.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
County—Trempealeau	
Parts:	
Arcadia Twn.	
Arcadia City	
Dodge Twn.	
Athens/Edgar	2
County—Marathon	
Parts:	
Athens Vil.	
Bern Twn.	
Edgar Vil.	
Fenwood Vil.	
Franklort Twn.	
Halsey Twn.	
Johnson Twn.	
Reitbrock Twn.	
Wein Twn.	
Capitol Drive (Milwaukee)	1
County—Milwaukee	
Parts:	
C.T. 41–43	
C.T. 45–47	
C.T. 83–85	
Coon Valley/Chaseburg	1
County—La Crosse	
Parts:	
Washington Twn.	
County—Vernon	
Parts:	
Chaseburg Vil.	
Coon Twn.	
Coon Valley Vil.	
Hamburg Twn.	
Elcho	2
County—Langlade	
Parts:	
*Ainsworth Twn.	
*Elcho Twn.	
*Parish Twn.	
*Summit Twn.	
*Upham Twn.	
County—Oneida	
Parts:	
*Enterprise Twn.	
*Schoepke Twn.	
Frederic/Luck	4
County—Polk	
Parts:	
Bone Lake Twn.	
Clam Fall Twn.	
Frederic Vil.	
Georgetown Twn.	
Lakeland Twn.	
Lorain Twn.	
Luck Twn.	
Luck Vil.	
McKinley Twn.	
West Sweden Twn.	
Galesville/Trempealeau	2
County—Trempealeau	
Parts:	
Caledonia Twn.	
Ettrick City	
Ettrick Twn.	
Gale Twn.	
Galesville City	
Trempealeau Vil.	
Trempealeau Twn.	
Genoa	1
County—Vernon	
Parts:	
*Bergen Twn.	
*De Soto Vil.	
*Genoa Twn.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Genoa Vil.	
*Harmony Twn.	
*Sterling Twn.	
*Wheatland Twn.	
Hayward/Radisson	2
County—Bayfield	
Parts:	
Barnes Twn. (S. 1/2)	
Cable Twn.	
Drummond Twn. (S. 1/2)	
Grandview Twn.	
Namekagon Twn.	
County—Sawyer	
Parts:	
Bass Lake Twn.	
Couderay Twn.	
Couderay Vil.	
Edgewater Twn.	
Exeland Vil.	
Hayward City	
Hayward Twn.	
Hunter Twn.	
Lenroot Twn.	
Meadowbrooke Twn.	
Meteor Twn.	
Ojibwa Twn.	
Radisson Vil.	
Radisson Twn.	
Round Lake Twn.	
Sand Lake Twn.	
Spider Lake Twn.	
Weirgor Twn.	
Winter Vil.	
Winter Twn.	
County—Washburn	
Parts:	
Bass Lake Twn.	
Stinnett Twn.	
Stone Lake Twn.	
Hillsboro	2
County—Juneau	
Parts:	
*Union Center Vil.	
*Wonewoc Vil.	
*Wonewoc Twn.	
County—Monroe	
Parts:	
*Glendale Twn.	
*Kendall Vil.	
*Sheldon Twn.	
*Wellington Twn.	
County—Richland	
Parts:	
*Bloom Twn.	
*Cazenovia Vil.	
*Henrietta Twn.	
*Westford Twn.	
*Yuba Vil.	
County—Sauk	
Parts:	
*Woodland Twn.	
County—Vernon	
Parts:	
*Forest Twn.	
*Greenwood Twn.	
*Hillsboro City	
*Hillsboro Twn.	
*Ontario Vil.	
*Union Twn.	
*Whitestown Twn.	
Inner City North (Milwaukee)	2
County—Milwaukee	
Parts:	
C.T. 44	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
C.T. 66–72	
C.T. 79–86	
C.T. 101–107	
C.T. 114–118	
C.T. 139–142	
C.T. 146–147	
Inner City South	3
County—Milwaukee	
Parts:	
C.T. 155–159	
C.T. 162–169	
C.T. 174–180	
Ironwood/Hurley (MI/WI)	2
County—Iron	
Parts:	
*Anderson Twn.	
*Carey Twn.	
*Gurney Twn.	
*Hurley City	
*Kimball Twn.	
*Knight Twn.	
*Mercer Twn.	
*Montreal City	
*Oma Twn.	
*Pence Twn.	
*Saxon Twn.	
*Tourists	
Juneautown	1
County—Milwaukee	
Parts:	
C.T. 108	
C.T. 110–113	
Kewaunee City	4
County—Kewaunee	
Parts:	
*Carlton Twn.	
*Franklin Twn.	
*Kewaunee City	
*Montpelier Twn.	
*Pierce Twn (S. 1/2)	
*W. Kewaunee Twn.	
Land O'lakes/Presque Isle	2
County—Vilas	
Parts:	
Land O'lake Twn.	
Presque Isle Twn.	
Winchester Twn.	
Laona	2
County—Forest	
Parts:	
*Armstrong Creek Twn.	
*Blackwell Twn.	
*Caswell Twn.	
*Freedom Twn.	
*Laona Twn.	
*Ross Twn.	
*Wabeno Twn.	
Markesan/Kingston	2
County—Green Lake	
Parts:	
Kingston City	
Kingston Twn	
Mackford Twn	
Manchester Twn	
Markesan City	
Marquette City	
Marquette Twn	
Mauston/New Lisbon	4
County—Juneau	
Parts:	
Camp Douglas Vil.	
Clearfield Twn.	
Cutler Twn.	
Elroy City	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Fountain Twn.	
Germantown Twn.	
Hustler Vil.	
Kildare Twn.	
Kingston Twn.	
Lemonweir Twn.	
Lindina Twn.	
Lisbon Twn.	
Lyndon Station Vil.	
Marion Twn.	
Mauston City	
Necedah Vil.	
Necedah Twn.	
New Lisbon City	
Orange Twn.	
Plymouth Twn.	
Seven Mile Creek Twn.	
Summit Twn.	
Minong/Solon Springs	4
County—Douglas	
Parts:	
Bennett Twn.	
Dairyland Twn.	
Gordon Twn.	
Highland Twn.	
Oakland Twn. (S. 1/2)	
Solon Springs Vil.	
Solon Springs Twn.	
Wascott Twn.	
County—Washburn	
Parts:	
Brooklyn Twn.	
Chicog Twn.	
Frog Creek Twn.	
Gull Lake Twn.	
Minong Vil.	
Minong Twn.	
Mondovi	2
County—Buffalo	
Parts:	
*Alma City	
*Alma Twn.	
*Belvidere Twn.	
*Buffalo City	
*Carrion Twn.	
*Cochrane Vil.	
*Dover Twn.	
*Gilmanton Twn.	
*Lincoln Twn.	
*Modena Twn.	
*Mondovi City	
*Mondovi Twn.	
*Naples Twn.	
County—Pepin	
Parts:	
*Albany Twn.	
Montello	4
County—Marquette	
Parts:	
Crystal Lake Twn.	
Harris Twn.	
Mecan Twn.	
Montello City	
Montello Twn.	
Neshkoro Twn.	
Neshkoro Vil.	
Newton Twn.	
Oxford Twn.	
Oxford Vil.	
Packwaukee Twn.	
Shields Twn.	
Springfield Twn.	
Westfield Vil.	
Westfield Twn.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Mountain/White Lake	1
County—Langlade	
Parts:	
Evergreen Twn.	
Langlade Twn.	
White Lake Vil.	
Wolf River Twn.	
County—Oconto	
Parts:	
Armstrong Twn.	
Bagley Twn.	
Brazeau Twn.	
Breed Twn.	
Doty Twn.	
Lakewood Twn.	
Riverview Twn.	
Townsend Twn.	
Oconto Falls	4
County—Oconto	
Parts:	
*Abrams Twn. (W 1/2)	
*Gilled City	
*Gillett Twn.	
*How Twn.	
*Lena Twn.	
*Lena Vil.	
*Maple Valley Twn.	
*Morgan Twn.	
*Oconto Falls City	
*Oconto Falls Twn.	
*Spruce Twn.	
*Stiles Twn. (W 1/2)	
*Suring Vil.	
*Underhill Twn.	
County—Shawano	
Parts:	
*Green Valley Twn.	
Oseeo	3
County—Eau Claire	
Parts:	
Augusta Twn.	
Bridge Creek Twn.	
Clear Creek Twn.	
Fairchild Twn.	
Fairchild Vil.	
Otter Creek Twn.	
County—Jackson	
Parts:	
*Cleveland Twn.	
*Garfield Twn.	
*Northfield Twn.	
County—Trempealeau	
Parts:	
*Hale Twn.	
*Osseo City	
*Strum Twn.	
*Sumner Twn.	
*Unity Twn.	
Park Falls/Phillips	2
County—Ashland	
Parts:	
Agenda Twn.	
Butternut Vil.	
Chippewa Twn.	
Gordon Twn.	
Jacobs Twn.	
Peeksville Twn.	
Shanagolden Twn.	
County—Iron	
Parts:	
Sherman	
County—Price	
Parts:	
Catawba Twn.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Eisenstein Twn.	
Elk Twn.	
Emery Twn.	
Fifield Twn.	
Flambeau Twn.	
Georgetown Twn.	
Hackett Twn.	
Harmony Twn.	
Kennan Twn.	
Kennan Vil.	
Lake Twn.	
Ogema Twn.	
Park Falls City	
Phillips City	
Prentice Twn. (West 1/2)	
Prentice Vil.	
Worchester Twn.	
County—Sawyer	
Parts:	
Draper Twn.	
Platteville/Cuba City	2
County—Grant	
Parts:	
Clifton Twn.	
Cuba City City	
Dickeyville Vil.	
Ellenboro Twn.	
Harrison Twn.	
Hazel Green Twn.	
Hazel Green Vil.	
Lima Twn.	
Livingston Vil.	
Paris Twn.	
Platoville Twn.	
Platteville City	
Smelser Twn.	
County—Iowa	
Parts:	
Mifflin Twn.	
Rewey Vil.	
County—Lafayette	
Parts:	
Belmont Vil.	
Belmont Twn.	
Benton Vil.	
Benton Twn.	
Elk Grove Twn.	
New Diggings Twn.	
Pulaski	2
County—Brown	
Parts:	
Pittsfield Twn.	
Pulaski Vil.	
County—Oconto	
Parts:	
Chase Twn.	
County—Shawano	
Parts:	
Angelica Twn.	
Maple Grove Twn.	
Sister Bay/Washington Island	2
County—Door	
Parts:	
Baileys Harbor Twn.	
Ephraim Vil.	
Gibraltar Twn.	
Liberty Grove Twn.	
Sister Bay Vil.	
Washington Island Twn.	
Sparta	4
County—Monroe	
Parts:	
Angelo Twn.	
Cashton Vil.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
Jefferson Twn.	
Lafayette Twn.	
Leon Twn.	
Little Falls Twn.	
Melvina Vil.	
New Lyme Twn.	
Norwalk Vil.	
Portland Twn.	
Ridgeville Twn.	
Sparta City	
Sparta Twn.	
Wells Twn.	
Tigerton/Birnamwood	3
County—Marathon	
Parts:	
Elderon Vil.	
Elderon Twn.	
Franzen Twn.	
Hatley Vil.	
Norrie Twn.	
Plover Twn.	
County—Shawano	
Parts:	
Almon Twn.	
Aniwa Twn.	
Aniwa Vil.	
Birnamwood Twn.	
Birnamwood Vil.	
Bowler Vil.	
Eland Vil.	
Fairbanks Twn.	
Germania Twn.	
Grant Twn. (W 1/2)	
Hutchins Twn.	
Matoon Vil.	
Morris Twn.	
Tigerton Vil.	
Wittenberg Vil.	
Wittenberg Twn.	
County—Waupaca	
Parts:	
Big Falls Vil.	
Harrison Twn.	
Wyoming Twn.	
Tomahawk	4
County—Lincoln	
Parts:	
*Bradley Twn.	
*Harrison Twn.	
*King Twn.	
*Skanawan Twn.	
*Somo Twn.	
*Tomahawk Twn.	
*Tomahawk City	
*Wilson Twn.	
County—Oneida	
Parts:	
*Little Rice Twn.	
*Lynne Twn.	
*Nokonus Twn.	
County—Price	
Parts:	
*Hill Twn.	
*Knox Twn.	
*Prentice Twn. (Eastern 1/2)	
*Spirit Twn.	
W. Marinette	2
County—Marinette	
Parts:	
*Amberg Twn.	
*Athelstane Twn.	
*Beaver Twn.	
*Coleman Vil.	
*Crivitz Vil.	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service Area Name	Degree of shortage group
*Lake Twn.	
*Middle Inlet Twn.	
*Pound Twn.	
*Pound Vil.	
*Silver Cliff Twn.	
*Stephenson Twn.	
*Wausaukee Vil.	
*Wausaukee Twn.	

PRIMARY CARE: Wisconsin

Population Group Listing

Population Group	Degree of shortage group
Med. Ind. Pop.—Inner City West	1
County—Milwaukee	
Parts:	
C.T. 62	
C.T. 87-90	
C.T. 96-100	
C.T. 119-123	
C.T. 133-136	
C.T. 146-149	

PRIMARY CARE: Wisconsin

Facility Listing

Facility Name	Degree of shortage group
Dodge Corr. I.	2
County—Dodge	
Ethan Allen School	3
County—Waukesha	
Wisconsin Corr. I.	1
County—Dodge	
Wisconsin State Ref.	3
County—Brown	

PRIMARY CARE: Wyoming

County Listing

County Name	Degree of shortage group
*Albany	
Service Area: Rock River	1
*Big Horn	
Service Area: Greybull	2
*Campbell	
Service Area: Wright	2
*Converse	
Service Area: Douglas	4
*Crook	
Service Area: Hulett	1
Service Area: Moorcroft	1
*Fremont	
Service Area: Dubois	1
Service Area: Jeffrey City	1

PRIMARY CARE: Wyoming—Continued

County Listing

County Name	Degree of shortage group
Population Group: Arapahoe/Shoshone Indians	1
*Hot Springs	
Population Group: Arapahoe/Shoshone Indians	1
*Lincoln	
Service Area: Kemmerer/Cokeville	3
Melrose	
Service Area: Midwest/Edgerton	1
*Niobrara	1
*Park	
Service Area: Gardiner/Mammoth Hot Springs	1
*Sublette	
Service Area: Big Piney/Marbleton	3
Service Area: Pinedale/Boulder	4
*Sweetwater	
Service Area: Rawlins	2
Service Area: Rock Springs	3
*Uinta	
Service Area: Lyman	1
*Weston	4

PRIMARY CARE: Wyoming

Service Area Listing

Service Area Name	Degree of shortage group
Big Piney/Marbleton	3
County—Sublette	
Parts:	
*Big Piney Div.	
Douglas	4
County—Converse	
Parts:	
*Douglas Div.	
Dubois	1
County—Fremont	
Parts:	
*Dubois Div.	
Gardiner/Mammoth Hot Springs	1
County—Park	
Parts:	
*Yellowstone Nat'L Park Div.	
Greybull	2
County—Big Horn	
Parts:	
*Big Horn Central Div.	
*Big Horn South Div.	
Hulett	1
County—Crook	
Parts:	
*Hulett Div.	
Jeffrey City	1
County—Fremont	
Parts:	
*Sweetwater Div.	
Kemmerer/Cokeville	3
County—Lincoln	
Parts:	
*Kemmerer East Div.	
*Kemmerer West Div.	
Lyman	1
County—Uinta	
Parts:	
*Bridger Valley Div.	
Midwest/Edgerton	1
County—Natrona	
Parts:	
E.D. 1675 (Edgerton)	

PRIMARY CARE: Wyoming—Continued

Service Area Listing

Service Area Name	Degree of shortage group
E.D. 1678.77 (Edgertown) E.D. 1678.81 (Edgertown)	1
Moorcroft	
County—Crook	
Parts:	
*Moorcroft Div.	4
Pinedale/Boulder	
County—Sublette	
Parts:	
*Boulder Div.	
*Pinedale Div.	2
Rawlins	
County—Sweetwater	
Parts:	
Wamsutter Div.	1
Rock River	
County—Albany	
Parts:	
Rock River Div.	3
Rock Springs	
County—Sweetwater	
Parts:	
Green River North Div.	
Green River South Div.	
Rock Spring North Div.	
Rock Spring South Div.	2
Wright	
County—Campbell	
Parts:	
*Gillette South CCD	

PRIMARY CARE: Wyoming

Population Group Listing

Population Group	Degree of shortage group
Arapahoe/Shoshone Indians	
County—Fremont	
Parts:	
Wind River	1
County—Hot Springs	
Parts:	
Wind River	

PRIMARY CARE: American Samoa

County Listing

County Name	Degree of shortage group
*Eastern Dist. (Tutuila) Service Area: Terr. Of American Samoa	3
*Manu'A Islands Service Area: Terr. Of American Samoa	3
*Rose Island Service Area: Terr. Of American Samoa	3
*Swains Island Service Area: Terr. Of American Samoa	3
*Western Dist. (Tutuila) Service Area: Terr. Of American Samoa	3

PRIMARY CARE: American Samoa

Service Area Listing

Service Area Name	Degree of shortage group
Terr. Of American Samoa	3
County—Eastern Dist. (Tutuila)	
County—Manu'A Islands	
County—Rose Island	
County—Swains Island	
County—Western Dist. (Tutuila)	

PRIMARY CARE:

County Listing

County Name	Degree of shortage group
*Kosrae State	1
*Pohnpei State	1
*Truk State	1
*Yap State	1

PRIMARY CARE: Guam

County Listing

County Name	Degree of shortage group
*Guam	1

PRIMARY CARE:

County Listing

County Name	Degree of shortage group
*Republic Of Marshall Is.	1

PRIMARY CARE: N. Mariana Islands

County Listing

County Name	Degree of shortage group
*Commwlth Of N. Mariana Is	1

PRIMARY CARE:

County Listing

County Name	Degree of shortage group
*Republic Of Palau	1

PRIMARY CARE: Puerto Rico

County Listing

County Name	Degree of shortage group
*Adjuntas	2
*Aguada	4
*Aguas Buenas	3
*Aneaco	3
*Arecibo Population Group: Pov. Pop.—Arecibo	2
*Arroyo Population Group: Pov. Pop.—Arroyo	1
*Barceloneta Population Group: Pov. Pop.—Barceloneta	4
*Barranquitas Population Group: Pov. Pop.—Barranquitas	1
*Cabo Rojo Population Group: Pov. Pop.—Cabo Rojo	3
*Camuy	2
*Canovanas	2
*Ceyey Population Group: Pov. Pop.—Ceyey	1
*Ceiba Population Group: Pov. Pop.—Ceiba	2
*Ciales	4
*Cidra	2
*Coamo Population Group: Pov. Pop.—Coamo	1
*Comerio	3
*Corozal	2
*Dorado	2
*Fajardo Population Group: Pov. Pop.—Fajardo	1
*Florida	2
*Guanica Population Group: Pov. Pop.—Guanica	1
*Guayama Population Group: Pov. Pop.—Guayama	1
*Guayanilla Population Group: Pov. Pop.—Guayanilla	1
*Gurabo	1
*Hatillo	1
*Hormigueros	1
*Humacao Population Group: Pov. Pop.—Humacao	2
*Isabela	3
*Jayuya Population Group: Pov. Pop.—Jayuya	1
*Juana Diaz	2
*Juncos	1
*Lajas	1
*Lares	1
*Las Marias	2
*Las Piedras	1
*Loiza	3
*Luquillo	1
*Manati Population Group: Pov. Pop.—Manati	1
*Maricao Population Group: Pov. Pop.—Maricao	2
*Maunabo	1
*Mayaguez Population Group: Pov. Pop.—Mayaguez	1
*Moca Population Group: Pov. Pop.—Moca	1
*Morovis	2
*Naguabo Population Group: Pov. Pop.—Naguabo	2
*Naranjito	2
*Orocovis	1
*Patillas	4

PRIMARY CARE: Puerto Rico—Continued

County Listing

County Name	Degree of shortage group
*Ponce Population Group: Pov. Pop.—Ponce	2
*Quebradillas	2
*Rincon	4
*Rio Grande Population Group: Pov. Pop.—Rio Grande	1
*Sabana Grande	3
*Salinas Population Group: Pov. Pop.—Salinas	1
*San German Population Group: Pov. Pop.—San German	2
*San Juan Service Area: Barrio Obrero	4
*San Lorenzo Population Group: Pov. Pop.—San Lorenzo	1
*San Sebastian Population Group: Pov. Pop.—San Sebastian	1
*Santa Isabel	1
*Toa Alta	1
*Utuado Population Group: Pov. Pop.—Utuado	1
*Vega Alta Population Group: Pov. Pop.—Vega Alta	1
*Vega Baja Population Group: Pov. Pop.—Vega Baja	1
*Villalba	2
*Yabucoa Population Group: Pov. Pop.—Yabucoa	1
*Yauco Population Group: Pov. Pop.—Yauco	1

PRIMARY CARE: Puerto Rico

Service Area Listing

Service Area Name	Degree of shortage group
Barrio Obrero	4
County—San Juan	
Parts:	
*C.T. 29-39	
*C.T. 44-45	

PRIMARY CARE: Puerto Rico

Population Group Listing

Population Group	Degree of shortage group
Pov. Pop.—Arecibo	2
County—Arecibo	
Pov. Pop.—Arroyo	1
County—Arroyo	
Pov. Pop.—Barceloneta	4
County—Barceloneta	
Pov. Pop.—Barranquitas	1
County—Barranquitas	
Pov. Pop.—Cabo Rojo	3

PRIMARY CARE: Puerto Rico—Continued

Population Group Listing

Population Group	Degree of shortage group
County—Cabo Rojo	
Pov. Pop.—Ceyey	1
County—Ceyey	
Pov. Pop.—Ceiba	2
County—Ceiba	
Pov. Pop.—Coamo	1
County—Coamo	
Pov. Pop.—Fajardo	1
County—Fajardo	
Pov. Pop.—Guanica	1
County—Guanica	
Pov. Pop.—Guayama	1
County—Guayama	
Pov. Pop.—Guayanilla	1
County—Guayanilla	
Pov. Pop.—Humacao	2
County—Humacao	
Pov. Pop.—Jayuya	1
County—Jayuya	
Pov. Pop.—Manati	1
County—Manati	
Pov. Pop.—Maricao	2
County—Maricao	
Pov. Pop.—Mayaguez	1
County—Mayaguez	
Pov. Pop.—Moca	1
County—Moca	
Pov. Pop.—Naguabo	2
County—Naguabo	
Pov. Pop.—Ponce	2
County—Ponce	
Pov. Pop.—Rio Grande	1
County—Rio Grande	
Pov. Pop.—Salinas	1
County—Salinas	
Pov. Pop.—San German	2
County—San German	
Pov. Pop.—San Lorenzo	1
County—San Lorenzo	
Pov. Pop.—San Sebastian	1
County—San Sebastian	
Pov. Pop.—Utuado	1
County—Utuado	
Pov. Pop.—Vega Alta	1
County—Vega Alta	
Pov. Pop.—Vega Baja	1
County—Vega Baja	
Pov. Pop.—Yabucoa	1
County—Yabucoa	
Pov. Pop.—Yauco	1
County—Yauco	

PRIMARY CARE: Virgin Islands

County Listing

County Name	Degree of shortage group
*St. Croix Service Area: Fredericksted	4
*St. Thomas Service Area: East End St. Thomas	1

PRIMARY CARE: Virgin Islands

Service Area Listing

Service Area Name	Degree of shortage group
East End St. Thomas	1
County—St. Thomas	
Parts:	
*East End	
*Southside	
*Tutu	
Fredericksted	4
County—St. Croix	
Parts:	
Fredericksted	
Northwest	
Southwest	

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Alabama

County Listing

Clay
De Kalb
Elmore
Etowah
Fayette
Marion
Talladega

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Alabama

Service Area Listing

Bay Minette
County—Baldwin
Parts:
Bay Minette CCD
Black Belt Community
Gainesville CCD
Livingston CCD
Panola Geiger CCD

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Arizona

Service Area Listing

Benson
County—Cochise
Parts:
Benson CCD
St. Johns
County—Apache
St. Johns Div.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Arkansas

County Listing

Conway
Crawford
Franklin

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: California

Service Area Listing

Orland
  County—Glenn
    Parts:
      Orland CCD
Quincy
  County—Plumas
    Quincy CCD
West Oakland
  County—Alameda
    C.T. 4014–4017
    C.T. 4017–4019
    C.T. 4019–4027

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Colorado

County Listing

Kiowa
Sedgwick
Yuma

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Colorado

Service Area Listing

Flagler
  County—Kit Carson
    Parts:
      Flagler Div.
Julesburg (Co/Nb)
  County—Sedgwick

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Connecticut

Population Group Listing

Pov. Pop.—S.W. Stamford
  County—Fairfield
    Parts:
      C.T. 201
      C.T. 214–215
      C.T. 217
      C.T. 222–229
Poverty Pop.—Central Waterbury
  County—New Haven
    C.T. 3501–3505
    C.T. 3508
    C.T. 3512
    C.T. 3514

PRIMARY CARE: Connecticut—Continued

Population Group Listing

Poverty Pop.—Middletown
  County—Middlesex
    C.T. 5411–5422
Poverty Pop.—N.E. Windham
  County—Windham
    Brooklyn Twn.
    Canterbury Twn.
    Eastford Twn.
    Killingly Twn.
    Plainfield Twn.
    Pomfret Twn.
    Putnam Twn.
    Sterling Twn.
    Thompson Twn.
    Woodstock Twn.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Florida

Population Group Listing

Pov. Pop.—Franklin Co.
  County—Franklin
    Parts:
      Pov. Pop.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Georgia

County Listing

Bryan
Dawson
Early
McIntosh
White

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Idaho

County Listing

Clearwater

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Illinois

County Listing

Calhoun

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Illinois

Service Area Listing

E. Chicago Heights
  County—Cook
    Parts:
      C.T. 8297 (E. Chicago Heights)
Hardin
  County—Greene
    Woodville Twp. (West 1/2)
  County—Jersey
    Quarry Twp.
    Richwood Twp.
    Rosedale Twp.
Robbins Vil.
  County—Cook
    C.T. 8243 (E. Chicago Heights)
S.E. Peoria
  County—Peoria
    C.T. 1–15
Salem
  County—Marion
    Alma Twp.
    Beacham Twp.
    Foster Twp.
    Haines Twp
    Iuka Twp.
    Kinmundy Twp.
    Omega Twp.
    Romine Twp.
    Salem Twp.
    Stevenson Twp.
    Tonti Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Indiana

County Listing

Clay
Decatur
Fayette
Martin
Ripley
Steuben
Switzerland

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Louisiana

County Listing

Bossier
St Bernard
St Charles
St John The Baptist
West Baton Rouge

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Louisiana

Service Area Listing

Northeastern St Tammany
  County—St Tammany
    Parts:
      C.T. 401.01–401.02
      C.T. 407.01–407.02

PRIMARY CARE: Louisiana—Continued

Service Area Listing

West Union
  County—Union
    Ward 9
    Ward 4
    Ward 5

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Maine

Service Area Listing

Lubec
  County—Washington
    Parts:
      Dennysville Twn.
      E. Central Wash. Unorg.
      Lubec Twn.
      Pt. s14
      Whiting Twn.
Mars Hill
  County—Aroostook
    Blaine Twn.
    Bridgewater Twn.
    E Pt.
    Mars Hills Twn.
    Westfield Twn.
Penobscot Bay
  County—Knox
    Matinicus Island
    Vinalhaven Island
Rangeley
  County—Franklin
    Coplin Pt.
    Dallas Pt.
    Eustis Twn.
    Madrid Twn.
    N. Franklin (Unorg.)
    Rangeley Pt.
    Rangeley Twn.
    Sandy River Pt.
  County—Oxford
    Lincoln Pt.
    Magalloway Pt.
    Unorg.—N. Oxford

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Maryland

County Listing

Queen Annes

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Massachusetts

Service Area Listing

Hough'S Neck/Germantown (Quincy)
  County—Norfolk
    Parts:
      C.T. 4178
Jamaica Plain
  County—Suffolk
    C.T. 1202–1207
North End Boston
  County—Suffolk
    C.T. 301–302
    C.T. 304–305

PRIMARY CARE: Massachusetts—Continued

Service Area Listing

Taunton
  County—Bristol
    Berkley Twn.
    Dighton Twn.
    Raynham Twn.
    Rehoboth Twn.
    Taunton City

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Massachusetts

Population Group Listing

Portuguese Pop.—Hudson
  County—Middlesex
    Parts:
      Hudson (Portuguese Pop.)

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Michigan

County Listing

Baraga
Hillsdale

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Michigan

Service Area Listing

Brown City
  County—Lapeer
    Parts:
      Burnside Twp.
  County—Sanilac
    Brown City
    Elk Twp.
    Flynn Twp.
    Maple Valley Twp.
    Speaker Twp.
De Tour
  County—Chippewa
    De Tour Twp.
    De Tour Vil.
    Drummond Twp.
    Raber Twp.
Gwinn
  County—Marquette
    Ewing Twp.
    Forsyth Twp.
    Turbin Twp.
    Wells Twp.
Kaleva
  County—Manistee
    Dickson Twp.
    Maple Grove Twp.
    Marilla Twp.
    Norman Twp.
    Springfield Twp.
Kinross/Rudyard
  County—Chippewa
    Bay Mills Twp.
    Chippewa Twp.
    Hulbert Twp
    Kinross Twp.
    Rudyard Twp.

PRIMARY CARE: Michigan—Continued

Service Area Listing

    Superior Twp.
    Trout Lake Twp.
    Whitefish Twp.
L'Anse
  County—Houghton
    Laird Twp.
Lexington/Croswell
  County—Sanilac
    Buel Twp.
    Croswell City
    Fremont Twp.
    Lexington Twp.
    Worth Twp.
Port Austin
  County—Huron
    Dwight Twp.
    Gore Twp.
    Hume Twp.
    Huron Twp.
    Lake Twp.
    Pointe Aux Barques Twp.
    Port Austin Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Minnesota

Service Area Listing

Baudette
  County—Beltrami
    Parts:
      Shotley Twp.
      Shotley Brook—Unorg.
      Upper Red Lake N 1/2—U
      Washkish Twp.
  County—Koochiching
    N.W. Koochiching—Unorg.
  County—Lake Of The Woods
    Baudette City
    Beltrami Forest—Unorg.
    Rainey River—Unorg. E.
    Williams City

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Mississippi

County Listing

Clay
Grenada

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Missouri

County Listing

Christian
Monroe
Putnam
Shelby
St Clair
Warren

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Missouri

Service Area Listing

Lincoln
County—Benton
Parts:
Cole Twp.
White Twp.
Williams Twp.
Southern Gasconade
County—Gasconade
Bosuf Twp.
Boulware Twp.
Bourbois Twp.
Brush Creek Twp.
Canaan Twp.
Clay Twp.
Third Creek Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Montana

County Listing

Prairie

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Nebraska

County Listing

Boyd
Butler
Clay
Deuel

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Nebraska

Service Area Listing

Arnold
County—Custer
Parts:
Arnold Twp.
Cliff Twp.
Delight Twp.
Elim Twp.
Grant Twp.
Hayes Twp.
Triumph Twp.
Wayne Twp.
County—Lincoln
Antelope
Garfield
County—Logan
Gandy
Logan

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Nevada

County Listing

Humboldt

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Nevada

Service Area Listing

Fernley/Silver Springs
County—Lyon
Parts:
Canal Div.
Dayton Div. (N. Pt.)

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New Hampshire

Service Area Listing

Upper Connecticut Valley
County—Coos
Parts:
Atkinson-Gilman Academy Grant
Clarksville Twn.
Colebrook Twn.
Columbia Twn.
Dixs Grant
Dixville Twn.
Errol Twn.
Millsfield Twp.
Odell Twn.
Pittsburg Twn.
Second College Grant
Stewartstown Twn.
Stratford Twn.
Wentsworth Location
Wilton/Milford
County—Hillsboro
Amherst Twp. (W. 1/3)
Lyndeborough Twn.
Milford Twn.
Mt. Vernon Twn.
Wilton Twn.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New Mexico

County Listing

Curry

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New Mexico

Service Area Listing

Northern Gallup
County—McKinley
Parts:
E.D. 99.03–99.05
Thoreau

PRIMARY CARE: New Mexico—Continued

Service Area Listing

County—McKinley
Thoreau CDP

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New York

Service Area Listing

Coney Isl/Brighton Beach/W. Brighton
County—Kings
Parts:
C.T. 326
C.T. 328
C.T. 330
C.T. 336
C.T. 340
C.T. 342
C.T. 346.01–346.02
C.T. 350
C.T. 352
C.T. 360.01–360.02
C.T. 362
C.T. 364
East Bronx
County—Bronx
C.T. 44
C.T. 48
C.T. 50
C.T. 52
C.T. 54
C.T. 56
C.T. 62
C.T. 64
C.T. 66
C.T. 68
C.T. 70
C.T. 214
Hamilton/Sherburne
County—Chenango
Columbus Twn.
Otselic Twn.
Sherburne Twn.
Smyrna Twn.
County—Madison
Brookfield Twn.
Eaton Twn.
Georgetown Twn.
Hamilton Twn.
Lebanon Twn.
Madison Twn.
County—Oneida
Sangerfield Twn.
Naples/South Bristol
County—Ontario
Naples Twn.
South Bristol Twn.
North Rockland
County—Rockland
C.T. 101–107
Washington Heights—Inwood
County—New York
C.T. 243.01
C.T. 245
C.T. 247
C.T. 249
C.T. 251
C.T. 253
C.T. 255
C.T. 261
C.T. 263
C.T. 265
C.T. 267
C.T. 269
C.T. 271
C.T. 277

PRIMARY CARE: New York—Continued

Service Area Listing

C.T. 279
C.T. 281
C.T. 283
C.T. 285
C.T. 287
C.T. 289
C.T. 291
C.T. 293
C.T. 295
C.T. 303
C.T. 307
C.T. 311

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New York

Population Group Listing

Seneca Nation—Allegany Reservation
County—Cattaraugus
Parts:
Allegany Res.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: New York

Facility Listing

Gouverneur Diag. & Treatment Ctr
County—New York

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: North Carolina

County Listing

Ashe
Graham
Granville
Perquimans
Richmond
Stokes

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: North Carolina

Service Area Listing

Bat Cave
County—Buncombe
Parts:
Broad River Twp.
Fairview Twp.
County—Henderson
Clear Creek Twp.
Edneyville Twp.
Hatteras
County—Dare
Hatteras Twp.
Kennekeet Twp.
Holly Ridge
County—Onslow
C.T. 4

PRIMARY CARE: North Carolina—Continued

Service Area Listing

County—Pender
Holly Twp.
Topsail Twp.
Lincoln
County—Durham
C.T. 8.01–8.02
C.T. 9
C.T. 10.01
C.T. 11
C.T. 12.01–12.02
C.T. 13.01–13.02
C.T. 14
Manns Harbor
County—Dare
Croatan Twp.
East Lake Twp.
Nags Head Twp.
Onslow
County—Onslow
C.T. 1–3
C.T. 5–25
Tipton Hill
County—Mitchell
Bradshaw Twp.
Hamill Twp.
Poplar Twp.
Red Hill Twp.
County—Yancey
Brush Creek Twp.
Green Mountain Twp.
Jacks Creek Twp.
Ramseytown Twp.
Western Pender
County—Pender
Bergan Twp.
Canetuck Twp.
Caswell Twp.
Columbia Twp.
Grady Twp.
Long Creek Twp.
Rocky Point Twp.
Union Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: North Dakota

County Listing

McHenry
Morton
Slope

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Ohio

County Listing

Paulding
Putnam

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Ohio

Service Area Listing

Willard
County—Crawford
Parts:
Auburn Twp. (N. 1/2)
County—Huron
Fairfield Twp.
Greenfield Twp.
Greenwich Twp.
New Haven Twp.
Norwich Twp.
Richmond Twp.
Ripley Twp.
Willard City
County—Richland
Blooming Grove Twp.
Butler Twp.
Cass Twp. (N 1/2)
Plymouth Twp. (N 1/2)
County—Seneca
Reed Twp.
Venice Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Oregon

Service Area Listing

Blodgett/Eddyville
County—Benton
Parts:
North Benton Div. (W 1/4)
County—Lincoln
Eddyville Div (E 1/2)
Brownsville
County—Linn
Brownsville CCD

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Pennsylvania

Service Area Listing

Armstrong-Clarion
County—Armstrong
Parts:
Brady'S Bend Twp.
Madison Twp.
Perry Twp.
Pine Twp.
Sugarcreek Twp.
Washington Twp.
County—Clarion
Brady Twp.
East Brady Twp.
Madison Twp.
Carbondale
County—Lackawanna
Archbald Boro.
Carbondale City
Carbondale Twp.
Fell Twp.
Greenfield Twp.
Jermyn Boro.
Mayfield Boro.
Scott Twp.
Vandling Boro.
County—Susquehanna
Clifford Twp.
Forest City Boro.

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Union Dale Boro.
County—Wayne
Canaan Twp.
Clinton Twp.
Lake Twp.
South Canaan Twp.
Waymart Boro.
Delta
County—York
Chanceford Twp.
Cross Road Boro.
Delta Boro.
East Hopewell Twp.
Fawn Grove Boro.
Fawn Twp.
Felton Boro.
Lower Chanceford Twp.
Peachbottom Twp.
East Crawford
County—Crawford
Athens Twp.
Bloomfield Twp.
Centerville Boro.
Richmond Twp.
Rockdale Twp.
Rome Twp.
Sparta Twp.
Spartansburg Boro.
Steuben Twp.
Townville Boro.
Forest-Clarion
County—Clarion
Farmington Twp.
Knox Twp.
Washington Twp.
County—Elk
Millstone Twp.
County—Forest
Barnett Twp.
Green Twp.
Howe Twp.
Jenks Twp.
Kingsley Twp.
Hit Dist./Terrance Vil.
County—Allegheny
C.T. 304-305
C.T. 401
C.T. 501-504
C.T. 508-509
Kidder
County—Carbon
East Side Boro.
Kidder Twp.
Lausanne Twp.
Lehigh Twp.
Penn Forest Twp.
County—Luzerne
Buck Twp.
Foster Twp. (E. Portion)
White Haven Boro.
County—Monroe
Coolbough Twp.
Tobyhanna Twp.
Tunkhannock Twp.
Mantua/Belmont
County—Philadelphia
C.T. 90-91
C.T. 106-110
Montrose (Area 14)
County—Susquehanna
Auburn Twp.
Bridgewater Twp.
Brooklyn Twp.
Dimock Twp.
Forest Lake Twp.
Franklin Twp.
Harford Twp.
Hop Bottom Boro.
Jessup Twp.

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Lathrop Twp.
Lenox Twp.
Liberty Twp.
Montrose Boro.
Rush Twp.
Silver Lake Twp.
Springville Twp.
Moscow
County—Lackawanna
C.T. 116
C.T. 129
North Indiana
County—Indiana
Cherry Tree Boro.
Clymer Boro.
East Mahoning Twp.
Glen Campbell Boro.
Grant Twp.
Green Twp.
Marion C. Boro.
Montgomery Twp.
Pine Twp.
Plumville Boro.
South Mahoning Twp.
Washington Twp.
Northern Lebanon Co.
County—Lebanon
Bethel Twp.
Cold Spring Twp.
East Hanover Twp.
Jonestown Boro.
Swatara Twp.
Union Twp.
Penns Valley
County—Centre
Center Hall Boro.
Greg Twp.
Haines Twp.
Miles Twp.
Millheim Boro.
Penn Twp.
Potter Twp.
Renovo
County—Clinton
Chapman Twp.
East Keating Twp.
Gaugas Twp.
Leidy Twp.
Noyes Twp.
Renovo Boro.
South Renovo Boro.
Reynoldsville
County—Jefferson
Knox Twp. (E. 1/4)
Pine Creek Twp. (E. 1/2)
Reynoldsville Boro.
Washington Twp. (S. 1/2)
Winslon Twp.
Southern Indiana
County—Indiana
Armagh Boro.
Black Lick Twp.
Blairsville Boro.
Burrell Twp.
Conemaugh Twp.
E. Wheatfield Twp.
Jacksonville Boro.
Saltsburg Boro.
W. Wheatfield Twp.
Young Twp.
Uniontown
County—Fayette
Fairchance Boro.
Franklin Twp.
Georges Twp.
Luzerne Twp.
Menallen Twp.
North Union Twp.
Redstone Twp.

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Smithfield Boro.
South Union Twp.
Uniontown City

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Rhode Island

Facility Listing

Med/Mas Securities I. (Cranston)
County—Providence

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: South Dakota

County Listing

Day
Mellette
Tripp

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: South Dakota

Service Area Listing

Winner/White River
County—Tripp

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Tennessee

County Listing

Cheatham
Fannin
Smith
Trousdale
Warren

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Tennessee

Service Area Listing

Blueridge/Copperhill (Tn/Ga)
County—Fannin
County—Macon
Highland Ridge
County—Robertson
Parts:
Orlinda CCD
County—Sumner
Portland CCD
Westmoreland CCD
White House CCD (N. 1/2)

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Texas

County Listing

Blanco
Montgomery
Reeves
Swisher
Waller

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Texas

Service Area Listing

Fair Park
County—Dallas
Parts:
C.T. 23
C.T. 25-26
C.T. 27.01-27.02
C.T. 28
C.T. 93.03-93.04

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Utah

Service Area Listing

Fillmore
County—Millard
Parts:
Fillmore City
Holden Twn.
Scipio Twn.
Unorg.—Scipio Div.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Virginia

County Listing

Greene
Isle Of Wight
Lee
New Kent

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Virginia

Service Area Listing

Nathalie
County—Halifax/S. Boston
Parts:
Meadville Dist.
Staunton Dist.
Pungo
County—Virginia Beach
C.T. 464 (Pungo)
C.T. 466 (Pungo)
Trout Dale/Independence
County—Grayson/Galax
Elk Creek Dist.
Wilson Creek Dist.
West Point
County—King And Queen
Buena Vista Dist.
County—King William
West Point Dist.
County—New Kent

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: West Virginia

County Listing

Jackson
Pleasants

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: West Virginia

Service Area Listing

Grant
County—Cabell
Parts:
Grant Dist.
Gulf
County—Raleigh
C.T. 1 (Trap Hill)
C.T. 111 (Trap Hill)
Teays Valley
County—Putnam
Curry Dist.
Scott Dist.
Teays Valley Dist.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Wisconsin

County Listing

Taylor

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Wisconsin

Service Area Listing

Amherst/Iola
County—Portage
Parts:
Amherst Twn.
Amherst Junction Vil.
Amherst Vil.
Nelsonville Vil.
County—Waupaca
Helvetia Twn.
Iola Twn.
Iola Vil.
Scandinavia Twn. (Pt.)
St. Lawrance Twn. (Pt.)
East Silver Spring
County—Milwaukee
C.T. 10-12
C.T. 18-21

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Wisconsin

Population Group Listing

Am. Ind.—Milwaukee
County—Milwaukee
Parts:
Am. In.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Wisconsin

Facility Listing

Kettle Morain Corr. I.
County—Sheboygan
Lincoln Hills School
County—Lincoln

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE HMSAs

PRIMARY CARE: Wyoming

Service Area Listing

Afton
County—Lincoln
Parts:
Afton Div.

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federal register

Friday
June 29, 1990

Part VIII

National Aeronautics and Space Administration

48 CFR Part 1804 et al.
Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1805, 1806, 1807, 1809, 1813, 1815, 1822, 1825, 1827, 1835, 1842, 1846, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89-4]

RIN 2700-AA92, 2700-AB04

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect the final version of an interim rule which added a solicitation provision and a contract clause implementing a program to enhance quality and productivity in contract performance. This document also makes a number of miscellaneous changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: June 30, 1990.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The only significant item involves the rule for Quality and Productivity Improvement Plans. An interim rule with request for comments was published on this topic on March 14, 1990 (55 FR 9446). Comments received suggested (1) rearranging the rule to simplify location in the Uniform Contract Format and (2) rescinding the rule in its entirety and rewriting it. The first suggestion has been adopted; however, the second cannot be accommodated, as this rule to elicit innovative approaches to improving quality and productivity in NASA programs is in direct response to several NASA-industry conferences where industry officials expressed a desire to develop and try new, innovative approaches to improving quality and productivity. The rule is an effort by NASA to allow offerers to put forth such new approaches and, if successful, to have that success recognized through the negotiation and award of fee. Therefore, NASA believes that the merits favor continued application of the rule in its present form. Future improvements can be made if operational experience indicates a need. The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1804, 1805, 1806, 1807, 1809, 1815, 1822, 1825, 1827, 1835, 1842, 1846, 1852, 1853, and 1870

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1804, 1805, 1806, 1807, 1809, 1813, 1815, 1825, 1837, 1835, 1845, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

1804.671-1 [Amended]

2. In 1804.671-1(a)(5), the abbreviation "EDPS" is revised to read "FPDS."

PART 1805—PUBLICIZING CONTRACT ACTIONS

3. Subpart 1805.3 is amended as set forth below:

1805.303-70 [Amended]

a. In 1805.303-70(a)(1) introductory text, the words "public affairs office" are revised to read "Public Affairs Office."

b. In 1805.303-71, in paragraphs (a)(2), (b)(1)(ii), and (b)(2), "(Code LM)" is revised to read "(Code PM)," and "Congressional Relations Office (Code XC)" is revised to read "Office of Legislative Affairs (Code LC)."

c. In 1805.303-71(b)(1) introductory text, "Headquarters Contracts and Grants Division" is revised to read "Headquarters Acquisition Division."

PART 1806—COMPETITION REQUIREMENTS

1806.302-770 [Amended]

4. In 1806.302-770, paragraph (c), "NASA Headquarters, Congressional Relations Office (Code XC)" is revised to read "NASA Headquarters, Office of Legislative Affair (Code LC)."

PART 1807—ACQUISITION PLANNING

1807.103 [Amended]

5. In 1807.103, in paragraphs (a)(1)(i)(A), (b)(1)(i)(A)(*2*), and (b)(1)(ii)(A)(*2*), "Headquarters Contracts and Grants Division" is revised to read "Headquarters Acquisition Division."

1807.7102 [Amended]

6. In 1807.7102, paragraph (b)(1)(ii), "Headquarters Contracts and Grants Division" is revised to read "Headquarters Acquisition Division."

PART 1809—CONTRACTOR QUALIFICATIONS

7. Subpart 1809.1 is amended as set forth below:

1809.106-70 [Amended]

a. In 1809.106-70, paragraph (d)(1), "20.G" is revised to read "20.H" in both places where it appears.

b. In 1809.106-70, paragraph (j)(2)(iv) introductory text, "VI" is revised to read "V."

§ 1809.404 [Amended]

8-9. In 1809.404, paragraph (b), the words "Prgram Programs" are revised to read "Procurement Programs."

PART 1815—CONTRACTING BY NEGOTIATION

1815.506 [Amended]

10. In 1815.506, paragraph (a)(3), the phrase "Contracts and Grants Division (Code HW)" is revised to read "Headquarters Acquisition Division (Code HW)."

1815.807-71 [Amended]

11. In 1815.807-71, the phrase "Headquarters Contracts and Grants Division" is revised to read "Headquarters Acquisition Division."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.1306 [Amended]

12. In 1822.1306, "(Code U)" is revised to read "(Code E)."

PART 1825—FOREIGN ACQUISITION

1825.7004 and 1825.7005 [Amended]

13. In 1825.7004 and 1825.7005(a), the phrase "Headquarters Contracts and Grants Division" is revised to read "Headquarters Acquisition Division."

PART 1827—PATENTS, DATA, AND COPYRIGHTS

14. Part 1827 is amended as set forth below:

1827.373 [Amended]

a. In 1827.373, paragraph (a)(2) is revised to read as follows:

1827.373 Contract clauses and solicitation provisions.

(a) • • •

(2) When the clause at FAR 52.227-11 is included in a solicitation or contract it shall be modified as set forth at 1852.227-11.

b. In subpart 1827.4, 1827.409 (e), (f), and (g) are revised to read as follows:

1827.409 Solicitation provisions and contract clauses.

• • • • • •

(e) In accordance with 1827.404(e)(1), the contracting officer shall add subparagraph (3) as set forth in 1852.227-14 to paragraph (d) of the clause at FAR 52.227-14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(f) In accordance with 1827.405(a)(1), the contracting officer shall add paragraph (e) as set forth in 1852.227-19(a) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(g) In accordance with 1827.405(a)(2), the contracting officer shall add paragraph (f) as set forth at 1852.227-19(b) to the clause at FAR 52.227-19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

• • • • • •

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.016-70 [Amended]

15. In 1835.016-70, paragraph (b)(3), "Headquarters Grants and Contracts Division" is revised to read "Headquarters Acquisition Division."

PART 1842—CONTRACT ADMINISTRATION

1842.7002 [Amended]

16. In 1842.7002, paragraph designator "(a)" is removed, and paragraph (b) is removed in its entirety.

PART 1846—QUALITY ASSURANCE

17. Subpart 1846.4 is revised to read as follows:

Subpart 1846.4—Government Contract Quality Assurance

Sec.

1846.470 Solicitation provision and contract clauses.

1846.470-1 Solicitation provision.

1846.470-2 Contract clauses.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Solicitation provision and contract clauses.

1846.470-1 Solicitation provision.

The contracting officer shall consider inserting in solicitations the provision at 1852.246-74, Requirement for Quality and Productivity Improvement (Q/PI) Plan, when in the judgment of the contracting officer and the program manager, a Q/PI plan would be meaningful and appropriate, and the estimated cost of the contract will be more than $2.5 million, annually. The proposed Q/PI plan shall be evaluated under Other Considerations. Any fee associated with a Q/PI plan shall not be considered as an amount over and above the total fee negotiated for the contract and shall not, when combined with all other price or fee considerations, exceed the limitations prescribed in FAR 15.903(d)(1).

1846.470-2 Contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.246-71, Government Contract Quality Assurance Functions, in solicitations and contracts. Insert the items involving quality assurance, the applicable functions (e.g., preliminary inspection, final inspection, acceptance), and the place(s) of performance appropriate for the particular procurement. See FAR 46.401.

(b) The contracting officer shall insert the clause at 1852.246-75, Quality and Productivity Improvement Plan, in all solicitations containing the provision at 1852.246-74, Requirement for Quality and Productivity Improvement Plan, and in contracts resulting therefrom.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Part 1852 is amended as set forth below:

1852.206-81 [Amended]

a. In paragraph (c) of the clause, the word "fed" is revised to read "feed."

b. Sections 1852.227-11, 1852.227-14, and 1852.227-19 are added as set forth below:

1852.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.373(a), modify the clause at FAR 52.227-11 by adding the following subparagraph (5) to paragraph (f) of the basic clause. In addition, use the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(5) The contractor shall provide the contracting officer the following:

(i) A listing every 12 months (or such longer period as the contracting officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(2) The contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

1852.227-14 Rights in Data—General.

As prescribed in 1827.409(e), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227-14:

(3) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(End of addition)

1852.227-19 Commercial Computer Software—Restricted Rights.

(a) As prescribed in 1827.409(f), add the following paragraph (e) to the basic clause at FAR 52.227-19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contract Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(g), add the following paragraph (f) to the basic clause at FAR 52.227-19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

1852.227-86 [Amended]

c. In 1852.227-86, paragraph (b) of the clause, the phrase "NASA Contractor Technical Representative/User" is revised to read "NASA Contracting Officer's Technical Representative/User"; and the parenthetical expression "(End of clause)" is added at the end of the clause.

1852.233-81 [Amended]

d. In 1852.233-81, in the clause "Contract Funding," the date "(MAR 1989)" is revised to read "(JUNE 1990)," and paragraph (a) is revised to read as set forth below:

1852.232-81 Contract Funding.

* * * * *

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

* * * * *

1852.242-71 [Amended]

e. In 1852.242-71, Alternate I of the clause is removed in its entirety.

1852.246-71 [Amended]

f. In 1852.246-71, the citation "1846.470" is revised to read "1846.470-2(a)."

g. Section 1852.246-74 is revised and 1852.246-75 is added to read as set forth below:

1852.246-74 Requirement for Quality and Productivity Improvement Plan.

As prescribed in 1846.470-1, insert the following provision:

Requirement for Quality and Productivity Improvement Plan (June 1990)

The offeror shall submit with its proposal a Quality and Productivity Improvement (Q/PI) plan. The plan should address only effort directly related to this solicitation. It should include areas of focus for improvement; Q/PI goals, schedules and assessment techniques; discuss how the offeror will create an environment within its organization conducive to continuous quality improvement; and discuss the offeror's active or proposed involvement, if any, in the Q/PI programs of subcontractors. The offeror shall identify all costs associated with the major elements of the proposed plan. The offeror may propose incentives to reward quality and productivity improvements made under the contract. If proposed as incentives that are distinct from other contract fees or prices, the offeror must be able to demonstrate to the contracting officer's satisfaction that the contractor's performance under the Q/PI plan can be discretely measured and its value is commensurate with the proposed cost or incentive. At the sole discretion of the contracting officer any consideration for the proposed Q/PI plan may be included in the total fee or price of the contract. If the contract will otherwise contain award fee provisions, the offeror shall include in its proposal appropriate award fee criteria designed to encourage and reward the offeror's Q/PI effort. The contractor shall comply with the approved plan during performance of the contract.

(End of provision)

1852.246-75 Quality and Productivity Improvement Plan.

As prescribed in 1846.470-2(b), insert the following clause:

Quality and Productivity Improvement Plan (June 1990)

During contract performance, the contractor shall comply with the Quality and Productivity Improvement Plan submitted pursuant to provision 1852.246-74, Requirement for Quality and Productivity Improvement Plan, as approved by the Contracting Officer.

(End of clause)

PART 53—FORMS

1853.215-2 [Amended]

19. In 1853.215-2, the citation "1815.905" is revised to read "1815.970."

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.303 [Amended]

20. In Appendix I to 1870.303, Chapter 3, section 304, paragraph 2.g. is redesignated as paragraph 2.h., and a new paragraph 2.g. is added to read as follows: "g. Quality and productivity improvement plan."

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June 29, 1990

Part IX

Environmental Protection Agency

40 CFR Part 35

Comprehensive Construction Grant Regulation Revision; Interim Rule With Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3702-9]

Comprehensive Construction Grant Regulation Revision

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Water Quality Act of 1987 (Pub. L. 100-4) amended the Clean Water Act (Pub. L. 92-500) by extending the authorization of several provisions in the title II construction grant program and by adding new provisions to respond to program experience. The 1987 amendments also authorized EPA to treat Indian Tribes as States for purposes of administering the title II program.

With today's action, the Environmental Protection Agency is revising the construction grant regulations at 40 CFR part 35, subpart I and the State delegation regulations at 40 CFR part 35, subpart J, to implement the 1987 Amendments to title II and the new Indian tribe delegation program of section 518 of the Clean Water Act. The Agency is making two other revisions to the construction grant regulations to respond to issues that have emerged since the regulations were last significantly amended on February 17, 1984 (49 FR 6224).

DATES: *Effective:* This interim rule is effective June 29, 1990. *Comments:* Comments must be received on or before August 28, 1990.

ADDRESSES: Comments may be mailed to Geoffrey Cooper, Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Geoffrey Cooper (202/382-2287).

SUPPLEMENTARY INFORMATION:

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I. Authority

The Water Quality Act of 1987 (the Amendments, Pub. L. 100-4) amended provisions in the title II construction grant program of the Clean Water Act (the Act, Pub. L. 92-500) and added new provisions to respond to program experience. The amendments also authorized EPA to treat Indian Tribes as States for purposes of the title II program.

These revisions to the Environmental Protection Agency's construction grant regulations are designed to implement the 1987 Amendments and to respond to issues that have emerged since the regulations were amended significantly on February 17, 1984 (49 FR 6224). The revisions will affect various sections of the Agency's construction grant regulations at 40 CFR part 35, subpart I and the State delegation regulations at 40 CFR part 35, subpart J. Because grant related rules are not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(a)), this rule is promulgated as an interim final rule. However, the Agency is providing a sixty-day period for comment on the rule.

II. Class deviation from the construction grant regulations

In order to implement three provisions of the 1987 Amendments before these revisions to 40 CFR part 35 became effective, EPA published a class deviation from the construction grant regulations in the Federal Register on May 4, 1988 (53 FR 15820), with an invitation for the public to comment. The three components of the class deviation, and their treatment in the revised rule, are discussed below.

A. Low Income User Charges

The class deviation permitted recipients of grants awarded after March 1, 1973 to establish lower rates for low-income residential users, provided that (1) the delegated State official or EPA Regional Administrator approves the system, (2) the cost reductions for the low income user class are proportionally absorbed by all other classes of users and (3) the system is adopted after the recipient has provided for public notice and a hearing. Revenues for the operation, maintenance and equipment replacement costs of the facilities cannot be reduced by the establishment of a lower user charge.

The Agency's user charge regulations at 40 CFR 35.2140 contain a new paragraph (i) that describes the requirements for adoption of an optional low-income user charge rate. These requirements are derived from the class deviation.

B. Design/Build Projects

New section 203(f) of the Act provides that an applicant may receive a grant that will enable it to award a single contract for both the preparation of plans and specifications and for the erection of certain small treatment works with estimated costs of $8 million or less.

The class deviation waived the requirement for grantees to submit plans and specifications to the Agency for approval and set forth in detail the statutory requirements for awarding design/build grants.

Design/build assistance is administered in two phases. To provide assistance in initiating the project, a grant is awarded to cover the costs of supplementing the facilities plan to prepare a pre-bid package upon which design/build contractors can bid. After the project has been bid, the grant is amended (increased) to cover the costs of designing and building.

In the revised title II regulations, design/build procedures are designated as Step 7 grants, which is the designation used for the procedure in the Grants Information and Control System. A new section 40 CFR 35.2036 is added and sets forth the terms and conditions for design/build project grants, including the types of treatment works eligible for the grants and bidding and procurement requirements.

C. Rotating Biological Contractors

Revised section 202(a)(3) authorizes the Agency to award grants for up to 100 percent of the costs of modifying or replacing (M/R) rotating biological contractors (RBCs) that have failed to meet design performance specifications. The Agency approved a deviation from the allowable costs provisions of 40 CFR part 35, subpart I to permit grants for 100 percent of the costs of modifying or replacing failed RBCs provided that the failure caused a significant increase in capital or operation and maintenance costs and was not due to negligence. The Agency determined that costs incurred for RBC modification or replacement before award of the grant are not allowable.

The criteria established in the class deviation and that must be met before a grant can be awarded for RBC modification or replacement are set forth in a new 40 CFR 35.2035. Appendix A of 40 CFR part 35, subpart I, concerning allowable costs, is also revised to permit 100 percent M/R grants for RBCs.

D. Comments on the Class Deviation

Six respondents commented on the class deviation. Most comments concerned two aspects of the deviation to permit grants for replacement or modification of failed RBCs. Four respondents argued that by denying grants for reimbursement costs borne by communities that proceeded to remedy RBC failures on their own, the Agency was penalizing communities that acted in a timely manner and in good faith before grants became available. The Agency concluded that RBC modification and replacement projects, like other construction grant projects that are completed without a grant, are not eligible for reimbursement under the Act. This conclusion rests on the Agency's longstanding interpretation, reflected in 40 CFR 35.2118, that the Act, particularly section 206, authorizes reimbursement funding only in narrowly prescribed circumstances. Nothing in section 202(a)(3) or its legislative history indicates that Congress intended for EPA to change its interpretation of the Act for RBC grants. Further, section 203(a) of the Act requires EPA approval of proposed projects before the obligation of grant funds.

Two respondents argued that the required showing that an RBC's failure was not due to negligence was too difficult to make and applied to a larger than intended set of parties. The showing required by the class deviation, and by the revised regulation, is derived directly from the statutory provision. The requirement can be met by a showing that the cause of the failure was other than negligence.

One respondent argued that the user charge deviation was unduly restrictive in requiring that reductions for low-income residents be absorbed by other classes. Other municipal revenues should be used to cover the decrease, the respondent recommended. The recommendation cannot be reconciled with the language of section 204(b) and 40 CFR 35.2140, which require that a grantee's user charge system assure that each recipient pays its proportional share of the system's total operation and maintenance costs. Under the Act and the regulations, other municipal revenues cannot substitute for user charges.

III. New Clean Water Act Provisions and Revisions to the Construction Grants Regulations

A. Federal Share

With the 1981 amendments to the Clean Water Act, Congress signaled its intention to gradually phase out the Federal role in wastewater treatment construction. Generally, grants for new construction awarded after September 30, 1984 would be reduced from 75 percent to 55 percent of the eligible project costs. However, phases or segments of a treatment works that had previously received a 75 percent grant for a phase or segment before October 1, 1984, could continue to receive a grant at that rate.

The 1987 Amendments end this "grandfathered" Federal share on September 30, 1990. This limitation has been added to the Federal share provisions of the regulations at 40 CFR 35.2152.

The 1987 Amendments also authorized a 75 percent Federal share for projects that applied for grant assistance before October 1, 1984, during the period when the higher Federal share was still generally available, but that were judicially enjoined from proceeding at that time. This authority is reflected in the amended construction grant regulations at 40 CFR 35.2152.

B. Agreement on Eligible Items

Under section 203(a)(2) of the Act, the Administrator is required to enter into an agreement with the applicant which specifies the items of the proposed project that are eligible for Federal payments before EPA awards a Step 3 grant or approves plans and specifications on a Step 2+3 grant. This provision will be implemented as a special grant condition for awards made after April 15, 1987. Eligibility determinations may still be audited and funds may be withheld or recovered for costs which are unreasonable, unsupportable or otherwise unallowable. 40 CFR 35.2100 is amended to implement this new procedure.

C. Non-Federal Share

A number of communities have applied grant assistance available to them through the Farmers Home Administration against their share of construction costs. This practice, long considered an acceptable use of other Federal funds, was specifically permitted by the Water Quality Act. The regulations at 40 CFR 35.2104 have been amended to reflect this provision of the Amendments.

D. Water Quality Management Planning

The 1987 amendments expanded and strengthened the requirements of section 204(a) of the Act for planning under sections 208 and 303(e). These requirements are set forth at 40 CFR 35.2102.

E. Reserves

The 1987 Amendments increased the amount that can be set aside from each State's construction grant allotment for alternatives to conventional treatment works for small communities. The Amendments also establish a new set-aside for State nonpoint source pollution control programs and two set-asides from the national title II allotment for marine and estuary protection and for awarding grants to Indian tribes. The new ceilings for the existing set-asides and the three set-asides established in the Amendments are reflected in the amended construction grant regulations at 40 CFR 35.2020.

IV. Other Revisions to the Construction Grants Regulations

Since the construction grant program regulations were last significantly amended on February 17, 1984 (49 FR 6224), two issues have arisen that require revisions. The first issue concerns the availability of funds from sources other than appropriations under titles II and VI to assist communities overcome difficulties in project performance certifications. The second issue concerns the allowability of small alternative treatment works for construction grant funding.

A. Project Performance

After reviewing the Act and its legislative history, the Agency has concluded that the limitation on Federal funding to correct problems that remain one year after completion of construction and initiation of operation (project certification period) does not apply to training funds under section 104(g)(1) of the Clean Water Act, but rather to funds for corrective construction. The clean water goals of the Act would be better met by allowing training assistance to be provided where such assistance would help a facility to meet its performance standards. Accordingly, the regulations are revised at 40 CFR 35.2218(d) to allow communities that are unable to certify that title II assisted facilities, or title VI equivalency projects, are meeting expected performance standards to apply for training assistance under section 104(g)(1) to meet the requirements of section 204(d)(2) of the Act.

B. Small Community Alternative Wastewater Treatment Facilities

Section 211 of the Act limits the funding of new conventional collection sewers to existing communities with sufficient existing or planned sewage treatment capacity. At 40 CFR 35.2116(b), EPA defines an "existing community" as one where generally two-thirds of the expected flow is from structures in place on or before October 18, 1972, the date section 211 was enacted.

In 1977, Congress amended the Act to encourage and promote the use of alternative waste management techniques. In an effort to promote the application of alternative technology in small communities, EPA determined that it was inappropriate to apply the 1972 two-thirds criteria (two-thirds rule) to small communities using alternative technologies. Instead, consistent with the primary focus of the 1977 amendments on controlling existing sources of pollution, the Agency determined that cost effective alternative treatment works providing the collection function in a centralized or cluster wastewater treatment management system would be eligible if they served water pollution control needs existing on December 27, 1977, the date of enactment of the 1977 amendments. Under this "1977 rule" portions of an alternative system (including grinder pumps and other on-site facilities) which serve structures constructed since December 27, 1977, are not eligible.

In 1981, Congress amended the Act to limit, after September 30, 1984, funding for collector sewers and several other categories of projects, to not more than 20 percent of a State's allotment (Governor's 20 percent discretionary funding). However, because the Act strongly encourages the use of alternative technologies in small communities, EPA decided that the collection portions of alternative treatment works should not be included in the collector sewer category (Needs Survey Category IV A) but rather in the secondary treatment category (Needs Survey Category I), and would not be restricted by the 20 percent limitation on collector sewers and other categories of projects.

Requests for regulatory deviations from the 1977 rule identified a circumstance that EPA did not anticipate when preparing the regulations in 1984. Under the 1972 two-thirds rule, once a collection system or a portion of a collection system using alternatives to conventional sewers as the cost effective alternative was determined eligible, that collection system and all of its eligible components (including grinder pumps) were eligible for all residences in place through the date of the grant award. Conversely, a strict application of the 1977 rule makes ineligible the components serving individual structures built between December 27, 1977, and the date of grant award. Thus, in this circumstance the effect of the 1977 rule would be more restrictive than the 1972 two-thirds rule. In our efforts to promote and encourage the use of alternative systems in small communities, it was not anticipated or intended that the 1977 rule would be more restrictive than the 1972 two-thirds rule.

Consequently, the allowable cost requirements in appendix A to the construction grant regulations are amended to permit the application of the 1972 two-thirds rule, rather than the 1977 rule, in circumstances where it would be more advantageous to a small community constructing cost-effective alternative systems.

V. Treatment of Indian Tribes as States

In addition to section 518(c) which reserves funds from the construction grant appropriation specifically for grants to Indian Tribes, section 518(e) of the 1987 Amendments requires the EPA Administrator to promulgate regulations specifying how a Tribe will be treated as a State for certain Clean Water Act programs, including the title II construction grant program. An Indian Tribe that qualifies under the regulations may enter into an agreement with the Regional Administrator for delegated management of the construction grant program. Such an agreement is comparable to a delegation agreement between the Regional Administrator and a State. A delegation agreement would authorize the Indian Tribe to assist local communities within that Tribe's reservation in the planning, designing and building of wastewater treatment facilities.

Unlike delegated States which are eligible for grants under section 205(g), no funds are authorized to assist Tribes in administering the delegated construction grant program. Federally recognized Indian Tribes are eligible for construction grants from the new set-aside from title II appropriations without qualifying for treatment as States. Former Indian reservations in Oklahoma and Alaska Native Villages are eligible for the new Indian set-aside program under section 518(c), but are not eligible to be treated as States under section 518(e) for the purpose of the title II construction grant program.

An Indian Tribe that seeks treatment as a State must provide documentation evidencing that it fulfills the statutory criteria of sections 518(e) and 518(h) of the Act. A description of the types of information that must be provided, and the manner of its presentation, has been set forth previously in other regulations under the Clean Water Act that authorize treatment of Indian Tribes as States. (See the water quality management and planning regulation under section 106 of the Act, which was published in the Federal Register on April 11, 1989 (54 FR 14354)).

In the revised State delegation regulation, the statutory criteria for treatment of Indian Tribes as States have been restated at 40 CFR 35.3000(b). The remainder of the State delegation regulations set forth the requirements with which a delegated State and a qualifying Indian Tribe must comply to administer the construction grants program within its jurisdiction.

VI. Regulation Development Process

A. Executive Order 12291

This regulation has been reviewed under Executive Order 12291 and does not meet the criteria for a major regulation. This regulation will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating in foreign or domestic markets. Because this regulation is not a major rule, a Regulatory Impact Analysis is not required. This regulation has been submitted to the Office of Management and Budget for review under the Executive Order.

B. Regulatory Flexibility Act

EPA did not develop a regulatory flexibility analysis for this rule because grant regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 35 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040-0027.

Public reporting burden for this collection of information is estimated to average 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This rule is associated with no increase in recordkeeping burden to respondents as covered under the provisions of the Act. Although the rule concerns the reporting of information in the form of a voluntary application from Indian Tribes seeking treatment as States, EPA does not expect any Tribes to apply.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this rule.

List of Subjects in 40 CFR Part 35

Grant programs—environmental protection, Wastewater treatment and disposal, Indian Tribes, Reporting and recordkeeping requirements.

Dated: June 15, 1990.

William K. Reilly,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency is amending 40 CFR part 35, subparts I and J as follows:

PART 35—[AMENDED]

Subpart I—Grants for Construction of Treatment Facilities

1. The authority citation for subpart I of part 35 continues to read:

Authority: Secs. 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 219, 304(d)(3), 313, 501, 602, 811, 516(b) and 518(c) of the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*

2. Section 35.2005 is amended by redesignating paragraphs (b)(47) through (b)(52) as paragraphs (b)(48) through (b)(53) and adding new paragraph (b)(47) to read as follows:

§ 35.2005 Definitions.

* * * * *

(b) * * *

(47) *Step 7.* Design/building of treatment works wherein a grantee awards a single contract for designing and building certain treatment works.

* * * * *

3. Section 35.2012 is added to read:

§ 35.2012 Capitalization grants.

Amounts allotted to a State under title II may be deposited in that State's water pollution control revolving fund as a capitalization grant in accordance with 40 CFR 35.3020 (f) and (g).

4. Section 35.2015 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 35.2015 State priority system and project priority list.

* * * * *

(b) * * *

(2) * * *

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of need other than those listed in paragraph (b)(2)(ii) of this section and for any purpose for which grants may be made under sections 319 (h) and (i) of the Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution).

* * * * *

5. Section 35.2020 is amended by revising paragraph (b) and adding paragraphs (f), (g) and (h) to read as follows:

§ 35.2020 Reserves.

* * * * *

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by the population estimates of the Bureau of Census) shall reserve not less than 4 percent nor more than 7½ percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 7½ percent of the State's allotment for the same purpose.

* * * * *

(f) *Nonpoint source reserve.* Each State shall reserve 1 percent of its annual allotment or $100,000, whichever is greater, for development and implementation of a nonpoint source management program under section 319 of the Act. Sums reserved by the State under this paragraph that are in excess of $100,000 and that are not used for these purposes, may be used by the State for any other purpose under title II of the Act.

(g) *Marine estuary reserve.* The Administrator shall reserve, before allotment of funds to the States, 1 percent of the funds appropriated under section 207 in fiscal years 1987 and 1988, and 1½ percent of the funds appropriated under section 207 in fiscal years 1989 and 1990, to carry out section 205(l) of the Act.

(h) *Indian program reserve.* The Administrator shall reserve, before allotment of funds to the States, one-half of 1 percent of the funds appropriated under section 207 in fiscal years 1987, 1988, 1989 and 1990, for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian Tribes.

6. Section 35.2021 is amended by revising paragraph (a) to read as follows:

§ 35.2021 Reallotment of reserves.

(a) Mandatory portions of reserves under § 35.2020 (b) through (g) shall be reallotted if not obligated during the allotment period (§ 35.2010 (b) and (d)). Such reallotted sums are not subject to reserves. The State management assistance reserve under § 35.2020(e) is not subject to reallotment.

* * * * *

7. § 35.2025 is amended by revising paragraphs (a) and (b)(5) to read as follows:

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project and Step 7 agreements will include an allowance for facility planning in accordance with appendix B of this subpart.

(b) * * *

(5) In the event a Step 2+3, Step 3 or Step 7 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When the State recovers such advances they shall be added to its most recent grant for advances of allowance.

8. Section 35.2035 is added to read:

§ 35.2035 Rotating biological contractor (RBC) replacement grants.

The Regional Administrator may award a grant for 100 percent of the cost, including planning and design costs, of modification or replacement of RBCs which have failed to meet design performance specifications, provided:

(a) The applicant for a modification/replacement grant demonstrates to the Regional Administrator's satisfaction, by a preponderance of the evidence, that the RBC failure is not due to the negligence of any person, including the

treatment works owner, the applicant, its engineers, contractors, equipment manufacturers or suppliers;

(b) The RBC failure has significantly increased the project's capital or operation and maintenance costs;

(c) The modification/replacement project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR parts 31, 32 and 35;

(d) The modification/replacement project is included within the fundable range of the State's annual project priority list; and

(e) the State certifies the project for funding from its regular (i.e. non-reserve) allotments and from funds appropriated or otherwise available after February 4, 1987.

9. Section 35.2036 is added to read:

§ 35.2036 Design/build project grants.

(a) *Terms and conditions.* The Regional Administrator may award a design/build (Step 7) project grant provided that:

(1) The proposed treatment works has an estimated total cost of $8 million or less;

(2) The proposed treatment works is an aerated lagoon, trickling filter, waste stabilization pond, land application system (wastewater or sludge), slow rate (intermittent) sand filter or subsurface disposal system;

(3) The proposed treatment works will be an operable unit, will meet all requirements of title II of the Act, and will be operated to meet the requirements of any applicable permit;

(4) The grantee obtains bonds from the contractor in an amount the Regional Administrator determines adequate to protect the Federal interest in the treatment works (see 40 CFR 31.36(h));

(5) The grantee will not allow any engineer, engineering firm or contractor which provided facilities planning or pre-bid services to bid or carry out any part of the design/build work;

(6) Contracts will be firm, fixed price contracts;

(7) The grantee agrees that the grant amount, as amended to reflect the lowest responsive/responsible bid (see paragraph (e) of this section), will not be increased;

(8) The grantee will establish reasonable building start and completion dates;

(9) The grantee agrees that EPA will not pay more than 95 percent of the grant amount until after completion of building and the Regional Administrator's final project approval, based on initiation of operation and acceptance of the facility by the grantee;

(10) The grantee agrees that a recipient of a Step 7 grant is not eligible for any other grant for the project under title II of the Act; and

(11) The grantee accepts other terms and conditions deemed necessary by the Regional Administrator.

(b) *Procurement.* (1) Grantee procurement for developing or supplementing the facilities plan to prepare the pre-bid package, as well as for designing and building the project and performing construction management and contract administration, will be in accordance with EPA procurement requirements at 40 CFR part 31.

(2) The grantee will use the sealed bid (formal advertising) method of procurement to select the design/build contractor.

(3) The grantee may use the same architect or engineer that prepared the facilities plan to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (see 40 CFR 31.36(k)).

(c) *Pre-bid package.* Each design/build project grant will provide for the preparation of a pre-bid package that is sufficiently detailed to insure that the bids received for the design/build work are complete, accurate and comparable and will result in a cost-effective, operable facility.

(d) *Grant amount.* The grant amount will be based on an estimate of the design/build project's final cost, including:

(1) An allowance for facilities planning if the grantee did not receive a Step 1 grant (the amount of the allowance is established as a percentage of the estimated design/build cost in accordance with appendix B of this subpart);

(2) An estimated cost of supplementing the facilities plan and other costs necessary to prepare the pre-bid package (see appendix A.I.1(a) of this subpart); and

(3) The estimated cost of the design/build contract.

(e) *Amended grant amount.* (1) After bids are accepted for the design/build contract, and the price of the lowest responsive, responsible bidder is determined, EPA will amend the design/build project grant based on:

(i) The amount of the lowest responsive, responsible bid;

(ii) A lump sum for construction management, contract and project administration services and contingencies;

(iii) Any adjustments to the final allowance for facilities planning if included as required by paragraph (c)(1) of this section (the amount of the final allowance is established as a percentage of the actual building cost in accordance with appendix B of this subpart);

(iv) The actual reasonable and necessary cost of supplementing the facilities plan to prepare the pre-bid package (see paragraph (c)(1) of this section); and

(v) The submission of approvable items required by § 35.2203 of this part.

(2) Changes to Step 7 projects cannot increase the amount of EPA assistance established at the time of the grant amendment.

(f) *Allotment limit for design/build grants.* The Governor may use up to 20 percent of the State's annual allotment for design/build project grants.

10. Section 35.2040 is amended by adding a new paragraph (g) to read as follows:

§ 35.2040 Grant application.

* * * * *

(g) *Design/build project grant (Step 7).* An application (EPA Form 5700-20) for a design/build project grant shall include:

(1) All the information required in paragraphs (b)(1), (b)(2) and (b)(4) of this section; and

(2) The estimated building start and completion dates and Federal payment schedule (the start and completion dates may be revised when the design/build bids are accepted and included in the amended grant).

11. Section 35.2100 is revised to read as follows:

§ 35.2100 Limitations on award.

(a) *Facilities plan approval.* Before awarding grant assistance for any project the Regional Administrator shall approve the facilities plan and final design drawings and specifications and determine that the applicant and the applicant's project have met all the applicable requirements of §§ 35.2040 and 35.2100 through § 35.2127 except as provided in § 35.2202 for Step 2+3 projects and § 35.2203 for Step 7 projects.

(b) *Agreement on eligible costs.* (1) Concurrent with the approval of a Step 3, Step 2+3 or Step 7 grant, the Regional Administrator and the grant applicant will enter into a written agreement which will specify the items in the proposed project that are eligible for Federal payments and which shall be incorporated as a special grant condition in the grant award.

(2) Notwithstanding such agreement, the Regional Administrator may:

(i) Modify eligibility determinations that are found to violate applicable Federal statutes and regulations;

(ii) Conduct an audit of the project;

(iii) Withhold or recover Federal funds for costs that are found to be unreasonable, unsupported by adequate documentation or otherwise unallowable under applicable Federal cost principles;

(iv) Withhold or recover Federal funds for costs that are incurred on a project that fails to meet the design specifications or effluent limitations contained in the grant agreement and NPDES permit issued under section 402 of the Act.

12. Section 35.2102 is revised to read as follows:

§ 35.2102 Water quality management planning.

Before grant assistance can be awarded for any treatment works project, the Regional Administrator shall first determine that the project is:

(a) Included in any water quality management plan being implemented for the area under section 208 of the Act or will be included in any water quality management plan that is being developed for the area and reasonable progress is being made toward the implementation of that plan; and

(b) In conformity with any plan or report implemented or being developed by the State under sections 303(e) and 305(b) of the Act.

13. Section 35.2104 is amended by redesignating paragraphs (a) through (d) as paragraphs (a)(1) through (a)(4), by redesignating the introductory text as paragraph (a) introductory text, and by adding a new paragraph (b) to read as follows:

§ 35.2104 Funding and other considerations.

* * * * *

(b) Federal assistance made available by the Farmers Home Administration may be used to provide the non-Federal share of the project's cost.

14. Section 35.2118 is amended by revising paragraph (a)(1) to read as follows:

§ 35.2118 Preaward costs.

(a) * * *

(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary building work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land or an option for the purchase of eligible land or advance building on minor portions of treatment works) after completion of the environmental review as required by § 35.2113.

* * * * *

15. Section 35.2140 is amended by adding paragraph (i) to read as follows:

§ 35.2140 User charge system.

* * * * *

(i) *Low income residential user rates.* (1) Grantees may establish lower user charge rates for low income residential users after providing for public notice and hearing. A low income residential user is any residence with a household income below the Federal poverty level as defined in 45 CFR 1060.2 or any residence designated as low income under State law or regulation.

(2) Any lower user charge rate for low income residential users must be defined as a uniform percentage of the user charge rate charged other residential users.

(3) The costs of any user charge reductions afforded a low income residential class must be proportionately absorbed by all other user classes. The total revenue for operation and maintenance (including equipment replacement) of the facilities must not be reduced as a result of establishing a low income residential user class.

* * * * *

16. Section 35.2152 is amended by revising paragraphs (a) introductory text and (a)(3) and by redesignating paragraphs (c) and (d) as (d) and (e) and by adding a new paragraph (c) to read as follows:

§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step or 3 or Step 7 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section the Federal share shall be:

* * * * *

(3) Subject to paragraph (c) and (d) of this section, 75 percent for grant assistance awarded after September 30, 1984 and before October 1, 1990, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

* * * * *

(c) A project for which an application for grant assistance has been made before October 1, 1984, but which was under judicial injunction at that time prohibiting its construction, shall be eligible for a grant at 75 percent of the cost of its construction.

* * * * *

18. Section 35.2203 is added to read as follows:

§ 35.2203 Step 7 projects.

(a) Prior to initiating action to acquire real property, a Step 7 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before approving a Step 7 grant amendment under § 35.2036, the Regional Administrator shall determine that the applicant and its project have met the requirements of §§ 35.2040 (b)(6) and (g), 35.2106, 35.2107, and 35.2122.

19. Section 35.2204 is amended by adding a new paragraph (c) to read as follows:

§ 35.2204 Project changes.

* * * * *

(c) Notwithstanding paragraph (a) of this section, changes to Step 7 projects cannot increase the amount of EPA assistance established at the time of the grant amendment.

20. Section 35.2212 is amended by revising paragraph (b) to read as follows:

§ 35.2212 Project initiation.

(a) * * *

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or, after receiving written approval of the information required under § 35.2202 under a Step 2 + 3 grant or, for a Step 7 project, after completing the facilities plan and the preparation of a pre-bid package that is sufficiently detailed to insure that the bids received form the design/build work will be complete, accurate, comparable and will result in a cost-effective operable facility. Public notice of proposed procurement action should be made promptly after Step 3 award or after final approvals for a Step 2 + 3 grant under § 35.2202, or after completing the prebid package for the Step 7 award. The grantee shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project within twelve months of the Step 3 award or final Step 2 + 3 approvals.

* * * * *

21. Section 35.2218 is amended by adding a sentence to the end of paragraph (d) to read as follows:

§ 35.2218 Project performance.

* * * * *

(d) * * * This limitation on Federal funding for corrective actions does not apply to training funds under section 104(g)(1) of the Act.

* * * * *

22. Section 35.2300 is amended by adding paragraph (f) to read as follows:

§ 35.2300 Grant payments.

* * * * *

(f) *Design/build projects.* For design/build projects, the Regional Administrator shall not pay more than 95 percent of the grant amount until completion of building and the RA's final project approval (see § 35.2036(a)(6)).

* * * * *

23. Paragraph (b)C.1. of appendix A of 40 CFR part 35, subpart I, is revised to read as follows:

Appendix A—Determination of Allowable Costs

* * * * *

(b) * * *

C. Privately or Publicly Owned Small and Onsite Systems

1. Allowable costs for small and onsite systems serving residences and small commercial establishments inhabited on or before December 27, 1977, include a. through e. below. Alternatively, the two-thirds rule at 40 CFR § 35.2116(b) may be used to determine allowable residential flows to be served by publicly owned small and alternative wastewater systems, including a. through e. below:

* * * * *

24. Paragraph (b)H.2. of appendix A of 40 CFR part 35, subpart I, is further amended by removing the period at the end of paragraph e. and adding text to the end of e. to read as follows:

Appendix A—Determination of Allowable Costs

* * * * *

(b) * * *

H. Miscellaneous Costs

* * * * *

2. * * *

* * * * *

e. * * * or to a failed rotating biological contactor eligible for funding under § 35.2035.

* * * * *

25. Paragraph (b) of Appendix A of 40 CFR part 35, subpart I is further amended by adding a new section I to read:

Appendix A—Determination of Allowable Costs

* * * * *

(b) * * *

I. Design/Build Project Grants

1. Allowable costs include:

a. The costs of supplementing the facilities plan to prepare the pre-bid package including the cost of preliminary boring and site plans, concept and layout drawings, schematic, general material and major equipment lists and specifications, instructions to builders, general and special conditions, project performance standards and permit limits, applicable State or other design standards, any requirements to go into bid analyses, and other contract documents, schedules, forms and certificates.

b. The costs for building the project, including:

(1) Project costs based on the lowest responsive, responsible competitive design/build project bid.

(2) Construction management services including detailed plans and specifications review and approval, change order review and approval, resident inspection, shop drawing approval and preperation of an O & M manual and of user charge and sewer use ordinance systems.

(3) Any adjustments to reflect the actual reasonable and necessary costs for preparing the pre-bid package.

(4) Post-construction activities required by project performance certification requirements.

(5) Contract and project administration activities including the review of contractor vouchers and payment requests, preparation of monitoring reports, grant administration and accounting services, routine legal costs, cost of eligible real property.

(6) Contingencies.

2. Unallowable costs include:

a. All costs in excess of the maximum agreed Federal share.

b. Costs of facilities planning where the grantee has received a Step 1 grant.

26. Appendix B of 40 CFR part 35, subpart I, paragraphs 1, 4, and 8. are revised to read as follows:

Appendix B—Allowance for Facilities Planning and Design

1. This appendix provides the method EPA will use to determine both the estimated and the final allowance under § 35.2025 for facilities planning and design. The Step 2 + 3, Step 3 and Step 7 grant agreements will include an estimate of the allowance.

* * * * *

4. The estimated and final allowance will be determined in accordance with this Appendix and Tables 1, 2 and 3. Table 2 is to be used in the event the grantee received a grant for facilities planning. Table 3 is to be used to determine the facilities planning allowance for a Step 7 grant if the grantee did not receive a Step 1 grant. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

* * * * *

8. For a Step 3 or Step 7 project, the grantee may request payment of 50 percent of the Federal share of the estimated allowance immediately after grant award. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

* * * * *

27. 40 CFR 35, subpart I, appendix B is amended by adding Table 3 at the end of the appendix to read as follows:

TABLE 3. —ALLOWANCE FOR FACILITIES PLANNING FOR DESIGN/BUILD PROJECTS

Building cost (dollars)	Allowance as a percentage of building cost*
100,000 or less	5.9262
120,000	5.7337
150,000	5.5061
175,000	5.3539
200,000	5.2250
250,000	5.0163
300,000	4.8516
350,000	4.7162
400,000	4.6019
500,000	4.4164
600,000	4.2701
700,000	4.1499
800,000	4.0483
900,000	3.9606
1,000,000	3.8837
1,200,000	3.7536
1,500,000	3.6003
1,750,000	3.4976
2,000,000	3.4109
2,500,000	3.2703
3,000,000	3.1595
3,500,000	3.0684
4,000,000	2.9915
5,000,000	2.8660
6,000,000	2.7666
7,000,000	2.6860
8,000,000	2.6198

NOTE: Building cost is the sum of the allowable cost of (1) the initial award amount of the prime subagreement for building and designing the project; and (2) the purchase price of eligible real property.
*Interpolate between values.

28. The authority section for 40 CFR part 35, subpart J is revised to read as follows:

Authority: Sections 205(g) and 518(e) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

29. Section 35.3000 is amended by designating the existing text as paragraph (a) and by adding new paragraphs (b) and (c) to read as follows:

§ 35.3000 Purpose.

(a) * * *

(b) A State, for purposes of receiving delegation of construction grant program responsibilities under this subpart, shall include a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands (Palau), the Commonwealth of the Northern Marianas, and any Indian

Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation, provided that the Tribe satisfies the following criteria:

(1) The Indian Tribe has a governing body carrying out substantial governmental duties and powers. The Tribe must submit a narrative statement to the Regional Administrator describing the form of the Tribal government, describing the types of essential governmental functions currently performed and identifying the source of the authority to perform these functions.

(2) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation. Assertions by the Indian Tribe with respect to this criterion will be provided by EPA to adjacent governmental entities in accordance with 40 CFR 130.15.

(3) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(c) Where a Tribe has previously qualified for treatment as a State under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which had not been submitted in a previous treatment as a State application.

[FR Doc. 90-14631 Filed 6-28-90; 8:45 am]
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Friday
June 29, 1990

Part X

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334
Restricted Area, Naval Supply Center Pier, San Diego Bay, San Diego, CA; Interim Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Naval Supply Center Pier, San Diego Bay, San Diego, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule invites comments on the Corps of Engineers proposal to establish a restricted area in the waters of San Diego Bay adjacent to the Naval Supply Center Pier in San Deigo, California. The area in the vicinity of the Naval Supply Center Pier must be protected because it contains a security interest which if compromised would cause damage to the command mission or national security. Vessels will be allowed to pass through the area without stopping. Entry into the area is prohibited only during wartime conditions.

DATES: Interim final rule effective June 29, 1990. Written comments must be received on or before July 30, 1990.

ADDRESS: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Kegarice at (213) 894–5606 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Supply Center, San Diego, California has requested the Army Corps of Engineers establish a restricted area in the waters adjacent to the Naval Supply Center Pier, San Diego. The restricted area will extend approximately 100 feet out from the north, west and south sides of the Naval Supply Center Pier. There is no anticipated navigational hazard or interference with existing waterway traffic. However, vessels must proceed through the area without stopping, loitering or anchoring unless specifically authorized by the Commander, Naval Base, San Diego, or his designee.

This interim final rule is made effective immediately on June 29, 1990, due the existing and continuing threat to the security and safety of the personnel and property at the Naval Supply Center Pier. We will, however, consider any comments or objections submitted and make any changes to the regulations we determine to be appropriate.

Economic Assessment and Certification

This interim final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply.

I hereby certify that this interim final regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers is amending part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. In § 334.870, paragraph (d) is redesignated as paragraph (e) and revised to read as follows, and a new paragraph (d), (d)(1) and (d)(2) are added to read as follows:

§ 334.870 San Diego Harbor, Calif.; restricted area.

* * * * *

(d) Restricted area at the Naval Supply Center Pier—(1) the area. The waters of San Diego Bay extending approximately 100 feet out from the north, west and south sides of the Naval Supply Center Pier enclosed by lines connecting the following stations:

Station	Latitude	Longitude
A	32°42'50" N	117°10'25" W
B	21°42'50" N	117°10'38" W
C	32°42'54" N	117°10'38" W
D	32°42'54" N	117°10'25" W

(2) The regulations. (i) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Navy, U.S. Coast Guard, other authorized military components, or other vessels authorized by Commander Naval Base, San Diego or his designee.

(ii) Loitering, dredging, dragging, seining, fishing and similar activities within the restricted area are prohibited.

(e) Enforcement. The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

Dated: June 20, 1990.

Approved Patrick J. Kelly

Patrick J. Kelly,

Major General, USA, Director of Civil Works.

[FR Doc. 90-15144 Filed 6-28-90; 8:45 am]

BILLING CODE 3710-92-M

federal register

Friday
June 29, 1990

Part XI

Department of Defense

Department of the Army

32 CFR Part 556

Private Organizations on Department of the Army Installations; Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 556

Private Organizations on Department of the Army Installations

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Army announces a revision of 32 CFR part 556. This revision provides policy and procedures for authorization and operation of private organizations (POs) on Army installations and sets policy for official participation by Department of the Army (DA) agencies, commands, and personnel in activities of private organizations operating on- and off-post. It implements DOD Instruction 1000.15 and DOD Directives 5500.2 and 5500.7 cited in 32 CFR part 212.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Kennedy, Community and Family Support Center, ATTN: CFSC-AE-P, Alexandria, VA 22331-0507, (202) 325-9370.

SUPPLEMENTARY INFORMATION: This revision also refines guidance concerning official involvement with private organizations; implements legislation to support Scouting Associations; provides guidance for the operation of on-post informal funds; revises the audit requirement for private organizations operating on-post; updates policy for provision of Government support and services to on-post private organizations; deletes requirement for nationally affiliated bowling leagues to become private organizations; provides guidance for type 2 private organizations overseas; and rescinds AR 1-210 and incorporates that information in section E, thereby removing one regulation from the Army inventory.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 556

Army Department, Federal buildings and facilities.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

32 CFR Part 556 is revised as follows:

PART 556—PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS

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Authority: 10 U.S.C. 3102.

Subpart A—Introduction

§ 556.1 Scope.

(a) *Purpose.* This regulation sets forth policy, procedures, and responsibilities for the authorization and operation of private organizations (POs) operating on Army installations, and official participation by Department of the Army (DA) agencies, commands, and personnel in the activities of POs and associations regardless of whether they operate on or off DA installations. This guidance does not cancel any specific agreements between Federally sanctioned or affiliated POs and the U.S. Government, the Department of Defense (DOD), or DA.

(b) *Applicability restrictions.* This regulation does not apply to—

(1) POs operating outside of DA installations that request use of Army space or facilities.

(2) Army funds or activities accounted for under U.S. Treasury symbols.

(3) Nonappropriated fund instrumentalities (NAFIs).

(4) Appropriated fund (APF) and nonappropriated fund (NAF) contractor and subcontractor organizations and funds on DA installations.

(5) Patients' trust funds.

(6) Prisoner of war funds.

(7) Prisoners' personal deposit funds.

(8) Funds established for civilian employees at civil works activities of the Corps of Engineers.

§ 556.2 References.

Required and related publications are listed in appendix A to this part.

§ 556.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary.

§ 556.4 Responsibilities.

(a) The Deputy Chief of Staff for Personnel (DCSPER) will be the Headquarters, Department of the Army (HQDA) proponent for POs on DA installations.

(b) The Commander, U.S. Army Community and Family Support Center (CFSC), will establish DA policies and procedures for operation of POs on DA installations.

(c) Major Army commanders will—

(1) Ensure that subordinate commands comply with this regulation.

(2) Review installation policies and procedures for monitoring POs.

(d) Installation commanders will—

(1) Ensure that all POs operating on their installations comply with this regulation.

(2) Determine what conditions require an official inquiry or investigation of a PO to best preserve United States interests. An official inquiry will not be made to meet the biennial PO audit requirement.

(3) Prohibit the possession or sale of drug abuse paraphernalia by or in POs, as required by AR 190-30.

Subpart B—Private Organizations

Description

§ 556.5 Types of private organizations.

(a) *Three PO types.* (1) Type 1—Federally sanctioned POs. POs that provide a recognized service to DOD and its employees. These POs are sanctioned by specific DOD authority. All type 1 POs are governed by this regulation except those listed below.

(i) Credit unions. (See AR 210-24.)

(ii) Banking offices or institutions. (See AR 210-135.)

(iii) American National Red Cross. (See AR 930-5.)

(iv) United Service Organization, Inc. (See AR 935-1.)

(v) United Seamen's Service. (See AR 700-83.)

(vi) Labor organizations subject to section 71, title 5, United States Code (5 U.S.C. 71) (See Federal Personnel Manual (FPM) chap. 711.)

(vii) Association of Supervisors and Managers. (See CPR 251.)

(viii) Civil Air Patrols. (See Air Force Regulation 46-6.)

(ix) Army Emergency Relief. (See AR 930-4.)

(2) *Type 2—Affiliated POs.* POs that have a national or State headquarters with local chapters, affiliations, or lodges. These POs conduct activities of common interest to a voluntary membership.

(3) *Type 3—Independent POs.* POs established, organized, operated, and controlled locally by common interest groups with no formal association with outside or parent organizations.

(b) *PO subtypes.* (1) For classification purposes there are eight authorized subtypes of POs. Classification of POs does not confer a preferred status on any one type or subtype, but serves to identify the various POs commonly found on DA installations. All POs operating on-post will receive equal treatment. (See appendix B to this part for a classification schematic of POs.)

(2) Authorized groupings are based upon one or more of the following characteristics:

(i) Similar purposes or objectives.

(ii) Related activities.

(iii) Common age level of membership.

§ 556.6 Informal funds.

Certain unofficial activities may operate on DA installations without being authorized as type 3 (Independent) POs, provided they do not exceed a net worth of $1,000. Installation commanders may exclude certain funds or activities from the provisions of this regulation due to their limited scopes, activities, memberships, or funds. (Examples are office coffee funds, cup and flower funds, Christmas party funds, family support groups, Army Community Service (ACS) volunteer activities, and annual picnic funds.) These smaller funds are subject to the following:

(a) Only one individual is to be responsible for fund custody, accounting, and documentation. The fund custodian will administer fund business during off-duty time. This individual will report annually to his or her military rater or civilian supervisor, as appropriate, concerning the fund's existence and purpose, financial status, or upon occurrence or suspicion of irregularities associated with the fund.

(b) Use is limited to expenses consistent with the purpose and function of the fund, and is not to be expended in any way that is, or appears to be, improper or contrary to Army interests.

(c) Compliance with AR 600-50 is to be observed when participating in private organizational activities and when expending informal funds.

(d) Commanders are to ensure that personnel are aware of Army policy regarding private organizations and may establish more specific policy and procedures for private organizational activities and informal funds on their installations.

Policy

§ 556.7 Overview.

(a) POs are not NAFIs, so they are not entitled to the special immunities and privileges given NAFIs.

(b) POs are not entitled to, and will not receive, DA endorsement by virtue of their contributions to the military installation, their espousal of DA goals and objectives, their support of the military community, or for any other reason.

(c) There is no official relationship between PO activities and official duties and responsibilities of DOD personnel who are PO members or participants.

(d) POs are not part of the military organization, so they receive only limited Government supervision.

(e) POs operate on a financially and operationally self-sustaining basis, except for support authorized in chapter 4.

(f) Neither the Federal Government nor its NAFIs have any vested interest in the assets of a PO. Nor will either make any claim to PO assets or incur or assume any obligation of a PO.

(g) Installation commanders may acquire for the installation (under DA policy and applicable Federal laws) property—

(1) Abandoned by a PO due to its disestablishment.

(2) Given to the installation by the PO. (See AR 1-100.)

(h) POs will follow all laws governing comparable private sector activities. (See § 556.13)

(i) DA interest in the operations of POs is due only to their—

(1) Location on DA installations.

(2) Relationships with both the Federal and private sectors.

(3) Activities that support recognized programs that benefit the DOD family.

(4) Responsibilities as employers.

§ 556.8 Restrictions.

(a) No PO will use or include in its title, logo, or letterhead—

(1) The name or seal of DOD or the acronym "DOD."

(2) The name, abbreviation, or seal of any military department or Service.

(3) The seal, insignia, or other identifying device of the local installation. The installation commander may authorize an exception to this restriction if clear identification is needed, provided official DOD sponsorship or endorsement is neither stated nor implied.

(b) Activities of POs will in no way prejudice or discredit DOD components or other agencies of the Federal Government.

(c) A PO will not duplicate or compete with a NAFI or APF governmental function on a DA installation.

(d) All PO functions and expenditures must be authorized by the local PO's constitution by bylaws. Only the PO will choose its specific functions and expenditures. DOD personnel acting in an official capacity will not influence these choices.

(e) A PO will not be created, operated, or administered by DOD personnel acting in an official capacity or on

behalf of an official purpose to evade restrictions on expenditures of APFs or NAFs.

(f) A PO will not be created, operated, or administered for a commercial purpose.

(g) POs will not engage in the resale of alcoholic beverages at any time.

§ 556.9 PO employment and membership practices.

(a) POs must follow all labor laws that apply to private sector employment. POs will not be allowed to operate on DA installations if their employment practices discriminate based on—

(1) Sex, age, religion, race, color, national origin, or marital status;

(2) Lawful political affiliation;

(3) Labor organization membership; or

(4) Physical handicaps.

(b) POs will not discriminate in membership on the basis of race, color, sex, national origin, or religion. This does not preclude the existence of religious, cultural, or ethnic POs when—

(1) Their membership is not restricted or discriminatory;

(2) Similar religious, cultural, or ethnic POs are approved without preference.

(c) The installation commander may approve the operation of certain POs that restrict membership to one sex. One or more of the following must apply:

(1) The PO's purpose if philanthropic and, by tradition, its membership has been of one sex.

(2) The PO's purpose and function is to benefit one sex, and its membership is composed of that sex. (Examples are scouting organizations or women's and men's sports associations.)

(3) The PO has a specific purpose and function that restricts membership to one sex, but also has a counterpart organization with the same purpose and function. (Examples are women's and men's sports clubs, women's and men's civic associations, boy/girl scouting organizations.)

(d) PO membership compaigns and recruitment practices will neither involve nor give the appearance of involving compulsion, coercion, or influence. (See AR 600–50 and AR 600–20.) Prohibited activities include the following:

(1) Repeated petitions, orientations, or counseling of persons who have chosen not to join a PO.

(2) Use of membership statistics by supervisors to influence nonmembers.

(3) Compilation of by-name lists of nonmembers.

§ 556.10 Insurance.

(a) When appropriate, POs will obtain adequate insurance as protection against public liability claims, property damage claims, or other legal actions arising from activities of the PO, or one or more of the PO's members acting on its behalf.

(b) Insurance will be appropriate when PO activities or functions expose the public to possible risk.

(c) Insurance (such as fidelity or fire insurance) of PO assets is the responsibility of each PO.

§ 556.11 Audit.

POs with gross annual revenue of $1000 or more will be audited at least once every 2 years. The following provisions apply:

(a) POs using a double entry accounting system, regardless of source of income over $1000, will be audited by a qualified auditor. (See definition in glossary.)

(b) POs using a single entry accounting system will be audited as follows:

(1) With income only from contributions dues, and assessments, by either a PO member who holds no office and is at least 18 years of age, or a qualified auditor.

(2) When they engage in resale or fundraising activities, by either an appointed committee of three PO members who hold no offices, or a qualified auditor.

(c) Type 2 POs with financial statements audited annually by their national headquarters may submit a copy of such an audit. If not audited by their national headquarters, the provisions of paragraphs (a) and (b) of this section.

§ 556.12 Taxes.

POs must comply with all Federal, State, and local tax laws. POs must seek private counsel or contact proper tax officials to ensure compliance with all tax laws. POs located overseas will obtain a statement of clarification from the local office of the Staff Judge Advocate (SJA).

(a) Federal income tax. Certain types of POs (for example, charitable, religious, educational, or scientific) may qualify for exemption from Federal income tax under section 501 of the Internal Revenue Code. Type 2 POs, in which national organizations control taxes for all local chapters, must provide a statement to this effect; it must be signed and notarized by the national headquarters. All other POs will obtain a statement of their tax status from their Internal Revenue Service (IRS) district office.

(b) Federal income tax withholding for employees, Federal employee taxes, and reports on amounts paid. POs must comply with laws that apply and obtain guidance from private counsel or the IRS.

(c) State and local sales, income, occupation, and employer taxes. Local law will determine whether POs—

(1) Must comply with State and local tax requirements, or

(2) Are exempt from State and local tax requirements.

§ 556.13 PO compliance with State or local laws.

(a) Licensing, certification, or registration with State or local authorities may be required for POs engaging in certain activities such as raffles or insurance operations. In approving a permit to operate, the installation commander will decide whether the PO should request a written statement from State or local commissions as to how State laws, local laws, or other requirements apply. The commander will consult with the local SJA office in making this decision.

(b) POs are not exempt from State or local law because they operate on Federal property. This regulation does not require licensing, certification, or registration of PO activities unless specifically required by State or local authorities. The licensing requirement applies only in the State containing the Federal property in which the PO operates.

Subpart C—Requirements and Procedures for On-Post Operation

§ 556.4 Overview.

The following procedures apply to all POs subject to this regulation, except as discussed in §§ 556.15 and 556.16.

(a) *Operating permit.* All POs that operate on DA installations must have an operating permit. POs seeking a permit to operate on a DA installation must apply in writing to the installation commander.

(b) *Documentation.* (1) Application for a permit will include—

(i) A charter, articles of agreement, constitution, or bylaws. (See sample format at figure C–1 in § 556.15.) Private organizations not using one of these documents in the standard format must ensure that all required information is submitted to the installation commander; the PO may provide a separate document, in conjunction with a charter, articles of agreement, constitution, or bylaws, which completes all information required by this paragraph.

(ii) Any other documentation that states the PO's nature, functions, objectives (including planned use of funds), and activities.

(2) Application documentation will—

(i) Define membership eligibility. (The majority of membership will be composed of the DOD family.)

(ii) Set forth responsibilites for all management functions. These functions include accountability of assets, coverage and limitation of insurance, and disposition of remaining assets upon breakup of the PO.

(iii) Include a statement of the PO's liability if assets are not enough to cover all PO liabilities. The statement of liability will meet all State and jurisdictional laws; it will also address the extent of PO members' personal liability for debts of, or claims against, the PO. State laws governing the liability of national headquarters of type 2 POs generally apply to all local chapters unless specifically superseded by laws of States where local chapters are established.

(3) To operate on a DA installation, type 2 POs must meet the requirements of both their national headquarters and this regulation.

(c) *Revalidation.* All POs must have their operating permits revalidated every 2 years. Requests for revalidation of operating permits will be submitted to the installation commander 90 days before the current permit expires. The letter of application will request continued operation and will include any major changes in PO activities, objectives, organization, or changes in its constitution, bylaws, and so forth. If revalidation is not obtained, the current permit automatically expires 2 years from the date of last approval. Commanders will establish suspense dates for each PO to seek revalidation and will notify POs of these dates.

(d) *Installation review.* Installation commanders will review all PO documentation for both initial permission to operate and for revalidation of operating permits. Approval will be granted or denied based on this review. Approval of an initial or revalidation request will permit a PO to operate on the installation for 2 years. The installation commander may revoke permission to operate at any time during the 2-year period. Written approval will include a statement freeing the installation from any liability of the PO. Installation commanders' reviews of PO applications will ensure the following:

(1) PO income will not personally profit individual members, except through—

(i) Salaries as employees of the PO; or

(ii) Payment for services rendered.

(2) As an exception, the installation commander may authorize an investment club that satisfies all other provisions of this regulation.

(3) PO income will be used to pay operating expenses; expenses include charitable contributions by the PO and competitive awards to PO members or installation personnel.

(e) *Reporting requirements.* (1) POs will supply the following to the installation commander:

(i) Minutes of PO meetings. POs will submit minutes or summaries of meetings, if required by the installation commander.

(ii) Financial statements. POs with gross annual revenue of $1000 or more will submit annual financial statements to the installation commander. (The installation commander may require more frequent submission.) Annually, installation commanders will send financial statements of POs whose gross annual revenue exceeds $100,000 to their major Army command (MACOM).

(iii) A copy of audit reports.

(iv) A copy of tax status, if required.

(v) A copy of correspondence concerning applicability of State or local laws. (See § 556.13.)

(2) Installation commanders will keep a current file on each PO. It will contain the latest copy of—

(i) All reports submitted by the PO, as stated in paragraph (e)(1) of this section.

(ii) The PO's charter, constitution, bylaws, articles of agreement, and so forth. (POs will keep installation commanders informed of changes in officers or points of contact.)

(iii) The PO's request for a permit to operate or for revalidation, and a copy of the installation commander's letter of approval.

(iv) The PO checklist, contained in DA Circular 11–88–1, will be completed per guidance in AR 11–2.

(f) *Termination of PO operation.* A PO may be discontinued by—

(1) The membership; or

(2) The installation commander, who may withdraw permission to operate on the DA installation at any time.

§ 556.15 Recreational and educational POs.

Certain POs may operate on DA installations as extensions of APF or NAF recreational or educational activities. Such POs need not fulfill the procedural requirements of § 556.14, although they are subject to all other provisions of this regulation. The operation of these POs on the installation requires the approval of the installation commander, who will prescribe local guidance for them. Examples of these POs are—

(a) Bowling leagues, little league organizations, and other recreational POs supervised by the director of community recreation.

(b) Those POs formed and operated in conjunction with installation dependent schools under the administrative supervision of a member of the school faculty. (Examples include, but are not limited to, school drama clubs, yearbook funds, language clubs, National Honor Societies, and Keyettes or Keys.)

§ 556.16 Standardized documentation.

(a) The national constitution, standard bylaws, charter, or articles of agreement of type 2 POs listed in table C–1 have been reviewed by CFSC–AE–P and found to meet all requirements of this regulation. Inclusion in this list does not imply official DA sanction, endorsement, or sponsorship of these POs. National headquarters of other type 2 POs may submit their national constitutions, bylaws, and so forth, for review and possible inclusion in table C–1 by sending a complete copy to Commander, CFSC, ATTN: AE–P, Alexandria, VA 22331–0507. Affiliated chapters of the POs listed in table C–1 may fulfill the requirements of § 556.14(b) by the following procedures:

(1) Local chapters will submit a letter to the installation commander requesting a permit to operate.

(2) The letter will contain—

(i) A statement of the charter's standing with the national organization.

(ii) A statement that the standard chapter bylaws prescribed by the national headquarters have been adopted without change. Any changes made by the local chapter will require review by the installation commander.

(iii) A statement of the intended scope and substance of chapter activities.

(3) Local chapters must also provide a copy of the national constitution, bylaws, charter, or articles of agreement. Installation commanders will use these in reviewing PO operations for compliance with the policies in § 556.8.

(b) While completing procedures in paragraph (a) (1), (2), and (3) of this section satisifies the requirements of § 556.14 (a) and (b) local chapters are still subject to revalidation and reporting requirements as contained in § 556.14 (c) and (e).

TABLE C–1.—TYPE 2 POs WITH DA-REVIEWED BYLAWS

Name of organization	Address of national headquarters	Federal tax exempt
Association of the United States Army.	2425 Wilson Boulevard, Arlington, VA 22201–3326.	Yes.

TABLE C–1.—TYPE 2 POs WITH DA-REVIEWED BYLAWS—Continued

Name of organization	Address of national headquarters	Federal tax exempt
Noncommissioned Officers Association.	International HQ Complex, P.O. Box 33610, San Antonio, TX 78265–3610.	Yes.
United States Army Warrant Officers Association.	P.O. Box 3765, Washington, DC 20007–0255.	Yes.
Society of Logistics Engineers.	303 Williams Avenue, Suite 922, Huntsville, AL 35801–8061.	Yes.
Armed Forces Broadcasters Association.	P.O. Box 12013, Arlington, VA 22209–0013.	Yes.
Veterans of Foreign Wars of the United States.	VFW Building, 406 West 34th Street, Kansas City, MO 64111–0001.	Yes.
Armed Forces Communications and Electronics Association.	4400 Fair Lakes Court, Fairfax, VA 22033–3899.	Yes.
Reserve Enlisted Association of the United States.	P.O. Box 2636, Washington, DC 20013.	Yes.
National Defense Transportation Association.	727 N. Washington Street, Suite 200, Alexandria, VA 22314–1976.	Yes.
American Military Members Association of the United States of America.	2610 Broadway, Suite 217, San Antonio, TX 78217–6354.	Yes.

Figure C–1. Sample of a Format for Bylaws

BYLAWS

ARTICLE I

Organization Name and Purpose

ARTICLE II

General Provisions

(Include all statements required by this regulation such as the statement of personal liability and licensing/registration of activities required by law [for raffles, insurance resale, and so forth]. Any documentation, such as a license or certificate of registration, should be attached and noted in this section.)

ARTICLE III

Policy

ARTICLE IV

Membership

ARTICLE V

Officers and Governing Body

ARTICLE VI

Duties of Officers

ARTICLE VII

Elections and Voting

ARTICLE VIII

Standing Committees

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Method of Financing

ARTICLE X

Taxes

ARTICLE XI

Insurance Coverage

ARTICLE XII

Meetings and Quorums

ARTICLE XIII

Activities

ARTICLE XIV

Awards and Gifts

ARTICLE XV

Dissolution

(Include the following paragraph: "If the organization is dissolved, all funds in the treasury at the time will be used to meet any outstanding debts, liabilities, or obligations. The balance of these assets will be disposed of as determined by the membership.")

Approved by Majority Vote on..... (date)

(Signed) _____

President _____

(Signed) _____

Secretary _____

Subpart D—Support and Services

Funding

§ 556.17 Overview.

(a) POs subject to this regulation will be self-sustaining except for limited logistical support that may be granted by installation commanders. (See Logistical Support and Services of this subpart) Funds will be obtained through dues, contributions, service charges, fees, or special assessment of members.

(b) Neither APFs nor NAFs are authorized to transfer any monies or other assets to any PO, including the Boy Scouts and Girl Scouts, by means of contributions, dividends, or other distributions, except as provided by statute. (See section 155, title 10, United States Code (U.S.C.) (10 U.S.C. 115).)

§ 556.18 Resale and fundraising activities.

(a) POs will not engage in on-post resale and fundraising activities unless the installation commander authorizes—

(1) Thrift shop sales of used clothing and used or handcrafted merchandise; net proceeds of such sales will be donated as specified in § 556.18(b)(2)(iii) of this section.

(2) Museum gift shop sales of items related to museum activities per AR 870–20.

(3) Occasional fundraising activities such as dances, car washes, cake raffles, bazaars, or other special events. All POs will comply with State codes requiring licensing for raffles; PO-sponsored raffles will not be permitted in States that prohibit them. Occasional sales for fundraising purposes within the continental United States (CONUS) will offer only the services and merchandise listed in AR 60–20, appendixes B and C.

(b) Exceptions to the continuing resale prohibition may be granted—

(1) By the installation commander as follows:

(i) Sales are restricted to PO members.

(ii) Merchandise sold is related directly to the purpose of the PO.

(iii) The Army and Air Force Exchange Service (AAFES) and other installation NAFIs state in writing an inability to meet the resale requirement.

(2) By major Army commanders as follows:

(i) Sales are not restricted to PO members and merchandise is not directly related to the PO's purpose.

(ii) AAFES and other installation NAFIs state in writing an inability to meet the resale requirement.

(iii) Net proceeds from sales are donated by the PO to—

(1) The installation to support its morale, welfare and recreation (MWR) and other community and family support activities, scholarship funds, or installation hospitals, schools, museums, and so forth.

(2) Local off-post hospitals, museums, libraries, and other community organizations used by, and of direct benefit to, the installation community. (Donations do not include proceeds used to cover the PO's expenses in providing such sales.)

(c) A copy of MACOM approval for such operations will be sent to Commander, CFSC, Attn: AE–P, Alexandria, VA 22331–0507.

Personnel

§ 556.19 Exclusions.

Neither soldiers nor DA employees (APF or NAF) will, as an official duty, be assigned to work for POs.

§ 556.20 Permissive temporary duty (TDY).

Installation commanders may authorize permissive TDY for active duty military personnel to support national Scouting organizations per AR 630–5, paragraph 12–4(e).

§ 556.21 Special events.

Installation commanders may authorize the use of military personnel and APF or NAF civilians to support special events that may benefit POs. The use of such personnel is only to prepare installation facilities and grounds for the event. The following conditions must be met:

(a) The commander must approve the special event (such as a fair, bazaar, or picnic) to be conducted on the installation.

(b) The event must benefit or enhance the morale of the installation DOD family.

(c) The event must be open to all members of the installation DOD family.

(d) The event must not compete with resale activities of the installation's MWR and other community and family support programs unless authorized, on an exception basis, by the installation commander.

(e) The event must not state or imply endorsement of a PO or specific commercial goods or services.

Logistical Support and Services

§ 556.22 Overview.

The amount and type of support authorized for a PO depends on the authority under which the PO is organized.

(a) For type 1 POs governed by other directives (see § 556.5(a)(1)) support is authorized as stated in those directives.

(b) For support for all other POs, §§ 556.23 through 556.30 will be followed. (For POs on Army Reserve Centers requesting use of space and facilities, see AR 140–486.)

(c) Under the provisions of AR 37–60, paragraphs 3–6 and 3–8, installation commanders may waive or reduce charges to nonprofit POs for any of the support elements listed in paragraph 3–3 of that regulation. This applies only to support provided to a PO on an occasional or nonrecurring basis.

§ 556.23 Use of space and facilities.

Most POs require space only for periods of time necessary to conduct regular organizational meetings or for other occasional or nonrecurring PO-sponsored events. Installation commanders may grant use of space to include utilities, in-place equipment, and janitorial supplies used without charge when it is incidental to other uses of the facility. PO use of space is governed by AR 405–80. Specific provisions are as follows:

(a) *Use of space or facilities under license agreement.* Use may be granted by means of a revocable-at-will license and will be defined as occasional, nonregular, regular part-time, or full-time use of space, and will not contain any of the terms in paragraph (b) of this section. Commanders will determine whether or not the license will be on a rent-free basis. POs have no property rights when use of space is granted under a license agreement. Specifically, such use—

(1) Entails use of space that may be recalled at any time by the installation commander without prior notice to the PO.

(2) Involves no lease agreement between the PO and the installation.

(3) Permits storage of equipment and supplies provided that such storage does not interfere with, nor restrict, the normal use of the facility by other users.

(b) *Use of space and facilities under lease agreement.* Use of space under a lease agreement will be defined as the guaranteed *sole* use of space or a facility on a full-time basis; guaranteed use of space for a specific period of time; or storage of in-place equipment or supplies that impairs or restricts normal use of the facility by other users. POs have certain property rights when use is granted under a lease agreement. Specifically, such use—

(1) Guarantees facility use for a specific period of time. Termination of the lease agreement requires a 30-day notice except in times of national emergency.

(2) Requires a lease agreement between the PO and the U.S. Government. This lease protects the PO's use of the facility based upon other conflicting installation priorities and requirements.

(3) Requires payment for use of space and facilities under a lease agreement.

(i) Rent for use of space in CONUS will be set by the district engineer.

(ii) Rent outside the continental United States (OCONUS) will be set by installation commanders per host country Status of Forces Agreements, treaties, or other agreements under which the Army controls such real estate.

(c) *Exceptions.* At the discretion of the installation commander:

(1) Nonprofit thrift shops and museum foundation POs may be granted use of space by means of a rent-free, revocable-at-will license.

(2) On-post youth group POs (Scouts, little league, and so forth) may be granted revocable-at-will licenses for one-time, intermittent, or continuing use of available meeting facilities. (See AR 405–80.)

(d) *Use by veterans' organization.* AR 405–80 authorizes major Army commanders to lend certain real property (including unoccupied barracks) to veterans' organizations for use at—

(1) State or national conventions; or

(2) National youth athletic or recreational tournaments sponsored by veterans organizations.

§ 556.24 Equipment.

POs must furnish or procure equipment, supplies, and other materials at their own expense.

(a) Government-owned equipment may be loaned or rented to a PO; however, such equipment must be directly related to the purpose and function of the PO.

(b) APFs and NAFs will not be used to repair equipment owned by, or loaned to, tenant POs unless a request is approved by the installation commander for the PO to reimburse the installation for such repairs.

(c) Audio-visual hardware and software may be used by POs when not in use for official purposes. (See AR 108–2.)

§ 556.25 Transportation.

All transportation support provided to POs will be on a reimbursable basis per AR 58–1, per the provisions of AR 37–60 (see § 556.22) to include all operations and maintenance costs associated with providing this service. The installation commander will ensure that transportation made available to POs neither is detrimental to the command mission nor generates requirements for additional military vehicles. Specific provisions follow:

(a) In CONUS, the commander may authorize reimbursable military bus service in support of PO-sponsored or co-sponored special events on post, if other conditions of section 556.21 (1) and (b) are met.

(b) At OCONUS locations, military buses may be authorized on a reimbursable basis to support special events conducted at non-military sites.

§ 556.26 Utilities.

All POs will reimburse the installation for utilities except when not required under § 556.22.

§ 556.27 Printing and copying services.

POs may obtain printing or copying services from Government printing plants on a reimbursable basis according to the provisions of § 556.22(c).

§ 556.28 Postal support.

POs will not use appropriated fund postage or the Military Postal Service (MPS) except as shown in table D–1. Questions regarding postal support to POs will be directed to HQDA (MPSA–ZA), ALEX VA 22331–0600.

TABLE D–1.—USE OF APF POSTAGE AND MPS

	APF	MPS
Type 1—federally sanctioned:		
Organizations		
Banks	No [1]	Yes.[2]
Credit unions	No	Yes.[2]
Labor organizations	No	Yes.[2]
Association of Managers and Supervisors.	No	Yes.[3]
United Service Organization	No	Yes.[4]
Red Cross	No	Yes.[4]
United Seamen's Service	No	Yes.[5]
DOD Component relief/aid organizations.	Yes [6]	Yes.
Civil Air Patrol	Yes [6]	N/A.
Youth organizations	No	Yes.
Other type 1	No	Yes.[6]
Type 2—affiliated	No	Yes.[6]
Type 3—independent:		
All type 3 POs	No	Yes.[6]

NOTES:

1. Only when using APF postage of the overseas U.S. Army Central Finance and Accounting Office for currency shipments to CONUS. Shipments within the overseas theater will include the words "DOD Official Intra-theater Mail" where the postage normally would be placed.
2. Use of MPS is authorized outside CONUS only where there is no U.S. Postal Service (USPS). Use will be limited to transactions arising from official operations for the benefit of the military installations and their personnel. All such mail entered into the MPS will bear proper postage.
3. MPS privileges are authorized outside CONUS only as follows: Where there is no USPS; if existing MPS facilities and personnel of the command permit; if the major overseas commander determines; and the MPS agency concurs, that local civil postal service is inadequate; and if the host government does not object.
4. Use of MPS is authorized outside CONUS only where there is no USPS.
5. When a U.S. Army organization is acting on behalf of these organizations.
6. Use of USAF indicia authorized per HQ USAF (AF/DAAC(S)).

§ 556.29 Other services.

POs may not use installation auditing, data processing, financial management, legal, purchasing, or other similar services. POs must obtain such support at their own expense, except in those instances when necessary for the installation commanders to perform their oversight responsibilities.

§ 556.30 Type 2 POs operating overseas.

Limited logistical support specified in AR 700–32 may be provided, on a reimbursable basis, to type 2 POs that are chartered to provide programs relating to the religious, social, welfare, and educational needs of active duty military personnel and their family members.

(a) Subject to Status of Forces or other country-to-country agreements, such support may include:

(1) Transportation services on a reimbursable basis.

(2) Commissary and exchange privileges.

(3) Armed forces postal services overseas (DODD 4525.6).

(4) Hospitalization, medical, and dental care on a reimbursable and space available basis, as determined by the medical treatment facility commander.

(5) Recreational facilities.

(6) Dependents' schools on a reimbursable and space-available basis.

(7) Utilities for facilities used in providing services to armed services personnel.

(8) Military banking facilities (MBFS) operated under DOD contracts.

(b) Before additional support is provided, the following is required:

(1) Local chapters in overseas areas must submit an application to the installation or community commander where they have been given permission to operate. The application will state specific support elements desired with reasons why the PO considers such support to be appropriate. If accepted, the local commander will endorse and forward the application to the MACOM.

(2) The endorsement will cite the services, programs, and activities being received from the PO that warrant special consideration for the PO; that the additional support authorized can be provided; and an estimate of the additional or nonroutine costs for providing that support.

(3) Application will be processed through command channels to CFSC–AE–P and will be evaluated at each level. If appropriate, HQDA will forward the application to the Office of the Secretary of Defense (OSD), which may enter into a Memorandum of Understanding (MOU) with the local PO's national headquarters.

(4) When finalized, the MOU will detail the maximum level of support to be extended to all of the affiliated chapters, regardless of overseas locations. Support will not be provided until HQDA notification of approval and implementing instructions are provided to MACOMs concerned.

Subpart E—Participation in Activities of Private Organizations (Associations)

§ 556.31 Scope.

(a) This chapter specifies policy for official participation by DA agencies, commands, and personnel in the activities of private organizations, societies, and associations, including technical and professional societies that operate on- or off-DA installations.

(b) The following provisions do not apply to DA military or civilian personnel participating in POs as individuals, acting outside their official capacity as employees of the Federal Government. Such membership or participation is permissible as long as it complies with laws (including the Hatch Act and the Anti-Lobbying Act) and regulations that prohibit soldiers and civilian employees from engaging in activities inconsistent with their Federal employment. (See AR 600–50.)

§ 556.32 Limitations.

(a) Participation will be limited to the extent of DOD interest involved.

(b) The favoring of one organization over another will be avoided.

§ 556.33 Official participation in POs.

(a) The following situations will be avoided:

(1) Unauthorized membership in a PO by the United States or its representatives. (See 24 Comp. Gen. 814; 31 Comp. Gen. 398; 32 Comp. Gen. 15.)

(2) Participation in the management and control of POs, in an official capacity, without congressional authorization.

(3) Participation in the determinations or conclusions of POs so as to suggest compliance by the Government without subsequent responsible administrative authority or congressional authorization.

(4) If doubt exists as to whether membership of an agency is authorized in a particular PO, the case should be referred to HQDA (DAJA–AL) WASH DC 20310–2212 prior to acceptance of membership.

(b) DA agencies may participate in activities of POs in the discussion of matters of mutual interest, subject to AR 600–50 and otherwise consistent with law, including anti-trust laws and laws relating to national security. An agency representative may vote verbally or in writing on issues presented for a vote, provided it is made clear to the PO that such vote indicates no more than the opinion of that representative. No vote so cast will be considered to bind DA or any DA agency, in any way, to a particular present or future course of action.

(c) DA military and civilian personnel will not accept an honorary office or honorary membership in any trade or professional organization that includes in its membership business entities that are engaged in, or are attempting to engage in, providing goods and services to a component of DOD, including its NAFIs. An honorary office includes any

office, whether termed honorary or not, when the selection for that office is on the basis of an official DA position or assignment.

§ 556.34 Permissive TDY.

Permissive TDY for the attendance of military and civilian personnel at PO meetings will be per AR 1–211.

Appendix A to Part 556—References

Required Publications. A required publication is a publication which the reader must have in order to understand the publication.

AR 1–211

Attendance of Military and Civilian Personnel at Private Organization Meetings. (Cited in § 556.34.)

AR 37–60

Pricing for Materiel and Services. (Cited in § 556.22(c).)

AR 58–1

Management Acquisition and Use of Administrative Motor Vehicles (Cited in § 556.29.)

AR 60–20

Army and Air Force Exchange Service (AAFES) Operating Policies. (Cited in § 556.18(a).)

AR 405–80

Granting Use of Real Estate. (Cited in § 556.23.)

AR 600–20

Army Command Policy and Procedures. (Cited in § 556.9(d).)

AR 600–50

Standards of Conduct for Department of the Army Personnel. (Cited in §§ 556.6(c), 556.9(d) and 556.31.)

AR 700–32

Logistic Support of United States Nongovernmental, Nonmilitary Agencies and Individuals in Overseas Military Commands. (Cited in § 556.30.)

AR 870–20

Museums and Historical Artifacts. (Cited in § 556.16(a).)

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1–100

Gifts and Donations.

AR 11–2

Internal Control Systems.

AR 108–2

Army Training and Audiovisual Support.

AR140–488

Licenses to Use Army Reserve Facilities.

AR 190–30

Military Police Investigations.

AR 210–24

Credit Unions.

AR 210–135

Bank and Credit Unions on Army Installations.

AR 215–1

Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities.

AR 215–2

The Management and Operation of Army Morale, Welfare and Recreation Programs and Nonappropriated Fund Instrumentalities.

AR 360–61

Community Relations.

AR 630–5

Leave and Passes.

AR 700–63

Army Support of United Seamen's Service.

AR 930–1

Army Use of USO Services.

AR 930–4

Army Emergency Relief.

AR 930–5

American National Red Cross Service Program and Army Utilization.

AFR 45–6

Support for Civil Air Patrols.

DODI 1000.15

Private Organizations on DOD Installations.

DODD 5500.2

Policies Governing Participation of Department of Defense Components and Personnel in Activities of Private Associations.

DODD 5500.7

Standards of Conduct.

DODD 4525.6

Single Manager for Military Postal Service.

Appendix B to Part 556—Classification system for private organizations by type and subtype.

(The list is not inclusive.)

B–1. Types of private organizations

a. Type 1—federally sanctioned.
b. Type 2—affiliated.
c. Type 3—independent.

B–2. Subtypes of private organizations

a. Financial institutions.
b. Community services, fraternal/benevolent.
c. Labor-management organizations.
d. Sports, hobbies, crafts.
e. Distaff service organizations.
f. Youth groups.
g. Professional, scientific, and management.
h. Religious groups.

B–3. Examples of private organizations by type and subtype

a. Type 1—federally sanctioned. Subtypes are—
(1) Financial institutions.
(i) Banks.
(2) Labor-management organizations.
(i) Labor organizations.
(b) Association of managers and supervisors.
(3) Community service.
(i) USO.
(ii) Red Cross.
(iii) United Seamen's Service.
(iv) Component relief/aid organizations.
(4) Youth groups.
b. Type 2—affiliated. Subtypes are—
(1) Professional, scientific, and management.
(i) Engineering or scientific fraternities.
(ii) Associations of active duty personnel.
(iii) Nurses' guilds.
(iv) Financial management associations.
(v) Personnel management organizations.
(2) Sports, hobbies, crafts.
(i) Affiliated hobby/craft groups.
(ii) Sports Officials' Association.
(3) Community service.
(i) Veterans organizations.
(ii) Parent Teachers Association.
(iii) Surviving spouse/parent organizations.
(iv) Ethnic group affiliations.
(v) Reserve and retired associations.
(vi) Affiliated community service clubs.
(4) Religious groups.
(i) Altar guild society.
(ii) Guilds.
(iii) Religious youth organizations.
(5) Youth organizations.
(i) Junior Army Navy Guild Organizations (JANGO)
(ii) 4–H Clubs.
(iii) Scouting organizations.
(iv) Little league.
(6) Other affiliations.
c. Type 3—independent. Subtypes are—
(1) Sports, hobbies, and crafts.
(i) Model clubs.
(ii) Stamp, coin, other collectors.
(iii) Theater and dance guilds.
(iv) Fish and game clubs.
(v) Golf leagues.
(vi) Bowling leagues not affiliated with national organizations. (Note: DOD has waived requirement for nationally affiliated bowling leagues to become private organizations under this regulation.)
(vii) Investment clubs.
(2) Youth organizations.
(i) Contemporary age clubs (teens, and so forth).
(ii) Youth sports/recreation clubs.
(3) Professional, scientific, management. Local, independent, unaffiliated organizations.
(4) Community service.
(i) Thrift shops.
(ii) School booster clubs.
(iii) Local ethnic groups.
(iv) Museum associations and foundations.
(v) Social problem study groups.
(5) Auxiliary organizations.
(i) Spouses' or wives' clubs (may include thrift shop operations).
(ii) National origin clubs.
(6) Religious. Local, independent, unaffiliated organizations.

Glossary

Abbreviations

AAFES. Army and Air Force Exchange Service
ACS. Army Community Services

AFR. Air Force Regulation
APF. Appropriated funds
CFSC. U.S. Army Community and Family Support Center
CONUS. Continental United States
CPR. Civilian Publication Regulation
DA. Department of the Army
DCSPER. Deputy Chief of Staff for Personnel
DOD. Department of Defense
FPM. Federal Personnel Manual
HQDA. Headquarters, Department of the Army
IRS. Internal Revenue Service
MACOM. Major command
MBFS. Military banking facilities
MOU. Memorandum of Understanding
MPS. Military Postal Service
MWR. Morale, welfare and recreation
NAF. Nonappropriated funds
NAFI. Nonappropriated fund instrumentality
OCONUS. Outside the continental United States
OSD. Office of the Secretary of Defense
POs. Private Organizations
SJA. Staff Judge Advocate
TDY. Temporary duty
USPS. United States Postal Service

Terms

Audit. An official examination, verification, and correction of account books that shows the financial status of a PO.

DA installation. A location, facility, or activity assigned to, owned, leased, controlled, or occupied by DA.

DOD family. A group consisting of—
a. Active duty military personnel.
b. Retired military members.
c. Members of Reserve Components.
d. Family members and surviving spouses of personnel in a. through c. above.
e. Local DOD civilian employees.
f. Other civilians as authorized by major commanders and installation commanders.

Double entry accounting system. A system in which both elements of each transaction (debits and credits) are—
a. Recorded separately, and
b. Recorded during the period of occurrence.

Gross annual revenue. The total revenue of a PO, which includes income from—
a. Sales of goods and services.
b. Membership assessments or dues.
c. Contributions and donations.
d. Interest.

Investment club. A membership that pools stated amounts of funds to invest in stock or other securities. Usually, group members pledge a regular amount to be paid into the club on a scheduled basis, for example, monthly and annually. Some clubs have a committee that gathers information on securities, selects the most promising, and recommends that the club invest in them. Other clubs rotate the investigatory responsibilities among all their members. Most require all members to vote for or against all investments, sales, exchanges, and other transactions.

Nonappropriated fund instrumentality. An integral DOD organizational unit that performs an essential Government function. It acts in its own name to provide, or assists other DOD organizations in providing, MWR programs for military personnel and authorized civilians. It is established and maintained individually or jointly by the secretaries of the military departments. As a fiscal entity, it maintains custody of and control over its NAFs and contributes to the MWR programs of organizational entities. It is not incorporated under the laws of any State or the District of Columbia. It enjoys the legal status of an instrumentality of the United States.

Nonappropriated funds. Cash and other assets received by NAFIs from sources other than monies appropriated by the Congress of the United States.

Private organization. A self-sustaining, non-Federal entity constituted or established and operated by individuals acting outside any official capacity as officers, employees, or agents of the Federal Government or its instrumentalities. It may be incorporated or unincorporated. It may operate on or off DA installations; however, to operate on-post, the private organization must have the written consent of the installation commander or higher authority.

Qualified auditor. An auditor qualified to hold grade UA/GS 9 (or local national equivalent grades) or above in civilian job series 510 or 511, or public accountant or certified public accountant licensed by a State or other recognized licensing jurisdiction.

Single entry accounting system. A simple system of recording transactions on a cash basis. No inventories or accounts receivable or payable are kept. (Often called a combination journal system.)

Status of forces agreement. International agreement which defines status of guest forces while on the territory of the host country.

Index

References are to paragraph numbers except where specified otherwise. Definitions of technical terms are found in the Glossary.

AAFES, Section 556.16
Alcoholic beverages, Section 556.8
Boy Scouts, Sections 556.17, and 556.23
Charitable contributions, Section 556.17
Donations, Section 556.16
Property acquisition, Section 556.7
Raffles, Sections 556.13 and 556.16
Rent, Section 556.23

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Friday
June 29, 1990

Part XII

Department of Agriculture
Forest Service
36 CFR Part 242

Department of the Interior
Fish and Wildlife Service
50 CFR Part 100

Temporary Subsistence Management Regulations for Public Lands in Alaska; Final Temporary Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Temporary Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Final temporary rule.

SUMMARY: This rule provides temporary regulations implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. The Alaska Supreme Court recently ruled that the law used by the State of Alaska to provide the subsistence priority required by Title VIII violated the Alaska Constitution. The court's action placed the State out of compliance with Title VIII. Since the State has been unable to return to compliance with Title VIII, the Federal government is required to take over the implementation of Title VIII on public lands.

EFFECTIVE DATE: July 1, 1990.

This rule will go into effect on July 1, 1990, unless, prior to that date, the State of Alaska extends its authority to continue to comply with 16 U.S.C. 3115(d). Once effective, the rule will remain in effect until December 31, 1991, unless the State reestablishes its authority to comply with the 16 U.S.C. 3115(d) and a notice suspending these regulations is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Glenn Elison, Assistant Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3469. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director, Subsistence, Forest Service, USDA, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State implemented such a program which the Department of the Interior found to be consistent with ANICLA. In December 1988, however, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture (Departments) will be required to take over the implementation of Title VIII of ANILCA on public lands. The Fish and Wildlife Service (Service) was delegated the lead responsibility for developing a contingency plan to fulfill the Federal government subsistence responsibilities. Five departments within the Federal government are responsible for management of lands covered by Title VIII. All departments cooperatively developed these regulations. Because these regulations relate to lands managed by agencies in both the Departments of Agriculture and the Interior, identical text is hereby incorporated into 36 CFR part 242 and 50 CFR part 100.

These temporary rules impact the subsistence uses of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service (NPS), Bureau of Land Management (BLM), USDA-Forest Service (USFS), Bureau of Indian Affairs (BIA), Air Force, Army and various other Federal land managing agencies.

On April 13, 1990, a Notice of Intent to Propose Rules was published in the Federal Register (55 FR 13922). Seventy-two written comments were received and taken into account in preparing the proposed temporary rule. On June 8, 1990 the proposed temporary regulations were published in the Federal Register (55 FR 23522) which solicited comments from the public. Because of the short time available, the opportunity for public review and comment was limited. The Fish and Wildlife Service received 152 oral and written comments in response to the proposed temporary regulations. All of these comments were taken into account in preparation of this final temporary rule.

Given the short time frame to prepare this final temporary rule, and in anticipation of the State returning to compliance with Title VIII, these temporary regulations establish a Federal program that minimizes change to the State's program consistent with meeting the Federal government's responsibilities under Title VIII. To do otherwise would be extremely disruptive to subsistence users and create unnecessary chaos if and when the State is able to bring its subsistence program back into compliance with ANILCA. The various seasons and bag limits in effect under the State system were reviewed by the various Federal land managers. Limited changes to existing State seasons and bag limits were made. Should the Federal government be required to retain management responsibility beyond this year, changes to the seasons and bag limits will be considered according to the procedures set forth in § ———.16 of the regulations. Thus the Departments of Interior and Agriculture conclude that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedures Act to make these regulations effective upon publication in the Federal Register.

These temporary regulations will remain in place until December 31, 1991, or until the State brings its subsistence program back into compliance with ANILCA, whichever comes first. The development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991.

Summary of Comments

The June 8, 1990 proposed temporary regulations solicited comments for 10 days on the issues addressed therein (55 FR 23522). Public meetings were held in Anchorage, Fairbanks, Juneau, and Bethel, Alaska. There were 103 total oral comments given at the meetings, and the Service received an additional 49 written comments.

Analysis of Comments

General Comments

(a) Public Involvement

Many comments were received that stated there should have been more public participation in developing the regulations for Federal subsistence management, that the comment period was much too short, and that more public meetings should have been held in rural communities.

Certainly more public involvement would have been desirable and valuable, and under normal circumstances would have occurred; but the time frame to develop a Federal subsistence management program was very limited. State management of subsistence expires June 30, 1990. In the normal course of developing Federal programs, substantial internal discussion and staff work is required before public involvement can occur effectively. Consequently, the public involvement period was short. During the development of these regulations, comments were solicited when the Notice of Intent was published on April 13, 1990 and again when the proposed regulations were published on June 8, 1990. For both documents, a comment period of ten days was provided. Public meetings were held in major population centers statewide. Because these are temporary regulations, a detailed public involvement process will take place soon with the development of the permanent regulations.

(b) Alaska National Interest Lands Conservation Act

Several people commented that they felt the ANILCA subsistence preference for rural residents of Alaska was unconstitutional and objected to the establishment of these regulations which allow for rural subsistence priority. Several comments called for an amendment to ANILCA.

The Departments of the Interior and Agriculture have no authority to make such an interpretation since the rural priority is a provision of Federal law. Until such time as the law is changed, the Federal government must provide a subsistence priority to rural Alaskan residents for use of fish and wildlife resources on public lands.

Some people commented that they felt Title VIII of ANILCA was "Indian legislation" and any ambiguity must be resolved in a way that protects the Natives' subsistence uses. While Title VIII notes the importance of subsistence to Natives, it similarly notes the importance of subsistence to all rural Alaskans. Sections 803, 804, and 805 of Title VIII are racially neutral. That racial neutrality is therefore reflected in these regulations.

There were a number of comments on both sides of the issue of State of Alaska management of fish and wildlife resources. There were comments advocating "State's rights"; the State should manage all fish and wildlife resources, and the State Constitution should not be amended to provide for a rural subsistence preference. Other commenters were opposed to a rural subsistence preference regardless of whether it is State or federally managed.

On the other side of the issue, there were comments that amending the State Constitution to be in compliance with ANILCA should be a top priority to avoid Federal management. Others feared that without a rural subsistence preference managed by either the Federal Government or the State, the subsistence lifestyle in Alaska would be jeopardized.

ANILCA mandates a priority for subsistence uses by rural residents on public lands. As long as the State of Alaska can administer this priority, the Federal Government believes it is preferable to have such management responsibility lie with the State. The temporary subsistence management regulations were written as a temporary measure in anticipation that the State will take the steps necessary to reassume subsistence management on public lands.

Additional comments were received expressing concern that the mandate of ANILCA to place a priority on subsistence use over sport and commercial use will not be implemented through Federal management.

Implementation of ANILCA, including the subsistence priority, is the responsibility of the Federal Government on public lands. The Departments of the Interior and Agriculture will implement title VIII by providing priority to subsistence use on public lands.

(c) Other Federal Laws and International Treaties

Comments were received that the regulations need to be in compliance with the Marine Mammal Protection Act (specifically regarding seals) as well as all international treaties.

As stated in § ———.23(n) of these regulations, the subsistence harvest of seals and other marine mammals will be subject to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations. In addition, subsistence management under these regulations will comply with all relevant international treaties, such as those regarding halibut and migratory birds.

Subpart A—General Provisions

(a) Definition of Public Lands

There were many comments on the exclusion of navigable waters from the definition of public lands. Some comments regarding the exclusion of State-selected and Native-selected lands in the definition were received also. There was a great deal of concern that the exclusion of navigable waters eliminated the majority of subsistence fishing, critical to the well being of rural communities. Some concerns were expressed also that the sport take of migratory species on State lands affects their numbers for subsistence purposes on public lands.

The United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands. Navigable waters are those waters used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

The scope of these regulations is limited by the definition of public lands in section 102 of ANILCA. Lands validly selected by the State or Native corporations are therefore excluded from this public lands definition.

(b) Adoption of State Regulations

There were comments on both sides of the issue of adopting State regulations for Federal subsistence management. A number of commenters said the Federal government should not automatically adopt the State regulations, while others advocated working closely with the State and adopting existing regulations.

In view of the uncertainty over the resumption of State management of subsistence, a major objective of the Federal program has been to minimize disruption to Alaskans and the State's continuing fish and game management, yet still fulfill the requirements of Title VIII. These regulations use existing State of Alaska regulations relevant to subsistence management as much as possible. The majority of seasons and bag limits and methods and means of harvest regulations in subpart D are very similar or identical to the current State regulations. State regulations promulgated prior to the effective date of the McDowell decision are presumed to fulfill the Title VIII requirements since the State's program was considered to meet the general applicability requirements of Section 805(d) of ANILCA. The relatively few changes made were to adapt the State regulations to address public lands or to conform to legal requirements, such as direction received from recent court rulings. Some changes were made in subsistence bag limits or seasons after a review revealed that existing State regulations may not provide adequate opportunity for subsistence use on public lands by rural residents.

(c) Community Season and Bag Limits

There were a number of comments advocating that the Federal government should establish community bag limits for subsistence take rather than adopt

the State's program of having only individual bag limits. There was also a concern about taking into consideration harvest for contribution to community ceremonial events.

The issue of community season and bag limits is an important issue. To address this issue requires more time, public involvement and information than was available during the development of these regulations. Community season and bag limits and ceremonial uses, e.g., funeral potlatches, will be addressed during development of permanent regulations and subsequent annual adjustments to subsistence use regulations. In addition, the Federal Government does not believe that the McDowell decision eliminated the State's ability to provide fish and wildlife for funeral potlatches.

Subpart B—Program Structure

(a) Contract with Native Corporations

Comments were expressed on both sides of the issue of contracting with non-governmental entities to help administer the subsistence management program. Most of these comments dealt specifically with the possibility of contracting with Native organizations pursuant to Public Law 93-638. Some of the comments received were in opposition to contracting with Native organizations, while others requested that Native organizations be considered as potential contractors.

Contracting is an administrative mechanism and option for accomplishing parts of the management program established by the regulations. Therefore, contracting is not addressed in these regulations. Federal agencies soon will be considering whether or not to contract certain subsistence management responsibilities to non-Federal organizations. If the decision is made to contract, the agencies must then decide which Federal subsistence management responsibilities to contract. Announcements of contract opportunities will be made publicly, if and when funds are available and decisions are made that contracting is the best mechanism to implement aspects of the subsistence management program.

(b) Local/Village/Regional Management of Fish and Wildlife

Some commenters recommended that the regulations provide for local, village, or regional management of fish and wildlife resources with Federal oversight.

ANILCA mandates that local rural people with knowledge of the conditions and requirements have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands. That role is provided through regional advisory councils and local advisory committees.

(c) Administrative Structure

There were a great many comments on the administration of the subsistence management regulations. Many commenters advocated subsistence user representation on the Federal Subsistence Board, as well as election of this board. Other commenters expressed displeasure with the current council and committee make up and advocated a revised local/regional advisory council system.

Federal management of subsistence uses on the public lands requires an administrative structure be established to execute the Federal governments subsistence responsibilities under Title VIII. The Federal Subsistence Board (Board) is the representative of the Secretaries of Interior and Agriculture. The Board executes their responsibilities. Empowering the key Federal land managing officials, which are responsible for implementation of Title VIII, on-the-ground is believed to be the best mechanism for implementing these temporary regulations.
Subsistence users' input into the process of managing subsistence on public lands is through input to, and membership on, the Regional and Local Advisory Councils and Committees. When permanent regulations are developed further consideration will be given to how the members of the Regional Advisory Councils and Local Advisory Committees are selected.

The existing State advisory system has broad responsibilities for dealing with subsistence take and uses as well as sport and commercial take statewide. These regulations require the Secretaries to review the existing resource regions, regional advisory councils and local advisory committees to determine their adequacy to fulfill the functions outlined in Section 805. This will be accomplished by December 31, 1991. If the Secretaries determine that the resource regions, Regional Advisory Councils or Local Advisory Committees are inadequate to fulfill the functions outlined in Section 805, these regulations empower the Board to establish a system of Councils and Committees, which are focused on subsistence uses specific to public lands. Public comment and participation will occur throughout the process of making the Secretaries' determination, and any subsequent actions as a result of the determination. Establishment of Councils and Committees by the Board will occur within 12 months after the date of the Secretaries' determination if they determine that the existing regional councils or committees are inadequate to fulfill the functions in Section 805.

(d) Definition of "Healthy" Population

All comments received were in favor of maintaining healthy fish and wildlife populations, though some wanted the Federal Government to define "healthy" populations to be the same as the State's sustained yield principles or conform to requirements of Title VIII of ANILCA for the "continued viability" of such populations. Other general comments pointed out that wildlife populations are cyclic and thus uncontrollable to a large extent and that healthy populations of fish and wildlife are needed to prevent food scarcity in parts of rural Alaska.

The term "healthy populations of fish and wildlife" appears in Title VIII of ANILCA as the standard against which subsistence uses are to be regulated and fish and wildlife are to be managed. Since this term appears in Federal law, it is used instead of the State's term "sustained yield."

In practice, managing by either concept frequently produces similar conclusions about levels of fish and wildlife. Healthy fish and wildlife populations will ensure continued viability of a species. The cyclic nature and recovery patterns of certain fish or wildlife populations have become better known through past and ongoing research in Alaska. Knowing more about these resources should allow for sound management decisions resulting in healthy fish and wildlife population available for subsistence uses by rural Alaskans.

(e) Customary and Traditional Issue

(1) Comments were received that the proposed regulations should follow customary and traditional harvest seasons and patterns with those being designed to match as closely as possible the customary and traditional lifestyles of rural Alaskans, including accommodation of any religious use of fish and wildlife. Some commented more generally that customary and traditional use should be judged by looking at prior cultural patterns of fish and wildlife use and that any decisions involving customary and traditional use should protect rural lifestyles and culture. Others stated that a subsistence priority should be given for customary and traditional uses of fish and wildlife on public lands. Some commenters would restrict the subsistence priority only to those persons using "traditional means," such as no use of aircraft, power boats, high-powered guns, snow machines, or other technological advances. Others pointed out that the use of technological means is not the central issue; instead it is a matter of the continuity of traditional cultural patterns found in rural Alaska. Other commenters wrote in either support or opposition to restrictions about landing aircraft and shooting wildlife. Some commenters felt the State had not provided for customary and traditional uses in certain parts of Alaska, such as the Southeast and hoped that the Federal Government could correct the situation before returning management to the State.

As noted previously, the intent of these temporary regulations is to provide for the subsistence priority for rural Alaskans as required by ANILCA. Given the short time frame to prepare and implement these regulations existing State determinations of customary and traditional use were adopted. The State's customary and traditional determinations will be reviewed, as necessary, by December 31, 1991, by the Board. This review could include consideration of prior cultural patterns wherein traditional harvest seasons and patterns would be evaluated for possible changes to recent State seasons or bag limits. Also, any issues concerning customary and traditional religious use of fish and wildlife would be relevant for formal consideration, as would a wide range of other potential issues. Overall, the intent of the Federal program is to be sensitive to the customary and traditional patterns for subsistence use of fish and wildlife by rural Alaskans, meaning that Federal decisions related to this matter would try to reasonably accommodate any such use patterns. Various provisions within Title VIII of ANILCA generally allow for most types of modern or technologically advanced forms of transportation and harvest equipment on most public lands (with some exceptions for certain conservation units). These allowances made by ANILCA will continue.

(2) A wide range of comments was received related to the issues of rural designation and qualification for a subsistence preference. Some commenters preferred using population density, lifestyle, or income levels alone rather than community population for guiding rural versus non-rural determinations. Others would include urban Natives or all Alaskan residents as qualifying for a subsistence preference. Still others would restrict subsistence uses to only those persons who practiced such uses at some prior time, such as "before the oil boom."

Other commenters felt that the proposed regulations were either inadequate, too liberal, too restrictive, or otherwise violated Federal law. Some commented, hoping that certain specific communities would be considered "rural," either continuing the State's prior designation or hoping that the Federal government would change a prior State non-rural designation. Another commenter did not understand what a rural community or area is. An additional comment urged consultation with the State in developing specific criteria to be used for determining rural and non-rural status, especially for communities with populations between 2,500 and 7,000.

As noted in § ———.15(b) of these regulations, population is used as a preliminary determinant in rural determinations. Community characteristics can modify the preliminary determination. These characteristics may include development of services and infrastructure, use of fish and wildlife as well as other indicators. Under ANILCA, a subsistence priority on Federal lands is to be provided only to rural Alaska residents regardless of ethnic background, meaning that Natives and non-Natives in rural areas only will receive this preference. These regulations follow the requirements of ANILCA without violation of other Federal laws or international treaties, as previously noted.

Due in part to the short time frame to prepare these regulations and to minimize public confusion, the prior State determinations of rural are adopted temporarily. As noted in § ———.15(b) of the regulations, the Federal Subsistence Board will review all such existing determinations no later than December 31, 1990, and shall determine the rural or non-rural status of all areas or communities in Alaska. Such communities or areas so designated as rural will be afforded a subsistence preference. The Federal Subsistence Board will consider all appropriate input from all sources, including the State of Alaska, related to criteria for determining rural or non-rural status and subsequent rural or non-rural determinations.

(3) Comments were received that the proposed regulations did not take into account barter and customary trade. Other commenters said that the Federal definition of customary trade found in the proposed regulations was either too restrictive or not restrictive enough in allowing commercial enterprise. Still another comment questioned restricting customary trade to that which existed prior to ANILCA.

Sections ———.4(c) and ———.4(f) of these regulations address barter and customary trade, respectively, with both allowable under the definition of subsistence uses in § ———.4(t). The definition of customary trade related to subsistence uses is consistent with Senate Report 96-413, which noted that customary trade was not to be used for the establishment of "significant" commercial enterprises. This language is prospective. It means no new significant commercial enterprise is to be established after the passage of ANILCA, under the guise of subsistence. The restriction limiting the types and volumes of customary trade to those which existed prior to ANILCA is consistent with the ANILCA and the Senate report. Further, section 803 of ANILCA is not interpreted under these regulations to prevent trappers from selling furs taken on public lands as a subsistence activity.

(f) Closures

Many comments were received expressing concern that the temporary regulations do not allow for temporary closure of areas to sport and commercial harvest without closure to subsistence take as well.

These regulations do allow for such closures. Section ———.17(b) states, "In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take." The word "any" in this section allows the Board to close an area to sport and/or commercial harvest while allowing subsistence harvest to continue.

Subpart C—General Provisions

(a) Permits/Licenses

A number of commenters opposed the requirement for any kind of permit system, especially requiring individuals to obtain permits to use fish and wildlife resources. Commenters also objected to the requirement for State permits and licenses for subsistence take on public lands.

The intent of these regulations is to minimize Federal permit requirements. Where State and Federal season and bag limit regulations vary, Federal permits may be required to ensure that adequate subsistence opportunity is provided to rural residents while ensuring healthy fish and wildlife populations. Clarifying language has been added to the preamble.

Subpart D—Subsistence Hunting, Trapping and Fishing

(a) Halibut

There were a number of comments advocating that halibut be included for subsistence take.

Subsistence fishing for halibut is not authorized under the convention between the United States and Canada for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea, as amended, or by the National Marine Fisheries Service in 50 CFR part 301.

(b) Other Comments

Several general comments were expressed on a limited basis by a few people. These comments included such topics as the need for compliance with the National Environmental Policy Act; the need to shift priorities to adequately enforce the new regulations; the need to publish seasons and bags, maps of Federal lands, addresses and locations of all management offices; the need for more conservation, education, and so forth.

The Federal government appreciates these comments and will consider them in the implementation of these regulations and the development of permanent regulations.

Special Issues

The following discussion addresses specific issues or sections of the proposed temporary regulations which may be particularly confusing, controversial, require additional explanation, or elaboration of intent.

The Federal Government intends to minimize disruption to traditional State regulation and management of fish and wildlife. A high level of coordination and cooperation between the State and Federal regulatory programs is anticipated. These temporary regulations represent the provisions necessary for the Secretaries to fulfill their responsibilities for subsistence pursuant to ANILCA Title VIII. In the event conflicts arise between the State and Federal programs. If the coordination and cooperation between the State and Federal regulatory programs are realized, then many of the regulatory tools contained herein will need to be used seldom or not at all.

A Memorandum of Understanding (MOU) will be developed with the State. The MOU will address the mechanics of how the State and Federal programs will interact and coordinate. Through the MOU, the Federal program will minimize disruption to the State's regulatory program while still meeting the Secretary's responsibilities under Title VIII.

Section ———.3, Applicability and Scope. Subsistence uses are not authorized in Glacier Bay National Park, Katmai National Park, Kenai Fjords National Park, of those portions of Denali National Park originally reserved as Mt. McKinley National Park. Consequently, the prohibition of subsistence uses in those areas is clarified in § 100.3/242.3 of these regulations.

Section ———.4(e), Customary Trade. Customary trade is included in ANILCA as part of the definition of subsistence uses. It is the intent of these regulations, and consistent with U.S. Senate Report No. 96–413, that customary trade not be used for the establishment of significant commercial enterprises under the guise of subsistence uses. The regulations allow for those types and volumes of customary trade of subsistence resources which existed prior to ANILCA passage. In addition, the regulations pertaining to subsistence fishing require prospective buyers and sellers of subsistence-taken fish, their parts, or their eggs to obtain a customary trade determination from the Board prior to the purchase or sale (§ ———.24(d)(4)).

Section ———.4(n), Public Lands. Title VIII applies to public lands, which are defined in section 102(3) of ANILCA. Lands validly selected by the State or Native corporations formed under the Alaska Native Claims Settlement Act are excluded from the public lands definition in section 102(3).

About 29.1 million acres will be conveyed to fill State and Native Corporation entitlements. However, nearly 60 million acres have been selected by the State and Native Corporations. This means approximately 31 million acres of land are over-selected and therefore will not be transferred, and will become "public lands" as defined in section 102(3) after final adjudication. Although section 906(o) of ANILCA states that Federal agencies manage both Native-selected and State-selected lands, until transferred, the Departments consider the section 102(3) public lands definition to be controlling.

Navigable waters generally are not included within the definition of public lands. Navigable waters are those rivers, streams, lakes, or other waters which are used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Section ———.10, Federal Subsistence Board. Federal management of subsistence uses on the public lands requires an administrative structure be established to execute the Secretaries' subsistence responsibilities and perform functions specific to public lands. The proposed structure is the Federal Subsistence Board which will function similarly to the State Boards of Fisheries and Game. The Board will broadly execute the Secretaries' subsistence responsibilities which include: maintaining healthy fish and wildlife populations; setting Federal subsistence seasons and bag limits; making determinations of rural and non-rural communities and areas; determining customary and traditional subsistence uses; establishing and determining the membership of Regional Advisory Councils and local advisory committees specific to public lands.

Board membership is the regional or state directors of the Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs. These are the chief officials in Alaska of the primary Federal land managing agencies. These officials were chosen because of their public land management responsibilities. The Secretary of the Interior shall appoint the Chair of the Board with the concurrence of the Secretary of Agriculture.

Sections———.11 and ———.12, Regional Advisory Councils and Local Advisory Committees. Councils and committees are required by ANILCA Section 805. The existing State advisory system had broad responsibilities for dealing with subsistence take and uses as well as sport and commercial take statewide. These regulations require the Secretaries to review the existing resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in Section 805. This will be accomplished by June 30, 1990. If the Secretaries determine that the resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions outlined in Section 805, then these regulations empower the Board to establish a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands. Public comment and participation will occur throughout the process of making the Secretaries' determination and any subsequent actions as a result of the determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretary's determination if they determine that the existing regions, councils or committees are inadequate to fulfill the functions in Section 805.

Pending the Secretaries' determination pursuant to this section, the Boards shall review the administrative record developed by the State Board of Fisheries and Game, regional advisory councils and local advisory committees and associated public comment as a temporary means of fulfilling Section 805 and gaining the input from the existing system of boards, councils and committees. Nothing in these regulations requires the Secretaries to establish a separate system of councils and committees, through they may do so if necessary to fulfill their responsibilities pursuant to Title VIII.

Section ———.14, Relationship to State Procedures and Regulation. As stated in §———.3 these regulations anticipate an interactive process between the State fish and game regulatory procedure. The State, because of its constitution, cannot provide a preference for rural residents with customary and traditional use of fish and wildlife as required by ANILCA. The State can facilitate harvest by rural residents through various regulations dealing with means and methods of take and perhaps other mechanisms.

If State regulations allow rural residents the opportunity to obtain their customary and traditional take and uses of fish and wildlife resources, the Federal regulations may closely parallel State regulations. The Federal program anticipates a highly cooperative, interactive relationship with the State system. To the extent that cooperation exists, the Federal program will be able to minimize change to traditional State regulation and management of fish and wildlife.

Section ———.15(b), Rural and Non-Rural Determinations. The definition of rural is, perhaps, the key element in these regulations. ANILCA did not define rural. The State has been wrestling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural.

The legislative history of ANILCA provides some insight. Senator Report 96–413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities fall in this population range which clearly appear to have rural character.

Communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7,000 and still be rural in character.

Determinations of rural or non-rural status by the State will be adopted by these regulations until December 31, 1990, unless superseded by determinations by the Federal Subsistence Board. This six month grace period will minimize confusion for existing subsistence users while allowing the Board to determine, according to the procedures in §——— .16, the rural or non-rural status of communities or areas within the State.

The Board will publish the characteristics it will use in determining rural or non-rural status. Communities with populations between 2,500 and 7,000 will be reviewed before other communities.

This definition and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. For example, the Department of Housing and Urban Development uses a population base of 2,500 but employs indicators such as "rural in character" or "has a serious lack of mortgage credit" to include larger communities in its definition of rural. Examples of indicators which the Federal Subsistence Board may evaluate to decide if a community is rural or nonrural in character are: fish and game use; development and diversity of the economy, transportation, communication, infrastructure, and educational and cultural institutions.

Section ———.16, Regulation Adoption Process. The process for promulgating Federal subsistence regulations specific to public lands will be similar, and at least initially, will use much of the State regulatory process. The advisory structure contemplated by Title VIII of ANILCA will be an integral part of the Federal regulatory structure. As discussed previously in §§ ———.11 and ———.12 regional advisory councils and local advisory committees may be established specific to Federal lands. Proposed regulations may originate from a variety of sources, but emphasis will be on the regional advisory council and local advisory committee system. While the public may comment and interact directly with the Board, it is the intent of these regulations that most public comment and interaction with the regulatory process be channelled through the councils and committees. However, during the effective period of these temporary regulations the Federal regulatory process will rely substantially on the administrative record of the State system.

Section ———.16(i). This section clarifies that an administrative appeal exists specifically for subpart D of this temporary rule. Subpart D contains extensive season and bag limit regulations which closely mirror State season and bag limits set before the McDowell decision took effect, i.e., set under State law and regulations which were considered generally applicable within the meaning of Section 805(d) of ANILCA. The Federal government believes that the regulations in subpart D provide for customary and traditional use by rural residents of fish and wildlife on public lands during the regulatory year July 1, 1990 to June 30, 1991. These regulations received extensive public input since essentially the same regulations were promulgated under the State procedures. However, since the seasons and bag limit regulations in subpart D did not receive public review under the Federal process because of time constraints, this section specifically provides for administrative appeal to the Federal Subsistence Board.

Section ———.21, Licenses, permits, harvest tickets, tags, and fees. The intent of this section is to maximize use of existing State licenses, permits,

harvest tickets, and tags. Separate Federal licenses, permits, harvest tickets or tags will only be required where the State's requirements for licenses, permits, harvest tickets or tags conflict with the Federal government's efforts to provide for subsistence preference for rural residents on public lands. In those cases the requirement for a Federal license, permit, harvest ticket or tag will replace the requirement on public lands for a comparable State authorization. During the effective period of these regulations, the instances requiring Federal authorizations are expected to be limited in number and primarily restricted to permits. No Federal licenses, permits, harvest tickets, or tags, for subsistence users are required by the temporary regulations unless specified in the annual seasons and bag limits promulgated in Subpart D.

Subpart D. Subpart D extensively adopts existing State regulations dealing with methods and means of take. The State regulations are codified in Title 5 of the Alaska Administrative Code. In many cases the language is verbatim from the State regulations. In other cases minor modifications have been made to make the regulation specific to this Federal program or Federal lands. The regulations cite the State regulations from which they were derived. These temporary regulations attempt throughout to limit change to the State regulations to that necessary to fulfill the Secretaries' responsibilities pursuant to Title VIII.

Section ———.24(a). Subsistence fishing for halibut is not authorized under the convention between the United States of America and Canada for the preservation of the halibut fishery of the Northern Pacific Ocean and Bering Sea, as amended, or by National Marine Fisheries Service in 50 CFR 301, and is, therefore, prohibited.

Section ———.24(d)(4). This section prohibits the buying or selling of subsistence-taken fish, their parts, or their eggs, unless otherwise specified. This section also provides that customary trade is authorized if, prior to the sale, the perspective seller or buyer obtains from the Federal Subsistence Board a determination that the sale would constitute customary trade.

Other Wild Renewable Resources

ANILCA Section 803 does not limit "subsistence uses" to fish and wildlife, but instead, uses the term "wild renewable resources." Vegetative resources and even water are included in this term. ANILCA Section 805(d) allows the State of Alaska to regulate take of fish and wildlife for subsistence uses on public lands if in compliance with sections 803, 804, and 805, but does not include other renewable resources.

Federal agencies have managed these other resources through various policies and regulations. Some agencies, like NPS, BLM, and the USFS, have adopted subsistence wood harvest policies which allow subsistence harvest under a permit system. Water was treated as a subsistence resource in BLM's Central Yukon Resource Management Plan/EIS. Because of past management and the desire to avoid confusion, regulation of the use of other wild renewable resources will be left to the individual land managing agency. The various Federal land managing agencies will continue to follow existing regulations with respect to non-fish and wildlife resources. See, for example, 36 CFR 13.49.

Access

Section 811 of ANILCA addresses "Access" for subsistence as follows:

(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provisions of this Act or other law, the Secretary shall permit on the public lands appropriate use for susbsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

Generally, access by foot, snow machine, aircraft, and boat is allowed on public lands, but the use of all-terrain vehicles is on a site-specific basis. In National Parks and Park Monuments only, "* * * subsistence uses without use of aircraft as a means of access * * *" is allowed (46 FR 31849, June 17, 1981). The Park Service currently provides for "certain exceptions" which are managed under special permits issued by park superintendents for unusual circumstances, such as matters involving safety.

The NPS prohibition on the use of aircraft for subsistence in national parks or park monuments is consistent with the position taken in the Federal Register notice published on June 17, 1981 (46 FR 31836). It provides for exceptions to the aircraft prohibition in individual hardship situations (46 FR 31841). A local rural resident or community who believes they qualify under the hardship criteria at 36 CFR 13.45(b)(2) may apply for a permit as provided at 36 CFR 13.51. Nothing in these rules is intended to alter the existing NPS regulations on aircraft use for subsistence.

Decisions and regulations concerning access are the responsibility of the respective Federal land manager. Correspondingly, information on access is available from the Federal agencies for the lands they manage. Appeals on access rulings are handled according to the appeal procedures of the agency in question.

Healthy Fish and Wildlife Populations

The term healthy populations of fish and wildlife appears in Title VIII as the standard against which subsistence use is to be regulated, and fish and wildlife are to be managed. The State uses the concept of sustained yield for its fish and wildlife regulatory program. Since the term healthy fish and wildlife populations appears in ANILCA, it is used instead of the term sustained yield, when identifying the standard for managing fish and wildlife under this regulatory program, although the terms in practice are compatible. National Parks, Park Monuments, and Park Preserves are managed according to the more restrictive natural and health populations standard.

Permanent Regulations

These temporary regulations automatically expire on December 31, 1991. Consequently, the Federal government will begin development of permanent regulations shortly after the temporary regulations take effect, if the State appears to be unable to resume subsistence management on public lands in 1990. Public comment will be solicited. Public meetings will also be held in the affected areas to solicit comments. The Federal government will then revise the proposed regulations in response to public comments and agency and legislative mandates and publish them as final regulations. Once implemented, the permanent regulations would remain in effect until the State brings its subsistence program back into compliance with ANILCA.

Conformance with Statutory and Regulatory Authorities

The impact of these regulations on subsistence uses has been evaluated under section 810 of ANILCA, even though it is not clear that this is an action subject to section 810. Subsistence use and access is expected to differ little from that previously allowed under State management. The regulations are consistent with the purposes and intent of section 810 and present no significant possibility of a significant restriction on subsistence activities on public lands.

Properly regulated and managed subsistence use is consistent with the purposes for which the various public lands in Alaska were established.

National Environmental Policy Act Compliance

The Federal assumption of subsistence management will generally maintain the status quo from the user's perspective. Responsibility and on the ground implementation will shift from State to Federal officials. Changes in environmental effects will be negligible. Therefore, the implementation of temporary regulations relative to Federal assumption of subsistence management on public lands is determined to be a categorical exclusion as detailed in the USDI Departmental Manual (516 DM 6, Appendix 1), USDA regulations at 7 CFR 16.3, USDA Forest Service Manual 1950, I.D. 2 and 17, and USDA Forest Service Handbook 1909.15, I.D. 2 and 17. In addition, the strict requirement to implement a Federal subsistence program on July 1, 1990, would have left the Departments with sufficient time within which to prepare an environmental impact statement. Not until May 8, 1990, when the State Legislature adjourned without taking action to remedy the problems created by the McDowell decision, did it become clear that the Departments would be compelled to implement a Federal subsistence program on July 1. Under the doctrine established in *Flint Ridge Development Company* v. *Scenic Rivers Association of Oklahoma*, 426 U.S. 776 (1976), NEPA's environmental impact statement requirement is inapplicable when preparing an EIS would require an agency to violate a deadline established by statute. Thus, even if the Departments were otherwise required to prepare an EIS on establishment of the Federal subsistence program, the need to meet the July 1 deadline would override the need to prepare an EIS.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of public lands in Alaska.

1. Section ———.18, appeals. The information collection requirements contained in this section provide a standardized process to allow individuals the opportunity to appeal decisions of the Federal Subsistence Board. Submission is voluntary, but required to receive a final determination on their appeal. The Department of the Interior estimates that an appeal will take 4 hours to prepare and submit for consideration.

2. Section ———.21(b), Federal permits. The information collection requirements contained in this section provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. The information requested is required to obtain subsistence benefits on Federal lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 15 minutes.

3. The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. The information collection requirements are required to obtain subsistence benefits on Federal lands in Alaska. The Department estimates that the average burden imposed upon individuals will be 8 minutes.

The information collection requirements described above have been submitted to OMB for review.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

William Knauer, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this rulemaking document.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Fish, National forests, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Chapter I, Subchapter H of Title 50 and Chapter II of Title 36 of the Code of Federal Regulations are amended by adding 36 CFR part 242 and 50 CFR part 100 to read as follows. The text of each part is identical.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

Sec.

Subpart A—General Provisions

___.1 Purpose.
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Authority: 16 U.S.C. 472, 551, 668dd et seq., 3101 et seq.; 16 U.S.C. 7, 3559, 3571; 43 U.S.C. 1733.

Subpart A—General Provisions

§ _____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ _____.2 Authority.

These regulations are issued pursuant to the Secretary of the Interior and of Agriculture authority specified in Section 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

§ _____.3 Applicability and scope.

The regulations of this part _____ apply to subsistence taking and uses of fish and wildlife on all public lands in the State of Alaska, and do not supersede agency specific regulations. Subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park originally reserved as Mt. McKinley National Park are prohibited.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part unless otherwise provided in other regulations of this part.

Agency means a subunit of a cabinet level Department such as U.S. Fish and Wildlife Service, USDA-Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Department of Army, Department of Air Force, National Marine Fisheries Service, etc.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, as amended.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses: For other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § _____.10.

Council means the Regional Subsistence Advisory Councils as described in § _____.11.

Customary and traditional use means a consistent pattern of, and reliance for subsistence purposes upon fish or wildlife or other wild renewable resources near or reasonably accessible from the users' place of residence. Customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks, Park Monuments, or Park Preserves determinations may be specific to individuals.

Customary trade means types and volumes of trade in existence among rural resident subsistence users prior to the passage of ANILCA. Customary trade does not include significant commercial enterprises established after passage of ANILCA.

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal lands means lands the title to which is in the United States.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

Household means that group of people domiciled in the same residence.

Local resident means a rural resident with subsistence use in a specific geographic area.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

Public lands means lands situated in Alaska which are Federal lands, except—

(a) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or State under any other provision of Federal law;

(b) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(c) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Regulatory year means July 1 through June 30.

Resident means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose. Individuals are not required to occupy a home twelve months per year to be considered resident.

Rural means any area of Alaska determined by the Board to qualify as such under the process described in § _____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

Take or taking as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

§ _____.5 Federal subsistence policy, general.

The Secretary under Title VIII of ANILCA must accord a preference to

subsistence uses of fish and wildlife on public lands. It is the policy of the Department to minimize conflict between resource uses on public and non-public lands. The Board will consider the recommendations of the State regional councils and local advisory committees, public input and comment, and actions of the State Boards of Fisheries and Game, as reflected in the administrative record, as a basis for decisions related to subsistence. The Board will give full consideration to state regulatory measures for fish and game uses and, where appropriate, adopt such measures, including state seasons and bag limits. However, the Secretary reserves the discretion, as embodied in these regulations, to prescribe different regulatory measures on public lands to protect subsistence uses consistent with Section 804 of ANILCA.

§ _____.6 Information collection requirements.

(a) These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of public lands in Alaska.

(1) Section _____.16, appeals. The information collection requirements contained in this section provide a standardized process to allow individuals the opportunity to appeal decisions of the Federal Subsistence Board. Submission is voluntary, but required to receive a final determination on their appeal. The Department of the Interior estimates that an appeal will take 4 hours to prepare and submit for consideration.

(2) Section _____.21(b), Federal permits. The information collection requirements contained in this section provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. The information requested is required to obtain subsistence benefits on Federal lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 15 minutes.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. The information collection requirements are required to obtain subsistence benefits on Federal lands in Alaska. The Department estimates that the average burden imposed upon individuals will be 8 minutes.

(b) Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structures

§ _____.10 Federal Subsistence Board.

(a) Subsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board.

(b) *Membership.* (1) The Board shall consist of the Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA-Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) The Board shall have a chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

(c) *Powers and Duties.* (1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will normally occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of three members but no action may be taken unless three members are in agreement.

(3) The Board is empowered, to the extent necessary to implement Title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Establish rules and procedures for the operation of the Board, the regional advisory councils and local advisory committees established pursuant to this part;

(iii) Apply a subsistence priority, as necessary for rural Alaska residents on public lands;

(iv) Assess the biological status of fish and wildlife populations used for subsistence on public lands;

(v) Determine if a harvest from populations of fish and wildlife is consistent with maintaining healthy fish and wildlife populations on public lands except NPS lands;

(vi) Make rural and non-rural determinations;

(vii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of fish and wildlife, as necessary. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may extend to individual local rural residents;

(viii) Review and respond to proposals by regional advisory councils for regulation, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(ix) Close public lands to the taking of fish and wildlife authorized by State fish and game laws and regulations which may adversely affect subsistence taking and uses on those lands;

(x) Prioritize subsistence taking of fish and wildlife among users when necessary to maintain healthy fish and wildlife populations based on application of the following criteria:

(A) Customary and direct dependence upon the populations as the mainstay of livelihood;

(B) Local residency; and

(C) The availability of alternative resources.

(xi) Restrict or eliminate harvest of fish and wildlife by subsistence users if necessary to maintain healthy fish and wildlife populations, or for reasons of public safety, or administration;

(xii) Establish at least six geographic subsistence resource regions;

(xiii) Establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xiv) Establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act.

(xv) Such other duties as are necessary to implement the Secretary's responsibilities under Title VIII of ANILCA.

(4) The Board shall consider the reports and recommendations of the Councils concerning the subsistence take of fish and wildlife on the public lands within their respective regions. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

(5) The Board will establish a Staff Committee composed of personnel from

the U.S. Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for administrative assistance. Personnel from other Federal and State agencies will be invited to participate on the Staff Committee as appropriate. The Staff Committee's functions will include, but not be limited to:

(i) Making recommendations concerning the biological status of fish and wildlife populations;

(ii) Making recommendations on which communities or areas are "rural" and which have demonstrated "customary and traditional uses"; and

(iii) Compiling records of subsistence harvest of fish and wildlife resources.

(6) Additional committees may be formed as necessary to assist the Board.

(7) The Board may review and revise or rescind its actions.

(8) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

§ _____.11 Regional advisory councils.

(a) The Secretary shall during the effective period of these regulations review and determine the adequacy, for the purposes of the Secretary's responsibilities under Title VIII of ANILCA, the existing State:

(1) Subsistence resource regions;

(2) Regional advisory councils; and

(3) Local advisory committees.

(b) If the Secretary determines pursuant to paragraph (a) of this section that the subsistence resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions described in Section 805 of ANILCA, he shall establish subsistence resources region, regional advisory councils or local advisory committees in accordance with this section and § _____.12.

(c) Pending the review and determination required by paragraph (a) of this section, the Federal Subsistence Board shall review the proposals, actions, and associated public comments contained in the administrative record produced by the existing State Boards of Fisheries and Game, Regional Advisory Councils, and local advisory committees. This review shall be an interim measure to gain the public input described in Section 805 of ANILCA.

(d) The Board shall establish a Regional Advisory Council for each subsistence resource region within 12 months from the date of the Secretary's determination pursuant to paragraph (a) of this section, if the Secretary determines existing State Regional Advisory Councils are inadequate to meet the requirements of Section 805 of ANILCA. The Councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Councils will provide for public participation in the regulatory process.

(e) Establishment of Councils-Membership—

(1) The number of members of each council shall be established by the Board, and shall be an odd number. A Council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses therein. The Board shall solicit nominations from the public. Appointments to the Councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall have staggered terms.

(3) The Chair of the Council shall be elected by the Council for a one year term and may be reelected.

(f) Powers and Duties—

(1) The Councils are empowered to:

(i) Hold public meetings on fish and wildlife subsistence matters;

(ii) Elect officers;

(iii) In consultation with the local advisory committees in its region; review, evalute, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting its region.

(2) The Councils shall:

(i) Prepare and submit to the Board an annual report containing;

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) Provide a forum for, and assist the local advisory committees in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(iii) Attempt to develop areas of compromise and reach a regional consensus if differences of opinion exist among the local advisory committees.

(iv) Perform other duties specified by the Board.

(3) Each Council must comply with rules of operation established by the Board.

(g) The Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the Councils.

§ _____.12 Local advisory committees.

(a) The Board shall establish local advisory committees as deemed necessary within each subsistence resource region, if the Secretary determines pursuant to § _____.11(a) that the existing state local advisory committees are inadequate to fulfill the requirements of ANILCA Section 805. The committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife, may make recommendations to the councils concerning regulations, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of committees—

(1) Committees and their membership shall be recommended by the Regional Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses. Nominations will be from the Councils. Authorizations of and appointments to the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial appointments shall have staggered terms.

(3) The Chair of the committee shall be elected by the committee for a one year term and may be reelected.

(4) When considering a request by a Council to create a committee, the Board will consider:

(i) Whether existing representation is adequate, and

(ii) Whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties—

(1) The committees are empowered to:

(i) Elect officers;

(ii) Provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife, habitat management, and assisting the Councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters;

(iii) Develop regulatory proposals for submission to the Council;

(iv) Evaluate regulatory proposals submitted to the committees and make recommendations to the Council and Board;

(v) Advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources;

(vi) Work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and

(vii) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge,

(viii) Perform other duties specified by the Board.

(2) Committees must comply with rules of operation established by the Board.

(d) The Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the committees.

§ _____.13 Board/agency relationships.

(a) *General.* (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate a single set of regulations for subsistence taking of fish and wildlife on public lands. An agency may submit proposed regulations to the Board for inclusion. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on public lands, unless the Secretary at his discretion chooses to exercise his review authority.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ _____.14 Relationship to state procedures and regulations.

(a) State of Alaska fish and wildlife regulations, other than subsistence regulations, apply to public lands unless the Board finds it necessary to promulgate regulations which supersede State regulations in order to ensure the opportunity for subsistence take of fish or wildlife on public lands.

(b) The Board may close public lands to hunting and fishing, or establish seasons and bag limits different from the State. Such regulations may be implemented through individual agency closure authority. Where applicable to all public lands such regulations will be promulgated by the Board. The Board may allow State closures to stand which serve to achieve the objectives of Title VIII of ANILCA.

§ _____.15 Board determinations.

(a) *Healthy Fish and Wildlife Populations.* Determinations of healthy populations of fish and wildlife shall be based upon the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems and minimizes the likelihood of irreversible or long term adverse effects upon such populations and species. Natural populations, for this section, shall include existing, nonindigenous populations. Such determinations shall also recognize that customary and traditional subsistence uses by local rural residents may be a natural part of such ecosystems. Habitat manipulation or control of other species for the purpose of maintaining subsistence uses is not authorized within National Park System Units.

(b) *Rural Determinations.* Not later than December 31, 1990, the Board shall determine the rural or non-rural status of all areas or communities within Alaska. Pending such determination each area or community will retain its rural or non-rural status pursuant to Alaska Administrative Code (5 AAC 99.014). In determining whether a particular area of Alaska is rural, the Board will use the procedures set forth in § 3.16 and use the following guidelines.

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics or a non-rural nature, or is part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined rural or non-rural before other areas or communities are reviewed. The characteristics identified pursuant to § _____.15(b)(5) will be used to make these determinations.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to: Fish and wildlife use; and development and diversity of: the economy, transportation, communication links, community infrastructure, educational and cultural institutions, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(c) *Customary and Traditional Determinations.* Not later than December 31, 1991, the Board shall determine, as necessary, customary and traditional uses of fish and wildlife by rural communities on public lands. Pending such determinations, existing determinations by the Alaska Boards of Fisheries and Game, as codified in 5 AAC, are adopted by these regulations. In making determinations of whether uses of fish and wildlife are customary and traditional, the Board may examine but not be limited to the following factors which exemplify customary and traditional use:

(1) The length, consistency and pattern of use.

(2) The degree of past and current reliance upon particular subsistence uses near or reasonably accessible from the user's place of residence.

(3) Whether current consistent use patterns provide substantial economic, cultural, social, or nutritional elements of the subsistence users' lives, as related to the importance of such uses to subsistence users' lives in the past.

(4) How the methods and means of taking relate to efficiency and economy of effort and cost, as conditioned by local circumstances, and as related to past methods and means of taking.

(5) Whether the present means of handling, preparing, preserving, and storing fish or game have been traditionally used by past generations—without excluding consideration of recent technological advances where appropriate.

(6) The passage of knowledge of fishing and hunting skills, values, and lore from generation to generation.

(7) Distribution or sharing of hunting or fishing effort, or the products of that effort (by customary trade, barter, sharing, and gift-giving), among others according to custom and tradition.

§ _____.16 Regulation adoption process.

(a) The public shall be provided opportunities to participate in and comment on proposed changes in the regulations. The regulation adoption process should reasonably coincide with the State of Alaska's annual process of establishing fish and game regulations.

(b) Early in the regulatory year the Board shall provide to the Councils and committees, once established, and public a schedule of the regulatory and amendment process.

(c) The committees and Councils must submit proposals to the Board in compliance with the schedule. Committee proposals must be submitted through the Councils. Proposals, however, may originate from any source; but to receive full consideration, must meet the published schedule. Proposals originating from individuals other than the Board, Councils or committees will be referred by the Board to the Councils for comments. Each Council and committee shall hold at least one public meeting per year in its region or area to solicit public comment on proposals. The publics' and Councils' comments shall be forwarded to the Board in accordance with the schedule.

(d) The Board, based on comments from the Councils and public, and on resource and resource use information, shall develop draft regulations, publish a notice of availability in the Federal Register, and provide other public notice necessary to obtain public participation. A comment period of no less than 30 days shall be provided. The Board shall hold at least one public meeting to obtain public comment on the proposed regulations.

(e) Following the comment period, the final regulations shall be published in the Federal Register and will become effective on the date of publication or such later date as may be determined by the Board.

§ _____.17 Closures.

(a) The Board may make or direct temporary closures of subsistence taking on public lands, if necessary, for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. In so doing, the Board will consult with the State, and provide adequate notice and public hearing, including at least one hearing in the vicinity of the affected communities.

(b) In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take. The Board shall publish notice and reasons justifying the closure in the Federal Register and in newspapers of the area(s) affected. The closure shall be effective when made, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such closure should be extended.

(c) Any closure, pursuant to Title VIII, exclusive of those made through the annual regulatory process, which does not apply to all public lands will be implemented through the regulations governing such closures by each agency which manages public land in Alaska. Public notification and involvement procedures of the involved agency(s) shall be followed.

(d) Based on emergency need for subsistence, the Board may extend or change seasons or increase bag limits. The Board may consider an emergency under this item only upon a petition from an affected rural resident or community. If such changes are granted they shall be for the minimum time period and bag limit necessary to meet the need and may be made only after a determination by the Board that the proposed change will not affect the maintenance of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

§ _____.18 Appeals.

(a) Decisions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the date on the notice of the written decision for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why a decision by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, mailing address, and daytime telephone number (if any);

(2) The decision for which reconsideration is requested and the date of that decision;

(3) A statement of how the requestor is adversely affected by the decision;

(4) A statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the decision changed.

(e) Stays. (1) A decision may be implemented while the Board is reconsidering that decision unless the Board grants a stay.

(2) If a stay is desired, the stay request must accompany the request for reconsideration. The stay request must contain a description of the decision to be stayed, specific reasons why the stay should be granted including specific adverse effect(s) upon the requestor, harmful site-specific impacts or effects on resources, and how the cited effects and impacts would prevent a meaningful reconsideration of the decision.

(3) The Board must issue a written decision on a stay request within 10 calendar days of receiving a stay request.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in paragraph (g) of this section. Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

(i) Regulations in subpart D of this rule are subject to motions for reconsideration to the Board. Such motion must be filed by September 30, 1990, according to the procedures in paragraph (d) of this section. The Board shall respond according to the procedures in paragraph (f) of this section.

Subpart C—General Requirements

§ _____.20 Subsistence use qualifications.

(a) The taking of fish and wildlife on public lands for subsistence uses as defined in § _____.4 is restricted to Alaska residents of rural areas or communities. Non-rural residents are not provided a preference for the taking of fish and wildlife on public lands.

(b) This section does not limit the authority of the Board, or individual Federal land management agencies, to further restrict the class of qualifying subsistence users in particular cases based upon specific authority in ANILCA or other Federal statutes.

§ _____.21 Licenses, permits, harvest tickets, tags, and fees.

(a) Persons engaged in subsistence activities related to the taking of fish and wildlife on public lands must possess State of Alaska licenses, permits, harvest tickets, and tags and must comply with reporting and validation requirements, except where such requirements conflict with Federal requirements. The intent of these regulations is to maximize the use of the State license and permit system, consistent with the sound management of fish and wildlife and fulfillment of the Secretary's Title VIII responsibilities.

(b) In addition to any licenses or permits required by paragraph (a) of this section, persons engaged in subsistence activities on public lands must possess any Federal licenses or permits that may be required for such activities.

(c) Upon request of a State or Federal law enforcement officer, individuals must produce: licenses, permits, harvest tickets, tags, or other pertinent documents required by this section; and, any apparatus designed to be, or capable of being used to harvest fish and wildlife.

§ _____.22 Penalties.

Any persons convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 may be punished by a fine or imprisonment or both in accordance with the penalty provisions prescribed by applicable law.

Subpart D—Subsistence Hunting, Trapping, and Fishing [1]

§ _____.23 Subsistence hunting and trapping.

(a) Definitions. The following definitions shall apply to all regulations contained in this subpart (derived from 5 AAC 92.990):

ADF&G means Alaska Department of Fish and Game.

Aircraft means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

Airport means an airport listed in the Federal Aviation Agency, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Bag limit means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.

Big game means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk ox-en, mountain or Dall sheep, wolf and wolverine.

Bow means long bow, recurve bow, or compound bow, but not crossbow.

Broadhead means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Bull moose means any male moose.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Dire emergency means a situation in which a person:

(a) is in a remote area;

(b) is involuntarily experiencing an absence of food required for sustenance;

(c) will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and

(d) cannot expect to obtain alternative food sources in time to avoid the consequences described in paragraph (c) of this definition.

Drawing permit means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such persons, and who agree to abide by the conditions specified for each hunt.

Full curl horn means the horn of a male mountain or Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

Fur animal means coyote, arctic fox, red fox, lynx, raccoon, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

Furbearer means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

Highway means the drivable surface of any constructed road.

Household means that group of people domiciled in the same residence.

Hunting area for a species means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

Motorized vehicle means a motor-driven land or water conveyance.

Open season means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

Permit hunt means a hunt for which permits are issued by drawing, registration or other means.

Poison means any substance which is toxic or poisonous upon contact or ingestion.

Registration permit means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(a) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(b) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

Sealing means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a mountain sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide and pelt are all the same thing, and mean any tanned or untanned external covering of an animal's body: skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

Small game means all species of grouse, hares, rabbits, ptarmigan,

[1] Subpart D of this part follows existing State Fish and Game regulations which are codified in Title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State provisions from which they were derived.

waterfowl, cranes and Wilson or jacksnipe.

Tine or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured in a straight line across the base.

Transport means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

Unclassified game means all species of game not otherwise classified in the definitions.

Unit means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

Year means calendar year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, big game, and waterfowl, snipe and cranes may be taken for subsistence by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited (derived from 5 AAC 92.080):

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) Knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) Unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat or snowmachine may be used to take caribou in (State Game Management Unit) Unit 23;

(v) With the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan;

(ix) By intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears consistent with following regulations.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.075 and 92.085):

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) The use of a muzzleloading rifle is prohibited for brown/black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead of at least 7/8" width, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed, and for special bow and arrow hunts only the hunter must have successfully completed an ADF&G approved bowhunter education course and minimum shot placement qualification test and carries an endorsement to this on their license;

(iv) With the use of bait; except that black bears may be taken with the use of bait between April 15 and May 31, in Units 1 (A)(B) and in Units 1 (A)(B)(D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park) 15 and 17 between April 15 and June 15; and Units 12, 19–21, 24, and 25, between April 15 and June 30. Baiting of black bears is subject to the following restrictions:

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A hunter using bait shall clearly mark the site with a sign reading "black bear bait stations" that also displays the person's hunting license number and ADF&G assigned number;

(E) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods; however, this does not apply to license guide outfitters, who personally accompany the client at the bait station site;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) With the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) With the use of a trap or snare;

(vii) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve units until 3:00 a.m. following the day in which the flying occurred.

(ix) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence purposes or assist in taking a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of (a) deer, or to (b) subsistence taking of wolves during August 10-March 31 in the portions of Units 9, 17, 19, 21, 23, 24, 25(B), 25(C), and 25(D) that are not in a national preserve; additionally with respect to wolves:

(A) No person may take a wolf without first obtaining from ADF&G, a number registration permit and numbered, nontransferable locking tags;

(B) Shotguns may not be used to take wolves;

(C) A person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) From a boat in Units 1–5.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.090):

(i) By using a dog, trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3:00 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.095):

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) Using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare.

(5) The following methods and means of hunting waterfowl, snipe, and cranes for subsistence are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section (derived from 5 AAC 92.100):

(i) With a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to 3 shell capacity;

(ii) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased;

(iii) From sunset to one-half hour before sunrise.

(c) Possession and Transportation of Wildlife (derived from 5 AAC 92.130 and 92.140):

(1) Unless otherwise provided, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit except as specified in paragraph (c)(3) of this section.

(2) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not separate and distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State general season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) The bag limit for brown bear in Unit 20(E) is one bear per regulatory year; a bear taken in this unit does not count against the one bear for every regulatory year bag limit in other units.

(5) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(6) No person may possess, transport, or give, receive or barter game or parts of game that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(d) Evidence of sex and identity (derived from 5 AAC 92.150):

(1) No person may possess or transport a mountain sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(2) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(4) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(e) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or an agency, if identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment (derived from 5 AAC 92.160).

(f) Sealing of bear skins and skulls (derived from 5 AAC 92.156)

(1) As used in this section,

Bear means brown bears in all units, and black bears of all color phases taken in Units 1–7, 11–16, and 20;

Sealing certificate means a form used by the ADF&G for recording information when sealing a bear.

Temporary sealing form means a form available at ADF&G offices for providing information regarding date and location of bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Units 8 or 12 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in paragraph (c) of this Section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) If a person kills a brown bear, while on a guided hunt or while hunting with a resident relative, the hunter, as well as the guide or resident relative who accompanied the hunter, shall sign the sealing certificate. If a temporary sealing form is used, the hunter, as well as the guide or resident relative, shall sign the temporary sealing form.

(6) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(7) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(g) Sealing of Martin, Lynx, Beaver, Otter, Wolf, and Wolverine (derived from 5 AAC 92.170).

(1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1–5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1–5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

((ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1–5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in paragraph (g)(2) of this section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in paragraph (g)(2) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(h) No person may use game as food for a dog or furbearer, or as bait, except for the following (derived from 5 AAC 92.210):

(1) The hide, skin, viscera, head, or bones of game;

(2) The skinned carcass of a furbearer or fur animal;

(3) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(4) Legally taken unclassified game.

(i) The following definitions shall apply to this paragraph (derived from 5 AAC 92.220):

Edible meat means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, edible meat of big game, wild fowl or fish does not include: meat of the head; meat that has been damaged and made inedible by the method of taking, bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

Wild fowl means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(j) A person taking game for subsistence shall salvage the following parts for human use:

(1) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(2) The hide, skull and edible meat of a brown bear;

(3) The hide, skull and edible meat of a black bear.

(k) A person who kills a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(l) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(m) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than $2,500.

(n) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

(o) Subsistence taking of fish or wildlife shall not be considered an emergency taking. Situations where emergency taking of wildlife are allowed are defined in paragraph (a)(13) of this Section.

(p)(1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if (derived from 5 AAC 92.410):

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) the necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) all other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. All bear hides surrendered (brown or black) must include claws. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking. As used in this section, "property" is limited to:

(i) A dwelling, permanent or temporary.

(ii) An aircraft, boat, automobile, or other means of conveyance;

(iii) A domesticated animal.

(iv) Other property of substantial value necessary for the livelihood or survival of the owner. Game taken by hunters is not "property" in the sense of this regulation.

(q) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(r) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(s) Game management unit descriptions.

(1) Game Management Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Camano Point and all islands in Stephens Passage and Lynn Canal north of Taku Inlet;

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal and excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw, including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock, including Berner's Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, and excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(2) Game Management Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island;

(3) Game Management Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait, including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(4) Game Management Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3, including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(5) Game Management Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(i) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(ii) Unit 5(B) consists of the remainder of Unit 5;

(6) Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(i) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands;

(ii) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(iii) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(iv) Unit 6(D) consists of the remainder of Unit 6;

(7) Game Management Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield, including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(8) Game Management Unit 8 consists of all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands;

(9) Game Management Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage, drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(i) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(ii) Unit 9(B) consists of the Kvichak River drainage;

(iii) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(iv) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(v) Unit 9(E) consists of the remainder of Unit 9;

(10) Game Management Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(11) Game Management Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier;

(12) Game Management Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage;

(13) Game Management Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of

Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River;

(i) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(ii) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(iii) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(iv) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(v) Unit 13(E) consists of the remainder of Unit 13;

(14) Game Management Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River;

(i) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(ii) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(iii) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(15) Game Management Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00' W. crosses the coast line of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00' W. to the mouth of the Russian River, thence southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary;

(i) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(ii) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(iii) Unit 15(C) consists of the remainder of Unit 15;

(16) Game Management Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its junction with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kanitula Glacier;

(i) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(ii) Unit 16(B) consists of the remainder of Unit 16;

(17) Game Management Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points, including Hagemeister Island and the Walrus Islands;

(i) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(ii) Unit 17(B) consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(iii) Unit 17(C) consists of the remainder of Unit 17;

(18) Game Management Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthews, and adjacent islands between Cape Newenham and the Pastolik River;

(19) Game Management Unit 19 consists of the Kuskokwin River drainage upstream from Lower Kalskag;

(i) Unit 19(a) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(ii) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(iii) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(iv) Unit 19(D) consists of the remainder of Unit 19;

(20) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of the Unit 13 and downstream from the east bank of the Robertson River;

(i) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(ii) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(iii) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(iv) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(v) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(vi) Unit 20(F) consists of the remainder of Unit 20;

(21) Game Management Unit 21 consists of drainages into the Yukon River upstream from Paimiut to but not including the Tozitna River drainage on the north bank, and to but not including the Tanana River drainage on the south bank, and excluding the Koyukuk River drainage upstream from the Dulbi River drainage;

(i) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(ii) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(iii) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(iv) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(v) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(22) Game Management Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers;

(i) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(ii) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(iii) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(iv) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of but not including the Tisuk River to and including Cape York, and St. Lawrence Island;

(v) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock;

(23) Game Management Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(24) Game Management Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(25) Game Management Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River;

(i) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjek Creek, the Coleen River drainage, and the Old Crow River drainage;

(ii) Unit 25(B) consists of Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainage into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(iii) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(iv) Unit 25(D) consists of the remainder of Unit 25;

(26) Game Management Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska;

(i) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River

drainage, and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(ii) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(iii) Unit 26(C) consists of the remainder of Unit 26.

(t) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(1) Unit 1(A). (i) In the Ketchikan area, a strip one-fourth mile wide on each side of the Tongass Highway system, including the Ward, Connel, and Harriet Hunt Lake Roads, is closed to the taking of big game;

(ii) in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bears;

(2) Unit 1(B). The Anan Creek drainage is closed to the taking of black bears;

(3) Unit 1(C). (i) Unit 1(C) is closed to the taking of snow geese;

(ii) in the Juneau area, that area between the coast and a line one-fourth mile inland of the following road systems is closed to the taking of big game: Glacier Highway from Mile 0 to Mile 24 at Peterson Creek, Douglas Highway from the Douglas city limits to Milepost 7 on the North Douglas Highway, Mendenhall Loop Road, and Thane Road;

(iii) the area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(iv) the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(v) Auke Lake is closed to the taking of waterfowl;

(vi) Mt. Juneau drainage, bounded by the Glacier Highway, Salmon Creek and its reservoir, a line from the head of the Salmon Creek drainage to the head of Granite Creek, and down Granite Creek and Gold Creek to the Glacier Highway, is closed to the taking of mountain goat;

(4) Unit 1(D). A strip one-fourth mile wide on each side of the Lutak Road between Mile 7 and Chilkoot Lake, and from the Chilkoot River bridge to the end of the Lutak Road spur at the head of Lutak Inlet, is closed to the taking of big game;

(5) Unit 3. (i) A strip one-fourth mile wide on each side of the Stikine (Zimovia) Highway from the Wrangell city limits to Milepost 9 is closed to the taking of big game;

(ii) in the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to the Crystal Lake campground is closed to the taking of big game, except wolves;

(iii) the Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(iv) Blind Slough, draining into Wrangell Narrows, and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting; the remainder of Blind Slough and its drainage is closed to the taking of snow geese only;

(6) Unit 4. (i) In the Sitka area, a strip one-fourth mile wide on each side of all State highways is closed to the taking of big game;

(ii) the Seymour Canal Closed Area (Admiralty Island), including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay, and including Swan and Windfall Islands, is closed to the taking of bears;

(iii) the Salt Lake Bay Closed Area (Admiralty Island), including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(iv) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(v) Northeast Chichagof Controlled Use Area, consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Port Frederick, is closed to the use of any motorized land vehicle for brown bear hunting;

(7) Unit 6. (i) the Goat Mountain goat observation area, which consists of that portion of Unit 6 bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(ii) the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat;

(8) Unit 7. (i) the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, migratory birds and small game may be hunted with shotguns after September 1;

(ii) the Exit Glacier Closed Area in Unit 7, which consists of the south side drainages of the Resurrection River downstream from the mouth of Redman Creek, and Resurrection Bay drainages between the mouth of the Resurrection River and the mouth of Lowell Creek, is closed to the taking of big game;

(iii) the Cooper Landing Closed Area, which consists of that portion of Units 7 and 15 bounded by a line from the junction of the Sterling Highway and the Chugach National Forest boundary, then along the national forest boundary to Thurman Creek, then southeasterly along Thurman Creek and the northeast side of Trout Lake, then to the confluence of Juneau Creek and Falls Creek, then easterly along Falls Creek and the North Fork of Falls Creek and over the connecting saddle to Devils Creek, then southeasterly along Devils Creek to its confluence with Quartz Creek, then southwesterly along Quartz Creek to the Sterling Highway and then to the point of beginning, is closed to the taking of Dall sheep and mountain goat;

(iv) the Resurrection Creek Closed Area, which consists of the drainage of Resurrection Creek downstream from Rimrock and Highland Creeks, including Palmer Creek, is closed to the taking of moose;

(9) Unit 9. (i) In Unit 9 in the McNeil River State Game Sanctuary, the McNeil River drainage, Mikfik Creek drainage, and all drainages into McNeil Cove from Akjemguiga Cove to McNeil Head, are closed to hunting, and the remainder of the McNeil River State Game Sanctuary and contiguous tidelands are closed to brown bear hunting; access to the sanctuary is by permit only issued by the State of Alaska;

(ii) Unit 9(E) is closed to the taking of Canada geese;

(iii) that portion of Unit 9 extending south and east of McNeil River State Game Sanctuary to the boundary of Katmai National Park and Preserve, and including any State land within the boundaries of Katmai National Park and Preserve, is closed to brown bear hunting;

(10) Unit 10. (i) Unit 10, except Unimak Island, is closed to the taking of Canada geese; and

(ii) Otter Island in the Pribilof Islands is closed to hunting;

(11) Units 12, 13, and 20. (i) The Tok Management Area:

(A) the area consists of those portions of Units 12, 13(C), and 20(D) bounded by a line along the Alaska Highway east from the east side of the Johnson River bridge to Tok Junction, then south along the Tok-Slana cutoff (Glenn Highway) to the Slana River, then west along the north bank of the Slana River to its confluence with Lost Creek, then up the north side of Lost Creek to the divide between Lost Creek and Jack Creek, then north to the Unit 12 boundary, then west along the Unit 12 boundary to Mount Kimball (63°17' N. lat., 144°40' W. long.), then west in a straight line to Mount Gakona (63°17' N. lat., 145°12' W. long.), then northerly along the east bank of the Johnson Glacier and Johnson River to the Johnson River bridge;

(B) the area is open to sheep hunting by permit only;

(ii) [Reserved]

(12) Units 13 and 20. (i) Delta Controlled Use Area:

(A) The area consists of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D);

(B) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(ii) [Reserved]

(13) Unit 13. (i) The Paxson Closed Area in Unit 13(B), which consists of the eastern drainage of the Gulkana River lying west of the Richardson Highway and the western drainage of the Gulkana River between the Denali Highway and the north end of Paxson Lake where the Gulkana River enters Paxson Lake, is closed to the taking of big game;

(ii) The Sheep Mountain Closed Area which lies along the Glenn Highway in Unit 13(A) and is bounded by a line from Caribou Creek, Milepost 107 Glenn Highway, then easterly along the Glenn Highway to Milepost 123, then north to Squaw Creek, then downstream to Caribou Creek, then down Caribou Creek to the point of beginning, is closed to the taking of moutain goat and Dall sheep;

(iii) The Sourdough Controlled Use Area:

(A) The area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(B) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access or transportation of game on the Richardson Highway, Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Alaska Department of Fish and Game;

(iv) The Clearwater Creek Controlled Use Area:

(A) The area consists of that portion of Unit 13(B) north of the Denali Highway, west of and including the MacLaren River drainage, east of and including the eastern bank drainage of the Middle Fork of the Susitna River downstream from and including the Susitna Glacier, and the eastern bank drainages of the Susitna River downstream from its confluence with the Middle Fork;

(B) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access, or transportation of game, on the Denali Highway;

(v) The Tonsina Controlled Use Area:

(A) The area consists of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River;

(B) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 to September 30;

(14) Unit 14. (i) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is open to the taking of big game by permit only;

(ii) The Eagle River Management Area, consisting of the Eagle River drainage upsteam from the Glenn Highway in Unit 14(C) is closed to hunting, except sheep hunting by permit;

(iii) The Anchorage Management Area:

(A) The area consists of all Cook Inlet drainages south of the Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek, but excluding the Anchorage Coastal Wildlife Refuge;

(B) The Anchorage Management Area is closed to hunting, except that:

(1) Moose hunting is allowed by State of Alaska permit only;

(2) Small game and waterfowl may be taken by falconry, except that waterfowl may not be taken in the Ship Creek drainage west of Post Road;

(iv) The Eklutna Lake Management Area:

(A) The area consists of the drainages of Eklutna River and Eklutna Lake in Unit 14(C) upstream from the Glenn Highway, excluding those drainages flowing into the East Fork of Eklutna River upstream from the bridge above the Lake and Thunderbird Creek;

(B) The area is closed to hunting, except that—

(1) Small game may be taken by bow and arrow only, from the day after Labor Day through April 30;

(2) Moose hunting is allowed by permit with bow and arrow only;

(3) Black bear may be taken by bow and arrow only, from the day after Labor Day to May 20, for one bear only;

(4) Sheep may be taken by permit, and by bow and arrow only, from the day after Labor Day through September 30;

(v) The Chugach State Park Management Area:

(A) The area consists of that portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management Areas;

(B) The area is open to hunting under regulations governing Unit 14(C), except as follows:

(1) Black bear hunting is open from the day after Labor Day through May 20 for 1 bear only;

(2) No hunting is allowed for brown bear, mountain goat, squirrel, wolf, woverine, coyote and unclassified game;

(vi) The Peters Creek Management Area:

(A) The area consists of all lands bounded on the south and west by Eagle River and the Fort Richardson Military Reservation, on the east by the old Glen Highway, and on the north by Peters Creek;

(B) The area is closed to hunting except that:

(1) Small game may be taken by shotgun or bow and arrow only, north and west of the Alaska Railroad;

(2) Moose hunting is allowed by drawing permit, by bow and arrow only;

(15) Unit 15. (i) The Moose River Closed Area near Sterling in Unit 15(A), which consists of the area on and within one-quarter mile of the Moose River between the Kenai National Moose

Range boundary and the Sterling Highway, is closed to the taking of waterfowl;

(ii) The Kenai Controlled Use Area, consisting of that portion of Unit 15(A) north of the Sterling Highway, is closed during moose-hunting season to the use of aircraft for hunting moose, including transportation of a moose hunter or moose part; however, this does not apply after 12:01 a.m., September 11, and does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(iii) The Lower Kenai Controlled Use Area, consisting of Unit 15(C), is closed to the use of any motorized vehicle except an aircraft or boat for hunting moose from September 11 through September 20, including transporation of a moose hunter or moose part; however this does not apply to a motorized vehicle on a state- or borough-maintained highway;

(vi) The Skilak Loop Management Area:

(A) The area consists of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westermost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning;

(B) The area is closed to hunting and trapping except that small game may be taken only from October 1 through March 1 by bow and arrow only, and anterless moose may be taken by permit only;

(16) Unit 17. (i) All islands and adjacent waters within one-half mile of each island in the Walrus Islands State Game Sancturay, as described in Alaska Statute 16.20.110, except for those islands known as the Twins and their adjacent waters are closed to hunting;

(ii) The Upper Mulchatna Controlled Use Area:

(A) The area consists of Unit 17 (B);

(B) The area is closed to the use of any motorized vehicle, except aircraft and boats and in legally permitted hunting camps, for hunting big game from August 1 to November 1, including transportation of big game hunters and parts of big game.

(17) Unit 18—the Kalskag Controlled Use Area. (i) The area consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, north-westerly to Russian Mission on the Kuskokwim River, north-westerly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag;

(ii) This area is closed to the use of aircraft for hunting big game, including transportation of any big game hunter and big game part; however, this does not apply to transportation of a big game hunter or big game part by aircraft to or from a publicly owned airport in the controlled use area;

(18) Unit 19—the Upper Kuskokwim Controlled Use Area. (i) The area consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50' W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning;

(ii) The area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(19) Units 20, 24, 25, and 26—the Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(20) Unit 20. (i) Birch Lake and the area within one-half mile of Birch Lake (Mile 56 Richardson Highway) is closed to the taking of big game;

(ii) Harding Lake and the area within one-half mile of Harding Lake (Mile 44 Richardson Highway) is closed to the taking of big game;

(iii) Lost Lake and the area within one-half mile of Lost Lake (Mile 56 Richardson Highway) is closed to the taking of big game with firearms and crossbows;

(iv) The Delta Junction Closed Area (Unit 20(D) near Delta Junction), which consists of that portion of Unit 20(D) bounded by a line beginning at the confluence of Donnelly Creek and the Delta River, then up Donnelly Creek to the Richardson Highway (Mile 238), then north along the east side of the highway to the coal mine road (Mile 242), then east along the south side of the coal mine road to the junction with the trail to Jarvis Creek, then down the east bank of Jarvis Creek to the 33-Mile Loop Road crossing (Mile 12), to the "12 mile crossing trail" (Mile 246.9), then east along the south side of the "12 mile crossing trail" and across Jarvis Creek to the 33-mile loop then northeast along the 33-Mile Loop Road to the intersection with the Alaska Highway (Mile 1414), then southeast along the north side of the Alaska Highway to the bridge at Sawmill Creek (Mile 1403.9), then down the west bank of Sawmill Creek to its confluence with Clearwater Creek and down the south bank of Clearwater Creek to its confluence with the Tanana River, then down the Tanana River to its confluence with the Delta River, and upstream along the east bank of the Delta River to the point of beginning at Donnelly Creek, is closed to the taking of moose;

(v) The Glacier Mountain Controlled Use Area:

(A) The area consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway;

(B) The area is closed to the use of any motorized vehicle for hunting, from August 5 to September 20; however, this does not prohibit motorized access via, or transportation of game on, the Taylor Highway or any airport;

(vi) The Wood River Controlled Use Area:

(A) The area consists of that portion of Unit 20(A) bounded on the north by the south side of the Rex Trail beginning at its intersection with the Totatlanika River then easterly along the Rex Trail to Gold King airstrip, then from Gold King airstrip along the trail's extension along the north side of Japan Hills to the Wood River; on the east by the Wood River, including the Wood River drainage upstream from and including the Snow Mountain Gulch Creek drainage; on the south side by the divide separating the Yanert River drainage from the drainages of Healy Creek, Moody Creek, Montana Creek and the Wood River; and on the west by the east bank of the Nenana River from the divide separating the drainage of the Yanert River and Montana Creek north to Healy Creek, then easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters, then along a straight line to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, and then down the east bank of the Totatlanika River to the Rex Trail;

(B) The area is closed to the use of any motorized vehicle except aircraft for big game hunting and transportation of any big game part, from August 1 through September 30;

(vii) The Macomb Plateau Controlled Use Area, consisting of that portion of Unit 20(D) south of the Alaska Highway, draining into the south side of the Tanana River between the east bank of the Johnson River upstream to Prospect Creek, and the east bank of Bear Creek (Mile 1357.3), is closed to the use of any motorized vehicle, except a floatplane on Fish Lake, for hunting or transportation of any game part, from August 10 though September 30;

(viii) The Yanert Controlled Use Area, consisting of that portion of Unit 20(A) drained by the Nenana River upstream from and including the Yanert Fork drainage, is closed to the use of any motorized vehicle, except aircraft, for big game hunting and transportation of any big game part; however, this does not prohibit motorized access via, and transportation of game on, the Parks Highway;

(ix) The Minto Flats Management Area:

(A) The area consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(B) The area is open to moose hunting by permit only;

(x) The Fairbanks Management Area consists of the Goldstream subdivision (SE1/4 SE1/4 Section 28 and Section 33, Township 2 North, Range 1 West, and Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning;

(xi) The Ferry Trail Management Area:

(A) The area consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail;

(B) The area is open to caribou hunting by permit only;

(xii) The Healy-Lignite Management Area:

(A) The Area consists of that portion of Unit 20 (A) that includes the entire Lignite Creek drainage, and that portion of the Nenana River drainage south of the Lignite Creek drainage and north of a boundary beginning at the confluence of the Nenana River and Healy Creek, then easterly along the south bank of Healy Creek to its confluence with Coal Creek, then northeasterly to the headwaters of Sanderson Creek at Usibelli Peak;

(B) The area is open to hunting by bow and arrow only.

(21) Units 21 and 24—the Koyukuk Controlled Use Area. (i) The area consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°N. lat., 157° 41° W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning;

(ii) the area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(22) Unit 21—Paradise Controlled Use Area. (i) The area consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the

mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut;

(ii) The area is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft to or from a publicly owned airport in the controlled use area;

(23) Unit 23—The Noatak Controlled Use Area, consisting of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner for big game hunting, including transportation of big game hunters or game.

(24) Unit 24—The Kanuti Controlled Use Area, consisting of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft to or from a publicly owned airport in the controlled use area;

(25) Unit 26—The Prudhoe Bay Closed Area is closed to the taking of big game; this closed area consists of the area bounded by a line beginning at 70° 22′ N. lat., 148° W. long., then running south approximately 14 miles to a point at 70° 10′ N. lat., 148° W. long, then west approximately 15 miles to a point at 70° 10′ N. lat., 148° 40′ W. long., then north approximately two miles to a point at 70° 12′ N. lat., 148° 40′ W. long., then west approximately eight miles to a point at 70° 12′ N. lat., 148° 56′ W. long., then north approximately two miles to a point at 70° 15′ N. lat., 148° 56′ W. long., then west approximately 12 miles to a point at 70° 15′ N. lat., 149° 28′ W. long., then north approximately 12 miles to a point at 70° 28′ N. lat., 149° 28′ W. long., then east approximately 14 miles to a point at 70° 28′ N. lat., 148° 52′ W. long., then south approximately 2 miles to a point at 70° 24′ N. lat., 148° 52′ W. long., then east approximately 10 miles to a point at 70° 24′ N. lat., 148° 11′ W. long., then south approximately 2 miles to a point at 70° 24′ N. lat., 148° 11′ W. long., then east approximately 6 miles to the point of beginning.

(ii) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(1) Unit 1(C) (Juneau area):

(i) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(ii) Auke Lake and the area within one-quarter mile of Auke Lake;

(iii) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(iv) A strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(v) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(vi) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) The area described as the Mendenhall Wetlands State Game Refuge in Alaska Statute 16.20.034 is closed to trapping; the use of off-road or all-terrain vehicles, motorcycles, or other motorized vehicles (except boats) within the boundaries of Mendenhall Wetlands State Game Refuge is prohibited at all times;

(2) Unit 9: The drainages of McNeil River, Mikfik Creek and all other drainages into McNeil Cove which extends from Akjemguiga Cove on the north to McNeil Head on the south, located at the head of Kamishak Bay, in the lower Cook Inlet are closed to trapping; access to the McNeil River State Game Sanctuary is by permit only;

(3) Unit 14(C) (Anchorage Area):

(i) The drainages into Eklutna River and Eklutna Lake, excluding those drainages flowing into the East Fork of the Eklutna River, upstream from the bridge above the lake, within the Chugach State Park except Thunderbird Creek;

(ii) Eagle River and all drainages into Eagle River;

(iii) That portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management areas is open to trapping under Unit 14(C) seasons and bag limits, except no trapping of wolf, wolverine, land otter, or beaver is allowed;

(iv) All land and water within the Anchorage Management Area as described in the preceding Subsection;

(v) In the Anchorage Coastal Wildlife Refuge in Unit 14(C), described in Alaska Statute 16.20.031: all land and water south and west of and adjacent to the toe of the bluff that extends from Point Woronzof southeasterly to Potter Creek;

(4) Unit 15. (i) Within the city limits of Homer (Unit 15) as those limits existed in November 1987;

(ii) The Skilak Loop Wildlife Management Area, consisting of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (milepost 58.0), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning;

(iii) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(5) Unit 17: All islands within the Walrus Islands State Game Sanctuary as described in Alaska Statute 16.20.110 are closed to trapping.

(v) Regulations in this section govern only subsistence take of big game, small game, fur animals and unclassified game, and include season, area, and permit restrictions. Game may not be taken for subsistence except as specifically provided in this chapter.

BIG GAME ANIMALS

Units and bag limits	Subsistence open season
Black Bear—seasons and bag limits	
Units 1, 2, 3, and 5—2 bears, not more than 1 of which may be a blue or glacier bear	Sept. 1–June 30.
Unit 6—1 bear	Sept. 1–June 30.
Units 7, 9, 11–13, and 15–26—3 bears	No closed season.
Unit 14—1 bear	No closed season.
Brown Bear—season and bag limits	
Unit 1—1 bear by registration permit only	Sept. 15–Dec. 31, Mar. 15–May 31.
Units 2 and 3	No open season.
Unit 4, Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21′ W. long.), to Rodgers Point (57°35′ N. lat., 136°39′ W. long.), including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34′ N. lat., 135°26′ W. long.), to the entrance of Gut Bay (56°44′ N. lat., 134°39′ W. long.), including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear by registration only.	Sept. 15–Dec. 31, Mar. 15–May 31.
Unit 4, that portion in the Northeast Chichagof Controlled Use Area—1 bear by registration permit only	Mar. 15–May 20.
Remainder of Unit 4—1 bear by registration permit only	Sept. 15–Dec. 31, Mar. 15–May 26.
Unit 5—1 bear every four years	Sept. 1–May 31.
Units 6, 7, and 8	No open season.
Unit 9(B)—1 bear every four years	Oct. 1–Oct. 21 (odd years only) May 10–May 25 (even years only).
Unit 9(E)—1 bear every four years	Oct. 7–Oct. 21 (odd years only) May 10–May 25 (even years only).
Remainder of Unit 9	No open season.
Units 10–16	No open season.
Units 17(A) and 17(C)—1 bear every four years	Sept. 10–Oct. 10, April 10–May 25.
Unit 17(B)—1 bear every four years	Sept. 20–Oct. 10, May 10–May 25.
Unit 18—Residents domiciled in Kwethluk: 1 bear every year. All others: 1 bear every 4 years	Sept. 10–Oct. 10, Apr. 10–May 25.
Units 19(A), 19(D), and 21(A)—1 bear every four years	Sept. 1–Oct. 10, May 10–May 25.
Remainder of Unit 19	No open season.
Unit 20 except 20(E)—1 bear every four years	Sept. 1–Nov. 30, Apr. 1–May 31.
Unit 20(E)	No open season.
Unit 21(B), 21(C), 21(D), and 21(E)—1 bear every four years	Sept. 1–Dec. 31, Apr. 1–May 25.
Remainder of Unit 21	No open season.
Unit 22(A)—1 bear every four years	Sept. 1–Oct. 31, Apr. 15–May 25.
Unit 22(C)—1 bear every four years	Sept. 1–Oct. 31, May 10–May 25.
Remainder of Unit 22—1 bear every four years	Sept. 1–Oct. 31, Apr. 15–May 25.
Unit 23—1 bear every four years	Sept. 1–Oct. 10, Apr. 15–May 25.
Unit 24—That portion of the Koyukuk River drainage upstream from, and including the Alatna River drainage. Residents of Anaktuvuk Pass: 1 bear every year.	Sept. 1–Oct. 31, Apr. 1–May 31.
All other subsistence hunters: 1 bear every four years by registration permit	Sept. 1–Oct. 31, May 10–May 31.
Remainder of Unit 24—1 bear every four years	Sept. 1–Dec. 31, May 10–May 25.
Unit 25	No open season.
Unit 26(A), east of 156° W. long. Residents of Anaktuvuk Pass: 1 bear every year	Sept. 1–Oct. 31, Apr. 1–May 31.
Other subsistence hunters—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Unit 26(A), west of 156° W. long.—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Units 26(B) and (C)—1 bear every four years	Sept. 1–Oct. 31, May 10–May 31.
Caribou—seasons and bag limits	
Unit 7	No open season.
Unit 8—No limit	No closed season.
Units 9(A), 9(B), 9(C), 9(E), 17(B), and that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31 and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(D) and Unit 10, Unimak Island only—1 bull	Sept. 1–May. 31.
Unit 10, Adak Island only 2 caribou by registration permit only	Sept. 1–Mar. 31.
Unit 10, Unmak Island only	No open season.
Remainder of Unit 10	No closed season.
Unit 11—1 caribou, by registration permit only	Aug. 10–Sept. 30.
Unit 12, residents of Tetlin and Northway only 1 antlerless caribou by Federal registration permit only	Open by announcement only.
Units 12 and 20(D) north of the south bank of the Tanana River downstream from the bridge at milepost 1903 Alaska Highway and north of the Alaska Highway from the bridge at milepost 1303 to the Canadian Border—1 caribou.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
Units 13 and 14(B)—1 caribou by registration permit only. During the Jan. 1–Feb. 28 season, caribou may be taken in Unit 13 except for Unit 13(B) and except for that portion of Unit 13(A) within one-half mile of the Alaska Pipeline.	Aug. 10–Sept. 20, Jan. 1–Feb. 28.
Units 13 and 14(B)	Aug. 10–Sep. 20.
Residents of Units 11, 13 and 12 along the Nabesna Road—1 caribou by Federal registration permit only	Jan. 6–Mar. 31.
Units 14(A) and 14(C), and remainder of Unit 15	No open season.
Unit 16—1 caribou	Aug. 10–Oct. 31.
Unit 17(A) and that portion of Unit 17(C) west of Nushagak River	No open season.
Unit 18 south of the Yukon River	No open season.
Remainder of Unit 18—1 caribou	Feb. 1–Mar. 31.
Unit 19—Residents domiciled in Lime Village only: Village bag limit of 100 caribou; cows and calves may not be taken from April 1–Aug. 8.	Feb. 1–Mar. 31, July 1–June 30.
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30, Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding residents of Lime Village): 4 caribou; however, no more than 2 caribou may be taken Aug. 10–Aug. 31 and no more than 1 caribou may be taken Sept. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 19(C)—1 Caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30, Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 Caribou	Aug. 10–Sept. 30.

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 20(C)	No open season.
Unit 20(D) south of the Tanana River—1 bull	Aug. 10–Sept. 30
Unit 20(E), that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstruck Creek—1 caribou.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails—1 caribou by registration permit only.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
Unit 20(F), except the Tozitna River drainage, south of the Yukon River and west of the Dalton Highway—1 bull	Aug. 10–Sept. 20.
Units 20(F), Tozitna River drainage—1 caribou only bull caribou may be taken during the Aug. 10–Sept. 30 season; caribou of either sex may be taken during the Mar. 1–Mar. 15 season.	Aug. 10–Sept. 30, Mar. 1–Mar. 15.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Unit 21, except Unit 21(D) west of the Yukon and Koyukuk Rivers—1 caribou	Aug. 10–Sept. 30.
Unit 21(D) west of the Yukon and Koyukuk Rivers, Units 22(A), 22(B), 23, and 26(A) (except the Nanushuk River drainage)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Units 22(C), 22(D), and 22(E)	No open season.
Unit 24, the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek), and that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Units 25(A), 25(B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr 30.
The Nanushuk River drainage of Unit 26(A), and Unit 26 (B)—5 caribou; however, cow caribou may be taken only from Oct. 1–April 30.	July 1–Apr. 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year	July 1–Apr.30.
Dall Sheep—seasons and bag limits	
Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19—1 ram with ⅞ curl horn	Aug. 10–Sept. 20.
Unit 11—1 sheep	Aug. 10–Sept. 20.
Unit 23: south and east of the Noatak River (excluding Gates of the Arctic National Park)—1 ram with ⅞ curl horn or larger; a registration permit is required.	Aug. 10–Sept. 20.
Unit 23 (Remainder)—1 sheep	Oct. 1–Apr. 30.
Units 25(A) and 26(C)—3 sheep, 1 ram with ⅞ curl horn or larger	Oct. 1–Apr. 30, Aug. 10–Sept. 20.
Remainder of Unit 25—1 ram with a full curl horn or larger	Aug. 10–Sept. 20.
Unit 24 and 26(A), those portions within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Remainder of Units 24, 26(A), and 26(B), including the Gates of the Arctic National Preserve—1 ram with ⅞ curl horn or larger.	Aug. 10–Sept. 20.
All other units	No open season.
Deer—seasons and bag limits	
Unit 1(A) and 2—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Unit 3, that portion south of Sumner Strait and Decision Passage, including the Vank Island group, but not including Level, Conclusion, and Channel Islands—2 antlered deer.	Aug. 1–Nov. 30.
Remainder of Unit 3	No open season.
Unit 4, that portion of Chichagof Island east of Port Frederick and north of Tenakee Inlet, including all drainages into Tenakee Inlet and Port Frederick—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Unit 1(D) and 5	No open season.
Unit 6—5 deer; however, 2 antlered deer	Aug. 1–Dec. 31.
Remainder of Unit 3	No open season.
Unit 4, that portion of Chichagof Island east of Port Frederick and north of Tenakee Inlet, including all drainages into Tenakee Inlet and Port Frederick—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Unit 1(D) and 5	No open season.
Unit 6—5 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Unit 8, that portion of Kodiak Island north of the access road from Port Lions to Crescent Lake (57°52' N. lat., 152°58' W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island north of a line from Sequel Point to Passagshak Pass, and north of the area draining into Ugak Bay east of a line from the mouth of Saltery Creek to Crag Point—1 deer; however, antlerless deer may be taken only from Oct. 1–Oct. 31.	Aug. 1–Oct. 31.
Unit 8, that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point draining into Ugak Bay, and south of a line from Sequel Point to Passagshak Pass—1 deer; however, antlerless deer may be taken only from Oct. 1–Oct. 31.	Aug. 1–Dec. 15.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 7	Aug. 1–Jan. 7
Goat—seasons and bag limits	
Unit 1(A), Revillagigedo Island only	No open season.
Unit 1(B), that portion between Muddy River and LeConte Bay including the drainages into the North side of LeConte Bay— 1 goat by registration permit only; however, the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Remainder of Unit 1(A) and Unit 1(B)—2 goats by registration permit only	Aug. 1–Dec. 31.
Unit 1(C), that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by registration permit only.	Oct. 1–Nov. 30.
Unit 1(C), that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott drainage.	No open season.
Remainder of Unit 1(C)—1 goat by registration permit only	Aug. 1–Nov. 30
Unit 1(D), that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.

BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Unit 1(D), that portion lying north of the Katzehin River and northeast of the Haines Highway—1 goat by registration permit only.	Sept. 15–Nov. 30.
Remainder of Unit 1(D), and Units 4 and 5—1 goat by registration permit only	Aug. 1–Dec. 31.
Unit 6(D), that portion in the Tatitlek hunt area—1 goat by registration permit only	Aug. 1–Jan. 31.
Unit 6(D) that portion in the Chenega Bay hunt area—1 goat by registration permit only	Aug. 1–Jan. 31.
Remainder of Unit 6—1 goat by registration permit only	Aug. 1–Jan. 31.
Units 7 and 15(C), those portions in the Seldovia, Brown Mountain and Port Dick hunt subareas—1 goat by registration permit only.	Aug. 1–Oct. 31.
Units 15(C), the English Bay hunt subarea—1 goat by registration permit only	Aug. 10–Oct. 31.
Unit 12 and the remainder of Unit 13	No open season.
Moose—seasons and bag limits	
Unit 1(A), and Unit 1(B) south of LeConte Glacier—1 bull	Sept. 15–Oct. 15.
Remainder of Unit 1(C)–1 bull by registration permit only	Sept. 15–Oct. 15.
Unit 1(D)—1 bull by registration permit only	Sept. 1–Sept. 10.
Units 2, 3 (except Wrangell Island), and 4	No open season.
Unit 3, Wrangell Island—1 bull with spike-fork or 50-inch antler	Oct. 1–Oct. 15.
Unit 5(A), except Nunatak Bench—1 bull by registration permit only	Oct. 15–Nov. 15.
Unit 5(A), Nunatak Bench	No open season.
Unit 5(B)—1 bull by registration permit only	Sept. 1–Nov. 15.
Unit 6	No open season.
Unit 9(A)—1 bull	Sept. 5–Sept. 20.
Unit 9(B) [Lake Clark drainage only]—1 bull; however, antlerless moose may be taken only from Dec. 16–Dec. 31	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Remainder of Unit 9(B)—1 bull	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Unit 9(C), that portion draining into the Naknek River—1 moose; however, antlerless moose may be taken by registration permit only from Dec. 1–Dec. 31.	Sept. 5–Sept. 20, Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	No open season.
Unit 9(D)	Sept. 10–Sept. 20, Dec. 1–Dec. 15.
Unit 9(E)—1 bull; however, moose taken from Sept. 10–Sept. 20 must have 50-inch antlers	Sept. 1–Sept. 20.
Unit 11—1 bull	Sept. 1–Sept. 20, Nov. 20–Nov. 30.
Unit 12, that portion drained by the Tanana, Nabesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickerel Lake to the Canadian border—1 bull.	Sept. 1–Sept. 30.
Unit 12, that portion lying east of the Nabesna River and south of the winter trail running southeast from Pickerel Lake to the Canadian border—1 bull with 50-inch antlers.	No open season.
Unit 12, that portion drained by the Little Tok River upstream from and including the first eastern tributary from the headwaters of Tuck Creek.	Sept. 1–Sept. 20.
Remainder of Unit 12—1 bull	Aug. 25–Sept. 20.
Unit 13—1 bull moose by Federal registration permit only; only 1 permit will be issued per household	Sept. 1–Sept. 30.
Unit 15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay—1 bull.	Aug. 25–Sept. 30.
Unit 16(B) Kalgin Island—1 moose	Sept. 1–Sept. 15.
Unit 16(B) Redoubt Bay drainages south and west of, and including, the Kustatan River drainage—1 bull	Sept. 1–Sept. 30, Dec. 1–Feb. 28.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30, and during the period Dec. 1–Feb. 28, by registration permit.	No open season.
Unit 17(A)	Sept. 1–Sept. 20.
Unit 17(B), that portion that includes all the Muichatna River drainage upstream from and including the Chichitna River drainage—1 bull.	Aug. 20–Sept. 15, Dec. 1–Dec. 31.
Remainder of Unit 17(B)—1 bull	Aug. 20–Sept. 15.
Unit 17(C), that portion that includes the lowithia drainage and Sunshine Valley and all lands west of Woodriver and south of Aleknagik Lake—1 bull.	Aug. 20–Sept. 15, Dec. 1–Dec. 31.
Remainder of Unit 17(C)—1 bull	No open season.
Unit 18, that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of (but not including) the Andreafsky River drainage.	Sept. 1–Sept. 30, Dec. 20–Dec. 30.
Remainder of Unit 18—1 bull	Aug. 10–Sept. 25, Nov. 20–Mar. 31.
Unit 19; residents of Lime Village only: No bag limit; either sex	Sept. 1–Sept. 20, Nov. 20–Nov. 30, Feb. 1–Feb. 10.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Nov. 20–Nov. 30 and Feb. 1–Feb. 10	Sept. 1–Sept. 30.
Unit 19(B)—1 bull	Sept. 1–Oct. 10.
Unit 19(C)—1 bull	Sept. 1–Sept. 30.
Unit 19(D), that portion of the Upper Koskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 bull.	Sept. 1–Sept. 30, Dec. 1–Feb. 28.
Unit 19(D), remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30, Dec. 1–Dec. 15.
Remainder of Unit 19(D)—1 bull	Sept. 1–Sept. 20.
Unit 20(A), that portion south of the Rex Trail and west of the Wood River Controlled Use Area, and the Yanert Controlled Use Area—1 bull with a spike-fork or 50-inch antlers.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 bull	Sept. 1–Sept. 20, Jan. 10–Feb. 28.
Unit 20[illegible] that portion within the Minto Flats Management Area—1 bull by registration permit only	Sept. 1–Sept. 20.
Unit 20(B), the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek— 1 bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 bull	Sept. 1–Sept. 20.
Unit 20(C)—1 bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken	Sept. 1–Sept. 20.
Unit 20(D), that portion lying south of the north bank of the Tanana River and east of the east bank of the Johnson River—1 bull.	Jan. 1–Feb. 15.
Residents of that portion of Unit 20(D) between Bear Creek and Berry Creek: 1 bull by registration permit only	Sept. 1–Sept. 15.
Unit 20(D), that portion lying west of the east bank of the Johnson River and south of the north bank of the Tanana River, except the Delta Junction Closed Area—1 bull with spike-fork or 50-inch antlers.	Sept. 1–Sept. 10.
Remainder of Unit 20(D)—1 bull	Sept. 1–Sept. 10.
Unit 20(E), that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 3½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	

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BIG GAME ANIMALS—Continued

Units and bag limits	Subsistence open season
Remainder of Unit 20(E), that portion draining into the Yukon River upstream from and including the Charley River drainages to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 bull.	Sept. 5–Sept. 25.
Unit 20(F)—1 bull	Sept. 1–Sept. 15, Dec. 1–Dec. 10.
Unit 21(A)—1 bull	Sept. 5–Sept. 30, Nov. 1–Nov. 30.
Units 21(B) and 21(C)—1 bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25, Feb. 1–Feb. 5.
Unit 21(E); Residents of Grayling, Anvik, Shageluk, Holy Cross and Russian Mission only—1 moose	Sept. 5–Sept. 25, Feb. 1–10.
Remainder of Unit 21(E)—1 bull	Sept. 5–Sept. 25.
Unit 22(A)—1 bull	Aug. 1–Sept. 30, Dec. 1–Dec. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a calf or a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(c)—1 bull	Sept. 1–Sept. 14.
Unit 22(D), drainages into the north side of Port Clarence, the north side of Grantley Harbor, and the north side of Imuruk Basin, excluding the Kuzitrin, Pilgrim and Kougerok River drainages—1 moose; however, antlerless moose may be taken only from Aug. 1–Dec. 31; no person may take a calf or a cow accompanied by a calf; only antlered moose may be taken Jan. 1–Jan. 31.	Aug. 1–Jan. 31.
Remainder of Unit 22(D)—1 moose; no person may take a calf or a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 22(E)—1 moose. No person may take a calf or a cow accompanied by a calf	Aug. 1–Mar. 31.
Unit 23, that portion north and west of and including the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 23—1 moose; however, antlerless moose may be taken only from Sept. 15–Oct. 31; no person may take a cow accompanied by a calf.	Aug. 1–Dec. 31.
Unit 24, that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25, Dec. 1–Dec. 10, Mar. 1–Mar. 10.
Unit 24, that portion that includes the John River drainage upstream from but excluding the Hunt Fork drainage—1 moose.	Aug. 1–Dec. 31.
Unit 24, the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25, Mar. 1–Mar. 10.
Remainder of Unit 24—1 bull	Aug. 25–Sept. 25.
Residents of Unit 25(A) and Residents of Venetie only—1 bull	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(B), that portion within the Porcupine River drainage upstream from but excluding the Colesn River drainage—1 bull.	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(B), that portion within the Yukon River drainage upstream from and including the Kandik River drainage—1 bull	Sept. 5–Sept. 25, Dec. 1–Dec. 10
Remainder of Unit 25(B)—1 bull	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 25(C)—1 bull	Sept. 5–Sept. 15.
Unit 25(D), that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary. Residents of Beaver, Birch Creek, and Stevens Village only—1 bull by Federal registration permit only.	Aug. 25–Sept. 25, Dec. 1–Dec. 10, Feb 18–Feb 28.
Remainder of Unit 25(D) Residents of Unit 25 excluding residents of the western portion of Unit 25(D) described above—1 bull.	Aug. 25–Sept. 25, Dec. 1–Dec. 10.
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B), that portion within two miles of the Dalton Highway	No open season.
Remainder of Unit 26(B), and Unit 26(C)—1 moose	Aug. 1–Dec. 31.
Muskox—seasons and bag limits	
Units 26(B) and 26(C); Residents of Kaktovik only—1 muskox by Federal registration permit only	Oct. 1–Oct. 31, Mar. 1–Mar. 31.
Wolf—seasons and bag limits	
Units 1–5—No limit	No closed season.
Units 6, 8, and 10—2 wolves	Aug. 10–Apr. 30.
Units 7, 14(C) and 15—1 wolf	Aug. 10–Apr. 30.
Units 9, 17, 19, 21, 23, 24, and 25(B)–(D)—10 wolves	Aug. 10–Apr. 30
Units 11, 12, 13, 20, 22, 25(A), and 26—No limit	Aug. 10–Apr. 30
Units 14(A) and (B), 16, and 18—4 wolves	Aug. 10–Apr. 30.
Wolverine—seasons and bag limits	
Units 1–5—1 wolverine	Nov. 10–Feb. 15
Units 6–26—1 wolverine	Sept. 1–Mar. 31.

FUR ANIMALS

Units and Bag Limits	Subsistence Open Season
Coyote—seasons and bag limits	
Units 1–5, 6(A), 6(D), and 8–14, and 16–2—2 coyotes	Sept. 1–Apr. 30.
Units 6(B) and 6(C)—No limit	No closed season.
Units 7 and 15—No limit	Sept. 1–Apr. 30.
Arctic fox—seasons and bag limits (including blue and white phases)	
Units 9 and 17—No limit	Dec. 1–Mar. 15.

FUR ANIMALS—Continued

Units and Bag Limits	Subsistence Open Season
Unit 10—No limit	No closed season.
Units 18, 22, 23, and 26—2 foxes	Sept. 1–Apr. 30.
Red fox—seasons and bag limits (including cross, black, and silver phases)	
Units 1–14, 16–26—2 foxes	Nov. 1–Feb. 15.
Unit 15	No open season.
Lynx—seasons and bag limits	
Units 1–5—2 lynx	Dec. 1–Feb. 15.
Units 6, 11, 13, 14, and 16—2 lynx	Dec. 15–Jan. 15.
Units 7, 8, 10, and 15—2 lynx	No open season.
Units 9 and 17—2 lynx	Nov. 10–Feb. 28.
Units 12 and 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 18—2 lynx	Nov. 10–Mar. 31.
Remainder of Unit 20, and Unit 25(C)—2 lynx	Dec. 1–Jan. 1.
Unit 23—2 lynx	Dec. 1–Jan. 15.
Units 19, 21, 24, and remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
Units 22 and 26—2 lynx	Nov. 1–Apr. 15.
Red squirrel, ground squirrel, flying squirrel—seasons and bag limits.	
Units 1–26—No limit	No closed season.

SMALL GAME

Units and Bag Limits	Subsistence Open Season
Grouse (spruce, blue, ruffed, and sharp-tailed)—seasons and bag limits	
Units 1–6—5 per day, 10 in possession	Aug. 1–May 15.
Units 7, 11, 13–16 (except 14(C))—15 per day, 30 in possession	Aug. 10–Mar. 31.
Units 8 and 10	No open season.
Unit 14(C)—5 per day, 10 in possession	Day after Labor Day–Mar. 31.
Units 9, 17–19, 21–24 and 26—15 per day, 30 in possession	Aug. 10–Apr. 30.
Units 12, 20 (except 20(D)) and 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 20(D), that portion south of the Tanana River and west of the Johnson River— 10 per day provided that not more than 2 may be sharp-tailed grouse, by falconry; 10 in possession; provided not more than 2 may be sharp-tailed grouse, by falconry only. 15 per day, provided that not more than 5 may be sharp-tailed grouse; 30 in possession, provided not more than 10 may be sharp-tailed grouse.	Aug. 10–Aug. 24. Aug. 25–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
Snowshoe and Arctic Hares—seasons and bag limits	
Units 1–5—5 per day	Sept. 1–Apr. 30.
Units 6–26, except 14(A) and 14(C). No limit	No closed season.
Unit 14(A)—5 per day	No closed season.
Unit 14(C)—5 per day	Day after Labor Day—Apr. 30.
Ptarmigan (Rock, willow, and white-tailed)—seasons and bag limits	
Units 1–6—20 per day, 40 in possession	Aug. 1–May 15.
Units 7, 11, 13–16 (except 14(A), 14(C), and 15(C)) 20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Day after Labor Day—Mar. 31.
Unit 15(C)— 10 per day, 20 in possession 5 per day, 10 in possession	Aug 10–Dec. 31. Jan. 1.–Mar. 31.
Units 8–10, 12, 17–19, and 21–26 (except 25(C))—20 per day, 40 in possession	Aug. 10–Apr. 30.
Units 20 and 25(C), those portions within 5 miles of Alaska Route 6 (Steese Hwy.) and Route 5 (Taylor Hwy. both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Hwy.) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Remainder of Units 20 and 25(C)—20 per day, 40 in possession	Aug. 10–Apr. 30.

WATERFOWL

Units and Bag Limits	Subsistence Open Season
Ducks (except sea ducks)—seasons and bag limits	
Units 1–4—5 per day and 15 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.
Units 5–7, 9, 10 (Unimak Island only), and 14–16—6 per day and 18 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.
Units 8 and 10, (except Unimak Island)—5 per day and 15 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Oct. 8–Jan. 22.
Units 11–13 and 17–26—8 per day and 24 in possession; however, not more than 2 per day and 6 in possession may be pintail ducks, and not more than 1 per day and 1 in possession may be canvasbacks.	Sept. 1–Dec. 16.

Waterfowl—Continued

Units and bag limits	Subsistence open season
Sea ducks (eider, scoter, old squaw, harlequin) and merganasers—seasons and bag limits	
Units 1–7, 9, 10 (Unimak Is. only), and 11–26—15 per day, 30 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Is.)—15 per day, 30 in possession	Oct. 8–Jan. 22.
Geese, cackling Canada—seasons and bag limits	
Units 1–26	No open season.
Geese, Canada (except cackling Canada)—seasons and bag limits	
Units 1–4, 7, 9 (except 9(E)), 10 (Unimak Island only), 11–17, and 19–26 4 per day, 8 in possession	Sept. 1–Dec. 16.
Units 5 and 6—4 per day, 8 in possession	Sept. 21–Dec. 16.
Units 8, 9(E), 10 (except Unimak Island) and 18	No open season.
Geese, White-fronted—seasons and bag limits	
Units 1–7, 9, and 14–18—2 per day, 4 in possession	Sept. 1–Dec. 16.
Unit 8—2 per day, 4 in possession	Oct. 8–Jan. 22.
Unit 10 (except Unimak Island) 4 per day, 8 in possession	Oct. 8–Jan. 22.
Unit 10 (Unimak Island only), 11–13, and 19–26—4 per day, 8 in possession	Sept. 1–Dec. 16.
Geese, Snow—seasons and bag limits	
Unit 1 (except 1(C)), 2–7, 9, 10 (Unimak Island only), and 11–26—6 per day, 12 in possession	Sept. 1–Dec. 16.
Unit 1(C)	No open season.
Units 8 and 10 (except Unimak Island)	Oct. 8–Jan. 22.
Brant—seasons and bag limits	
Units 1–7, 9, 10 (Unimak Island only), and 11–26—2 per day, 4 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island) 2 per day, 4 in possession	Oct. 8–Jan. 22.
Emperor Geese—seasons and bag limits	
Units 1–26	No open season.
Cranes—seasons and bag limits	
Units 1–7, 9, 10 (Unimak Island only), and 14–17—2 per day, 4 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island) 2 per day, 4 in possession	Oct. 8–Jan. 22.
Units 11, 12, 13 and 18–26—3 per day, 6 in possession	Sept. 1–Dec. 16.
Snipe—seasons and bag limits	
Units 1–7, 9, 10 (Unimak Island only), and 11–26—8 per day, 16 in possession	Sept. 1–Dec. 16.
Units 8 and 10 (except Unimak Island)—8 per day, 16 in possession	Oct. 8–Jan. 22.
Tundra Swans—seasons and bag limits	
Unit 22—1 swan, by registration permit only	Sept. 1–Oct. 30.
All other units	No open season.

Note.—The total combined bag limit for all Canada, white-fronted and snow geese is 6 per day and 12 in possession. In no unit may more than 4 per day, 8 in possession be any combination of Canada and white-fronted geese. In Units 1–9, and 14–18 no more than 2 per day, 4 in possession may be white-fronted geese.

UNCLASSIFIED GAME

Units and bag limits	Subsistence open season
Bat, shrew, rat, mouse, and porcupine—seasons and bag limits	
Units 1–26—No limit	No closed season.
Raven—seasons and bag limits	
Units 1–26	No open season.
Cormorant—seasons and bag limits	
Units 10, 17, 18, 22, and 23 No limit; however, a bird may only be taken if used for food or clothing, and no bird may be sold or offered for sale.	No closed season.
Crow—seasons and bag limits	
Units 1–9 and 15—40 per day	Mar. 1–Apr. 15, Sept. 1–Nov. 17.
Units 10–14 and 16–26	No open season.
Snowy Owl—seasons and bag limits	
Units 17, 18, 22, 23, and 26—No limit; however, a bird may only be taken if used for food or clothing, and no bird may be sold or offered for sale.	No closed season.
Units 1–16, 19–21, 24, and 25	No open season.
Magpie—seasons and bag limits	
Units 1–26	No open season.
Raccoon—seasons and bag limits	
Units 1–26—No limit	No closed season.

(w) Subsistence Trapping Seasons and Bag Limits.

It is lawful to trap for subsistence purposes a fur bearer only in a game management unit or a portion of a unit open to trapping in accordance with the open season and bag limit prescribed in this subsection. Bag limits and open seasons are based upon the regulatory year.

TRAPPING SEASONS—FUR BEARERS

Units and bag limits	Subsistence open season
Beaver—trapping seasons and bag limits	
Units 1 (except Unit 1(D)), 2, 3 (except Mitkof Island), and 4 (that portion east of Chatham Strait)—No limit	Dec. 1–May 15.
Unit 1(D)	No open season.
Unit 3, Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 4 (that portion west of Chatham Strait)	No open season.
Unit 5—No limit	Nov. 10–May 15.
Unit 6—20 per season	Feb. 1–Mar. 31.
Units 7 and 15—20 per season	Feb. 1–Mar. 31.
Units 8, 11, 13, 14(A), 14(B), and 16—30 per season	Nov. 10–Apr. 30.
Unit 9—40 per season	Jan. 1–Mar. 31.
Units 10 and 26	No open season.
Unit 12—15 per season	Nov. 1–Apr. 15.
Unit 14(C), that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, and the Twentymile River—20 per season.	Feb. 1–Mar. 31.
Remainder of Unit 14(C)	No open season.
Unit 17(A)—20 per season	Jan. 1–Jan. 31.
Units 17(B) and 17(C)—20 per season	Jan. 1–Feb. 28.
Unit 18—No limit	Nov. 1–June 10.
Units 19, 21, and 24—50 per season	Nov. 1–Apr. 15.
Unit 20(A)—25 per season	Feb. 1–Apr. 15.
Unit 20(B), that portion of the Chena River downstream from its confluence with the Little Chena River, and Badger (Pilledriver) Sough downstream from Plack Road.	No open per season; however, seasons may be set and bag limits, by permit only, to curb high beaver populations and reduce property damage.
Remainder of Unit 20(B) and Units 20(C), 20(E), and that portion of 20(D) draining into the north bank of the Tanana River, including the islands in the Tanana River—25 per season.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 per season	Feb. 1–Apr. 15.
Units 20(F) and 25 (except Unit 25(C))—50 per season	Nov. 1–Apr. 15.
Units 22(A) and 22(B)—50 per season	Nov. 1–June 10.
Remainder of Unit 22—50 per season	Nov. 1–Apr. 15.
Unit 23, the Kobuk and Selawik River drainages—50 per season	Nov. 1–June 10.
Remainder of Unit 23—30 per season	Nov. 1–June 10.
Unit 25(C)—25 per season	Nov. 1–Apr. 15.
Coyote—trapping seasons and bag limits	
Units 1–5—No limit	Dec. 1–Feb. 15.
Unit 6(C), that portion south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6, and Units 9–11, 13, 14(A), 14(B), and 16–18—No limit	Nov. 10–Mar. 31.
Units 7, 14(C), and 15—No limit	Nov. 10–Feb. 28.
Units 12 and 20(E)—No limit	Nov. 1–Feb. 28.
Units 19, 20 (except 20(E)), 21, 24, and 25—No limit	Nov. 1–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.
Fox, arctic, white, or blue—trapping seasons and bag limits	
Units 9, 10, and 17—No limit	Nov. 10–Feb. 28.
Unit 18—No limit	Nov. 10–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.
Fox, red (including the cross, black, or silver color phases)—trapping seasons and bag limits	
Units 1–5—No limit	Dec. 1–Feb. 15.
Units 6, 9–11, 13, 14(A), 14(B), 16, and 17—No limit	Nov. 10–Feb. 2.
Units 7, 14(C), and 15—One per season	Nov. 10–Feb. 28.
Unit 8—No limit	Nov. 10–Mar. 31.
Units 12, 20, 21, 24, and 25—No limit	Nov. 1–Feb. 28.
Unit 18—No limit	Nov. 10–Mar. 31.
Unit 19—No limit	Nov. 1–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.
Lynx—trapping seasons and bag limits	
Units 1–5—No limit	Dec. 1–Feb. 15.
Units 6, 11, 13, 14, 16—No limit	Dec. 15–Jan. 15.
Units 7, 8, 10, and 15	No open season.
Unit 18—No limit	Nov. 10–Mar. 31.
Units 9 and 17—No limit	Nov. 10–Feb. 28.
Units 12 and 20(E)—No limit	Nov. 1–Jan. 31.
Unit 19—No limit	Nov. 1–Feb. 28.
Remainder of Unit 20 and Unit 25(C)—No limit	Dec. 1–Jan. 31.
Unit 21—No limit	Nov. 1–Feb. 28.
Units 22 and 26—No limit	Nov. 1–Apr. 15.
Unit 23—Three lynx	Dec. 1–Jan. 15.
Unit 24—No limit	Nov. 1–Feb. 28.
Remainder of Unit 25—No limit	Nov. 1–Feb. 28.
Marten—trapping seasons and bag limits	
Units 1–4—No limit	Dec. 1–Feb. 15.
Unit 5—No limit	Nov. 10–Feb. 15.
Units 6–8, 11, and 13–16—No limit	Nov. 10–Jan. 31.
Units 9 and 17—No limit	Nov. 10–Feb. 28.
Units 12, 19, 20, 21, 24, and 25—No limit	Nov. 1–Feb. 28.
Unit 18—No limit	Nov. 10–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.

TRAPPING SEASONS—FUR BEARERS—Continued

Units and bag limits	Subsistence open season
Mink and weasel—trapping seasons and bag limits	
Units 1–4—No limit	Dec. 1–Feb. 15.
Unit 5—No limit	Nov. 10–Feb. 15.
Units 6–8, 11, 13–16, and 18—No limit	Nov. 10–Feb. 28.
Units 9, 10, and 17—No limit	Nov. 10–Feb 28.
Units 12, 19, 20, 21, 24, and 25—No limit	Nov. 1–Feb. 28.
Units 22, 23, and 26—No limit	Nov. 1–Jan. 31.
Muskrat—trapping seasons and bag limits	
Units 1–5—No limit	Dec. 1–Feb. 15.
Units 6, 8–11, 13, and 16–18—No limit	Nov. 10–June 10.
Units 7, 14, and 15—No limit	Nov. 10–May 15.
Units 12 and 20(E)—No limit	Sept. 20–June 10.
Units 19, 20 (except 20(E)), and 21–26—No limit	Nov. 1–June 10.
Otter—land trapping seasons and bag limits	
Units 1–4—No limit	Dec. 1–Feb. 15.
Unit 5—No limit	Nov. 10–Feb. 15.
Units 6, 9–11, 13, 14(A), 14(B), and 16–18—No limit	Nov. 10–Mar. 31.
Units 7, 14(C), and 15(C)—No limit	Nov. 10–Feb. 28.
Unit 8—No limit	Nov. 10–Jan. 31.
Units 11 and 13—No limit	Nov. 10–Apr. 15.
Units 12 and 19–26—No limit	Nov. 1–Apr. 15.
Units 15(A) and 15(B)—No limit	Nov. 10–Jan. 31.
Otter, sea—trapping seasons and bag limits	
Units 1–26	No open season.
Squirrel (red, flying, parka, or ground) and marmot—trapping seasons and bag limits	
Units 1–26—No limit	No closed season.
Wolf—trapping seasons and bag limits	
Units 1–5—No limit	Nov. 10–Apr. 30.
Units 6, 9, 10, 11, 13, 14(A), 14(B), and 16–18—No limit	Nov. 10–Mar. 31.
Units 7, 14(C), and 15—No limit	Nov. 10–Feb. 28 (season may be closed by emergency order).
Units 12 and 20(E)—No limit	Oct. 1–Apr. 30.
Units 19, 20 (except 20(E)), 21, 24, and 25—No limit	Nov. 1–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.
Wolverine—trapping seasons and bag limits	
Units 1–5—No limit	Nov. 10–Apr. 30.
Units 6–11, 13, 14, 15(B), 15(C), 16, and 17—No limit	Nov. 10–Feb. 28.
Unit 15(A)	No open season.
Units 12, 20, and 25(C)—No limit	Nov. 1–Feb. 28.
Unit 18—No limit	Nov. 10–Mar. 31.
Units 19, 21, 24, and 25 (except 25(C))—No limit	Nov. 1–Mar. 31.
Units 22, 23, and 26—No limit	Nov. 1–Apr. 15.

(x) A fur bearer may only be taken under this section by a person who possesses a valid State of Alaska trapping license, or by a resident of Alaska under the age of 16.

§ _____.24 Subsistence fishing.

(a) Regulations in this section apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska (derived from 5 AAC 01.001).

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the State of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section (derived from 5 AAC 01.005).

(c) The following definitions shall apply to all regulations contained in this section and in § _____.28 (derived from 5 AAC 39.105(d) and 39.975).

Abalone Iron is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

Anchor is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

Beam trawl is a trawl with a fixed net opening using a wood or metal beam.

Crab means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi*; *Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

Dipnet is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear is any type of hard hat or skin diving equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Fishing Site means a structure or vessel used by an Alaska Commercial Fisheries Entry Commission permit holder for providing shelter in support of the operation of stationary net gear.

Fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net is a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

Grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

Groundfish—Bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursuing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

Herring pound is an enclosure used primarily to retain herring alive over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hydraulic clam digger is a device using water or a combination or air and water to remove clams from their environment.

Inclusive season dates means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

Lead is a length of net employed for guiding fish into a seine or set gill net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Long line is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

Mechanical clam digger is a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine is a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Net gear site means the in-water location of stationary net gear.

Otter trawl is a trawl with a net opening controlled by devices commonly called otter doors.

Pelagic trawl is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with th seabed.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

Power gurdy troll gear consists of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy.

Purse seine is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

Rockfish means all species of the genus *Sebastes*.

Salmon stream means any stream used by salmon for spawning or for traveling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Scallop dredge is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Seine vessel means the largest vessel, as determined by keel length, used to operate a seine and the vessel from which the seine is set, and to which the seine is retrieved.

Set gill net is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel is a hand-operated implement for digging clams or cockles.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

To operate fishing gear means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirements.

Trawl is a bag-shaped net towed through the water to capture fish or shellfish.

(d) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing (derived from 5 AAC 01.010):

(i) Gear specified in paragraph c of this section.

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section or unless, prior to the sale, the prospective buyer or seller obtains a determination from the Board that the sale constitutes customary trade.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence-taken salmon or their parts. Further restrictions on the bartering of subsistence-taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live nonindigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish.—No person may possess, transport, give, receive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 01.030).

(f) Descriptions of Fishery Management Areas and Pertinent Restrictions.

(1) Kotzebue-Northern Area. The Kotzebue-Northern Area includes all waters of Alaska north of the latitude of the westernmost tip of Cape Prince of Wales and west of 141° W. long., including those waters draining into the Chukchi Sea and Arctic Ocean.

(i) Northern District: All waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and Chukchi Sea.

(ii) Kotzebue District: All waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(A) Subdistrict 1: All waters east of a line from the terminus of the Tukrok River to an Alaska Department of Fish and game regulatory marker located on the sandbar at 66°49' North latitude, 162°55' West longitude to an Alaska Department of Fish and Game marker located approximately two miles off Riley Wreck to an Alaska Department of Fish and Game marker located on the west bank of Riley Creek at 66°43' North latitude, 162°19' West longitude, and west of a line from a point one mile offshore from an ADF&G regulatory marker placed on the north shore of Hotham Inlet at 67°02' N.lat., 161°38' W.long., to a point one mile offshore from an ADF&G regulatory marker placed on the northern shore of the Baldwin Peninsula near the terminus of Singigrachak Creek (66°09' N.lat., 162°11' W.long.);

(B) Subdistrict 2: All waters at the mouth of the Noatak River inside a triangle defined by three points: the first point is located at the outlet of a small slough on the east side of the Noatak River at 69°59' North latitude, 162°29' West longitude; the west side of the triangle is located on a mud bar on the west side of the Noatak River extending between 68°77' North latitude, 162°34' West longitude and 68°57' North latitude, 162°32' West longitude;

(C) Subdistrict 3: All remaining waters in the Kotzebue District.

(iii) Fish may be taken at any time except that during the weekly fishing closures of the commercial salmon fishing season in the Kotzebue District commercial fishermen may not fish for subsistence programs.

(iv) Allowed gear and specifications

(A) Salmon may be taken only be gill nets or beach seines.

(B) Fish other than salmon may be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net; jigging gear, spear, and lead.

(C) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) In the Kotzebue District, kegs or buoys attached to subsistence gill nets may be any color except red.

(E) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in aggregate length nor 12 meshes in depth, nor have a mesh size larger than seven inches.

(F) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(G) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(v) Waters closed to subsistence fishing—In the Kotzebue District, the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and the Kelly River from its mouth to one-fourth mile upstream are closed to subsistence char fishing from June 1 through September 20.

(vi) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(vii) Only those residents domiciled in the Northern District, except for those domiciled in State of Alaska Game Management Unit 26–B, may take fish in that district.

(viii) Only those residents domiciled within 20 miles of the coast between Cape Prince of Wales and Point Hope, including the village of Noatak, may take herring and herring roe in that location.

(ix) Only those residents domiciled in the Kotzebue District may take salmon, sheefish, and char in the district.

(2) Norton Sound-Port Clarence Area. The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point Light, including the waters of Alaska surrounding St. Lawrence and those waters draining into the Bering Sea.

(i) The Port Clarence District consists of all waters between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of the westernmost tip of Cape Douglas.

(ii) The Norton Sound District consists of all waters between the latitude of the westernmost tip of Cape Douglas and the latitude of Canal Point Light. The following are regulatory subdistricts of the Norton Sound District:

(A) Subdistrict 1 consists of waters from the terminus of Penny River to the tip of Topkok Head;

(B) Subdistrict 2 consists of waters from the tip of Rocky Point to the southernmost tip of Cape Darby;

(C) Subdistrict 3 consists of waters from an Alaska Department of Fish and Game regulatory marker located three-fourths of a mile east of Elim village on Elim Point to the terminus of the Kwik River;

(D) Subdistrict 4 consists of waters from the terminus of the Kuluktulik River located eight miles southwest of Koyuk to the tip of Island Point;

(E) Subdistrict 5 consist of waters from the westernmost tip of Cape Denbigh to the terminus of Junction Creek located seven miles north of Egavik;

(F) Subdistrict 6 consist of waters from the terminus of Junction Creek located seven miles north of Egavik to the tip of Black Point.

(iii) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6:00 p.m. Thursday until 6:00 p.m. Tuesday.

(iv) In the Norton Sound District, fish may be taken at any time except as follows:

(A) In Subdistrict 1 from June 15 through August 31, salmon may be taken only from 6:00 p.m. Monday until 6:00 p.m. Wednesday and from 6:00 p.m. Thursday until 6:00 p.m. Saturday.

(B) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gill nets which have a mesh size that does not exceed 4½ inches, and with beach seines.

(C) In the Unalakleet River from June 1 through July 15, salmon may be taken from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(v) Salmon may only be taken by gill net, beach seine, or fishwheel.

(vi) Fish other than salmon may be taken by set gill net, drift net, beach seine, fishwheel, pot, long line, fyke net, jigging gear, spear, and lead.

(vii) A gill net may not obstruct more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(viii) In the Norton Sound District, kegs or buoys attached to subsistence gill nets may be any color except red.

(ix) Gill nets with a mesh size of less than 4½ inches and beach seines may not be used in the Sinuk River upstream of Alaska Department of Fish and Game regulatory markers placed two miles above the mouth, in the Nome River, and in the Solomon River upstream from Alaska Department of Fish and Game regulatory markers placed near the village of Solomon.

(x) In the Nome River, no person may operate more than 50 feet of gill net in the aggregate.

(xi) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gill net in the aggregate.

(xii) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(xiii) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xiv) In the Norton Sound District, fish may not be taken for subsistence purposes seaward of the mouth of the Unalakleet River in an area between Alaska Department of Fish and Game regulatory markers on each side of the river to an outer line established by Alaska Department of Fish and Game regulatory markers and buoys.

(xv) In the Port Clarence District, Salmon Lake, its tributaries, and within 300 feet of Alaska Department of Fish and Game regulatory markers placed at the outlet of Salmon Lake, are closed to subsistence fishing from July 15 through August 31.

(xvi) The Nome River, from its terminus upstream for a distance of 200 yards and upstream from an Alaska Department of Fish and Game regulatory marker located near Osborn, is closed to the taking of fish.

(xvii) Except as provided in this subsection, fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit is required as follows:

(A) In the Port Clarence District: Pilgrim River drainage including Salmon Lake;

(B) In the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) Only those residents domiciled within 20 miles of the coast between Cape Romanoff and Cape Prince of Wales and on St. Lawrence Island, may take herring and herring roe in those locations.

(xx) Only those residents domiciled in the Norton Sound-Port Clarence Area may take salmon in that area.

(3) Yukon Area. The Yukon Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those draining into the Bering Sea.

(i) District 1 consists of that portion of the Yukon River drainage from its terminus upstream to the northern edge of the mouth of the Anuk River and all waters of the Black River including waters within one nautical mile of its terminus.

(ii) District 2 consists of that portion of the Yukon River drainage from the northern edge of the mouth of the Anuk River upstream to an Alaska Department of Fish and Game regulatory marker located at Toklik, and includes the Anuk River drainage.

(iii) District 3 consists of that portion of the Yukon River drainage from an Alaska Department of Fish and Game regulatory marker located at Toklik upstream to an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village.

(iv) District 4 consists of the Yukon River from an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the western edge of the mouth of Illinois Creek at Kallands.

(A) Subdistrict 4–A consists of that portion of the Yukon River from an Alaska Department of Fish and Game regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the tip of Cone Point;

(B) Subdistrict 4–B consists of the Yukon River drainage from the tip of Cone Point upstream along the north bank of the river to the westernmost edge of Illinois Creek and includes the following islands: Cook, Lark, Serpentine, Louden, Fish, Dainty, Yuki, Melozi, Dasha, Straight, Kit, Fox, Hardluck, Mickey, Florence, Doyle, Chokoyik, Lady, Liner, Flora and Cronin;

(C) Subdistrict 4–C consits of the Yukon River drainage from the tip of Cone Point upstream along the south bank of the river to a point opposite the westernmost edge of Illinois Creek and includes the following islands: Cat, Hen, Jimmy, Big, Ninemile, Ham, Emerald, Edith, Kathaleen, Henry, Burns, Youngs, Weir, Clay, Large and Brant.

(v) District 5 consists of that portion of the Yukon River drainage (excluding the Tanana River drainage) from the western edge of the mouth of Illinois Creek to the U.S.-Canada border, and includes the Illinois Creek drainage.

(A) Subdistrict 5–A consists of the Yukon River drainage from a point opposite the westernmost edge of Illinois Creek upstream along the south back of the river to the easternmost edge of the Tanana River mouth and includes the following islands: Basco, Sword, Leonard, Still, Tanana and Mission;

(B) Subdistrict 5–B consists of the Yukon River drainage from the westernmost edge of Illinois Creek upstream along the north bank of the river to a point opposite the easternmost edge of the Tanana River mouth upstream along both banks of the Yukon River to the westernmost tip of Garnet Island and includes the following islands: Darvin, Little Joker, Station, Tozitna, Circle, Bull and Long;

(C) Subdistrict 5–C consists of the Yukon River drainage upstream from the westernmost tip of Garnet Island to Alaska Department of Fish and Game regulatory markers located approximately two miles downstream from Waldron Creek;

(D) Subdistrict 5–D consists of the Yukon River drainage from Alaska Department of Fish and Game regulatory markers located approximately two miles downstream from Waldron Creek upstream to the U.S.-Canada border.

(vi) District 6 consists of the Tanana River drainage to its confluence with the Yukon River.

(A) Subdistrict 6–A consists of that portion of the Tanana River drainage from its mouth upstream to the eastern edge of the mouth of the Kantishna River and includes the Kantishna River drainage.

(B) Subdistrict 6–B consists of that portion of the Tanana River drainage from the eastern edge of the mouth of the Kantishna River upstream to the eastern edge of the mouth of the Wood River and includes the Wood River drainage.

(C) Subdistrict 6–C consists of the Tanana River drainage from the eastern edge of the mouth of the Wood River upstream to the eastern edge of the mouth of the Salcha River and includes the Salcha River drainage.

(vii) Unless otherwise restricted, salmon may be taken in the Yukon Area at any time.

(viii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season:

(A) Districts 1, 2 and 3, except:

(*1*) Through July 19 in Districts 1 and 2 subsistence fishing periods will be established by emergency order every other weekend during commercial salmon fishing closures;

(*2*) After July 19 in District 1, except for the set net only locations, and in District 2, a 24 hour subsistence fishing period will be established by emergency order each weekend during commercial salmon fishing closures;

(B) District 4, excluding the Koyukuk and Innoko River drainages;

(*1*) In Subdistrict 4–A from June 15 through August 1, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(*2*) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 5, excluding the Tozitna River drainage and Subdistrict 5–D;

(D) District 6, excluding;

(*1*) The Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River;

(*2*) Subdistrict 6–B, from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(ix) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–B, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday;

(C) In Subdistrict 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(x) In Subdistrict 6–C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6:00 p.m. Monday until 6:00 p.m. Friday.

(xi) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(xii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this section.

(xiii) In Districts 1, 2, and 3, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh during periods established by emergency order.

(xiv) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xvi) Unless otherwise specified in this section, fish other than salmon may be taken only by set gill net, drift gill net, beach seine, fishwheel, long line, fyke net, dip net, jigging gear, spear, or lead, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes, except that in Subdistrict 4–A, upstream from the mouth of Stink Creek, a commercial fisherman may, at any time, assist subsistence fishermen in the operation of subsistence fishing gear;

(B) The aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net in use by an individual may not exceed 50 fathoms in length;

(C) In Subdistricts 4, 5 and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear;

(D) A gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing device may obstruct not more than one-half width of any salmon stream.

(xvii) Salmon may be taken only by set gill nets in those locations described in below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Gull Point;

(F) Waters of Kwikpak Pass downstream from Sea Gull Point;

(G) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(H) Waters within one nautical mile seaward from any grassland bank in District 1.

(xviii) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xix) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(xx) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xxi) The following locations in the upper Yukon River drainage are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit designating measures for the protection of other fish: the following streams and within 500 feet of their mouths: Birth Creek; Dall River, June 10 through September 10;

(xxii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the state highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(xxiii) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Gerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mount of Clearwater Creek after November 20.

(xxiv) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(xxv) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xxvi) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks are within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64°06′ N. lat., 145°34′ W. long), Richardson Clearwater Creek (Clear Creek at 64°14′ N. lat., 146°16′ W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between Alaska Department of Fish and Game regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xxvii) The following waters are closed to the taking of chum salmon from August 15 through December 31:

(A) Toklat River.

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xxviii) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(xxix) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from Alaska Department of Fish and Game regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.—Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B.

(xxx) In addition to the subsistence fishing permit conditions, permits issued for fish other than salmon may also designate restrictive measures for the conservation of salmon.

(xxxi) Only one subsistence fishing permit will be issued to each household per year.

(xxxii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel.

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Alaska Department of Fish and Game may require for management or conservation purposes.

(C) In that portion of Subdistrict 6–B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the State once each week, or as specified on the permit. In the remainder of Subdistrict 6–B and in Subdistrict 6–A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxiii) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, including the community of Stebbins, may take salmon in the Yukon Area.

(xxxiv) Only those residents domiciled in rural locations in the Yukon River Drainage, as determined by the Federal Board including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.

(xxxv) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, may take freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pie, char, and blackfish, in the Yukon Area.

(xxxvi) Only those residents domiciled within 20 miles of the coast between the terminus of the Black River and the westernmost point of the Naskonat Peninsula may take herring and herring roe in that location.

(xxxvii) In subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxviii) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxxix) A commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xl) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xli) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6–C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the department.

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367.

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(F) In Subdistrict 6–B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6:00 p.m. Friday through 6:00 p.m. Wednesday.

(xlii) Adjustments may have to be made to the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xliii) Salmon may be taken only by set gill net or fishwheel. No person may operate a gill net having a mesh size larger than six inches after a date specified by emergency order issued between July 5 through July 25.

(xliv) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the department.

(xlv) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(4) Kuskokwim Area. (i) The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of the Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(ii) District 1 is that portion of the Kuskokwin River upstream from a line from Apokak Slough (60°8′ North latitude, 162°12′ West longitude) to the southernmost tip of Eek Island to Popokamiut (60°4′ North latitude, 162°28′ West longitude) to a line between Alaska Department of Fish and Game regulatory markers located just upstream of the mouth of Bogus Creek.

(iii) District 2 is that portion of the Kuskokwim River from Alaska Department of Fish and Game regulatory markers located at the High Bluffs upstream to the Alaska Department of Fish and Game regulatory markers at the downstream edge of Chuathbaluk.

(iv) District 4 consists of Kuskokwim Bay between Alaska Department of Fish and Game regulatory markers placed at the westernmost edge of the mouth of the Arolik River.

(v) District 5 consists of that portion of Goodnews Bay inside a line between Alaska Department of Fish and Game regulatory markers placed near the bay entrance and a line between Alaska Department of Fish and Game markers placed near the mouth of the Ufigag River and on the opposite shore near the mouth of the Tunulik River.

(vi) Unless otherwise restricted, salmon may be taken in the Kuskokwim area at any time.

(vii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may be taken at any time except salmon may not be taken for 16 hours before, during and for six hours after, each open commercial salmon fishing period for District 1;

(viii) In District 1, Kuskokuak Slough only, salmon may be taken at any time except:

(A) From June 1 through July 31, salmon may not be taken for 24 hours before and during each open commercial salmon fishing period in the district.

(B) From August 1 through August 31, salmon may not be taken for 15 hours before and during each open commercial salmon fishing period in the district.

(ix) In Districts 4 and 5, salmon may be taken at any time except from June 1 through September 8, salmon may not be taken for 24 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(x) Except as otherwise provided, there is no closed season on fish other than salmon.

(xi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, salmon may be taken at any time, except that from June 1 through September 8 salmon may not be taken for 24 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(xii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this chapter, except that salmon may also be taken by spear in the Holitna River drainage.

(xiii) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(xiv) Fish other than salmon may only be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, or lead.

(xv) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(xvi) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakof River, no part of a set gill net located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gill net.

(xvii) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(xviii) Kegs or buoys attached to subsistence gill nets may be any color except red during any open weekly commercial salmon fishing period.

(xix) The maximum depth of gill nets is as follows:

(A) Gill nets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gill nets with greater than six-inch mesh may not be more than 35 meshes in depth;

(xx) In addition to the previously stated requirements,

(A) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(B) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xxi) The Goodnews River is closed to the subsistence taking of fish by nets east of a line between Alaska Department of Fish and Game regulatory markers placed near the mouth of the Ufigag River and Alaska Department of Fish and Game regulatory marker placed near the mouth of the Tunulik River 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xxii) The Kanektok River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during the six hours after each open commercial salmon fishing period.

(xxiii) The Arolik River is closed to the subsistence taking of fish by nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xxiv) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(xxv) Only those residents domiciled in the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB, may take salmon for subsistence purposes in the Kuskokwim Area.

(xxvi) Only those residents domiciled in the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak may take for subsistence purposes Pacific cod in the Kuskokwim area.

(xxvii) Only those residents domiciled within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island may take for subsistence purposes herring and herring roe in those locations.

(4) Bristol Bay Area. (i) The Bristol Bay Area consists of all waters of Bristol Bay including drainage enclosed by a line from Cape Newenham to Cape Menshikof.

(ii) Districts and Sections for salmon, bottomfish, and other finfisheries are described below.

(A) Nushagak District: All waters of Nushagak Bay north of a line from 58°33′48″ North latitude, 158°47′12″ West longitude (Nichols Hills) to 58°39′24″ North latitude, 158°19′12″ West longitude (Etolin Point):

(*1*) Igushik Section: All waters of Nushagak Bay bound by a line from 58°33′48″ North latitude, 158°47′12″ West longitude to 58°36′18″ North latitude, 158°34′36″ West longitude to 58°44′54″ North latitude, 158°41′24″ West longitude to 58°45′48″ North latitude, 158°46′36″ West longitude;

(*2*) Snake River Section: All waters bound by a line from 58°52′25″ North latitude, 158°43′10″ West longitude to 58°44′54″ North latitude, 158°41′24″ West longitude to 58°45′48″ North latitude, 158°46′36″ West longitude.

(*3*) Nushagak Section: All waters of the Nushagak district not described in paragraph (f)(5)(ii)(A) (*1*) and (*2*) of this section.

(B) Naknek-Kvichak District: All waters of Kvichak Bay north and east of Loran C line 9990–Y–32430 and divided as follows:

(*1*) Kvichak Section: All waters of Kvichak Bay north and east of Loran C line 9990–Y–32430 and north and west of a line from 58°36′30″ North latitude, 157°22′14″ West longitude to the outer end of the Libbyville dock then along the dock to shore.

(*2*) Naknek Section: All waters of the Naknek-Kvichak District not described in paragraph (f)(5)(ii)(A)(*1*) of this section.

(C) Egegik District: All waters north of Loran C line 9990–Y–32630, east of Loran C line 9990–Z–45140, and south of Loran C line 9990–Y–32570.

(D) Ugashik District: All waters south of Loran C line 9990–Y–32782 and east of a line connecting an Alaska Department of Fish and Game regulatory marker at Cape Menshikof (Loran C coordinates 9990–Y–32891 and 9990–Z–45229) with a point at the intersection of Loran C lines 9990–Y–32782 and 9990–Z–45150).

(E) Togiak District: All waters north of a line from Cape Newenham to Cape Pierce then to Right Hand Point then to Kulukak Point.

(*1*) Togiak River Section: Waters of Togiak Bay within a line from a marker on the near shore near Mt. Aeolus to a marker at Rocky Point;

(*2*) Kulukak Section: Waters of Kulukak Bay within a line bearing in a westerly direction from a marker at Kulukak Point to a marker on the shore at 159°45′ West longitude.

(*3*) Osviak Section: Waters within a line Estu Point and Asigyupak Spit at 58°41′ North latitude, 161°18′ West longitude;

(*4*) Matogak Section: Waters of Hagemeister Strait within a line between Estus Point and Tongue Point;

(*5*) Cape Peirce Section: Waters within a line from Cape Newenham to Cape Peirce.

(iii) The Districts and Sections for herring, herring spawn on kelp, and capelin fisheries are:

(A) The Togiak District consists of all waters of Alaska between the longitude of the tip of Cape Constantine and the longitude of the tip of Cape Newenham. Sections are as follows.

(1) Kulukak Section: All waters between the longitude of the tip of Cape Constantine and the longitude of the tip of Right Hand Point.

(2) Nanavachak Section: All waters between the longitude of the tip of Right Hand Point and a line extending south from the westernmost tip of Anchor Point;

(3) Togiak Section: All waters between a line extending south from the westernmost tip of Anchor Point and the longitude of the terminus of the Quigmy River;

(4) Hagemeister Section: All waters between the longitude of the terminus of the Quigmy River and the longitude of the tip of Asigyukpak Spit;

(5) Pyrite Point Section: All waters between the longitude of Asigyukpak Spit and the longitude of Cape Pierce;

(6) Cape Newenham Section: All waters between the longitude of the tip of Cape Pierce and the longitude of the tip of Cape Newenham.

(B) The Bay District consists of all waters of the Bristol Bay Area east of the longitude of the southernmost tip of Cape Constantine.

(C) The General District consists of all waters of the Bristol Bay Area west of the longitude of the southernmost tip of Cape Newenham.

(iv) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay Area.

(v) Within the waters of a district open during the commercial salmon fishing season, salmon may be taken only during open commercial salmon fishing periods. In the open waters of the Nushagak District, provision shall be made for subsistence salmon fishing by emergency order whenever there are commercial salmon fishing closures of five or more days. During these emergency order openings,

(A) Set gill nets may not be more than 10 fathoms in length;

(B) No set gill net may be set or operated within 450 feet of another set gill net, and

(C) Catches during the emergency order openings must be reported to the Dillingham Alaska Department of Fish and Game office within 24 hours after the closure.

(vi) From October 1 through December 31, sockeye salmon may be taken along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by Alaska Department of Fish and Game regulatory markers.

(vii) In the Nushagak District from an Alaska Department of Fish and Game regulatory marker located two statute miles south of Bradford Point to an Alaska Department of Fish and Game regulatory marker located at Red Bluff on the west shore of the Wood River, from 9:00 a.m. June 16 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Monday to 9:00 a.m. Tuesday, 9:00 a.m. Wednesday to 9:00 a.m. Thursday, and 9:00 a.m. Friday to 9:00 a.m. Saturday.

(viii) In the Naknek, Egegik, and Ugashik Rivers from 9:00 a.m. June 23 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(ix) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(x) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(xi) The maximum lengths for set gill nets used to take salmon are as follows:

(A) In the Naknek, Egegik and Ugashik Rivers, in the Nushagak District, and in Naknek Lake, set gill nets may not exceed 10 fathoms in length;

(B) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(xii) No part of a set gill net may be operated within 300 feet of any part of another set gill net, except in the Nushagak District from the Alaska Department of Fish and Game regulatory marker two statute miles below Bradford Point to a marker at Red Bluff on the west shore of Wood River, no part of a set gill net may be operated within 100 feet of any part of another set gill net.

(xiii) No set gill net may obstruct more than one-half the width of a stream.

(xiv) Each set gill net must be staked and buoyed.

(xv) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xvi) Fish, other than salmon, herring and capelin may be taken by gear previously listed unless restricted under the terms of a subsistence fishing permit.

(xvii) Herring spawn on kelp may be taken only by hand picking and hand operated rakes.

(xviii) During closed commercial herring fishing periods, gill nets used for the subsistence taking of herring or capelin may not exceed 25 fathoms in length.

(xix) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistance taking of fish within 300 feet of a stream mouth.

(xx) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski;

(xxi) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14:

Lower Talarik Creek
Middle Talarik Creek
Upper Talarik Creek
Pete Andrew Creek
Zacker Creek
Newhalen River
Roadhouse Creek
Alexi Creek
Taximina River
Young's Creek
Chekok Creek
Tomokok Creek
Nick G. Creek
Copper River
Kakhonak River
Gibralter River
Dennis Creek
Belinda Creek

(xxii) Metervik Bay is closed to herring fishing north of a line from an Alaska Department of Fish and Game regulatory marker at 58°49'6" North latitude, 156°47'15" West longitude to an Alaska Department of Fish and Game regulatory marker at 58°49'56" North latitude, 156°45'45" West longitude. This closure does not apply to the taking of herring spawn on kelp.

(xxiii) Ungalikthluk Bay is closed to the taking of herring north of a line from an Alaska Department of Fish and Game regulatory marker at Rocky Point (58°53'15" North latitude, 160°14'15" West longitude) to an Alaska Department of Fish and Game regulatory marker at 58°51'54" North latitude, 160°9'45" West longitude. This closure does not apply to the taking of herring spawn on kelp.

(xxiv) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(xxv) Only one subsistence fishing permit may be issued to each household per year.

(xxvi) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the Alaska Department of Fish and Game King Salmon office.

(xxvii) Only those residents domiciled in the Nushagak District and freshwater drainage flowing into the district may take salmon in the district and those drainage.

(xxviii) Only those residents domiciled in the Togiak District, freshwater drainage flowing into the district, and the community of Manokotak may take salmon and freshwater fish species in the district and those drainage.

(xxix) Only those residents domiciled in the Naknek and Kvichak River drainage may take salmon in the Naknek River drainage.

(xxx) Only those residents domiciled in the Iliamna-Lake Clark drainage may take salmon in the Iliamna-Lake Clark drainage.

(xxxi) Only those residents domiciled in the communities of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point, and Ekuk may take herring and herring roe on kelp in the waters of the Togiak District which consist of all waters of Alaska between the longitude of the tip of Cape Constantine and the longitude of the tip of Cape Newenham.

(xxxii) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(xxxiii) The total annual possession limit for a subsistence salmon fishing permit issued under this section is 200 sockeye salmon.

(6) Aleutian Islands Area. (i) The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° E. long., and south of 54°36' N. lat.

(A) Akutan District: All waters between Scotch Cap and Cape Sarichef Light and extending west to and including Akutan Pass. South of Scotch Cap, the eastern boundary of the district is a line extending from Scotch Cap through the easternmost tip of Ugamak Island.

(B) Unalaska District: All waters west of Akutan Pass to and including Umnak Pass

(1) Beaver Inlet Section: All waters between Cape Sedanka and Cape Kalekta and including Unalga Island;

(2) Unalaska Bay Section: All waters between Cape Kaalekta and Cape Kovrizhka;

(3) Makushin Bay Section: All waters between Cape Kovirzhka and Spray Cape;

(4) Kashega Bay Section: All waters between Spray Cape and Konets Head;

(5) Southern Section: All waters between Konets Head and Cape Sedanka.

(C) Umnak District: All waters west of Umnak Pass to and including Atka Pass.

(D) Adak District: All waters west of Atka Pass to the terminus of the Aleutian Islands.

(ii) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(iii) Fish other than salmon may be taken by gear previously, unless restricted under the terms of a subsistence fishing permit.

(iv) The waters of Unalaska Lake (at Unalaska Village), its drainage and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(v) The Adak District is closed to the taking of salmon.

(vi) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts. Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(7) Alaska Peninsula Area. (i) The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the Tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(ii) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(iii) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(iv) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(v) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(vi) No set gill net may exceed 100 fathoms in length.

(vii) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(c) Inshore of a line from the Pacific Pearl dock to Black Point, including the inlet and Humboldt Creek.

(viii) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(8) Chignik Area. (i) The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20'13" W. long., (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(ii) Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(iii) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(iv) Salmon may not be taken in the Chignik River, upstream from the Alaska Department of Fish and Game weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(v) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(vi) From June 10 through September 30, commercial fishing license holders may not subsistence fish for salmon.

(9) Kodiak Area. (i) The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°52' N. lat.), west of 150° W. long., north of 55°30' N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20'13" W. long.).

(ii) Salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through

December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel.

(iii) Fish other than salmon may be taken at any time unless restricted by the terms of a subsistence fishing permit.

(iv) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear previously listed.

(v) Salmon may be taken only by gill net and seine.

(vi) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All waters closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55'10" N. lat., 152°36' W. long. to 57°55'03" N. lat., 152°29'20" W. long.

(viii) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistance purposes during the commercial herring sac roe season from May 1 through June 30. All subsistence fisherman shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game by February 1 of the year following the year the permit was issued.

(ix) only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard base, may take salmon in the Kodiak Area. This restriction does not apply to the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitute of Cape Douglas (58° 52' North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" West longitude.)

(10) Cook Inlet Area. (i) The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°52' N. lat) and a line extending south from Cape Fairfield (148°40' W. long.).

(A) Northern District: North of a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, then to a point on the west shore at 60°46'23" N. lat.

(*1*) Eastern Subdistrict: All waters south of the latitute of Point Possession, north of the latitude of Boulder Point, and east of a line from Shell Platform C to a point at 61°02'40" N. Lat., 150°40' W. long.;

(*2*) In addition to paragraph (f)(10)(i)(A) (*1*) of this section, the Tyonek subdistrict includes those waters of the Northern District within mean lower tide from a point one mile south of the southern edge of the Chuitna River south of the easternmost tip of Granite Point.

(*3*) General Subdistrict: All waters of the Northern District not specified above.

(B) Central District: All waters between a line extending from Boulder Point at 60°46'23" N. lat., to Shell Platform C, to a point on the west shore at 60°46'23" N. lat., and the latitute of Anchor Point Light (59°46'12" N. lat.)

(*1*) Kustatan Subdistrict: All waters within a line from the Drift River terminal to the South Kalgin Island Light at 60°20'48" N. lat., 152°04'30" W. long., northerly along the west side of Kalgin Island to Northwest Point at 60°31'15" N. lat., 155°55'45" W. long., bearing 43° to Shell Platform C, to a point on the west shore at 60°46'23" N. lat., excluding the waters of the Kalgin Island Subdistrict;

(*2*) Upper Subdistrict: All waters within a line from Boulder Point to shell Platform C, then bearing 223° to Northwest Point at 60°31'15" N. lat., 151°55'45" W. long. then following the eastern shore of Kalgin island to the South Kalgin Island Light at 60°20'48" N. lat., 152°09'42" W. long., then bearing 142° to the Ninilchik small boat harbor, excluding the waters of the Kalgin Island Subdistrict;

(*3*) Kalgin Island Subdistrict: All waters within a line encompassing Kalgin Island within one mile of mean lower low water as delineated by the most recent U.S. Coast and Geodetic Survey chart number 8553;

(*4*) Lower Subdistrict: Waters between a line extending from Ninilchik small boat harbor, then bearing 136° to the South Kalgin Light at 60°20'48" N. lat., 152°09'42" W. long., then bearing 236° to a point one nautical mile from the bluff on the northwestern shore of Chisik Island at 60°10'30" N. lat., 152°35' W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59°56'5" N. lat., then bearing 270° to the shore, and the latitude of the Anchor Point Light, excluding the waters of the Chinta Bay and the Kalgin Islands Subdistricts;

(*5*) Western Subdistricts: Water within a line from the Drift River terminal to the South Kalgin Light at 60°20'48" N. lat., 152°09'42" W. long., then bearing 236° to a point one nautical mile from the bluff on the northeast shore of Chisik Island at 60°10'30" N. lat., 152°35' W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59°56'05" N. lat., then bearing 270° to the shore, excluding the waters of the Kalgin Island Subdistrict;

(*6*) Chinitna Bay Subdistrict: All waters in Chinitna Bay west of a line from Spring Point to Sea Otter Point.

(C) Southern District: All waters enclosed by a line from the westernmost tip of Anchor Point west to 59°46'15" N. lat., 162°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then in a northeasterly direction to the tip of Cape Elizabeth, then from the tip of Cape Elizabeth to the tip of Point Adam;

(*1*) Port Graham Subdistrict: All waters east of the longitude of Point Bede and south of the latitude Point Pogibshi;

(*2*) Seldovia Bay Subdistrict: All waters south of a line from Point Naskowhak, to Seldovia Point;

(*3*) Barbara Creek Subdistrict: All waters between the longitudes of Seldovia Point and Nubble Point and south of 59°30' N. lat.;

(*4*) Tutka Bay Subdistrict: All waters east of the longitude of Nubble Point and south of the latitude of Anisom Point on the eastern shore of Eldred Passage at 59°32'06" N. lat., 161°27'55" W. long., including Kasitnsa Bay;

(*5*) Humpy Creek Subdistrict: All waters east of a line from an Alaska Department of Fish and Game marker on Glacier Spit at 59°36' N. lat., 151°12'31" W. long., to the Northshore Subdistrict line at 59°38'15" N. lat., 151°18'45" W. long., and southeast of a line from that point on the Northshore Subdistrict line at 59°38'15" N. lat., 151°18'45" W. long., to a point north of Chugachik Island at 59°45' N. lat., 151°02'36" S. long., to a point on the mainland at 59°44'30" N. lat., 151°02'06" W. long.

(*6*) Northshore Subdistrict: All waters north of a line from Coal Point to a point north of Chugachik Island at 59°45' N. lat., 151°02'36" W. long., then northwesterly to a marker one-half statute mile southwest of the terminus of Swift Creek;

(*7*) China Poot Subdistrict: All waters south of a line from Peterson Point at 59°35'48" N. lat., 151°16'24" W. long., to Coal Point on the tip of the Homer Spit at 59°36'06" N. lat., 151°24'30" W. long. to 59°32'06" N. lat., 151°33'05" W. long. to Anisom Point.

(*8*) Halibut Cove Subdistrict: All waters within a line from a marker on Glacier Spit at 59°36' N. lat., 151°12'30" W. long., to the intersection of the Northshore Subdistrict line at 59°38'15" N. lat., 151°18'45" W. long., to Coal Point to Peterson Point.

(D) Kamishak Bay District: All waters enclosed by a line from 59°46'15" N. lat., 153°30' W. long., then east to 59°46'15" N. lat., 152°20' W. long., then south to 59°03'25" N. lat., 152°20' W. long., then southwesterly to Cape Douglas (58°52' N. lat.).

(*1*) Iniskin Bay Subdistrict: All waters north of a line from a point on the east shore of Iniskin Bay near Scott Island at 59°38'35" N. lat., 153°25'30" W. long., to a point north of South Head at 59°37'20" N. lat., 153°33'30" W. long.;

(*2*) Cottonwood Bay Subdistrict: All waters west of a line from South Head north to a point at 59°37'20" N. lat., 153°33'30" W. long.;

(*3*) Ursus Cove Subdistrict: All waters west of the longitude of Ursus Head and north 59°28'05" N. lat.;

(*4*) Rocky Cove Subdistrict: All waters between 59°25'05" N. lat., and 59°25' N. lat., and west of 153°40' W. long;

(*5*) Bruin Bay Subdistrict: All waters between 59°25' N. lat., and 59°29' N. lat., and west of 153°49' W. long.;

(*6*) Kamishak River Subdistrict: All waters east of a line from McNeil Head at 59°07'24" N. lat., 154°10'24" W. long. to the mushroom islet at 59°07'45' N. lat., 154°09'30" W. long. to the northern tip of Nordyke Island at 59°11' N. lat., 154°05' W. long., south of the latitude of the northern tip of Nordyke Island, and west of 153°50' W. long.;

(*7*) McNeil River Subdistrict: All waters southwest of a line from McNeil Head to a point of land at 59°09'30" N. lat., 154°12'45" W. long.;

(*8*) Chenik Subdistrict: All waters between 59°20' N. lat., and the latitude of the northern tip of Nordyke Island at 59°11' N. lat., 154°05' W. long., and west of 153°40' W. long.;

(*9*) Paint River Subdistrict: All waters south of the latitude of the northern tip of Nordyke Island at 59°11' N. lat., 154°05' W. long., west of a line from the northern tip of Nordyke Island to the mushroom islet at 59°07'45" N. lat., 154°09'30" W. long. to McNeil Head and east of a line from McNeil Head to a point of land at 59°09'30" N. lat., 154°12'45" W. long.;

(*10*) Douglas River Subdistrict: All waters west of the longitude of Cape Douglas (153°10'30" W. long.), south of the latitude of the northern tip of Nordyke Island at 59°11' N. lat., 154°05' W. long., and east of 153°50' W. long.

(E) Barren Island District: All waters enclosed by a line from Cape Douglas (58°52' N. lat.) to the tip of Cape Elizabeth, then south to 58°52' N. lat., 151°53' W. long., then west to Cape Douglas.

(F) Outer District: All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52' N. lat., 151°53' W. long., then east to the longitude of Aligo Point (149°44'33" W. long.), then north to the tip of Aligo Point.

(*1*) Koyuktolik Subdistrict: All waters east of the longitude of Point Adam and north of 59°13'55" N. lat.;

(*2*) Port Chatham Subdistrict: All waters north of 58°10' N. lat., and east of 151°50' W. long.;

(*3*) Windy Bay Subdistrict: All waters west of a line from 59°12'33" N. lat., 151°27'30" W. long., to 59°14'06" N. lat., 151°28'24" W. long.;

(*4*) Rocky Bay Subdistrict: All waters north of a line from 59°14'06" N. lat., 151°28'24" W. long., to 59°12'24" N. lat., 151°19'15" W. long.; Scurvey Creek Section: all waters northwest of a line from 59°34'30" N. lat., 151°28'24" W. long. to a point on the southwest corner of Picnic Harbor at 59°15'05" N. lat., 151°25' W. long.;

(*5*) Port Dick Subdistrict: All waters of Port Dick north of 59°13' 12" N. lat.;

(*i*) Port Dick North Section: All waters of the northern shore of West Arm bounded by a line from the marker at 59°16'40" N. lat., 151°16'56" W. long., south to a point 300 yards offshore then southeasterly to 59°16'50" N. lat., 151°05'55" W. long. then north to the waterfall at 59°16'40" N. lat.

(*ii*) Port Dick South Section: Waters of the subdistrict not included in the Port Dick North Section.

(*6*) Nuka Island Subdistrict: All waters of Nuka Passage north of a line from Front Point to Nuka Point and south of the latitude of Hardover Point;

(*7*) East Nuka Subdistrict: All waters of the East Arm of Nuka Bay north of the latitude of Harrington Point.

(G) Eastern District: All waters east of the longitude of Aligo Point (149°44'33" W. long.), west of the longitude of Cape Fairfield (148°50' W. long.), and north of 58°52' N. lat.

(*1*) Aialik Bay Subdistrict: All waters north of a line from Aligo Point to Aialik Cape;

(*2*) Resurrection Bay Subdistrict: All waters north of the latitude of Caines Head (59°59' N. lat.)

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(iii) Salmon may be taken for subsistence purposes only as follows:

(A) In the Tyonek subdistrict;

(*1*) From May 15 through June 15 from 4:00 a.m. to 8:00 p.m. on Tuesdays, Thursdays and Fridays;

(*2*) From June 16 through October 15 from 6:00 a.m. to 6:00 p.m. on Saturdays;

(*3*) The season described in paragraph (f)(10)(iii)(A) (*1*) of this section shall close by emergency order when 4,200 king salmon have been taken;

(*4*) The season described in paragraph (f)(10)(iii)(A) (*2*) of this section shall not open until July 1, if 4,200 king salmon are taken before June 16.

(B) In the Port Graham and Koyuktolik Subdistricts from April 1 through September 30 from 6:00 a.m. Monday until 6:00 a.m. Wednesday and from 6:00 a.m. Thursday until 6:00 a.m. Saturday;

(iv) Dolly varden may be taken in fresh water for subsistence purposes in the Port Graham Subdistrict only from April 1 through May 31.

(v) Only those residents domiciled in Port Graham and English Bay may take salmon in the Port Graham and Koyuktolik Subdistricts and dolly varden in fresh water in the Port Graham Subdistrict.

(vi) Only those residents domiciled in the village of Tyonek may take salmon in the Tyonek Subdistrict.

(vii) Unless otherwise restricted or under the terms of a subsistence fishing permit, fish may be taken by listed gear.

(viii) Salmon may be taken only as follows:

(A) In the Tyonek Subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth;

(B) In the Port Graham and Koyuktolik Subdistricts by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth;

(C) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(ix) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(x) Bottomfish may be taken by legal gear for commercial bottomfish in the area.

(xi) Smelt and herring may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(xii) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(xiii) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xiv) All salt water is closed to the taking of finfish except

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(xv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xvi) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xvii) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xviii) Whitefish may be taken only in the Tyonek River drainage and only under the authority of a permit issued by the department.

(xix) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port Graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits in (B) of this subsection; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area.

(i) The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(A) The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of the Slana River downstream to an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by Alaska Department of Fish and Game regulatory markers.

(*1*) The Chitina Subdistrict consists of all waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to an Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(*2*) The Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(iii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) In the Chitina Subdistrict, only when that subdistrict is open to the personal use salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(iv) Herring spawn on kelp may be taken only during the open commercial herring spawn on kelp season.

(v) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(vi) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict;

(C) In salt water by gill nets and seines.

(vii) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(viii) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(ix) Herring spawn on kelp may be taken only by a hand-held unpowered blade cutting device. Kelp plant blades must be cut at least four inches above the stipe (stem). The provisions of this subsection do not apply to "Fucus" species.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(xi) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xii) Crosswind Lake is closed to all subsistence fishing.

(xiii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xiv) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(xii) Gill nets may not be used in fresh waer, except for the taking of whitefish in the Tyonek River drainage.

(xiii) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xiv) All salt water is closed to the taking of finfish except

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(xv) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xvi) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xvii) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xviii) Whitefish may be taken only in the Tyone River drainage and only under the authority of a permit issued by the department.

(xix) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port Graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits if (B) of this subsection; the holder of a Tyonkek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area.

(i) The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(A) The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of the Slana River downstream to an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by Alaska Department of Fish and Game regulatory markers.

(*1*) The Chitina Subdistrict consists of all waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to an Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(*2*) The Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(iii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) In the Chitina Subdistrict, only when that subdistrict is open to the personal use salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because ofan inadequate escapement of sockeye or chinook salmon, the fishery may be reopened Stpebmer 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(iv) Herring spawn on kelp may be taken only durign the open commercial herring spawn or kelp season.

(v) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(vi) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict;

(C) In salt water by gil ents and seines.

(vii) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only oe fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(viii) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(ix) Herring spawn on kelp may be take only by a hand-held unpowered blade cutting device. Kelp plant blades must be cut at least four inches above the stipe (stem). The provisions of this subsection do not apply to "Fucus" species.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(xi) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xii) Crosswind Lake is closed ot all subsistence fishing.

(xiii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xiv) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(xv) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(xvi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xvii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) A subsistence salmon fishing permit for the Upper Copper River District will be issued only to a resident domiciled in Game Management Units 11, 13–A, 13–B, 13–C, and 13–D; in Game Management Unit 12 except that portion east of the Nabesna River and south of the winter trail running southeast from Pickerel Lake to the Canadian border; and in that road-connected area of Game Management Unit 20–D from Alaska Highway Milepost 1371.4 to Milepost 1347. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of the Slana River downstream ot an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek as designated by Alaska Department of Fish and Game regulatory markers.

(*1*) The Chitina Subdistrict consists of all waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River form the upstream edge of the bridge to an Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(*2*) The Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(iii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) In the Chitina Subdistrict, only when that subdistrict is open to the personal use salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because ofan inadequate escapement of sockeye or chinook salmon, the fishery may be reopened Stpebmer 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(iv) Herring spawn on kelp may be taken only durign the open commercial herring spawn or kelp season.

(v) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(vi) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict;

(C) In salt water by gil ents and seines.

(vii) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only oe fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(viii) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(ix) Herring spawn on kelp may be take only by a hand-held unpowered blade cutting device. Kelp plant blades must be cut at least four inches above the stipe (stem). The provisions of this subsection do not apply to "Fucus" species.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(xi) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xii) Crosswind Lake is closed ot all subsistence fishing.

(xiii) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xiv) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(xv) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the Alaska Department of Fish and Game regulatory marker located one quarter of a mile upstream of the bridge.

(xvi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xvii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) A subsistence salmon fishing permit for the Upper Copper River District will be issued only to a resident domiciled in Game Management Units 11, 13–A, 13–B, 13–C, and 13–D; in Game Management Unit 12 except that portion east of the Nabesna River and south of the winter trail running southeast from Pickerel Lake to the Canadian border; and in that road-connected area of Game Management Unit 20–D from Alaska Highway Milepost 1371.4 to Milepost 1347. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned to the Alaska Department of Fish and Game no later than October 31, or a permit for the following year may be denied.

(D) During closed fishing periods, the Alaska Department of Fish and Game's Chitina permit issuing station may be closed or operated at reduced hours to reduce costs.

(xx) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) 30 salmon for a household with one person;

(B) 60 salmon for a household with two persons;

(C) 10 salmon for each additional person in a household over two;

(D) Upon request, permits for additional salmon will be issued with the following limits:

(*1*) No more than a total of 200 salmon for a permit issued to a household with one person;

(*2*) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(xxi) No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(xxii) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit.

(xxiii) Salmon, other than chinook salmon, may be taken in the vicinity of the former native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G; permits may be issued only to those residents domiciled in the villages of Dot Lake and Mentasta;

(B) Salmon may be taken only in those waters of the Copper River between Alaska Department of Fish and Game regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between Alaska Department of Fish and Game regulatory markers identifying the open waters of the creek;

(C) Fishwheels and dipnets only may be used on the Copper River; dipnets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed by emergency order; fishing periods are to be established by emergency order and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a live box or be monitored at all times;

(F) The permit must be returned to the Alaska Department of Fish and Game's Glennallen office no later than September 30 of each year.

(xxiv) Subsistence salmon fishing permits for the Southwestern District and Green Island may be issued only to those residents domiciled in the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield and all waters surrounding Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in the Southwestern District, as described in above, and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Chenega Bay village.

(xxv) Subsistence salmon fishing permits for those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, may be issued only to those residents domiciled in the villages of Tatitlek and Ellamar. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, with a maximum mesh size of 6.25 inches, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Tatitlek village.

(12) Yakutat Area. (i) The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(iii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iv) When the length of the weekly commercial salmon net fishing period exceeds two days in the Yakutat Area salmon net fishery the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(v) Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take

(A) Herring and herring spawn in waters of Yakutat Bay, including Russell Fiord, within a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape;

(B) Bottomfish in waters of Yakutat Bay, including Russell Fjord, and in waters of Alaska from Point Manby to Ocean Cape bounded by Loran C lines 7900-Y-30830 and 7980-Y-30430;

(C) Salmon in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to the Tsiu River, in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape, and in waters of Icy Bay inside a line from the Westernmost tip of Point Riou to Icy Cape Light;

(D) Dolly varden char, steelhead trout, and smelt in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to Point Manby, and in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(vi) Fish may be taken by gear previously listed, unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(ix) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(x) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(xi) Subsistence fishermen must remove the dorsal fin from subsistence caught slamon when taken.

(13) Southeastern Alaska Area. (i) The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(A) District 1: All waters east and north of a line from the southernmost tip of Caamano Point to 54°40′ N. lat., 131°45′ W. long., and north of a line from 54°40′ N. lat., 131°45′ W. long., 54°42′29″ N. lat., 130°36′55″ W. long.

(*1*) Section 1–A: All waters of Portland Canal north of the latitude of Hattie Island light;

(*2*) Section 1–B: All waters south of Section 1–A and east and south of a line extending three miles bearing 297° from the range marker located at Foggy Point (54°55′32″ N. lat., 130°58′30″ W. long.) and then south to intersect a line between Barren Island Light and Lord Rock Light, then to Lord Rock Light, and then to the southern boundary of district 1;

(*3*) Section 1–C: Waters of the district between a line from a point at 55°11′47″ N. lat., 131°05′08″ W. long., located on Point Sykes to a point at 55°12′13″ N. lat., 131°05′42″ W. long., located one-half mile northwest of Point Sykes to Point Alava, and a line from Point Eva to Cactus Point;

(*4*) Section 1–D: Waters of the district between a line from Point Eva to Cactus Point and a line from Nose Point to Snail Point;

(*5*) Section 1–E: Waters of the district between a line from Caamano Point to Point Higgins and a line from Nose Point to Snail Point;

(*6*) Section 1–F: All other waters of the District.

(B) District 2: All waters south of a line from the easternmost tip of Narrow Point to the northernmost tip of Lemesusrier Point, west of District 1 and east of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long.

(C) District 3: All waters north of a line from Point Marsh Light to 54°40′ N. lat., 132°17′30″ W. long. to the southernmost tip of Cape Muzon and east of a line from the northernmost tip of Eagle Point on Dall Island and passing successively through the southernmost tip of Point Arboleda, the northernmost tip of Point San Roque, the southernmost tip of Cape Ulitka, the northeasternmost tip of Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island, and south of the latitude of Aneskett Point (56°06′50″ N. lat.);

(*1*) Section 3–A: Waters of the district south of 55° 15′ N. lat., excluding waters of Meares Passage;

(*2*) Section 3–B: Waters of the district south of the latitude of Cape Lynch (55°47′ N. lat.) and north of 55°15′ N. lat., including all waters of Meares Passage;

(*3*) Section 3–C: Waters of the district north of the latitude of Cape Lynch (55°47′ N. lat.);

(D) District 4: All waters north of Cape Muzon, west of District 3, and south of a line from Helm Point on Coronation Island to Cape Lynch.

(E) District 5: Waters of Sumner Strait, north and east of a line from Cape Decision of Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point Light in Keku Strait.

(F) District 6: All waters of Clarence Strait north of a line from Narrow Point to Lemesuriere Point to Ernest Point to the most southerly point of Etolin Island. Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows south and west of a line from Prolewy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal;

(*1*) Section 6–A: Waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barrie to the tip of Point Baker;

(*2*) Section 6–B: Waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock Light to Key Reef Light to Nesbitt Reef Light to the tip of Point Nesbitt.

(*3*) Section 6–C: Waters enclosed by a line from Lincoln Rock Light to the westernmost point of Screen Islands to the westernmost point of Marsh Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef Light to Key Reef Light to Lincoln Rock Light;

(*4*) Section 6–D: all other waters of the district.

(G) District 7: All contiguous waters of Ernest Sound and Bradfield Canal east of a line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point;

(*1*) Section 7–A: Waters of the district north of the latitude of Point Eaton;

(*2*) Section 7–B: Waters of the district south of the latitude of Point Eaton.

(H) District 8: Waters of Frederick Sound south of a line from Wood Point to beacon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point;

(*1*) Section 8–A: Waters of the district north of a line from Blaquiere Point to Kakwan Point.

(*2*) Section 8–B: Waters of the district south of a line from Blaquiere Point to Kakwan Point.

(H) District 9: All waters of Frederick Sound and Chatham Strait south of the latitude of the southernmost tip of Point Gardner, south of the latitude of the southernmost tip of Elliott Island and west of a line from the southernmost tip of Elliott Island to the westernmost tip of Point Macartney, north and west of a line from the northernmost tip of Point Camden to Salt Point Light, north and east of a line from the southernmost tip of Cape Decision to the southernmost tip of Hein Point to the westernmost tip of Hazy Islands to Cape Ommaney Light;

(I) Section 9–A: Waters of the district west of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner;

(J) Section 9–B: Waters of the district east of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(K) District 10: Frederick Sound, Stephens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to the southern tip of Elliott Island, north of the latitude of the southern tip of Elliott Island, Seymour Canal south of 57°37' N. lat., and south of a line from Point League to Point Hugh.

(K) District 11: Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north of 57°37' N. lat., south of the latitude of Little Island Light, and east of a line from Little Island Light to Point Retreat Light;

(1) Section 11–A: Waters of the district north and west of a line from a point at 56°12'20" N. lat., 134°10' W. long., to the Coast Guard marker and Light on Point Arden;

(2) Section 11–B: Waters of the district north of the latitude of Midway Island Light and south and east of a line from a point at 56° 12' 20" N. lat., 134° 10' W. long., to the Coast Guard marker and Light on Point Arden.

(3) Section 11–C: Waters of the district south of the latitude of Midway Island Light to a line from Point League to Point Hugh;

(4) Section 11–D: All waters of Seymour Canal north of 57° 37' N. lat.

(L) District 12: All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverdon to Point Augusta, and east of a line from Point Hayes to Point Thecher.

(1) Section 12–A: All waters of Chatham Strait south of the latitude of Point Couverdon (58° 11' 25" N. lat.) to the latitude of Point Gardner (57° 01' N. lat.), east of a line from the southeasternmost tip of Point Hayes to the northernmost tip of Point Thacher;

(2) Section 12–B: All waters of Lynn Canal south of the latitude of Little Island Light, west of a line from Little Island Light to Point Retreat Light and north of the latitude of Point Couverdon (58° 11' 25" N. lat.).

(M) District 13: All waters north of the latitude of the southernmost tip of Helm Point and west of a line from the southernmost tip of Helm Point to the westernmost tip of Hazy Island to Cape Ommaney Light, south of a line projecting west from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost tip of Point Thacher.

(1) Section 13–A: All waters north of 57° 16' N. lat. and those waters of Peril Strait south of the latitude of Pogibahi Point (57° 30' 30" N. lat.);

(2) Section 13–B: All waters south of 57° 16' N. lat.;

(3) Section 13–C: Waters of the district north of the latitude of Pogibahi Point and west of a line from Point Hayes to Point Thatcher in Peril Strait.

(N) District 14: All waters of Icy Strait west of a line from the southernmost tip of Point Couverdan to Point Augusta Light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point;

(1) District 14–A: Waters of the district west of a line beginning at 58°13' N. lat., 135°57' W. long. to Lemesurier Island to Point Caroline;

(2) Section 14–B: Waters of the district east of a line beginning 58°13' N. lat., 136°57' W. long. to Lemesurier Island to Point Caroline and west of a line from Point Sophia to Excursion Point at 58°22'30" N. lat., 136°28' W. long.;

(3) Section 14–C: Waters of the district east of a line from Point Sophia to Excursion Point at 58°22'30" N. lat., 135° 28' W. long.

(O) District 15: All waters of Lynn Canal north of the latitude of Little Island Light;

(1) Section 15–A: All waters of the district north of the latitude of Sherman Rock Light;

(2) Section 15–B: Waters of Berners Bay east of a line from Point St. Mary to Point Bridget;

(3) Section 15–C: All waters of the district south of the latitude of Sherman Rock Light, except for the waters of Section 15–B.

(P) District 16: All waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(Q) Dixon Entrance District: All waters east of 136°45'20" W. long., south of the southern boundaries of Districts 1, 2, 3 and 4 and north of a line from 54°43'30" N. lat., 130°37'37" W. long., to 54°43'24" N. lat., 130°37'39" W. long., to 54°43'15" N. lat., 130°37'44" W. long., to 54°43'00" N. lat., 130°37'55" W. long., to 54°42'58" N. lat., 130°37'57" W. long., to 54°42'47" N. lat., 130°38'06" W. long., to 54°42'22" N. lat., 130°38'28" W. long., to 54°41'09" N. lat., 130°38'58" W. long., to 54°39'54" N. lat., 130°36'56" W. long., to 54°39'14" N. lat., 130°39'18" W. long., to 54°39'48" N. lat., 130°41'35" W. long., to 54°40'03" N. lat., 130°42'22" W. long., to 54°40'42" N. lat., 130°44'43" W. long., to 54°40'41" N. lat., 130°44'59" W. long., to 54°40'46" N. lat., 130°45'51" W. long., to 54°41'08" N. lat., 130°48'31" W. long., to 54°41'05" N. lat., 130°49'17" W. long., to 54°41'21" N. lat., 130°53'18" W. long., to 54°41'26" N. lat., 130°53'39" W. long., to 54°42'27" N. lat., 130°56'18" W. long., to 54°42'36" N. lat., 130°57'09" W. long., to 54°43'00" N. lat., 130°57'41" W. long., to 54°43'40" N. lat., 130°58'55" W. long., to 54°44'12" N. lat., 130°59'44" W. long., to 54°45'39" N. lat., 131°03'06" W. long., to 54°46'16" N. lat., 131°04'43" W. long., to 54°42'11" N. lat., 131°13'00" W. long., to 54°11' N. lat., 134°01'52" N. lat., 131°13'54" W. long., to 54°38'09" N. lat., 131°16'17" W. long., to 54°36'52" N. lat., 131°19'22" W. long., to 54°29'53" N. lat., 131°33'48" W. long., to 54°30'32" N. lat., 131°36'01" W. long., to 54°28'16" N. lat., 131°45'20" W. long., to 54°26'41" N. lat., 131°49'28" W. long., to 54°21'51" N. lat., 132°03'54" W. long., to 54°24'53" N. lat., 132°23'39" W. long., to 54°24'41" N. lat., 132°26'29" W. long., to 54°24'41" N. lat., 132°24'35" W. long., to 54°24'39" N. lat., 132°28'51" W. long., to 54°24'34" N. lat., 132°38'16" W. long. to 54°24'54" N. lat., 132°39'46" W. long., to 54°26'09" N. lat., 132°44'12" W. long., to 54°27'07" N. lat., 132°49'35" W. long., to 54°27'07" N. lat., 132°50'42" W. long., to 54°28'25" N. lat., 132°55'54" W. long., to 54°28'32" N. lat., 132°56'28" W. long., to 54°30'03" N. lat., 133°07'00" W. long., to 54°30'10" N. lat., 133°07'43" W. long., to 54°30'42" N. lat., 133°11'26" W. long., to 54°31'02" N. lat., 133°14'00" W. long. to 54°30'06" N. lat., 133°16'58" W. long., to 54°22'01" N. lat., 133°44'24" W. long., to 54°20'33" N. lat., 133°49'21" W. long., to 54°15'40" N. lat., 134°19'49" W. long., to 54°12'57" N. lat., 134°23'47" W. long., to 54°12'45" N. lat., 134°25'03" W. long., to 54°07'30" N. lat., 134°56'24" W. long., to 54°00'01" N. lat., 135°45'57" W. long., to 53°28'27" N. lat., 138°45'20" W. long.

(ii) Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska Area at any time.

(iii) Herring may be taken at any time except that vessels licensed as commercial fishing vessels may not be used to take herring for personal use in any district that is open for commercial herring fishing for 72 hours before, during and 72 hours after any open commercial herring fishing period for that district when the vessel has aboard it any person holding a Southeastern Alaska Area winter bait herring or herring sac roe interim-use or entry permit.

(iv) Coho salmon may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(v) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(vi) Finfish may be taken for subsistence purposes only as provided in this section:

(A) Klukwan: Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(B) Haines: Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainage of Excursion Inlet, may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(c) Hoonah: Only those residents domiciled in the City of Hoonah and in Chichagof Island drainage on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take herring, herring spawn, and bottomfish in waters of District 14 east of the longitude of Point Dundas; and salmon, smelt, and dolly varden char in waters of section 14–B and 14–C, in District 13 in waters along the western shore of Yakobi Island east of a line from Cape Spencer Light to Surge Bay Light, and in District 12 in waters of Basket Bay inside a line from 57°39'50" N. lat., 134°53'12" W. long. to 57°39'17" N. lat., 134°53'53" W. long.

(D) Angoon: Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island, may take herring, herring spawn, and bottomfish in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in Section 13–C east of the longitude of Point Elizabeth; and salmon and dolly varden char in waters of District 12 south of a line from Fishery Point to South Passage Point and north of the latitude of Point Caution and in waters of Section 13–C east of the longitude of Point Elizabeth.

(E) Sitka: Only those residents of the City and Borough of Sitka domiciled in drainage which empty into Section 13–B north of the latitude of Dorothy Narrows, except those domiciled in the U.S. Coast Guard base on Japonski Island, may take herring and herring spawn in waters of Section 13–B north of the latitude of Aspid Cape; and sockeye salmon in waters of Section 13–A south of the latitude of Cape Edward, in waters of Section 13–B north of the latitude of Redfish Cape, and in waters of Section 13–C.

(F) Kake: Only those residents domiciled in the City of Kake and in Kupreanof Island drainage into Keku Strait south of Point White and north of the Portage Bay boat harbor may take herring, herring spawn, and bottomfish in waters of Section 9–B north of the latitude of Point Ellis, in waters of District 10 west of a line from Pinta Point to Point Pybus, and in waters of District 5 north of 56°40' N. lat.; and salmon and dolly varden char in Sections 9–A and 9–B in waters north of the latitude of Swain Point, in waters of District 10 west of a line from Pinta Point to False Point Pybus, and in waters of District 5 north of a line from Point Barrie to Boulder Point.

(G) Saxman: Only those residents domiciled in the City of Saxman may take herring and herring spawn in waters of Section 1–F between Point Sykes and Foggy Point to a distance of 2 nautical miles from shore; bottomfish in waters of Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra, and in waters of Section 1–E south of the latitude of Grant Island light; and salmon and dolly varden char in waters of Section 1–C in Checats Cove east of the longitude of Edith Point, in waters of Section 1–D in Yes Bay north of a line from Syble Point to Bluff Point, in Section 1–E in waters of Helm Bay north of the latitude of Helm Point and in waters of the Naha River and Roosevelt Lagoon, and in Section 1–F in waters of George Inlet north of 55°26' N. lat. and in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.

(H) Kassan: Only those residents domiciled in the City of Kassan and in the drainage of the southeastern shore of the Kassan Peninsula west of 132°20' W. long. and east of 132°25' W. long. may take herring and herring spawn in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kassan Peninsula, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long.; and salmon, dolly varden char, and bottomfish in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kassan Peninsula.

(I) Klawock: Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Kalwock Heenya Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly varden char, and steelhead trout in Section 3–B in waters east of line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55°44' N. lat., 133°25' W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55°48' N. lat. and east of 133°20' W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(J) Craig: Only those residents domiciled in the City of Craig and on

Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly warden char, and steelhead trout in Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point of Hecata Island at 55°44' N. lat., 133°25' W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55°48' N. lat. and east of 133°20' W. long, and in waters of Sarkar Cove and Sarkar Lakes.

(K) Hydaburg: Only those residents domiciled in the townsite of Hydaburg may take herring and herring spawn in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133°20' W. long.; bottomfish in waters of Section 3–A, and in waters of Section 3–B south of the latitude of Bocas Point, excluding Port Refugio; and salmon and dolly varden char in waters of Section 3–A and in waters of District 2 in Nichols Bay north of 54°42' 07" N. lat.

(vii) Fish may be taken by gear previously listed except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge;

(C) Beach seines and gaffs only may be used to take coho salmon during the season and including coho salmon which may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(viii) The following waters are closed to subsistence salmon fishing: in District 15, saltwaters of Lynn Canal including Chilkat, Chilkoot and Lutak Inlets, during the closed period of the commercial salmon net fishery in the district, except that salmon may be taken in saltwaters of Lutak Inlet on the Saturday before any period that the commercial salmon net fishery is open in the inlet to the terminus of the Chilkoot River.

(ix) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.

(x) Permits will not be issued for taking chinook or coho salmon, except for coho salmon as provided in Salt Lake and Mitchell Bay from August 1 through October 31, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report and chinook or coho salmon taken in this manner on his or her permit calendar.

(xi) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(xii) Subsistence salmon fishing permits for the fishery provided for Salt Lake and Mitchell Bay will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(xiii) When issuing a herring spawn on kelp subsistence fishing permit, ADF&G may specify on the permit the times and locations for harvesting and the species of kelp that may be taken. The annual possession limit for herring spawn on kelp is 32 pounds for an individual or 156 pounds for a household of two or more persons. ADF&G will, in its discretion, issue an additional permit for herring spawn on kelp above the annual possession limit if harvestable surpluses of herring spawn on kelp are available.

(xiv) Before July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay only by residents of Angoon. On and after July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay by residents of both Angoon and Sitka.

(xv) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(xvi) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(xvii) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

(xviii) In the waters of the Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

(xix) no person may possess subsistence-taken and sport-taken salmon on the same day.

§ _____.25 [Reserved]

§ _____.26 Subsistence shellfish.

(a) Regulations in this section apply to subsistence fishing on public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts. The descriptions of legal types of gear and definitions in § _____.24(c) are applicable to the regulations of this section (derived from 5AAC 02.001).

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section and § _____.24 (derived from 5 AAC 0.2.005).

(c) Methods, means, and general restrictions. (1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing (derived from 5 AAC 02.010):

(i) Gear specified in § _____.24(c);

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bearing Sea.

(6) Each subsistence fisherman shall plainly and legibly inscribe his/her first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tied down straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in paragraph (c)(6) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) *Subsistence Take by Commercial Vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered (derived from 5 AAC 02.025).

(e) *Unlawful possession of Subsistence Shellfish.* No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 02.030).

(f) *Descriptions of Subsistence Shellfish Areas and Pertinent Restrictions*—(1) Southeastern Alaska-Yakutat Area. (i) The Southeastern Alaska-Yakutat area has as its western boundary the longitude of Cape Suckling (143° 53' West longitude), its southern boundary the International Boundary at Dixon Entrance, and its seaward boundary the 400-fathom (732 m) depth contour.

(A) District 1: All waters east and north of a line from the southernmost tip of Caamano Point to 54°40' N. lat., 131°45' W. long., and north of a line from 54°40' N. lat., 131°45' W. long., 54°42'29" N. lat., 130°36'55" W. long.

(*1*) Section 1–A: All waters of Portland Canal north of the latitude of Hattie Island light;

(*2*) Section 1–B: All waters south of Section 1–A and east and south of a line extending three miles bearing 297° from the range marker located at Foggy Point (54°55'32" N. lat., 130°58'30" W. long.) and then south to intersect a line between Barren Island Light and Lord Rock Light, then to Lord Rock Light, and then to the southern boundary of district 1;

(*3*) Section 1–C: Waters of the district between a line from a point at 55°11'47" N. lat., 131°05'08" W. long., located on Point Sykes to a point at 55°12'13" N. lat., 131°05'42" W. long., located one-half mile northwest of Point Sykes to Point Alava, and a line from Point Eva to Cactus Point;

(*4*) Section 1–D: Waters of the district between a line from Point Eva to Cactus Point and a line from Nose Point to Snail Point;

(*5*) Section 1–E: Waters of the district between a line from Caamano Point to Point Higgins and a line from Nose Point to Snail Point;

(*6*) Section 1–F: All other waters of the District.

(B) District 2: All waters south of a line from the easternmost tip of Narrow Point to the northernmost tip of Lemesurier Point, west of District 1 and east of a line from Point Marsh Light to 54°40' N. lat., 132°17'30" W. long.

(C) District 3: All waters north of a line from Point Marsh Light to 54°40' N. lat., 132°17'30" W. long. to the southernmost tip of Cape Muzon and east of a line from the northernmost tip of Eagle Point on Dall Island and passing successively through the southernmost tip of Point Arboleda, the northernmost tip of Point San Roque, the southernmost tip of Cape Ulitka, the northeasternmost tip of Cape Lynch to the southwest entrance point of Halibut Harbor on Kosciusko Island , and south of the latitude of Aneskett Point (55°08'50" N. lat.);

(*1*) Section 3–A: Waters of the district south 55°15' N. lat., excluding waters of Meares Passage;

(*2*) Section 3–B: Waters of the district south of the latitude of Cape Lynch (55°47' N. lat.) and north of 55°15' N. lat., including all waters of Meares Passage;

(*3*) Section 3–C: Waters of the district north of the latitude of Cape Lunch (55°47' N. lat.);

(D) District 4: All waters north of Cape Muzon, west of District 3, and south of a line from Helm Point on Coronation Island to Cape Lynch.

(E) District 5: Waters of Sumner Strait, north and east of a line from Cape Decision of Helm Point to Cape Lynch to the southwest entrance point of Halibut Harbor, and north of the latitude of Aneskett Point, west of a line from Point Baker to Point Barrie, and south of a line from Point Camden to Salt Point Light in Keku Strait.

(F) District 6: All waters of Clarence Strait north of a line from Narrow Point to Lemesuriere Point to Ernest Point to the most southerly point on Etolin Island. Stikine Strait south of the latitude of Round Point, Sumner Strait west of a line from Point Alexander to Low Point, and east of a line from Point Baker to Point Barrie, Wrangell Narrows south and west of a line from Prokasy Point to the northern tip of Mitkof Island, and all waters of Duncan Canal;

(*1*) Section 6–A: Waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barrie to the tip of Point Baker;

(*2*) Section 6–B: Waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock Light to Key Reef Light to Nesbitt Reef Light to the tip of Point Nesbitt.

(*3*) Section 6–C: Waters enclosed by a line from Lincoln Rock Light to the

westernmost point of Screen Islands to the westernmost point of Marsh Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef Light to Key Reef Light to Lincoln Rock Light;

(4) Section 6–D: All other waters of the district.

(G) District 7: All contiguous waters of Ernest Sound and Bradfield Canal east of a the line from Lemesurier Point to Ernest Point to the most southerly point of Etolin Island, Zimovia Strait south of the latitude of Nemo Point, and Eastern Passage and Blake Channel south of a line from Babbler Point to Hour Point;

(1) Section 7–A: Waters of the district north of the latitude of Point Eaton;

(2) Section 7–B: Waters of the district south of the latitude of Point Eaton;

(H) District 8: Waters of Frederick Sound south of a line from Wood Point to becon Point (excluding Wrangell Narrows), Stikine Strait, Sumner Strait, Zimovia Strait and Eastern Passage inside a line from Point Alexander to Low Point to Round Point to Nemo Point to Hour Point to Babbler Point;

(1) Section 8–A: Waters of the district north of a line from Blaquiere Point to Kakwan Point.

(2) Section 8–B: Waters of the district south of a line from Blaquire Point to Kakwan Point.

(I) District 9: All waters of Frederick Sound and Chatham Strait south of the latitude of the southernmost tip of Point Gardner, south of the latitude of the southernmost tip of Elliott Island and west of a line from the southernmost tip of Elliott Island to the westernmost tip of Point Macartney, north and west of a line from the nothernmost tip of Point Camden to Salt Point Light, north and east of a line from the southernmost tip of Cape Decision to the southernmost tip of Helm Point to the westernmost tip of Hazy Islands to Cape Ommaney Light;

(1) Section 9–A: Waters of the district west of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(2) Section 9–B: Waters of the district east of a line from Nation Point on Coronation Island to the latitude of Point Gardner two miles west of Point Gardner.

(J) District 10: Frederick Sound, Stephens Passage and contiguous waters north of a line from Beacon Point to Wood Point, east of a line from Point Macartney to the southern tip of Elliott Island, north of the latitude of the southern tip of Elliott Island, Seymour Canal south of 57°37′ N. lat., and south of a line from Point League to Point Hugh.

(K) District 11: Stephens Passage and contiguous waters north of a line from Point League to Point Hugh and Seymour Canal north of 57°37′ N. lat., south of the latitude of Little Island Light, and east of a line from Little Island Light to Point Retreat Light;

(1) Section 11–A: Waters of the district north and west of a line from a point at 58°12′20″ N. lat., 134°10′ W. long., to the Coast Guard marker and Light on Point Arden;

(2) Section 11–B: Waters of the district north of the latitude of Midway Island Light and south and east of a line from a point at 58°12′20″ N. lat., 134°10′ W. long., to the Coast Guard marker and light on Point Arden.

(3) Section 11–C: Waters of the District south of the latitude of Midway Island Light to a line from Point League to Point Hugh;

(4) Section 11–D: All waters of Seymour Canal north of 57°37′ N. lat.

(L) District 12: All waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner, west of a line from Little Island Light to Point Retreat Light, east of a line from Point Couverdon to Point Augusta, and east of a line from Point Hayes to Point Thacher.

(1) Section 12–A: All waters of Chatham Strait south of the latitude of Point Couverden (58°11′25″ N. lat.) to the latitude of Point Gardner (57°01′ N. lat.), east of a line from the southeasternmost tip of Point Hayes to the northernmost tip of Point Thacher;

(2) Section 12–B: All waters of Lynn Canal south of the latitude of Little Island Light, west of a line from Little Island Light to Point Retreat Light and north of the latitude of Point Couverden (58°11′25″ N. lat.).

(M) District 13: All waters north of the latitude of the southernmost tip of Helm Point and west of a line from the southernmost tip of Helm Point to the westernmost tip of Hazy Island to Cape Ommaney Light, south of a line projecting west from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point, and west of a line from the southernmost tip of Point Hayes to the northernmost tip of Point Thacher.

(1) Section 13–A: All waters north of 57°16′ N., lat. and those waters of Peril Strait south of the latitude of Pogibshi Point (57°30′30″ N. lat.);

(2) Section 13–B: All waters south of 57°16′ N. Lat.;

(3) Section 13–C: Waters of the district north of the latitude of Pogibshi Point and west of a line from Point Hayes to Point Thatcher in Peril Strait.

(N) District 14: All waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta Light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point;

(1) District 14–A: Waters of the district west of a line beginning at 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus;

(2) Section 14–B: Waters of the district east of a line beginning 58°13′ N. lat., 135°57′ W. long. to Lemesurier Island to Point Carolus and west of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135°29′ W. long.;

(3) Section 14–C: Waters of the district east of a line from Point Sophia to Excursion Point at 58°22′30″ N. lat., 135°29′ W. long.

(O) District 15: All waters of Lynn Canal north of the latitude of Little Island Light;

(1) Section 15–A: All waters of the district north of the latitude of Sherman Rock Light;

(2) Section 15–B: Waters of Berners Bay east of a line from Point St. Mary to Point Bridget;

(3) Section 15–C: All waters of the district south of the latitude of Sherman Rock Light, except for the waters of Section 15–B.

(P) District 16: All waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(Q) Dixon Entrance District: All waters east of 138°45′20″ W. long., south of the southern boundaries of Districts 1, 2, 3 and 4 and north of a line from 54°43′30″ N. lat.,130°37′37″ W. long., to 54°43′24″ N. lat.,130°37′39″ W. long., to 54°43′15″ N. lat.,130°37′44″ W. long., to 54°43′00″ N. lat.,130°37′55″ W. long., to 54°42′58″ N. lat.,130°37′57″ W. long., to 54°42′47″ N. lat.,130°38′06″ W. long., to 54°42′22″ N. lat.,130°38′26″ W. long., to 54°41′09″ N. lat.,130°38′58″ W. long., to 54°39′54″ N. lat.,130°38′58″ W. long., to 54°39′14″ N. lat.,130°39′18″ W. long., to 54°39′48″ N. lat.,130°41′35″ W. long., to 54°40′03″ N. lat.,130°42′22″ W. long., to 54°40′42″ N. lat.,130°44′43″ W. long., to 54°40′41″ N. lat.,130°44′59″ W. long., to 54°40′46″ N. lat.,130°45′51″ W. long., to 54°41′06″ N. lat.,130°48′31″ W. long., to 54°41′05″ N. lat.,130°49′17″ W. long., to 54°41′21″ N. lat.,130°53′18″ W. long., to 54°41′26″ N. lat.,130°53′39″ W. long., to 54°42′27″ N. lat.,130°56′18″ W. long., to 54°42′34″ N. lat.,130°57′09″ W. long., to 54°43′00″ N. lat.,130°57′41″ W. long., to 54°43′46″ N. lat.,130°58′55″ W. long., to 54°44′12″ N. lat.,130°59′44″ W. long., to 54°45′39″ N. lat.,131°03′06″ W. long., to 54°46′16″ N. lat.,131°04′43″ W. long., to 54°42′11″ N. lat.,131°13′00″ W. long., to 54°40′52″ N. lat.,131°13′54″ W. long., to 54°39′09″ N. lat.,131°16′17″ W. long., to 54°36′52″ N. lat.,131°19′22″ W. long., to 54°29′53″ N. lat.,131°33′46″ W. long., to 54°30′32″ N. lat.,131°38′01″ W. long., to 54°28′18″ N. lat.,131°45′20″ W. long., to 54°26′41″ N. lat.,131°49′28″ W. long., to 54°21′51″ N. lat.,132°02′54″ W. long., to 54°24′52″ N. lat.,132°23′39″ W. long., to 54°24′41″ N. lat.,132°24′29″ W. long., to 54°24′41″ N. lat.,132°24′35″ W. long., to 54°24′30″ N. lat.,132°26′51″ W. long., to 54°24′34″ N. lat.,132°36′16″ W. long., to 54°24′54″ N. lat.,132°39′46″ W. long., to 54°26′00″ N. lat.,132°44′12″ W. long., to 54°27′07″ N. lat.,132°49′35″ W. long., to 54°27′07″ N. lat.,132°50′42″ W. long., to 54°28′25″ N. lat.,132°55′54″ W. long., to 54°28′32″ N. lat.,132°56′28″ W. long., to 54°30′03″ N. lat.,133°07′00″ W. long., to 54°30′10″ N. lat.,133°07′43″ W. long., to 54°30′42″ N. lat.,133°11′28″ W. long., to 54°31′02″ N. lat.,133°14′00″ W. long., to 54°30′08″ N. lat.,133°16′58″ W. long., to 54°22′01″ N. lat.,133°44′24″ W. long., to 54°20′33″ N. lat.,133°49′21″ W. long., to 54°15′40″ N. lat.,134°19′49″ W. long., to 54°12′57″ N. lat.,134°23′47″ W. long., to 54°12′45″ N. lat.,134°25′03″ W. long., to 54°07′30″ N. lat.,134°36′24″ W. long., to 54°00′01″ N. lat.,135°45′57″ W. long., to 53°28′27″ N. lat.,138°45′20″ W. long.

(R) Yakataga District: All waters of Alaska between the longitude of Cape Suckling (143°53′ W. long.) and the longitude of Icy Cape (141°42′ W. long.).

(S) Yakutat District: All waters of Alaska between the longitude of Icy Cape (141°42′ long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

(ii) Shellfish may be taken for subsistence purposes only as provided in this subsection.

(A) Yakutat: Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take shellfish in waters of Yakutat Bay, including Russell Fiord, within a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(B) Klukwan: Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take shellfish, except king and tanner crab, in waters of Section 15–A.

(C) Haines: Only those residents domiciled in the City and Borough of Haines, excluding residents domiciled in the village of Klukwan and in the drainages of Excursion Inlet, may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 15–A.

(D) Hoonah: Only those residents domiciled in the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take shellfish, except shrimp, king crab, and tanner crab, in waters of District 14 east of the longitude of Point Dundas.

(E) Angoon: Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ West longitude, including Killisnoo Island, may take shellfish, except shrimp, king crab, and tanner crab, in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in section 13–C east of the longitude of Point Elizabeth.

(F) Kake: Only those residents domiciled in the City of Kake and in Kupreanof Island drainages into Keku Strait south of Point White and north of the Portage Bay boat harbor may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 9–B north of the latitude of Point Ellis, in waters of District 10 west of a line from Penta Point to Point Pybus, and in waters of District 5 north of 56°40′ North latitude.

(G) Saxman: Only those residents domiciled in the City of Saxman may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 1–F north of the latitude of the northernmost tip of Mary Island, excepts waters of Boca de Quandra, and in waters of section 1–E south of the latitude Grand Island light.

(H) Kasaan: Only those residents domiciled in the City of Kasaan and in the drainages of the southeastern shore of the Kasaan Peninsula west of 132°20′ West longitude and east of 132°25′ West longitude may take shellfish, except shrimp, king crab, and tanner crab, in District 2 north of the latitude of the northermost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula.

(I) Klawock: Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation as they existed in January 1989 may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3–B.

(J) Craig: Only those residents domiciled in the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation as they existed in January 1989 may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3–B.

(K) Hydaburg: Only those residents domiciled in the townsite of Hydaburg may take shellfish, except shrimp, king crab, and tanner crab, in waters of section 3–B south of the latitude of Bocas Point, excluding Port Refugio.

(iii) No commercially licensed and registered shrimp fishing vessel may be used to take shrimp for subsistence purposes in Districts 6, 7, 8 and 10 from February 15 through April 30.

(iv) In the subsistence taking of dungeness crab.

(A) The daily bag and possession limit is 20 crab person except that, in waters of Thorne Bay west of the longitude of the southernmost tip of Thorne Head, the daily bag and possession limit is five crab;

(B) Only male crab six and one-half inches or greater in shoulder width may be taken or possessed;

(C) Spears and gaffs may not be used in Districts 1 through 13;

(D) Live holding facilities used to accumulate or pool multiple bag limits by an individual or individuals are not allowed.

(v) In the subsistence taking of king crab.

(A) In the Southeastern Alaska Area the daily bag and possession limit is six crab per person and only male crab may be taken;

(B) In that portion of the Southeastern Alaska-Yakutat Area east of the longitude of Cape Spencer (136°39′ 30 seconds West longitude)

(1) Red and blue king crab may not be taken from April 1 through June 30;

(2) Only make red and brown king crab seven inches and male blue king crab six and one-half inches or larger in width of shell may be taken or possessed;

(C) In the Yakutat Area the daily bag and possession limit if two crab per person and only male crab may be taken;

(D) An operator of a commercially licensed and registered king crab fishing vessel shall obtain a permit from the Alaska Department of Fish and Game before taking king crab for subsistence purposes in waters of Yakutat Bay enclosed by a line from the westernmost tip of Ocean Cape to the easternmost tip of Point Manby during the open commercial king crab fishing season; the Alaska Department of Fish and Game

may set out requirements in the permit for the conservation of the king crab resource and to ensure compliance with other applicable fishing laws and regulations.

(vi) In the subsistence taking of tanner crab the possession limit is 30 crab per person per day.

(vii) In the subsistence taking of geoducks the bag limit is six geoducks per person per day.

(viii) In the subsistence taking of abalone

(A) The possession limit is 50 abalone per person.

(B) The minimum allowed size is three inches (76 mm) in greatest diameter of shell, except in district 13 the minimum legal size is three and one-half inches (89 mm) in greatest diameter of shell;

(C) Subsistence fishing is prohibited while engaged in commercial abalone fishing; prior to engaging in the subsistence fishery, commercial abalone fishermen must return the commercial permit to the Alaska Department of Fish and Game and land the commercial catch in possession.

(2) *Prince William Sound Area.* The Prince William Sound Area has as its western boundary the longitude of Cape Fairfield (148°50′ West longitude), its eastern boundary the longitude of Cape Suckling (143°53′ West longitude) and its seaward boundary the 400-fathom (732 m) depth contour.

(i) In the subsistence taking of shrimp in addition to marking requirements otherwise specified, each key or buoy must also be plainly and legibly inscribed with the vessel name or U.S. Coast Guard number of the vessel used to operate the pot.

(ii) In the subsistence taking of dungeness crab

(A) The daily bag and possession limit is 20 crab per person;

(B) The minimum legal size is six and one-half inches (165 mm) in shoulder width;

(C) Only male crab may be taken.

(iii) In the subsistence taking of tanner crab.

(A) The daily bag and possession limit is 20 male crab per person;

(B) Only male tanner crab 5.3 inches or greater in width of shell may be taken or possessed.

(iv) In the subsistence taking of king crab

(A) The daily bag and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) The minimum legal size is 5.9 inches in width of shell for blue king crab and seven inches in width of shell for red and brown king crab.

(v) In waters east of 146° West longitude and south of a line from the southernmost tip of point Bentinck, to the southernmost tip of Point Whitshed

(A) Razor clams may be taken only under the authority of a subsistence razor clam fishing permit;

(B) Only razor clams four and one-half inches or longer in length of shell may be taken or possessed.

(3) *Cook Inlet Area.* (i) The Cook Inlet Area has as its eastern boundary the longitude of Cape Fairfield (148°50′ West longitude) and its southern boundary the latitude of Cape Douglas (58°52′ North latitude).

(ii) Northern District: North of a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, then to a point on the west shore at 60°46′23″ N. lat.

(A) Eastern Subdistrict: All waters south of the latitude of Point Possession, north of the latitude of Boulder Point, and east of a line form Shell Platform C to a point at 61°02′40″ N. Lat., 150°40′W. long.;

(B) General Subdistrict: All waters of the Northern District not specified above.

(iii) Central District: All waters between a line extending from Boulder Point at 60°46′23″ N. lat., to Shell Platform C, to a point on the west shore at 60°46′23″ N. lat., and the latitude of Anchor Point Light (59°46′12″ N. lat.)

(A) Kustatan Subdistrict: All waters within a line from the Drift River terminal to the South Kalgin Island Light at 60° 20′ 48″ N. lat., 152° 04′ 30″ W. long., northerly along the west side of Kalgin Island to Northwest Point at 60° 31′ 15″ N. lat., 155° 55′ 45″ W. long., bearing 43° to Shell Platform C, to a point on the west shore at 60° 46′ 23″ N. lat., excluding the waters of the Kalgin Island Subdistrict;

(B) Upper Subdistrict: All waters within a line from Boulder Point to shell Platform C, then bearing 223° to Northwest Point at 60° 31′ 15″ N. lat., 151° 55′ 45″ W. long., then following the eastern shore of Kalgin Island to the South Kalgin Island Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 142° to the Ninilchik small boat harbor, excluding the waters of the Kalgin Island Subdistrict;

(C) Kalgin Island Subdistrict: All waters within a line encompassing Kalgin Island within one mile of mean lower low water as delineated by the most recent U.S. Coast and Geodetic Survey chart number 8553;

(D) Lower Subdistrict: Waters between a line extending from Ninilchik small boat harbor, then bearing 136° to the South Kalgin Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northwestern shore of Chisik Island at 60° 10′ 30″ N. lat., 152° 35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59° 58′ 5″ N. lat., then bearing 270° to the shore, and the latitude of the Anchor Point Light, excluding the waters of the Chinta Bay and the Kalgin Islands Subdistricts;

(E) Western Subdistrict: Waters within a line from the Drift River terminal to the South Kalgin Light at 60° 20′ 48″ N. lat., 152° 09′ 42″ W. long., then bearing 236° to a point one nautical mile from the bluff on the northeast shore of Chisik Island at 60° 10′ 30″ N. lat., 152° 35′ W. long., then in a southerly direction one nautical mile seaward of the mean high water line to a point at the southern end of the silver salmon set-net area at 59° 58′ 05″ N. lat., then bearing 270° to the shore, excluding the waters of the Kalgin Island Subdistrict;

(F) Chinitna Bay Subdistrict: All waters in Chinitna Bay west of a line from Spring Point to Sea Otter Point.

(iv) Southern District: All waters enclosed by a line from the westernmost tip of Anchor Point west to 59° 46′ 15″ N. lat., 162° 20′ W. long., then south to 59° 03′ 25″ N. lat., 152° 20′ W. long., then in a northeasterly direction to the tip of Cape Elizabeth, then from the tip of Cape Elizabeth to the tip of Point Adam;

(A) Port Graham Subdistrict: All waters east of the longitude of Point Bede and south of the latitude of Point Pogibshi;

(B) Seldovia Bay Subdistrict: All waters south of a line from Point Naskowhak to Seldovia Point;

(C) Barbara Creek Subdistrict: All waters between the longitudes of Seldovia Point and Nubble Point and south of 59° 30′ N. lat.;

(D) Tutka Bay Subdistrict: All waters east of the longitude of Nubble Point and south of the latitude of Anisom Point on the eastern shore of Eldred Passage at 59° 32′ 08″ N. lat., 141° 27′ 55″ W. long., including Kasitsna Bay;

(E) Humpy Creek Subdistrict: All waters east of a line from an Alaska Department of Fish and Game marker on Glacier Spit at 59° 38′ N. lat., 151° 12′ 31″ W. long., to the Northshore Subdistrict line at 59° 38′ 15″ N. lat., 151° 18′ 45″ W. long., and southeast of a line from that point on the Northshore Subdistrict line at 59° 38′ 15″ N. lat., 151° 18′ 45″ W. long., to a point north of Chugachik Island at 59° 45′ N. lat., 151° 02′ 36″ W. long., to a point on the mainland at 59° 44′ 30″ N. lat., 151° 02′ 06″ W. long.

(F) Northshore Subdistrict: All waters north of a line from Coal Point to a point north of Chugachik Island at 59° 45′ N. lat., 151° 02′ 36″ W. long., then northwesterly to a marker one-half statute mile southwest of the terminus of Swift Creek;

(G) China Poot Subdistrict: All waters south of a line from Peterson Point at 59°35′48″ N. lat., 151°16′24″ W. long., to Coal Point on the tip of the Homer Spit at 59°36′06″ N. lat., 151°24′30″ W. long., to 59°32′08″ N. lat., 151°33′05″ W. long. to Anisom Point.

(H) Halibut Cove Subdistict: All waters within a line from a marker on Glacier spit at 59° 38′ N. lat., 151°12′30″ W. long to the intersection of the Northshore Subdistrict line at 59°38′15″ N. lat., 151°18′45″ W. long., to Coal Point to Peterson Point.

(v) Kamishak Bay Distict, All water enclosed by a line from 59°46′15″ N. lat., 153°30′ W. long., then east to 59°48′15″ N. lat., 152°20′ W. long., then south to 59°03′25″ N. lat., 152°20′ W. long., then southwesterly to Cape Douglas (58°52′ N. lat.)

(A) Iniskin Bay Subdistrict: All waters north of a line from a point on the east shore of Iniskin Bay near Scott Island at 59°36′35″ N. lat., 153°25′30″ W. long., to a point north of South Head at 59°37′20″ N. lat., 153°33′30″ W. long.;

(B) Cottonwood Bay Subdistrict: All waters west of a line from South Head north to a point at 59°37′20″ N. lat., 153°33′30″ W. long.;

(C) Ursus Cove Subdistrict: All waters west of the longitude of Ursus Head and north of 59°28′05″ N. lat.;

(D) Rocky Cove Subdistrict: All waters between 59°28′05″ N. lat., and 50°25′ N. lat., and west of 153°40′ W. long.;

(E) Bruin Bay Subdistrict: All waters between 59°25′ N. lat., and 59°20′ N. lat., and west of 153°40′ W. long.;

(F) Kamishak River Subdistrict: All waters east of a line from McNeil Head at 59°07′24″ N. lat., 154°10′24″ W. long. to the mushroom islet at 59°07′45″ N. lat., 154°09′30″ W. long. to the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., south of the latitude of the northern tip of Nordyke Island, and west of 153°50′ W. long.;

(G) McNeil River Subdistrict: All waters southwest of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(H) Chenik Subdistrict: All waters between 59°20′ N. lat., and the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and west of 153°40′ W. long.;

(I) Paint River Subdistrict: All waters south of the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., west of a line from the northern tip of Nordyke Island to the mushroom islet at 59°07′45″ N. lat., 154°09′30″ W. long. to McNeil Head and east of a line from McNeil Head to a point of land at 59°09′30″ N. lat., 154°12′45″ W. long.;

(J) Douglas River Subdistrict: All waters west of the longitude of Cape Douglas (153°10′30″ W. long.), south of the latitude of the northern tip of Nordyke Island at 59°11′ N. lat., 154°05′ W. long., and east of 153°50′ W. long.

(vi) Barren Island District: All waters enclosed by a line from Cape Douglas (58°2′ N. lat.) to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then west to Cape Douglas.

(vii) Outer District: All waters enclosed by a line from the tip of Point Adam to the tip of Cape Elizabeth, then south to 58°52′ N. lat., 151°53′ W. long., then east to the longitude of Aligo Point (149°44′33″ W. long.), then north to the tip of Aligo Point.

(A) Koyuktolik Subdistrict: All waters east of the longitude of Point Adam and north of 59°13′55″ N. lat.;

(B) Port Chatham Subdistrict: All waters north of 59°10′ N. lat., and east of 151°50′ W. long.;

(C) Windy Bay Subdistrict: All waters west of a line from 59°12′33″ N. lat., 151°27′30″ W. long., to 59°14′08″ N. lat., 151°26′24″ W. long.;

(D) Rocky Bay Subdistrict: All waters north of a line from 59°14′08″ N. lat., 151°26′24″ W. long., to 59°12′24″ N. lat., 151°91′15″ W. long.; Scurvey Creek Section: all waters northwest of a line from 59°34′30″ N. lat., 151°26′24″ W. long. to a point on the southwest corner of Picnic Harbor at 59°15′05″ N. lat., 151°25′ W. long.;

(E) Port Dick Subdistrict: All waters of Port Dick north of 59°13′12″ N. lat.;

(*1*) Port Dick North Section: All waters of the northern shore of West Arm bounded by a line from the market at 59°18′40″ N. lat., 151°16′50″ W. long., south to a point 300 yards offshore then southeasterly to 59°16′50″ N. lat., 151°05′55″ W. long. then north to the waterfall at 59°16′40″ N. lat.

(*2*) Port Dick South Section: Waters of the subdistrict not included in the Port Dick North Section.

(F) Nuka Island Subdistrict: All waters of Nuka Passage north of a line from Front Point to Nuka Point and south of the latitude of Hardover Point;

(G) East Nuka Subdistrict: All waters of the East Arm of Huka Bay north of the latitude of Harrington Point.

(viii) Eastern District: All waters east of the longitude of Aligo Point (149°44′33″ W. long.), west of the longitude of Cape Fairfield (148°50′ W. long.), and north of 58°52′ N. lat.

(A) Aialik Bay Subdistrict: All waters north of a line from Aligo Point to Aialik Cape;

(B) Resurrection Bay Subdistrict: All waters north of the latitude of Caines Head (59° 59′ N. lat.)

(ix) Except as otherwise in this section, no person may take shellfish for subsistence purposes.

(x) Clams may be taken in the Port Graham Subdistrict only by persons domiciled in the villages of Port Graham and English Bay.

(xi) Clams may be taken on the western beaches of Cook Inlet from the terminus of the Drift River to the terminus of the Crescent River only by persons domiciled in the village of Tyonek.

(xii) No person may take dungeness crab or king crab.

(4) *Kodiak Area.* (i) The Kodiak Area has as its northern boundary the latitude of Cape Douglas (58° 52′ North latitude), its western boundary the longitude of Cape Kumlik (157° 27′ West longitude), its eastern boundary the longitude of Cape Fairfield (148° 50′ West longitude), and its seaward boundary the 300-fathom (549 m) depth contour.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall

have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab;

(D) King crab may be taken only from June 1 though January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location.

(vi) In the subsistence taking of tanner crab

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15 through February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location.

(C) The daily bag and possession limit is 12 crab per person and only male crab may be taken.

(vii) Only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base, may take king crab in the Kodiak Area. This restriction does not apply to the Semidi Island, the North Mainland, and the South Mainland Sections, as described below:

(A) Semidi Island Section: all waters west of the longitude of Cape Kilokak (156° 19' West longitude) and east of the longitude of Cape Kumlik (157° 27' West longitude);

(B) North Mainland Section: all waters north of 58° North latitude and west of a line from 58° 52' North latitude, 152° 45' West longitude to 58° North latitude, 154° West longitude.

(C) South Mainland Section: all waters south of 58° North latitude, west of a line from 58° North latitude, 154° West Longitude to 57° 15' North latitude, 155° 30' West longitude to 56° 45' Noth latitude, 156° 19' West longitude, and east of the longitude of Cape Kilokak (156° 19' West longitude.)

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The area includes Pacific Ocean waters west of the longitude of Cape Kumlik (157° 27' West longitude), east of 172° East longitude and shoreward of the 800-fathom (1463 m) depth contour, and Bering Sea waters east of 172° East longitude and south of 54° 36' North latitude.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1 through January 31.

(vi) The daily bag and possession limit is 12 tanner crab per person. Only male crab may be taken.

(6) *Bering Sea Area.* (i) The area includes the waters of the Bering Sea and Chukchi Sea north of 54°36' North latitude, east of a line from 54°36' North latitude, 171°23' East longitude, to 65°32' North latitude, 168°55' West longitude to 68°21' North latitude, 168°55' West longitude (the U.S.-Russia Convention Line of 1867) and south of the latitude of Point Hope (68°21' North latitude).

(A) Pribilof District: Waters of the Bering Sea area south of the latitude of Cape Newenham (58°30' North latitude).

(B) Northern District: Waters of the Bering Sea area north of the latitude of Cape Newenham (58°30' North latitude).

(*1*) Norton Sound Section: Waters east of 168° West longitude, north of the latitude of Cape Romanzof (61°49' North latitude), and south of the latitude of Cape Prince of Wales (65°36' North latitude);

(*2*) Saint Matthew Island Section: Waters north of the latitude of Cape Newenham (58°39' North latitude) and south of the latitude of Cape Romanzof (61°49' North latitude);

(C) Saint Lawrence Island Section: All remaining waters of the district.

(ii) In waters south of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iv) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(v) In waters south of 60° North latitude, the daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(vi) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily bag and possession limit is six crab per person, and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In the Norton Sound Section of the Northern District, a subsistence fishing permit is required and may be obtained from a local representative of the Alaska Department of Fish and Game;

(D) In waters south of 60° North latitude, crab may be taken only June 1 through January 31.

(vii) In waters south of 60° North latitude, the daily bag and possession limit is 12 tanner crab, and only males may be taken.

Dated: June 25, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

Dated: June 25, 1990.

F. Dale Robertson,

Chief, USDA—Forest Service.

[FR Doc. 90-15284 Filed 6-28-90; 8:45 am]

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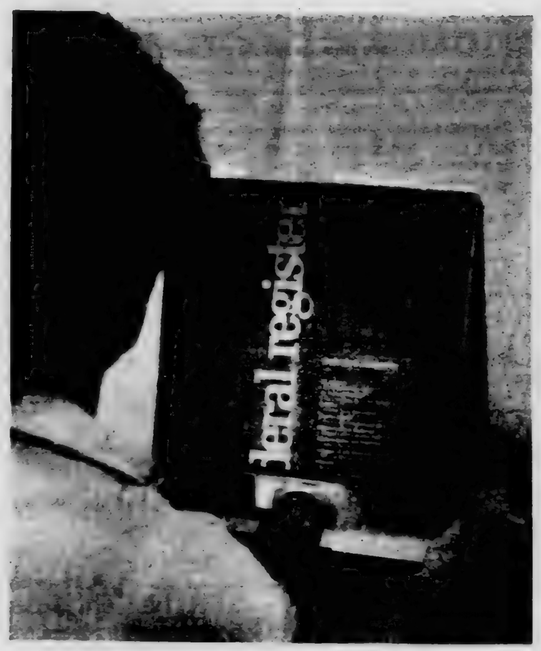
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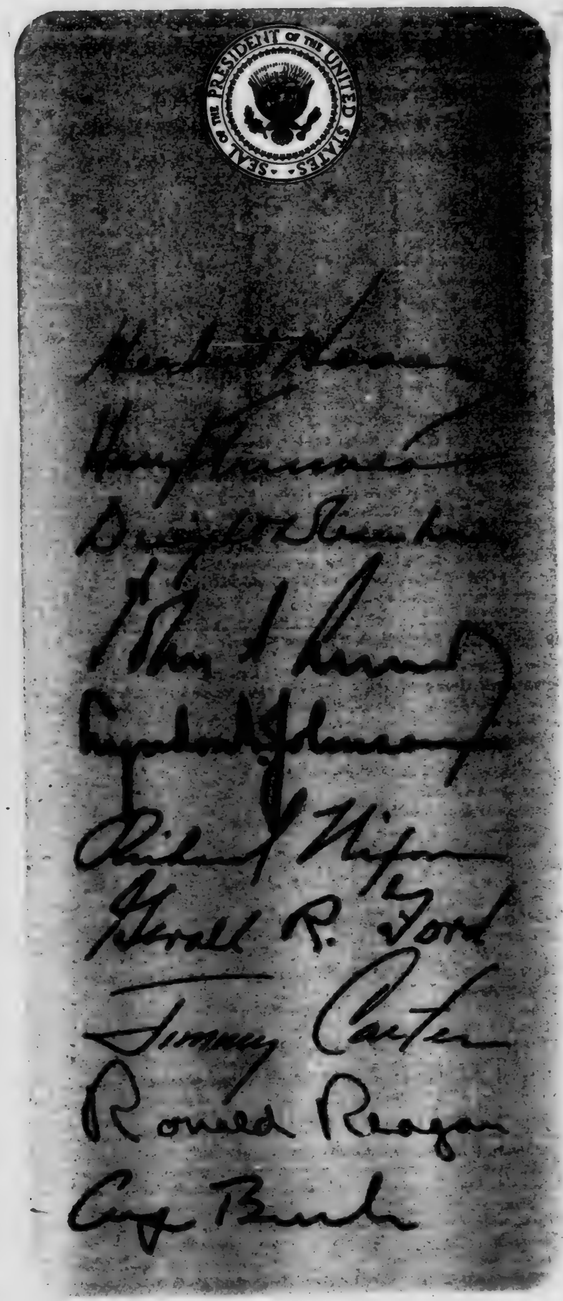
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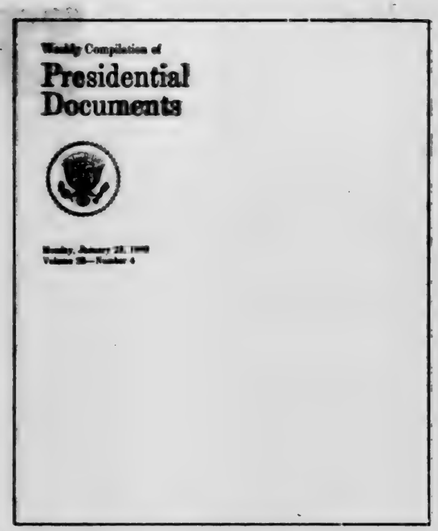
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Parallel Table of Authorities and Rules



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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1990.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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446.115c Removed 47352
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446.120d (a)(3)(ii) introductory text amended 11584
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446.260 (b)(1)(ii)(*a*) amended 47205
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452.32a (a)(3)(ii) introductory text amended 11584
452.110d (a)(3)(ii) introductory text amended 11584
452.115g Added 280
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452.510b (a)(2) revised 47352
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452.510d (a)(3)(ii) introductory text amended 11584
452.910 (a)(3)(ii) amended 11584

453 Authority citation revised; sectional authority citations removed 39637
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453.522 Redesignated as 453.522a; new 453.522 added 38224
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455.4a (a)(3)(ii) introductory text amended 11584
455.15 (a)(3)(ii) amended 11584
455.15a (a)(3)(ii) amended 11584
455.40 Added 2641
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455.82a (b)(1)(iii)(B) amended 47205
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455.185b (a)(3)(ii) introductory text amended 11584
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455.270 Added 38375
455.285 Added 20384
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455.510d (a)(1) amended 11585
455.540 Added 2642
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500.51 (c) amended 18279
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510.6 Removed 22741
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510.112 (a) and (e) amended 18280
510.301 Introductory text amended 18280
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514.55 Removed 22742
514.60 Removed 22742
514.111 (a)(5)(ii)(*a*)(*6*) amended 18280
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520.447 (c) revised 47767
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520.622a (a)(3) amended 8461
520.622c (b)(4) amended 8462
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520.1100 (c) revised; (d) (3) and (4) redesignated as (d) (2) and (3) 30205
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520.1242a (f)(2)(ii)(*a*) amended 18280
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520.1448 Amended 3586
520.1660d (d) amended 18280
520.1720a (b)(4) amended 22885
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520.1760 Removed 30205
520.1780 Removed 30205
520.1803 (b) amended 38515
520.1840 (c)(4) and (d)(4) added 33501
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520.2080b Removed 30205
520.2087 (b) amended 8460
520.2088 (a)(2) and (b)(2) amended 8460
520.2184 (b) amended 8460
520.2220d Added 48593
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522.2220 (c) (2), (3) (i), and (ii) revised; (c)(3)(iii) removed; (c)(3)(iv) redesignated as (c)(3)(iii) 30205
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524.2080 Removed 30205
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529 Authority citation revised 39638
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539 Authority citation revised; sectional authority citations removed 39638
540 Authority citation revised; sectional authority citations removed 39638
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540.255c (c)(2) (i) and (ii) amended 41442
540.274b (c)(3)(ii) and (5)(i) revised 33673
(c)(4) removed 41442
540.874a (c)(3)(i) and (4)(i) amended 8462
544 Authority citation revised; sectional authority citations removed 39638
544.275 (c)(2) and (4)(iii) revised 41442
546 Authority citation revised; sectional authority citations removed 39638
546.110b (b)(2) amended 18281
546.180a (c)(5)(i)(C) amended 11698

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Correctly designated 13977
548 Authority citation revised 39638
548.112b Removed 30206
555 Authority citation revised; sectional authority citations removed 39638
555.110a (c)(2)(ii) amended 8462
555.110b (c)(2) amended 26958
555.210 (c)(2) amended 41442
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556 Authority citation corrected 20235
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556.34 Added 25115
556.250 (b) amended 18281
556.308 Revised 28052
556.344 (a) amended 18281
556.360 Revised 3209
556.420 (a) revised 32633
556.760 Introductory text removed; (a) and (b) introductory text added 31950
558 Authority citation revised 39639
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558.3 (b)(4) amended 51386
558.4 (d) table amended 18281, 32633, 53319
(d) table amended 1406
(d) table corrected 40657
558.15 (g)(1) table amended 37098
(g) introductory text amended 51386
(g)(1) table amended 8462
(g)(2) table amended 8460
558.35 (a) amended 8460
558.55 (d)(2) table amended 8460
558.58 (d)(1) table amended 8460
558.62 (c)(2)(iii) amended 18281
558.76 (d)(3)(xiii) added 29335
(d)(3)(xiv) added 32635
558.95 (b)(1)(iii)(*b*), (iv)(*b*), (v)(*b*), (vii)(*b*), (ix)(*b*), (x)(*b*), and (xi)(*b*) amended 8460
558.105 (d)(1)(ix)(*b*) amended 8460
558.128 (c)(5) (vii) and (viii) redesignated as (c)(5) (vi) and (vii); new (c)(5)(viii) added 24901
(c)(5)(xi) redesignated as (c)(5)(xii); new (c)(5)(xi) added 25115
(c)(5)(xiii) added 26732
558.195 (d) table amended 8460
558.258 (c)(3) added 36963
558.265 (c) revised 28052
558.274 (a)(2) and (c)(1) table amended 51021
558.311 (b)(6) added 29544
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558.325 (c)(3)(xv) added 21940
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558.340 (c) (2) and (3) redesignated as (c)(1) (i) and (ii); new (c)(2) added 26732
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(c)(3) added 32635
(c)(4) added 33885
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558.355 (b)(14), (d) (3), (10), (11), and (f)(6) added 32633
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558.363 (c)(1)(v) added 29335
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558.369 (a) amended 8460
558.376 (a) amended 8460
558.430 (a) amended 8461
558.515 (d)(1)(ii)(*b*) amended 8461
558.530 (d)(4)(vii) added 24901
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558.625 (b)(38) amended 38646
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558.630 (b)(10) amended 51021
558.680 (a) amended 8461
564 Authority citation revised 39639
564.17 (k) amended 18281

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570 Authority citation revised; sectional authority citations removed 39639
570.6 (e) amended 18281
570.35 (c) (2) and (3) amended 18281
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573.640 (b)(4) (i) and (ii) amended 18281
573.780 (b)(1) amended 18282
573.920 (a) revised; (f) added 14215
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579 Authority citation revised 39639
582 Authority citation revised 39639
582.99 Authority citation removed 39639
584 Authority citation revised 39639
584.200 Authority citation removed 39639
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885.955 (a)(2) revised; OMB number....39708
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904.104 (c) revised; OMB number 39710
904.107 (m)(1) revised; OMB number 39710
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905.406 (a)(3) added; OMB number 39711
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61 Authority citation revised 14193
61.4 (h) added 14193
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101 Authority citation revised 34974
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103 Authority citation revised 34975
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1.41-0 Redesignated as 1.41-0A and amended; undesignated center heading added; new 1.41-0 Added 21204
1.41-1 Redesignated as 1.41-1A and amended; new 1.41-1 Added 21205
1.41-2 Redesignated as 1.41-2A; new 1.41-2 Added 21205
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1.41-4 Redesignated as 1.41-4A; new 1.41-4 Added 21209

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1.41–6 Redesignated as 1.41–6A; new 1.41–6 Added 21211
1.41–7 Redesignated as 1.41–7A; new 1.41–7 Added 21211
1.41–8 Redesignated as 1.41–8A; new 1.41–8 Added 21211
1.41–9 Added 21213
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1.162–25T (b) amended 51026
1.163–11T Added (temporary) 731
1.218–0 Amended 21204
1.267(f)–1T (h) revised (temporary) 38823
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[EDITORIAL NOTE: The 1989 edition of title 38 was revised as of September 1, 1989. Amendments to this volume will be promulgated during the period of September 2, 1989 through July 1, 1990.]

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The CFR is revised annually according to the following schedule:

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INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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†††Amendments to this volume were promulgated during the period July 1, 1988 through September 1, 1989.

††††Amendments to this volume were promulgated during the period October 1, 1988 through October 15, 1989.

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Table I is in the CFR Index and Finding Aids revised as of January 1, 1990. Additions during 1989 are in the December 1989 LSA (List of CFR Sections Affected).

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Table I is in the CFR Index and Finding Aids revised as of January 1, 1990. Removals during 1989 are in the December 1989 LSA (List of CFR Sections Affected).

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LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

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[EDITORIAL NOTE: The 1989 edition of title 38 was revised as of September 1, 1989. Amendments to this volume will be promulgated during the period of September 2, 1989 through July 1, 1990.]

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1.17 (d)(3) corrected 46187
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1.956 (a) (1), (2) and (2)(iv) nomenclature change 40871
3.1 (y) revised 8141
3.6 (c) (4), (5) authority citation, (d)(2), and (e) introductory text revised; (d)(3) redesignated as (d)(4); new (d) (3) and (4) authority citation added 51200
3.32 Added 8140
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3.109 (b) revised and authority citation added 13529
3.110 Revised and authority citation added 13529

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3.160 (e) revised and authority citation added 20148
3.301 (b), (c) introductory text, (2) and cross-reference revised 13530
3.302 (a)(2), (b)(1), and (3) amended 13530
3.311b (a)(1) amended; (b)(2)(i), (iii), (xiv), (xv) and (4) revised; (b)(2)(xvi), (xvii), (a)(1) authority citation and (b)(2) authority citation added 42803
3.312 (c)(1) amended 42803
3.328 Added 18602
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3.342 (c)(1) amended; (c)(2) revised 17271
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17.610 (c) corrected 46611
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21.4135 (z) added 42501
21.4150 (c) revised 49756
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21.4153 (a)(1), (c)(4)(ii), and (f) revised; (c)(2)(iii) removed; (c)(2) (i) and (ii) redesignated as (ii) and (iii); new (c)(2)(i) added 49757
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1990. Removals during 1989 are in the December 1989 LSA (List of CFR Sections Affected).

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